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Protecting injured workers' rights

Post Office Box 2551
Phoenix, AZ 85002-2551

(520) 323-1234 phone
(520) 323-1188 fax

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Dale Schultz, Chairman
Joseph M. Hennelly, Jr., Vice Chair
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Industrial Commission of Arizona
800 W. Washington St.
Phoenix, AZ 85007

Emailed: Kara.Dimas@azica.gov

Re: Modifications in the 2021-2022 Pharmaceutical Fee Schedule

Dear Chairman Schultz and Commissioners:

Article XVIII, Section 8 of our Arizona Constitution mandates that our Workers' Compensation system protect injured workers and their families from "burdensome" and "litigious" remedies. In exchange for paying an injured worker's medical bills and a portion of his/her lost wages, *employers receive immunity* from personal injury lawsuits from that injury.

This was the "Grand Bargain" struck 100 years ago between employers and labor: The injured worker *surrendered common law rights to sue the employer in exchange for an expeditious, no-fault system* that was intended to be a quick and speedy remedy. The "purpose" of the law is to "make certain a just and humane compensation law ... *for the relief and protection* of such workmen, their widows, children or dependents ... *from the burdensome, expensive and litigious remedies* for injuries". Ariz. Const. Art. 18, Sec. 8.

The Industrial Commission and its Commissioners have a constitutional obligation and a duty to protect injured workers. The proposed "2021/2022 Arizona Physicians' and Pharmaceutical Fee Schedule" and its recommendation to adopt NADAC dispensing fee schedule for pharmacies *breaks the promise* made in the Arizona Constitution to our state's injured workers.

How does the proposed NADAC dispensing fee for pharmacies do this? By reducing injured workers' choice of pharmacies and by reducing -- if not eliminating -- the quality

of pharmaceutical care delivered to injured workers. Taken together, the effect will be industrial claims staying “open” longer because of delayed prescription authorization and delivery and “burdensome, expensive and litigious” fights over those delayed prescriptions and denied authorizations. Studies show that delayed medical treatment and lack of medication adherence slow the recovery and return to work of injured workers.

On behalf of thousands of injured Arizona workers, many of whom are represented by members of the Arizona Association of Lawyers for Injured Workers (“AALIW”), AALIW opposes the proposed changes to the pharmacy fee schedule. The NADAC dispensing fee schedule *does not fit* the Arizona’s workers’ compensation system, which is premised on the promise found in the Arizona Constitution.

Specifically, the adoption of the NADAC dispensing fee schedule for pharmacies would:

- 1) Significantly *reduce* injured workers’ *choice* of pharmacies¹ because it will likely drive specialized workers’ compensation pharmacies out of the market and put our clients’ recovery in jeopardy;
- 2) *Reduce quality* of pharmaceutical *care* to injured workers by making it more difficult to timely deliver and continue prescriptions to claimants. Specialized workers’ compensation pharmacies are willing to authorize prescriptions at the initial stage of a claim and/or continue delivering prescriptions during litigation, unlike retail pharmacies; and,
- 3) *Increase the likelihood that claims stay open longer and that litigation ensues* because of delayed delivery and/or delayed authorization of prescriptions to injured workers.

This latest proposal is pattern of Industrial Commission actions which have resulted in the Commission’s failure of its constitutional duty to protect injured workers. In 2016, the Industrial Commission adopted the Official Disability Guidelines (“ODG”) for chronic pain management *but purposefully exempted* “ODG-identified” auto authorizations for prescriptions, even though the authors of the ODG (the Work Loss Data Institute) supported “auto-authorization” because it timely delivers medications to injured workers. The exemption of automatic authorization under R20-5-1304(B) has led to more litigation as injured workers have to “fight” for what should be “auto-authorization” prescriptions.

In 2017, the Commission adopted application of the ODG to *all* medical treatment. The complete adoption of the ODG has reduced the number of doctors willing to treat injured workers, which *has reduced the quality of care* for injured workers. Additionally, injured

¹ Injured workers have the right to choose their doctors, except under self-insured employers, and the proposed pharmaceutical fee schedule, if adopted, would limit pharmacy choice. A.R.S. §23-908 (E), *Estes Corp. v. Indus. Comm’n*, 23 Ariz. App. 370, 376 (Ct. App. 1975).

workers often have to litigate for medical treatment *recommended by their own treating doctor* because of what the “ODG” prescribes.

The Commission also adopted a Physicians and Pharmaceutical Fee Schedule that reduced medical reimbursements for surgeries and other specialists’ treatment. This forced many of our best and most skillful treating doctors to give up accepting workers comp patients, thus reducing the number of treating doctors, limiting patient choice, and lowering the quality of medical care delivered to injured workers.

Over the last five years, instead of finding ways to improve the workers’ compensation system for injured workers, the Commission has pursued ways to restrict or eliminate medical providers and specialized pharmacies who treat and serve injured workers. Our clients are not asking for special treatment; they are asking to be treated fairly.

For these reasons, we urge the Commissioners to reject the proposed fee schedule and keep the current pharmaceutical fee schedule in place -- this would ensure patient choice and quality care, and demonstrate that the Commissioners take seriously their constitutional obligation and duty to protect injured workers from “burdensome, expensive and litigious remedies”.

Very truly yours,



Laura Clymer
President

Cc: James Ashley, Director (via email)
Charles Carpenter, Manager, Medical Resource Office (via email)