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August 5, 2021

Industrial Commission of Arizona
Chairman Dale Schultz
PO Box 19070
Phoenix, AZ 85005-9070

Delivered via email: mro@azica.gov

Re: Proposed 2021-2022 Fee Schedule

Dear Chairman Schultz and Members of the Commission:

Mitchell International is a leading provider of services to the workers' compensation and property casualty industries. Mitchell Pharmacy Solutions provides pharmacy benefit management services for payers to assist their injured workers in obtaining necessary medications to treat their workplace injury. We appreciate the opportunity to comment on the 2021-2022 proposed fee schedule. We also express our appreciation to the Commission, Medical Resource Office and ICA staff for their accessibility, their dedication to making the workers' compensation system better, and for their diligent work and research on critical issues facing the stakeholders in the Arizona workers' compensation system. Our comments are focused on the pharmacy section of the fee schedule proposal.

Commissioner Schultz opened the public hearing with an impassioned plea for stakeholders to address pharmaceutical pricing abuses, citing several examples. We wholeheartedly support the goal of the Commission to rationalize pricing to industry norms and eliminate pricing practices that take unjust advantage of the current rule structure at the expense of Arizona employers and payers.

We support the changes made to the definitions of "pharmacy accessible to the general public" and "pharmacy not accessible to the general public" to conform to recent legislative changes.

Mitchell is opposed to the suggested change to using the "national average drug acquisition cost" or NADAC as the reimbursement benchmark for workers' compensation prescription drugs. NADAC was developed for the Centers for Medicare and Medicaid (CMS) to benchmark reimbursement in federal entitlement programs, specifically Medicaid. There are vast differences in eligibility, clinical services, wholesale drug buy rates and claims processing between the Medicaid and the workers' compensation systems. Medicaid and Medicare have predetermined eligibility and predetermined benefits based on enrollment in the program. Workers' compensation works in a much different world where eligibility is based on circumstances surrounding the workplace injury or sickness and benefits are determined based on the medical necessity of the care being provided. NADAC does not contemplate the

complexity and additional services involved when processing the pharmacy portion of a workers' compensation claim. Nationally, workers' compensation is an AWP-based system, from the manufacturer through the wholesaler, through the pharmacy and ultimately through the PBM to the payer. The adoption of NADAC in Arizona would be a "one-off" process requiring extensive re-programming throughout the supply chain. It is important to note that the federal workers' compensation programs continue to use AWP as their basis for reimbursement and have not adapted to the NADAC standard despite its use in federal entitlement programs.

We recommend the removal of all references to NADAC, WAC and GEAP in the acronym, definition, reimbursement and other sections of the proposal. We propose maintaining "average wholesale price" (AWP) as the basis for determining reimbursement for brand and generic drugs, and offer the following suggestions to Section III (F) to address the concerns Commissioner Schultz raised in his opening statement:

- 1. Generic Drugs:**
 - a. (85% of AWP per unit) x (number of units dispensed)**
 - b. For generic drugs where the AWP exceeds the usual and customary reimbursement for therapeutically similar generic drugs, the payer has the right to research other pharmacies to find the market value of a therapeutically similar drug and to reimburse the provider at a reasonable and customary rate.**
- 2. Brand name drugs:**
 - a. (85% of AWP per unit) x (number of units dispensed)**

We suggest adding in Section III a new paragraph (H) and renumbering the remaining proposed paragraphs:

H. The prescribing practitioner shall prescribe OTC medications in lieu of a prescription drug when clinically appropriate. When prescribing an OTC medication alternative to a prescription drug, the prescribing practitioner is encouraged to indicate on the prescription the appropriate strength of the medication and the approximate quantity of the OTC medication that is reasonably required by the nature of the compensable injury or occupational disease.

To further help constrain unnecessary pharmacy costs, we recommend reinforcing the requirement that medications should be prescribed in accordance with the ODG drug formulary adopted by the Commission. We suggest adding the following language to Section I by creating a new paragraph (A) and renumbering the remaining paragraphs:

- A. Medical practitioners shall prescribe medications in accordance with the drug formulary adopted by the Commission pursuant to Title 20, Chapter 5, Article 13, Treatment Guidelines.**

In Section III, we support the addition of paragraphs H, I and J related to reimbursement for OTC medications.

In Section V (F), we support the changes in subparagraphs 1 and 2 regarding reimbursement limits for topical compounds.

In Section VIII, we recommend maintaining the current dispensing fee of \$7.00, absent any other changes to the reimbursement in Section III.

There has been some confusion regarding the billing of injectable medications administered in a physician's office. We recommend the following changes to Section VI as follows:

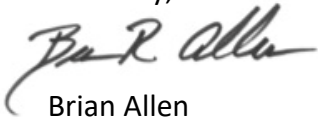
- A. A pharmaceutical bill submitted for a medication, other than an injectable medication, administered by a medical practitioner must comply with billing procedures outlined in Sections III, IV, and V of the current PFS, as applicable.**
- B. The reimbursement value for a medication, other than an injectable medication, administered by a medical practitioner shall be based on the current PFS reimbursement methodology contained in Sections III, IV, and V of the PFS, as applicable.**
- C. Injectable medications administered in the physician's office shall be billed at the lesser of the usual and customary charge, or 125% of the Medicare Average Sales Price (ASP), based on the designated J-Code for the injectable medication administered.**

During the hearing, there was some discussion about allowing the competitive market to shape reimbursement for prescription drugs in the workers' compensation system. That only works in a managed care environment when payers can direct care to a designated network. For market forces to come to bear, the entity paying for the medication needs to be in a position to negotiate pricing for all medications the injured worker might receive. In instances where an injured worker can choose a non-network, non-negotiated pharmacy provider, any market force is nullified and reimbursement becomes subject to the whims of the entity providing care limited by whatever constraints can be imposed by the regulatory fee schedule. However, we have seen time and again that a small handful of pharmacy providers have found ways to circumvent any rules imposed and continue to bill at abnormally high prices compared to the rest of the marketplace. Allowing for directed, managed pharmacy care would foster market forces to keep downward pressure on pharmacy pricing. And, with most workers' compensation managed pharmacy networks including over 90% of local, retail pharmacies in their networks, injured workers will still maintain access to quality pharmacy care from a local, trusted pharmacy advisor.

We recognize that allowing for directed, managed care exceeds the authority of the Commission, as granted by the legislature, nevertheless, we encourage the Arizona Legislature to consider a narrow grant of managed, directed care for pharmacy care provided to injured workers in Arizona. A properly run, managed pharmacy care program would eliminate the need for much of the regulatory verbiage contained in the pharmacy fee schedule as the competitive market will truly self-regulate as payers seek out and contract with the best managed care programs to serve their injured workers.

Thank you again for the opportunity to offer comments. If you have questions or need additional information, please feel free to contact me at Brian.Allen@mitchell.com or at 801-903-5754. We look forward to continuing dialogue around these important issues.

Sincerely,

A handwritten signature in black ink that reads "Brian Allen". The signature is written in a cursive style with a large initial "B" and a long, sweeping underline.

Brian Allen
Vice President Government Affairs