August 5, 2021

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Industrial Commission of Arizona

Via email: mro@azica.gov

Re: Comments on proposed changes to the Arizona Physicians' and Pharmaceutical Fee Schedule

Optum Workers' Compensation and Auto No-fault (Optum) appreciates the opportunity to comment on proposed changes to the Arizona Physicians' and Pharmaceutical Fee Schedule. We support the Industrial Commission's (Commission/IC) efforts to update and keep current the fee schedule which better serves treating providers and injured workers. We appreciate the ongoing dialogue with the Commission regarding our concerns and for providing stakeholders the ability to provide oral and written comments.

Based upon input of from the Commission and staff as well as other stakeholders during the July 29, 2021 public hearing, we have a better understanding of Commission goals related to controlling drug costs. While we understand these goals, we do not believe the proposed drastic change in pharmacy reimbursement is the appropriate solution. Instead we believe there are several regulatory and legislative solutions, which working in synergy, will bring better controls to total system pharmacy spend. This may include better addressing current "loopholes" being exploited by various pharmacy services entities, making tweaks to the existing reimbursement rate to better place necessary controls, or seeking legislative authority to enact policies shown to control pharmacy spend in numerous other jurisdictions.

Addressing highly expensive and unique medications as well as current system practices which continue to allow utilization of these drugs should be the first step taken by the Commission. We acknowledge the urgency and frustration of the Commissioner related to certain medications being egregiously overpriced in the marketplace. Processes driving this type of medication utilization are completely contrasted by stakeholders who drive cost effective and efficient care. With public policy engagement in numerous states, Optum observes similar concerns raised by many workers' compensation agencies. In many cases we work as a partner to develop and implement unique policy solutions. For this reason, and based on statutory and regulatory structure, we respectfully offer modifications to the proposed fee schedule below. As you will notice, our proposal includes modifications we believe will help the Commission achieve their first goal without adoption of NADAC, WAC and GEAP. This will continue to permit the system to operate on an AWP basis, while producing system savings.

During the public hearing it was reassuring to hear the Commission speak of the role of PBMs and how PBMs bring clinical oversight and cost savings to the system. This is the role that PBMs who provide workers' compensation pharmacy services look to deliver. We provide clinical oversight and compliance with the often numerous jurisdictional requirements. Maintaining controls on opioid utilization, formulary and treatment guideline compliance and development of networks are a few of the critical things PBMs bring to the table. But first and foremost, PBMs strive to drive as many claims as possible to process via the network where they are subject to network contracted reimbursement rates offering payers discounted pharmacy services pricing. The larger segment of claims which an employer can "direct" or move into their pharmacy network brings greater cost savings. We respectfully suggest the Commission engage in two specific actions relating to this point. First, before adopting the proposed fee schedule

changes, engage in continued discussion with PBMs and payers as to network cost savings and policies to help increase network participation. The Commission could also use this information to compare pharmacy costs for network vs. non-network transactions. Second, with the help of system stakeholders and data from PBMs and payers, the Commission should approach the Legislature seeking authority to establish pharmacy network programs such as those found in California and New York.

Another policy process which will help control the pharmacy spend in Arizona is full expansion of the currently adopted ODG Treatment Guidelines. Clearly, the Commission has adopted ODG Treatment Guidelines for application to care provided to injured workers but due to complicated statutory structure was unable to fully apply the ODG Drug Formulary Drug List to medications prescribed and dispensed in terms of a prior authorization requirement. Formularies based upon ODG have become a recognized process for injecting proper clinical care and cost savings into state workers' compensation system. Indiana, Kentucky, Montana and Texas have all adopted ODG based drug formularies with a prior authorization requirement, and the data out of Texas shows a marked decline in both drug utilization and total pharmacy spend. Other states such as California and New York have adopted state specific formularies with similar results. Working together with PBMs, payers and other stakeholders, the Commission could apply the impact of full ODG drug formulary application to Arizona claims. With these findings, the Commission, along with other stakeholders, should approach the Legislature seeking authority to fully implement the ODG drug formulary for Arizona claims.

Adoption of the fee schedule as proposed not only impacts reimbursement rates but places a significant burden on PBMs and any stakeholder who process pharmacy claims and/or pharmacy bills in the marketplace. At present industry processing and adjudicating systems are geared towards and AWP-based reimbursement rate as outlined in the current Arizona fee schedule (and adopted by nearly every other state for their workers' comp. fee schedules). Changing from a fee schedule based upon AWP to one that not only includes AWP but also includes NADAC, WAC and GEAP will require significant system(s) development and programming to accommodate the new fee schedule for one jurisdiction. These efforts will entail sizeable efforts by IT and systems development teams that must be accounted for in the rule-making. Historically past critical fee schedule changes, implementation of a drug formulary or other significant public policy change requires a minimum of no more than six months of development and testing. Thus, for this specific reason alone, most stakeholders will not be able to make proper system enactments in order to comply with these requirements by the proposed October 1, 2021 date. We urge the Commission to take this concern into consideration.

OWCA Suggested Changes

OWCA respectfully offers the following changes to the proposed rule in synergy with the issues stated above. All added language is identified as underline. All deleted language is identified as ~~strikethrough~~.

Section II Definitions

(J) NADAC - We suggest removing the definition of National Average Drug Acquisition Cost.

(U) Therapeutically-similar – We suggest removing the definition of Therapeutically-similar.

Section III General Guidelines

(E) ~~For purposes of determining NADAC, the Commission has selected the most-recent updated on the CMS website available at . .~~ . For purposes of determining ~~WAC,~~ AWP~~, and GEAP~~ the Commission has selected Medi-Span.

(F) The reimbursement value for a prescription medication shall be determined by reference to the original manufacturer's NDC and shall be calculated on a per unit basis as follows:

~~1. Generic Drugs:~~

~~a. If the medication is listed in NADAC: (125% of NADAC per unit) x (number of units dispensed).~~

~~b. If the medication manufactured by company is not listed in NADAC and the same medication manufactured by one or more different companies is listed in NADAC: (125 of the lowest NADAC of the same medication per unit) x (number of units dispensed).~~

~~c. If the medication is not listed in NADAC and the same medication is not manufactured by one or more companies that is listed in NADAC, the lesser of the following:~~

~~i. (80% of WAC per unit) x (number of units dispensed).~~
~~ii. (60% of AWP per unit) x (number of units dispensed).~~
~~iii. (60% of the GEAP per unit) x (number of units dispensed).~~

1. Generic Drugs. Reimbursement for generic drugs shall be:
   a. (85% of AWP per unit) x (number of units dispensed).
   b. If the NDC of the drug is **not found** in Medi-Span, reimbursement for that drug shall not exceed the highest reimbursement rate for a generic equivalent NDC as found in Medi-Span.
   c. When a generic drug is dispensed and a therapeutically equivalent over-the-counter (OTC) medication exists, and the OTC is less expensive than the generic the payer can reimburse the generic drug at the same rate of reimbursement for OTCs.

~~2. Brand Drugs.~~

~~a. If the medication is listed in NADAC: (102% of NADAC per unit) x (number of units dispensed)~~
~~b. If the medication is not listed in NADAC, the lesser of the following:~~
~~i. (100% of WAC per unit) x (number of units dispensed)~~
~~ii. (85% of AWP per unit) x (number of units dispensed).~~

2. Brand Drugs.
   a. (85% of AWP per unit) x (number of units dispensed).

Section IV Billing and Reimbursement for Repackaged Medications
(C) The reimbursement value for a repackaged medication shall be based on the current PFS reimbursement methodology contained in Section III of the PFS, utilizing the NDC(s) and corresponding ~~NADAC(s), WAC(s), GEAP(s), or~~ AWP(s) of the original manufacturers(s).

Section V Billing and Reimbursement for Compounded Medications
(E) If any component ingredient in a compound medication is a repackaged medication, the reimbursement value for the repackaged medication ingredient shall be determined based upon the current PFS reimbursement methodology set forth in Section III, using the ~~NADAC, WAC, GEAP, or~~ AWP corresponding to the NDC of the original manufacturer.

Section VIII Dispensing Fee
(A)(1) – If a generic non-compound prescription medication is dispensed by a pharmacy accessible to the general public pursuant to a prescription order, a dispensing fee of up to ~~eleven dollars ($11.00)~~ seven dollars ($7.00) per prescription medication or repackaged medication may be charged if the reimbursement value is determined perusal to Section III.

~~(F)(1)(a) or (b) using NADAC. If a generic non-compound prescription medication is dispend by pharmacy accessible to the general public pursuant to a prescription order, a dispensing fee of up to seven dollars per prescription medication or repackaged medication may be charge if the reimbursement value is determined pursuant to Section III(F)(1)(c) using WAC, AWP or GEAP. Dispensing fees do not apply to OTC medications that are not prescribed by a medical practitioner.~~

As a workers' compensation PBM and an impacted stakeholder, we remain committed to developing positive policy outcomes with the Commission. We offer our continued assistance including the insight of our Clinical and data teams as well as policy insight from other states which may be of use over the coming months. We greatly appreciate the Commission allowing us to provide insight and we look forward to maintaining our strong relationship as we move forward.

Should you need anything from me or our various Optum teams, please feel free to reach out to me at any time.

Sincerely,

Kevin C. Tribout
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