

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, June 26, 2014 – 1:00 p.m.

Present:	David M. Parker	Chairman (video conference)
	Susan Strickler	Vice Chair
	Kathleen Oster	Member
	Michael G. Sanders	Member (telephonic)
	Joseph M. Hennelly, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	William Warren	ADOSH Director
	Melinda Poppe	Chief Administrative Law Judge
	Renee Pastor	Accounting
	Kelly LeFevre	Human Resources Manager
	Rosanne Oropeza	Human Resources
	Yvonne Borunda	Legal Division
	Kara Dimas	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Tom Carroll of Maricopa County, Robert Lydford of LBBS, Ethan Hirsch and Jason Weber of Snell & Wilmer, and Jeff Homer of General Dynamics.

Approval of Minutes of June 19, 2014 Meeting

The Commission unanimously approved the Minutes of the June 19, 2014 General Session on motion of Mr. Hennelly, second of Ms. Oster.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C13/14-0746 AZ Mad Heating and Cooling, Inc.
2. 2C13/14-0668 Dave's The Dog House, L.L.C. dba Dave's Dog House aka Doghouse
3. 2C11/12-2571 Globe Construction, LLC
4. 2C13/14-1949 Healthy Fitness, L.L.C. dba Tap House Kitchen
5. 2C12/13-1902 Phoenix Marketing Associates, LLC

6. 2C13/14-1674 Scottsdale Assisted Living, L.L.C. dba Scottsdale Assisted Living, L.L.C. Phase III
7. 2C13/14-0041 Wright Remodeling, LLC

b. Approval of Requests for Renewal of Self-Insurance Authority.

1. The Wendy's Company (a Delaware Corporation)
2. Marriott International, Inc.
3. Wal-Mart Associates, Inc.

Chairman Parker asked if any agenda items needed to be removed from the Consent Agenda. Hearing none, the Commission unanimously approved the items on the consent agenda on motion of Ms. Strickler, second of Ms. Oster.

Discussion and/or Action regarding Legislation.

Scot Butler was not available today. Mr. Wade stated there was nothing to report at this time.

Discussion and/or Action regarding Residential Fall Protection and Federal OSHA's Notice of Initiation of Proceedings to Reject State Initiated Plan Change No. 133, and Reconsider Arizona's State Plan Authority under Section 18(e) of the Occupational Safety and Health Act. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(3) and (A)(4) to consult with its attorneys to obtain legal advice and to consider its position and instruct its attorneys regarding pending or contemplated litigation.

Mr. Wade stated there was nothing new to report at this time.

Discussion and Action of Arizona Division of Occupational Safety and Health (ADOSH) Discrimination Complaint.

#13-6444-30 – Lauri Kennedy vs. Chipotle Mexican Grill, Inc. – William Warren explained that this matter was previously presented to the Commission and the Commission decided not to pursue. Ms. Kennedy requested the Commission reconsider that decision. Mr. Warren summarized Ms. Kennedy's request, the original investigation, and the further investigation performed as a result of Ms. Kennedy's request for reconsideration. Mr. Warren recommended that the Commission not pursue the matter because there was no new evidence from the review to support pursuing the complaint.

Mr. Parker asked about the review process and Mr. Wade and Ms. McGrory responded to the question.

Following discussion, the Commission unanimously voted to sustain the original determination and declined reconsideration on motion of Mr. Sanders, second of Ms. Strickler.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Michael L Riddle Painting, Inc. dba Riddle Painting & Coatings	Fatality/Accident
5922 N Black Canyon Hwy	Years in Business: 31

SERIOUS – Citation 1 - Item 3 –

- a) The Company did not provide a forklift training program to its employees that consisted of a combination of formal instruction, practical training and an evaluation of the operator's performance. (1910.178(1)(2)(ii)).
- b) An employee operated a Toyota Forklift Truck Model number 8FGCU25 Serial number 32200 and the employer did not have a written certification that the employee had been trained and evaluated as required by the standard. (1910.178(1)(6)).

There one other instance of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 4 –

- a) A written hazard communication program had not been maintained for employees who were exposed in the workplace to hazardous chemicals, materials and/or substances such as Phosphoric acid 75%. (1910.1200(e)(1)).
- b) Warehouse: Totes filled with chemicals in the warehouse storage area were not labeled or marked with the identity of the chemical contained therein. (1910.1200(f)(5)(i)).
- c) Copies of safety data sheets for hazardous chemicals such as Phosphoric acid 75% were not readily accessible to the employees in their work area during each work shift. (1910.1200(g)(8)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$5,000.00

TOTAL FORMULA AMT. - \$5,000.00

Mr. Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,000.00 on motion of Ms. Strickler, second of Mr. Hennelly.

Discussion and Action regarding the Selection of Candidates for Interviews for Administrative Law Judge Positions. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(1) and (A)(3) to Discuss Selection of Candidates.

Ms. McGrory stated that Administrative Law Judge Karen Gianas has announced her retirement after more than 25 years and staff is seeking approval to promptly initiate an external posting of the position and to discuss the process. Mr. Parker summarized the discussion and noted that the position will be posted on June 27, 2014 with a first review of resumes on July 10, 2014; Ms. Poppe will review the resumes and supply the Commissioners with a summary of the candidates on July 15, 2014 for the Commission Meeting on the July 17, 2014; the Commission will select at the July 17, 2014 meeting those candidates for a first round screening interview with those interviews to take place during the following two weeks; Ms. Poppe will supply the Commission with a summary of those interviews in time for the August 7, 2014 meeting.

Ms. Poppe commented on the process related to filling the Tucson Vice Chief position.

Discussion and Action regarding the 2014 Arizona Physicians' and Pharmaceutical Fee Schedule.

Laura McGrory provided a brief summary of this year's fee schedule update process. She advised that the Commissioners had been provided a summary of the issues and comments received, along with copies of the actual comments and a copy of the transcript of the April 17, 2014, public hearing. Ms. McGrory stated that today she would present the issues and her recommendations and would ask the Commissioners to take the action they deemed appropriate. She then explained the steps that would be taken subject to the action taken today. Ms. McGrory presented the following issues:

1. Updated Values and Designation of "Add-On" and "Modifier-51 Exempt" Codes for Select Codes and Adoption of Deletions, Additions and Terminology Changes in 2013 CPT®-4.

Ms. McGrory stated that proposed reimbursement values for the codes under review, including the designation of add-on and modifier -51 exempt codes are found in tables 1 through 6 of the staff document. She also stated that the proposed value for the anesthesia conversion factor is \$58.10. She recommend that these proposed values be adopted for the 2014 fee schedule, along with the anesthesia conversion factor, the deletions, additions, and terminology changes published in the 2013 CPT®-4, and the updates to the designation of "add-on" and "modifier-51 exempt" codes. Following discussion, the Commission unanimously adopted to approve the proposed values for select codes, along with the anesthesia conversion factor, the deletions, additions, and terminology changes published in the 2013 CPT®-4, and the updates to the designation of "add-on" and "modifier-51 exempt" codes on motion of Mr. Sanders, second of Mr. Hennelly.

2. Designation of Publication for Purposes of Determining Average Wholesale Price ("AWP").

Ms. McGrory recommended the continued use of Medi-Span for purposes of determining AWP, which results in a continuation of this publication from prior years. Following discussion, the Commission unanimously approved the continued use of Medi-Span on motion of Ms. Strickler, second of Ms. Oster.

3. Methodology to Determine the Values of Codes under Review.

Ms. McGrory stated that in response to the methodology committee's recommendation to conduct an annual review of all codes, the Commission published a Request for Proposal (RFP) for a vendor based solution to calculate reimbursement values for the Arizona Physicians' and Pharmaceutical Fee Schedule based on data the vendor would collect from the seven states identified by the Commission for each code adopted. Three vendors responded to the RFP, and the selection process to review the proposals is underway. She explained that in the near future, recommendations will be made to the Commission as to whether an annual review of all codes can, or should, be implemented for the 2015 Fee Schedule. This recommendation will not impact the 2014 fee schedule.

She also stated that the methodology committee recommended that if the Commission were interested in moving to an Arizona based product (instead of relying on the seven state survey) that the Commission consider moving to the RBRVS (Resource Based Relative Value System), but not before hiring a consultant to perform a study to evaluate the impact of moving to this system. She stated that the methodology committee believed that this change could be successful if it was approached with an initial payment stabilization philosophy (to minimize swings in either direction) and used conversion factors specific to Arizona with an annual inflationary update process. She also

explained that the public comments were split on whether moving to an RBRVS system was a good idea.

Ms. McGrory recommended that the Commission take no action at this time, but that staff would publish an RFP for a consultant to evaluate the impact of moving to an RBRVS based system. In response to a question from Ms. Oster, Ms. McGrory explained that a determination of whether the Commission had the funds to pay for such a consultant would be made after responses to the RFP were received.

Following discussion and in response to these recommendations, the Commission took no action at this time

4. Update to Most Recent CPT.

Ms. McGrory explained that, under the current process, December 31st of the preceding calendar year is the review date used. She explained that the methodology committee recommended that this be pushed to January 31st of the year in which the fee schedule is published. She explained that this could result in other dates be pushed back (for example, the date of the public hearing and the effective date of the fee schedule), but with that caveat she recommended that, for purposes of updating the codes to the fee schedule, the Commission move the date of review from December 31st of the preceding calendar year, to January 31st of the calendar year in which the fee schedule is being updated. Following discussion the Commission unanimously approved this recommendation on motion of Ms. Oster, second of Ms. Strickler.

5. Review of "After Care" or "Follow-Up" Days Associated with the "Global Period".

Ms. McGrory explained the current review process regarding updates to follow-up days. She recommended that the Commission update the follow-up days associated with the global period at the same time it reviews the reimbursement value of a code. These updates are found in Table 3 under the column titled "Follow-Up Days." The Commission unanimously approved this recommendation on motion of Ms. Oster, second of Ms. Strickler.

6. Adoption of the Healthcare Common Procedure Coding System ("HCPCS") as Published by the Centers for Medicare and Medicaid Services ("CMS").

Ms. McGrory explained the authority of the Commission to set fees under found in A.R.S. §23-908(B). She explained that the statute limits the Commission's authority to fees charged by physicians, occupational therapists, and physical therapists attending injured employees and that the Commission does not have jurisdiction to set fees for suppliers or non-physician providers of medical services, which includes ambulance services, durable medical equipment, prosthetics, and orthotics when provided outside of a physician's office. She explained that the Commission cannot simply adopt the HCPCS codes, as suggested by the methodology committee, because the majority of these codes fall outside of Commission's jurisdiction. To respond, however, to the methodology's interest to streamline billing and reimbursement, as well as to enhance data analytics for supplies and materials billed under 99070, she recommended that the following new language (which is underlined) be added to the 2014 fee schedule, in the first paragraph of Section (I)(4) of the Introduction (titled Materials and Supplies and currently found on page 13):

"A physician is not entitled to be reimbursed for supplies and materials normally necessary to perform the service. A physician may charge for other supplies

and materials using code 99070¹. A physician may use an applicable HCPCS code in lieu of code 99070 if the HCPCS code more accurately describes the materials and supplies provided by the physician. Examples of those items that are and are not reimbursable are listed below.

Documentation showing actual costs associated with providing supplies and materials plus fifteen percent (15%) to cover overhead costs will be adequate justification for payment. This provision does not apply to retail operations involving drugs or supplies. Administration of drugs to patients in a clinical setting is covered under code 99070. Prescription drugs provided to patients as a part of the overall treatment regimen but outside of the clinical setting are not included under this code.”

Following discussion, the Commission unanimously approved this recommendation on motion of Ms. Strickler, second of Mr. Hennelly.

7. Standardized Billing Formats for Pharmacy Billing.

Ms. McGrory explained that the pharmaceutical work group was unable to reach a consensus on this issue, and that the public comments were split as well. She explained that based on the report of this workgroup, use of the recommended form would appear to have little impact on the bigger retail pharmacies. The impact would appear to be upon the physicians who dispense medications and the payers who are processing those bills. She recommended that no action be taken until there is broader consensus on the issue. She also recommend that the Commission continue this dialogue with the community, in particular the suggestion by PMSI that, if the Commission declines to adopt the universal claim form, that it provide guidance on the proper billing for pharmaceuticals using the CMS-1500 form. Following discussion and in response to this recommendation, the Commission took no action at this time.

8. Reimbursement Rates for Certified Registered Nurse Anesthetists.

Ms. McGrory explained the two issues raised by the Association for Certified Nurse Anesthetists. She explained that both of these issues were considered by the Commission in 2012 and that the Arizona Association of Nurse Anesthetists was engaged in the process at that time. She recommended that the Commission decline to take any action with respect to these two issues. Following discussion, and in response to this recommendation, the Commission took no action at this time

9. Pharmacy Dispensing.

Ms. McGrory summarized the three proposals presented by *U.S. HealthWorks* She recommended that the Commission take no action for the following reasons: a.) Imposition of a pre-authorization requirement for compounded drugs, and adoption of a close formulary is outside of the Commission’s authority under A.R.S. § 23-908, and; b.) Elimination of the dispensing fee for over the counter medications requires further review and public comment before the Commission should take action on this proposal. Following discussion, and in response to this recommendation, the

¹ CPT only copyright 2013 American Medical Association. All rights reserved.

Commission took no action at this time, but requested that the dispensing fee issue be presented for public comment during next year's fee schedule process.

Ms. McGrory advised that she will prepare a document which summarizes the Commission's action taken at today's meeting. This document will be posted on the Commission's website in the near future. On or about September 1st, Commission staff will post the 2014 fee schedule on the Commission's website, which will become effective October 1, 2014.

Mr. Parker commented on staff's work to prepare the fee schedule every year.

Announcements and Scheduling of Future Meetings.

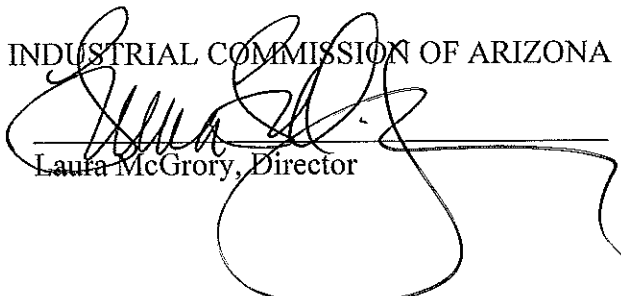
Ms. McGrory noted that the Arizona Department of Administration approved the Commission's request to address attorney salary inequities. Mr. Sanders requested a memorandum on this topic. Ms. McGrory introduced the Commission's new HR Manager, Kelly LeFevre.

Chairman Parker confirmed the dates scheduled for July and August for Commission meetings and confirmed September 11, September 18, and September 24 for future meetings.

There being no further business to come before the Commission and no further public comment, the meeting was adjourned at 2:12 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


Laufa McGrory, Director

ATTEST:


Kara Dimas, Commission Secretary