

211 CMR: DIVISION OF INSURANCE

211 CMR 44.00: CONFIDENTIALITY OF BIDS SUBMITTED FOR RESTRICTED PHARMACY NETWORK CONTRACTS -- TO FACILITATE THE IMPLEMENTATION OF M.G.L. c. 176D, § 3B

Section

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44.01: Purpose

The purpose of 211 CMR 44.00 *et seq.* is to provide for the implementation of M.G.L. c. 176D, § 3B and to set forth the proprietary data and information that a Carrier shall withhold from public disclosure in the opening of Restricted Pharmacy Network contract bids.

44.02: Applicability, Scope and Effective Date

- (1) 211 CMR 44.00 *et seq.* shall apply to the Restrictive Pharmacy Network contract bidding process between Carriers and Eligible Bidders after December 31, 1994.
- (2) 211 CMR 44.00 *et seq.* shall not apply to arrangements for the provision of pharmaceutical drug benefits to Insureds between a Carrier and a mail order pharmacy, a hospital-based pharmacy which is not a retail pharmacy, a pharmacy maintained by a physician group practice or clinic which is not a retail pharmacy or a pharmacy wholly-owned by a Carrier or to the establishment of any Restricted Pharmacy Network in a geographical area, approved by the Commissioner, which is served solely by a single provider of pharmaceutical services.

44.03: Definitions

Carrier: an insurer operating pursuant to the provisions of M.G.L. c. 175, a hospital service corporation operating pursuant to the provisions of M.G.L. c. 176A, a medical service corporation operating pursuant to the provisions of M.G.L. c. 176B, a health maintenance organization operating pursuant to the provisions of M.G.L. c. 176G, and a preferred provider arrangement operating pursuant to the provisions of M.G.L. c. 176I, or a wholly-owned subsidiary or affiliate under common ownership thereof.

Commissioner: the Commissioner of Insurance appointed pursuant to M.G.L. c. 26, § 6, or his or her designee.

Eligible Bidder: a retail pharmacy, community pharmacy or pharmacy department registered pursuant to M.G.L. c. 112, §§ 38 and 39, or an association of such pharmacies, irrespective of corporate structure or number of locations at which it conducts business, located within the Geographical Service Area of a Carrier and willing to bid for participation in a Restricted Pharmacy Network contract.

Geographical Service Area: that area defined in the terms of a Carrier's certificate, contract or agreement of insurance or coverage. If the Carrier's certificate, contract or agreement of insurance does not define a specific geographic area, then it shall be deemed to be the entire State.

Insured: a person whose health care services and benefits are provided by, or indemnified by or otherwise covered by a Carrier's group or individual insurance policy, or certificate, agreement or contract and shall include subscribers, enrollees or members.

44.03: continued

Restricted Pharmacy Network: an arrangement for the provision of pharmaceutical drug benefits to Insureds which under the terms of a Carrier's policy, certificate, contract or agreement of insurance or coverage requires an Insured, or creates a financial incentive for an Insured, to obtain prescription drug benefits from one or more participating pharmacies that have entered into a specific contractual relationship with the Carrier pursuant to a competitive bidding process.

Willing Pharmacy Provider: a retail pharmacy registered pursuant to M.G.L. c. 112, §§ 38 and 39, or an association of such pharmacies whose purpose is to promote participation in Restricted Pharmacy Networks, irrespective of corporate structure or number of locations at which it conducts business, located within the Geographical Service Area of a Carrier and which are not offered or are not participating in a Carrier's Restricted Pharmacy Network contract but are willing to provide drug benefits to the Carrier's Insureds in accordance with M.G.L. c. 176D, § 3B.

44.04: Bid Disclosure and Confidentiality Requirements

(1) Bid Disclosure: A Carrier shall open all Restricted Pharmacy Network contract bids in a public manner in accordance with the requirements of M.G.L. c. 176D, § 3B subject to the restrictions set forth in 211 CMR 44.04(2)(a) and (b).

(2)(a) Proprietary Data and Information: Except as provided for in 211 CMR 44.04(2)(b), a Carrier shall withhold proprietary data and information contained in the Restricted Pharmacy Network contact bids as confidential from public view. Proprietary data and information shall include:

1. a Carrier's or an Eligible Bidder's marketing strategy;
2. a description of a Carrier's or an Eligible Bidder's information system, computer programs or other on-line service;
3. a Carrier's projected utilization information;
4. rebates, refunds, discount amounts or formulas, volume discounts, any class of trade discounts or any estimated unit and dollar volume discounts provided to an Eligible Bidder by drug manufacturers or pharmaceutical companies;
5. proposed discounts from the average wholesale price, dispensing fees, capitation or other risk-sharing methodology, or ingredient costs;
6. a Carrier's closed formulary;
7. descriptions of unique, plan-specific programs or techniques including cost containment efforts, drug utilization review, formulary compliance assistance, disease management, outcomes management, patient compliance, generic utilization, generic and therapeutic substitution programs; and
8. lists of pharmacies included in the network of an Eligible Bidder which is not chosen in the bidding process by a Carrier to participate in the Carrier's Restricted Pharmacy Network.

(b) Limited Disclosure: Notwithstanding the provisions in 211 CMR 44.04(2)(a), any final price per prescription information contained in the bid shall be disclosed to only an Eligible Bidder or a Willing Pharmacy Provider; provided, however, if the bid does not contain any final price per prescription information, the price methodology described in the bid, including, but not limited to, discounts from the average wholesale price, dispensing fees, capitation or other risk-sharing methodology or ingredient costs, shall instead be disclosed to only an Eligible Bidder or a Willing Pharmacy Provider. The Eligible Bidder or a Willing Pharmacy Provider shall not release the information to any other entity or person.

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44.05: Request for Ruling

Whenever an Eligible Bidder or Carrier believes that certain data or information contained in a bid which is not listed as being proprietary under 211 CMR 44.04(2)(a) or (b) is of a proprietary nature, the Eligible Bidder or Carrier may make a written request to the Commissioner that such information be deemed proprietary for the purposes of M.G.L. c. 176D, § 3B. Written requests should specifically identify the information sought to be deemed proprietary and state in detail the reasons for requesting that the information be deemed proprietary. The information will be treated as proprietary until the Commissioner renders a decision.

44.06: Notice that a Bid is Public

A Carrier that solicits bids for a Restricted Network Pharmacy contract shall open all bids at a previously specified time, which shall not be more than 30 days after the bid submission deadline in a public manner pursuant to M.G.L. c. 176D, § 3B and subject to the restrictions set forth in 211 CMR 44.04(2)(a) and (b). A Carrier shall notify the Commissioner in writing that the bids have been opened no later than three days after the opening of the bids. The notification shall specify the date the bids were opened.

44.07: Severability

If any section or portion of a section of 211 CMR 44.00, or the applicability thereof to any person or circumstance is held invalid by any court of competent jurisdiction, the remainder of 211 CMR 44.00, or the applicability thereof to other persons or circumstances, shall not be affected thereby.

REGULATORY AUTHORITY

211 CMR 44.00: M.G.L. c. 176D, § 3B, and M.G.L. chs. 175, 176A, 176B, 176D, 176G and 176I.

NON-TEXT PAGE