Mitchell
6220 Greenwich Drive
San Diego, CA 92122
858.368.7000
mitchell.com

July 2, 2020

Industrial Commission of Arizona
Medical Resource Office
800 W Washington Street
Phoenix, AZ 85007

Delivered via email: mro@azica.gov

Re: Proposed Fee Schedule Changes

Dear Director Ashley and Members of the Commission:

Mitchell Pharmacy Solutions is one of the leading providers of managed pharmacy care to the workers' compensation industry. We serve insurance carriers and self-insured employers in all fifty states and our pharmacy management services are exclusive to the workers' compensation system. Our team has been actively involved in shaping public policy around the provision of pharmacy care to injured workers, focused on providing the most appropriate care for an injury based on prevailing treatment guidelines and doing so in the most cost-effective manner. In Arizona we partner with a broad network of local, community-based pharmacies encompassing over 95% of the retail pharmacies accessible to the general public.

We appreciate the opportunity to comment on the proposed fee schedule for 2020-2021. Our comments will address those changes that affect the provision of pharmacy care for Arizona injured workers.

General
We support the continued designation of Medi-Span as the publication for determining the average wholesale price of dispensed medications.

Introduction
We support the changes to clarify the definitions of "health care provider" and "physician." The changes support what we believe was the long-standing intent of the Commission and has been the actual practice in the marketplace.

D. Directed Care and Use of Networks
We support the changes in this section to conform with the definitional changes. We recommend adding language to the first paragraph of this section confirming it is permissible for a workers' compensation carrier or public self-insured employer to inform employees of network options for care, provided the notice is clear that choice is voluntary and not required and conforms with the intent of A.R.S. 23-930.

Pharmaceutical Fee Schedule

We recognize that the current draft proposal does not include changes to this section, but we wanted to make the Commission aware of some unintended consequences of the changes adopted in the 2019 version of the fee schedule. Last year the Commission adopted significant changes in this section that were designed to curtail dispensing practices that were adding unnecessary costs to the system. Mitchell Pharmacy Solutions was very supportive of those changes.

In reviewing our data over the last five quarters, we have found that the dispensing of medications by physicians and the prescribing of high-cost, compounded medications has been curtailed since the change was adopted. However, rather than seeing a shift of those medications to local retail pharmacies, many of the providers previously involved in the dispensing of medications or the prescribing of compounds are now referring their patients to out-of-state mail order pharmacies. With just one of our customers in Arizona, physician dispensing costs decreased over 75% from September of 2019 to February of 2020. During that same time period, prescriptions to the out-of-state mail order pharmacies increased over 500%. Our data indicates drugs dispensed through these sources can be as much as 25% more expensive than in-network dispensing just in the cost of the medications, not to mention additional costs due to higher utilization and loss of clinical controls. According to our data, injured workers obtaining medications through out-of-state mail order pharmacies have higher utilization rates of opioids. Since so many of the local pharmacies are connected to our network, we lose valuable clinical controls when prescriptions are referred to these out-of-state pharmacies.

As you may know, retail pharmacies almost entirely participate in managed care pharmacy networks, such as Mitchell's. When patients utilize a local retail network, there are two important benefits that are created: (1) the responsible payer for the injured workers claim receives the benefit of lower drug pricing as a result of negotiated discounts with the pharmacy, and (2) the patient's claim undergoes a clinical review to ensure the treatment is within clinical guidelines and is medically appropriate. When patients use out-of-network pharmacies, including out-of-state pharmacies, these two important benefits are bypassed in favor of higher drug costs and more permissive utilization of drugs.

As case in point, I draw your attention to the recent settlement with Injured Workers Pharmacy, an out of state mail order pharmacy and the Massachusetts Attorney's General office. On June 25, 2020, the Massachusetts Attorney General announced a settlement with one of the mail-order pharmacies in question. Her announcement detailed a number of violations that burdened the system with unnecessary costs and burdened injured workers with unnecessary and illegal prescriptions. The AG also noted the payment of illegal incentives for referrals to the pharmacy. The AG's announcement can be found here: https://www.mass.gov/news/ag-healey-secures-11-million-settlement-with-andover-mail-order-pharmacy-for-illegal

In last year's change, the definition of a "pharmacy not accessible to the general public" included pharmacies that provide services to a defined or exclusive group of consumers because of their relationship with a specific entity or medical practitioner. There is not consensus in the workers'

compensation community as to whether or not these out-of-state mail order pharmacies fall within this definition. We believe that since these pharmacies are generally only accessed by injured workers being treated by a specific set of physicians that they would fall under the definition. To eliminate any ambiguity or confusion and to strengthen enforcement of last year's change, it would be helpful if the definition could be clarified as to the intent of the Commission regarding these arrangements. We also suggest adding language allowing payers to contract with these entities, if they so desire, for the provision of pharmacy care beyond the limitations defined in rule.

It is interesting that the laws and rules of Arizona prohibit a carrier or self-insured public entity from "directing" care, but there is no prohibition on a physician "directing" care to one of these out-of-state entities. In fact, the rule language around direction of care is currently drafted in such a way that many carriers and self-insured public entities are reluctant to even suggest a voluntary in-network option to a claimant, while the practitioners have an unfettered ability to "direct" care even in cases where they may have a financial interest in doing so. As our data shows, physicians are now actively directing care outside of Arizona in response to the limitation on physician dispensing and in circumvention of the spirit and intent of the previous changes designed to promote patient safety, drug cost reductions and use of local community pharmacies.

There are over 17 states in the U.S. that permit some form of direction of pharmacy care allowing payers to ensure that patients receive medically appropriate, cost effective and safe care. In each of these states, the abuses we have seen in Arizona have effectively been eradicated without compromise to patient choice and more importantly, with patient safety as the outcome. With over 1200 pharmacy network locations in the State of Arizona representing over 95% of all registered community pharmacies open to the public, patients have extensive choice in their pharmacy provider, and direction of care would not negatively affect their choice of provider. Based on our extensive experience around the country, the ability of employers and carriers to direct pharmacy care promotes the goals of safety, access to care and reducing the cost of healthcare. Additionally, direction of care drives use of local pharmacies who are part of the fabric of the communities where they are located and are trusted advisors to the individuals they serve.

Thank you for your consideration of our comments. If you have questions or need additional clarification, please feel free to contact me at Brian.Allen@mitchell.com or at 801-903-5754.

Sincerely,

Brian Allen
Vice President Government Affairs