July 31, 2024

By Email To: Commissionsecretary@iic.idaho.gov
Idaho Industrial Commission
11321 W. Chinden Blvd.
Building #2
Boise, ID 83714

RE: Negotiated Rulemaking Comments – 17.01.01.803 Medical Fees

Dear Ms. K. Slay,
We appreciate the opportunity to provide feedback on IDAPA 17.01.01, the Administrative Rules Under the Workers' Compensation Law. Healthesystems is a pharmacy and ancillary benefit manager supporting large national carriers, regional insurers, self-insureds, state insurance funds, and third-party administrators. We will focus our comments on physician dispensing and billing timeliness.

Physician Dispensing Limits
The current medical fee schedule rules permit the practice of physician dispensing, and we urge the Commission to implement rules to limit this practice. Although physician dispensing might offer convenience for some patients, it presents risks to patient safety, quality of care, and cost containment. Healthesystems aims to ensure that injured workers have access to their medications from the start of their claim, but we also see the value pharmacies and pharmacist have on patient care. Pharmacists and pharmacies fill the safety gaps physician offices cannot by ensuring patients take their medications properly and educating patients about safety risks. By excluding pharmacists from the dispensing process, patients are deprived of essential safeguards, including checking for drug interactions, therapy duplications, and overall medication management. These safeguards are integral to proper treatment and are often overlooked in physician dispensing.

In recent years, states across the country have been proactive in limiting physician dispensing as they have recognized this practice to be both dangerous and costly.

- Texas[1] and Montana[2] have similar laws which prohibit physician dispensing to injured workers unless there is no pharmacy accessible to the patient or the patient is in imminent harm without the medication. While Arizona[3], New Mexico[4], and Oregon[5] have established a general day supply limit for physician dispensed medications.
- Pennsylvania[6], South Carolina and Colorado[7] all require the use of a pharmacy at first, or after, initial fill.

In its reports to the Commission in 2021 and 2023, the National Council on Compensation Insurance highlighted the dangers of the concurrent use of benzodiazepines with opioids, noting a 5% higher

[1] Texas OCC §158.003. Dispensing of Dangerous Drugs in Certain Rural Areas
[2] Montana §37-2-104. Dispensing of drugs by medical practitioners -- registration -- exceptions
[3] Arizona 2022 Pharmaceutical Fee Schedule Guidelines Section VII pg. 17
[4] New Mexico 11.4.7.9.D(6) Fees For Health Care Services
[5] Oregon 436-009-0090 Pharmaceutical
[6] Pennsylvania 77 Pa. Stat. § 531 Surgical and medical services and supplies;
[7] Colorado Rule 18 Medical Fee Schedule, Drugs and Medications

payment distribution for controlled substances compared to regional and nationwide payments. Additionally, the National Institute on Drug Abuse[8] found in 2021 that nearly 14% of overdose deaths involving opioids also involved benzodiazepines.

Limiting physician dispensing is crucial for medications such as opioids and other scheduled controlled substances, which demand ongoing monitoring and reassessment to ensure patient safety.

For the above-mentioned reasons, we recommend the following language:

Section 803. Medical Fees – 02. Acceptable Charges for Medical Services Provided by Physicians Under the Idaho Worker's Compensation Law – f. Medicine Dispensed by Physicians:

- *Medications dispensed outside a pharmacy, shall be limited to a one-time 7-day supply and only within 7 days of date of injury. For medications dispensed after the initial visit or greater than 7 days past the date of injury, these shall be dispensed by a licensed pharmacist in a pharmacy that is accessible to the general public. Exceptions to this rule are:*
    - *I. The injured worker does not have access to a retail pharmacy within 15 miles of their home or work address; or*
    - *II. Emergency treatment where the injured worker would be placed at higher risk if medications did not begin immediately upon departure of the physician's office.*

Reimbursement for Medicine Dispensed by Physicians

We would also like to express our support in amending the reimbursement policy for physician dispensed medications; however, we find the draft language added to paragraph f. Medicine Dispensed by Physicians presented during the July 29th negotiated rulemaking meeting to be ambiguous:

- Reimbursement to physicians for any drug or topical agent, including over-the-counter (OTC) shall not exceed the acceptable charge calculated for that medicine as if provided by a Pharmacy under Subsection 04 of this rule without a dispensing or compounding fee. Reimbursement for any drug or topical agent for which a significant lower-cost therapeutic equivalent is available, including over-the-counter (OTC), shall be limited to 50% above the cost of the therapeutic equivalent. Reimbursement to physicians for repackaged medicine shall be the AWP for the medicine prior to repackaging, identified by the National Drug Code (NDC) reported by the original manufacturer. Reimbursement may be withheld until the original manufacturer's NDC is provided by the physician.

We recommend the following underlined language:

- Reimbursement to physicians for any drug or topical agent, including over- the-counter (OTC), shall not exceed the *lesser of* acceptable charge, *excluding a dispense fee*, calculated for that medicine as if provided by a Pharmacy under Subsection 04.0, *or 150% of the AWP for the lowest-cost therapeutic equivalent drug.* Reimbursement to physicians for repackaged medicine shall be the *lesser of* the AWP for the medicine prior to repackaging, identified by the National Drug Code (NDC) reported by the original manufacturer *or 150% of the AWP for the lowest-cost therapeutic equivalent drug.* Reimbursement may be withheld until the original manufacturer's NDC is provided by the physician. *Physicians who dispense medications shall not receive a dispense or compounding fee.*

[8] Benzodiazepines and Opioids | National Institute on Drug Abuse (NIDA) (nih.gov)

We believe the proposed language effectively clarifies reimbursement for physician-dispensed medicines, ensuring it does not exceed the reimbursement a pharmacy would receive and closing any existing loopholes. However, our primary concern with the current draft language is the phrase “significantly lower-cost therapeutic equivalent,” which is ambiguous. This could be interpreted to mean that the Average Wholesale Price (AWP) is low enough that adding 50% to the significantly lower-cost therapeutic equivalent still results in a value less than the AWP of the dispensed drug. To eliminate the need for defining “significantly lower-cost therapeutic equivalent,” we recommend adopting the standard "lesser of" language found in many workers' compensation fee schedules. This approach would achieve the same objective with greater clarity.

Additionally, we recommend applying the same reimbursement methodology to repackaged drugs. This would close costly loopholes that may be exploited with repackaged drugs to bypass the reimbursement cap the Commission intends to establish. While our recommendation may not fully resolve the pricing issue for unique strength drugs and other medications commonly used solely in workers’ compensation, it will address the majority of high-priced, physician-dispensed drugs.

Billing and Payment Requirements

We strongly support the Commission’s intent to establish a 12-month timely filing period for submitting medical bills. The current 120-day filing timeline only restricts providers from using the Commission's dispute resolution process; it does not prevent the submission of outdated medical bills. Implementing a definitive timeline for reimbursement eligibility will reduce the frictional costs associated with payers receiving medical bills years after a claim file has been closed.

Healthesystems appreciates the Commission's commitment to valuing stakeholder input and providing the opportunity to submit comments during the rule proposal draft process. We are available to answer any questions or provide further information related to our recommendations.

Sincerely,

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