



June 6, 2011

End of Session Legislative Initiative Update – Key Bills

As we reach the end of numerous state legislative sessions, a late flurry of activity has taken place in several states on various key issues. As is common during the waning hours of most legislative sessions, bills previously thought no longer viable often come back to life and move quickly through the final hours from committee or floor amendment to fully passed bill. Additionally, many pieces of legislation which started out as a simple change to the workers' compensation marketplace often become a vehicle for more pertinent negotiated reform efforts. This is clearly evident by bills passed in states such as Florida, Illinois and Oklahoma in the last days of their legislative sessions. Finally, several pieces of legislation key to the provision of medical care for injured workers have been signed into law and now move to the rule-making and compliance stage. Outlined below are a few bills which we feel necessitating closer analysis. Please review and feel free to reach out to your Account Management Representative or PMSI's Government Affairs Team for more information.

Florida House Bill 7095

Florida House Bill 7095 – The Controlled Substance Reform Act of 2011 – passed the Florida Legislature and was presented to the Governor for signature on May 25, 2011. Though the legislation amends pertinent sections of the current Controlled Substance Act, and makes much needed changes to prohibit doctor dispensing of **some** controlled drugs, language which would have capped reimbursement for doctor dispensed and repackaged drugs for injured workers (under a workers' compensation claim) was removed via the legislative process, and the final bill does not address WC drug repackagers.

As mentioned above, the bill takes several steps towards limiting the ability of doctors to dispense medications to their patients; however, the prohibition is aimed more at controlling the dangerous spread of "Pain Clinics" and "Pill Mills" in Florida rather than controlling doctor dispensing in workers' compensation. Specifically, HB 7095 states within 30 days of the bill becoming law, doctors in Florida (with certain exemptions) are no longer legally allowed to dispense Controlled Substances in the Schedule II or Schedule III categories and must either return their current inventory to a wholesaler or ensure their inventory is properly disposed of in conjunction with law enforcement. Additionally, the bill implements strict requirements on any pharmacy which dispenses controlled substances such as the need for additional licensure to dispense these drugs, written policies and procedures for dispensing of these drugs and shortening the timeframe in which a pharmacy must report dispensing of controlled substances to the state database.

PMSI believes clients should experience a reduction in doctor dispensed Schedule II and Schedule III medications, and PMSI is undertaking necessary internal efforts to flag any pharmacy transactions which are dispensed by physicians. Additionally, as your mail-order pharmacy provider, PMSI is moving forward to comply with new pharmacy licensure requirements.

Illinois House Bill 1698

In a compromise between the Legislature and Governor, Illinois passed a major workers' compensation reform bill, House Bill 1698. The bill brings about major changes to all areas of the workers' compensation laws, including implementation of new fee schedules for all medical providers and dramatic cuts in reimbursements for medical service providers, doctors and hospitals. The bill calls for the Illinois Workers' Compensation Commission (WCC) to adopt no later than September 1, 2011 a new/revised fee schedule(s) for medical services and by January 1, 2012



to reduce the number of geozips utilized for fee schedule reimbursement calculations from the current level of 29 to 4. Additionally, as of September 1, 2011 reimbursements for medical services, products and supplies will be reduced from the current fee schedule rate to 70% of the newly adopted fee schedule rate in place at time of service, good or product was provided – a 30% reduction from current reimbursement levels; and where the product or service is recognized by the fee schedule (listed CPT or HCPCS Code) but no rate is established by the WCC, reimbursement will be reduced from the current level of 76% of billed charge to 53.2% of billed charge, another significant reimbursement reduction. The Legislature hopes these savings, coupled with other reforms in the bill, will save employers in the state between \$500 million and \$700 million.

Moreover, the legislation caps reimbursement for repackaged and doctor dispensed drugs at AWP plus \$4.18 and calls for rule-making on implementation of billing standards, including utilization of eBilling standards between providers and payors. It is unclear at this time if the legislation requires rule-making to address reimbursement rates for supplies/services not recognized by the fee schedule or for pharmacy services and drugs provided via a licensed pharmacy provider. PMSI will continue to track any rule-making activity and as necessary engage in communications with the WCC.

Minnesota Senate Bill 1159

Minnesota Senate Bill 1159 is a comprehensive workers' compensation reform bill brought forth by the Minnesota Department of Labor and Industry (DL&I), and contains numerous statutory tweaks to improve the workers' compensation marketplace in Minnesota. One such tweak is legislative language allowing the Director of DL&I to engage in rule-making related to the current pharmacy fee schedule, and to replace AWP with WAC (Wholesale Acquisition Cost). Language in the final bill was amended to give the Director the **ability** to engage in rule-making on a new pharmacy fee schedule and if necessary (if AWP ceases to exist) replace AWP with WAC. The bill has been signed by the Governor and now becomes law, and PMSI will continue to monitor rule-making activity on the issues of AWP and the pharmacy fee schedule.

Mississippi Senate Bill 2445

Recently, the Governor of Mississippi approved SB 2445, a bill extending and amending related pharmacy and controlled substance provisions. As part of this reform, all out-of-state entities, including non-resident pharmacies, dispensing medications into the state of Mississippi must register with the Board of Pharmacy for a specific classification/license to continue dispensing controlled substances. Additionally, non-resident pharmacies must incorporate and certify that they understand and will comply with Mississippi and Federal pharmacy laws and regulations. Finally, whenever a pharmacy ships, mails or delivers any Schedule II controlled substance listed in Mississippi Statutes (Section 41-29-115) to a private residence in the state, the pharmacy is now required to ensure the entity delivering these drugs will both deliver the controlled substance(s) only to a person who is at least 18 years old and obtain signature of that person before final delivery of the controlled substance(s). We expect these new provisions to be implemented over the coming year via rule-making by the Mississippi Board of Pharmacy. PMSI is already compliant with the delivery signature requirements for controlled substances and meets all state pharmacy licensure requirements.

Oklahoma Senate Bill 878

In last minute efforts to bring reforms to the workers' compensation system, the Oklahoma Legislature passed a major reform package in Senate Bill 878. The bill makes numerous changes to all aspects of the workers' compensation system including requirements for adoption of ODG treatment guidelines (as well as state-specific guidelines), adoption of new fee schedule(s) via rule-making no later than 2012, adoption of caps on reimbursement for repackaged and doctor dispensed medications and requires implementation of new billing requirements for compound drugs.



Specifically, the new legislative requirements limit reimbursement for doctor dispensed medications to the lesser of: reimbursement set in fee schedule, reimbursement amount for the same drug obtained by mail-order (where available) or reimbursement amount for the same drug if obtained at a retail pharmacy. However, another section of the bill limits reimbursement for doctor dispensed drugs to 10% above cost of the medication – clearly these statutory conflicts will need resolution via rule-making. Additionally, the bill requires that if the NDC of a billed medication is for a repackaged drug, then maximum reimbursement shall be the lesser of original labeler’s NDC or lowest cost therapeutic drug product. Finally, the bill requires all compound medications to be billed by compounding pharmacy at ingredient level, with each ingredient identified using applicable NDC(s) of the drug product and corresponding quantity.

SB 878 was recently signed into law, and PMSI continues to review the enacted changes to ensure compliance and will continue to communicate with the OK-WCC on future rule-making efforts.

Texas House Bill 528

As expected, the Texas Legislature passed the PBM “fix” bill, also known as House Bill 528, which will allow continued operation of workers’ compensation PBMs in Texas at rates discounted from fee schedule. HB 528 passed the House by a vote of 139-0-2 and the Senate (un-amended) by a vote of 31-0 and at present is pending signature by the Governor. Once signed into law, several provisions of the bill take effect within 30 days, including a requirement that any PBM wishing to provide pharmacy services for workers’ compensation register with the Texas Division of Workers’ Compensation (TDWC) as a Voluntary and/or Informal Network (VIN) and ensure that necessary contractual arrangements and contracted reimbursement rates are properly executed. PMSI is diligently moving forward with all compliance requirements, to ensure no disruption of service PMSI provides injured workers in Texas.

If you have any questions regarding this alert or any other government-related topic, please contact your dedicated Account Manager. You may also contact our Director of Government Affairs, Kevin Tribout at Kevin.Tribout@pmsionline.com or 813.627.2445.

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