Workers' Comp

Leveraging Direction of Care in Workers' Comp to Address Drug Pricing

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Direction of care can have a profound influence on reducing the impacts of high drug prices in workers' compensation. In our latest interview with VP of Government Affairs, we dive into the latest on drug pricing and direction of care.

Shelley Callahan, Sr. Director of Marketing: We're here with Brian Allen, VP of Government Affairs, talking a little bit about drug pricing. It's a hot topic in workers' comp. Brian, what's going on?

Brian Allen, VP of Government Affairs: Well, Shelley – thanks, first of all, for visiting with me and you know, there's a lot happening with drug pricing and let's start at the beginning of the supply chain at the manufacturing level.

At the beginning of this year, there were over 580 brand name drugs that had price increases. And this has been a consistent trend year-over-year for the last several years. In 2020, there was a lawsuit filed against 26 manufacturers by 44 states accusing the manufacturers of price fixing. So we know that's going on at the generic level and that case is proceeding through the courts. Obviously it was delayed a little bit with COVID, but still a lot of activity there. So we know some very interesting things are happening at the manufacturing level.

And then, on the distribution level, you have some areas of fraud and abuse that we're concerned about. We're seeing, you know, hardly a week goes by where there isn't some prosecution of a practice somewhere for fraudulent prescribing of drugs. And we see that a lot in topicals. Topicals is really a big problem across the country in the workers' comp space, where you'll see creams that are, you know, two to $3,000 a month. And, really those drugs could be manufactured and probably purchased for less than a hundred dollars.

The other thing we see is the prescribing of really high cost generics drugs that have really high AWP and having large profit margins. We see some groups working on really pushing those kinds of drugs. And so, regulators around the country are really struggling, trying to figure out what to do about it. In fact, [recently]

there was a hearing in Arizona and one of the big focuses was, how do we deal with these outlying drugs that are really super expensive? And how do we curb the fraud and abuse? And I know the chairman Schultz down there went on a fairly long diatribe about some of the problems that he's seeing in their system. And so it's really an issue that regulators are trying to grapple with.

One of the things that [could help fix it] is allowing for direction of care. One of the things that direction of care does is that it takes a lot of pressure off the regulators, because if they allow for direction of care, [they] can solve a lot of those problems. Through the marketplace and contract with good providers that play well in the sandbox. We can make sure that we're getting appropriate pricing and everybody wins at the end.

The dispensers win because they're getting good clean workers' comp business and we can make sure that their payments go smoothly, because they're not overpaying for drugs. The injured workers win because they're getting access to the right kind of care for the right reasons. And they're not being, you know, they're not being used as pawns in a scheme to make money.

So it's a good program and we've really promoted. And the challenge is that a lot of states don't really allow that to happen. They can allow it to happen voluntarily, whether they don't really make it so that an employer can really strive to direct care. So that's an area that we continue to work on regulatorily, but it is an issue and drug pricing is going to continue to be a problem. And so we get to a point where we can allow the marketplace to do the contracting and let that competition within the contracting help drive those prices down. We can't do anything to impact what happens at the manufacturing level. That's a federal issue, but the states can certainly do some things to help manage the prescribing abuses and other things that are happening at the state level and their workers' compensation systems.

Shelley Callahan: That's absolutely right, Brian, and I'm glad you brought up two things. One, just to be clear, that manufacturers are the ones that set the AWP for their drugs themselves, but what the regulators can do that you highlighted is doing direction of care. Can you tell us a little bit more about what direction of care is and why all states aren't already doing that?

Brian Allen: Sure. Well, direction of care, it's a pretty simple program. You allow employers to select a network of pharmacies that an injured worker can use to obtain their prescription care. It's a fairly simple thing.

The good news is for most employers and injured workers, is that the networks in workers' compensation are very broad. I know our networks encompass generally 90% or more of the local retail pharmacies in the state. You're keeping that business local. It's not getting fed to out-of-state mail order pharmacies or other things that aren't going to benefit the local community. So a lot of that business stays local and there's plenty of access to care.

There's not like there's a shortage of pharmacies in people's neighborhoods. And if we have 90% of those, then nine times out of 10, they're going to be able to pick the one – the one they're using is going to be in-network.

And the other thing that we do allow, for the most part, in our networks is the opportunity for a pharmacy to join it if they want to. So we have a very open policy in that way, and I think that's worked well for the industry. And I think it works well in workers' comp because it really provides the broadest access of care possible within the confines of a managed care program.

What that does is allows us to contract with those pharmacies at rates that are competitive. It gets rid of the outliers. If we have someone who wants to overcharge, they just can't play in the network. I mean, it's just that simple. And so you're able to, through a contractual arrangement, kind of weed out some of the problems.

You asked why states don't do it. I will tell you that I'm a little perplexed by it because I think most states don't do it because there's kind of a lack of understanding. There's commercial health plans and, you know, you can in Medicare. You have to go to an approved provider. you can't just go to anybody you want to reap the benefits of the program. I mean, you can go to any, you know, most insurance allow you to go to an out-of-network provider, but you're going to pay more out of your pocket. So most people try to choose in-network. So being in-network is not a foreign thing. It's something that everybody does and for pharmacy care in a commercial health plan, you have to go to an approved pharmacy. You just can't go to anybody you want.

So in workers' comp, for whatever reason, there's been a real resistance to direction of care. I think they fear that employees won't get good care if they are directed to a doctor or a treating provider by their employer. There's a sort of a mistrust, I think, that exists between the various groups. I think obviously employers have a vested interest in getting their employees healthy and well as quickly as possible. And I think most employers really do try to do the right things. So, I don't know. I think that maybe there was some mistrust, and it made sense years and years ago.

I don't know if that's really true today, but in pharmacy care for sure it shouldn't be as big of a hurdle to get over. Because, and no offense to the pharmacies out there, but there really isn't a lot of difference, you know, in pharmacy care from one pharmacy to the next. I've used multiple pharmacies in my life and they all take really good care of me and they all, you know, spend time with me and do the things that a pharmacist is expected to do, but it's not that dissimilar. So the primary product you're getting is the drug. Obviously there's some advice that comes along with it and some counseling that a pharmacist can give, but that is pretty consistent across the board. So it's not like there's, you can argue that they're going to get better care from one pharmacy to the next; they're pretty similar. And the pharmacies are all very professional and they do a really good job. And so there's not like a real disconnect between, you know, we're going to get really bad care from this pharmacy.

In fact, in some cases in the United States where there are choices and there is free, open choice, I think injured workers, in some cases they're getting taken advantage of, because I think they're getting products that they don't really need. We've seen evidence of that in the topical cream arena. There was a situation that we dealt with in New York a few years ago where patients were getting topical creams that they never asked for. And it looked like it was coming from their doctor because they had their doctor's name on the paperwork, but it turns out the doctor never prescribed it either. So somehow or another, they were getting these creams. And so they get taken advantage of, and I think having a network where there's broad access to pharmacies that an injured worker could choose from and allowing them to weed out some of the problems is really a positive thing. But it's been a hurdle.

I know the pharmacies typically don't want direction of care. They want choice, but in workers' comp where you've got 90% of the pharmacies available to an injured worker and an open policy where we'll allow any pharmacy that wants to participate. To me, it seems to make sense because it's a way, and it takes a lot of heat off the regulators.

Regulators are constantly trying to play catch up with the people who are abusing the system and we work and get laws and rules passed and they find another loophole and they exploit that loophole. Then we get to close that loophole and then it opens up another loophole somewhere. And it's just an endless game of whack-a-mole where you're trying to just beat back the wolves from the door.

If they went to a direction of care model, they could take a lot of the pressure off the regulators. The marketplace would put its own sort of guard rails in place, and you wouldn't have to deal with this constant battle of trying to figure out how do we close these gaps and how do we close these loopholes and make sure that people aren't abusing the system. The best way to do that is through contractual arrangements, because we can control that in our contracts.

We have found that our pharmacies in our network are good players. They do a fantastic job. They do it at a fair rate. We try to do everything we can to make sure they maintain profitability. We want to make sure that our payers aren't overpaying for medications. And there's a lot of competition in that space. So the payers have all the leverage in the world to keep negotiating prices down and they do, and they're very good at it. For me, it just seems to make a lot of sense, and I've never understood the resistance to it.

I know right now in a lot of states, the local pharmacies, they fight against direction of care. But what they don't realize is that millions of dollars are going out of their state to other pharmacies located in states that that don't benefit them and that's money that could be there in their shops, helping them. So, I think people don't embrace it and I hope they do. I think it'll solve a lot of problems.

Shelley Callahan: Thanks, Brian, the best care at the best price and making sure that at the end of the day, all injured workers are well taken care of. So we appreciate your, your insights and your passion. Join us again on the mPower podcast.

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