



Government Affairs Alert

March 26, 2010

Physician Dispensing and Repackaged Medications

Summary of Problem

A worrisome trend has emerged in workers' compensation, as a growing number of prescribing physicians (led by companies specifically marketing capabilities to physicians) are repackaging and dispensing medications normally dispensed by retail pharmacies. These repackaging and dispensing physicians inject cost and challenges to the system which include:

- Skirting of state fee schedules and pharmacy cost controls: Because most workers' compensation fee schedules do not recognize physician-dispensed medications, and by billing as a physician and not a pharmacy provider, some bill review systems find difficulty in identifying doctor dispensed and re-pricing/re-packaged drugs consistently.
- Improperly inflating average wholesale price (AWP) of commonly dispensed drugs: Some physician dispensers bill at inflated reimbursement rates by using inflated AWP's to profit under application of the state fee schedule (AWP-based reimbursement guidelines), claiming they are not a dispensing pharmacy.
- Repackaging and NDC switching: Another growing concern is doctor dispensing of repackaged medications (into an odd fill amount such as 21 or 40 – as compared to industry standards), and subsequent creation of new national drug code(s) NDCs. These NDC numbers are not recognized by processors/bill reviewers and, if uncovered, no underlying guidance or AWP exists for these “invented” NDCs. See above.

An example was cited by the California Workers Compensation Institute (CWCI) in 2006 which stated that the average physician dispensed reimbursement for ranitidine (generic Zantac for heartburn or ulcers) is 10 times the amount of a retail pharmacy dispense under state fee schedule.

State Responses to the Problem

- California – In 2007, California revised their fee schedule, requiring physician dispensed and/or repackaged medications to be reimbursed at California fee schedule. Recently, a CWCI initiated study on doctor dispensing reforms indicated repackaged drugs represented well over half (54.7%) of all filled prescriptions and 59.2% of all workers' compensation prescription payments in California (2006 data prior to reform). However, as a result of reforms, repackaged drugs declined to 10.5% of total prescriptions and 8.3% of total payments (mid-2007 CWCI data). Furthermore, initial 2008 data shows repackaged drugs account for just 8.1% of workers' compensation prescriptions and 5.8% of pharmaceutical payments.



- **Arizona** – In September 2009, the Arizona Industrial Commission issued a revised pharmacy fee schedule, attempting to specifically control doctor dispensed drugs. The Arizona fee schedule requires reimbursement for repackaged drugs to be billed at fee schedule AWP levels (regardless of location of dispense) and limits the dispensing fee to \$7.00. In addition, if information pertaining to original underlying drug product (NDC or AWP) is not provided or is unknown, then discretion is vested in payor to select which AWP to use (e.g., RedBook, FDB, MediSpan) when making payment for repackaged medications.
- **Florida** – In August 2009, The Florida Division of Workers' Compensation (DWC), in response to an Administrative Law Case, stated that doctors are allowed to dispense (if properly licensed) and injured workers are allowed to utilize any properly licensed dispenser of medications. The DWC was correct because in accordance with Florida statute, *'an injured employee shall be entitled, at all times, to free, full and absolute choice in selection of pharmacy provider'*. The DWC attempted to limit doctor dispensing fees by limiting reimbursement to AWP plus a \$4.18 dispensing fee (Florida Statute), unless a carrier has contracted for a lower amount. This solution has not worked as intended, as dispensing doctors continue to repackage drugs, create new NDCs and bill with inflated AWPs, forcing carriers to pay inflated reimbursement requests.

Next Steps

PMSI acknowledges doctor dispensing can have legitimacy for proper medical treatment of an injured worker, specifically if dispensed at occupational medical clinics or for specific medications which require physician oversight. However, PMSI and our clients are noticing a dangerous trend in the number of non-occupational medical physicians who engage in repackaging and dispensing of drugs solely to their workers' compensation patients. In addition to the cost issue, use of medications dispensed from a physician's office presents multiple issues with medication safety including:

- No safety checks to determine drug-drug or drug-disease interactions with other medications the patient may be receiving (outside the workers' compensation prescription profile)
- No safety checks to determine if prescriptions are being refilled early, which may lead to overuse of a medication as well as overdose of damaging pain medications such as acetaminophen

PMSI knows firsthand of physician billing companies who directly target doctors, offering to install repacking and dispensing machines in the doctor's office and assist the doctor in "securing" additional workers' compensation revenue streams. These physicians and physician billing companies, though not violating any laws, clearly circumvent cost savings measures such as fee schedules and treatment guidelines.

PMSI contends that these practices are becoming more commonplace in states such as Florida and New York and urges public policy makers to review current medical treatment guidelines, pharmacy fee schedules and related statutes/regulations to see if closing this expensive and dangerous loophole can be accomplished. Until these loopholes are addressed, physicians and physician billing companies will continue to charge unreasonable levels (above fee schedule as dispensed in a retail pharmacy) and utilize unrecognized NDCs. We suggest that states where doctor dispensing is becoming more prevalent examine regulatory or legislative language similar to that adopted by Arizona and California. PMSI also urges our clients to review their current billing and/or bill review processes—and existing billing regulations—to



Government Affairs Alert



avail themselves of the full weight of billing regulations or statute in determining what is a complete bill and what information is mandated on a complete bill. Application of existing law may be useful in controlling some, if not all abuses.

For more information, please contact your Account Manager or Sales Representative. You may also contact our Director of Government Affairs, Kevin Tribout, at Kevin.Tribout@pmsionline.com or 813.627.2445.

PMSI—The Only Solution You Need. Founded in 1976, today PMSI is one of the nation's largest providers of specialty managed care services and products for workers' compensation. PMSI provides a best-in-class integrated portfolio of clinically based services in Pharmacy, Medical Services and Equipment, and Settlement Solutions that promotes quality care for injured workers while helping clients contain costs and control utilization. For more information, please refer to the PMSI website at www.pmsionline.com.