



October 28, 2010

### Texas Division of Workers' Compensation (TDWC) Moving Forward With Adoption of Emergency Pharmacy Fee Schedule

In anticipation of a pending ruling by the Attorney General related to the ability of PBMs to continue operation in Texas after January 1, 2011 (HB 473 voluntary/informal networks), TDWC issued notification to interested stakeholders late last week of their intention to adopt an emergency pharmacy fee schedule(s). On October 25, 2010 TDWC officially published an informal draft rule, containing two specific versions of an emergency fee schedule. These can be viewed at <http://www.tdi.state.tx.us/wc/rules/documents/drpharm1010.pdf>.

The informal draft rule contains two specific versions of an emergency pharmacy fee schedule(s), "Draft A" and "Draft B", allowing TDWC to move forward with a fee schedule change after publication of the pending AG opinion. In other words, the Division is preparing to put in place a pharmacy fee schedule which would reflect findings of the AG opinion and allow uninterrupted provision of pharmacy care to injured workers in Texas, while ensuring cost savings to concerned stakeholders.

In the event the AG acknowledges the clear ability of PBMs to continue to operate (outside a certified health care network) via contracts at a discounted rate of fee schedule, "Draft A" of the proposed rule(s) provides that pharmacy services/benefits are to be payable at a contracted rate which is **greater than** fee schedule or **the lessor of**:

- 1) Fee schedule, or;
- 2) Contracted rate, which is lower than Fee Schedule

"Draft A" requires stakeholders to calculate the MAR (maximum allowable reimbursement – fee schedule payment) by using a "*nationally recognized AWP source in effect on the date prescription drug was dispensed*" at a rate of **AWP + 25% + \$4.00 dispensing fee for generics and AWP + 9% + \$4.00 dispensing fee for brands**. It should be noted that though "Draft A" makes no changes to existing fee schedule or billing/payment policies, it removes U&C from the "lessor of" reimbursement methodology. "Draft A" also requires payment of "*a single compounding fee of \$15 per prescription – for compounds – shall be added to a calculated total*".

While "Draft A" makes little, if any changes, major changes to existing fee schedule reimbursement methodologies can be found in "Draft B," which would be implemented if the AG opinion fails to recognize a PBM's ability to continue to operate (outside a certified health care network) via contracts at a discounted rate off of fee schedule. Adopting this version would have significant consequences for PBMs and their clients. "Draft B" provides that pharmacy services/benefits are to be payable **ONLY** at a contracted rate which is **greater than** fee schedule (only if to ensure access to care for injured workers) or at a fee schedule of **AWP – 15% + \$4.00 dispensing fee for generics and AWP – 4% + \$4.00 dispensing fee for brands**.



While “Draft B” also requires MAR payment to be calculated using a “*nationally recognized AWP source in effect on date prescription was dispensed*,” it is more notable for the substantial reduction in fee schedule rates and language removed when compared to current fee schedule and “Draft A”. First, “Draft B” reduces payment for generics by 40 percent over current fee schedule and 13 percent for brands over current fee schedule. Second, “Draft B” removes language allowing any entity (except pharmacy processors) to contract at rates less than fee schedule, and third, it removes both “lessor of” and “U&C” from the reimbursement methodologies currently contained in fee schedule. “Draft B” also contains language relating to a single dispensing fee of \$15 for compound prescriptions.

Both versions contemplate legislative action on the PBM issue moving forward in the 82<sup>nd</sup> Texas Legislative Session, which starts on January 11, 2011. However, regardless of AG opinion or version of fee schedule adopted, the Legislature will be unable to pass any emergency bill for signature by the Governor sooner than March 2011, with most legislation taking effect on September 1<sup>st</sup> of each year. Thus, the date in both versions impacts all prescriptions dispensed on or after January 1, 2011 and before September 1, 2011.

TDWC is requesting comments from all concerned stakeholders be filed no later than 5 pm (Central) Monday, November 15, 2010 either in person or via email at [InformalRuleComments@tdi.state.tx.us](mailto:InformalRuleComments@tdi.state.tx.us). TDWC will also hold a public hearing on the proposed rule(s) on Tuesday, November 16, 2010 at TDWC offices in Austin, Texas.

PMSI will be filing comments on the proposed informal draft rule(s) and will discuss the impact of implementation of both “versions” with TDWC. Additionally, we will continue to closely monitor the Attorney General’s Office for release of their opinion on this critical PBM related issue, which is expected on, or around, November 20, 2010.

Should you have any questions, please feel free to contact our Director of Government Affairs – Kevin Tribout at [kevin.tribout@pmsionline.com](mailto:kevin.tribout@pmsionline.com).

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