

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting

Held at 800 West Washington Street

Phoenix, Arizona 85007

Thursday, September 2, 2021 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman (Telephonic)
	Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
	D. Alan Everett	Commissioner (Telephonic)
	James Ashley	Director (Telephonic)
	Gaetano Testini	Chief Legal Counsel (Telephonic)
	Jason M. Porter	Deputy Director (Telephonic)
	Trevor Laky	Legislative Affairs Chief/Public Information Officer (Telephonic)
	Charles Carpenter	MRO Manager (Telephonic)
	Renee Englen	MRO Admin (Telephonic)
	Renee Pastor	Self Insurance (Telephonic)
	Jessie Atencio	ADOSH Director (Telephonic)
	Miguel Castillo	ADOSH Compliance (Telephonic)
	Steven Black	ADOSH Compliance (Telephonic)
	Ron Mills	ADOSH Compliance (Telephonic)
	Anna Maria Stonerock	ADOSH Admin (Telephonic)
	Kara Dimas	Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance on the telephone, confirmed by roll call were Chi Nguyen (Albertson Companies, Inc.); Roshell Lee (Ashton Tiffany for Securis); Larry Reilly (Bottle Breacher, LLC); Michael Donnelly and Eric Donnelly (EWD Inc dba Roof Rite); Jim Goad (Mr. Shed, Inc); Marleen Chavez (Karely Renovation, LLC); Dr. Mitchell Lipton (The Hand Center); Jon Amores (Arizona Medical Association); Brian Allen (Mitchell Pharmacy Solutions); Kevin Tribout (Optum) and Barry Aarons and Hayley Howard (The Aarons Company LLC representing AALIW and IWP).

Approval of Minutes of August 26, 2021 Regular Meeting Minutes.

Vice Chair Hennelly moved to approve the Minutes of the August 26, 2021 regular session meeting and Chairman Schultz seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

- a. Approval of Requests for Renewal of Self-Insurance Authority.

1. Albertson Companies, Inc.
2. Chevron U.S.A., Inc.
3. QuickTrip Corporation

Commissioner Everett moved to approve the items on the Consent Agenda and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Update Regarding Securis Insurance Pool, Inc.'s Experience Modification and Discussion of Security Requirements.

Ms. Pastor provided the quarterly update for Securis Insurance Pool ("Securis") which has added ten new members to the pool resulting in an increase in their deposit amount. Ms. Pastor reviewed the loss history, claims and financial reports. Ms. Pastor recommended that the commissioners approve Securis to continue their self-insurance authority.

Chairman Schultz commented that the reason for quarterly updates on Securis is because it is a new pool and because of the significant exposure initially for cancer claims and now COVID claims and to ensure the Special Fund is protected from any potential uninsured losses by keeping a close eye on both the claims and the reserves of Securis and looking at its capitalization to make sure they are moving along the plan to achieve full capitalization and the Commission will continue to follow this program quarterly until it achieves full capitalization.

Vice Chair Hennelly seconded the Chairman's comments but noted that while capitalization is problematic the Commission will continue to keep an eye on it.

Chairman Schultz is encouraged by the growth.

Ms. Pastor attends all of the Securis meetings Securis, is very conservative and before the pool makes a significant move, she is contacted and included in those discussions.

Vice Chair Hennelly moved to approve continuing the current security deposit and approve the additional new members that have joined the pool and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion and Action regarding the 2021-2022 Arizona Physicians' and Pharmaceutical Fee Schedule.

Mr. Carpenter thanked the Commission for the opportunity to present the following staff recommendations for the 2021-2022 Physicians' and Pharmaceutical Fee Schedule:

First, staff recommends the updated service codes, relative value units (RVUs), and reimbursement values as presented in the tables previously presented and posted on the MRO webpage. The methodology used in computing reimbursement values has not changed from previous years and is outlined in detail in the memo. Staff recommends that the 2021-2022 Fee Schedule continue to use the Center for Medicare and Medicaid Services, or CMS's, surgical global periods, assign RVUs to consultation services and delineate codes that are unique to Arizona. The recommendations do not include a Stop Loss or Stop Gain cap for any service code. A Stop Loss

has been implemented in previous years to assist in transitioning to a pure RBRVS system. The Stop Loss has been incrementally increased and, after analyzing the impact of another increase to the Stop Loss versus removing the Stop Loss altogether, staff recommends that the Stop Loss be removed since the change from another incremental Stop Loss and removal of the Stop Loss is negligible. Moreover, removal of the Stop Loss will move Arizona towards a fully-deployed RBRVS system based only on RVUs and Conversion Factors.

Staff recommends updating the RBRVS conversion factors used in the 2020/2021 Fee Schedule. Staff recommends that the conversion factor for Anesthesia remain unchanged, whereas the conversion factor for Surgery and Radiology be updated to \$70 and the conversion factor for all other services be increased to \$65. Except for the Anesthesia Section, the Fee Schedule uses RVUs from the current Medicare Physician Fee Schedule. CMS establishes the value of each RVU based on the work of a healthcare provider, the associated administrative and overhead costs to provide the service, and malpractice insurance costs. CMS takes into account the expertise required to perform the service in their calculations. The RVUs are modified annually to reflect industry changes as appropriate. Due to this, Medicare maintains one conversion factor for all services except Anesthesia.

Staff also analyzed the conversion factors for other states' workers' compensation fee schedules that utilize an RBRVS system and adopt the RVUs from Medicare. Fourteen states have a single conversion factor for Surgery. The average conversion factor for these 14 states is \$70.44. Nine of the 14 states have conversion factors lower than \$70. Similar analysis of the conversion factor for Radiology yielded 20 states. The average conversion factor in those 20 states is \$68.20. Thirteen of the 20 states have a conversion factor lower than \$70.

Staff also analyzed data provided by FAIR Health on commercial health insurance allowed amounts for surgery and radiology services in Arizona in order to compare workers' compensation reimbursement values to commercial health insurance allowed amounts. The allowed amount represents the total reimbursement a healthcare provider receives for specific services, including any amount paid by the patient. Staff received data on 94 of the most-billed surgical procedure codes and 105 of the most-billed radiology procedure codes. Respectively, these codes represent 75% and 87% of all billed procedures according to the billing frequency data from NCCI. Based on the data, the proposed 2021-2022 reimbursement values for surgery will be on average 143% of the allowed amount for the same procedures in the commercial health setting and 133% of the allowed amount for radiology for those same procedures.

Based on this data, staff recommends adjusting the conversion factor for Surgery and Radiology to \$70. With this Conversion Factor, the fee schedule will allow payment for surgical and radiological services to be over 200% of Medicare and an average of 143% for surgery and 133% for radiology when compared to commercial health allowed amounts in Arizona.

The staff recommendations, including the changes to the RVUs and proposed conversion factors of \$70 for surgery/radiology, \$61 for Anesthesia, and \$65 for all other services, will result in a projected 2% overall increase in medical expenditures throughout the next fiscal year.

Second, the recommended Fee Schedule continues to designate Medi-Span® as the source to determine Average Wholesale Price (AWP). This reference value is used to calculate reimbursement values for pharmaceutical products.

Third, staff recommends changing the format of all Arizona-specific codes. The current format consists of eight alphanumeric characters. Eliminating the “099” after the initial AZ prefix results in a five-character alphanumeric code that conforms to the current CPT® billing code format. This update is recommended in response to external stakeholder feedback.

Fourth, staff proposes to update all references to the American Medical Association’s Current Procedural Terminology publication throughout the Fee Schedule as “CPT®”.

Fifth, staff recommends the following amendments to the Introduction Section of the 2021/2022 Fee Schedule:

- Delete Section A(10). Consultation services are defined in the CPT®. The description and accompanying essential criteria of a consultation billing code govern how the service may be performed and when it may be billed. Deleting this Section avoids potential confusion with Section H
- Add Section A(14) to clarify that the Fee Schedule applies to the payment of telehealth services.
- Add Section B(13) to provide guidance on reimbursing ambulance service providers. Staff updated this section following the public hearing in July by removing references to Air Ambulance Provider service fees and indicating that only ground ambulance service provider fees are mandated and regulated by the Arizona Department of Health Services. Fees for Air Ambulance Service providers are not regulated by state or federal agencies and the Commission does not regulate ambulance service fees in the Fee Schedule.
- Change the language in Section H from “difficult problems” to “complex cases” to add clarity.
- Update the language in Section I(4) to further clarify the required documentation for materials and supplies in order to receive appropriate reimbursement and indicate that medications administered in a clinical setting should be billed using CPT® code 99070 and reimbursed according to the Pharmaceutical Fee Schedule Guidelines.

Sixth, staff recommends amending Paragraph C of Section I in the Pharmaceutical Fee Schedule Guidelines. This amendment was not included in the original staff proposal and was added, in part, in response to multiple public comments about reducing abusive pharmaceutical billing practices that harm the system. The recommended language states, “Whenever possible: (1) medical practitioners should prescribe less costly drugs; and (2) pharmacies and medical practitioners (under Section VII) should dispense generic drugs with lower AWP values.” This new language is intended to make it clear that it is not appropriate for pharmacies or medical practitioners (under Section VII) to selectively dispense generic medications that have inflated AWPs.

Next, staff recommends amending Section II in the Pharmaceutical Fee Section Guidelines by adding a definition for “Therapeutically-Similar” medication. In addition, staff proposes an update to the definitions of “Pharmacy Accessible to the General Public” and “Pharmacy Not Accessible to the General Public” to be consistent with recent legislative changes to A.R.S. § 23-908. Based on stakeholder feedback, the current recommendations do not include adding definitions for GEAP, NADAC, and WAC.

Next, staff recommends amending the factor to calculate reimbursement value for prescription generic medications in Section III. Currently, the reimbursement value for prescription generic medication is 85% of AWP per unit. Staff recommends updating the reimbursement value for generic medications to 75% of AWP. Staff previously proposed determining reimbursement

values using a “lesser of” methodology that included NADAC, GEAP, and WAC. However, based on stakeholder comments, we have removed all references to NADAC, GEAP, and WAC. We have also removed the changes to the dispensing fee section of the Pharmaceutical Fee Schedule that were proposed in connection with the adoption of NADAC, GEAP, and WAC.

Staff also proposes to amend Section III to establish the reimbursement value for over-the-counter medications that are “commercially available” and not “commercially available.” The reimbursement value for commercially available OTC medications is to be based on the retail price (per unit) of the OTC medication in settings where the medication is commercially available. The reimbursement value for OTC medications that are not commercially available in pharmacies accessible to the general public will be calculated on a per unit basis based on the retail price (per unit) of the most therapeutically similar OTC medication commercially available in pharmacies accessible to the general public. The last amendment to Section III establishes the maximum reimbursement value for OTC topical creams or lotions and topical patches that are not “commercially available.” Based on staff research of OTC medications that are commercially available and their respective retail prices, the proposed maximum reimbursement for OTC topical creams or lotions is \$30 per 30-day supply and the maximum reimbursement for OTC topical patches is \$75 per 30-day supply. These limitations will apply to OTC medications, regardless of whether they are dispensed by a medical practitioner or pharmacy.

Staff recommends amending Section VII of the Pharmaceutical Fee Schedule to delete subsections (F) and (G). These subsections refer to reimbursement values for OTC medications dispensed by pharmacies not accessible to the general public or medical practitioners. The recommended amendments to Section III, which I just discussed, apply in all settings, including pharmacies not accessible to the general public and physician dispensing. As such, these sections are duplicative and could potentially cause some confusion. These deletions were not originally included in the staff proposal but are being recommended now to eliminate duplicative and potentially confusing language.

Seventh, staff proposes to add language to the Surgery Guidelines to clarify how to determine the global period when multiple services are performed during the same operative session.

Eighth, staff proposes to add references to “ambulatory surgery centers” in the Radiology Guidelines to clarify that the services performed in an ambulatory surgery center are managed similarly to services performed in a hospital.

Ninth, staff proposes to amend the Physical Medicine and Rehabilitation Guidelines section of the Fee Schedule by clarifying proper billing practices for the initial evaluation and subsequent re-evaluations for both physical therapy and occupational therapy in Section A. Staff proposes to amend the language in Sections B and C to clarify that therapeutic procedures and modalities are distinct and that time spent performing these services should be counted separately. Staff also proposes the addition of language to clarify the maximum amount of time and units of therapeutic procedures that may be billed in one session without prior approval. Additionally, the time spent performing modalities does not count towards the maximum allowable time and units of therapeutic procedures. Staff proposes to amend Section B to allow three modalities without the need for prior approval. Staff proposes to amend Section G to provide specific instructions on documentation expectations. Staff also proposes to amend sections A through G to add clarifying language and examples consistent with the Medicare Time Based Billing Standards that were adopted last year. Staff worked closely with external stakeholders in amending the Physical Medicine and

Rehabilitation section to improve the Guidelines and use language common to healthcare providers who perform these services.

Finally, staff proposes to add language in the Evaluation and Management Guidelines to clarify that documentation and review of records are inclusive to the performance of an evaluation and management service and to clarify the manner in which a physician may bill for time that is not already accounted for in an evaluation and management or consultation service. The American Medical Association updated the Evaluation and Management Guidelines in the CPT® this year. Staff proposes to update the Evaluation and Management Guidelines to conform to current CPT® updates.

Mr. Carpenter recommended the Commission adopt the proposed revisions to the Pharmaceutical Fee Schedule as presented.

Chairman Schultz noted a public hearing was held on July 29, 2021 regarding proposed changes to the Fee Schedule and the Commission accepted oral comments and written comments which have been posted on the Medical Resource Office website and made some changes as a result of those additional comments. As always the commission has strived to simplify the system to make it easier for both providers to bill and payors to pay by trying to simplify the system to enable the system to operate much more than commercial and Medicare payment systems and make sure the injured workers receive the appropriate treatment and providers are paid reasonably for providing services. In the past the commission has taken action to simplify procedures, including adding services available online that allow both payors and providers to do most of their work with the Commission online and no longer have to come down to the Commission or take time away from their practice or job to come to the Commission to do their work. Also the Commission has responded to prior concerns about the amount of paperwork required for workers' compensation cases by including payments for completing reports and simplifying processes that the system operates as closely as it can to Medicare and the commercial insurance systems.

Dr. Lipton provided his background, having been in practice since the 1970s. He highlighted both Dr. Guidera's written comment that there is going to be a 25% reduction, and Dr. Carter Lipton's estimate of 17% and 20% reduction in what hand surgeons will receive. Dr. Lipton explained why treating industrial patients is more difficult than other types of patients. While he did not think the intent was to decrease the amount of reimbursement, but that is the actual practicality of what is happening with the new fee schedule. He thanked the Commission for listening.

Chairman Schultz thanked Dr. Lipton for taking time away from his practice and his comments noting the Commission tries its best to get input from all of the stakeholders and to try to make themselves available. He noted that he has seen some of the work that Dr. Lipton has done in industrial cases and knows how much he cares about his patients and the system and appreciate his comments. He noted that staff continues to work on these issues throughout the year and encouraged him to send comments to Mr. Carpenter and keep an open dialogue to try and improve the system.

Dr. Lipton thanked him for his kind comments.

Mr. Carpenter added that the first thing that the Commission looks at is other states' workers' compensation rates and based on those rates using the RBRVS system, Arizona is actually above the median and in a very good place. A lot of states have conversion factors much lower and we

looked at what is happening in other states and the commercial setting, and have known that Arizona's conversation factor are considerably higher than Medicare.

Chairman Schultz asked Dr. Lipton to have his son send the information that he developed, as the Commission continually reviews this.

Chairman Schultz asked Mr. Amores if he had comments from the Arizona Medical Association.

Mr. Amores thanked the Commission and noted he was here to echo the comments that Dr. Lipton made. He appreciated the description of the methodology, and the comparisons vis-à-vis the other states and commercial plans and the percentage relative to Medicare, all of that is certainly not argued here, but wanted to share the concern that regardless, like many things in policy there is theory and practice.

Chairman Schultz thanked Mr. Amores for his comments and noted that the Commission changes the fee schedule annually because of the expense for people to change their systems to both be able to bill and pay. He noted that the Industrial Commission is responsible for the entire workers' compensation system, statewide and covering all care that is rendered to injured workers and monitor carefully things on a system wide basis spending a lot of time with the National Council on Compensation Insurance statistics on both compensation payments and medical payments. That is reviewed frequently, and over the last five years, we have had increases in overall medical expenditures that not only were greater than the CPI they were also greater than the average of medical CPI; our providers being reimbursed more than they are in other areas. Taking a big picture look at things, it is the way things work, sometimes it is not entirely fair to everybody but do our best to try to be fair to everybody and try to do our best to encourage even more physicians to participate in treating injured workers and try to make it more financially beneficial to them than treating Medicare or even commercial insurance patients. It is a source of some frustration and a source of the medical increase in so much of medical care the payments are determined by contracts, not even our fee schedule, and so much of it is out of our hands in terms of the ability to attempt to help providers and provide more payments or the fact the opposite - the fee schedule has no impact on the people's contracts either through third party billing services or direct contracting and all of the other things that go on between payors and providers and employers. The Commission tries its best to keep the system balanced, keep the best physicians, being remunerated appropriately and providing the excellent care that they do for our injured workers. Over the years Chairman Schultz has participated in a number of committees at the Medical Association and in the area of tort reform. Director Ashley and Chairman Schultz are always available to talk to your committees, meet with Mr. Amores and individual providers and can meet virtually if necessary. The Commission is open to input and meeting with anybody, anytime and believes it is important to get that input and work hard to try to be the most transparent Commission and believe in inviting people to participate, listening to everyone and making a stronger system for everybody.

Mr. Amores thanked the Chairman and noted he will take him up on his offer and appreciated that his request is extraordinary and a little late for the comment period, but it did come to their attention and just thought he would be remiss if he did not bring up the impact on a particularly important specialty as it relates workers' compensation, the Medical Association loves all their physicians, and took additional effort to jump on this call and make a request to at some point revisit this and perhaps will do that through the process as it seems to directly affect practitioners, hand surgeons and those practices and how critical they are for workplace injuries.

Chairman Schultz checked to see if Mr. Tribout had any comments.

Mr. Tribout thanked the Commission for allowing him to participate in the last meeting and listening in today. He commented that they did some data dives into problematic medications that were identified at the prior meetings and offered to provide the data to the commission.

Chairman Schultz noted the team did tell him that Mr. Tribout was very helpful and appreciates it and how we make the whole system better.

Chairman Schultz checked to see if Mr. Aarons or Ms. Howard had any comments.

Mr. Aarons noted they were pleased to be able to sit in and listen to the Commission's deliberation.

Chairman Schultz checked to see if Mr. Allen had any questions or comments.

Mr. Allen thanked the Chairman for the openness and the ability to comment and for the Commission's thoughtful consideration of the comments. Mr. Allen stated Arizona is one of his favorite states to work with and appreciates all of the effort and time that goes into the things that the Commission does and offered to help in any way they can.

Chairman Schultz asked if there were any other comments, hearing none.

Chairman Schultz read the recommended Resolution that the Commission would adopt.

Commissioner Everett moved to approve staff recommendations as presented and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Load Star Builders LLC	Complaint
20849 E Saddle Way	Years in Business: 3
Queen Creek, AZ 85142	Empl. Covered by Inspection: 3
Site Location: 11665 W. Parkway Ln.	
	Avondale, AZ 85323
Inspection No: V4364 - 1541859	
Inspection Date: 7/12/2021	

REPEAT-SERIOUS – Citation 1 - Item 1 –

- a) 11665 W Parkway Ln., Avondale, AZ 85323: Two employees were nailing fascia from the roof of a new home that was approximately 22 ft above the ground level without fall protection. 29 CFR 1926.501(b)(13)

The Load Star Builders LLC was previously cited for a violation of this Occupational Safety

And Health Standard or its equivalent standard 1926.502(B)(13), which was contained in ADOSH Inspection Number 1468541, Citation Number 1, Item Number 2 and was affirmed as final order on 10/07/2020, with respect to a workplace located at 25310 S Saint Ruben Ct., Gilbert, AZ 85298 and abated on 12/04/2020.

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

REPEAT-SERIOUS – Citation 1 - Item 2 –

- a) 11665 W Parkway Ln., Avondale, AZ 85323: Two employees were nailing fascia from the roof of a new home without fall protection training. 29 CFR 1926.503(a)(1)

The Load Star Builders LLC was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent standard 1926.502(b)(13), which was contained in ADOSH Inspection Number 1468541, Citation Number 1, Item Number 2 and was affirmed as final order on 10/07/2020, with respect to a workplace located at 25310 S Saint Ruben Ct., Gilbert, AZ 85298 and abated on 12/04/2020.

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

TOTAL PENALTY - \$10,000.00

TOTAL FORMULA AMT. - \$10,000.00

Mr. Atencio noted that the Compliance Officer, Mr. Castillo was available for questions. Mr. Atencio discussed ADOSH’s investigation, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Schultz checked if anyone on the phone would like to comment.

Vice Chair Hennelly moved to approve the citation and proposed penalties as presented and seconded Commissioner Everett the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Bottle Breacher LLC
1870 W Prince Rd #35
Tucson, AZ 85705

Planned
Years in Business: 7
Empl. Covered by Inspection: 8

Site Location: 1870 W Prince Rd #35
Tucson, AZ 85705
Inspection No: T3633 - 1544464
Inspection Date: 7/28/2021

Mr. Atencio started to review this file and before completion he removed this file from today’s meeting to be heard at a later meeting.

Chairman Schultz noted it was a very thorough inspection and appreciated the grouping and looks forward to further discussion next time.

Chairman Schultz apologized to Mr. Reilly and appreciated him for joining and fully intended to complete this item and will give notice of the next meeting and would appreciate it if he were able to join then.

Mr. Reilly asked which item was incomplete. Mr. Atencio responded.

Ms. Dimas confirmed Commission meeting dates through November 2021. Commissioner Hennelly noted he may not be able to make the first couple of meetings in October.

Public Comment.

There was no other public comment.

Commissioner Everett moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 3:23 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary