

Are We All Paying the Wrong Prices for Prescription Drugs in PA Workers' Compensation Cases?

Average Wholesale Price (“AWP”) is the basis for determining payments for all prescription drugs in PA comp.

Most people think that Average Wholesale Price is the average price paid for a drug at wholesale, but this is entirely untrue. AWP is instead a contrived and artificial number bearing little if any relationship to the average price at which manufacturers sell, and jobbers, distributors, and providers, buy drugs. Courts around the country have so ruled. Yet for reasons unknown, we in Pennsylvania base payments on the artificial and inflated AWP instead of the plain language and real AWP.

The Pennsylvania Bureau of Workers’ Compensation relies upon the “Redbook”, a publication by a private company, to determine AWP. This company creates its artificial AWP in complete secrecy and based on unique data and formulae. The Redbook itself admits that it does not publish “actual” AWP. The difference between the Redbook AWP and the “actual” AWP can be enormous. For some drugs, the Redbook AWP may be 90% higher than the actual AWP. Remarkably, comp carriers and self insured often pay more for drugs based on “AWP” than the drugs sell for at full retail. Millions, if not billions of dollars would be saved if comp payments for drugs were based on actual AWP instead of artificial AWP.

Furthermore, the Protz decision suggests that it is unconstitutional for the legislature to delegate law making to a private entity, at least without providing tight controls and guidance to prevent unwarranted changes in the future. For drug pricing, the Pennsylvania Legislature delegated the task to a private company, and provided no policy guidance and no controls to control the changes made by that company. Worse still, the legislature delegated the task of determining AWP to a company that expressly denies the ability to report on actual AWP. This supports an argument that drug pricing in PA comp is not only based on the wrong standard (artificial AWP vs. real AWP) but the entire scheme appears to be unconstitutional under Protz.

The problem of wildly inflated AWP, resulting in wildly inflated comp payments, is acute and dramatic in the case of “compounded pain creams” (“CPC”). **One popular ingredient in CPC’s retails for less than a dollar, but comp pays over \$2,000 for that ingredient due to the absurd inflation of AWP and the unconstitutional delegation of setting of AWP to a private company.**

Due to the huge profit margins created by the artificially inflated AWP in comp, it is not surprising, but very troubling, that claimants’ lawyers and doctors are now opening and investing in pharmacies focused on filling comp prescriptions.

Many states and programs are getting rid of AWP as a basis for calculating payments for prescription drugs. Until the PA legislature follows suit, there are several strategies that employers and carriers can use, right now, to avoid hideous overpayments based on the contrived AWP. Because millions of dollars are at stake carriers/employers should take action to prevent unnecessary payments for prescription drugs. **For the full analysis, report and recommendations, please contact cgoldstein@chartwelllaw.com (610) 666 8425**

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