



California Workers' Compensation Institute

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June 30, 2020

VIA E-MAIL – DWCForums@dir.ca.gov

Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
Attn: DWC forums
c/o Maureen Gray, Regulations Coordinator

Re: Comments on Proposed Revisions to the Pharmaceutical Fee Schedule

Dear Ms. Gray:

On behalf of its members, the California Workers' Compensation Institute (the Institute) offers these comments on the proposed revisions to the Pharmaceutical Fee Schedule Regulations. The Institute members include insurers writing 83% of California's workers' compensation premium, and self-insured employers with \$65B of annual payroll (30% of the state's total annual self-insured payroll).

Insurer members of the Institute include AIG, Alaska National Insurance Company, Allianz Global Corporate and Specialty, AmTrust North America, AXA XL Insurance, Berkshire Hathaway, CHUBB, CNA, CompWest Insurance Company, Crum & Forster, EMPLOYERS, Everest National Insurance Company, GUARD Insurance Companies, The Hanover Insurance Company, The Hartford, ICW Group, Liberty Mutual Insurance, North American Casualty Company, Pacific Compensation Insurance Company, Preferred Employers Insurance, Republic Indemnity Company of America, Sentry Insurance, State Compensation Insurance Fund, Travelers, WCF National Insurance Company, Zenith Insurance Company, and Zurich North America.

Self-insured employer members include Albertsons/Safeway, BETA Healthcare Group, California Joint Powers Insurance Authority, California State University Risk Management Authority, Chevron Corporation, City and County of San Francisco, City of Los Angeles, City of Pasadena, City of Torrance, Contra Costa County Risk Management, Costco Wholesale, County of Los Angeles, County of San Bernardino Risk Management, County of Santa Clara Risk Management, Dignity Health, East Bay Municipal Utility District, Foster Farms, Grimmway Farms, Kaiser Permanente, Marriott International, Inc., North Bay Schools Insurance Authority, Pacific Gas & Electric Company, Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Shasta-Trinity Schools Insurance Group, Southern California Edison, Special District Risk Management Authority, Sutter Health, University of California, and The Walt Disney Company.

Recommended revisions to the proposed regulation are indicated by underscore and ~~strikeout~~. Comments and discussion by the Institute are identified by *italicized text*.

Recommendation:

Section 9789.13.2 Physician-Administered Drugs, Biologicals, Vaccines, Blood Products.

(a) Physician-administered drugs, biologicals, vaccines, or blood products are separately payable.

(1) Vaccines shall be reported using the NDC and CPT-codes for the vaccine. Other physician-administered drugs, biological and blood products shall be reported using the NDC and HCPCS Level II code assigned to the product.

(2) The maximum reimbursement shall be determined using the “Basic Rate” for the HCPCS code contained on the Medi-Cal Rates file for the date of service. The Medi-Cal fee schedule reimburses drug products, vaccines and immunizations at the Medicare rate of reimbursement when established and published by the Centers for Medicare & Medicaid Services (CMS) or the Medi-Cal pharmacy Pharmaceutical Fee Schedule rate of reimbursement when the Medicare rate is not available. The Medicare rate is currently defined as average sales price (ASP) plus 6 percent. The Medi-Cal pharmacy rate has been defined as the lower of (1) the average wholesale price (AWP) minus 17 percent; (2) the federal upper limit (FUL); or (3) the maximum allowable ingredient cost (MAIC). Pursuant to the Medi-Cal State Plan Amendment 17-002, the Medi-Cal pharmacy drug ingredient cost is modified to be defined as the lower of (1) National Average Drug Acquisition Cost (NADAC) or Wholesale Acquisition Cost (WAC) if a NADAC price does not exist, (2) Federal Upper Limit (FUL), or (3) the Maximum Allowable Ingredient Cost (MAIC). The modified drug ingredient cost will be implemented for workers’ compensation prospectively as set forth in sections 9789.40.4 and 9789.40.5 for pharmaceutical products dispensed on or after XXX XX, 2020 [60 days after the amendments are filed with the Secretary of State. Date to be inserted by OAL].

(3) The “Basic Rate” price listed on the Medi-Cal rates page of the Medi-Cal website for each physician-administered drug includes an injection administration fee of \$4.46. This injection administration fee should be subtracted from the published rate because payment for the injection administration fee will be determined under the physician fee schedule. See section 9789.19 for a link to the Department of Health Care Services’ Medi-Cal rates file.

(4) For a physician-administered drug, biological, vaccine or blood product not contained in the Medi-Cal Rates file referenced in subdivision (a)(2), the maximum reimbursement is the amount prescribed in the Pharmaceutical Fee Schedule applicable to physicians as adopted by the Division of Workers’ Compensation in sections 9789.40, 9789.40.4, or 9789.40.5 and posted on the Division website as the Pharmaceutical Fee Schedule. See section 9789.19 for a link to the Division of Workers’ Compensation Pharmaceutical Fee Schedule.

Discussion:

The proposed language in §9789.13.2 is confusing as written. The Institute recommends removing the date defined explanations of the Medi-Cal reimbursement methodology. Reference

to the Pharmaceutical Fee Schedule, which is further clarified under subdivision (4) provides greater clarity for physician-administered drugs that are not included in the Medicare ASP rate files.

Recommendation:

Add a list of definitions to section §9789.40.1 to include unfamiliar terms: Legend and Non-Legend, Unfinished Drug Products.

Discussion:

The Institute recommends the addition of definitions for terms that may be unfamiliar to industry stakeholders who must understand Pharmaceutical Fee Schedule coverage and requirements.

Thank you for the opportunity to comment, and please contact us if additional information would be helpful.

Sincerely,

Stacy L. Jones

Stacy L. Jones
CWCI Senior Research Associate

SLJ/me

cc: George Parisotto, DWC Administrative Director
Katrina Hagen, DIR Director
CWCI Claims Committee
CWCI Medical Care Committee
CWCI Regular Members
CWCI Associate Members