



Physician dispensing of repackaged drugs is increasing prescription drug costs for workers' compensation claims in a number of states. What is the impact in your state?

A July 11, 2012 *New York Times* article, [Insurers Pay Big Markups as Doctors Dispense Drugs](#) by Barry Meier and Katie Thomas reported, "At a time of soaring health care bills, experts say that doctors, middlemen and drug distributors are adding hundreds of millions of dollars annually to the costs borne by taxpayers, insurance companies and employers through the practice of physician dispensing." The article goes on to note, "The practice has become so profitable that private equity firms are buying stakes in the businesses, and political lobbying over the issue is fierce."

According to the [2012 Survey of Prescription Drug Management](#) released January 2013 by CompPharma, LLC, a consortium of workers' compensation pharmacy benefit managers, physician-dispensed repackaged drugs were the second largest driver of workers' compensation prescription drug costs after the use of opioids.

This edition of *Spotlight* examines the issues surrounding physician-dispensed repackaged drugs and efforts the states have undertaken to manage this cost driver.

Physician-Dispensed Repackaged Drugs

The Drug Listing Act of 1972 requires registered drug establishments to provide the United States Food and Drug Administration (FDA) with a current list of all drugs manufactured, prepared, propagated, compounded or processed by it for commercial distribution. Drug products are identified and reported using a unique, 10 or 11-digit, three-segment number called the National Drug Code (NDC), which serves as a universal product identifier for prescription or over the counter drugs for humans. This number identifies the labeler, product and trade package size. The FDA maintains the NDC number and the information listed in a database known as the Drug Registration and Listing System (DRLS).

Included in the definition of drug establishments are companies that repackage and relabel drugs. These companies purchase large quantities of drugs (e.g. 1,000 to 10,000 tablets) and repackage the drugs into single prescription sizes (e.g. 14, 21, 28 tablets) appropriate for dispensing directly to patients. The repackaged prescription sizes are relabeled with a new NDC and a new average wholesale price (AWP) is set, which is typically more than the AWP set by the original manufacturer.

Manufacturers, distributors and other suppliers provide data used to establish an average wholesale price for each NDC code. Repackaged drugs are mostly marketed to physicians. The practice of "physician dispensing" occurs when a doctor distributes repackaged medications directly to patients at the place of service. Repackaging companies pay the physician or practice a percentage of what is charged for the medications.

Physician dispensing of drugs is not new, but the emergence of repackaged drugs has increased the frequency and the difference in the price between what the physician and pharmacy are paid.

On July 19, 2012, the Workers' Compensation Research Institute (WCRI) released a study, [Physician Dispensing in Workers' Compensation](#). The study compared 23 states, including Arkansas, Connecticut, Florida, Illinois, Indiana, Iowa, Louisiana, Maryland, Michigan, Minnesota, New Jersey, North Carolina, Pennsylvania, Virginia, and Wisconsin highlighting changes in patterns of dispensing, as well as changes in percent of market and pricing from 2007/2008 thru 2010/2011. Key findings of the study include:

- Prices paid for physician-dispensed drugs were substantially higher than if the same drugs were dispensed by a retail pharmacy.
- Physician-dispensed drugs became increasingly common in most states that permit physician dispensing. In Florida, Illinois, pre-reform Georgia, Maryland, Connecticut and post-reform Arizona and California, physicians dispensed 28-53 percent of all prescriptions, representing 28-63 percent of total spending on workers' compensation claims.

Pros and Cons of Physician-Dispensed Repackaged Drugs

Proponents of physician dispensed repackaged drugs argue that in addition to increased revenue realized by the physician, the practice enhances the quality of patient care by:

- Ensuring patient compliance, because 10 percent of all prescriptions are never filled, and 30 percent of patients never refill their prescriptions;
- Providing convenience to patients who cannot get to a retail pharmacy;
- Beginning treatment immediately.

Opponents to physician dispensed repackaged drugs point to increased risks to the patients. The prescriber must rely on the injured worker to provide a complete medication and medical history. Because physician-dispensed drugs are not processed through a pharmacy benefit manager (PBM), there is an inability to detect duplicate or harmful drug interactions for patients receiving drugs prescribed by other physicians.

In addition to an increased cost per unit, drugs dispensed by physicians are not subject to the contracts negotiated by the PBM, formularies or the requirements to substitute generics for brand name drugs resulting in increased costs to the payers.

The California Experience

In November 2005, the California Workers' Compensation Institute (CWCI) published its initial study examining pharmaceutical utilization, payment and access following implementation of workers' compensation reforms enacted in 2003 and 2004. The 2003 reform bill, Senate Bill 228, and the regulations that established the workers' compensation pharmacy fee schedule adopted in January 2004 included a loophole that allowed providers who dispensed repackaged drugs to obtain significantly higher payments than pharmacies received for dispensing the same drugs. That study noted that repackaged drugs accounted for 43 percent of the California workers' compensation pharmaceutical dollars billed in 2004, and more than half of all pharmaceutical dollars paid.

In 2006, repackaged drugs reportedly accounted for 54.7 percent of all California workers' compensation prescriptions and 59.2 percent of the prescription dollars.

Effective in March 2007, the California Division of Workers' Compensation revised the adopted regulations to require that the relevant fee schedule for physician-dispensed drugs be the same as for pharmacies, based on the original manufacturer NDC. The effect was immediate. By the third quarter of 2007, repackaged drugs had reportedly decreased to only 10.5 percent of the prescriptions and 8.3 percent of the payments and have continued to decline.

According to the WCRI study, California physicians continued to dispense medication despite the lower reimbursement rates. As recent as 2011, 53 percent of workers' compensation prescriptions in California were physician-dispensed.

On February 25, 2013, the California Workers' Compensation Institute (CWCI) released the research report [Differences in Outcomes for Injured Workers Receiving Physician-Dispensed Repackaged Drugs in the California WC System](#). This study examined the association between physician-dispensed repackaged drugs and overall claim outcomes for injured workers pre and post reform. According to their findings there is evidence that physician dispensing of repackaged drugs is associated with higher medical and indemnity costs and delayed return-to-work.

Physician Dispensing of Medication in Other States

Click here to view a [map](#) prepared by CompPharma that shows how each state handles physician dispensing of medications.

Some states allow physician dispensing, but the practice is restrictive. For example, in Minnesota, physicians are allowed to dispense, but must register with the Medical Practices Board before doing so. The physician must also disclose to the patient that he/she profits from the dispensing of medications, and that the patient may choose to obtain prescriptions from another source. Louisiana limits physician dispensing of narcotics to a 48-hour supply, but allows for non-narcotic drugs to be physician dispensed for longer periods. Arkansas limits physicians to dispensing a 72-hour supply and New Jersey limits doctor dispensing to a seven-day supply. As of June 2011, in Florida physicians are prohibited from dispensing Schedule II and Schedule III narcotics.

States that have followed California's lead in equalizing reimbursement rates include:

- Arizona effective October 2009
- Georgia effective April 2011
- South Carolina effective December 2011

In 2012, Colorado, Connecticut, Illinois, Michigan, Tennessee and the U.S. Department of Labor Office of Workers' Compensation Programs (OWCP) also enacted rules that limit reimbursement for repackaged medications to the same amount as for medications dispensed by pharmacies by requiring the reimbursement be based on AWP of the original manufacturer NDC.

States Considering Action in 2013

Additional states are expected to take action on physician dispensing of repackaged drugs this year.

The Idaho House Commerce and Human Resources Committee has approved a regulatory [proposal](#) that would tie the payments for repackaged drugs to the original manufacturer's average wholesale price and provide no separate reimbursement for the doctors who dispense the medications. The Idaho Industrial Commission's repackaged drug rules, which are included as part of an update to its Medical Fee Schedule, would take effect on July 1, 2013, if approved by the full Legislature.

[House Bill 174](#) in Maryland would authorize provider reimbursement only in situations where drugs are dispensed within 72 hours of an accident or the discovery of an industrial disease and would limit doctors to dispensing a 30-day supply. The bill has been referred to the House Economic Matters Committee. [Senate Bill 139](#) would require physicians who dispense medications to obtain a dispensing permit through the Board of Pharmacy. The measure is being considered by the Maryland Senate Education, Health and Environment Committee.

Introduced this year in the Hawaii Legislature, [Senate Bill 1302](#), would set reimbursement for physician-dispensed repackaged drugs at the average wholesale price of the original manufacturer, plus an additional 40 percent for brand-name medications and 60 percent for generic drugs, except where the carrier and the specific provider seeking reimbursement have directly contracted between one another for a lower reimbursement amount. Similar legislation failed last year.

Florida is considering legislation to cap the price of repackaged drugs in the workers' compensation system for the fourth successive year.

In 2010, the Florida Legislature unanimously passed House Bill 5603, which would have capped the reimbursement fee for physician-dispensed repackaged to the same amount allowed for non-repackaged drugs. However, then Governor Charlie Crist vetoed the bill explaining that it had not been fully vetted in the legislative process. The legislation was re-filed in 2011 as Senate Bill 1068. This bill passed the Senate, but died in a House-Senate budget conference committee. In 2012, Senate Bill 668, companion House Bill 511 and amended House Bill 307 all would have capped the price of repackaged drugs at the AWP established by the original manufacturer, plus a \$4.18 dispensing fee, but failed to pass.

This year [House Bill 605](#) and its companion Senate Bill 662 have been re-filed to cap the price of repackaged drugs at the AWP established by the original manufacturer, plus a \$4.18 dispensing fee, unless a carrier has contracted for a lower amount. The passage of this legislation in Florida is not expected to be any easier this year.

What You Can Do

To manage costs related to physician dispensed repackaged drugs, below are some things you should do:

- During the initial contact, provide the injured employee with information regarding the pharmacy network in use. Early involvement by the PBM has proven to result in better management of prescription drugs.
- Be vigilant in monitoring not only the prescription costs, but also the drugs that are driving those costs and who is prescribing and dispensing the medication. As soon as you notice any trends of concern, engage medical case management resources to develop a comprehensive strategy to ensure appropriate dispensing and control costs on your workers' compensation claim.
- As laws and regulations are constantly evolving, stay informed on how physician dispensing works in the states where you handle claims.

On November 20, 2012 Sedgwick published [Health-focused managed care: Physician-drug dispensing solutions](#) written by Kimberly George, senior vice president managed care practices and client services. This white paper offers excellent information about the how Sedgwick is seeking to control costs and ensure optimal outcomes for injured employees.