



HEALTH PERSPECTIVES

Current Issues in Healthcare

The Impact of AWP Litigation on Your PBM Contract

By Brett Swanson, FSA, MAAA

A recent court ruling requires First DataBank and Medi-Span to make special one-time modifications to their published Blue Book Average Wholesale Prices (AWP). The change in AWP is scheduled to occur on Sept. 26, 2009. For all prescription drugs with a current AWP mark-up over the wholesale acquisition cost (WAC) in excess of 20%, First DataBank's and Medi-Span's published AWP will be reduced such that the AWP mark-up over the WAC is no greater than 20%. First DataBank and Medi-Span also agreed to cease the publication of Blue Book AWP within two years of the settlement.

Most pharmacy benefit managers (PBMs) intend on concurrently making adjustments to the contractual terms that determine ingredient costs such that, when First Databank's and Medi-Span's special adjustments occur and AWP values for drugs are reduced, the combined change to the contractual terms and AWP is cost-neutral to the PBM, the PBM's contract holders (customers), and the PBM's contracted pharmacies.

There are a number of approaches PBMs are taking to address the AWP litigation. Each approach has advantages and disadvantages. It is important for PBM contract holders to know the impact of each approach as they work with their PBM going forward.

Approach 1: Revised AWP Discounts

The first approach entails the PBM concurrently reducing the AWP discounts for brand and generic drugs in such a manner that when First DataBank's and Medi-Span's special adjustments occur and AWP prices for drugs are reduced, the combined change is cost-neutral to all parties overall. The goal of this approach is to determine the AWP discounts in such a way that, when applied to First DataBank's and Medi-Span's revised AWP prices, the impact to PBM contract holders (individually or collectively) will be cost-neutral when compared to the old discounted AWP and current contract holder discounts.

The impact of this change on a specific PBM contract holder may vary depending on its drug mix because the effect of this change is

not uniform across all national drug codes (NDCs). Based on their size, smaller PBM clients will inherently have more variability as a result of this change. Figure 1 provides more detail regarding the potential AWP change based on a sample of contract holders for branded and specialty products.

Figure 1

Estimated Average Change in AWP by Contract Holder

Mean	Std. Dev.	Minimum	Maximum
-3.98%	0.02%	-4.02%	-3.96%

Some PBMs are using each contract holder's specific experience as a means to establish the cost-neutral discounts. This approach is operationally difficult for the PBM; however, because the change in AWP does not uniformly impact all drugs, using a contract holder's specific experience minimizes the opportunity for drug mix to affect the calculation of the equivalent AWP discounts.

Other PBMs are using block of business experience (average across multiple clients) as a means to establish the cost-neutral discounts. Because average adjustments are used, there could potentially be some *winners* and some *losers* through the adjustment process. However, some PBMs taking this approach are providing direct reimbursement (restitution) in order to offset the unfavorable discount adjustment (i.e., the *losers*), such that no contract holders are financially disadvantaged by the AWP adjustment.

Also, some PBMs are not adjusting the AWP discounts for generic drugs, which will benefit the vast majority of contract holders for a subset of generic drugs. However, the number of generic drugs that are affected by the change in AWP is minimal. Therefore, the benefit to the contract holder should also be minimal.

This approach also does not address First DataBank's and Medi-Span's agreement to cease publication of the Blue Book AWP within two years of the settlement date. PBMs taking this approach may need to go through another round of contract revisions with the PBM's customers and/or the PBM's contracted pharmacies to replace their AWP as this date draws nearer.

Approach 2: Revised AWP Price Points

A different approach involves the PBM concurrently adjusting the published AWP prices of each prescription drug based on historical WAC markup factors from First DataBank and Medi-Span. In other words, the adjusted AWP will be used to ensure that the markup over WAC is equivalent to the AWP markup over WAC before the reduction to the AWP.

This approach removes the potential for adverse variation across contract holders as the adjustments are made at the individual NDC level. Therefore, as drug mix changes over time and across contract holders, so does the degree of impact that is due to the First DataBank and Medi-Span settlement. However, this approach could be negatively perceived as it perpetuates the issue at the heart of the AWP litigation against First DataBank and Medi-Span. The PBMs may be in their right to make this adjustment; even if so, at a minimum, they will need to manage the perception of this approach.

One way to manage this perception is for PBMs to change the AWP publisher used as the basis to determine ingredient costs. Most PBMs currently use First DataBank or Medi-Span published Blue Book AWP as a pricing basis. However, because of the litigation, some PBMs may consider other publishers as a means to avoid changing AWP price points and/or the ceasing of publication of Blue Book AWP within two years of the settlement date altogether. Not all publishers of AWP are subject to the terms of the agreement to cease the publication of AWP within two years. For instance, Gold Standard is now going to publish multiple versions of AWP:

1. **Current Approach**—Calculated Average Wholesale Price (C-AWP), which is based on a markup of 25% applied to the reported WAC or direct price (DP).
2. **New Approach**—Calculated Average Wholesale Price 1.20 (C-AWP 1.20), which is based on a markup of 20% applied to the reported WAC or DP.

By publishing both AWP price points, Gold Standard leaves it up to the PBM (or other payer) to elect which version of AWP to use as a pricing basis.

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Approach 3: Using Alternate Pricing Terms (i.e., WAC)

Another approach is where the PBM changes the pricing basis to be used in the determination of ingredient costs. For example, the PBM may change the terms with all contract holders to base the calculation of ingredient costs off of WAC plus a percentage, instead of a percentage off of AWP. This approach not only addresses the short-term issue of the determination of AWP changing effective Sept. 26, 2009, but it also addresses the issue of AWP no longer being published by First DataBank and Medi-Span within two years of the settlement date.

The operational burden for the PBM can be large under this approach as the contractual terms for each of their contract holders must be changed significantly. Not only must the PBMs develop a pricing system based on an entirely different approach to determining ingredient costs, but they also will be under competitive pressure to provide assurance that the revised terms are price-neutral to the contract holders. Using WAC, for example, this approach is complicated by the fact that not all NDCs have a published WAC price. Other alternatives to WAC could be average manufacturer price (AMP) or average sales price (ASP).

The use of AWP has been the standard pricing basis for most contract holders for a number of years. Changing to a new basis could be difficult as the contract holder may not have a good benchmark to compare contract terms (i.e., competitiveness of pricing discounts). Also, it will make the comparison of proposals obtained through the RFP process difficult as some are likely to be based on WAC (or some other non-AWP price point), while others will still be based on AWP.

Conclusion

It is important for PBM contract holders to understand which approach their PBMs plan to implement as a result of the settlement of the First DataBank and Medi-Span AWP litigation. Each PBM contract holder will want to ensure that the approach used by its PBM is transparent and indeed cost-neutral (or at least not adverse). Most PBMs have had independent parties validate the price neutrality of their methods. However, some approaches create potential *winner*s and *loser*s. It is also important to understand the approach of each PBM when undergoing an RFP process, contract renewal, or contract negotiations, as a direct comparison of pricing terms may no longer be a true *apples-to-apples* comparison.

Brett Swanson is an actuary in Milliman's Milwaukee office and can be reached at brett.swanson@milliman.com or 262-784-2250. Feel free to contact him or your Milliman consultant with any questions.

Inquiries may be directed to:

Health Perspectives Editor
One Pennsylvania Plaza, 38th Floor
New York, NY 10119
(646) 473 3021
health.perspectives.editor@milliman.com