

NEW PA LAW LIMITING PHYSICIAN DISPENSING OF MEDICATIONS SHOULD BE WELCOMED BY ALL WORKERS' COMPENSATION PARTIES

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Pennsylvania House Bill 1846 took full effect on December 25, 2014. This article will explain the background of the physician dispensing and reimbursement problem; will discuss how other States have handled the issues; and in conclusion will explain the provisions in the bill and how it should be beneficial to handling of Workers' Compensation Claims.

Physician dispensing of medications directly to patients is a practice with roots back to the 19th Century. More recently, the dispensing of pharmaceuticals has shifted to retail pharmacies, likely due to (1) a distribution advantage for a pharmacy, which can offer a variety of different brands and types of medications at more competitive prices and (2) can better implement systems that can adhere to ever changing laws and government regulation of pharmaceutical distribution. Although most consumers still obtain medications through retail pharmacies, there has been a growing trend in many states, specifically through Workers' Compensations systems, whereby physicians have dispensed medications directly through their offices. One reason that the practice has grown is that the pharmaceutical reimbursement statutory language in many jurisdictions essentially permits a manipulation of the system by offering windfall profits to physicians who dispense the medications, and to third party vendors who are generally able to sell the particular physician on a product which the physician may often not fully understand. We have had the opportunity to cross examine several physicians on their dispensing practices and in nearly every instance they testified that were not aware how the pricing for the medication was calculated and deferred to office managers as the "captain of the ship", when it came to billing and reimbursements for medications.

We first realized a problem with physician dispensing when we received a Health Care Financing Administration (HCFA) reimbursement form submitted by a vendor for a medical office which was dispensing medications directly to a patient. The form noted one day of service and a bill for \$7,233.00. The medications dispensed were nothing unique or extraordinary, which prompted us to look into exactly how, in this case, Gabapentin, which is a generic form of Neurontin and a common medication in many Workers' Compensation Claims, was being billed out at \$3.22 a pill when that same medication could be obtained through a retail pharmacy for about \$0.20 a pill. Another medication, Diclofenac Sodium, which is a generic form of Voltaren, was being billed out at \$8.91 a pill when that same drug could be obtained at your local pharmacy for about \$0.45 a pill. What we found was a loophole in the Pennsylvania Workers' Compensation Act ("Act") that permitted this practice. This led to frustration in the handling of Workers' Compensation Claims and to increased costs. According to State Representative Marguerite Quinn (R-Bucks), sponsor of House Bill 1846, this resulted in approximately \$33,000,000.00 a year in added costs.

Prior to the passage of House Bill 1846, reimbursement for pharmaceuticals was generally governed by Section 306(f.1)(3)(vi.) of the Act, which allows for reimbursement of medications at 110 percent of the Average Wholesale Price (“AWP”) of the medication. The AWP is intended to be a fair depiction of the average price at which a wholesaler would sell medications to a pharmacy. The AWP of a medication is determined by the National Drug Code (“NDC”) for the medication which is on file with the Food and Drug Administration (“FDA”).

The reason why physician dispensed medications had such inflated prices is that a middleman/vendor, called a “repackaging company”, became involved. Repackaging companies essentially purchase medications from manufacturers and repackage them for distribution. Once the medications are repackaged, a new NDC is created. In turn, a new AWP is created, which generally increased drugs costs from 40 to 400 percent. These repackaged medications are then marketed directly to physicians through a vendor that provides software and billing services for the physician’s office to dispense the medications. Significant profits are obtained for those parties involved.

The problem of physician dispensing and repackaging markups is not unique to Pennsylvania. Other jurisdictions have dealt with the problem legislatively as well. California first addressed the issue in 2007 by enacting legislation that did not prevent physician dispensing, but only permitted reimbursement based the original manufacturer’s NDC, thereby taking the repackaging markup out of the equation. More recently, Georgia, South Carolina and Illinois enacted similar laws. States such as Texas, New York, and Ohio prohibit physician dispensing in its entirety, with few exceptions.

Now that Pennsylvania has joined the trend in limiting physician dispensing, we can look at what the new law says and how it may be beneficial to all interested parties, save for the repackaging companies and the self dispensing doctors.

Here are the highlights of the law:

- A physician seeking reimbursement for drugs dispensed shall include the original manufacturer's NDC, as opposed to the more costly repacking code.
- A physician cannot seek reimbursement in excess of one hundred ten per centum of the AWP of the drugs dispensed by reference to the original manufacturer's NDC.
- A repackaged NDC may not be used and will not be considered as the original manufacturer's NDC. If a physician seeking reimbursement for drugs dispensed does not include the original manufacturer's NDC on bills and reports, reimbursement shall be limited to one hundred ten per centum of the AWP of the least expensive clinically equivalent drug, calculated on a per unit basis.
- No physician may seek reimbursement for a Schedule II or Schedule III drug in excess of one, initial seven day supply, beginning with the employee’s initial date of treatment. However, should the employee require a medical procedure, including surgery, one additional fifteen day supply can be dispensed commencing on the date of the medical procedure.

- No physician shall seek reimbursement for any other drug dispensed in excess of an initial thirty day supply, commencing upon the employee's initial treatment by a health care provider under the particular Workers' Compensation Claim.

- Further, no outpatient provider, other than a pharmacy licensed in Pennsylvania or another state, may seek reimbursement for an over-the-counter drug.

- The Workers' Compensation Advisory Council shall annually conduct a study of the impact of this sub-clause, including calculation of the savings achieved in the dispensing of pharmaceuticals.

- By June 25, 2017, the Pennsylvania Compensation Rating Bureau shall calculate the savings achieved through the implementation of the law, with the goal being to provide an immediate reduction in rates, equal to the savings, applicable to employer's Workers' Compensation policies.

The new law should affect the parties in multiple ways:

- It will keep costs down. As Rep. Quinn noted, "This reform initiative ... removes a costly price-adjustment loophole contained in current law which allows repackaged prescription drugs to be dispensed directly by doctors to injured workers." Rep. Quinn further noted that estimates from the State Department of Labor and Industry and the Insurance Federation of Pennsylvania project the new law will reduce prescription costs as much as 15 percent and reduce total costs in the state's \$3.3 billion Workers' Compensation insurance system by approximately \$33 million annually.

- It will encourage settlements of some difficult to resolve denied claims. If the employer was looking at an outrageous medical exposure due to the 40-400 percent increase in prices associated with repackaged prescriptions, it may have "rolled the dice" and taken a case to a decision rather than to settle it with an overpriced prescription payment obligation. Now, with a more manageable medical exposure, employers may more quickly move to resolve denied claims.

- Further, as per Rep. Quinn, the law "limits the size of initial prescriptions given to injured workers, mitigating abuse of potent and addictive painkillers while still providing patients with the convenience and immediate relief they need."

- It corrects an imbalance in how self dispensing physicians versus traditional pharmacies were reimbursed for very similar services.

While the new law had its critics prior to passage, the votes in the Pennsylvania Senate (48-0) and House (196-0), followed by a quick gubernatorial signature, speak to the broad support of the bill.