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VIA ELECTRONIC SUBMISSION

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

Re.: Opposition to Senate Bill 306

Dear Sir/Madam:

My name is Brennan McCarthy, and I have been an attorney in Maryland since 1999. I am also barred in the United States District Court for the District of Maryland, the United States District Court for the District of Columbia, the United States Tax Court, the United States Court of Appeals for the District of Columbia Circuit, the United State Court of Appeals for the Fourth Circuit and the Supreme Court of the United States. In my career as an attorney, I have tried hundreds of cases in all areas of law, including family law, criminal defense and business torts. Since 2013, I have represented pharmacies before the Maryland Workers' Compensation Committee ("WCC") for reimbursements. I initially represented Injured Workers' Pharmacy ("IWP"), and I currently represent EZ Scripts and RescueMeds.

These hearings before the WCC have taken a familiar tone. My clients are reimbursed based on a "contract" rate with these carriers, yet do not have any such contract. They bring issues before the WCC, and at hearing the carriers provide various hypothetical reimbursement models including GoodRX, a coupon service that reflects co-pays, National Drug Acquisition Cost ("NADAC"), an ingredient-based model for the cost of drugs, and CostPlus, a drug manufacturer based in Dallas, TX that ships low-cost generic drugs that operates currently at a steep loss. None of these are the basis of the short pays rendered by these carriers to my clients, and none of these models reflect a typical reimbursement rate to a pharmacy. As an example, GoodRX prices reflect the amount the individual pays as a co-pay to a retail pharmacy, but on the "back end" of this transaction is a PBM payment to the pharmacy, with GoodRX taking a service fee for the transaction. My clients are not retail pharmacies.

In preparing for this area of practice, I have studied various reimbursement models for pharmacies in the injured workers space, and have represented my clients in thousands of claims

against Chesapeake Workers' Insurance/IWIF, and to a lesser extent the City of Baltimore. These three (3) entities are the sole insurance providers that contest reimbursement rates. An occasional case will arise wherein the other 80 carriers in the State may contest a prescription, but this is usually based on an argument that the drugs shipped are unnecessary, not within the ambit of the injured worker's award, etc. Further, all but these three (3) insurance carriers primarily reimburse my client at Average Wholesale Price ("AWP") as set forth in Medispan and Red Book and often at plus 20%. It is important to note that the objection to pricing comes solely from Chesapeake/IWIF and the City of Baltimore in almost all cases. Further, the vast majority of prescriptions paid by these entities through their Pharmacy Benefit Managers ("PBM's") for pharmaceuticals is to in-network pharmacies at a contract rate, with the carriers paying the PBM at their own rate (usually AWP - .19%), with the PBM keeping the "spread." Thus, payment is through a third party PBM, and the difference between what is paid by the PBM and the reimbursement from the insurance carrier for that drug to that PBM is the PBM's profit.

I have also noted that my clients provide a unique and beneficial service for injured workers in the State of Maryland. Their model is based on the receipt of a prescription from a doctor, and the shipping of that prescription directly to the patient. My clients then seek reimbursement from the insurance carrier as an out-of-network provider. This doctor to patient model stands in direct contrast to the model employed by insurance carriers, which involves provision of prescriptions by a doctor to the carrier, a review of the pharmaceuticals prescribed by the carrier and/or the PBM, and approval or disapproval of the prescription upon review. This costs crucial time for any patient who should be receiving their medications, and places the injured worker's health in limbo while their medications are subjected to this review process. While this assures a maximizing of profits for the carrier, the needs and health of the patient are more often than not held hostage to the process itself. No patient's health should be placed on hold and at risk for a review process by an insurance carrier.

I have reviewed State Senate Bill 306, and its proposal to fix the price for reimbursement at acquisition cost of a drug plus an undefined dispensing fee. I have spoken to my clients, and while they do not oppose a reimbursement fee schedule for pharmaceuticals, the model proposed is radically low. Such a low reimbursement rate would adversely affect smaller pharmacies, including my clients, who ship prescriptions to injured workers in the State of Maryland. In other words, and in my opinion, this would drive any pharmacy, and particularly smaller community pharmacies, out of this space and would adversely affect care for any injured worker making claims under the Labor & Employment Article. It is an example where a bad result comes from the very best of intentions. Moreover, this would artificially place the patient in a market with fewer options, as smaller independent pharmacies would simply refuse to fill prescriptions to injured workers, and the entire control of their care would lie on the hands of the carrier. While the patient can certainly file "issues" before the WCC, this takes time while the patient is not receiving pharmaceuticals to ensure they are healed from their injuries.

My clients are not adverse to a fee guide for pharmaceuticals, but the manner in which this bill has been proposed is not the proper manner for this to be addressed. Currently, Maryland Code, Labor & Employment § 9-663 requires that "[e]ach fee or other charge for medical service or treatment under this subtitle is limited to the amount that prevails in the same community for similar treatment of an injured individual with a standard of living that is comparable to that of the covered employee" and further requires that the WCC review its medical fee guide every two years for completeness and reasonableness. The law proposed is unnecessary, and the WCC can meet its obligations for review through a study that involve bringing together the parties and material experts that would be most affected by such a guide, including pharmacies, carriers and PBM's, to identify what a fair fee guide should be moving forward. I would note that 36 states use AWP plus or minus as their reimbursement model. Yet in the states that I have reviewed, each of these formulas were reached following a robust debate and study process, which included pharmacies who are uniquely positioned to address the particular challenges in their industry.

The WCC in fairness attempted this in 2023, including an acquisition-based reimbursement system, and could not reach a conclusion. During one memorable meeting, stakeholders, including PBM's and pharmacies, voiced their opposition and reasoning in opposing an acquisition-based reimbursement system. Of particular note, the WCC fee guide committee did not contain a single pharmacy or pharmacy expert as a participant. It was thus fatally flawed from the outset. This can be easily remedied moving forward with the recommendations I have set forth *supra*. This can also act to make the model for reimbursement one that takes into account the complex issues in the workers' compensation space, increases and maintains competition, and avoids cost shifting to government programs, such as Medicaid, that often accompanies low drug reimbursement and subsequent refusal by pharmacies to ship prescribed drugs to injured workers.

In conclusion, the considerations for a fee guide are not so simply applied, and material expertise is absolutely required to come up with a fair system for reimbursement grounded in financial realities within the industry. This assures an approach with set fees for pharmaceuticals that are based on all of these considerations. It further provides for the very best of health outcomes for injured workers, who are free to receive their medications from a pharmacy of their choice while avoiding the attorney fees incurred by the carriers and pharmacies involved and frustration incumbent with the current pharmacy docket system being litigated every month before the WCC between my clients and primarily three (3) insurance carriers.

Thank you for your kindly consideration.

Respectfully,

/s/ Brennan C. McCarthy

Brennan C. McCarthy

BCM