



# Legislative Update

August 3, 2009

## PRESCRIPTION DRUG PRICING AND THE FIRST DATABANK SETTLEMENT

### The Issue At-a-Glance

By now, you've probably heard that First DataBank (FDB), the prescription drug industry's largest publisher of Average Wholesale Price (AWP) data, is in the midst of a legal settlement related to inflated price models that have cost consumers and third-party payers billions of dollars earlier in the decade.

At issue now isn't so much what happened in the past, but what impact the settlement may have on future prescription costs and pricing models. The proposed settlement has two basic elements:

- FDB would have to roll back the prices on its published list by 5 percent;
- FDB has agreed to stop publishing AWP data altogether two years after the settlement went into effect.

In a vacuum, both aspects of the settlement seem relatively mundane, but in the broader context of the prescription drug market they could significantly impact a number of factors including:

- The relationships/contracts plan sponsors have with their Pharmacy Benefits Manager (PBM) and the discounts they receive from them;
- The generally accepted methodology used to calculate drug prices across the industry;
- The costs plan sponsors pay for prescription drugs.

### What Does That Mean For You?

**From a pricing standpoint** – In reality, it should mean very little to the net price of prescription drugs for plan sponsors. When the 5 percent AWP pricing rollback is enacted, it would result in a lower published value for many commonly used drugs.

Because most clients have negotiated AWP-based discounts with their PBMs, it is likely that those PBMs would seek to reduce those discounts to reflect the lower AWP. But, if the published value and the discount drop in tandem, then the net cost for the plan sponsor should be the same. See chart at side for example.

Pre-settlement Drug AWP	Post-Settlement Price with 5% AWP Rollback
\$100	\$95
Plan sponsor price with 15% AWP discount	Plan Sponsor Price with ~10% AWP Discount
\$85	\$85
<b>Net Change to Plan Sponsor = \$0</b>	

*\* This chart represents a hypothetical scenario assuming a parallel decrease in the AWP rollback and AWP negotiated discount.*

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**From a Contract Standpoint** – Most contracts allow PBMs to adjust pricing as long as it’s “fair and equitable” and the rollback in AWP would certainly seem to meet that criteria. The bigger issue, as it relates to contracts, would be if AWP is phased out as a pricing index altogether. That would open up the opportunity for PBMs to broadly renegotiate contracts. That scenario may be several years away, but it is something to keep in consideration and to begin planning for well in advance.

**If Your Pharmacy Plan is Fully Insured** – If fully insured and completely or partially experience rated, your rates are unlikely to change before your next renewal. Depending on the terms of your agreement with the insurer, you may be able to revisit and change rates in the event of changes in laws or regulations that may alter pricing. Since the net effect of this matter is not believed to have a negative impact on group health plans or insurers, it is unlikely that an insurer would try to alter rates based on this issue. It will become important that upon renewal there is a review of how the insurer plans to adjust for this change. In fact, it is suggested that this take place long before the next renewal and once all final litigation details are publicized.

**If Your Pharmacy Plan is Self Funded** – Since the net effect is expected to be “no cost change”, there should be little, if any, impact. The key for self-funded plans is to ensure that the pharmacy benefit manager (PBM) has documented how they plan to adjust their AWP discount and for the Plan Sponsor to get written assurances that there shall not be a negative impact on overall costs on the basis of the litigation. The stakes are higher for self-funded Plan Sponsors due to the immediate impact changes in claims has on their cost. Many PBMs have begun to issue notices and updates regarding their plans to adjust AWP discounts in light of the roll back of the AWP. It is suggested that Plan Sponsors carefully scrutinize what their PBM plans to do to get assurances of a net zero impact based on the litigation. These discussions need to be happening now.

### **What is the Future of Pharmacy Benefit Pricing?**

The AWP system used to set prices for pharmacy products is archaic and arbitrary. The First DataBank case exposes some of the failures of this price-setting system and makes a strong case for a much-needed overhaul of how pharmacy prices are determined. There is both an overwhelming need for increased transparency as well as a correlation to the actual manufacturer’s price, since the AWP has little to do with the actual cost of the drug. With healthcare reform front and center, there can be no meaningful debate without addressing a more modern system for drug benefit pricing that safeguards the interests of all stake-holders. There are several options available and Conner Strong supports any meaningful effort to add greater transparency to the process so that group plan sponsors can have access to more information about what drives the cost of pharmacy benefits. This will allow group plans to make better informed decisions about how to contract with PBMs, design plans and create improved strategies for effective pharmacy benefit management.

### **Where Does Conner Strong Come In?**

Conner Strong can provide a great deal of value in navigating the complexities related to this settlement and the issues surrounding it but at the most basic level it comes down to two things: *advocacy* and *access*.

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**ADVOCACY** – At Conner Strong, we understand that most organizations don't have the data or expertise to fully evaluate the complexities associated with this situation. That's why we act as an advocate for our clients, reviewing contract language and settlement progress, outlining implications and presenting options, and acting as an informed and expert negotiator with PBMs when necessary. We have the expertise and the resources and we'll use them to put your business in the best position to succeed.

**ACCESS** – When you work with Conner Strong, you have access to a team of dedicated experts that is monitoring this situation on a daily basis. That means you have access to the most up-to-date information, access to the most in-depth analysis and access to the deepest knowledge base in the industry on this issue. And that knowledge gives you the power to make informed decisions and take proactive steps that will result in the best outcomes for your business and your bottom line.

Please contact your Conner Strong representative with any questions, toll-free at 1-877-861-3220.

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