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Commissioner Dale L. Schultz
Industrial Commission of Arizona
800 W. Washington Street
Phoenix, AZ 85007

Re: Comments for Public Hearing (7/29/21) on Proposed Changes to A.R.S. § 23-908(B) – Pharmacy Fee Schedule

Dear Commissioner Schultz:

We submit this letter to the Commission on behalf of our client WIRX Pharmacy in anticipation of the hearing scheduled for July 29, 2021, regarding the staff's proposed pharmacy fee schedule. Both our firm and WIRX Pharmacy want to begin by expressing our gratitude of the Commission's respect for the Arizona business community by encouraging and listening to stakeholder comments and concerns.

WIRX Pharmacy focuses on filling prescriptions for workers' compensation patients. We believe the proposed fee schedule change from AWP to NADAC will negatively impact injured workers' access to quality prescription care and limit patient choice of pharmacy. The proposed change from AWP to NADAC is alarming and presents material risk to both Arizona patients and businesses. First, NADAC will not be able to offset acquisition costs and serve as a disincentive for businesses to operate in Arizona. Also, the NADAC model relies on voluntary information from provider surveys that can be inconsistent and unreliable while AWP is known and familiar to Arizona stakeholders operating within the state's workers' compensation system. Furthermore, many prescriptions' National Drug Codes (NDCs) continue to remain unavailable for NADAC pricing, thereby adding to its unreliability and difficulty in servicing Arizona patients. Finally, NADAC does not consider the administrative burden inherent in workers' compensation that pharmacies, like WIRX, must navigate for each patient and with the proposed fee schedule, would be forced to do so at less than cost in many cases.

AWP is a reference point published by recognized national sources and does not rely on an administrative assistant at a pharmacy that completes a survey at the direction of a supervisor WITHOUT any supporting or validating information. Anecdotally, we understand some pharmacy providers are confused about the voluntary nature of the survey and complete the document from memory or without actual data in hand. Because of the methodology, NADAC does not reflect the actual cost paid by any prescription provider.

In the contrary, the AWP standard that is published and validated by two independent sources (Thomson Reuters Red Book and Medi-Span) is currently used in 49 states and has all that the ICA should need, covers acquisition costs, promotes business interest, and is an industry standard that is common and easy to utilize and understand. Many states using flat AWP or AWP Plus fee schedules enjoy reduced premiums and declining costs. AWP continues to be the nationally recognized standard and has been proven to be effective and reliable.

To emphasize the comments made by other commentors, Arizona is a model state when considering controlling costs and keeping rates/premiums low, even with its current fee schedule. In 2018, the state was considered top 10 in affordability, spending only 88 cents per \$100 on coverage, allowing savings for employers across the state.¹ In contrast, neighboring California has performed as one of the top five *least* affordable states for workers' compensation in the last decade.² Other neighboring states such as Utah have experienced success with their AWP model seeing lower rates than Arizona and many other states. In 2018, Utah was over 35% below the national average.³

We have also examined the 2020 White Paper produced by Myers and Stauffer at the Commission's request. While we believe Myers and Stauffer to be a competent and reputable firm, our understanding is that their expertise and previous work focused on Medicaid and Medicare. While they do currently use the NADAC fee schedule, Medicaid and Medicare have a very different procedural process, and as such, are not appropriate for making projections with regards to workers' compensation. Additionally, given Myers and Stauffer's background in connection with Medicaid and Medicare, they would likely have a strong bias in support of the NADAC fee schedule. We also wish to draw attention to the fact that the White Paper focuses solely on a review of pricing methodologies regarding pharmaceutical reimbursement and did not include other cost fee methodologies. Approaching cost containment on only pharmaceutical methodologies creates a limited view that does not take into account the full reality of prescription fulfillment.

Finally, the Commission staff has expressed concern about manipulation by pharmaceutical manufacturers and is seeking to address that alleged manipulation through pharmacy retailers, but such remedy is a spurious application. The current litigation by states' attorneys general against opioid manufacturers has not sought relief from the retail and specialty pharmacies that filled opioid prescriptions. Punishing retailers for supposed manipulatory practices is therefore a misdirected effort by the Commission and is neither appropriate nor fair.

We urge the Commission to reject this proposal.

If you have any questions or comments, please feel free to reach out and contact me directly at (602) 900-8562 and MBoesen@BSLawUSA.com. Thank you once again for your time.

Sincerely,



Mark D. Boesen, Pharm.D., J.D.
Attorney

¹ <https://www.nasi.org/wp-content/uploads/2020/11/November-2020-Benefits-Coverage-and-Costs.pdf>

² Id.

³ Id.