Chairman Schultz convened the meeting at 1:05 p.m. In attendance, confirmed by roll call were Dorothy Schulte (Court Reporter); Dave Howard and Sean Scalley (DSI); Esperanza Alvarez (RJ Utility); Kiana Lawrence and Kaila Hopkins (Snell & Wilmer); Barry Aarons (IWP and AALIW); Larry Contreras (Premier Risk Mgmt); Robin Arreaga and Robin Arreaga Morales (Rob’s Roofing) and Susan Strickler (Arizona Self Insurers Association). Also in attendance on the telephone, confirmed by roll call were Chris Frank (Banner Health); Ben Cutcliffe (Truly Nolen); Anthony Acosta (AZ Municipal Risk Retention Pool); Janny Snyder and Chris Miller (Purcell); Jessica Davis (Honor Health); Tim Ramthun, Bob Pastore, Laura Gore, Danielle Nuebauer (Walmart); Katie Callaway (Central Arizona Project); Brian Bradnel (Bon Rich, Inc.); Arnold Gabalfin (High Tech Refrigeration Services, LLC); and Dianne Shoemake (City of Glendale).

Public Hearing regarding the 2022-2023 Arizona Physicians’ and Pharmaceutical Fee Schedule established under A.R.S. § 23-908(B).

Chairman Schultz welcomed interested parties to the public hearing which gives stakeholders another opportunity to comment on staff proposals regarding the 2022/2023 Arizona Physicians’ and Pharmaceutical Fee Schedule and the recommendations for changes to the Fee Schedule. He noted the Staff Proposal has been posted on the Commission’s website for the last month.

Mr. Carpenter reviewed the six items in the staff proposal.

Chairman Schultz thanked Mr. Carpenter.
The following attendees addressed the Commission during the Public Hearing: Barry Aarons (IWP and AALIW); Dianne Shoemake (City of Glendale) did not have any comments; and Brian Allen (Mitchell Pharmacy Solutions).

At the conclusion of the testimony, Chairman Schultz noted that the record will remain open for written comments until the close of business on July 7, 2022. Comments received by the Commission will be placed on the Commission’s website, including the transcript from today.

A written transcript of the Public Hearing is attached hereto.

Approval of Minutes of June 23, 2022 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the June 23, 2022 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr 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. Arizona Municipal Risk Retention Pool
2. Banner Health
3. BH Automotive, LLC
4. Central Arizona Water Conservation District dba Central Arizona Project
5. Freeport-McMoran Inc.
6. HonorHealth
7. Kiewit Corporation
8. Knight Transportation, Inc.
10. Mayo Clinic
12. Pilot Travel Centers LLC
13. Prudential Overall Supply, Inc.
14. Purcell Rubber & Tire Company
15. Swift Transportation Co., LLC
16. The Kroger Co.
17. Truly Nolen of America, Inc.
19. Weyerhaeuser Company

Chairman Schultz explained as part of the review the Commission looks at the financial condition of the self-insured entity and their safety record. He noted there are a number of the self-insured employers who are also participants in the Voluntary Protection Program (VPP) under our
Arizona state plan. These entities that are both self-insured and are VPP are among the safest of all of the self-insured entities when comparing the experience modification factor. The VPP sites that are self-insured run from a .67 to .79, dramatically safer, dramatically different, the Chairman encourages the rest of the self-insured employers to become a VPP site, by contacting the ADOSH office

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

Discussion & Action regarding Appointment of Special Assistant to the Industrial Commission of Arizona.

Tina Brown

Ms. Tate requested to appoint Tina Brown as Special Assistant for the Commission’s Claims Division.

Commissioner LeMarr moved to appoint Tina Brown as Special Assistant and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor or 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.

Desert Structures, Inc
3426 North 29th Avenue
Phoenix, AZ 85017

Site Location: 440 E Germann Rd
Gilbert, AZ 85297

Inspection No: FC-2022-V4364-0013
Inspection Date: January 6, 2022

Fatality/Catastrophe
Years in Business: 13
Empl. Covered by Inspection: 10

SERIOUS – Citation 1 - Item 1 –

a) 440 E Germann Rd, Gilbert, AZ 85297: Two employees worked on the roof of a commercial building while using a personal fall arrest system that was faulty and was not removed from service. 29 CFR 1926.502(d)(21)
Div. Proposal - $1,500.00
Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 2 –

a) 440 E Germann Rd, Gilbert, AZ 85297: Two employees worked on a commercial roof of a height of approximately 40 feet above the ground level without hole protection. 29 CFR 1926.501(b)(4)(i)
Div. Proposal - $1,500.00
Formula Amt. - $1,500.00
SERIOUS – Citation 1 - Item 3 –

a) 440 E Germann Rd, Gilbert, AZ 85297: A fall protection system was not installed for employees working on a roof that was adequate. 29 CFR 1926.760(a)(1)

Div. Proposal - $1,500.00
Formula Amt. - $1,500.00
TOTAL PENALTY - $4,500.00
TOTAL FORMULA AMT. - $4,500.00

Mr. Atencio discussed ADOSH’s inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Commissioner LeMarr asked about the term “give way” - if that meant someone stepped on plywood that was not nailed properly and flipped. Mr. Atencio discussed what possibly happened but could not be confirmed.

Chairman Schultz noted a request to speak from Mr. Howard.

Mr. Howard, founder of Premier Risk Management, wanted to share information for their consideration. He noted they did not lose just an employee but also a friend. He noted he has worked with the organization which has 120 employees since 2015. The experience modification factor for this company is currently .80 and last year was .91 and before was .98 which is trending in the right direction; they are very positive and proactive in what they do. Post incident they stood down and took everyone off their jobs because they really do not know what happened. There were no witnesses except the people on the floor who saw the victim hit the ground. There was no witness on the roof that knows what went wrong. He noted that 95% of these things that happen are human error and 5% engineering. Post incident, the owners left this man on the payroll so his family could continue to get paid, and actually paid for the funeral, he lost a friend, not just an employee and partner in the company. Out of the 120 people they usually employ, there are only 24 people that are allowed to do the work that man was doing that day, it was very specialized training and have to know what you are doing, it is dangerous work. He worked for them on and off for 15 years and knew he was a solid, seasoned employee and had the ability to do the job safely. He has been with them a long time and will continue to be with Desert Structures because they are proactive and continue to work hard and hopefully get past this event and it will never happen again.

Commissioner LeMarr thanked Mr. Howard for his description of the company’s approach to safety, obviously they have a lot of emphasis on this. He asked who would be responsible on a daily basis for checking the equipment, because looking at the photos of the frayed safety line it is clearly past its useful life span.

Mr. Howard responded that it would have been the competent person on the roof, the victim in this case. There are other people looking at the equipment and the roll out meetings in the morning. He does not have answers, the other person involved in the incident, who they have not been able to talk to. The other employee who basically walked away from this, which is a miracle, retained counsel and they have not been able to ask him anything yet but are hoping to get that opportunity.

Commissioner LeMarr discussed with Mr. Howard what the company has done subsequent to this incident. The equipment has been checked and verified, there is a dispute on the retractables, since the retractables have a label that says it can be used at level ground, and now they are being told by the manufacturer that there is a disagreement with the label.
Chairman Schultz was also bothered by the way the anchor was placed. His question going forward would be, what changes have they made, is someone now responsible for inspecting how those anchors are attached to the roofing to make sure they are secure. He appreciated Mr. Howard’s comments and understands that it is more than losing an employee and the devastation to the family and the work family.

Chairman Schultz asked if there were any other comments.

Mr. Atencio noted that there is a foreman on site that would check and go through things, there was information in the file that things are being checked and always a responsibility to go back to look at these things on a daily basis. There was just a closing review last week of what was found, there was a long period of time where they thought everything was ok or were working on things independently.

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

Bon-Rich, Inc. DBA Mohave Roofing Company
1330 London Bridge Rd
Lake Havasu City, AZ 86404

Referral
Years in Business: 30
Empl. Covered by Inspection: 6

Site Location: 3353 Park Ridge Ave
Bullhead City, AZ 86429
Inspection No: CP-2022-V4364-0014
Inspection Date: January 24, 2022

SERIOUS – Citation 1 - Item 1 –

a) 3353 Dark Ridge Ave, Bullhead City, AZ 86429: Two employees were installing shingles on a single-story home that was 9’ above the ground level, without fall protection.
b) 3353 Dark Ridge Ave, Bullhead City, AZ 86429: Two employees were installing shingles on a single-story home that was 9’ above the ground level, without fall protection. 29 CFR 1926.501(b)(13)
Div. Proposal - $2,000.00
Formula Amt. - $2,000.00

SERIOUS – Citation 1 - Item 2 –

a) 3353 Dark Ridge Ave, Bullhead City, AZ 86429: Two employees were installing shingles on a single-story home that was 9’ above the ground level, without the supervision of a qualified person. 29 CFR 1926.502(d)(15)(ii)
Div. Proposal - $1,000.00
Formula Amt. - $1,000.00
TOTAL PENALTY - $3,000.00
TOTAL FORMULA AMT. - $3,000.00

Mr. Atencio discussed ADOSH’s inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Schultz checked if Mr. Bradnel would like to comment.

Mr. Bradnel understood the citations and wanted to ask for some leniency, sometimes the employees really need to take into consideration the rules, they have extensive documentation on
the training and everyone knows what they are supposed to do. He has communication from the injured worker afterwards apologizing and that he was not following company rules. He just wished there was some way to make someone take their own safety into their own hands a little bit, you provide everything, and they do not use it. It is disheartening. They completely revamped their safety training program since this happened and spent thousands of dollars on time with the safety coordinator, they are trying to do it the right way and head in the right direction. He is fine with the citation and understands and asked for consideration, they are trying to do it right.

Chairman Schultz noted the Commission appreciates his efforts to upgrade the safety equipment and safety program, it seems like this was a bit of a storm between the windy conditions and having an employee who takes off and leaves everybody without the proper equipment, but yes, he appreciated the fact that he went back and retrained everyone about taking accountability for safety and to speak up to say they are not getting on the roof without the right equipment. He appreciated his efforts to improve their program.

Commissioner LeMarr moved to amend the citation and proposed penalties. Based on comments from Mr. Bradnel that they take their safety seriously and there was potential malfeasance of the Superintendent on the job additionally in photograph #5 you can see two gentlemen tied off and at least they have these items available and retaining took place. Commissioner LeMarr moved for a 10% good faith discount for a total of $2,700.00 based on their subsequent safety efforts. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

<table>
<thead>
<tr>
<th>High Tech Refrigeration Service LLC</th>
<th>Fatality/Catastrophe</th>
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<tbody>
<tr>
<td>5641 E 22nd St</td>
<td>Years in Business:</td>
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<tr>
<td>Tucson, AZ 85711</td>
<td>Empl. Covered by Inspection:</td>
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**Site Location:** 137 E Congress St
Tucson, AZ 85710

**Inspection No:** RF-2022-A7576-0004

**Inspection Date:** January 4, 2022

SERIOUS – Citation 1 - Item 1 –

a) 137 E Congress St, Tucson. AZ 85701: One employee working on a rooftop HVAC unit, without fall protection, stepped onto and fell through, a 2' x 4' skylight, approximately 20 feet to the floor below. 29 CFR 1910.28(b)(3)(i)

Div. Proposal - $2,000.00 Formula Amt. - $2,000.00

SERIOUS – Citation 1 - Item 2 –

a) 137 E Congress St, Tucson. AZ 85701: One employee, working on a rooftop HVAC unit, approximately 20 feet above the floor below, was not trained in the fall hazards associated with such work. 29 CFR 1910.30(a)(1)

Div. Proposal - $2,000.00 Formula Amt. - $2,000.00

SERIOUS – Citation 1 - Item 3 –

a) 132 E Congress St, Tucson AZ: One employee was working on a roof approximately 20 feet above the ground and a hazard assessment was not conducted of the workplace. 29 CFR 1910.132(d)(1)
SERIOUS – Citation 1 - Item 4a –

a) 5641 E 22nd St, Tucson AZ: Employees were mixing and using degreasing and cleaning chemicals and no hazard communication program was implemented to inform them of the hazards associated with such chemicals. 29 CFR 1910.1200(e)(1)
Div. Proposal - $975.00  
Formula Amt. - $800.00

SERIOUS – Citation 1 - Item 4b –

a) 5641 E 22nd St, Tucson AZ: Employees were mixing and using degreasing and cleaning chemicals without access to safety data sheets to inform the employees of the hazards associated with the chemicals that they were using. 29 CFR 1910.1200(g)(8)
Div. Proposal - $0.00  
Formula Amt. - $0.00

TOTAL PENALTY - $6,950.00  TOTAL FORMULA AMT. - $6,600.00

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

Commissioner LeMarr asked whether during the interviews the employees indicated if they used goggles and gloves or other PPE when handling the chemicals.

Mr. Kautz noted the employee did not know about the skylights and did not know they were painted over. He noted the one chemical they were using was not a household chemical which cleaned the coils. Mr. Atencio noted one of the citations was for not doing a hazard assessment for PPE, because the employer did not provide ADOSH anything. If they were using PPE, that would have been in conjunction to ensure that they were.

Commissioner LeMarr noted the assumption was that they were not using PPE. Mr. Atencio agreed and Mr. Kautz noted he was not there when they were cleaning the coils and the employee did not really know it was an industrial chemical and the employer told them it was a household chemical. Mr. Atencio noted he discussed with the Assistant Director in Tucson whether or not to issue a citation for not having a PPE assessment that is required, and the reason he provided that information is because the employees were not using it, not just the fall protection.

Commissioner LeMarr noted it is clear to use goggles and gloves, and if they were they read the label too.

Chairman Schultz checked if Mr. Gabalfin would like to comment.
Mr. Gabalfin noting this was devastating when it happened, he has been in business for 13 years and every month they have a meeting and discuss what the employees need and he would order it. He noted that the building was old in Tucson and the employee on the roof thought the painted skylight was part of the roof and never saw the skylight, it was covered up inside and did not know it existed. It was an accident. He has implemented more training in their Monday meetings and more emphasis on chemicals and PPE use. He thought the building should have a barrier around the skylight.

Mr. Atencio stated one of the employees did say they were provided gloves but they were just work gloves and that is all they had not rubber gloves. Another employee was asked about training, and he never had training before and did not understand what the safety data sheets were or how to use them. It was just the hazard chemicals he was using were not explained to him other than the use of gloves.

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

R&J Utility LLC
102 S 95th Ave
Tolleson, AZ 85353

Program Planned
Years in Business: 5
Empl. Covered by Inspection: 6

Site Location: 102 South 95th Ave
Tolleson, AZ 85353

Inspection No: PP-2022-E7721-0011
Inspection Date: February 7, 2022

SERIOUS – Citation 1 - Item 1 –

a) Trench: One employee worked as a spotter inside a 8'2" deep by 15'5" wide excavation running in excess of 100 yards without an adequate protective system. 29 CFR 1926.652(a)(1)
Div. Proposal - $1,500.00
Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 2 –

a) Indian School Road and Sunrise Lane, Buckeye, AZ 85396: An employee was working as a spotter in a 8'2" deep by 15'5" wide excavation running in excess of 100 yards without any means of safe egress. 29 CFR 1926.651(c)(2)
Div. Proposal - $1,500.00
Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 3 –

a) Indian School Road and Sunrise Lane, Buckeye, AZ 85396: An employee was performing spotting duties in a 8'2" deep, by 15'5" wide, excavation running in excess of 100 yards without training. 29 CFR 1926.21(b)(2)
Div. Proposal - $1,500.00
Formula Amt. - $1,500.00

TOTAL PENALTY - $4,500.00
TOTAL FORMULA AMT. - $4,500.00
Mr. Atencio and the Compliance Officers, Mr. Preciado and Ms. Stratton were available for questions. Mr. Atencio discussed ADOSH’s inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Commissioner LeMarr noted it’s a deep trench and asked how they got in and out without a ladder.

Ms. Stratton noted they climbed out and slid down the side to get in.

Chairman Schultz checked if Ms. Alvarez would like to comment.

Ms. Alvarez for R&J Utilities noted they stopped work immediately and fixed the trench, the VP showed up and fixed the trench, and called a safety manager immediately to do training and stopped all work for a week, they trained a competent person for the operators and foremen, they trained on stop work authority for all employees and trained on trench and excavation for shoring, benching and slope for all employees. They are currently looking for a safety manager and conducting safety audits on a weekly basis with a third party. They are being proactive so this will not happen again.

Commissioner LeMarr moved to amend the citation and proposed penalties. Because of the prompt attention to safety and correcting the protocol he suggested at 10% Good Faith Discount for a total of $4,050.00. Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Commissioner LeMarr left the meeting.

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<th>Rob's Roofing, LLC</th>
<th>Complaint</th>
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<tr>
<td>6534 W Pioneer St</td>
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<td>April 7, 2022</td>
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SERIOUS – Citation 1 - Item 1 –

a) 501 E 6th St, Tucson, AZ 85705: Two roofers were replacing ceramic tiles on 20' high roof without fall protection. 29 CFR 1926.501(b)(10)
Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 2 –

a) 501 E 6th St, Tucson, AZ 85705: Four roofers replacing ceramic tiles on 20' high roof without fall protection training. 29 CFR 1926.503(a)(2)
Div. Proposal - $2,000.00  
Formula Amt. - $2,000.00
TOTAL PENALTY - $3,000.00  
TOTAL FORMULA AMT. - $3,000.00
Mr. Atencio removed this file for further review with staff noting there are no deadline issues.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley updated the Commissioners on the Heat Stress awareness campaign that will have a significant public service announcement impact this year to promote “Water, Shade and Rest.” He noted all of the geographic areas throughout the state for the radio announcements in English and Spanish for 30 second and 15 second spots and will have the recordings for a later meeting. Mr. Laky is working with a media buyer to be able to cover more areas.

Mr. Ashley reminded everyone of the special page on the Commission website for Heat Stress awareness, training and resources, and Mr. Laky will be making some updates, and the website will be mentioned in the radio spots.

Ms. Dimas confirmed Commission meeting dates through September 2022.

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 3:02 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

James Ashley, Director

ATTEST:

Kara Dimas, Commission Secretary
PUBLIC HEARING REGARDING THE 2022-2023 ARIZONA PHYSICIANS' AND PHARMACEUTICAL FEE SCHEDULE

June 30, 2022
1:00 p.m.

Prepared by:
Dorothy A. Schulte, RPR
Certified Court Reporter
Certificate No. 50459

(ORIGINAL)
THE PUBLIC HEARING REGARDING THE 2022-2023
ARIZONA PHYSICIANS' AND PHARMACEUTICAL FEE SCHEDULE
was reported by Dorothy A. Schulte, CCR, RPR,
Arizona Certified Court Reporter No. 50459, in and
for the State of Arizona.

* * * * *

TELEPHONIC APPEARANCES

COMMISSIONERS: Vice Chair Joe Hennelly
Commissioner Alan Everett

STAFF: Renee Pastor, Self-Insurance.

Fee Schedule Hearing:
Brian Allen/Mitchell Pharmacy Solutions
Dianne Shoemake/City of Glendale

IN-PERSON APPEARANCES

COMMISSIONERS: Chairman Dale Schultz
Commissioner Scott LeMarr

STAFF: James Ashley, Director
Gaetano Testini, Chief Legal Counsel
Trevor Laky, PIO and Legislative Affairs
Charles Carpenter, MRO Manager
Renee Englen, MRO Assistant
Ruby Tate, Claims Manager
Jessie Atencio, ADOSH Director
Don Kautz, ADOSH Compliance
Charlie Preciado, ADOSH Compliance
Anna Maria Stonerock, ADOSH Admin
Kara Dimas, Commission Secretary
PUBLIC COMMENTS

SPEAKERS:  PAGE:
BARRY AARONS (THE AARONS COMPANY)............. 10
BRIAN ALLEN (MITCHELL PHARMACY SOLUTIONS)...... 13
Phoenix, Arizona
June 30, 2022
1:00 p.m.

PROCEEDINGS

CHAIRMAN SCHULTZ: All right. I think we are good to go.

Okay, so our first order of business today is a public hearing regarding the 2021 Arizona Physicians' and Pharmaceutical Fee Schedule established under A.R.S 23-908(B).

This public hearing is being held to give members of the public and Commission stakeholders an opportunity to comment on staff proposals regarding the 2022-2023 Arizona Physicians' and Pharmaceutical Fee Schedule and to make additional recommendations for changes to the Fee Schedule.

The staff proposal has been posted on the Commission's website for the last month.

Charles Carpenter, the manager of the Medical Resource Office, will provide a brief overview of the staff proposal.

MR. CARPENTER: All right. Good afternoon, Chairman, Commissioners, Director Ashley,
colleagues, and guests. And thank you for the opportunity to present the staff proposal for the 2022-2023 Physicians' and Pharmaceutical Fee Schedule.

First, staff proposes to include the updated service codes, relative value units or (RVUs), and reimbursement values as presented in the tables accompanying the published proposal.

The methodology used in computing reimbursement values has not changed from previous years and is outlined in detail in the proposal. The proposed 2022-2023 Fee Schedule will continue to use the Centers for Medicare and Medicaid services, or CMS, continue to use their surgical global periods, assign RVUs to consultation services, and delineate codes that are unique to Arizona.

Staff proposes to maintain the RBRVS conversion factors used in the 2021-2022 Fee Schedule.

Second, staff proposes to continue to designate -- the designation of Medi-Span as the source to determine Average Wholesale Price or (AWP).

Third, staff proposes to adopt the deletions and additions to the 2022 edition of the American Medical Association's Current Procedural Terminology publication, also known as the CPT.

Fourth, staff proposes to amend the
introduction Section of the Fee Schedule in Sections A and J by adding clarifying language to subsections A(2) and J(4). Staff also proposes the addition of a new section, and that will become Section (I). This new section provides updated guidance on reimbursing healthcare providers who testify at hearing.

Regardless of the party who files for a hearing, if a healthcare provider is requested by an insurance provider, a self-insured employer, or the Special Fund of the Commission, to provide testimony at hearing, they, that is the insurance provider and the self-insured employer, or the Special Fund, will be responsible to provide payment to that witness. The amount that those entities will be responsible to pay is a minimum of 150 dollars for the first hour of testimony or any portion of that hour. Payment for time spent giving testimony after the initial hour is equal to 50 dollars for each 20-minute increment thereafter.

Witnesses requested by the injured worker will be reimbursed by the Commission at a rate of 150 dollars for the initial hour, or any portion thereof, and 50 dollars for each 20-minute increment thereafter.

Prior to proposing an update to the witness fees, the Medical Resource Office staff -- we gathered
and we analyzed data from other jurisdictions on how they paid for witness fees or for witnesses who are requested to testify at hearing.

The majority of states require the requesting party be responsible for paying their witness fees and not all of the states regulate the amount paid for witness fees.

The proposed witness fee update this year will increase the amount witnesses are paid while maintaining the ability of an injured worker to request the testimony of a healthcare provider at a hearing without financially burdening the injured worker.

Fifth, staff proposes to amend the Surgery Section of the 2022-2023 Fee Schedule by adding modifiers "82" and "AS" to Section D along with language that clarifies the appropriate level of the healthcare provider who should use modifier "AS". Staff also proposes updating the reimbursement value for modifier "81" to 16 percent of the listed value of that surgical procedure. This aligns with the current Medicare reimbursement value.

Sixth, staff proposes to amend portions of the Physical Medicine and Rehabilitation Guidelines to clarify that time spent performing time-based modalities is included when determining the total
treatment time and the total number of units that may be billed during a single visit. However, the time spent performing time-based modalities does not count toward the time requirement for therapeutic procedures that necessitates prior approval from the payer.

Finally, staff proposes to update the service description of code AZ099 based on the proposed changes to the witness fees. The new language reflects the amount for the initial hour and that the fees are prorated after the first hour based on 20-minute increments.

So the Medical Resource Office appreciates your time considering this proposal, and I'm happy to take any questions from the Commission.

CHAIRMAN SCHULTZ: Any questions for Charles?

Joe or Alan, any questions for Charles?

MS. DIMAS: Commissioner Everett, you may need to unmute yourself.

CHAIRMAN SCHULTZ: Okay. We're good then. Let's move on, and now we welcome those present and on the phone who wish to present any oral comments and recommendations regarding the 2022-2023 Fee Schedule.

We'll start with the list of people that have
already requested to speak per the instructions you received a month ago with a copy of the proposed updates.

Others wishing to speak will then also be given an opportunity. You will have five minutes to speak. At the beginning of your comments, for the record and the court reporter, please state your name again and spell it and state who you represent.

At the conclusion of your comments, the Commissioners and staff may ask you questions. In the interest of time, please do not repeat what other speakers have stated. If you agree with what has been said, simply state as such.

Although the public hearing will end when oral comments have concluded, written comments will be accepted through close of business on Thursday, July 7, 2022. That's Thursday, July 7, 2022.

Once the record is closed, the Medical Resource Office and the Commission will carefully consider all comments and available information and data prior to taking formal action related to the 2022-2023 Arizona Physicians' and Pharmaceutical Fee Schedule.

Now, let's start with public comments. And let's see. Where do we have our list of folks. Those
are both about ADOSH.

    Okay, so let's see. I actually first see, on
our list here of the folks who have signed in, Barry
Aarons.

    Barry, would you like to join us?

    MR. AARONS: Good afternoon,
Mr. Chairman, Members of the Commission. For the
record, my name is Barry Aarons. Last name is spelled
A-a-r-o-n-s. I'm here on behalf of the Arizona
Association of Lawyers for Injured Workers and Injured
Workers Pharmacy.

    We have a couple of comments related to not
just the proposal but the process as it was developed.
I want to thank the Commission and, in particular, I
want to thank Mr. Laky for his cooperation and
assistance during legislative session. During which
time, the legislature passed House Bill 2202, which
amended 23-908, to provide some additional process in
determining the Pharmacy Fee Schedule, to that, and I
also want to thank Mr. Laky and Mr. Carpenter for
conducting your required stakeholder meeting, which I
thought was robust and was informative and led us not
just to discussions about what's before us today but
some really interesting ideas for moving into the
future. And we appreciate that.
I would add one process suggestion to you, Mr. Chairman, Members of the Commission, and that is that although the law only requires a stakeholder meeting between the time that the proposal was issued and this hearing, we would suggest that if the Commission staff makes significant changes in the proposal based on the comments from this hearing or other evidence that they collect in terms of written comments, that since you're required to post the -- that seven business days prior to when you have the hearing to adopt it, if you consider -- if changes have been made that you consider conducting another one of the stakeholder meetings that Mr. Carpenter or Mr. Laky convened earlier this month so we would have an opportunity to review it, discuss it, chat about it and see if there's anything that we can do to modify it if there are significant changes.

Lastly, I would tell you that we do not have objections to what is proposed here today. We particularly want to say that the witness fee addition is a good addition, adds some predictability to the process. And we appreciate that.

With that, Mr. Chairman, I'm happy to entertain questions.

CHAIRMAN SCHULTZ: Any questions for
Mr. Aarons?

Commissioners on the phone, any questions for Mr. Aarons?

MR. HENNELLY: Not for me.

CHAIRMAN SCHULTZ: Okay. Thank you.

Alan, any?

Okay.

MR. AARONS: And with that,

Mr. Chairman, again, I want to thank you for your willingness to meet with me one on one several times. We had good, robust discussions, and I appreciate that.

CHAIRMAN SCHULTZ: Always my pleasure, Barry.

MR. AARONS: Thank you, Mr. Chairman.

CHAIRMAN SCHULTZ: Thank you for joining us today.

Okay, and let's see on the phone -- those are all about self-insured, ADOSH, and the only person I show on the phone joining us for the Fee Schedule hearing is Dianne Shoemake.

Dianne, did you wish to make any comments, or are you just listening in today?

Dianne, you need to hit star six to unmute yourself.

MS. SHOEMAKE: Sorry about that. I have
no comments at this time, but thank you very much for
giving me this opportunity.

CHAIRMAN SCHULTZ: Great. Okay. Thank
you.

Okay. I don't see any others who indicated
they wish to have an opportunity to speak, and so I
will open it to those of you who have joined us.

Is there anyone here who wishes to speak to
the issue of the 2022-2023 Physicians' and
Pharmaceutical Fee Schedule?

Hearing none, is there anyone on the phone
who has not identified themselves as wishing to speak
who does wish to speak to the Fee Schedule? Now is
your opportunity. Please hit star six to unmute
yourself and give us your name and who you represent.

Hearing none --

MR. ALLEN: This is Brian Allen. This
is Brian Allen from Mitchell Pharmacy Solutions. I
just wanted to comment, first of all, on the
stakeholder meeting. I thought it was very well done
and extremely helpful. I also just wanted to express
our support for your continuation of using Medi-Span as
the source for AWP. We appreciate that, and that's
helpful. Thank you.

CHAIRMAN SCHULTZ: Okay. Thank you,
Mr. Allen.

Any questions for Mr. Allen?

Okay. Then if there's no one else who wishes to speak to the Fee Schedule, this will conclude the annual Fee Schedule Public Hearing.

As a reminder, although the oral proceeding has concluded, written comments will be accepted through the close of business on July 7, that's July 7, 2022. Written comments may be submitted to Charles Carpenter, manager of the Medical Resource Office. His contact information is available on the Commission's Medical Resource Office web page at azica.gov.

All written comments, along with a transcript of this hearing, will be posted on the Medical Review Office web page, so you can look to comments from others on the web page.

Okay. If there's no one else who wishes to comment, then let us move on to our other items of business on our agenda today.

(WHEREUPON, the hearing concluded at 1:32 p.m.)
CERTIFICATE

I HEREBY CERTIFY that the proceedings had upon the foregoing hearing are contained in the shorthand record made by me thereof, and that the foregoing pages constitute a full, true, and correct transcript of said shorthand record; all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 19th day of July, 2022.

Dorothy A. Schulte
Dorothy A. Schulte, CCR, RPR
Certified Court Reporter
Certificate No. 50459