

First DataBank, Medi-Span, and McKesson AWP Litigation Settlements

The U.S. District court for the District of Massachusetts entered a Final Order and Judgment approving a class action settlement that involved two major publishers of drug pricing information, First DataBank (FDB) and Medi-Span. The lawsuit alleged that Wholesale Acquisition Costs (WAC) to Average Wholesale Price (AWP) spread was arbitrarily raised from 20% to 25%. The suit alleged that only one wholesaler (McKesson Corporation) was surveyed. As a result of the class-action lawsuit, there has been a rollback of AWP values from 1.25 to 1.20 times the wholesale acquisition cost of such drugs. This rollback went into effect on September 26, 2009. Further, FDB and Medispan will need to cease publishing the AWP within two years of September 26, 2009.

Vermont Medicaid's reimbursement pricing model for pharmacies is currently set at AWP minus 14.2% for single-source brands, multiple-source brands and single-source generics. [Essentially, any drug that does not have a Maximum Allowable Cost (MAC) or Federal Upper Limit (FUL) pays off AWP, unless the Usual & Customary (U&C) is lower.] The State of Vermont, Office of Vermont Health Access will not be adjusting its AWP reimbursement.

In addition to the 1,400 drugs affected, FDB and Medi-Span are taking steps to apply the 1.20 factor to all other NDCs with an AWP markup factor of greater than 1.20. It is expected that in total 18,860 NDCs will be affected. However, while this number appears large, it should be noted that of all the Vermont Medicaid pharmacy claims paid during the 2nd quarter of calendar year 2009, 35% were processed using AWP pricing methodology. The remaining 65% of claims were processed at the lesser of Vermont's MAC, the pharmacy's U&C, or the FUL, and are not affected by the settlement provisions. Further, of the total 18,860 NDCs:

- 12,242 are drug NDCs, with the remainder being for OTCs and supplies not generally paid through the pharmacy benefit, and
- out of the 12,242 drug NDCs included the rollback, OVHA had utilization for 2,020 (or 16.5%) during the 2nd calendar quarter of 2009.

Vermont's decision to not adjust AWP reimbursement is consistent with the majority of other state Medicaid programs, as indicated by a recent survey of state Medicaid programs conducted by the National Association of State Medicaid Directors (NASMD).

