

## **CompPharma Platform on Transparency**

PBM Pricing (MAC pricing) and Transactional Transparency Legislation

**Issue:** A recent legislative push by state pharmacy associations have lead to the introduction and action on legislation requiring PBMs to be more transparent in their pricing and disclosing proprietary information regarding pricing (including MAC pricing), reimbursement terms with pharmacies and remuneration terms with client payers. The focus of most legislative activity seems to target the practices of PBMs operating in the group health market. However, the bills usually do not specifically exclude workers' compensation PBM services and thus often unknowingly impose a dual regulatory scheme on PBMs providing services to injured workers.

**Position:** CompPharma's initial position should be one of solidarity with the PBM marketplace and work with our group health partners to try and kill the overall legislative effort. However, if this initial effort is unsuccessful, CompPharma, on behalf of our membership, will work to specifically exclude property & casualty (including workers' compensation) PBMs and PBM processes from the legislation. CompPharma acknowledges the sensitivity of our members who process both workers' compensation and group health transactions and will take these concerns into consideration when engaging in any contact or advocacy with public policy makers on this legislation.

## Why PBM Transparency Bills Are Not Necessary

- Pharmacy transactions which are processed through PBMs are done so in full accordance with the contractual terms agreed upon between PBMs and pharmacies
- Mutually agreed upon contracts between PBMs and pharmacies contain requirements governing issues such as pricing, reimbursement timeframes, and prior approval and reimbursement dispute resolutions.
- Additional governance of these contractual terms and contractually governed relationships between
  pharmacies and PBMs would unnecessarily increase costs for PBMs and these would be reflected in
  higher healthcare costs for employers, insurers and the consumer.
- MAC pricing terms and pricing requirements are disclosed to pharmacies and have been used consistently not only in the group health marketplace but as a tool to control costs by Medicare Part D programs and state Medicaid programs.

## Why Workers' Compensation Transactions Do Not Fit

- Pharmacies and pharmacy providers are not mandated (even by contract) to use a specific PBM or
  any PBM to process workers' a compensation prescription transaction. Under existing state labor
  laws or workers' compensation regulations, a pharmacy is free to seek reimbursement directly from
  the insurer or employer. Additionally, many pharmacies freely choose to use third-party-billing
  entities to assist in securing reimbursement.
- Many group health PBM contracts and government programs (Medicare/Medicaid) require
  pharmacies to process claims and accept reimbursement only from the PBM administering the

- patient's benefit. Unlike in workers' compensation, pharmacies cannot process most group health prescriptions through another PBM or billing entity nor can they bill the payer directly.
- Workers' compensation pharmacy transactions and claims are already highly regulated and
  governed by state labor laws and/or workers' compensation specific regulations. This includes
  levels of reimbursement set by state fee schedules, billing and payment timeframes and formats, as
  well as dispute resolution processes. Any contracts between pharmacy providers and PBMs relating
  to workers' compensation prescription transactions must adhere and take into consideration these
  legal requirements.
- Subjecting workers' compensation pharmacy transactions to additional and completely duplicative

   statutory or regulatory requirements will only slow the ability to provide timely and proper
   treatment to injured workers and drive up premium costs to employers.

## Recommendation for a Workers' Compensation Exclusion

Numerous states have enacted similar legislation over the past couple of years and other states continue to debate the merits of this legislation. In several states, the legislative and regulatory policy makers have (for the reasons above) recognized the uniqueness of workers' compensation pharmacy transactions and have included or adopted a specific exemption – exclusively – for workers' compensation pharmacy. CompPharma has been involved in these discussions with policy makers and thus we suggest the addition of language (similar) to the following, where it is deemed necessary by membership, to advocate for a workers' compensation exclusion, to any future legislation or regulation.

Where the bill or regulation defines Pharmacy Benefits Management or Pharmacy Benefits Manager and does not specifically exclude workers' compensation (or injury/accident only transactions) or fails to limit the definitions to only group health, CompPharma suggests adding the language:

"Such services shall not include any services provided to injured workers pursuant to existing workers' compensation statutes, regulations or similar laws."

Note: CompPharma has an infographic showing the differences between workers' comp PBMS and other PBMs, which can be used in this discussion.