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OIG Recommends Changes to State Medicaid Prescription Drug Reimbursement Methodologies

By Deborah Rotenberg*

On July 18, 2011, the U.S. Department of Health and Human Services, Office of Inspector General (OIG) released a [report](#) entitled "Replacing Average Wholesale Price: Medicaid Drug Payment Policy," that recommends changes to Medicaid reimbursement methodologies for prescription drugs. OIG surveyed all fifty states and the District of Columbia (States) regarding whether they intend to change their prescription drug reimbursement methodologies once average wholesale prices (AWP), which serve as the basis for Medicaid drug reimbursement in many states, are no longer published by First DataBank, effective September 26, 2011. Based on the results of its survey, OIG recommends that the Centers for Medicare & Medicaid Services (CMS) develop a national benchmark based on pharmacy acquisition costs that States can use in setting Medicaid reimbursement drug prices. CMS concurred with OIG's recommendation.

Background

Under federal regulations, Medicaid reimbursement amounts for prescription drugs cannot exceed the lower of: (1) the estimated acquisition cost (EAC) plus a dispensing fee; or (2) the provider's usual and customary charge to the public for the drug. CMS allows States flexibility in determining the EAC of prescription drugs. States base their EAC on AWP, average sales price, manufacturer price, acquisition cost, or the wholesaler acquisition cost (WAC) of a drug. Most States (forty-five) base EAC on AWP, and of these, thirty-seven States obtain their AWP data from First DataBank. First DataBank has decided, after settling a lawsuit related to its methodologies, that it will cease publishing AWP's no later than September 26, 2011, forcing States to re-evaluate how they

will pay for prescription drugs after that date.

In January 2011, OIG surveyed the States to determine: (1) how States will set reimbursement for Medicaid prescription drugs after September 26, 2011; and (2) the role that States would prefer CMS to play in developing Medicaid reimbursement methodologies for prescription drugs.

Results of Survey

Twenty States Have Not Established Definitive Plans

As of the first quarter of 2011, twenty States that use AWP-based reimbursement methodologies have not developed plans for prescription drug reimbursement after September 26, 2011. All twenty of these States currently obtain their AWP data from First DataBank. Eight of these twenty States have not decided whether they will continue to use AWP or select another benchmark. The remaining twelve States either: (1) intend to discontinue using AWP (but have not taken steps to select a new benchmark); (2) intend to continue using AWP (but have not selected the source for AWP data); or (3) are considering whether to use AWP from another source or to replace AWP with WAC.

Ten States Will Continue Using AWP, But Fifteen States Plan to Move Away From AWP-Based Reimbursement

Of these same forty-five States that use AWP in determining reimbursement for Medicaid prescription drugs, ten will continue, at least in the short term, to use AWP after September 26, 2011. However, fifteen reported having plans to implement new reimbursement methodologies that replace AWP with another benchmark. Of these fifteen States, three plan to replace AWP with average acquisition cost, and twelve plan to replace AWP with WAC.

Forty-Four States Want CMS to Develop a National Benchmark

Most States would prefer CMS to develop a single national benchmark to set Medicaid reimbursement rates. Twenty-four States specified that they would want the benchmark based on pharmacy acquisition costs. CMS staff reports that CMS has not yet provided uniform guidance about options for Medicaid reimbursement after September 26, 2011. CMS is taking steps to address this issue and plans to provide guidance to States. CMS also plans to conduct a nationwide survey to collect retail community pharmacy prices for drugs (including acquisition costs), and intends to discuss the results and other options for States in future guidance or in proposed rulemaking.

OIG's Recommendations

OIG recommends that CMS: (1) develop a national benchmark that accurately estimates acquisition cost; and (2) encourage States to

consider it when determining Medicaid reimbursement rates for prescription drugs. CMS agrees with this recommendation.

**We would like to thank Deborah Rotenberg, Esquire (Salem & Green, Sacramento, CA) for authoring this email alert.*

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