

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
First Floor Auditorium  
Phoenix, Arizona 85007  
Thursday, August 15, 2019 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Steven J. Krenzel	Commissioner
	James Ashley	Director
	Gaetano Testini	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Jacqueline Kurth	Medical Resource Office
	Stacey Rogan	Assistant Chief Counsel
	Renee Pastor	Self Insurance
	Renee Englen	Medical Resource Office
	Jessie Atencio	ADOSH Director
	Alex Ceballos	Compliance Officer
	Zakary Marquez	Compliance Officer
	Devin Wheeler	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Michael Zalle (Zip EHS); John Paul (EPCOR); Scot Butler (Undisclosed); Casey Kurth (Jardine, Baker, Hickman, and Houston PLLC) and Michael Fassett (Snell & Wilmer).

Approval of Minutes of August 9, 2019 Regular Meeting.

Vice Chair Hennelly moved to approve the Minutes of the August 9, 2019 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel 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.

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- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
  1. 2C-18/19-003 Joseph & Varja Miller, dba Diamond Shine Auto Detailing \$5000
- b. Approval of Requests for Renewal of Self-Insurance Authority.

1. Freeport-McMoran Inc.
2. Nordstrom, Inc.
3. Pilot Travel Centers LLC
4. The Kroger Co.

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

Discussion and Action regarding the 2019/2020 Arizona Physicians' and Pharmaceutical Fee Schedule.

Ms. Kurth noted oral and written public comments were received regarding the Staff Proposal for the 2019/2020 Arizona Physicians' and Pharmaceutical Fee Schedule ("Staff Proposal"). The July 1, 2019 Fee Schedule hearing transcript and all written public comments have been posted on the Medical Resource Office webpage.

Ms. Kurth explained that after careful review and consideration of all public comments, staff recommends the Commission adopt the following changes/updates to the 2019/2020 Fee Schedule:

A. Adoption of proposed updated relative value units (RVUs) and reimbursement values. The public comments received that referenced the entire proposed fee schedule, were supportive of the Commission methodology used to update the RVUs and reimbursement values. Staff recommends the Commission adopt the methodology proposed in the staff proposal. The following should be noted:

1. The conversion factors used to calculate reimbursement values remain unchanged from the previous year. The conversion factors are \$82.38 for surgery/radiology; \$61.00 for anesthesia; and, \$64.63 for all other services.

2. The proposed 2019/2020 Fee Schedule continues to apply a 25% Stop Loss Cap to any service codes whose reimbursement values incurred a decrease of greater than 25% due to transition to a RBRVS-based system.

B. Adoption of four Healthcare Common Procedure Coding System (HCPCS) Level II G codes for definitive drug testing, G0480 – G0483. The four proposed HCPCS codes are standardized code sets commonly used for definitive drug testing for Medicare, AHCCCS and other health insurance providers. No public comments were received regarding the proposal to adopt the use of the four HCPCS G codes. Staff propose the Commission adopt the four HCPCS codes, G0480 – G0483, for definitive drug testing.

C. Continued Designation of Medi-Span as the Publication for Purposes of Determining Average Wholesale Price. The Commission received a few public comments that supported the staff proposal to adopt Medi-Span as the publication the Commission uses to determine AWP for drug costs. Staff recommend the Commission adopt Medi-Span as the publication to use to determine AWP.

D. Adoption of deletions, additions, general guidelines, and identifiers of the CPT® -4. The proposed 2019/2020 Fee Schedule is based upon staff review of deletions and additions to the 2019 edition of CPT® -4. The comments received that referenced proposed changes to the entire fee schedule, were supportive of staff recommendations. These proposed changes will conform the 2019/2020 Fee Schedule to changes that have taken place in the American Medical Association (AMA)

2019 edition of CPT® -4. Staff recommends the Commission adopt the deletions, additions, general guidelines, and identifiers of the CPT® -4.

E. Revisions to the Pharmaceutical Fee Schedule. By way of a short summary, last year Arizona lawmakers passed Senate Bill 1111. Section 3 of the Senate Bill 1111 stated, “On or before July 1, 2019, as part of the Industrial Commission of Arizona’s annual review of the schedule of fees pursuant to Section 23-908, Arizona Revised Statutes, as amended by this act, the Industrial Commission of Arizona shall review information and data, consult with physician, employee and business and industry stakeholders and hold at least one public hearing in considering whether to adopt additional reimbursement guidelines for medications dispensed in settings that are not accessible to the general public.” In addition, A.R.S. § 23-908 was amended to give the Commission authority to include reimbursement guidelines in the Arizona Physicians’ and Pharmaceutical Fee Schedule for “medications that are dispensed in settings that are not accessible to the general public.” The Commission has completed the tasks mandated by the legislature, including research and consultation with diverse stakeholders in an effort to better understand the issues.

The Commission received numerous public comments regarding the proposed Pharmaceutical Fee Schedule, which were reviewed and considered. In addition to non-substantive revisions (e.g. formatting & numbering corrections), the following is a list of substantive revisions made to the proposed Pharmaceutical Fee Schedule that are responsive to public comments. Staff recommends the adoption of the Pharmaceutical Fee Schedule as revised. The following are the substantive revisions made to the Pharmaceutical Fee Schedule:

1. Section II(C), Definitions, the definition of “commercially available” is modified to read:  
“C. “Commercially available” means a drug product is widely available for purchase in pharmacies accessible to the general public, including in brick and mortar pharmacies accessible to the general public.”
2. Section II(D), Definitions, the definition of “compound medication” is modified to read:  
“D. “Compound medication” means a pharmaceutical product created by virtue of mixing or combining drugs and/or components to meet the unique needs of an individual patient when the finished product does not recreate a commercially-available product.”
3. Under Section II(I), Definitions, the definition of “non-traditional strength” is modified to read:  
“I. “Non-traditional strength” medication means a finished drug product in a strength (i.e. dosage) that is not commercially available in pharmacies accessible to the general public.”
4. Section III(G) (formerly III(K)), General Guidelines for Billing and Reimbursement of Prescription Medications, is modified to read:  
“G. Reimbursement for non-traditional strength prescription medications shall be calculated on a per unit basis, as of the date of dispensing, based on the original manufacturer’s NDC and corresponding AWP of the most therapeutically-similar traditional strength form of the same medication. Under no circumstance shall the NDC of the non-traditional strength medication be used.”

5. Section VII(A)(1), Reimbursement for Medications Dispensed by a Medical Practitioner or in a Pharmacy Not Accessible to the General Public, is modified to read:

“1. The prescription medication is dispensed by a medical practitioner to the injured employee within seven days of the date of the industrial injury.”

6. Section VII(A)(3), Reimbursement for Medications Dispensed by a Medical Practitioner or in a Pharmacy Not Accessible to the General Public, is removed.

7. In Section VII, Reimbursement for Medications Dispensed by a Medical Practitioner or in a Pharmacy Not Accessible to the General Public, footnote (5) is added, which reads:

“<sup>5</sup> Section VII sets forth reimbursement guidelines for medications dispensed in settings that are not accessible to the general public in Arizona’s workers’ compensation system and does not interfere with a medical practitioner’s ability to dispense medications pursuant to A.R.S. § 32-1491 or seek payment from sources unrelated to workers’ compensation.”

8. Section VII(C), Reimbursement for Medications Dispensed by a Medical Practitioner or in a Pharmacy Not Accessible to the General Public, is removed.

9. Section VII(D) (formerly VII(E)), Reimbursement for Medications Dispensed by a Medical Practitioner or in a Pharmacy Not Accessible to the General Public, is modified to read:

“D. The guidelines in this section do not apply to prescription medications dispensed during in-patient hospital care or upon discharge from in-patient hospital care.”

10. New section VII(F), Reimbursement for Medications Dispensed by a Medical Practitioner or in a Pharmacy Not Accessible to the General Public, is added, as follows:

“F. The reimbursement value for OTC medications that are dispensed by a medical practitioner or in a pharmacy not accessible to the general public and that are not commercially available in pharmacies accessible to the general public shall be calculated on a per unit basis, as of the date of dispensing, based on the retail price (per unit) of the most therapeutically-similar OTC medication commercially available in pharmacies accessible to the general public. Under no circumstance shall the NDC or AWP of the non-commercially-available OTC medication be used.”

11. Section VIII(B), Dispensing Fee, is modified to read:

“B. If a prescription medication is dispensed by a medical practitioner or in a pharmacy not accessible to the general public pursuant to Section VII(A), (B), or (C), a dispensing fee of up to seven dollars (\$7.00) per prescription medication, repackaged medication, or compound medication may be charged. If an OTC medication is dispensed by a medical practitioner or by a pharmacy not accessible to the general public, a dispensing fee is not permitted.”

Ms. Kurth recommended the Commission adopt the proposed revisions to the Pharmaceutical Fee Schedule as presented.





Chairman Schultz and Mr. Atencio discussed the ladder depicted in photograph #1.

Commissioner LeMarr, Mr. Ceballos and Mr. Atencio discussed that Citation 1, Item 1 was considered to be a willful violation, based upon the employer's admission to lack of employee training for excavation work, and the history report.

Commissioner Krenzel and Mr. Atencio discussed the history with eight serious violations and one repeat and whether consultation services were offered.

Chairman Schultz had the same concerns about the willful citation, but outlined the opportunities the employer had to properly train the employees, minimize risk to the employees, and avoid a willful violation.

Commissioner LeMarr and Mr. Atencio discussed the relationship between Hunt Management LLC and EPCOR.

Commissioner Krenzel wanted to go on record that there was no one present representing the company. Commissioner LeMarr confirmed with Mr. Atencio that someone from Hunt Management was contacted about the meeting today.

Vice Chair Hennelly agreed with the early comment this was basically an enormous trench that lacked safety controls. Vice Chair Hennelly and Mr. Atencio discussed if there was a written training manual or process to govern the training employees are supposed to have with respect to these excavations. Vice Chair Hennelly appreciated the explanation regarding the classification and thought it was helpful.

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

Chairman Schultz commented favorably regarding Mr. Ceballos' inspection.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2019. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley discussed the second Governor's Economy Goal Council Directors on the Road outreach which entailed several agency directors going to Prescott for a roundtable of elected officials, a tour of Embry-Riddle University, and a business roundtable at Sharlot Hall.

Mr. Ashley noted the two Vice Chief Administrative Law Judge candidates have accepted the positions.

Chairman Schultz noted he was at an event with the Governor who was extremely complimentary about all of the work we are doing at the Industrial Commission. Chairman Schultz thanked Mr. Ashley for his leadership and commended Mr. Ashley for his ability to communicate to the Governor and the rest of the agency heads what we are doing here and to lead us to be an example for other agencies. Mr. Ashley thanked Chairman Schultz and noted we have a phenomenal team here we are lucky to work with on a daily basis.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through October 2019.

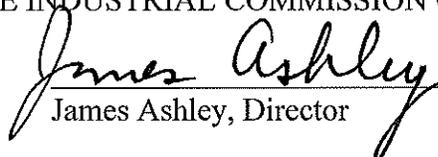
Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 3:03 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary