



California Workers' Compensation Institute  
1111 Broadway Suite 2350, Oakland, California 94607 • Tel: (510) 251-9470 • Fax: (510) 251-9485  
www.cwci.org

January 24, 2006

VIA E-MAIL

Maureen Gray  
Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

Re: Fees for Pharmaceuticals Not Covered by Medi-Cal

Dear Ms. Gray:

These advisory comments on draft regulations regarding maximum reasonable fees for pharmaceuticals not covered by Medi-Cal are presented on behalf of the California Workers' Compensation Institute members. Recommended modifications are indicated by underline and ~~strikethrough~~.

Fee schedule loopholes lead to "cottage industries." This was the case for ambulatory surgery center facility fees and now is the case for repackaged drugs. In AB 228 the Legislature required a pharmacy fee schedule that would reimburse products and services at Medi-Cal rates. CWCI supports modifying the Pharmacy Section of the Official Medical Fee Schedule to eliminate the loophole for repackaged drugs and other drugs and services not covered by Medi-Cal. In accordance with the plain language and intent of Labor Code 5307.1, regardless of whether furnished by a pharmacy or a practitioner, maximum fees may not exceed 100% of Medi-Cal fees for comparable drugs and services. In order to best accomplish this goal, CWCI recommends establishing maximum reimbursement according to the condition that applies in the following order:

1. dispensed NDC in Medi-Cal listing
2. portion of NDC identifying manufacturer and product in Medi-Cal listing
3. therapeutic/pharmaceutic equivalent NDC in Medi-Cal listing
4. therapeutic/pharmaceutic equivalent NDC not in Medi-Cal listing
5. dispensed NDC without therapeutic/pharmaceutic equivalent

**Recommendation**

*(b) For a pharmacy service or drug that is not covered by a Medi-Cal payment system, the maximum reasonable fee paid shall not exceed the fee determined in accordance with this subdivision, plus the dispensing fee allowed pursuant to section 14105.45 of the Welfare and Institutions Code \$7.25 professional fee for dispensing or \$8.00 if the patient is in a skilled nursing facility or an intermediate care facility. No dispensing fee shall be paid for over-the-counter drugs.*

**Discussion**

Although section 14105.45 specifies a \$7.25 professional fee for dispensing, or \$8.00 if the patient is in a skilled nursing facility or an intermediate care facility, citing the section in lieu of the dollar amount will serve to keep the dispensing fees parallel with Medi-Cal's. Without this change, the Division must modify this regulation every time that the Medicare dispensing fee is changed. Those fees have changed about once a year during the past several years. It is not reasonable to pay a dispensing fee for over-the-counter drugs.

**Recommendation**

*(b)(1) If the National Drug Code for the drug product as dispensed is not in the Medi-Cal database, and that portion of the National Drug Code for the underlying drug product from the original manufacturer that identifies the manufacturer and product appears in the Medi-Cal database, then the maximum fee shall be the fee allowed pursuant to section 14105.45 of the Welfare and Institutions Code using the National Drug Code for the underlying drug product from the original manufacturer as it appears in the Medi-Cal database, calculated on a per unit basis from the most common packet size.*

**Discussion**

Since reimbursement is calculated on a per unit basis, it is only necessary that the portion of the NDC that identifies the manufacturer and product appears in the Medi-Cal database. It is doubtful that the full NDC, including that portion of the NDC that indicates a "drum" quantity that repackagers may use, appears in the Medi-Cal database. It would be reasonable to calculate the per unit fee from the most common packet size. The most common packet size is readily available (from First DataBank, which is Medi-Cal's source of average wholesale price, for example).

**Recommendation**

*(b)(2) If neither the National Drug Code for the drug product as dispensed, nor the portion of the National Drug Code that identifies the original manufacturer and product is in the Medi-Cal database, then the reimbursement shall not exceed the fee determined for the lowest priced therapeutically or pharmaceutically equivalent drug listed in the Medi-Cal database, calculated on a per unit basis.*

**Discussion**

This methodology will ensure that payment does not exceed the maximum Medi-Cal payment for an equivalent drug as the statute requires.

## Recommendation

(b) (2)(3) If there is no National Drug Code for the drug product as dispensed, is not in the Medi-Cal database and the National Drug Code for the no portion of the National Drug Code that identifies the underlying drug product from and the original manufacturer, and no National Drug Code for is not in the Medi-Cal database, a therapeutically or pharmaceutically equivalent drug in the Medi-Cal database, then the reimbursement shall not exceed be the lowest average wholesale price of the lowest priced therapeutically or pharmaceutically equivalent drugs minus the percentage of the average wholesale price specified in the calculation of the estimated acquisition cost of legend and non-legend drugs in section 14105.45 of the Welfare and Institutions Code the percentage reduction specified 17 percent, calculated on a per unit basis.

## Discussion

If the Administrative Director accepts this modification, Medi-Cal's payment methodology will be applied to the extent possible to drugs with therapeutic or pharmaceutical equivalents that do not appear in the Medi-Cal database. For reasons corresponding to those discussed in (b), it is preferable to refer to the Welfare and Institutions section for the average wholesale price percentage.

## Recommendation

(b) (4) If no National Drug Code for the dispensed drug and no portion of the National Drug Code that identifies the underlying drug product and manufacturer appears in the Medi-Cal database, and there is no therapeutically or pharmaceutically equivalent drug product, then the reimbursement shall not exceed the dispensed drug's average wholesale price minus the percentage of the average wholesale price specified in the calculation of the estimated acquisition cost of legend and non-legend drugs in section 14105.45 of the Welfare and Institutions Code.

## Discussion

This recommendation applies Medi-Cal's payment methodology to the extent possible when there is no comparable drug. Again, it is preferable to refer to the percentage in the Welfare and Institutions section instead of the numeric percentage that is in effect now for reasons similar to those discussed in (b).

## Recommendation

(b)(5) Each billing for a pharmacy product shall include an accurate National Drug Code for the product dispensed, and if the dispensed product's National Drug Code is not included in the Medi-Cal database, shall in addition include the National Drug Code for the underlying drug product from the original manufacturer.

## Discussion

Without the National Drug Code of the manufacturer, there will be no way to provide reimbursement equal to that of comparable pharmacy products paid by Medi-Cal. It is doubtful that the full NDC, including that portion of the NDC that indicates a "barrel" quantity that repackagers may use, would appear in the Medi-Cal database.

**Recommendation**

*(c)(1) "therapeutically and pharmaceutically equivalent drugs" means drugs that have been assigned the same Therapeutic Equivalent Code starting with the letter "A" and including "B" codes in the Food and Drug Administration's publication "Approved Drug Products with Therapeutic Equivalence Evaluations" ("Orange Book"). The Orange Book may be accessed through the Food and Drug Administration's website: <http://www.fda.gov/cder/orange/default.htm>;*

**Discussion**

To provide equivalent payment for equivalent drugs, it is important to clarify that equivalent payment will be provided to drugs that are therapeutically and/or pharmaceutically equivalent, including drugs with codes beginning with "A" and "B" codes.

**Recommendation**

*(c) (2) "National Drug Code for the underlying drug product from the original manufacturer" means the National Drug Code of the drug product actually utilized by the repackager in producing the repackaged product.*

**Discussion**

No modification is recommended for (c)(2).

Thank you for your consideration. Please contact me for further clarification or if we can be of any other assistance.

Sincerely,

Brenda Ramirez  
Medical and Rehabilitation Director

BR/pm

cc: Carrie Nevans, Acting Administrative Director  
Susan McKenzie, M.D.  
Jackie Schauer, DWC Counsel  
CWCI Claims Committee  
CWCI Medical Care Committee  
CWCI Associate Members