ARIZONA INJURY MEDICAL ASSOCIATES, P.L.L.C.

Physical Medicine and Rehabilitation
Internal Medicine

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PUBLIC COMMENT

September 10, 2018

The Industrial Commission of Arizona
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Scott P. Lemarr, MEMBER
James Ashley, DIRECTOR

Joseph M. Hennelly, Jr., VICE CHAIR
Steven J. Krenzel, MEMBER
Jacqueline Kurth, MANAGER

Medical Resource Office
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Dear Industrial Commission Chairman, Vice Chairman, Members, Director, Manager and Concerned Citizens of Arizona:

I want to thank the Industrial Commission of Arizona for the opportunity to provide a comment regarding physician dispensing for Arizona's injured workers. I have practiced medicine in Arizona for about 8 years. My practice focuses on the medical evaluation and treatment of injured workers. Despite previous public respondents' portrayals, physician medication dispensing is not unethical, clandestine, inappropriate or illegal.

Currently, the Arizona Pharmaceutical Fee Schedule (PFS) item 2, under the General Provisions states:

> "The PFS applies to drugs that are dispensed by a **pharmacy or dispensed by a physician**." [Emphasis added]

Furthermore, the Fee Schedule states:

> "Reimbursement for prescription medicines shall be based the following formulas:
> a. Generic drugs: 15% discount from the average wholesale price.
> b. Brand name drugs: 5% discount from the average wholesale price...
>
> C. DISPENSING FEE.
> 1. Whether dispensed by a pharmacy or dispensed by a physician, the dispensing fee per prescription shall be seven dollars ($7.00)..."
>
> "Except as provided below (in this subsection), **AWP shall be determined on the date a drug is dispensed from pricing published in the most recent issue, as updated in the most recent update, of a nationally recognized pharmaceutical publication designated by the Commission**." [Emphasis added]

If pharmacies and physicians are to be paid the same amount for the same prescription, how can the insurers claim physicians are overpaid? If this is their complaint, then a rational person can only conclude pharmacies are undercharging the insurers, thus giving insurers the perception there is a tremendous savings to be reaped when using a pharmacy or

particular network of pharmacies. In my opinion, these inducements and/or rebates for using a particular vendor, network thereof or pharmacy benefits manager (PBM) is corrupting this aspect of the Arizona workers' compensation system.

Over the last few years, the workers' compensation insurers in Arizona have been relentless in implementing constraining reforms on what care injured workers are eligible for. The ICA adopted Official Disability Guidelines (ODG) for pain management. The ICA then proceeded to adopt the ODG in its entirety. Last year, there was the change in reimbursement to use Medicare RBRVS and the adoption of full and final settlements.

With all their recent triumphs, the insurers returned this year with an all-out assault on physician medication dispensing. This started with a legislative failure earlier this year and now a second attempt through a anonymous white paper submission, public hearing and administrative policy-making at the ICA.

The insurers' uniformly peculiar proposal that a physician only be able to dispense a 7 to 14 day supply of medications following the date of injury is absurd. It generally takes more than 30 days to get a claim administratively accepted in Arizona. What happens to the many claimants whose case will be denied? In my opinion, the patients will have to pay for their own medications.

I have a license from the Arizona Medical Board to dispense medications and devices to my patients. Furthermore, I must comply with the Board of Pharmacy reporting rules. If I do not follow the rules, my license will be revoked.

Lately, in cases when I write a prescription for a ODG "YES" medication, the patients get a denial at the pharmacy counter and/or I get a drug utilization review to complete. These medications are ultimately either paid for by the patient or by their insurance whether it be private (commercial) or Medicaid / Medicare. I foresee an aggressive escalation in these abusive business practices, if the insurers' proposals are granted. I project this will result in the ultimate cost savings for the industrial carriers, as the industry will aggressively deny medication coverage with impunity and not have to pay for any medications, unless ordered by a Judge to do so. This is being done right now without any reforms in place.

The insurers who have submitted comments invariably claim they are implementing all these changes to help curtail their skyrocketing pharmaceutical costs. The last 5 years of ICA implemented reforms, all benefiting the insurance industry, have not decreased my company's workers' compensation insurance premiums. Where did the "savings" go? How much of the denied care was offloaded onto society? Eventually someone pays for medically necessary care, if the responsible parties do not.

The best option, at this time, is for the ICA to research how the ODG and its massively restricted formulary impact the insurance industry's pharmaceutical costs. All long acting opioids are ODG "NO" drugs now. Many muscle relaxers and benzodiazepines and antidepressant medications are also ODG "NO" drugs.

ASIA wrote several exorbitant examples of members' alleged payments from January 1, 2018 to May 31, 2018:

$2062.30 for 60 ondansetron pills. **ODG FORMULARY states this is a "NO" medication.**
$3009.57 for 540 topiramate pills. **ODG FORMULARY states this is a "NO" medication.**

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If insurers *willingly disregard* the ODG formulary, they cannot proceed to complain to the ICA about outrageous the fees they allegedly paid.

If something must be done by the ICA, then I suggest the Commission:

1. Continue to allow the licensed practice of physician medication and device dispensing in Arizona for its injured workers.
2. Review and update the pharmaceutical fee schedule so that it continues to be fair for both pharmacies and physicians alike. Concentra's public comment shows Arizona is among the lowest reimbursed states with AWP based medication formulas.
3. Review all the medication reimbursement examples provided by the insurers in their public comment and recalculate them using the Pharmaceutical Fee Schedule to see if there is an actual measurable cost savings or rather a discount / inducement by the "retail" pharmacies. If there is a difference, why is that so? If ODG "NO" medications were paid, what were those specific circumstances? Did the insurer willingly disregard the ODG formulary to their own detriment?
4. Ban the practice of discounts, inducements and/or rebates by pharmacies, pharmacy benefit managers and or other unspecified medication distribution networks which corrupts the Pharmaceutical Fee Schedule.
5. Ensure insurers automatically approve and pay for ODG "YES" medications without additional abusive paperwork and / or routine patient denials at any pharmacy counter.
6. Report to the public the actual "savings" corresponding to each of the last few years' reforms. If there are no realized savings, cancel those wasteful reforms.

From a "front line boots on the ground" treating physician's perspective, if the Industrial Commission adopts the proposals of the insurance industry, which have similar public comment recommendations for the ICA, a travesty will be unleashed upon the injured workers and citizens of Arizona. Next year, the bloodthirsty insurers will undoubtedly return with a white paper, wash-rinse-repeat policy making strategy for their next "cost-saving" target.

In closing, as Arizona's physicians must practice in an "evidence-based" manner, so to must workers' compenation insurers perform in a similar manner by demonstrating actual evidence the reforms are benefiting Arizona's injured workers and Arizona's citizens and businesses. To date, I have found no publications, or any other such evidence-based insurance findings that anyone but the workers' compensation insurance industry is benefiting from all these reforms.

Respectfully submitted,

Demitri A. Adarmes, M.D.