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March 24, 2025

C. T. Wilson, Chair
House Economic Matters Committee and Esteemed Committee Members

**Re: WCC LETTER OF INFORMATION
2023 ATTEMPT TO ADOPT A PRESCRIPTION FEE GUIDE
BY REGULATION**

The information below explains current pharmacy reimbursement rates and recounts our agency's unsuccessful effort in 2023 to adopt a pharmacy fee guide by regulation.

CURRENT LAW

Maryland pharmacies dispensing medication to workers' compensation patients are reimbursed at "usual and customary" rates. In practice, most pharmacies have contractually agreed to reimbursement rates so they don't need to repeatedly litigate "usual and customary" rates. A pharmacy that cannot reach an agreement with an insurance company has a hearing before the Workers' Compensation Commission to resolve their disagreement. These hearings can involve a single dose of medication or many months of prescriptions. It is important to note that these hearings do not involve the claimant: the sole issue is the rate of reimbursement and not the medical necessity for the medication (also, regardless of the outcome of the hearing, the claimant cannot be "balance billed" for their medications). A dissatisfied party can appeal the WCC Order to the Circuit Court.

WHY WE SOUGHT TO CHANGE CURRENT LAW

When I became Chair in March 2023, there was a 22 month backlog of pharmacy/insurance company disputes. In all of these instances, the petitioning pharmacy gave the Claimant the medication and litigated later. From the pharmacies' and the insurance companies' standpoint, this was an expensive way to do business. Both stakeholder groups urged our agency to adopt a prescription fee guide so that reimbursements could become a clerical function without any need for litigation.

OUR EFFORTS AND THE OUTCOME

I asked the WCC Medical Fee Guide Committee, a COMAR created advisory Committee that regulates non-hospital medical fees, to find a broad consensus in favor of a reimbursement methodology. The Medical Fee Guide Committee is composed of physicians, medical providers and attorneys for claimants, governmental entities and private insurance companies. Members were asked to educate themselves on the various methodologies used by workers' compensation systems around the country. A public hearing was held before the WCC Medical Fee Guide Committee in October 2023.

After the hearing, the members of the Medical Fee Guide were roughly evenly divided between the AWP reimbursement methodology and the NADAC reimbursement methodology. This was not the broad consensus I had hoped for. I did not believe that AELR would approve regulations changing our reimbursement method if we lacked a consensus for change. As I pondered a way forward, another event occurred which affected our deliberations. The Pennsylvania Supreme Court, in January 2024, struck down the state's AWP reimbursement methodology on grounds that the publication for looking up AWP prices was not, in fact, the average wholesale price. Let me emphasize that the problem was not the AWP methodology, the problem was there wasn't a publication anywhere in the country that published AWP prices. If we cannot look up prices in a book (or an e-subscription), we cannot implement a fee schedule. I was concerned that if we adopted AWP, our regulation would be struck down by AELR or the courts for the same reason.

A second reason weighed upon me. I also believed that both our Fee Guide Committee members and our Commissioners (including myself) lacked the public policy knowledge that should underpin any decision that could potentially disrupt markets. For these two reasons, I pressed the "pause" button on the deliberations of the Medical Fee Guide Committee.

Sincerely,



Maureen Quinn
Chair

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