INDUSTRIAL COMMISSION OF ARIZONA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Staff Proposal and Request for Public Comment for 2019/2020

Arizona Physicians' and Pharmaceutical Fee Schedule

Industrial Commission of Arizona
800 West Washington Street
Auditorium
Phoenix, Arizona

July 1, 2019
1:00 p.m.

REPORTED BY:

TERESA A. WATSON, RMR
Certified Reporter
Certificate No. 50876

PREPARED FOR:
INDUSTRIAL COMMISSION OF ARIZONA

Perfecta Reporting
(602) 421-3602

REPORTER'S TRANSCRIPT OF OPENING REMARKS AND PUBLIC HEARING COMMENTS, 2019/2020 ARIZONA PHYSICIANS' AND PHARMACEUTICAL FEE SCHEDULE, was reported by TERESA A. WATSON, Registered Merit Reporter and a Certified Reporter in and for the State of Arizona.

PANEL MEMBERS:

Dale L. Schultz, Chairman
Steven J. Krenzel, Commissioner
James Ashley, Director
Jacqueline Kurth, Medical Resource Office
Jason Porter, Deputy Director
Gaetano Testini, Chief Legal Counsel
Scott LeMarr, Commissioner (by telephone)

PUBLIC COMMENTS

SPEAKER:	PAGE:
Mr. Gale Vogler	21
Representative Regina Cobb	25
Representative Aaron Lieberman	34
Representative Raquel Teran	39
Mr. Brian Carmichael	39
Ms. Chris Garland	40
Ms. Dawn Chambers	42
Ms. Susan Strickler	43
Mr. Russell Smoldon	46
Dr. Jeffrey Scott	50
Mr. Brian Allen	54
Ms. Tami Creegan	57
Mr. Todd Delano	57
Mr. Chad Snow	61
Ms. Kathy Senseman	65
Mr. Breck Rice	72
Mr. Brian Weekley	72
Ms. Lisa Anne Bickford	73
Mr. Greg Gilbert	73
Mr. Jeremy Merz	74
Ms. Beth Rau	75
Dr. Sanjay Patel	77
Dr. Stephen Borowsky	80

PUBLIC COMMENTS (CONT'D.)

SPEAKER:	PAGE:
Ms. Deb Baker	81
Mr. Jason Barraza	83
Mr. Bryan Conner	84
Ms. Christine Lawson	87
Mr. Charles Nort	88

P R O C E E D I N G S

CHAIRMAN SCHULTZ: Okay. I'd like to call this meeting of the Industrial Commission to order, and I'd like to start with the Pledge of Allegiance, please.

(Pledge of Allegiance recited.)

CHAIRMAN SCHULTZ: And also that everyone has an opportunity to know those here on the dais. I'm Dale Schultz, and I'm Chairman of the Commission.

MR. ASHLEY: James Ashley, Director.

MR. KRENZEL: Steve Krenzel, Commissioner.

MS. KURTH: Jacqueline Kurth, Manager of the Medical Resource Office.

MR. PORTER: Jason Porter, Deputy Director.

MR. TESTINI: Guy Testini, Chief Legal Counsel.

CHAIRMAN SCHULTZ: And on the phone -- if it's all right with everyone, I'll just read the list. We have another of our commissioners, Scott LaMarr.

We have Bryan Conner representing American Airlines. We have Christine Lawson representing Willis Towers Watson. We have Deborah Lefler from the Integrion Group. Jim Gill, Southwest Risk. Allie Matthews, City of Tucson. Frances Bracamonte, City of Tucson. Wendy Mueller, Mesa Unified School District. Paul Murray, Bashas'. Raji Chadarevian, who is representing the National Council on Compensation Insurance.

Sharon Hulbert from Zenith Insurance Company. Tom Coccia from AHCS. James Gill from City of Scottsdale. Kristie Griffin from Express Scripts.

Is there anyone else on the phone that I have missed?

MS. COLWELL: Yes. This is Patti Colwell from Southwest Airlines.

CHAIRMAN SCHULTZ: Thank you, Patti.

Okay. We are here today to discuss a very important issue, and I would like to begin by setting the stage as to why we are here. And I will tell you that we're not here because this is something that the Industrial Commission decided that it wanted to do. In fact, in 2018, Senate Bill 1111 was introduced by Senator Karen Fann. The bill was introduced proposed to create a new statute which would establish reimbursement guidelines for medications dispensed in closed-door pharmacy, not public pharmacy.

Although the Commission was not involved in SB 1111 stakeholder discussions, it was and is our understanding that the stakeholder discussions resulted in an agreement to remove the proposed statutory language and replace it with a directive that the Industrial Commission study and address the issue.

In addition to unambiguous statutory authority to address the issue of medications dispensed in settings that are

not accessible to the general public, in the Commission's fee schedule, the revised bill required the Commission to also review information and data, consult with physician, employee, business and industry stakeholders and to hold at least one public hearing in considering whether to adopt additional reimbursement guidelines.

The legislative directive did not include any guidance or limitations apart from the above language. So we got to work. We scheduled and held over 20 stakeholder meetings with physicians. I see several of you that we met with individually. Employee, business and industry leaders. We've conducted a public hearing and received substantial written and verbal input in August of 2018. Almost a year ago we started working on this issue. Written comments and a transcript of the hearing were promptly posted to the Medical Resource Office page of the Commission's website. Very public.

As other states have been wrestling with dispensing issues for many years, we studied what more than 20 other states have done and sought to understand the impact of their reforms, and reviewed and studied all data and information regarding the issue we could find. And you may recall, those of you who were here at that August 2018 hearing, I specifically asked for everyone to provide the Commission with additional data, additional facts that would help us in determining what our course of action would be.

In all of the information that we have reviewed, we have come to the determination that there is abuse when it comes to dispensing of medications, particularly in cases of physician dispensing, and dispensing of repackaged compound or non-traditional strength medications.

We also learned that it was our fee schedule that was technically allowing the abuse. To illustrate the problem, let me give you two examples. These examples are only intended to highlight what we saw on a much larger scale.

So there are widely available generic and over-the-counter medications that provide relief that we can -- that either patients on their own or physicians on their behalf can direct those patients to obtain. Instead, what we find is that physicians instead dispense much more expensive medications that are prescription-only medications at a dramatically higher cost than what was available over the counter or available in pharmacies that are open to the general public.

Now, when you look at these -- these on an individual basis, the amount per prescription is important, but what astounded us at the Commission is when you look at that, the amount of these medications that were prescribed over a duration of treatment, the numbers become truly astounding and astronomical, as in this particular example.

Another abuse that we found is looking at individual medications. And this example is -- is actually just

the dealing with a medication that's an anti-nausea or anti-vomiting medication that's very, very readily available through any pharmacy, and what we found was that the average wholesale acquisition cost.

And you can argue whether you buy in large lots if it's lower or higher. But when you can buy a medication for, in this case, at 19 cents, and the average wholesale price has been -- has been manipulated to $40 per pill -- this is $40 for each and every pill -- it just becomes -- so even if the acquisition cost was not 19 cents. What if it was a dollar? What if it's $2? What if it was $5? Still in comparison to the prescribed and dispensed cost of $40, it's unconscionable. And when you look at that, once again, over the treatment period, the dollars become just absolutely astounding.

This just reinforced the Commission's desire to try and find some ways to establish reimbursement guidelines. This is not about prohibiting the dispensing of medications by physicians. It's not about controlling that, other than to make sure that where we can, that the reimbursement guidelines control the cost.

And why do we want to do that? This is why we want to do that. Arizona is significantly above the national average in our medical care cost for the treatment of industrial injuries. That's true on a per-case basis, and it's true in the aggregate.

Now, that by itself is not a significant issue. What is of concern is that the costs are that much higher, but the outcomes are not better. I think we would all agree that if somehow spending more on medical costs reduced the amount that is spent on indemnity, and actually, even more important than that, if it returned people to work sooner, if it relieved the burden of injuries from the families of these injured workers, it would be well worth the investment of additional dollars in medical care, but that is not the case.

In everything that we see in comparing our medical costs, in our indemnity costs to others, guess what? Our medical costs are higher. Our results are no different. And in fact, when we compare our results to the national compensation insurance statistics that are published on an annual basis, our average cost per claim where there is physician-dispensed medications is 30 to 70 percent higher than costs where those medications or that -- the medications are paying by the patient through a public pharmacy.

Now, once again, not any one of these issues is that -- such that we felt like we needed to address that individual issue. I want you all to understand that the Commission tries to look at the entire system of providing benefits, to look at not only that, yes, the cost to employers, the cost of insurance, but we look to outcome.

This Commission is seriously focused on trying

to, number one, reduce the number of injuries in the state, which has happened. We're in our fifth year of declining injury rates. That's good. That's so many fewer, and we're talking about thousands each year of Arizona families that are not impacted by industrial injuries. This is key. This is the root cause.

But we also looked at -- looked to the entire system, and we looked for ways to find to improve the system, to find things that aren't working, to find areas of abuse and see if we cannot find ways to address those issues. And so who pays when this stuff happens? Well, guess what? We all pay. And how is it we all pay? Well, we have the direct payors.

The schools, who then have less money to spend on what? What do we all want? We want better education. We want higher teacher salaries. We want computers in every classroom. We want the best available supplies and people teaching our children, because guess what? That's our future. I'm really old, you know. I'm facing my mortality every day. I want to know that there's people who have been properly educated. They're going to follow on behind, and one way we can do that is to try and make sure that those education dollars are spent wisely. They're not wasted on things that don't produce any outcome.

Same thing, county, city, towns, the State of Arizona, we have numerous examples of what this dispensing issue

has cost the State of Arizona. And guess who pays for that? Once again, every one of us in this room, presuming that we're all residents, end up paying higher taxes because of abuses in this system.

We have our own particular issues at the Industrial Commission, because we operate the Special Fund. And what's the Special Fund do? It provides care for injured workers where the employer has not provided workers' compensation insurance for that injured worker. So we assume that responsibility, and so this once again takes additional dollars away from what the Special Fund can do in terms of second injury claims and rehabilitation claims, that this abuse is felt in many, many areas and every day. This is not just about something that happens occasionally. It's about something that's consistent.

And let's talk a little bit about then what's it mean to the injured worker? As I said before, if we got better outcomes, I would say it's worth the -- I'd consider it an investment. It's worth the additional expenditures if, in fact, it had a significantly better impact in terms of our treatment of our injured workers. But guess what? That's not what's happening. The average amount of lost claim time, lost time, the time people are away from work is 64 days, if, in fact, they -- that injured worker received their medication from a pharmacy.

When that same -- well, I shouldn't say the same injured worker, because they don't get it from the same place, but other injured workers who receive physician-dispensed medications, the average duration of disability was 85 days. Think about that difference. Twenty days. Two-thirds of a month difference in the duration of disability. And once again, the cost impact is significantly higher, both for medical costs and for indemnity costs, which, of course, result from the duration of the disability.

I want to refer you to one of the studies. It's just one of the many studies that the Commission has reviewed in looking at this issue. And this is from the American College of Occupational and Environmental Medicine from 2014. This was a peer-reviewed study. This isn't something that came from one person or one state, and that's the kind of thing we're looking for.

As I've said before in these public hearings, it's important for us to hear stories. It's more important for us to get data, and for that data to provide us with information that can lead us to decisions, and this is the kind of studies that we look to. And in this case, we found that claims where physician-dispensed medications were associated with a higher number of prescriptions, higher pharmaceutical medical indemnity costs, and more lost time days than claims where medications were dispensed by pharmacies. The

impact on the claim outcomes between pharmacy-dispensed and physician-dispensed drugs was not explained by injury, complexity, age, sex, or attorney involvement, but rather seems to be an inherent attribute of physician practices that dispense medication.

I don't know that you all know that my background is in health care. That's how I spent my entire career. In particular, I spent much of that career working with evidence-based medicine, reviewing, reviewing before making decisions. What is the evidence before you're going to decide if you're going to change a way a patient is treated? And giving credibility, the most credibility to those studies that involve double-blinded studies, but also very -- we looked very much to peer-reviewed studies, where, in fact, it wasn't just somebody's opinion. It was data that resulted in conclusions that were reviewed by a range of folks, knowledgeable in the same area, and it was determined that, in fact, there was value to the information in that report. That's why we look to those kinds of studies for our direction.

Now, over the course of our study, we have received significant amount of feedback, and I just wanted to share with you a little bit of what we have heard from the community. And I call this myths and facts. Myth: "Insurance companies are trying to go behind the backs of your elected

officials by getting the Industrial Commission to go along with them."

Truth: The Legislature specifically directed the Commission to consider dispensing issues in SB 1111 and specifically authorized the Commission to do so in its fee schedule. Insurance companies were no more involved in the Commission's process than any other stakeholder.

And I was present in many of the stakeholder meetings, and so I know how many we spent with insurance companies, and I know how many we spent with physicians and attorneys who treat or represent injured workers. And I will tell you the Commission always tries to maintain a balance. We want information from all sources, and we try and use that information from different sources to achieve the best outcome.

But we are focused on what's the best outcome for the injured worker. We don't get a thing out of this. Not one thing comes to the Industrial Commission from our addressing these issues. It doesn't lower our operating expense. It doesn't give us more control over anything. We're doing this because we want to improve the system, pure and simple. That's the bottom line.

We want people to not be injured, but if they are, we want them to get the appropriate treatment at the right time and to get back to work as quickly as possible. Because I

will tell you one thing the Commission does truly believe in and support, and that's the governor's desire for Arizona to be the safest place in the United States, to work, live and recreate, and we are here to try and do what we can to foster that.

"The ICA is seeking to interfere with the doctor-patient relationship and limit access to care." Need I remind you all that Arizona is one of the very few states that provides open access to care. Unlimited right to reopen cases. We are as open as -- as any jurisdiction I have ever seen, and with prior employers, I was involved in companies that work coast to coast, and so I'm familiar with a lot of different systems, and what we have is a very, very, very open system here.

The proposed guidelines do not interfere with an injured worker's ability to obtain necessary medications and do not limit access to care. Patient access to physicians and medications is unchanged with our proposed reimbursement guidelines.

"The ICA's proposals will make it more difficult to receive medication." Really? In addition to reputable internet and mail order pharmacies, which by the way, I use mail order pharmacy in addition to retail pharmacies for me and my family virtually every day. There are over 1,200 retail pharmacies in Arizona. Any of which can quickly and safely fill a prescription. When I say "safely," I will tell you that there

are very, very, very, very strict regulations on pharmacies, and in fact, pharmacists, I believe, do a very good job at not just dispensing the medication that the prescription before them says they are to dispense, but also to asking us all the questions that are important. What other medications? What other supplements are we taking? To look for potential drug/drug interactions or adverse reactions and to inform you as the patient or the family of what those potentially are. An incredible safety net.

Moreover, physicians may be reimbursed for dispensed medications for any duration when authorized by the payor. So we're not trying to interfere with -- also with the business relationship between the physician and the payors. You're free to reach agreements in any manner that you want.

"The ICA's proposal is an outrageous secret plan." Need I remind you once again, how secret can you be when you post all this crap on the website, and you have meetings with anybody who will stand still for five minutes and listen to you? It's not secret. It's not ever intended to be secret, but we -- we actually are just -- not only are we conscientious of, but we adhere very strongly to public meeting rules. That's why we're here today.

The Commission is about transparency in everything that we do, in our rate setting, in our rules, our regulations, and in what we do in terms of our reimbursement

guidelines under the fee schedule. No matter what the issue is that we are addressing here, whether it was evidence-based medicine, whether it was full and final settlements, whether it was moving to an RBRVS to make our system more efficient for physicians. We do all this in the open with as much input as we can possibly obtain.

Next. "Requires your doctor to receive pre-approval in writing from the insurance carrier for medication." Pre-approval? We all know that's not true. There's no requirement for any treatment or any dispensing of any medication to get pre-approval. If there's ever any issues, it's about being paid for. It's not about whether or not you can perform the service. And so that's just absolutely not true.

"The proposed guidelines require prescriptions to be mail order." There's no -- there's nothing in there. If you've read this, it doesn't require that. What it says is guess what? You Can. You can use mail order services, and these days, you know, with most of the mail order pharmacies, two days. I don't care if you're at the bottom of the Grand Canyon. You can get your prescriptions delivered to your house directly. And so it doesn't require that. It offers it as a way to efficiently obtain your medications.

So I have rambled on long enough, and so I just felt like I had to get that off my chest, folks. This stuff is

very important to me. We as a Commission are trying really hard to get all the information we can before we make any decision, and that's what this is about. There have been no decisions made. This is a public hearing. And what's the purpose of the public hearing? It's to get additional input and information in addition to our prior public hearing and our multitude of meetings with various stakeholders. We want more.

This is an important decision that we have spent over a year already studying, and we want to make sure and make a decision, we make a good, solid, well-founded decision. And so I'm now going to open the floor up for comments from speakers. But I want you all to remember also that we expect you to provide us with written comments, and once again, what we most need is supporting data. If you have a position, give us the information that supports that position. We're open to any and all information, and we work hard at studying that information.

Beyond that, if you have constructive ideas, constructive ideas about how we can address this issue, we would love to see what those ideas are. Understand we've looked at the range of -- there's a half a dozen states that have just decided to prohibit, entirely prohibit, physician dispensing. We don't believe that's the answer. What we believe is that we should look at it, take constructive ideas and implement a set of reimbursement guidelines that will

improve our system overall. That's our intent.

And with that, I will open the floor. Now, because we have just -- we have a stack here of quite a number of folks who have indicated they want to address the Commission, and we want to give everyone an opportunity to do that. So I would ask a couple of things. We would like you to try and limit your comments to three minutes. Based upon the number of requests we have, we should be out of here somewhere around nine o'clock tonight.

The other thing that I would very much like is that if the person before you, whether directly before you or just someone has already said what you want to say, please just tell us you agree with them. But if you can add data to support what they said, that's what we -- the additional information that we want to hear. So please, if you could, if you would keep your comments to three minutes. And the big guy's going to be timing you, and so you don't want him to have to come down into the audience.

MR. PORTER: He's the big guy.

CHAIRMAN SCHULTZ: And so please, if you will, if you don't have anything new to add, just agree with whatever you have heard before.

And now, we've had one request for a PowerPoint, and so -- and by the way, we've also had an additional request from two of our representatives, two of our legislators who

would like to address the group. So if you would indulge me, if I could get that PowerPoint out of the way, and then we'll be ready to roll into the comments.

MR. ASHLEY: Mr. Chairman, actually, in the course of the meeting, a third representative joined us, Representative Teran. If you would like to join the other two representatives that are here, we can accommodate that as well.

REPRESENTATIVE TERAN: That's fine.

CHAIRMAN SCHULTZ: All right. So Copperpoint.

MR. VOGLER: Good afternoon. Thanks again for having us. We've presented some of this data previously.

CHAIRMAN SCHULTZ: Please, if you'd introduce yourself and who you are representing today.

MR. VOGLER: My name is Gale Vogler. I'm director of medical management at Copperpoint Insurance.

CHAIRMAN SCHULTZ: Thank you.

MR. VOGLER: We've presented much of this data in the past in the last hearing. But firstly, I wanted to say that we're in support of everything you guys are doing. All of the slides you previously presented, we see that all too often at Copperpoint in the majority of the work comp. cases that we handle daily.

In Arizona, the practice of physician dispensing is almost entirely concentrated among a few workers'

compensation providers, and the vast majority of injured workers have their prescription drugs met without physician dispensing. The small amounts -- I'm sorry -- the small number of medical providers who are engaged in dispensing derive tremendous profits at the expense of injured workers, their employers, and the workers' compensation system as a whole.

Significantly, only three of those physician dispensers that we are seeing were responsible for 89 percent of all physician dispensing costs, which is illustrated right here.

Physician dispensing is not more efficient and convenient to an injured worker, especially after the first fill. Physician-dispensed refills require another office visit, typically during business hours, or on weekdays. By contrast, retail pharmacies are available before and after regular business hours.

The majority of Copperpoint injured workers also reside in areas with access to multiple pharmacies within a short distance. In fact, most had 50 or more pharmacies within a 15-mile radius, while others had at least five pharmacies in that range.

As you also have mentioned, there's also the availability of mail order pharmacy services that allow for the delivery of three months' supply of medications directly to that injured worker's front door.

Sorry. And our number of pharmacies in our prescription benefit management program is relative to the ones you noted. You noted 1,200. We have 1,196 in our pharmacy benefit program.

We have one good example. Illustrated by, in comparison, the many that you show. In our opinion, physician dispensing circumvents cost controls by avoiding negotiated rates. Retail pharmacies are usually members of networks which provide medication at a much lower cost than negotiated rates. As a result, medications dispensed by physicians cost substantially more than those obtained at most pharmacies.

Here's a situation right here. One example of the cost difference between physician dispensed drugs and network pharmacy dispensed drugs: Duloxetine. This is the same basic prescription. You can see that prescription was $177,000 through physician dispensing. That same prescription through a retail pharmacy, and we provided GoodRX numbers, would have been $3,001. Just an average cost of a claim we're seeing. $4,280 with physician dispensing. That same claim without physician dispensing, $2,370.

Another illustration for you. Average cost per script, physician dispensed versus pharmacy dispensed, $546 in physician dispensing, $221 through retail pharmacy.

Copperpoint would like to thank you for the opportunity to comment. The proposal including the

recommendation on physician dispensing is thorough, well researched and grounded in Arizona data. Most importantly, the proposal, if implemented, will benefit the entire workers' compensation system and the injured workers that it serves. Copperpoint support. I respectfully request that the Commission adopt the proposal as noted.

Okay. Thank you.

CHAIRMAN SCHULTZ: Thank you. And thank you for staying close to your three minutes so I didn't have to unleash them.

Commissioner Krenzel, any questions?

MR. KRENZEL: I just had actually one question on the -- I'll mispronounce it -- the Duloxetine slide, the 30 milligrams. With that being in the 98 percent for private dispensing or -- of physician dispensing 177,000, and I'm rounding, and the chart pie chart, do you have the patient numbers with that? I just wanted to make light on if it was a skewed patient number count as opposed to how many --

MR. VOGLER: I would have to go back and get that information if you like.

MR. KRENZEL: I would, please.

MR. VOGLER: Okay. I will provide that.

CHAIRMAN SCHULTZ: Any other questions?

MR. KRENZEL: We're good.

CHAIRMAN SCHULTZ: Okay. Thank you very much.

And now let's move to our legislators. Do you guys flip the coin in terms of how you want to go, or what's your pleasure?

REPRESENTATIVE TERAN: No. You go. I'm here to listen and learn, mostly.

CHAIRMAN SCHULTZ: Thank you.

REPRESENTATIVE COBB: Good afternoon. I'm Representative Cobb, District 5. Thank you for allowing us to speak this afternoon. Welcome to my world, having nine o'clock meetings.

CHAIRMAN SCHULTZ: Absolutely. By the way, it's good to see you again. I haven't seen you since we --

REPRESENTATIVE COBB: I know it's been a while. It's been a while.

So Director and Chairman and members, I come to oppose this, and for a few reasons. It's readily apparent that -- and we all wanted to get to with SB2011, was to get to a point where we addressed the bad actors, and it -- it obviously wasn't what the Legislature wanted, and it didn't pass. We did throw it back to you guys, and you said, sir, yourself that it was to study and address the issue and to address the fee schedules.

Well, what I feel is what we've done here is it didn't do that, and when the bill sponsor testified, she said in her language, she said she wanted to address bad actors that

overprescribed them opioids. I think it circumvents the legislative process. I think it has no place in the fee schedule. I think it's a rule. And then, therefore, we're -- the Commission has circumvented the rules moratorium that the governor placed in place.

You also mentioned that you did have stakeholder meetings, and you said you had 20 stakeholder meetings. I'm not sure if these were individuals or what they were, but not all key stakeholders were included. Some were left out. The Hospital Alliance was one of those that represent major urban hospitals. Not all of them were aware or were even given a heads up that this would be included on the fee schedule. The Alliance have submitted comments. I know they have expressed their frustration.

I addressed the director immediately once I conferred with a couple of my legislators. And thank you, Mr. Ashley. You were very responsive to that. But as soon as I got done with that, immediately I had Copperpoint calling me and insurance companies calling me. So the myth that you said that the insurance companies had nothing to do with that, I didn't talk to anybody but the Industrial Commission. And then all of a sudden I had people calling me almost immediately asking for meetings with me to address that, and those were the same people that backed SB2011. And so I have issues with that, also.

I've also been told that there's abuses of, like, $600 a day. I haven't seen any examples to verify that. They also -- Copperpoint did bring in some of statistics that they showed today. They showed 2018, 2019 what was billed, but they didn't say what was paid. They showed the exact billing of one year to the next year, but nothing -- they did not -- and I requested that, and that hasn't been given to me yet.

I think we all want to address the fraud. I think that we want to get to some answers, but putting a blanket across all of these physicians, and I think there's 28, 29 physicians that do workman's comp., that I think there's about three of them that are bad actors. I think putting a seven-day limit, and that was another myth that you put on there, also, that you said we -- there's a myth that we're not changing what we do. It is changing. It's limiting it to seven days.

And there are some -- we're not talking about a sprained ankle here. We're talking about somebody that may have an amputation or someone that may have a severe head injury, visit Barrow's Clinic.

Also, the evidence based that you addressed in there was from Illinois from 2014. I wanted to see more recent evidence based, and I'm not seeing that with what we saw up in here. I think there are a lot of things that we need to do, but this isn't in the way to address it.

Now, I've compared what the fee schedule is, the

proposed fee schedule language that you guys have to what SB2011 in there was. It's not verbatim, but it's darn close. As close as I can see, it took 2011 and put it in this.

Again, I think we're circumventing the Legislature, and I would ask that the Commission deny the proposal, go back to the table. I did make some recommendations. I -- there should be a maximum allowable fee schedule. You can limit the over-the-counter medications. You can limit how many times they do medications. There are so many things that could be done that aren't done within this proposal, and I think you need to go back and look at that all over again, and include some of the stakeholders that were not included, including the workman compensation doctors.

So I appreciate your time today. Thank you. And I'll be open for any questions.

MR. ASHLEY: Mr. Chairman.

CHAIRMAN SCHULTZ: Yes.

MR. ASHLEY: There might be some others on the panel that have other comments. First of all, I'd like to thank you for being here.

REPRESENTATIVE COBB: You're welcome.

MR. ASHLEY: We've had a great opportunity that I value in the last couple years to work together.

REPRESENTATIVE COBB: We have.

MR. ASHLEY: Members from JLBC, all the way to

our State Plan and Federal OSHA. As you know, it's so important that we maintain the State Plan with Federal OSHA, because that gives us Arizona jurisdiction and Arizona authority to localize, control, and influence workplace safety, which we've been working really hard at improving. I'd like to thank you for that.

REPRESENTATIVE COBB: And I appreciate you doing all the work you've done on that, too. Thank you.

MR. ASHLEY: Not to mention all of our time in LD5 and working with businesses in Kingman and Honeywell Aerospace, and working with Nucor Steel. Really encouraged by the economic development up there at the airport in Kingman.

CHAIRMAN SCHULTZ: Kingman Regional Hospital.

MR. ASHLEY: And Kingman Regional Hospital as well. I believe it was under construction on my first visit up there. I think it may be finished almost.

REPRESENTATIVE COBB: Yeah. The second phase of that. Yes.

MR. ASHLEY: Second.

REPRESENTATIVE COBB: Was under construction.

MR. ASHLEY: Good. Shows how much they need it.

REPRESENTATIVE COBB: Yeah.

MR. ASHLEY: I wanted to raise an issue regarding the sponsor of the bill. But that leads to the intent of the sponsor, what the sponsor experienced through this process and

what the sponsor feels right now about the bill. So I actually -- I do have a statement from Senate President Karen Fann that I'd like to read into the record.

I am pleased to write the Commission in support of the staff proposal 2019-2020 Arizona Physicians and Pharmaceutical Fee Schedule. As you know, I sponsored SB 1111, workers' compensation opioids dispensed medications, which required the Commission to modify the physician fee schedule to set reimbursement guidelines for medications dispensed in settings not accessible to the general public.

I was heartened to hear that the Commission solicited input from a broad cross-section of the stakeholders, including physicians and insurers in the employer community. It was good to see that the process included a public hearing to receive stakeholder input, and that the Commission hired an independent consultant to review the issue and advise the Commission. It is clear to me that you have utilized a thoughtful and robust process to develop the staff recommendations.

I believe the recommended staff proposal regarding the dispensing of medications is consistent with the intent of the legislation, both in terms of process and substance. It appears that the Commission has embraced the responsibility given to it by the Legislature. The proposed guidelines will improve Arizona's work compensation system.

It was clear from the legislative testimony and stakeholder meetings related to SB 1111 that physician dispensing of medications can create unnecessary costs without improving patient outcomes. Many of the stakeholder comments during the public hearing process and the consultant's report reflect this position.

The staff recommendation to prohibit the reimbursement of unnecessary physician-dispensed pharmaceuticals is an appropriate guideline. The fee schedule provides reasonable exceptions to this limitation to ensure that patients receive the pharmaceuticals they need, including at the initial visit.

Thank you for considering my comments on the implementation of SB 1111. I am happy to see that the Commission has fully embraced the legislative initiated reforms like evidence-based medicine and the reimbursement guidelines related to physician-dispensed drugs. I look forward to our continued work together to ensure that Arizona has the highest quality workers' compensation system.

Sincerely, Senator Karen Fann.

Thank you.

REPRESENTATIVE COBB: Thank you.

Sir, just a comment on that letter. If I can, Director, Chairman.

CHAIRMAN SCHULTZ: Certainly. Yes.

REPRESENTATIVE COBB: I -- I have all the respect for President Fann, now President Fann, who was Senator Fann at the time, and is still Senator Fann, but -- I have all the respect in the world, but if it were my bill, I'd be happy with this, too, because it's in there. And so with all due respect, I feel like we're asking the bill's sponsor, are you happy with these guidelines? Well, yes. They're my bill. But that's not what we asked the Legislature. That's not what the Legislature asked to do. It asked to go back to the Industrial Commission, you create clear guidelines, not just saying that we're doing a seven-day limit for everybody.

CHAIRMAN SCHULTZ: Thank you.

And by the way, just a point of clarification, hospitals don't come under the medical fee schedule. So that's why they weren't consulted. But once again, all of our information is up on our websites, and their representatives were free to engage us if, in fact, they thought it would have any impact on that. Thank you.

REPRESENTATIVE COBB: But sir, the doctors do -- again, Mr. Chairman, the doctors that go into the hospitals are in within this fee schedule, some of the workman comp. doctors. So even though that they may not be the hospital themselves, they work within the alliance.

CHAIRMAN SCHULTZ: All right.

REPRESENTATIVE COBB: Thank you.

MR. ASHLEY: Mr. Chairman, actually, one other point. I just wanted to clarify, Representative, there was a comment about the rule-making process, and from the day I was appointed to the agency, I've worked to make sure that the Industrial Commission has a strong and successful line of communication with the governor's office. That didn't always exist. And that has been true for every issue of prominence impacting the Industrial Commission, and this issue has been no different. From the time the bill passed the Legislature to the time the governor signed the bill, we've been in close and frequent contact with the governor's office, with our policy advisor, and with members of senior staff. So they fully understand and embrace what we're doing, and not only do they fully understand it, they do fully support this proposal as well.

REPRESENTATIVE COBB: Mr. Ashley, I just talked to Christina Corieri a couple days ago, and she had no clue this was happening, and she is the policy advisor.

MR. ASHLEY: Correct. And that was brought to our attention, and we spoke to senior staff at the governor's office, and they encourage you to speak with them again to clarify their involvement with this process.

REPRESENTATIVE COBB: Okay. Thank you. Thank you.

CHAIRMAN SCHULTZ: And we will take your ideas --

REPRESENTATIVE COBB: Thank you.

CHAIRMAN SCHULTZ: -- under advisement.

Great. Okay. This is Representative Lieberman, correct?

REPRESENTATIVE LIEBERMAN: Correct.

Hello. I'm Representative Aaron Lieberman representing Legislative District 28, which is Central to North Phoenix and the Town of Paradise Valley.

I had a chance to visit with Director Ashley. Thank you very much for your time on this, and Chairman Schultz, thank you for giving us an opportunity to testify. Especially thank you for letting us go first. Appreciate that.

I just want to say I feel strongly that there's a role for physician dispensing, for doctors who specialize in treating workers' comp. injuries. These are very complicated, difficult cases, often involving permanent disability, and having doctors' ongoing involvement with dispensing should be a significant time saver for the patient, and hopefully lead to better care as the doctor has a full understanding of the patient's medical history.

Of course, if there's any doctor abusing the system for financial gain, as alleged here, they should absolutely be prosecuted to the fullest extent of the law, and I would hope that the Industrial Commission would work to shut that practice down as quickly as they possibly could.

But the clear directive coming from the Legislature when this issue was dealt with was the reality is there wasn't the support in the Legislature for the bill that Senator Fann proposed. If so, we wouldn't have had this hearing, because it would have passed. There was significant opposition to this idea of doing exactly what's been put into the fee schedule, and for that reason, the compromise goes, well, let's have the Industrial Commission figure out who to deal with these bad actors. The reality is that the -- and to make sure that the Industrial Commission is relying on evidence-based guidelines.

I want to commend you. I think you all have done a terrific job, particularly with the implementation of the official disability guidelines, to do exactly what the Legislature, I think, intended, which is to say let's look at evidence-based guidelines. As I understand it, you effectively have two measures. The ODG works effectively as a formulary, and then you can help set prices or correspond to the average wholesale price limits.

For the life of me, I don't understand how you can't deal with every single problem that's been presented there as a challenge with those two tools. You can eliminate things that you're willing to pay or not pay. You can eliminate, you know, any one of those things that have appeared, and if there is a big spread, as some of the insurance people presented to

us, between what the wholesalers, the pharmacy backup managers are paying, and the average wholesale price, I believe you have the tools to reduce that spread. You publish what those guidelines are.

With those two tools in place, and of course, the ODG has only been implemented since October, then as I understand it, there's actually been a pretty dramatic reduction in costs since then. A 19 percent drop in drug utilization since October. 12 percent of that drop has been in those N drugs. Those are not approved by the ODG.

The kind of pour of this for me is everybody should be treated fairly, regardless of the setting for the pharmacy and how it's being dispensed, and the State and -- but you know, by you guys acting on behalf of the State should not be picking winners or losers, especially when patients -- of course, if they prefer to have their pharmacy filled -- their prescription filled at the pharmacy, they can do that 100 percent of the time. They can always do that.

At its core, this policy seems to throw out the baby with the bath water. For these patients -- and again, in every slide that you show, they show different costs. Aside from the Illinois study, which was obviously a different state and five years ago, these are much more complicated patients. You would expect to have different costs for the more complicated, medically involved patients, and the reality is

there aren't that many doctors willing to treat these patients.

And for those doctors who are willing to take the time and the care, to sit with our injured workers, many of whom are facing a lifetime of disability, to provide that extra level of attention and care, I'm okay with them doing that physician dispensing instead of sending that same injured worker down to a pharmacy nearby where they have to fill a prescription. Often it will end up in conflict with what the doctor is writing, what the prescription needs, and that's more involvement going back and forth with the doctor.

In fact, many of our physicians who do this got into this because they were sick and tired of dealing with -- having to go back and forth with the pharmacies and thought, look, I can just deal with this myself. I'm the one writing this prescription. I certainly have the guidance and training to fill it.

So in the end of the day, I applaud the physician -- I applaud the Commission for the work that you've done, particularly with the official disability guidelines. Every problem that I see can be responded by the tools that you have currently available at your disposal, and I certainly would urge everybody to be as aggressive as they could with anyone who's taking advantage of that system by both pursuing those individual cases, but most importantly, if you're finding things that are out of whack, adjusting what is effectively the fee

schedule and the ODG act as the formulary. It seems to me like you have ample tools to do that.

I'm happy to take any questions that you have. Thank you.

CHAIRMAN SCHULTZ: Mr. Krenzel, questions?

I just have to tell you, I know your brother from when he practiced at Good Sam.

REPRESENTATIVE LIEBERMAN: Yeah.

CHAIRMAN SCHULTZ: And it is uncanny how much you look like him.

REPRESENTATIVE LIEBERMAN: I appreciate that. Little different size, but I --

CHAIRMAN SCHULTZ: You're much more handsome. Tell Larry I said that.

REPRESENTATIVE LIEBERMAN: I will. Yeah. Exactly. And you know my father's been involved in this area, although I'm representing myself and the Legislature in that capacity.

CHAIRMAN SCHULTZ: I know. Thank you very much.

REPRESENTATIVE LIEBERMAN: Sure. Thank you.

CHAIRMAN SCHULTZ: Okay. Great.

REPRESENTATIVE LIEBERMAN: Thank you.

CHAIRMAN SCHULTZ: Any other comments?

MR. ASHLEY: Representative Raquel Teran.

CHAIRMAN SCHULTZ: Yes.

REPRESENTATIVE TERAN: Thank you, Chairman. Thank you, members, Director. I just wanted on to go on record that I strongly oppose this proposition. I already sent a letter. It should be on record. So I just wanted to make sure it was on record here.

CHAIRMAN SCHULTZ: Yes.

REPRESENTATIVE TERAN: Thank you.

CHAIRMAN SCHULTZ: Great. Okay. We have before us a formidable stack, and so I'll just try to get through these, once again, as quickly as I can.

Our first speaker is Brian Carmichael, who's the risk manager for City of Surprise.

Mr. Carmichael, good to see you, sir.

MR. CARMICHAEL: Good to see you.

Brian Carmichael, Risk Manager, City of Surprise. As such, I have responsibility for a self-administered workers' compensation program, and I come today in support of the proposal and applaud the Commission for your efforts in evidence-based medicine and controlling costs.

One thing that I would add, although I don't have any data, specific data to add, I would say that transparency is a big deal. In Copperpoint's presentation, they talked about comparison to GoodRX. These are public dollars that I am responsible for as risk manager at the City of Surprise, dollars that can be audited and are transparent on the website.

And we appreciate -- I appreciate, on behalf of the City of Surprise and the citizens, the fact that you're putting this cap on to control the costs for accountability. If we were to be faced with some of these physician-dispensed costs that we saw with Copperpoint and others have mentioned, if that were to be published on the website, there's a fiduciary responsibility that we have, and it would look very bad. So I thank you for protecting the money of all us in the state, and this proposal as presented appears to be favorable for everyone.

Another thing that I would say is it was somewhat implied in some of the prior testimony that the injured worker would somehow not get that prescription. It's not about not getting the prescription. It's writing that prescription and where is it filled? So that's a particular person. It's not -- if it's a life saving measure, it's going to be dispensed, probably intravenously. So these are pills, these are other medications that they'll get their stuff in the appropriate manner.

So I thank you, and I'm in support of this.

CHAIRMAN SCHULTZ: Thank you. Questions for Mr. Carmichael? None here. Thank you very much.

And our next speaker is Chris Garland.

MS. GARLAND: Good afternoon, Chairman, members, Director. My name is Chris Garland, and I'm representing

Integrion Group. We're a small TPA based out of New Mexico. And I don't have any figures to share with you. I don't have any statistics. I just have a little story that I wanted to tell.

We had an injured worker recently who was 70 years old with failed back syndrome treating with -- I was going to mention names, but I decided not to -- with one of the major physician dispensers in the room, for pain management under his supportive care award. He was last examined by this doctor on November 19th of '18, and serious non-industrial health issues were noted.

He unfortunately passed away at the beginning of January of 2019. Without seeing the patient, this doctor continued sending packages of pain medication to his home on January 26th of 2019, February 26th of 2019, March 26th of 2019, and April 23rd of 2019, even after the patient missed his February check-up appointment.

When the bills for all these medications were received in mid May, we called this doctor's attention to the gentleman's death before the May shipment of pain medication went out. With lightning speed, this doctor sent us a check reimbursing us for the repackaged medication that was auto shipped to his deceased patient. But we wonder where those medications that were sent out in January, February, March and April ended up. And I've got the documentation, and I've got a

copy of the check reimbursing us. So it's all fact based.

And that's all I wanted to say, and I'm in support of the Commission proposal.

CHAIRMAN SCHULTZ: Thank you. Any questions?

Okay. Next Dawn Chambers.

MS. CHAMBERS: Good afternoon. My name is Dawn Chambers. I'm the claims operations manager for the Arizona School Alliance For Workers' Compensation. The Alliance is a self-insured workers' compensation pool that provides coverage to 231 Arizona school districts, career and technical education districts, and also community colleges.

The Alliance is in full support of the ICA's proposal fee schedule changes related to physician dispensing medications. Based on our many years as a workers' compensation insurer, along with abundant research and data produced by others, we believe that physician dispensing of medication in closed-door pharmacy settings tends to lead to unnecessary and unreasonable costs. The changes proposed by the ICA are measured and are responsible checks of those tendencies.

The Alliance is a non-profit corporation owned by its public entity members. Our individual members and their representatives on the Alliance board are committed to responsible stewardship of taxpayer dollars. The proposed changes, if adopted, will help support that commitment. I appreciate you allowing me to share the Alliance's views, and

thank you.

CHAIRMAN SCHULTZ: Thank you. Questions?

MR. KRENZEL: No questions.

CHAIRMAN SCHULTZ: Okay. Thank you, Dawn.

Susan Strickler.

Hi, Susan. Good to see you.

MS. STRICKLER: Good afternoon. Mr. Chairman, Commissioners, my name is Susan Strickler, and I am the workers' compensation claims manager for the Arizona Counties Insurance Pool, or as we call them, ACIP. ACIP represents 12 of the rural counties in Arizona, and we cover about 10,000 county employees.

ACIP supports the Commission's recommendations, and we'll be sending a letter, but I'd like to focus on two things for today. First and foremost, we are in favor of the definition of pharmacy as proposed by the Commission, because we feel that commercially available pharmacy provide additional safety and oversight for county employees.

Physicians must rely on the patient's memory and honesty informing the provider about their medications, supplements or over-the-counter medications they may be taking, and since pharmacies and are now prevalent in grocery stores, readily available in rural areas, it is likely the patient is already using the commercial pharmacy for other medication prescribed by them and their family.

The medications are usually through their group health, Medicare or other disability, and therefore, their pharmacy has a more robust history and record of the patient to reduce any potential errors or possible drug interactions. The requirement for prescription safety imposed by the Board of Pharmacy for pharmacists are usually more stringent than the requirement for physicians who dispense drugs from their office.

Of the 2,000 -- excuse me -- of the 200 physicians who saw county employees this fiscal year, only six dispensed medication from their office. These physicians only see the employee for their workers' compensation claim, and they are typically pain management or orthopedist physicians. They are not primary care physicians. The medications dispensed were only for pain management. So when county employees already used pharmacy for other medication, since group health plans, Medicare and AHCCCS actually prohibit the practice of dispensing medication for non-special fee medication.

Workers' compensation insurance is the only area that physician dispensing occurs on a regular basis. We are not saying that the medications are not important and do not help the patient, but we do feel that it is imperative for the safety of the county employees that we adopt the policies already in use by Medicare and private insurance and having commercially available pharmacies monitor, inform and protect the patient

from possible prescription conflicts or errors.

Another area, I would just like to affirm with everybody else, since our counties are rural, they don't receive the tax revenue that maybe Maricopa or Pima County does, and unlike private, self-insured companies, government entities are including from direct medical care. So we are at the mercy of these physicians and how they prescribe.

Ten percent of all medications written for county employees were from six physicians, and yet these prescriptions were 22 percent of the total pharmacy cost for this fiscal year. So this also includes the adoption of the ODG formulary. Medications received from a commercially available pharmacy were typically 31 percent less, or an average of $50 per medications. Had the medication gone through a commercially available pharmacy this year, ACIP, the counties and county taxpayers would have saved about 33 percent on prescription costs for this fiscal year that just closed.

And with that, I support the recommendation. We will be sending a letter.

CHAIRMAN SCHULTZ: Okay. Thank you. Any questions?

MR. KRENZEL: No questions.

CHAIRMAN SCHULTZ: And thank you for providing that additional data, truly. That will be in your written comments?

MS. STRICKLER: Yes, it will be.

CHAIRMAN SCHULTZ: Thank you.

Russell Smoldon.

Cut this one to two minutes, Jason.

MR. SMOLDON: Thank you, Mr. Chairman, members and staff. I'm Russell Smoldon representing the Arizona Self-Insurers Association. The Self-Insurers Association been -- was established in 1983 to provide professional development and networking opportunities to self-insured entities throughout the state, and to promote and protect the rights of public and private sector employers to self-insure.

Our members employ more 300,000 workers in Arizona. ASIA stands in support of this proposal, the 2019-2020 Arizona Physicians and Pharmaceutical Fee Schedule, and specifically, the reimbursement guidelines related to physician-dispensed medications and closed pharmacies.

Half of our membership is made up of public sector members. The cities, towns, counties, school districts. The other half is made up of private employers. Our private employers are equally concerned about this practice in that they are the largest taxpayers in the state of Arizona. And our public sector folks are trying to maintain costs every chance they get. So additional costs for schools and community colleges, the cities, counties, are something that they are desperately trying to avoid.

I -- a lot of the material that you covered, Mr. Chairman, is in the notes that I have. I would just say that nationally, medications dispensed by the physician or through a closed pharmacy have found to be 60 to 300 percent more than regular retail pharmacies. And in ASIA specific public sector members, we've seen a medication cost ranging from 9 percent to 228 percent more expensive than retail.

This trend has held true today. The cost to the same insurer that we're -- we'll identify in the -- in our written comments, the cost range from 30.47 percent to 92.15 percent are more expensive than 18 -- on 18 different types of medications.

I just also have a lot more stuff I could read, but I just want to clarify a couple things. Senate Bill 1111 was introduced in 2018 by President Fann. Then Senator Fann. But the important thing to remember was at the same time, the first month of the 2018 legislative session was inundated with opioid discussion. We were passing a comprehensive legislation that the governor's proposal bipartisan group passing opioid legislation in order to get control on the opioid epidemic.

And I can tell you from personal experience. I have a sister who passed two years ago from an overdose of opioids. I can tell you that it was -- it's rampant. I volunteer at a treatment facility. I work with addicts all the time. So I know from personal experience what happens here.

I just want to reiterate a couple of things. One, we were also dealing with a PTSD bill that had taken a lot of our time, and when the ServRX folks and the others, doctors came to us and said, hey, why don't we put this at the ICA and have the ICA to do hearings. They suggested it to us. We'll have them look through it. We think they're better -- better able to look at this than the Legislature. We were inundated with other issues, and we said, Okay. That's sounds like a great idea to us. We had no idea what the outcome was going to be. We put in our testimony, and we dealt with it in a public manner, just like everybody else had the opportunity to. And I think it's important to remember that this is only for workers' compensation. This does not impact hospitals.

It doesn't impact outpatient pharmacies, and all the other issues we were dealing with at the time, this seemed like the best forum to get to the bottom of this, as opposed to the hyperintensive kind of Legislature that we deal with where a motion's get -- running rampant. And you guys have been able to step back and look at the facts and present the facts and know exactly what these costs are, and we very much appreciate what you've done.

Not one of us has ever come to you and said this is what we want you to do or that we want you to put this into place, we want the statute put into place in the -- in the rules. We didn't do that. At least nobody from my -- my group

did. And so I just want to make that very, very clear that's where we are today, and we appreciate all your fine work, and we support you.

CHAIRMAN SCHULTZ: Thank you. Questions for Mr. Smoldon?

MR. KRENZEL: No.

MR. ASHLEY: No.

MR. PORTER: Actually, I have a question. Sorry. My timer broke.

CHAIRMAN SCHULTZ: You broke it.

MR. SMOLDON: I couldn't believe I got in under the wire.

MR. PORTER: I tried to do two minutes.

Having been involved in the stakeholder process in the legislation, were there any -- there were comments made earlier about legislative intent. Were there ever any votes by anybody in the Legislature voting no on the original proposed language, or was it just removed by a sponsor in response to stakeholder discussions?

MR. SMOLDON: I don't believe -- did we have an actual vote in committee?

AUDIENCE MEMBER: Yes.

MR. SMOLDON: I think we did have a vote in committee.

AUDIENCE MEMBER: To get it out of committee, and

then we recommended on the floor, because of the agreement that was made with Arizona Medical Association.

MR. SMOLDON: Association. Yeah. So there was one vote before we changed it on the floor and put it into the form that you have currently.

AUDIENCE MEMBER: Because it didn't have the votes to get out of the committee with it as is. Because remember, Representative Petersen, Senator Petersen, Senator Meza --

MR. SMOLDON: Yeah.

AUDIENCE MEMBER: -- were not going to vote for the bill as is.

MR. SMOLDON: Yeah.

MR. PORTER: Okay. Thank you.

CHAIRMAN SCHULTZ: Thank you.

MR. SMOLDON: Thank you.

CHAIRMAN SCHULTZ: Dr. Jeffrey Scott.

DR. SCOTT: Good afternoon. Thank you for allowing me to speak. I had a prepared presentation here, but I guess I'm just going to bypass that in the interest of time. Some of the things I was going to say have been covered.

A couple comments about your slides. The first thing is that the two drugs that you identified as problem children are both N drugs in ODG. And my understanding of the way the ODG formulary works is that if it's an N drug requires

prior authorization. So I know that I saw some HIPAA forms showing billing, but it's at the carrier's prerogative to say no. Those require prior authorization. That's the way the ODG formulary is supposed to work. And those are the two examples that you showed.

The second thing is unless you're really in the trenches, you don't know how often pharmacies do say no or say they can't get it approved. I've had a lot of direct correspondence with pharmacies where they say, Please get this authorized for us. We can't dispense it. And I could bring in a stack of paper showing that from Walgreens and CVS.

As far as data, I don't know if you've seen the NCCI study from the last month showing Arizona's cost per claim with a patient with one prescription, and it does show that there is a reduction in cost per claim with every patient that has one prescription when comparing before the ODG reforms and post ODG reforms. And this study looked at the first year of ODG implementation as only '16 and '17. I know it's in the study, too, that NCCI estimates a full 60 to 90 percent reduction in drug usage for those states that use the ODG formulary.

So I would encourage the Commission to seek out more information as far as what's happening right now, now that ODG applies to everything, all phases of all injuries, as far as the reduction and the N drugs, the compounds, the off-dose

generic medications that have been labeled as problems.

One thing do I want to also mention, too, is -- and I have a couple of examples that I saw last week where insurance companies are denying yes drugs. So these denials came over a month after the patient received their medication, and it was a yes drug, and there would have been no other way for them to receive it if it hadn't been dispensed to them.

I already heard this comment, but the study with regard to the cost of physician dispensing and the study from 2014 out of Illinois, I just think there needs to be a little more investigation as far as what the impact here is in this state, such as we've seen with the data posted last month with regard to Arizona and the impact of ODG and the formulary.

And finally, I do want to make a comment with regard to the patient that was discussed that had passed away. That was my patient. We were notified about it. We refunded it immediately, because we knew that was out of sort, and we paid the cost for that medication. It was -- it was actually sent back to us. So it was properly disposed. We -- as soon as we heard about it, we rectified the situation immediately.

Any questions?

CHAIRMAN SCHULTZ: Thank you for your diligence in that, by the way.

DR. SCOTT: Sure.

CHAIRMAN SCHULTZ: Thank you very much. Both the

refund, but also in the proper recovery and disposal of the medications. That's a huge problem.

DR. SCOTT: And also, nothing controlled, controlled substances. So fortunately I haven't heard a whole lot of that today, but there really doesn't even have to do with controlled substances, opioids, schedule IIs and IIIs and things.

CHAIRMAN SCHULTZ: Okay. Thank you. Steve?

DR. SCOTT: I'm sorry.

MR. KRENZEL: I actually just have a clarification question. I just have a clarification question, and this might just -- if you were to dispense -- self-dispense from the physician's office as opposed to -- I know you've mentioned -- and I've been there before, too, with kind of the retail pharmacies out there, and you've had a bunch of denials. I guess the way it was stated, I would take it as in the pharmacy's overriding your judgment, or is it the insurer who's not --

DR. SCOTT: Well, the pharmacy won't dispense it until they know it will get paid, which is different than the way we operate.

MR. KRENZEL: Okay. I just wanted that on record to clarify that.

DR. SCOTT: And it may not be the insurer. It may be the pharmacy benefit manager. There may by

miscommunication. It's not always the insurance company's fault.

MR. KRENZEL: Appreciate that.

DR. SCOTT: Sure.

CHAIRMAN SCHULTZ: Thank you, Dr. Scott. Appreciate it.

Okay. Next speaker, Brian Allen.

MR. ALLEN: Thank you, Mr. Chairman, Director, members of the Commission. My name is Brian Allen. I am the vice president of Government Affairs for Mitchell International in their Pharmacy Solutions Division. We are a work comp. PBM. That's all we do. We don't do any pharmacy services outside of the worker's comp. area.

This is an issue that I've worked on in a number of states. This is -- it's like deja vu all over again. I hear all the same arguments. I've heard all the same discussions. I've heard all of the same, you know, impetus to move it from the regulatory authority to the Legislature, back to the regulatory authority, and it's -- this is not an uncommon process that I've -- I've seen. I want to first of all tell you that we are in support of the bill or the proposed rule as drafted.

CHAIRMAN SCHULTZ: Reimbursement guideline.

MR. ALLEN: The reimbursement guideline, yes.

And we will be submitting written comments that

will be a lot more detailed than my testimony. You've stole a lot of my thunder with the study that you've already demonstrated, so I'm going to skip over the study part. But I did want to address a couple things. There's been a lot talk about getting rid of bad actors and how this really kind of covers everybody, and that's true. It's really, really hard to legislate against a bad actor in this environment when it's a -- it's a practice that a lot can do.

We contract already with a lot of the good actors. So those good actors that we contract with will -- they'll -- dispensing physicians will be able to continue to dispense medications under our contracted rates. We have no problem with that. It fits all within the reimbursement guidelines that you've established, and it's -- that's going to aid those good actors. It will certainly control the bad actors, which we support.

There haven't been a lot of discussion -- well, there was, I think, also discussion about a Y drug being denied, and that's very possible. If you look at the ODG guidelines, the treatment guidelines, not every Y drug is right for every injury, and if you follow the treatment guidelines, there may be some Y drugs that just aren't appropriate that would get denied at the pharmacy.

And I think the challenge that we've always had with physician dispensing is -- it's kind of the old adage that

to a hammer, everything's a nail. A pharmacy has a much broader inventory of medications that they can dispense. Physicians typically have a small cadre of medications that are available to them. And if you're a prescribing physician and you have a financial incentive to provide -- prescribe drugs in your office that you have, that you can make money on, are you always going to be choosing the very best drug for your patient, or are you going to be choosing the one that you can dispense to make money on, or are you going to write a prescription that they can take to the pharmacy? It's an ethical dilemma. I think most doctors probably do okay with that and do the right thing. But there are those bad actors that don't do that, and I think this is where this proposed guideline gets to that problem as well.

I think the other thing that hasn't been talked a lot about is in the guideline of compounds. There was a study released by WCRI in 2018. They looked at the physician dispensing reforms in Pennsylvania, and they found that by simply limiting price, just the cost of the medications, the reimbursement, those were not sustainable over time. But when you limited the time the physician could dispense, it did have an impact, and it did drive those costs down. But what they saw was the shift of compounds. And so your rule addressed that appropriately, and we want to thank you for that and show our support for that as well.

But we will be submitting comments with more

detail, and if there's, of course, any questions that you have, I'll be happy to answer them. Thank you.

CHAIRMAN SCHULTZ: Okay. Questions, Mr. Krenzel?

MR. KRENZEL: No questions. Thank you.

CHAIRMAN SCHULTZ: Thank you, Mr. Allen.

Next, Tami Creegan.

MS. CREEGAN: For the sake of time, I'm going to second that we add.

CHAIRMAN SCHULTZ: Okay. Thank you very much.

Todd Delano.

Mr. Delano, good to see you again.

MR. DELANO: Thank you all for your time. Todd Delano, Cofounder and CEO of ServRX.

ServRX is one of the country's largest billing agents or processors of workers' comp. prescription claims in the country. Today we're contracted with one in six pharmacies in the country. That includes physician dispensing, but not unique to physicians. In fact, many, many more of our contracts are typical and/or traditional pharmacies that you guys know of today.

We do business in all 50 states. We have billed hundreds of millions of dollars and will continue to bill hundreds of millions of dollars around the nation in workers' comp. prescription claims. So this is an area that we take serious. This is what we do, and this is all that we do. So we

are key stakeholders. We do keep track of what's going on around the country. And then specifically, though, here in our state, we're headquartered in Arizona. So we can be anywhere. We choose to do business in this state as a corporation. We enjoy the business climate of Arizona. We enjoy living here. And so again, we're stakeholders as residents of Arizona independent of this issue.

We were encouraged by the decision to bring this to the ICA, meaning the bill that was sent back to be reconsidered for a fee schedule recommendation. We feel that we're uniquely positioned in the marketplace to be able to consult. In fact, we think we are the most unique in the country to be able to consult with how do we solve these problems.

The disappointment came in that we were able to have a stakeholder meeting, a private meeting, but we were not able to share data with each other, and to me, a collaborative approach with both sides.

I could come up and share slides that would position physicians in a favorable light or insurance companies in a favorable light, or make injured workers look like they're the victim. That's not what this format's for. That's why knowledgeable people get together in a true stakeholders meeting where we say you have vested interest, but we're the concentric circles with the problem you're trying to solve, and how can we

do it.

For example, the insurance, the -- Copperpoint shared information that said six prescribers were the predominant prescribers in this state that led to the expenses. This is true. Number one, I'll say for every pharmacy we represent, we represent one in 1,000 prescriptions. Several in this state, grocery store chains, use us. It's 10 to 15 percent of the 1 percent that's workers' comp. that come through the doctor. Many of them are first fills. You cannot compare that data to a paying physician who's treating chronically injured patients.

So this is not the format or time to tease apart that type of data, but what I will ask is that we should be able to solve the problem if it's six or eight doctors.

We have a unique perspective in the marketplace. We've created unique solutions. We've asked to be able to attend a meeting with other stakeholders, and we've been denied that process. So this is a frustration and disappointment for me. We are in opposition to the fee schedule as it's written, but we encourage fee schedule changes.

Arizona is in the bottom quarter of expenses as a fee schedule. As a recommended fee schedule, we're doing a great job. We should continue to do a better job. We're in support of that. But we do oppose the legislation as written, and we hope that we can get together with all stakeholders soon

and come up with solutions that benefit all the stakeholders.

Thank you for your time.

CHAIRMAN SCHULTZ: Any questions?

MR. KRENZEL: No, sir. Thank you.

MR. DELANO: Thank you.

CHAIRMAN SCHULTZ: I have one question.

MR. DELANO: Yes, sir.

CHAIRMAN SCHULTZ: You said you were denied a meeting with the stakeholders?

MR. DELANO: So we were denied the opportunity to get together in a room with multiple people from all sides. That was the request from everyone I know on our side to say let's get together with the ICA, with insurers, with pharmacies, with doctors. Let's get some of the market leaders together. Let's share data openly, and let's talk about what's real, what's not, and how can we solve the problems, for which I'm in favor of. You know, this is not -- I'm pro physician. I'm pro patient. I'm pro insurance. I'm pro business. So we were not afforded that opportunity, at least from what we've been told. That's the frustration I have with the process.

CHAIRMAN SCHULTZ: We definitely would appreciate any constructive solutions you have to offer as we are looking for.

MR. DELANO: Well, my constructive solution -- I do have one ask, and I would ask that you help us coordinate a

meeting with the key prescribers that were mentioned in the slides, with the insurance companies, the key counties, with the ICA. And I want that meeting to happen, and I want us to all openly share and be pragmatic and be open and honest with each other. I promise you we'll attend that meeting. I promise you we'll be pragmatic, and we'll come up with solutions that will save the State money and that will make sure insurance companies are heard, we're heard, doctors are heard, and patients are heard. And I look forward to that opportunity, and hopefully you can help me -- help us set up that meeting. I thank you for that.

CHAIRMAN SCHULTZ: Thank you. And would you give me a call or drop me a note --

MR. DELANO: Yes.

CHAIRMAN SCHULTZ: -- please, after the meeting?

MR. DELANO: I promise to. Thank you.

CHAIRMAN SCHULTZ: Thank you.

Okay. Chad Snow. Mr. Snow, good to see you.

MR. SNOW: Chairman, members of the Commission, Director, my name is Chad Snow. I'm an attorney in private practice with the firm of Snow, Carpio & Weekley. Our firm represents more injured workers than any other firm in the state. I think I personally have represented more injured workers in the last 20 years than anybody. So I'm uniquely positioned to speak on behalf of the one thing we've never

talked about that hasn't come up in this meeting, and that's the injured workers. I'm here to speak for them.

Chairman Schultz, you had a slide that had some myths and some facts, and I want to go over our side of myth versus fact. You made a statement that you're only doing what the Legislature told you to do at the beginning, and that's belied from multiple letters of legislators from both parties who expressed shock and dismay at this action by the Commission. They said that was not what was discussed. Some of the members even of that committee.

Excuse me. You talked about physician dispensing abuse. I think that one of the slides said there was abuse by physicians dispensing medications and compounds. I talked to every -- all of the nine attorneys in my firm, several other attorneys in other firms, and not one of us has ever been told by a carrier that this is an issue. And so whatever anecdotal information you may have been given by insurance companies or self-insureds, it's flat out false. We've never been informed, as those who represent injured workers, that this is a problem. So I believe that this is a solution in search of a problem that could lead to a much bigger problem.

Those of us who represented workers back in the '90s and the early 2000s remember how difficult it was to find physicians to treat our clients, especially those with chronic pain. Doctors just didn't want to get involved. It's a pain in

the butt to represent injured workers, and so until they were able to dispense medications, doctors just didn't do it. And so I think by driving some of these doctors out, which I believe is the real intent of this, you're going to be reducing the ability for injured workers -- limiting their access to care.

The other thing I want to address is the lack of transparency here. You state that there were stakeholder meetings, and I think you mentioned they included physicians, employers and the insurance community. What's missing from that? The injured workers, what this affects at the end of the day.

Our firm and other firms representing injured workers were never consulted or informed of these meetings. We certainly would have attended. We would have put our input into it. And we specifically requested a meeting, along with Dr. Scott, with Jackie Kurth. We were denied that meeting.

MS. KURTH: Let me just add I've had coffee with Dr. Scott. I've met with Dr. Scott and talked with him on the phone, Chad, so...

MR. SNOW: Okay. Well, our meeting was denied.

And I want to just talk lastly about -- your one slide had this thing that said a violation of trust. The mission statement of the Industrial Commission is to oversee the laws related to the protection of the life, health, safety and welfare of the injured workers of the state.

I have seen nothing undertaken by this Commission in the last four years which is aimed to benefit injured workers. Every issue that you've championed lately is what is brought to you by the insurance industry, and you've carried their water without fail. I'm talking about ODG, full and final settlements, the expansion of ODG, and now trying to attack the doctors who treat our clients.

At one point a couple years ago -- I won't go into that. That to me is the real violation of trust here. There's not one thing that I can see that's been done to benefit the injured workers, the very workers that this Commission exists for. And to -- with that in mind, as the representative of the attorneys that represent these injured workers, we wholeheartedly oppose this. It will drastically limit their access to care.

Lastly, I do want to say you made a mention that injuries have gone down in Arizona over the last five years. That's been going on for 20 years. So, you know, don't pat yourselves too hard on the back for that. That's something that's just been -- that -- because of technology and all other things.

So that's all I have to say. We oppose this very strongly for those reasons. Thank you.

CHAIRMAN SCHULTZ: Thank you. Any questions?

MR. KRENZEL: Actually, I do have a question for

you. I've heard a lot from a lot of stakeholders here. Regardless the side you guys are on, and the one of the arguments is we oppose this, what the ICA is doing, and look at what we believe is the direction of the legislation. And I've heard arguments that -- so I guess I would -- just curious if anyone who has this -- this view would go on record as to say that they wouldn't be opposed necessarily to the intent of what the ICA is trying to do by protecting injured workers and looking at the fee schedule, but they're more concerned with language and intent of the legislation, translating to what we are trying to translate this to.

I see -- I guess what I'm hearing is a lot of it goes to you guys are doing something you're not supposed to be doing based on the intent of the Legislature. And forgive me for not knowing this, but has there been any proposed legislation to correct that intent, that language, if they're that sharp and appalled by what the ICA is attempting to do?

MS. SENSEMAN: I'll speak to that.

MR. KRENZEL: Thank you.

MS. SENSEMAN: Hi. My name is Kathy Senseman. I represent ServRX, a number of doctors.

To that point, there wasn't legislation because you didn't put your fee schedule out until the week after the Legislature concluded. So usually this fee schedule comes out in April, March, April, May-ish, and so we wanted to see what

that was going to be, and I made several calls to Mr. Ashley saying, Where are we at in the process? And all we got was that it was -- we're working on it. It's very complicated and, you know, we don't have anything yet. But a week after the legislative section concluded, your fee schedule came out with language that was exact -- almost exactly identical to the Senate Bill 1111 for 2018.

So we thought it was -- why would we run legislation if we didn't know what it was doing to be? Our intent from the time in 2018 when we negotiated with the Arizona Medical Association with Senator Fann and others was to remove that language, and because there was not the support. The insurance industry had run similar bills like that in multiple years. They had all been defeated. It was going to be defeated in committee. Senator Fann agreed to remove that language, and we all agreed that we would work on the bad actor situation. That's what Senator Fann testified to. That's what we all agreed to. That's what the Arizona Medical Association submitted comments to back in August of 2018.

So at no point did anyone agree to doing Senate Bill 1111 into your fee schedule. And so if that's being insinuated, that is not the understanding of the stakeholders that were part of that agreement. I was one of them. No -- at no point would anyone ever make an agreement to take language out of a bill only to say let's put it in a fee schedule. It

was to deal with bad actors. It was to deal with specifically opioid overprescriptions. It was to deal with compounds, and it was to deal with off dosages, where doctors would prescribe a dosage that wasn't in the formulary and then be able to charge a higher amount. Those were the three things we all thought we were dealing with.

When we met with Chairman Schultz, that's what we talked about in depth. We talked about PBMs and creating a system within the fee schedule that would put doctors out of business, and to force everyone into PBMs outside of the fee schedule.

So we were confident, Mr. Schultz, when we left your meeting that you understood our position and where we were coming from, and Mr. Delano that spoke earlier offered the same thing. Let's get together. Let's talk about this. We have experience from around the country that we can bring to the table. Let us know when you want to talk, and that never happened.

So I can absolutely speak to legislative intent. So that's why I think you keep hearing it, because at no point did folks that were a part of that ever agree to putting language from Senate Bill 1111 into your fee schedule. It was to deal with bad actors.

So with that, I'll be happy to answer questions.

MR. ASHLEY: Mr. Chairman, there may be some

others that would like to maybe ask questions or make comments. I just wanted to go over a couple of items.

And Kathy, I've enjoyed our conversations, and as you know, I'm accessible when you reach out to me. If I don't answer, I'm going to call you back.

MS. SENSEMAN: I appreciate it.

MR. ASHLEY: And I never want this to be an agency that we'll say that we're not going to take a meeting, and I don't believe that's occurred, to the best of my knowledge.

MS. SENSEMAN: Mr. Ashley, I would say that we did reach out to two commissioners who either didn't call us back or said they couldn't meet with us and then denied meeting with us. So we have made those attempts. Not you, Mr. Schultz. We had made attempts to meet with commissioners, and those were denied or unable to be made after they said they could.

MR. ASHLEY: Any one of our volunteer commissioners can choose to meet with whoever they want. They can choose whether it be through a schedule conflict or other issues to not be able to take a meeting for whatever purpose.

MS. SENSEMAN: I'm a gubernatorial appointee. I get it. I'm president of a board. I -- but you know, I know that when there's something controversial, I like to make every effort to meet with all sides before I consider an issue.

MR. ASHLEY: Correct. And again, our volunteer

commissioners can choose to take a meeting or if schedule conflicts prohibit that they can choose not to.

There was -- there was a reference to those who represent injured workers. Last summer some of the first groups that we reached out to were folks that we knew might have concerns about any changes to physician dispensing, and one of the earliest meetings that I recall was with AALIW, the Arizona Association of Lawyers For Injured Workers, and we have two claimant attorneys available in that meeting.

And Mr. Snow, I'm sorry that you weren't notified by the group about that meeting.

MR. SNOW: We're not members of that group.

MR. ASHLEY: And a separate request, again, you know, we're there to accommodate those requests. We are there to meet and have a dialogue, and I want to make sure that you are aware of that, and we are willing to meet. And if there was a miscommunication in the past that I'm not aware of, we're here -- we're open for that.

And there was also -- there was a reference to letters from legislators. We had three legislators here today, and I really appreciate them coming here. I have great respect, especially for Representative Cobb. I have a great deal of respect for Representative Cobb and the work we've done, as you heard earlier, with Representative Cobb.

There are legislators that we received letters in

opposition to this proposal. Those legislators are starting to retract those letters, and that's why you don't see more here today. As they learn more about this issue, those letters are starting to be retracted, and I just wanted to make that point for the record. But I also want to reiterate that we are here, and we are open and transparent. Any request -- and I offered to you four weeks ago today when we spoke, I said, I will set up a call. I will set up a meeting. And I know the response was --

MS. SENSEMAN: With whom, Mr. Ashley?

MR. ASHLEY: With our chairman. With our Medical Resource Office. With our legal team to discuss this further.

MS. SENSEMAN: Mr. Ashley, I apologize, but I don't recall that being an offer from you when we spoke.

MR. ASHLEY: It was an offer four weeks ago today, and the response was -- that you gave me, We'll see you on July 1st.

MS. SENSEMAN: I'm sorry, but that's not my recollection of it. And I'll share with you that when we talk about stakeholder process at the Legislature, we talk about stakeholders being every one at the table, not just individual meetings. We talk about -- again, as a gubernatorial appointee and the president of a board that is controversial, I spend a tremendous amount of time meeting with folks. And I appreciate you, Mr. Schultz, for meeting with us when you did. But

stakeholders meetings, when we talk about that in the legislative sense, and I would think that this board would understand that, is that you are going to put people around the table, and it's going to be uncomfortable, and it's going to be difficult, and you're going to work through it.

Individual stakeholder meetings are just -- you can't even call them stakeholder meetings. They're meetings. A stakeholder meeting and a stakeholder process to get full input is when you have everyone at the table talking and negotiating and figuring out what it is. That did not happen in this process, I'm sorry to say.

MR. ASHLEY: I appreciate that, and this room, this is a fraction of the stakeholders that are impacted by this issue. And holding select meetings where we pick and choose or maybe some stakeholders pick and choose who represents their issues, that still excludes folks, and that's why we had an auditorium session last summer just like this, a crowd of almost this size, and that's why we're here today, after the proposal's been released, to continue to get feedback.

And the record stays open. The record does not close today, folks. The record stays open for another week until the close of business on Monday, July, 8th. And then all of those comments that we received up to that day, including the transcript if it's ready -- talking to the court reporter over there -- we will have all of that posted online a week from

today.

MS. SENSEMAN: So Mr. Ashley, your assertion that there's just too many people, and it's too difficult as to why we didn't have a stakeholder meeting, because I don't -- I'm on the board of someone that has over 550 schools that they -- we regulate, and we routinely have stakeholder meetings with folks that are in excess of that number and have a much more robust process to take comments and to participate in that than what happened here. And so all we're asking for is to have a truly -- a truly open conversation with you guys about this, because I think we all --

CHAIRMAN SCHULTZ: We need to move on. We still have quite a stack here.

MS. SENSEMAN: No problem. Thank you.

CHAIRMAN SCHULTZ: Always good to see you again.

Breck Rice, please.

MR. RICE: In the interest of time, I'll pass.

CHAIRMAN SCHULTZ: Thank you. Good.

Brian Weekley.

MR. WEEKLEY: Chad Snow spoke for our firm, so I will affirm.

CHAIRMAN SCHULTZ: Good to see you, Brian.

MR. WEEKLEY: Thank you.

CHAIRMAN SCHULTZ: Thank you.

Lisa Ann Bickford.

MS. BICKFORD: I'm with Coventry, and now I'll just defer to my colleague, Brian. We're in support of the measure.

CHAIRMAN SCHULTZ: Okay. Thank you. I had --

MR. PORTER: Mr. Chairman, I understand the City of Avondale needs to leave. So accelerate those comments.

CHAIRMAN SCHULTZ: Okay. And who would that be?

MR. PORTER: I'm not sure. No. Never mind.

CHAIRMAN SCHULTZ: Okay. We're going to have to help me with -- this. Sorry. Hold back.

MS. KURTH: It's Greg Gilbert.

CHAIRMAN SCHULTZ: Greg Gilbert.

MR. GILBERT: I didn't realize my scribble was that bad. I apologize.

CHAIRMAN SCHULTZ: Back to --

MR. GILBERT: I apologize for that.

Mr. Chairman, Director, members of the ICA, thank you for having me here, and thank you for also having a public discussion on this topic.

I'm going to be very brief, because I'm going to talk about a couple things in the existing proposal that have not been discussed yet.

We're in support of the proposal as it stands today. Two sections that we'd like to see reviewed. The first one would be when this seven-day period for dispensing starts as

opposed to the date of injury. We'd like it to be the date of first treatment. We've seen that done in other states. I think it makes a lot more sense, because there's often delays with patients from the time they get injured for treatment, and I don't think your intent was to compress that seven-day period.

CHAIRMAN SCHULTZ: Thank you.

MR. GILBERT: Secondly, as a primary care provider, we dispense medications in the front line. Oftentimes we do that before the claim has been established or even determined compensable, which means there's risk involved in that dispensing. We've sent a lot of our bills through PBMs to work with the insurance companies in that process.

But one thing that we noticed in the proposal was the elimination of dispensing fee, and we ask that that not be eliminated. Our acquisition cost in many cases would be higher than the actual cost would be in the bill without the dispensing fee, and therefore, we would not be able to dispense those medications, which I don't think was your intent stated earlier in your presentation. That's it. Thank you.

CHAIRMAN SCHULTZ: Okay. Thank you.

MR. GILBERT: Questions?

CHAIRMAN SCHULTZ: Questions? Okay. Thank you.

Okay. Jeremy Merz.

MR. MERZ: Good afternoon, Mr. Chair, Commissioners. Jeremy Merz on behalf of the American Property

Casual Insurance Association. We have the largest P&C trade association in the country. We represent 70 percent of the workers' compensation insurance market.

We support the proposal that has been put forth today. We thank you for the hard, thoughtful work. It was data driven. We agree. We see this throughout the country. We've seen different states tackle it in different ways.

With the lateness of the hour and heeding the Chair's advice, I would associate my comments for the Arizona Self-Insured Associated and Copperpoint about the data and the problem. What we see here, though, is a thoughtful solution. Right? There are built-in access to physician dispensing still. We talked about first fill. We've talked about the ability for those in remote access areas to still use this process. We've talked about the exemption for the hospitals.

So we think there are thoughtful things built into this. We appreciate the hard work, and in the interest of time, again, I just say we very much support the proposal in its entirety including the other piece of the proposal dealing with the fee schedule on compounds. So thank you.

CHAIRMAN SCHULTZ: Thank you.

Beth Rau.

MS. RAU: Good afternoon, Mr. Chairman, Director Ashley and commissioners. I appreciate the opportunity to see you all again, to be here to say a few words about this. I'm

the safety risk manager for Fry's Food Stores. Been in that role for 29 years. We fortunately have the blessing to be a self-insured employer in the state of Arizona, because it truly is a blessing.

Arizona has by far the best workers' comp. system across the nation that Kroger actually resides in, and I hear that often. And I really appreciate all the efforts that you have taken on in the last four or five years. The improvements have been fantastic.

One of the things you said today which really strikes everything that I'm about is all of this has been going on, but there were no better outcomes. So my focus is on prevention, not having the associate injured. But when they do get injured, for every reason, the best solution is to get them back as quickly as possible and as close to 100 percent if not 100 percent.

That outcome -- I'm outcome driven, and the good benefit that Fry's has is we have retail pharmacies, and we guarantee first fill for our associates, even if they're in an environment where it's late at night -- we do have 24-hour pharmacies, but I'm not going to make someone drive across town. I'm going to guarantee that first fill to make sure they get the medications that they need.

Being able to direct medical care to our pharmacies as well, we don't see the abuse and the situations

that others do, and I'm constantly asked how is it that you are able to not have this happen? And it's because we can direct care, and we direct care for pharmacies as well.

If you ask who's the most -- who's the most trustworthy person in everyone's life, it's going to be your pharmacist, and a lot of that is because they have one focus, and that's to take care of their patient. The technology that we've seen, the increases and improvements in technology really helps the pharmacist determine the contraindications and really helps prevent any kind of problem.

And I'll just tell you an injured worker initially getting evaluated with pain and everything that's happened, they're not going to remember everything they're taking. Maybe the vitamins. Maybe something they just started taking a week ago. So the problems that I've heard about and listened to are real. And so I want you to know that Fry's truly supports all of the work that you've done on the fee schedule. We want to go on record as supporting that, and we're also a member of ASIA, and I appreciate all of your work.

Any questions? Thank you.

CHAIRMAN SCHULTZ: Thank you. Perfect timing, Beth.

Okay. Dr. Patel.

DR. PATEL: Sanjay Patel, M.D., and I know Jackie really well, and to the Chairman and Commissioner, thank you for

allowing us to talk.

I just want to reiterate what Dr. Scott said, and I don't want to spend much time, because I know it's getting late in the day, and everybody's getting a little tired. But a couple things.

You know, Jackie, when we had ODG guidelines implemented, I was part of helping the Commission with that process, trying to preach that message out to many doctors who feared this process, and I thought we really had stakeholder meetings at that time. We actually sat down with a variety of different doctors, applicant, defense, insurance, insurers, Industrial Commission. I thought we had good conversations, albeit nervous conversations about what was going to happen. And everybody was fearful, and it all turned out okay with all these people in that room.

So I don't think -- I haven't seen that in this process, at least myself. I've haven't had a meeting with anybody. I have just heard hearsay in looking at your website, which you are correct, it does announce and publish everything that you guys talk about.

Just a couple of quick points. ODG does have a formulary. There are yes/no drugs on that, and you know, these examples you give, many of them are no drugs. So the carrier has the absolute right and -- to be able to take those medications and not pay that fee.

So with respect to that, I get many, many denials every day regarding a medication I may prescribe. The only time I'm allowed to take a no drug is to write a medical necessity. So medical review, independent medical evaluator, ODG formulary, all have impact on what we can and cannot prescribe. So just -- there is a level in this process to manage both the cost and types of medications.

I've been in Arizona for seven years. I've never -- never prescribed compounded-type medications. We had issues with that where I came from in California, multiple issues. So I've never done that, but it always ends up showing up in the -- in discussion.

And then second -- just one last thing. Dr. Scott had mentioned this National Council For Compensation Insurance. I read through this several times, and it really shows pre- and pro-reform, again, drug tests -- drug costs. $1,216 pre-reform to current levels of close to $1,000. So there is improvement in these reforms, particularly ODG have impacted costs, and I think it will continue to benefit costs as they provide their evidence-based guidelines, which change continually in terms of all aspects of medicine.

That's all I wanted to say.

CHAIRMAN SCHULTZ: Questions for Dr. Patel?

MR. KRENZEL: No, sir. Thank you.

CHAIRMAN SCHULTZ: Okay. Thank you.

Dr. Stephen Borowsky. Good afternoon, Doctor.

DR. BOROWSKY: Good afternoon. I'm Dr. Steve Borowsky. I've been a pain medicine doctor for over 40 years. Assistant clinical professor at the U of A Medical School. I've been on the Governor's Opioid Committee. I have had a significant workers' comp practice over the years on referral only both from claimant's attorneys and defense attorneys, and sometimes jointly. So I am very familiar with that practice.

In reviewing records, I was totally amazed when I happened to come upon the in-house pharmacy issue where medications were chosen, not out of the whole multitude of available medications, but solely based on what was available in the in-house pharmacy. And then I saw records that indicated that they were going to start a trial of a new medication. Again, it was a medication that was in the pharmacy, in-house, and the trial involved a prescription for 180 pills with three refills. Hardly a trial.

So the issue appears to be not an opioid issue, but more of a license to steal. And so this becomes significant, and certainly, obviously, I approve of this proposal. When I bring this up to the medical students that I work with and mention about the fact that $12 prescriptions are charged $800 or more, they can't believe this is happening. So hopefully, with their mindset, will understand this issue and will be directed at a more reasonable approach.

This issue does not in any way limit access to care or the ability to care in any fashion. It's strictly a matter of cost, and I think you've shown that's the major issue.

CHAIRMAN SCHULTZ: Questions?

MR. KRENZEL: No, sir.

CHAIRMAN SCHULTZ: Thank you, Doctor.

Deb Baker.

MS. BAKER: Hello, lady and gentlemen. I'm Deb Baker, Work Comp. Director at Valley Schools Workers' Compensation Group. We're a self-insured group of school districts.

And first I want to say that I agree with everyone here who has spoken in support of the proposal. I'm 100 percent in support of it.

I have to tell you I'm a little shocked. Everyone in this room is a professional, and I don't believe that every speaker has conducted themselves professionally, and I felt that at times all of you were under attack. I consider that inappropriate.

And I -- just to rebut a few things, I have called many applicant attorneys to tell them that their client is getting 504 of oxycodone every 30 days. You attorneys don't know that because you don't monitor your clients. You're getting the medical reports.

AUDIENCE MEMBER: That's unprofessional. You're

wrong.

MR. SNOW: You're a self-insured. It doesn't affect you anyway.

AUDIENCE MEMBER: Exactly.

MR. SNOW: Self-insureds can direct care.

MS. BAKER: No. I'm a public entity. I said I handle school districts.

MR. SNOW: Self-insured.

MS. BAKER: I don't have -- public entity self-insureds do not --

MR. SNOW: All the other self-insureds have talked about it.

CHAIRMAN SCHULTZ: Let's move along.

MS. BAKER: Yes. I'm moving on.

I do want to emphasize as you stated so eloquently in your presentation, Chairman, we're paying claims with taxpayers' dollars. Education is so important. I don't think anyone in this room is against better education, more teachers, higher teacher salaries, smaller classrooms, and the -- the money that we're spending on claims that we don't need to spend could go to support the education of the next generation.

So that's all I have to say. Thank you.

CHAIRMAN SCHULTZ: Thank you. Questions?

MR. KRENZEL: No.

CHAIRMAN SCHULTZ: Okay. Jason Barraza.

MR. BARRAZA: Good afternoon. Mr. Chairman, Commissioners. For the record, my name's Jason Barraza with Veridus.

CHAIRMAN SCHULTZ: I'm sorry.

MR. BARRAZA: That's just fine. You were close enough.

I'm appearing on behalf of myMatrix, which is an Express Scripts company, which was recently purchased by Cigna.

I just want to thank you for this opportunity to express our support for the proposed fee schedule. For the Commission's benefit, as one of the largest pharmacy benefit management companies in North America, providing PBM services to thousands of client groups, including management care organizations, insurance carriers, employers, third-party administrators and public sector workers' compensation and union-sponsored benefit plans, myMatrix takes a strategic approach to workers' compensation to ensure safety for the injured worker while aggressively controlling costs.

MyMatrix supports the proposal and appreciates the opportunity to share that with the Commission today. We believe that the current proposal provides reasonable limits on reimbursement for repackaged and physician-dispensed prescription drugs, and we appreciate the work of the Commission on this issue.

At the Commission's direction, we will be

providing a more thorough written comment by the July 8th deadline. And again, thank you for this opportunity to publicly express our position. Thank you.

CHAIRMAN SCHULTZ: Okay. Questions?

MR. KRENZEL: No, sir.

CHAIRMAN SCHULTZ: Mr. Barraza, thank you.

Okay. We have no more speaker slips, so I'd like to now open the phone lines if we could.

MR. PORTER: Not there.

CHAIRMAN SCHULTZ: There we go. Good. Okay. Thank you.

Our first person on the phone who's indicated they want to make a comment would be Brian Conner, representing American Airlines.

MR. CONNER: Thank you, Commissioner, Mr. Chairman, Board. As one of Arizona's largest (inaudible).

COURT REPORTER: I can get him.

MR. ASHLEY: Hey, Trevor, can we get the volume up any louder than that?

CHAIRMAN SCHULTZ: Brian, can I ask you to start over when we deal with the volume here so the court reporter can get your comments, please?

MR. CONNER: Oh, sure. Absolutely.

CHAIRMAN SCHULTZ: Hang on just one minute while we try to figure out how to increase your volume.

Okay. Would you try it again, Brian? And yell at us, would you, please.

MR. CONNER: Okay. Is that better?

CHAIRMAN SCHULTZ: Yes.

MR. CONNER: Much better?

CHAIRMAN SCHULTZ: Yes.

MR. CONNER: Very good. Okay. Thank you very much.

Again, as one of Arizona's largest private employers, we have a significant stake in the policy followed by the Industrial Commission of Arizona. Therefore, we would like to communicate our support in the proposed changes to the fee schedule, limiting the circumstances which providers may dispense medication from their own office.

Safety is American Airlines' number one priority and the power of our company. Any work-related injury is paramount to American Airlines. When a work-related injury does occur, our intense focus is to ensure our team members receive prompt and adequate medical care. Our commitment to our team member is unwavering in this respect, and we do not support any changes that will undermine this commitment in any way whatsoever.

With that said, we join concerns about the changes coming from some providers who are dispensing medication from their own offices. This often results in charges

significantly greater than what the medications cost as far as the pharmacy available to the public. These mark-ups cannot be justified on any rational, understandable basis. The only beneficiary to this practice are the physicians who are bringing in (inaudible), and this has to stop.

The proposed changes to the fee schedule are consistent with what we've seen in other jurisdictions. Remember, American Airlines has 135,000 employees, and we operate workers' comp. in every state in the United States.

Under the proposal, physicians are allowed to prescribe from their office under certain provisions, but not indefinitely. Accident agreement between the provider and the payor, the payor is not required to pay for medication that the employee can easily obtain from the likes of Wal-Mart, Walgreens, CVS and so forth. The only parties harmed by this change are some providers. Employees, on the other hand, will continue to receive the medication that their injury legitimately deserves.

We applaud the Industrial Commission's efforts and sincerely hope that you will treat any objections to those changes with the appropriate (inaudible). Price gouging by a few outliers is (inaudible). Thank you.

CHAIRMAN SCHULTZ: Thank you, Mr. Conner.

Any questions for Mr. Conner?

MR. KRENZEL: No.

CHAIRMAN SCHULTZ: Okay. Thank you.

Next we have Christine Lawson from Willis Towers Watson.

MS. LAWSON: And I will support American Airlines' position and the employer voting in favor of. Thank you.

CHAIRMAN SCHULTZ: Okay. Thank you.

We have a significant list of others on the phone that I read before. Does anyone who's on the phone wish to make any additional comments? If so, would you say so now?

MS. COLWELL: Yes. This is Pat Colwell with Southwest Airlines, and I thank you, Board, for the opportunity to speak today, and I, too, would like to voice the same support as American. We are public airlines, is the largest domestic (inaudible) --

MR. TESTINI: We lost her.

CHAIRMAN SCHULTZ: You cut out, Pat.

MR. PORTER: Just invite her to submit a written comment. Oh, she did. Okay.

CHAIRMAN SCHULTZ: Yeah. Okay. Good.

Anyone else on the phone who wishes to make a comment?

MR. NORT: Chairman, members of the committee.

CHAIRMAN SCHULTZ: Yes.

MR. NORT: Can you hear me? Can you hear me? My

name is Charles Nort.

CHAIRMAN SCHULTZ: Yes.

MR. NORTON: Uh-huh. I'm president of Nevada Alternative Solutions. We're a third-party administrator throughout the tri-state area, Arizona, Nevada and Utah. I support and commend the comments throughout on both sides today, and it certainly was a robust meeting, and I wanted to -- can you hear me, sir?

CHAIRMAN SCHULTZ: Yes.

MR. NORTON: And as such, having just gone through a lengthy, although short in time, legislative session in Nevada, I can tell you the biggest -- the biggest issues that came forth were access to physicians and medication, and improving that is -- I think, is exactly what you're doing today, and I commend you for it.

CHAIRMAN SCHULTZ: Thank you.

MR. NORTON: Thank you.

CHAIRMAN SCHULTZ: Anyone else on the phone who wishes to make a comment?

If not, James would you remind folks of the process from here?

MR. ASHLEY: Yes. The record is open for another full week. It's been open for the full month. Actually, it's been open for about 13 months. But it's been open for the full month since the actual proposal has been released, and it will

be open for another week until Monday, July 8th at close of business, at which point all comments received, including the transcript from today, will be posted online.

CHAIRMAN SCHULTZ: Okay. Thank you.

So now that we've had the fun part of our meeting, the Commission does need to go through its regular agenda, but for any of those of you who have already suffered through an Industrial Commission meeting, you're free to go. I'll give you a couple of minutes, but any of you who you want to stay, we'd love to have you stay.

(End of public comments.)

* * * * *

C E R T I F I C A T E

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 90 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 8th day of July 2019.

Teresa A. Watson, RMR
Certified Court Reporter
Certificate No. 50876