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February 25, 2025

The Honorable Pamela Beidle
Chair, Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, MD 21401

Re: **SB 306** - Worker's Compensation - Prescription Drug and Pharmaceutical Services - Reimbursements - **OPPOSE**

Dear Chair Beidle, Vice Chair Hayes and Members of the Senate Finance Committee:

I am the founder and CEO of RescueMeds, a pharmacy based in Annapolis, Maryland, specializing in supporting injured workers by filling their prescriptions both before their final compensability is determined and throughout the injury lifecycle.

I write to strongly oppose **SB306**, which seeks to implement a **Fee Guide for prescription reimbursement at Acquisition Cost, (widely known as "NADAC").** This bill would impose an unsustainably low reimbursement rate, jeopardizing the ability of pharmacies like RescueMeds to continue operating. If enacted, SB306 would result in **pharmacy closures, widespread refusal by pharmacies to process workers' compensation prescriptions, and, most critically, injured workers losing access to the medications they need for recovery**. The consequences of SB306 would be devastating—not just for pharmacies but, most importantly, for the injured workers the system is designed to protect.

SB306 will eliminate competition and is an example of unfair trade practices intended to enrich insurance carriers, deprive injured workers from care, and subvert the Fee Guide Committee for a Unilateral Decision.

Workers Compensation insurance carriers are well-known for denying, declining and delaying care. Some believe such tactics will make an injured worker "give up" and walk away from their claim. Others think it's a systematic flaw that we can't do anything about. In an effort to focus on what we can agree on-
Everyone can agree that injured workers are:

1. Entitled to medical care and lost wages
2. Should have treatment quickly and efficiently
3. Should have access to providers who will give them adequate care.
4. Should be treated with respect and without retaliation.
5. Should not be cost-shifting the financial burden onto other payers like Medicaid.

The harshness of SB306 can be perceived to be part of an overall campaign to **prevent**: access to care, delay care, eliminate competition, retaliate against provider pushback, and cost-shift to Medicaid.

SB306 PREVENTS ACCESS TO CARE

Access to Care: It's important to have access to all providers (not just those "selected" by an insurance company). Acquisition Cost/NADAC is drastically low reimbursement which will effectively eliminate pharmacies such as mine in the market. It will eliminate physician dispensing and limit access to care for the injured.

SB306 DELAYS CARE

According to the Maryland Workers Compensation Annual Report, 47.5% of claims filed annually are **CONTESTED** by the insurance carrier. That means that 10,285 injured workers must go through months of hearings and aggravation in order to be given access to medical treatment. Currently, instead of waiting months or years for medical treatment, companies like mine and physicians treat and provide medications with **no guarantee of payment. We might actually receive no reimbursement at all**. The NADAC methodology **eliminates competition,** thereby eliminating the ability for these 10,285 people to get the care they need until their case is deemed compensable, delaying care**.**

SB306 ELIMINATES COMPETITION

Insurance companies deploy the assistance of Pharmacy Benefits Managers, which then reimburse the insurers in rebates from manufacturers. Such an arrangement incentivizes insurers to direct and steer patient care to their own PBM. SB306 eliminates competition in the marketplace due to reimbursement rates that are not sustainable for workers comp pharmacies or self-dispensing doctors. Such an elimination would potentially enrich insurers and their PBM's at the expense of small business and injured workers.

SB306 COST-SHIFTS THE RESPONSIBILITY OF THE INSURANCE COMPANY TO TAXPAYERS

When an injured worker is denied coverage by their workers comp insurance company, and they have no alternatives like RescueMeds or Physician dispensing, they use alternative means like Medicaid. The practice, known as "Cost-Shifting" will shift the burden of payment to the MD taxpayer, instead of the company that owes the bill.

CHESAPEAKE/IWIF REFUSING A MIDDLE GROUND

Chesapeake/IWIF have instituted a legal team and an expert to fight small providers who dispute a contracted reimbursement rate to which they are not a party. Much of these funds are taxpayer dollars. They **refuse to participate** in constructive "Pre-Trial" conferences designed to mitigate disputes, a mechanism proven to be very effective in avoiding more expensive hearings. They have **refused to cooperate** in meaningful conversation about a contract set aside between respective parties.

MD WORKERS COMP FEE GUIDE COMMITTEE RECOGNIZED NADAC WAS NOT THE SOLUTION

The Medical Fee Guide Committee (MFG) of the Worker's Compensation Commission, was tasked with examining prescription costs but has not conducted follow-up analysis since its November 27, 2023 meeting. Members were scheduled to meet on January 11, 2024, but in fact, never met. This meeting never occurred, and the Fee Guide never convened again. (See Meeting Notes here.)

In those official minutes of the MFG in November of 2023, it states, "***A suggestion was made to obtain data from surrounding states that have prescription fee guides to compare prescriptions costs* and determine what 'guardrails' might be needed if a prescription fee guide is adopted**." [Emphasis added].

We agree with this assessment. One could speculate why nothing was done because Mr. D'Alessandro (noted in the MFG meeting notes) advocated for a NADAC/Acquisition Cost Methodology. He was the only person in the notes who did so. Other experts disagreed. In fact, Mr. D'Alessandro knew at that time, that out of 50 states, zero in 2023 - and to the day of this hearing - none use "Acquisition Cost' methodology for Worker's Compensation. ***That could be the reason why this bill is before you today, he failed to convince the MFG committee to his position***. Over 35 states use an AVERAGE WHOLESALE PRICE (AWP) reimbursement mode, none use an Acquisition Cost model. See: 2024 Optum Pharmacy Guide.

There is a reason 'Acquisition Cost' aka "NADAC" has not been adopted by a large number of states. Acquisition/NADAC model does not:

1. Does not contemplate that pharmacies have vastly different "acquisition costs" or have a mechanism to account for this fact.
2. Does not contemplate/consider what happens when pharmacies are simply not paid due to dispute.
3. Does not contemplate delivery fees.
4. Does not contemplate shortages and changes in costs.
5. Does not accommodate injured workers during disputes.
6. Does not account for over 30% of meds dispensed.
7. Does not account for Mail Order or Specialty medications.
8. Does not account for Physician Dispensing.

SB306 IS UNILATERAL: STATUTORY DETERMINATION IN PRESCRIPTION REIMBURSEMENT IS NOT UNILATERAL AND REQUIRES STAKEHOLDER INPUT

SB 306 is a statutory determination that should be resolved in the regulatory process where a comprehensive workgroup with all stakeholders at the table can review what other states are doing and why. This is similar to what the Prescription Drug Affordability Board does. Maryland State Legislature has already contemplated such action and in doing so created PDAB Statute, Health Article 21-2C-07 and 08. The protocol for

determination of fee guide changes is accompanied by cost determination, affordability and transparency through a Stakeholder Council.

PHARMACIES SHOULD BE INCLUDED IN THE FEE GUIDE COMMITTEE, AS WELL AS INJURED WORKERS

Critically, no pharmacies were consulted in developing the proposed reimbursement structure, despite their central role in providing care. We strongly urge the Committee to reconvene and include all stakeholders, including:

- A pharmacy representative specializing in workers' compensation
- A Maryland resident with a Permanent Partial Disability (PPD)
- Other relevant healthcare and insurance experts

The Prescription Drug Affordability Stakeholder Council provides an excellent model for inclusive, data-driven policy decisions. SB306 should not proceed without a similar multi-stakeholder analysis to assess the true impact on injured workers and access to care. See Health Article, 21-2C-04.

The Harsh Reality For Marylanders: Denials, Delays, and Contested Cases

The workers' compensation system is already fraught with challenges, including frequent delays, denials, and contested claims:

- 87,262 First Reports Injury by an Employer of an Employee in 2023
- 21,661 Formal Claims Filed by an Injured Party
- 10,285 Contested Cases by the Carriers (Insurance Companies)
- 599 Cases Ultimately Denied by the Workers' Compensation Committee

Maryland Workers Compensation Annual Report, 2023

So what do these figures show? Here's the answer and the questions you must answer as the policymakers and guardians of taxpayer money and the rights of injured workers.

DENIALS AND FRIVILOUSLY CONTESTING INJURED WORKERS OCCURS ALMOST 50% OF THE TIME. THE RESULT IS WINNING LESS THAN 6% OF THE TIME ON TAXPAYER MONEY (for IWIF).

In workers compensation, the carrier can CONTEST an injury, which results in a CONTESTED STATUS - MEANING NO HEALTHCARE IS AUTHORIZED. This **significant GAP** in care is where small providers like RescueMeds step in to help the injured, with no guarantee of payment. The questions must be asked:

- Is Chesapeake/IWIF frivolously denying medical coverage to injured workers?
- Are these denials, delays justified?
- How much taxpayer money is being spent on attorney fees denying medical coverage, when the statics say that less than 6% (599 cases out of 10,285) of those denials involving thousands of hours to fight, are actually "successful" (aka denied claims by the Court)?
- Is it right that Chesapeake/IWIF attempts to force their contracts onto providers who are not a party to the contract? And if they do not comply, they institute policies to eliminate them?
- Is it right there has been no study, no understanding and apparently no effort to understand the net affect of eliminating providers and services to injured workers?
- Is it right that the Maryland Workers Comp Fee Guide Committee, in which multiple stakeholders, recommended further examination of the pharmacy reimbursement issue should be circumvented by SB306?

STATE MONEY SPENT ON FRIVOLOUS DISPUTES DESIGNED TO OUTSPEND COMPETITION IN LITIGATION

As a state entity run by a private company, there should be a heightened level of responsibility not to litigate frivolously. When compared to the total amounts being disputed, to the total potential benefits, the legal fees far outweigh the amount in dispute, as can be illustrated in the following: The total payments to RescueMeds in 2024 provided to me by Chesapeake and IWIF are: $16,789.32 from Chesapeake and $8,269.14 from IWIF. It seems the legal fees to fight these miniscule amounts, must be significantly more.

A full and complete audit of Chesapeake and IWIF would reveal how much they are spending in legal fees in their pursuit to eliminate competition, delay and deny care. It would also reveal exactly which company is financing these activities. The same attorney represents both IWIF and Chesapeake in court proceedings, as does the same expert. Who pays for the billable hours of the legal team? The state? Or Chesapeake? How do we know? When was the last audit? Why should the State be paying for a private entity's litigation?

Filling the Gap: The Role of Specialty Workers' Compensation Pharmacies

During this "gap" period, when insurers delay or contest liability, specialty pharmacies like RescueMeds step in to ensure injured workers receive the necessary medications.

Unlike traditional retail pharmacies, workers' compensation pharmacies dispense medications even without a guarantee of payment, often waiting months or even years for reimbursement.

CHALLENGES OF WORKERS COMP PHARMACY VS RETAIL PHARMACY

Challenge	Workers' Comp Pharmacies	Retail Pharmacies
Handle complex workers' comp cases	✅	❌
Require entire medical records for each prescription	✅	❌
Guaranteed payment for prescriptions	❌	✅
Frequent under payments from insurers	✅	❌
Payment delays (220-day average)	✅	❌
Specialization in workers' compensation claims	✅	❌
Contracted with PBMs (leading to non-payment risk)	❌	✅
Litigation costs due to denied payments	✅	❌
Frequent under short payments from insurers	✅	❌
Preauthorization limitations	❌	✅
Coordination with attorneys for appeals	✅	❌

The added burden of medical records submission, preauthorization, and follow-up with insurers makes workers' compensation pharmacy operations significantly more complex than standard retail pharmacy dispensing.

What Happens If Injured Workers Cannot Get Their Prescriptions?

If pharmacies refuse to fill workers' compensation prescriptions due to low reimbursement rates, injured workers will have limited options:

1. Pay Out-of-Pocket at AWP, or "Cash" Prices –
2. Go Without Medications – Leading to worsened medical conditions and delayed recovery.
3. Turn to Medicaid or Other Payors – Causing cost-shifting to Maryland taxpayers.

Cost-Shifting to Medicaid: An Inevitable Consequence

When injured workers are denied access to their medications under workers' compensation, they often rely on Medicaid instead. This cost-shifting directly impacts Maryland's Medicaid program, increasing expenses for taxpayers while shifting the financial burden away from insurers.

In summary,
SB306 is the result of a confluence of events, and a circumvention of stakeholder input.

February 2022 MWCC created a "prescription docket"- attendees primarily EZ Scripts, RescueMeds, Chesapeake, City of Baltimore, eliminating the traditional "Order Nici" and requiring all "Issues" or short-payments by insurance carriers to go to a Hearing.

January 2023 MD Workers Comp Fee Guide Committee (FGC) **was created.** No pharmacy or pharmacist was on the Committee. Carmine D'Alessandro CEO of Chesapeake Employers was on the Committee and expressed his will to make the Fee Guide NADAC. Disagreement ensued.

October 2023- FGC public comment was held, with the vast majority of stakeholders promoting Average Wholesale Price (AWP) as the best option.

November 2023- FGC Met and decided the matter needed further review and a study of other state's Workers Comp Fee Guides was necessary. They were to meet in January 2024.

Jan 2024- FGC meeting canceled.

Jan 2025- SB306 was introduced, with no additional study, no FGC considerations, no apparent further input or requests to address the concerns of other stakeholders. The one consistency is the 'minority of one' suggestion from the Nov. 2023 FGC proposal – 'Acquisition Cost'/NADAC.

Alignment with the Maryland Workers' Compensation Commission's Mission

The Maryland Workers' Compensation Commission's mission and vision emphasize **timely and equitable administration of benefits** for injured workers:

Mission:
"The Maryland Workers' Compensation Commission seeks to secure the equitable and timely administration of the provisions of the Maryland Workers' Compensation law on behalf of its customers, the injured workers and their employers, by providing an efficient forum for the resolution of individual claims."

Vision:
"The Workers' Compensation Commission envisions a state wherein injured workers and employers are empowered to create an equitable partnership to facilitate prompt and fair resolution of workers' compensation matters."

By **drastically cutting pharmacy reimbursements, SB306 contradicts these principles**, introducing new barriers to care instead of facilitating access for injured workers.

Understanding Workers' Compensation: The "Grand Bargain"

Workers' compensation was created as a **mutual agreement**—a **"Grand Bargain"**—to protect **injured workers while limiting employer liability**. This system involves multiple stakeholders, including **Commissioners, insurers, Pharmacy Benefit Managers (PBMs), Third-Party Administrators (TPAs), vocational rehabilitation providers, physicians, attorneys, and pharmacies**, all of whom collaborate to provide care for Maryland's injured workers.

The system is inherently **complex and highly litigious**, meaning even minor changes can **trigger significant, unintended consequences** for patient care and access.

Lack of Justification for SB306

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There is **no data-driven justification** for the drastic reimbursement cuts proposed in SB306.

- **No studies have demonstrated that prescription costs are a burden to insurers.**
- **No evidence has been provided to show prescription coverage is driving up workers' comp insurance rates.**
- **The state's largest insurer, Chesapeake Employers Insurance Fund, has seen a 37% rate decrease and recently returned over $50 million in excess funds to policyholders, there is no evidence to suggest prescription costs are causing harm.**
- **Their legal fees to contest cases where they only prevail in 5% of the cases may well exceed any of the amounts they pay to my company RescueMeds.**

Conclusion: A Call for Sensible Policy

SB306, as written, threatens the **viability of workers' compensation pharmacies, the stability of the system, and—most critically—the health and well-being of Maryland's injured workers**.

We **strongly urge the Committee to reject SB306** and instead engage **all stakeholders** in a transparent, data-driven analysis of workers' compensation pharmacy reimbursement.

Please review my attached suggested reasonable and compromise Amendments to SB 306 that will provide the guidance and 'guardrails' for the Workers' Compensation Commission to produce the best policy outcome for all Marylanders.

Thank you for your time and consideration.

Colleen Shields

Sincerely,
Colleen Shields
Founder & CEO
RescueMeds LLC