

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Telephonic Meeting
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, July 29, 2021 – 1:00 p.m.

Present: Dale L. Schultz	Chairman (Telephonic)
Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
Scott P. LeMarr	Commissioner (Telephonic)
D. Alan Everett	Commissioner (Telephonic)
James Ashley	Director (Telephonic)
Gaetano Testini	Chief Legal Counsel (Telephonic)
Jason M. Porter	Deputy Director (Telephonic)
Trevor Laky	Legislative Affairs Chief/Public Information Officer (Telephonic)
Charles Carpenter	MRO Manager (Telephonic)
Renee Englen	MRO Admin (Telephonic)
Renee Pastor	Self Insurance (Telephonic)
Jessie Atencio	ADOSH Director (Telephonic)
Steve Black	ADOSH Compliance (Telephonic)
Ron Mills	ADOSH Compliance (Telephonic)
Hans Schmidt	ADOSH Compliance (Telephonic)
Anna Maria Stonerock	ADOSH Admin (Telephonic)
Kara Dimas	Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance on the telephone, confirmed by roll call were Nicola Bauman (Court Reporter); Joshua Schultz (representing U & I Utility & Industrial, LLC); Pat Riordan and Chelsey Markel (PRJ Development, LLC dba Riordan Framing); Andre Merrett (Thorpe Shwer, PC representing Trafficade Service, Inc); Christopher Dang and Nick Mesa (Quarles & Brady representing RxDevelopment and ServRx); Deborah Baker (Valley Schools WC Group); Brian Allen (Mitchell Pharmacy Solutions); Mike Colletto (Professional Fire Fighters of AZ); Todd Delano (ServRX, Inc.); Laura Clymer (Brian Clymer Attorney at Law representing AALIW); Steve Bennett (APCIA); Emily Rice (Arizona Self Insurers Association); Brett Barratt (NCCI); Julie Sexton (Corvel); and Kevin Tribout (Optum).

Public Hearing regarding the 2021-2022 Arizona Physicians' and Pharmaceutical Fee Schedule established under A.R.S. § 23-908(B).

Chairman Schultz welcomed interested parties to the public hearing and noted the public hearing gives stakeholders another opportunity to comment on staff proposals regarding the 2021/2022 Arizona Physicians' and Pharmaceutical Fee Schedule and the recommendations for changes to the Fee Schedule. He noted the Staff Proposal has been posted on the Commission's website for the last month.

Mr. Carpenter reviewed the ten items in the staff proposal.

Chairman Schultz thanked Mr. Carpenter and Ms. Englen for their efforts on the review, time with stakeholders and reviewing information from other states and other repayment systems

before making the complex and valuable proposal. He thanked everyone for being on the call and addressed a few issues that were raised in the written comments regarding NADAC.

The following attendees addressed the Commission during the Public Hearing: Christopher Dang and Nick Mesa (Quarles & Brady representing RxDevelopment and ServRx); Deborah Baker (Valley Schools WC Group); Brian Allen (Mitchell Pharmacy Solutions); Mike Colletto (Professional Fire Fighters of AZ); Todd Delano (ServRX, Inc.); Laura Clymer (Brian Clymer Attorney at Law representing AALIW); Steve Bennett (APCIA); Kevin Tribout (Optum) and Emily Rice (Arizona Self Insurers Association).

At the conclusion of the testimony, Chairman Schultz noted that the record will remain open for written comments until the close of business on August 5, 2021. Comments received by the Commission will be placed on the Commission's website, including the transcript from today.

A written transcript of the Public Hearing is attached hereto.

Approval of Minutes of July 15, 2021 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the July 15, 2021 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2CNP20/21-0683 Brent P Brooks dba Brookings Senior Living \$1,000
2. 2CNP20/21-0681 Inge's Uniquely Warm Assisted Living LLC \$1,000
3. 2CNP20/21-0680 North Star Adult Care Home LLC \$1,000
4. 2CC20/21-0145 Arizona's Heating & Cooling Doctors LLC \$5,000

b. Approval of Requests for Renewal of Self-Insurance Authority.

1. Dole Food Company, Inc.
2. Hyatt Corporation

Vice Chair Hennelly moved to approve the items on the Consent Agenda and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

a) 4429 HWY 89, Flagstaff, AZ 86004: Two employees were using a 24 ft. fiberglass extension ladder, brand, model and serial numbers unknown, that did not extend three feet beyond the landing. 29 CFR 1926.1053(b)(1)

Div. Proposal - \$1,000.00	Formula Amt. - \$1,000.00
TOTAL PENALTY - \$4,000.00	TOTAL FORMULA AMT. - \$4,000.00

Mr. Atencio noted Mr. Mills, the Compliance Officer was available for questions and discussed ADOSH's investigation, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Schultz thanked Mr. Atencio for the reminder to add the base when determining ladder safety.

Chairman Schultz checked if anyone on the phone would like to comment.

Ms. Markel joined to hear what was proposed and also had a question about lowering the fines as this was the company's first offense, and asked about the process.

Chairman Schultz let Ms. Markel know if she had records of employees being trained for fall protection, that also helps Mr. Atencio when they calculate the penalty, if there are any records of their training to please share with Mr. Atencio.

Mr. Atencio explained the process forward.

Mr. Atencio also discussed a connection for a VPP Program and mentorship and help from other companies in the surrounding communities to get better with safety.

Commissioner LeMarr moved to approve the citation and proposed penalties as presented and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Chairman Schultz thanked Mr. Atencio for the ADOSH Compliance Report.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley commented on new features for stakeholders in the ICA Community Portal allowing the ability to receive individual rather than combined new claim notifications. Also, a courtesy fax communication tool allowing carriers and the self-insured community flexibility to have communications sent to up to 20 fax numbers to assist in the distribution of Claims and ALJ notices to allow for more timely receipt by the carriers, self-insured and third-party adjustors.

Chairman Schultz noted it is a terrific tool for out-of-state adjustors and third-party adjustors to be able to get notices internally to begin focusing on loss prevention and claims at the same time and up to 20 is amazing to be able to send local, regional or national and move the process along.

Ms. Dimas confirmed Commission meeting dates through September 2021.

Chairman Schultz welcomed Commissioner Everett to the Commission.

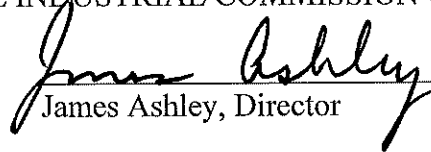
Public Comment.

There was no other public comment.

Vice Chair Hennelly moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 3:12 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary

INDUSTRIAL COMMISSION OF ARIZONA

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REMOTE PUBLIC HEARING REGARDING THE 2021-2022
ARIZONA PHYSICIANS' AND PHARMACEUTICAL FEE SCHEDULE

* * * * *

July 29, 2021
1:00 p.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Prepared For:
INDUSTRIAL COMMISSION OF ARIZONA

Prepared By:
Nicola Bauman, CCR
Certified Court Reporter
AZ Certificate No. 50830

Perfecta Reporting
602.421.3602
CRRF No. R1071

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THE PUBLIC HEARING REGARDING THE 2021-2022
ARIZONA PHYSICIANS' AND PHARMACEUTICAL FEE SCHEDULE was
reported remotely by Nicola Bauman, CCR, Arizona
Certified Court Reporter No. 50830, in and for the State
of Arizona.

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COMMISSION MEMBERS PRESENT VIA TELECONFERENCE:

Dale L. Schultz, Chairman
Joseph M. Hennelly, Jr., Vice-Chairman
Scott P. LeMarr, Commissioner
D. Alan Everett, Commissioner

STAFF MEMBERS PRESENT VIA TELECONFERENCE:

James Ashley, Director
Gaetano Testini, Chief Legal Counsel
Trevor Laky, PIO and Legislative Affairs
Jason Porter, Deputy Director
Charles Carpenter, Medical Resource Office Manager
Renee Pastor, Self-Insurance
Jessie Atencio, ADOSH Director
Steve Black, ADOSH Compliance Officer
Ron Mills, ADOSH Compliance Officer
Hans Schmidt, ADOSH Compliance Officer
Anna Maria Stonerock, ADOSH Admin
Kara Dimas, Commission Secretary

PUBLIC COMMENTS

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July 29, 2021
1:00 p.m.

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PROCEEDINGS

CHAIRMAN SCHULTZ: Thank you. I'm Dale Schultz, and I'm Chairman of the Commission. Before we begin our public hearing and our meeting of the Industrial Commission today, I'd like to verify that we have a quorum and identify who we have on the phone with us today and what item on the agenda that they are interested in. So I'll start with the Commission.

Vice-Chair Joe Hennelly.

MR. HENNELLY: Chairman Schultz, I am on the phone.

CHAIRMAN SCHULTZ: Thank you, Joe. Scott LeMarr.

MR. LEMARR: Yes, Dale, I'm here. Thank you.

CHAIRMAN SCHULTZ: Okay. Great, Scott. Thank you.

And our newest Commissioner, Alan Everett. Alan, are you there?

Alan, you have to hit "*6" to unmute yourself. Are you there, Alan?

MR. EVERETT: Yes, this is Alan speaking.

1 CHAIRMAN SCHULTZ: Terrific. Great. Thanks
2 for becoming a member of the Commission, and thanks for
3 joining us for our meeting today, Alan.

4 We now officially have a quorum.

5 Members of the staff.

6 James.

7 MR. ASHLEY: Good afternoon, Chairman and
8 Commissioners, and good afternoon to everyone on the
9 call.

10 CHAIRMAN SCHULTZ: Thanks, James.

11 Guy.

12 MR. TESTINI: Good afternoon.

13 CHAIRMAN SCHULTZ: Hey, Guy.

14 Trevor.

15 MR. LAKY: I'm here.

16 CHAIRMAN SCHULTZ: Great, Trevor.

17 Jason.

18 MR. PORTER: I'm here. Good afternoon.

19 CHAIRMAN SCHULTZ: Okay, Jason.

20 Charles.

21 MR. CARPENTER: I am here this afternoon.

22 Thank you.

23 CHAIRMAN SCHULTZ: Great. Thank you,

24 Charles.

25 Renee.

1 MS. PASTOR: I am here. I couldn't find the
2 "unmute" button, but I am here.

3 CHAIRMAN SCHULTZ: Okay. And also Renee
4 Englen. Renee, are you there, Englen?

5 Okay. We'll move on.

6 Jessie.

7 MR. ATENCIO: Good afternoon, Chairman. Hi,
8 Commissioners. Can you hear me okay?

9 CHAIRMAN SCHULTZ: Absolutely, Jessie.
10 Thank you.

11 Steve Black.

12 MR. BLACK: I'm here, Chairman Schultz.

13 CHAIRMAN SCHULTZ: Hi, Steve. Thanks for
14 joining us.

15 Ron Mills.

16 MR. MILLS: Good afternoon, Chairman. I'm
17 here.

18 CHAIRMAN SCHULTZ: Thank you.

19 Hans Schmidt.

20 MR. SCHMIDT: I'm here, Chairman.

21 CHAIRMAN SCHULTZ: Hans, thank you for
22 joining us today.

23 Anna Maria.

24 MS. STONEROCK: Good afternoon, Chairman.
25 I'm present.

1 CHAIRMAN SCHULTZ: Hi. Thank you.
2 And, of course, Kara we have.
3 Savannah Scharnhorst. Are you with us,
4 Savannah?

5 Okay. Nicola Bauman.

6 MS. BAUMAN: I'm present, Chairman.

7 CHAIRMAN SCHULTZ: Thank you. Thank you for
8 joining us and being our court reporter for the public
9 hearing.

10 Others are joining us on the phone for some
11 additional items, for our ADOSH items.

12 U & I Utility & Industrial, LLC,
13 Joshua Schultz, Attorney.

14 MR. J. SCHULTZ: Yes, I'm here.

15 CHAIRMAN SCHULTZ: Okay. Thank you.
16 Joshua, great name. Sorry we aren't related.

17 MR. J. SCHULTZ: Thank you. I agree with
18 your sentiment, Mr. Chairman.

19 CHAIRMAN SCHULTZ: Okay. Also, PRJ
20 Development, LLC, dba Riordan Framing, Pat Riordan.

21 Pat, are you there? You may have to hit
22 "*6" to unmute yourself.

23 And Chelsey Markel.

24 Okay. Pat or Chelsey, you have to hit "*6"
25 if you join us. If not, we'll check back with you

1 later.

2 And for Trafficate Service, Inc., I show
3 Robert Sanchez. Robert, are you there?

4 MR. MERRETT: Excuse me, Mr. Chairman. This
5 is André Merrett of the Thorpe Shwer Law Firm, and I
6 represent Trafficate.

7 CHAIRMAN SCHULTZ: Great. And, André, could
8 you spell your name for Kara so we can get it in the
9 record?

10 MR. MERRETT: You bet. The first name is
11 A-n-d-r-é, the last name is M-e-r-r-e-t-t. And the law
12 firm name is spelled T-h-o-r-p-e, Shwer, S-h-w-e-r.

13 CHAIRMAN SCHULTZ: Thank you.

14 Did you get that, Kara?

15 MS. DIMAS: Yes, I did. Thank you.

16 CHAIRMAN SCHULTZ: Great. Thank you very
17 much, all.

18 I also show as having put in a request to
19 speak at the fee schedule hearing Christopher Dang.

20 MR. DANG: Present. Can you hear me?

21 CHAIRMAN SCHULTZ: Great. Yes, I can hear
22 you fine, Christopher. Do you happen to be related to
23 Doug Dang, ER physician?

24 MR. DANG: I don't believe so.

25 CHAIRMAN SCHULTZ: Okay. Thank you. Just

1 wondering.

2 And I show Nick Meza.

3 MR. MEZA: Yes, Chairman Schultz, I am
4 present as well.

5 CHAIRMAN SCHULTZ: Great. Thank you,
6 Christopher and Nick. Is anyone else from Quarles
7 there?

8 MR. MEZA: Just us.

9 CHAIRMAN SCHULTZ: Perfect. You are
10 certainly enough. Thanks for joining us.

11 I also show Deb Baker from Valley Schools
12 Workers' Comp Group. Deb, are you there?

13 MS. BAKER: Yes, sir, I am here.

14 CHAIRMAN SCHULTZ: Great. Thanks, Deb.
15 Thanks for joining us, as always.

16 I also show Brian Allen from Mitchell
17 Pharmacy Solutions.

18 MR. ALLEN: I am here.

19 CHAIRMAN SCHULTZ: Hi, Brian. Good to hear
20 your voice.

21 I also show Mike Colletto from Professional
22 Firefighters of Arizona. Mike, are you there?

23 MR. COLLETT0: I am.

24 CHAIRMAN SCHULTZ: Great. Good to hear your
25 voice, Mike. It has been quite a long time.

1 I also show Todd Delano. Todd, are you
2 there?

3 MR. DELANO: Yes -- yes, I'm present. Good
4 afternoon, everyone.

5 CHAIRMAN SCHULTZ: Great. Thanks, Todd.
6 I also show Laura Clymer. Laura, are you
7 there?

8 MS. CLYMER: Good afternoon, everyone. I'm
9 here.

10 CHAIRMAN SCHULTZ: Great. Thank you, Laura.
11 And I also show Steve Bennett.

12 MR. BENNETT: Chairman and Commissioners,
13 Steve Bennett is here.

14 CHAIRMAN SCHULTZ: Great. Thank you.
15 Is there anyone else on the phone who wishes
16 to speak at the fee schedule hearing?

17 MS. RICE: Mr. Commissioner, Emily Rice on
18 behalf of the Arizona Self-Insurers Association.

19 CHAIRMAN SCHULTZ: Emily, thank you for
20 joining us.

21 Anyone else?

22 MR. BARRATT: Mr. Chairman, this is
23 Brett Barratt on behalf of NCCI.

24 CHAIRMAN SCHULTZ: Hey, Brett, thanks for
25 joining us again.

1 Anyone else?

2 MS. SEXTON: This is Julie Sexton with
3 CorVel.

4 CHAIRMAN SCHULTZ: Hi, Julie. How are you?

5 MS. SEXTON: Good. How are you?

6 CHAIRMAN SCHULTZ: Excellent. Thanks for
7 joining us.

8 Anyone else?

9 MS. MARKEK: Hi. Yes, my name is
10 Chelsey Markel. I'm here with my father, Pat Riordan.

11 CHAIRMAN SCHULTZ: Hi, Chelsey. Thanks. We
12 passed you by before. I'm glad you can join us.
13 Appreciate it.

14 MR. TRIBOUT: Hi. This is Kevin Tribout
15 with Optum. Thank you for having me today.

16 CHAIRMAN SCHULTZ: Great. Thank you, Kevin.

17 Anyone else? Anyone else who wishes to
18 speak at the fee schedule hearing or on any other item
19 coming before the Commission today, now is the time to
20 hit "*6," identify yourself and the issue you're
21 interested in.

22 Okay. Hearing no one else, then I'd like to
23 call this meeting of the Industrial Commission to order.
24 Our first item on the agenda today is the public hearing
25 regarding the 2021-2022 Arizona Physicians' and

1 Pharmaceutical Fee Schedule established under
2 A.R.S. 23-908(B). This public hearing is being held to
3 give members of the public and Commission stakeholders
4 an opportunity to comment on staff proposals regarding
5 the 2021-2022 Arizona Physicians' and Pharmaceutical Fee
6 Schedule and to make additional recommendations for
7 changes to the fee schedule. The staff proposal has
8 been posted on the Commission's website for the last
9 month.

10 To help with background noise, your phones
11 have been put on mute. You will be given an opportunity
12 to make comments later.

13 And so now I would like to move to
14 Charles Carpenter, the Manager of the Medical Resource
15 Office, who will provide a brief overview of the staff
16 proposal.

17 Charles.

18 MR. CARPENTER: Good afternoon, Chairman,
19 and good afternoon, Commissioners, Director Ashley,
20 colleagues and guests. Thank you for the opportunity to
21 present the staff recommendations for the 2021-2022
22 Physicians' and Pharmaceutical Fee Schedule.

23 First, staff recommends the updated service
24 codes, relative value units, or RVUs, and reimbursement
25 values as presented in the tables accompanying the

1 published proposal. The methodology used in computing
2 the reimbursement values has not changed from previous
3 years and is outlined in detail in the proposal. The
4 proposed 2021-2022 fee schedule will continue to use the
5 Center for Medicare & Medicaid Services', or CMS,
6 global -- their surgical global periods, assign RVUs to
7 consultation services and delineate codes that are
8 unique to Arizona.

9 The proposal does not include a stop-loss or
10 a stop-gain cap for any service code. A stop-loss has
11 been implemented in previous years to assist in
12 transitioning to the RBRVS system. The stop-loss has
13 been incrementally increased, and after analyzing the
14 impact of another increase to the stop-loss versus
15 removing the stop-loss altogether, staff recommends that
16 the stop-loss be removed since the change from another
17 incremental stop-loss and removal of the stop-loss is
18 negligible. Moreover, removal of the stop-loss will
19 move Arizona to a fully deployed RBRVS system based only
20 on RVUs and conversion factors.

21 Staff recommends updating the RBRVS
22 conversion factors used in the 2020-2021 fee schedule.
23 Staff recommends that the conversion factor for
24 anesthesia remain unchanged, whereas the conversion
25 factor for surgery and radiology be updated to \$70 and

1 the conversion factor for all other services be
2 increased to \$65. Except for the Anesthesia section,
3 the fee schedule uses RVUs from the current Medicare
4 Physician Fee Schedule. CMS establishes the value of
5 each RVU based on the work of a healthcare provider, the
6 associated administrative and overhead costs to provide
7 the service and the malpractice insurance costs.

8 CMS takes into account the expertise
9 required to perform the service in their calculations.
10 The RVUs are modified annually to reflect industry
11 changes as appropriate. Due to this, Medicare maintains
12 one conversion factor for all services except
13 anesthesia.

14 In 2021, CMS initially reduced the
15 conversion factor by 10 percent to remain budget
16 neutral. The CMS conversion factor, however, was later
17 increased by 3.75 percent for an overall conversion
18 factor reduction of just over 6 percent. I mention this
19 because the ICA's proposed conversion factor of \$70 for
20 surgery and radiology remains over 200 percent of the
21 current Medicare conversion factor. Essentially, this
22 means that providers who may be -- this means providers
23 may be reimbursed over twice as much for the same
24 service when it is performed on an injured worker in
25 Arizona as compared to a Medicare patient.

1 Staff analyzed the conversion factors for
2 other states' workers' compensation fee schedules that
3 utilize an RBRVS system and adopt the RVUs from
4 Medicare. Fourteen states have a single conversion
5 factor for surgery. The average conversion factor for
6 those fourteen states is \$70.44. Nine of those fourteen
7 states have conversion factors lower than \$70. Similar
8 analysis of the conversion factor for radiology yielded
9 twenty states. The average conversion factor in those
10 twenty states is \$68.20. Thirteen of the twenty states
11 have a conversion factor lower than \$70.

12 Staff also analyzed data provided by FAIR
13 Health on commercial health insurance allowed amounts
14 for surgery and radiology services in Arizona to see
15 where workers' compensation reimbursement values
16 compared to commercial health insurance. The allowed
17 amount represents the total reimbursement a healthcare
18 provider receives for a specific service, and that
19 includes any amount paid by the patient.

20 Staff received data on 94 of the most-billed
21 surgical procedure codes and 105 of the most-billed
22 radiology procedure codes. Respectively, these codes
23 represent 75 percent and 87 percent of all billed
24 procedures according to the billing frequency data from
25 NCCI. Based on the data, the proposed 2021-2022

1 reimbursement values for surgery will be, on average,
2 143 percent of the allowed amount for the same
3 procedures in the commercial health setting and
4 133 percent of the allowed amount for radiology for
5 those same procedures.

6 Based on this data, staff recommends
7 adjusting the conversion factor for surgery and
8 radiology to \$70. With this conversion factor, the fee
9 schedule will allow payment for services to be over
10 200 percent of Medicare and an average of 143 percent
11 for surgery and 133 percent for radiology of commercial
12 health allowed amounts in Arizona. The staff proposal,
13 including the changes to the RVUs and proposed
14 conversion factors of \$70 for surgery and radiology,
15 \$61 for anesthesia and \$65 for all other services, will
16 result in a projected 2 percent overall increase in
17 medical expenditures throughout the next fee-schedule
18 year.

19 Second, the proposed fee schedule continues
20 to designate Medi-Span® as the source to determine
21 average wholesale price, or AWP. In addition to AWP,
22 the proposed fee schedule designates Medi-Span® to
23 determine wholesale acquisition cost, or WAC, and
24 generic equivalent average price, GEAP. These reference
25 values are used to calculate reimbursement values for

1 pharmaceutical products.

2 Third, staff proposes a change to the format
3 of the Arizona-specific codes. The current format
4 consists of eight alphanumeric characters. Eliminating
5 the "099" after the initial "AZ" prefix results in a
6 five-character alphanumeric code that conforms to the
7 current CPT® billing code format. This update is
8 proposed in response to external stakeholder feedback.

9 Fourth, staff proposes to update all
10 references to the American Medical Association's Current
11 Procedural Terminology publication throughout the fee
12 schedule as "CPT®."

13 Fifth, staff recommends the following
14 amendments to the Introduction section of the 2021-2022
15 Fee Schedule: First, delete Section A(10).
16 Consultation services are defined in the CPT®. The
17 description and accompanying essential criteria of a
18 consultation billing code governs how the service may be
19 performed and when it may be billed. Deleting this
20 section avoids potential confusion with Section H;

21 Add Section A(14). This clarifies that the
22 fee schedule applies to the payment of telehealth
23 services;

24 Add Section B(13). This provides guidance
25 on reimbursing ambulance service providers;

1 Change the language in Section H from
2 "difficult problems" to "complex cases" to clarify
3 intent;

4 Update the language in Section I(4) to
5 further clarify the required documentation for materials
6 and supplies in order to receive appropriate
7 reimbursement and also indicate that medications
8 administered in a clinical setting should be billed
9 using CPT® code 99070 and reimbursed according to the
10 Pharmaceutical Fee Schedule Guidelines.

11 Sixth, the proposed fee schedule contains
12 multiple amendments to the Pharmaceutical Fee Schedule
13 Guidelines. Some of these amendments are based on
14 research and recommendations presented in the Myers and
15 Stauffer 2020 white paper titled *Pharmaceutical*
16 *Reimbursement: Review of Pricing Methodologies within*
17 *Workers' Compensation*. This white paper is published on
18 the Medical Resource Office webpage.

19 Staff proposes to amend Section II of the
20 Pharmaceutical Fee Schedule Guidelines by adding
21 definitions for "National Average Drug Acquisition
22 Cost," or "NADAC;" "Wholesale Acquisition Cost," or
23 "WAC;" "Generic Equivalent Average Price," or "GEAP;"
24 and "Therapeutically Similar" medication. In addition,
25 staff proposes an update to the definitions of "Pharmacy

1 Accessible to the General Public" and "Pharmacy Not
2 Accessible to the General Public" to be consistent with
3 recent legislative changes to A.R.S. 23-908.

4 Next, staff proposes to amend the
5 reimbursement methodology for prescription medication in
6 Section III as follows: The reimbursement value for a
7 generic medication, when the NDC for that specific
8 medication is listed in NADAC, is calculated on a
9 per-unit basis by multiplying the NADAC value per unit
10 by 125 percent and then multiplying that value by the
11 number of units.

12 When the NDC of a generic medication is not
13 listed in NADAC, and the same medication manufactured by
14 one or more companies is not listed in NADAC as well,
15 the reimbursement value is calculated on a per-unit
16 basis by determining the lesser value of either
17 80 percent of WAC, 60 percent of AWP or 60 percent of
18 GEAP.

19 The reimbursement value for brand-name drugs
20 that are listed in NADAC is calculated on a per-unit
21 basis by multiplying the NADAC value per unit by
22 102 percent and then multiplying that value by the
23 number of units. If the drug is not listed in NADAC,
24 the reimbursement value is calculated on a per-unit
25 basis by determining the lesser value of either

1 100 percent of WAC or 80 percent of AWP.

2 Chairman Schultz will have more on NADAC
3 following my comments.

4 Staff also proposes to amend Section III to
5 establish the reimbursement value for over-the-counter
6 medications that are commercially available and not
7 commercially available. The reimbursement value for
8 commercially available over-the-counter medications is
9 based on the retail price per unit of the
10 over-the-counter medication in settings where the
11 medication is commercially available. The retail value
12 for medications that are not commercially available in
13 pharmacies accessible to the general public shall be
14 calculated on a per-unit basis based on the retail price
15 per unit of the most therapeutically similar
16 over-the-counter medication commercially available in
17 pharmacies accessible to the general public.

18 The last amendment to Section III
19 establishes the maximum reimbursement value for
20 over-the-counter topical creams or lotions and topical
21 patches that are not commercially available. Based on
22 staff research of over-the-counter medications that are
23 commercially available and their respective retail
24 prices, the proposed maximum reimbursement for topical
25 creams or lotions is \$30 per thirty-day supply and the

1 maximum reimbursement for topical patches is \$75 per
2 thirty-day supply.

3 Staff proposes to amend Section VIII to
4 update provisions pertaining to dispensing fees.
5 Currently, a dispensing fee of \$7 may be charged per
6 prescription in settings where a dispensing fee is
7 permitted. The proposed amendment increases the
8 dispensing fee that may be charged for generic
9 non-compound drugs to \$11 per prescription when a NADAC
10 value is used to determine the reimbursement value. The
11 dispensing fee that may be charged in all other settings
12 and using all other pricing methodologies remains the
13 same.

14 Seventh, staff proposes to add language to
15 the Surgery Guidelines to clarify how to determine the
16 global period when multiple services are performed
17 during the same operative session.

18 Eighth, staff proposes to add references to
19 "ambulatory surgery centers" in the Radiology Guidelines
20 to clarify that the services performed in an ambulatory
21 surgery center are managed similarly to services
22 performed in a hospital.

23 Ninth, staff proposes to amend the Physical
24 Medicine and Rehabilitation Guidelines section of the
25 fee schedule by clarifying proper billing practices for

1 the initial evaluation and subsequent reevaluations for
2 both physical therapy and occupational therapy in
3 Section A.

4 Staff proposes to amend the language in
5 Sections B and C to clarify that therapeutic procedures
6 and modalities are distinct and that time spent
7 performing these services should be counted separately.
8 Staff also proposes the addition of language to clarify
9 the maximum amount of time and units of therapeutic
10 procedures that may be billed in one session without
11 prior approval. Additionally, the time spent performing
12 modalities does not count towards the maximum allowable
13 time and units of therapeutic procedures.

14 Staff proposes to amend Section B to allow
15 three modalities without the need for prior approval.
16 Staff also proposes to amend Section G to provide
17 specific instructions on documentation expectations.
18 Staff also proposes to amend Sections A through G to add
19 clarifying language and examples consistent with the
20 Medicare time-based billing standards that were adopted
21 last year. Staff worked closely with external
22 stakeholders in amending the Physical Medicine and
23 Rehabilitation section to improve the guidelines and use
24 language common to healthcare providers who perform
25 these services.

1 Finally, staff proposes to add language in
2 the Evaluation and Management Guidelines to clarify that
3 documentation and review of records is inclusive to the
4 performance of an evaluation and management service and
5 to clarify the manner in which a physician may bill for
6 time that is not already accounted for in an evaluation
7 and management or consultation service. The American
8 Medical Association updated the Evaluation and
9 Management Guidelines in the CPT® this year. Staff
10 proposes to update the Evaluation and Management
11 Guidelines to conform to the current CPT® updates.

12 The Medical Resource Office appreciates your
13 time considering this proposal, and I'm happy to take
14 any questions from the Commission.

15 CHAIRMAN SCHULTZ: Thank you, Charles. And
16 I really want to thank you and Renee. I know how much
17 effort has gone into the review, how much you've spent
18 with stakeholders taking their input, how much time
19 you've spent looking at information from other states
20 and from other payment systems before making this
21 extremely complex but valuable proposal. And so thank
22 you very, very much.

23 Do any of the Commissioners have any
24 questions for Charles before I go, or would you like to
25 hold your questions until later?

1 Okay. Hearing no questions from the
2 Commissioners, then I truly want to thank everyone for
3 being on this call for this very important public
4 hearing. And I do want to remind everyone we are here
5 to take your comments. We do want to hear your
6 recommendations for positive improvements to the
7 Physicians' and Pharmaceutical Fee Schedule. But before
8 we begin, I would like to address a few issues that have
9 been raised in the written comments, numerous comments
10 which we've received in the month that the proposal has
11 been posted on our website.

12 Number one, multiple comments have mentioned
13 that pharmaceutical costs in Arizona are only 1 percent
14 more than the costs countrywide and 2 percent more than
15 the region. This is misleading and incomplete.
16 Although Arizona's pharmaceutical costs in 2019 were
17 9 percent of the total medical spent in Arizona,
18 compared to 8 percent nationally and 7 percent
19 regionally, Arizona's medical spent has been increasing
20 each year since 2010.

21 In 2018, according to NCCI, Arizona's
22 medical expenses for an average lost-time claim climbed
23 to \$43,000 compared to only \$23,000 regionally and
24 \$27,000 nationally. I want to repeat that. Average --
25 the medical expenses for an average lost-time claim

1 climbed to \$43,000 compared to \$23,000 regionally and
2 \$27,000 nationally. Obviously, 9 percent of Arizona's
3 much higher medical costs is not 1 percent more than
4 7 percent of the region's far lower costs; in fact, it's
5 about double. It's a truly dramatic, significant
6 difference.

7 Another comment that was mentioned several
8 times is that there may be delays in care because some
9 drugs are not included in NADAC. If a drug isn't
10 included in NADAC, we have AWP as a secondary tool
11 covering those NDCs that are not included in NADAC. And
12 in all the comments that were made, no one provided any
13 data or even a single example of how there has been or
14 would be a delay because of this change.

15 The third issue raised a number of times is
16 the ICA doesn't have the statutory authority to change
17 to NADAC. A.R.S. 23-908 does not require the
18 pharmaceutical fee schedule to utilize AWP. In fact,
19 the statute authorizes the Commission to adopt pricing
20 benchmarks that have been validated and accepted in the
21 industry.

22 Based upon the widespread usage of NADAC in
23 states across the country, we disagree with the
24 suggestion that NADAC is not validated and accepted in
25 the pharmaceutical reimbursement industry. In fact,

1 Arizona's AHCCCS program has used NADAC for years.

2 Number four, comments have said that this
3 would drive pharmacies and doctors out of the workers'
4 compensation market. We have heard this before when we
5 have implemented other changes, and it never comes true.
6 We know of no pharmacy or doctor who is no longer
7 serving workers' compensation patients. In fact, I've
8 personally heard of a prominent pain management
9 physician who has moved completely away from commercial
10 and Medicare and is only doing workers' compensation.

11 Number five, multiple comments suggest that
12 the ICA is trying to limit access to pharmaceutical care
13 for injured workers. This is completely false. Access
14 to care is a priority of the Commission. There are over
15 6,000 pharmacies in Arizona available to serve injured
16 workers. Injured workers in Arizona are entitled to
17 appropriate medical and pharmaceutical care. We want
18 injured workers to get the care they need, to get better
19 and return to work as quickly as possible.

20 We cannot, however, turn a blind eye to
21 excessive billing practices and abuses. The Commission
22 continues to see excessive pharmaceutical-invoicing
23 practices driven, in part, by pharmacies that choose to
24 dispense drugs with artificially inflated AWP. For
25 those who comment today, please comment on how the

1 Commission can address this type of fraud and abuse
2 without being accused of trying to infringe on the
3 rights of injured workers.

4 Let me highlight a few examples. I won't
5 mention any pharmacies by name. First, I'm looking now
6 at a bill for ibuprofen that a pharmacy billed for \$216.
7 This cost should have been closer to \$10; maximum, \$20.
8 Does anyone here think it is appropriate to bill \$216
9 for ibuprofen? Please let me know when you make your
10 comments if you think that is reasonable.

11 Second, here is a bill for ondansetron.
12 This pharmacy charged \$2,062 for something you could get
13 at almost any other pharmacy for \$20. Third -- and
14 while I have plenty more, I'll make this my last
15 example. We have a lot of material to get through.
16 Here I have a bill for omeprazole, and this is
17 20 milligrams. You can go to a pharmacy and get this
18 drug for \$10; most of the time less. This particular
19 pharmacy billed \$378; \$378. Hopefully you can
20 understand that when I see these egregious examples that
21 it just hurts me to the core that -- and cries out for
22 reform.

23 With that being said, we have had countless
24 phone calls and meetings with our stakeholders, as we
25 always do. And the ICA has determined that the industry

1 is not ready for reforms like moving to NADAC at the
2 moment. I do still believe that we should improve our
3 reimbursement methodologies to crack down on the abuse
4 we see in the system. In the meantime, we will be
5 looking at other methods to prevent bad actors from
6 taking advantage of our system in Arizona. This abuse
7 in excessive pharmaceutical billing is disgusting and we
8 will continue to work to cut it out of the system. It's
9 not good for the system, and it's not good for injured
10 workers.

11 With that, let's proceed with public
12 comments. We now welcome you to present your oral
13 comments and recommendations regarding the 2021-2022 Fee
14 Schedule. We will start with a list of people that have
15 already requested to speak per the instructions you
16 received a month ago with a copy of the proposed
17 updates. Others wishing to speak will then also be
18 given an opportunity.

19 When your name is announced, press "*6" to
20 unmute yourself; that's "*6." You'll have five minutes
21 to speak. At the beginning of your comments, for the
22 record and the court reporter, who is also on this call,
23 please state your name again and spell it, and state who
24 you represent. At the conclusion of your comments, the
25 Commissioners and staff may ask you questions. In the

1 interest of time, please do not repeat what other
2 speakers have stated. If you agree with what has been
3 said, simply state as such.

4 Although the public hearing will end when
5 oral comments have concluded, written comments will be
6 accepted through the close of business on Thursday,
7 August 5, 2021; that's Thursday, August 5, 2021. Once
8 the record is closed, the Medical Resource Office and
9 the Commission will carefully consider all comments
10 already received, all comments made today, all
11 comments -- written comments we receive before the 5th
12 and available information and data prior to taking
13 formal action related to the 2021-2022 Arizona
14 Physicians' and Pharmaceutical Fee Schedule.

15 With that, we now begin with
16 Christopher Dang.

17 MR. DANG: Thanks, Mr. Chairman.
18 Christopher Dang here with Nick Meza. Last name is
19 spelled D-a-n-g, and "Meza" is spelled M-e-z-a. And
20 we're here, both, to speak today on behalf of
21 RxDevelopment and ServRx. With that, I'll turn it over
22 to my colleague, Nick Meza.

23 MR. MEZA: Chairman Schultz, Commissioners,
24 Commission staff, thank you very much. By way of
25 background, RxDevelopment and ServRx operate within the

1 workers' compensation space providing pharmacy services
2 and prescription management services to pharmacies and
3 dispensing practitioners. We're speaking here today to
4 voice opposition to the proposed 2021-'22 Fee Schedule.
5 Namely, we oppose the Commission's proposal to adopt
6 NADAC as the primary methodology for determining
7 reimbursement value for prescriptions. Note, in
8 addition to our commentary here today, we have also
9 submitted written comments.

10 We are primarily opposed to the adoption of
11 NADAC because we believe it is an unproven methodology
12 that is not accepted within the workers' compensation
13 industry. As the Commission is aware, it is authorized
14 by statute to consider the adoption of a fee schedule
15 with provisions that involve specific prices, values and
16 reimbursements for prescription drugs. Critically, per
17 statute, A.R.S. 23-908, if the Commission considers the
18 adoption of a fee schedule for prescription drugs, it
19 must, quote, base the adoption on studies or practices
20 that, one, are validated and, two, are accepted in the
21 industry.

22 NADAC is neither validated nor commonly
23 accepted in the workers' compensation space. If the
24 Commission were to adopt an unproven and uncommon
25 standard, it would be acting outside of its statutory

1 authority. Note that the statute goes on to state that
2 methodologies can include formulas and use average
3 wholesale price, or AWP, as a dispensing fee. Thus, the
4 current and chosen methodology of reimbursement, AWP, is
5 expressly contemplated in statute. Though we do not
6 hold the position that other methodologies may not be
7 employed, rather, we hold that if such methodologies are
8 employed, they must be validated and accepted within the
9 industry.

10 Quite simply, more study is needed. Again,
11 any -- NADAC is not a commonly accepted methodology.
12 And the Myers and Stauffer white paper on which the
13 proposed change is based confirms this. First, as noted
14 in the white paper, only one state, California, has
15 adopted NADAC as a method of reimbursement in the area
16 of workers' compensation. The white paper lists only
17 one study published in 2018 that evaluates California's
18 workers' compensation system.

19 As noted in our written commentary, the
20 study focused on percentage by which the various
21 benchmarks, including NADAC, provided pricing on claims.
22 However, it did not provide a qualitative analysis of
23 the impact of NADAC adoption on patient care and access.

24 Second, AWP standards is very clearly the
25 most accepted and adopted standard across the workers'

1 compensation space with thirty-four of thirty-seven
2 states that adopted a defined-pricing schedule adopting
3 the AWP standard. There is no doubt that AWP is a
4 validated and common industry standard. Conversely,
5 with only one state adopting NADAC, there's absolutely
6 no doubt that this is an uncommon standard in the
7 industry. This is true not only for workers'
8 compensation programs but across the pharmaceutical
9 reimbursement industry generally.

10 NADAC is simply not a common methodology.
11 Before NADAC can be adopted, it must be further studied
12 by the Commission, and it must also be more of a common
13 industry practice in order to meet the requirements of
14 Arizona law as an acceptable standard.

15 We also want to comment on the perceived
16 benefit of the proposed standard notwithstanding its low
17 and uncommon adoption across the industry. Very
18 quickly, it is worth noting Arizona's system currently
19 reimburses at no more than 85 percent of AWP. This
20 85-percent limit was put into effect in the 2019-2020
21 Fee Schedule.

22 Now, before analyzing the impact on cost
23 that this limit created, the Commission has proposed a
24 complete departure from the AWP standard. The white
25 papers admits that it has no long-term data if the

1 85-percent AWP limit has resulted in lower costs.
2 However, the short-term data does show that this has had
3 a positive impact on costs, that, quote, compares
4 favorably to the NADAC equivalency metric. Thus, by the
5 white paper's own admission, the one year of data show
6 that the current methodology is effective and comparable
7 to NADAC, thus, arguably, there is need for a change.

8 In sum, we believe that NADAC is not a
9 validated and common industry standard and should not be
10 adopted, that more study and data are required, that the
11 adoption of this standard is contrary to the intent of
12 the clear language of the Arizona statute, and we urge
13 the Commission to reconsider. Thank you.

14 CHAIRMAN SCHULTZ: Thank you, Mr. Meza.

15 Any of the Commissioners have any questions?

16 Hearing none, we'll move to our next person
17 who has requested to speak, Deb Baker, Valley Schools
18 Workers' Comp Group. Deb, are you there?

19 MS. BAKER: I'm here. I --

20 CHAIRMAN SCHULTZ: Great.

21 MS. BAKER: -- hit "*6."

22 Hello, Chairman Schultz and Commissioners
23 and Guy and James and Trevor and Charles. I want to
24 compliment Charles on his excellent presentation. I
25 think he did a fabulous job. And I want to praise the

1 Industrial Commission of Arizona for their fabulous
2 leadership and proactive approach to protecting injured
3 workers and workers' compensation employers. I am
4 impressed beyond measure by the proactive stance the
5 Industrial Commission has taken.

6 I've been in workers' compensation insurance
7 claims for forty-nine years; yes, I'm old. And I can
8 say beyond a shadow of a doubt that Chairman Schultz and
9 the Commissioners and the leaders at the Industrial
10 Commission are the best I have seen in my forty-nine
11 years in workers' comp. So I'm very grateful for the
12 proactive approach.

13 And as I represent Valley Schools Workers'
14 Comp Group and as I have been a bad faith claims expert
15 witness, I know that we owe equal duties to the injured
16 workers and the employers out there. And my team and I
17 work very hard to make sure that we ensure equal
18 consideration to each.

19 We have a first-fill program where injured
20 workers go to our occ-health clinic and they are given a
21 one-sheet flyer so when they're given prescriptions,
22 they can go to any pharmacy they choose and get their
23 prescriptions and they do not have to pay out of pocket,
24 which is very important to me. I believe in taking care
25 of injured workers. That's my job.

1 So I just want to thank the Industrial
2 Commission for everything you're doing, and I want to
3 say you have my total support.

4 CHAIRMAN SCHULTZ: Thank you, Deb. We
5 appreciate your comments. And, by the way, that is a
6 wonderful program to both give the injured worker the
7 information they need to begin treatment and to receive
8 any medications immediately. That's exactly the way the
9 system should work. So thank you very much, Deb.

10 MS. BAKER: Thank you, Chairman.

11 CHAIRMAN SCHULTZ: Thank you.

12 Next on our list is Brian Allen from
13 Mitchell Pharmacy Solutions. Brian.

14 MR. ALLEN: Mr. Chairman, can you hear me
15 now?

16 CHAIRMAN SCHULTZ: Yes, perfect.

17 MR. ALLEN: Thank you. Sorry about that.
18 Sometimes there's a little bit of a lag on that
19 "mute/unmute."

20 So, first of all, I want to thank you,
21 Chairman Schultz and Members of the Commission, for the
22 opportunity to speak today. My name is Brian Allen,
23 B-r-i-a-n A-l-l-e-n. I am the Vice-President of
24 Government Affairs for Mitchell Pharmacy Solutions.

25 I want to start by saying that, first of

1 all, we really appreciate the efforts of the Medical
2 Resource Office and the ICA staff in their desire to
3 appropriately control costs in your workers'
4 compensation system. They have been absolutely more
5 than accessible, more than accommodating to listening to
6 us and our concerns. And we have been working
7 diligently trying to find some kind of an answer or
8 solution that would help solve the problem without, you
9 know, the upset that we think this is going to cause.

10 So we do have some concerns. And I'm going
11 to focus on the pharmacy section of the fee schedule.
12 And I want you to know that we do -- you know, you stole
13 some of my thunder, Mr. Chairman. We do have concerns
14 about some of the abuses that we see out there. And,
15 you know, in our system, injured workers who use our
16 network get medications at a significantly reduced cost.
17 We negotiate hard. It's a very competitive marketplace
18 in the workers' comp world, and we work hard to deliver
19 value to our customers and to the injured workers that
20 they serve.

21 And so, for us, you know, it's not an issue
22 of, you know, what's happening in our world as much as
23 what's happening in the world around us. But the
24 challenge that we have with this proposal is that we
25 live in an AWP world and all of our program is around

1 AWP, all of our contracts are written around AWP. So
2 the lift to get from AWP to NADAC and all the
3 uncertainty that NADAC creates is -- I mean, we've done
4 a lot of analysis internally on trying to figure out if
5 there was a formula that could get NADAC to the current
6 AWP fee schedule. And it's just all over the chart.
7 We couldn't come up with any -- it isn't like *NADAC*
8 *times "X" equals the current fee schedule; it's NADAC*
9 *times multiple variables of "X."* And so there's no way
10 to really program that into our fee schedule.

11 So trying to figure out how it would impact
12 us financially was really challenging. We still
13 don't -- we don't completely understand how it would be;
14 we know it's not good. And then add that to the cost
15 of, you know, all the reprogramming and things that we
16 would have to change in recontracting, I mean, it's a
17 pretty significant lift for us to make that change at
18 this point in time.

19 However, all that being said, we are
20 committed to working with the staff in trying to find
21 some solution. We support the notion of getting to some
22 kind of an average price to get to the outliers. We're
23 not -- you know, we actually talked about GEAP at one
24 time, and we have not done the full analysis on that.
25 We don't know what that impact is. We'd like to

1 continue to work on that and see if we can come up with
2 some kind of a process that would get to those outliers
3 that you mentioned in your presentation, Mr. Chairman.
4 When we see those, it's disconcerting to us as well, and
5 we'd like to see those carved out of the system as well.

6 We have a very inclusive network. Our
7 network includes, you know, more than 90 percent of the
8 pharmacies that have locations in Arizona. We certainly
9 want to encourage our injured workers that we serve to
10 use those pharmacies to access the local businesses
11 there and to get the kind of care that they're used to
12 getting. And we think that's really critical, and we
13 want to continue to be able to provide that service and
14 hope we'll be able to, you know, continue to do that.

15 And we -- but we are concerned that the fee
16 schedule may, as proposed, create some trouble for us in
17 that regard. And so we are -- we're working on that
18 carefully with our various stakeholders as well, and we
19 continue to dialogue with the Medical Resource Office.

20 The other thing that we would like to say is
21 that we do support some of the -- we do support the
22 changes on how over-the-counter and topical medications
23 would be reimbursed. These are known areas of abuse in
24 the industry, so we support those changes.

25 I do want to mention one thing that isn't in

1 the fee schedule that I heard yesterday from our bill
2 review team. They said there has been some confusion
3 about how J Codes are billed in Arizona, so I'm going to
4 dig into that a little bit. So you may see something
5 about that in our comments, but I didn't want to just
6 send that in my comments and blindsides you with some
7 out-of-the-woods thing that you hadn't heard about
8 before. So we're going to -- I'll work with our team
9 and figure out what it is, and, if it's nothing, I'll
10 let -- I'll let you know that as well.

11 In closing, I just want to reiterate that we
12 are supportive of the goals of the Commission. We stand
13 by what you're trying to accomplish. And we certainly
14 want to continue to work with them. We've had, I think,
15 a long and friendly working relationship with the
16 Commission. It's kind of odd for me to be in a position
17 where I'm not, you know, a hundred percent supportive of
18 what they've been trying to do because typically we find
19 ourselves -- we've been very supportive, and this is
20 kind of an odd spot for us to be in.

21 But I want you to know that we continue --
22 you know, we view our partnership with the Commission --
23 we value it. We think that it's critical for us, as the
24 stakeholders in Arizona, to continue to work together to
25 find a solution for this problem. And we will continue

1 to do that. And we're happy to offer, you know,
2 whatever information that we can, and we'll continue to
3 keep working on trying to find, you know, a balance. I
4 know in many states where we have direction of care we
5 don't have these issues. And we -- you know, we know
6 that's a legislative issue that needs to be addressed
7 and it's not something we can address here.

8 But we certainly support the efforts of the
9 Commission, again, and we just commit our ongoing
10 support to help do what we can to help find a solution
11 that works for the industry. Thank you.

12 CHAIRMAN SCHULTZ: And thank you, Brian.
13 And I want to recognize that we do both appreciate and
14 understand that you are able, through your contacts, to
15 effect many of the reforms that we want to see. And so
16 we believe that's the way business should work and
17 that's the way this industry should work, and we
18 appreciate that very much.

19 I want to tell you we also appreciate a lot.
20 You know, we are not payers; we are not providers. And
21 so the information that you gave us concerning the
22 potential impact on your operations and what it would
23 take to implement is very, very important to us, as
24 you've seen and, I think, as you were alluding to in our
25 move to the RBRVS and away from the separate medical fee

1 schedule that required all separate, you know, systems
2 to be able to deal with separate billing systems, you
3 know, as a way we simplified processes for providers to
4 bill and payers to pay and settlement opportunities.

5 Anyway, we work very, very hard to try and
6 improve the functioning of the system as well as the
7 costs of the system. And so your comments truly were
8 insightful for us in looking at exactly, you know, how
9 quickly we're going to move, in what direction we're
10 going to move and to truly analyze the impact that it's
11 going to have on all of our stakeholders in the system.
12 So we do appreciate your efforts very much, and we
13 appreciate how open and sharing you are. You share
14 data, you share ideas, and that's what helps us make
15 better decisions.

16 We try, to the extent possible, to be data
17 driven. That's why I reiterate, probably ad nauseam,
18 to, please, all of you, give us data, give us examples
19 so that we have something concrete to deal with rather
20 than, as I would call it, whining and moaning. You
21 know, that offers us no solutions. We need data; we
22 need solutions.

23 So, anyway, thank you, Brian.

24 Do any of the Commissioners have any
25 questions for Brian?

1 Hearing none, let's move to Mike Colletto.

2 Mike, you have the floor.

3 Mike, you need to hit "*6" to unmute
4 yourself.

5 MR. COLLETT0: I want to thank the
6 Commission for the opportunity to speak today.

7 I agree with the first speaker. I don't
8 think we need to do this. It's not advantageous to my
9 people. I like the independent pharmacies and the
10 workers' comp pharmacies that are servicing our people.
11 And I'll just leave it at that.

12 CHAIRMAN SCHULTZ: Thank you, Mike. And,
13 wow, do I ever appreciate your brevity and, once again,
14 following directions. Yes, I understand you agree with
15 the first presenter. And so thank you very much for
16 that, Mike, and I look forward to seeing you again soon.
17 It has been quite a while now that we're all, you know,
18 stuck social distancing and all. So thanks for your
19 comments, Mike. We appreciate it.

20 Okay. Any questions for Mike?

21 If not, we'll move to Todd Delano. Todd,
22 how are you today?

23 Todd, are you there? Hit "*6," please.

24 MR. DELANO: I apologize. Can you guys hear
25 me now?

1 CHAIRMAN SCHULTZ: Yeah, we can, perfectly.
2 Thanks, Todd.

3 MR. DELANO: Sorry about that. Yes, sir,
4 again, thank you for your time.

5 This is Todd Delano with ServRx. I think,
6 for the reason of brevity, what's most useful for my
7 time with you guys -- and, again, thank you for this
8 time -- is to add a voice of reason for what would be
9 the out-of-network portion of spend in Arizona and
10 nationwide. And, again, we love to work with you and
11 love to work with Brian Allen. He and I have worked
12 together for years and communicate frequently.

13 But just to provide some context -- I do
14 think you deserve context to what -- to that
15 out-of-market part of the market. So ServRx serves a
16 very valuable role nationwide in the pharmacy chain for
17 workers' compensation. In particular, in the world of
18 community of pharmacies, we're contracted with 12,000 of
19 the 25,000 community pharmacies around the country. In
20 any given month, 3- to 6,000 of these pharmacies will
21 use our services. We've been in business thirteen
22 years. We're approaching over a billion -- upwards of a
23 billion dollars of claims processed. Some of the local
24 grocery store chains or pharmacy chains you might know
25 that use our services is Bashas' groceries; that's one

1 we all know at least here in the Metro Phoenix area.

2 And what role do we play in the marketplace?
3 We're a third-party biller that sits on the frontline of
4 new injuries. So in pharmacy spend, upwards of
5 15 percent of the prescriptions that are billed are new
6 injuries. Picture the patient that is hurt at 9:00 a.m.
7 on the job, goes to an urgent care to get a medication
8 or a prescription, and it's 1:00 p.m. when they're
9 walking into one of their local Bashas' grocery store
10 pharmacies. It's too early at this point in the life of
11 the claim to process it or adjudicate it realtime. And
12 that's a distinction between CMS and workers' comp. I
13 do agree with you that we could choose an acquisition
14 cost plus fill metric if this was a system that would
15 guarantee -- where there was database that could be
16 realtime adjudicated and paid. It's just not the case
17 in workers' comp.

18 So these 15 percent of claims that grocery
19 stores around -- pharmacies around the country, the
20 reason they use us is we process it realtime, we give
21 them a realtime answer, and we go upon the tedious task
22 of billing and collecting for these claims. Oftentimes
23 it's thirty to sixty days before network homes are found
24 for these claims, and there's another 15 or 20 percent
25 that never find a home; there's 30 or 40 percent of

1 claims nationwide that stay out of network. But the
2 first fill is the critical part we serve.

3 And I'll just say that -- and this is where
4 I can provide some context. I appreciate your point
5 that you do need clarity and objectivity with the cost
6 of these claims. And I'm happy to provide that in
7 future meetings, and we can work together.

8 But picture the claim I mentioned earlier
9 where the patient walks in. There's oftentimes five to
10 seven touch points with my staff by the time I've
11 guaranteed the payment to the pharmacy. So what ServRx
12 does is guarantees a payment to the pharmacy so it feels
13 like a CMS claim. It feels like a guaranteed payment to
14 the pharmacy. And then, for us, with our economies of
15 scale, we go through the tedious task of billing and
16 collecting.

17 We have to reach out to the carrier, reach
18 out to the employer. We oftentimes wait, one, two,
19 three weeks, we submit a bill, we have to call again.
20 And each time we call, it's not magic; it's staff that
21 we pay a reasonable wage, and each call is ten to
22 fifteen minutes. And, again, this drive costs upwards
23 of, on average, 40 to 60 bucks per claim for any new
24 fill for a generic medication, at a minimum. And that's
25 just our cost. I'm not speaking of the pharmacy's

1 costs, the head pharmacist, the pharm tech or any of the
2 other layers of costs.

3 So in workers' compensation, it just behaves
4 a little differently than a commercial claim. And, in
5 particular, in the medication, if you're focused only on
6 acquisition costs and a small dispensing fee, I think
7 you might be missing some of the costs associated with
8 the claim. I won't go into the other operational
9 details. We can talk off-line and help you streamline a
10 process. And Brian articulated, you know, the issues
11 with moving away from AWP for contracting standards and
12 IT. And I'm happy to dive into that at an appropriate
13 time with you guys and roll up our sleeves and work
14 together.

15 I'll say that we're also against -- we're
16 also in favor of cost containment. I'm in no way in the
17 marketplace dictating what claims come to us. And if
18 there's a reasonable fee for any outliers, I'm happy to
19 work with you guys on what we see in our own database,
20 what we process in the marketplace, and we can work
21 together on those.

22 And I'll just lastly say NADAC is a CMS or
23 federal benchmark. But, in fact, even the federal
24 government itself doesn't use NADAC for its own injured
25 workers. So that is, you know, evidence alone that we

1 believe that NADAC isn't necessarily a benchmark that's
2 designed for workers' comp, not in and of itself with a
3 cost plus model. So, again, I understand what you guys
4 are trying to do at the Commission as a whole, and we
5 support that. We support you guys being -- I say "you
6 guys," but men and women being proactive, you know, in
7 the goals at the Commission and am happy to work with
8 you. We promise to be in contact in the coming weeks
9 and months and we can sit together and work -- you know,
10 we represent the provider side, but we understand there
11 needs to be a healthy ecosystem between providers and
12 payers. And we're proud of the role we serve in the
13 community pharmacies, and we look forward to working
14 with you in the -- in the months to come.

15 CHAIRMAN SCHULTZ: Great. Thank you, Todd.
16 And, once again, as much data as you can provide us in
17 your written comments before the close of business on
18 August 5 we do appreciate. And, as always, I think you
19 hopefully all understand that our doors are open all the
20 time. We will meet with stakeholders at any time. It's
21 just we try and be as open and transparent as we
22 possibly can. But, yes, you're exactly right; we are
23 dedicated to improving the system, in both improving the
24 efficiency and reducing the costs. But thank you for
25 your thoughts, Todd.

1 Do any Commissioners have any questions for
2 Todd?

3 If not, next on our list is Laura Clymer.
4 Laura, are you there? Hit "*6" to unmute yourself.

5 MS. CLYMER: Good afternoon, Chairman,
6 Commissioners, staff and those in attendance. My name
7 is Laura Clymer, and that's spelled C-l-y-m-e-r. I'm an
8 attorney who represents injured workers in Tucson and
9 Southeastern Arizona, and I'm president of the Arizona
10 Association of Lawyers for Injured Workers.

11 First of all, I just want to let you all
12 know that we really appreciate the opportunity to
13 comment on the proposed changes to the pharmaceutical
14 fee schedule.

15 AALIW opposes the proposed changes to the
16 pharmaceutical fee schedule for the reasons that were
17 outlined in a letter that we had submitted yesterday.
18 Specifically, we believe the proposal, if adopted, will
19 have a significant likelihood of reducing patient
20 choice. Employees, insured employers and public
21 self-insured entities do have the right to choose their
22 own healthcare providers, and this includes being able
23 to choose their own pharmacy. We urge the Commission to
24 reconsider the proposed changes to the pharmaceutical
25 fee schedule.

1 And that's all I have. Thank you very much.

2 CHAIRMAN SCHULTZ: Thank you, Laura. And
3 thank you for your letter. I read it over, actually,
4 several times. And, once again, if we could encourage
5 you to provide us some additional information, as I said
6 before, data is so critical to helping us make our
7 decisions and even individual examples. I mean, you
8 know, we know that just even a single example can show a
9 significant problem. And so we want to see both data
10 and individual examples.

11 And we definitely -- we want the system to
12 get benefits to the injured workers as quickly as
13 possible. And I think that if anyone would look at the
14 improvement that James and the team has made to how
15 quickly awards are issued and how quickly hearings are
16 held, the results of our MRO reviews, you know, we have
17 made, I think, dramatic strides in improving efficiency
18 and getting benefits to injured workers as quickly as
19 possible.

20 Anyway, we appreciate your position. We
21 appreciate you sharing your comments and look forward to
22 any additional comments and information you can provide
23 us before the 5th of August. Thank you, Laura, and
24 thank you, again, for what you do representing workers
25 in our system. While we try and make it as simple as

1 possible to understand, it is a complex system to
2 navigate, and it's folks like you that help our injured
3 workers and make sure that they get the benefits they
4 deserve. So thank you.

5 Any questions from the Commissioners for
6 Laura?

7 If not, Steve Bennett, you're next on our
8 list.

9 MR. BENNETT: Steve Bennett here, S-t-e-v-e
10 B-e-n-n-e-t-t. I'm with the American Property Casualty
11 Insurance Association, APCIA.

12 Commissioner, I just want to thank the
13 Commission and all the Commissioners and their staff for
14 coming out with the proposal. We fully support the
15 proposal and the intent of the proposal to get medical
16 costs under control.

17 The Commissioner gave a good summary at the
18 beginning of the call of Arizona and the average claim
19 cost of \$43,000, which is well above the average cost
20 nationally, as well as regional cost. And part of the
21 problem is there is also pharmaceutical costs.

22 We support the Commission, and we appreciate
23 their efforts. We believe NADAC can be a good source.
24 It's certainly used in California, which is a major
25 state, and it's also used in state Medicaid systems. We

1 believe NADAC not only has a proven record in those
2 instances, but it's a very transparent system, the
3 information is easily accessible on the CMS site, and
4 it's an accurate and fair system based on the actual
5 acquisition cost of the pharmaceuticals and then giving
6 an additional amount above that. So we think it has
7 worked, it has a fine track record and it's easily
8 accessible and transparent.

9 That said, we want to work with all the
10 stakeholders here and we want an Arizona work comp
11 system that's stable and healthy and also that gets
12 benefits to injured workers. So what I'm saying here is
13 APCIA is very interested in working with all
14 stakeholders to find a solution to the problem of, you
15 know, medical cost containment in Arizona, because that
16 is the major problem. And whatever benchmark the
17 Commission finally adopts, we would like to see costs go
18 down so that the system stabilizes so that -- what we
19 want is a system that provides indemnity and medical
20 benefits to all injured workers but also at a reasonable
21 cost for Arizona employers.

22 And Arizona does a good job, and the
23 Commission does a good job. But as pointed out, there
24 is an issue with rising medical costs. And we support
25 the Commission in its efforts in proposing to adopt

1 NADAC, but we want to work with the Commission and with
2 all the stakeholders to find a solution that's feasible
3 to everything but that will help stabilize the Arizona
4 work comp system and that will ultimately lower medical
5 costs for Arizona.

6 Thank you.

7 CHAIRMAN SCHULTZ: And thank you, Steve. We
8 appreciate you for both joining us today but also in
9 your approach. And, you know, when there are big
10 changes, you have to take, sometimes, a bite of the
11 elephant at a time. But we always try to be transparent
12 and we always try and sort of point the searchlight in
13 the direction that we're going.

14 And so, anyway, thank you for your thoughts
15 and thank you for joining us today. And, yes, you know,
16 as I say -- probably people are really tired of hearing
17 it -- we want to be part of the economic engine of
18 Arizona. We want this workers' compensation system to
19 be such that it attracts employers from across the
20 nation because they see it's fair, it's reasonably
21 priced, the system is efficient, it's effective, it
22 operates, it keeps people at work as much as possible.
23 And that's tying in, also, the efforts of our state
24 plan, our Arizona Division of Occupational Safety &
25 Health rather than just adopting the federal program,

1 because we want it to be different, we want it to be
2 collaborative, we want it to be closely integrated in
3 sharing information with -- injury information so that
4 we can do our best to provide the safest possible state
5 to work and play in in the nation.

6 That's our goal, and we understand that
7 insurers are an important part of that. And so we
8 appreciate that you have joined us today with your help
9 as we try to continue to improve the system as we go
10 along.

11 Any questions for Steve from the
12 Commissioners?

13 Okay. Do we have anyone else on the phone
14 who would like to make any comments relative to the
15 proposed changes to the Physicians' and Pharmaceutical
16 Fee Schedule? If so, please hit "*6" to unmute
17 yourself, give us your name and who you represent.

18 MR. TRIBOUT: Yes, sir. Thank you. This is
19 Kevin, K-e-v-i-n, Tribout, T-r-i-b-o-u-t, and I'm from
20 Optum Workers' Compensation Pharmacy Services.

21 And just to make sure -- there's a
22 clarification -- I understand the earlier comment that
23 you made, Commissioner, is, at this time, the intent to
24 move forward with the adoption of NADAC is not going to
25 take place. Is that correct?

1 CHAIRMAN SCHULTZ: Kevin, thank you for
2 joining us today. Optum is an incredibly important
3 pharmacy provider. And so I will tell you that, of
4 course, it's always the final decision of the Commission
5 at our hearing later when we will review the proposal of
6 staff. But at this point in time, we think that there
7 are significant hurdles. And so I would tell you that I
8 can't guarantee you that until the Commission votes, and
9 we all have an equal vote. But I will tell you we very
10 definitely recognize that we could benefit from further
11 study and evaluation.

12 MR. TRIBOUT: Thank you, sir. With that, my
13 comments will be relatively short.

14 You know, we do business in all fifty
15 states. We appreciate and thank the Commission for
16 working with us and with our trade association, AAPAN,
17 on this issue. I know we've had several conversations,
18 and we appreciate the openness in the discussion.

19 As I said, we do business in fifty other
20 states. You know, we've been in workers' comp for a
21 long time. I've been here for quite a long time doing
22 policy efforts. And I would support and agree with you
23 that some of these egregious pricing -- I can tell you
24 what; this is not the first I've heard of this in
25 multiple states.

1 So what we are resigned to do is throw in
2 our effort to help you, to be a stakeholder, to work
3 through this. We can probably get some examples from
4 some other states on effective policy language, we can
5 offer our clinical folks to be part of the discussion,
6 and then, of course, we can look at some of the data
7 points as well.

8 So whatever you need from us, please feel
9 free to continue to reach out to us. And thank you,
10 all.

11 CHAIRMAN SCHULTZ: And, Kevin, thank you.
12 We definitely appreciate input from all stakeholders.
13 Okay. Thank you, Kevin.

14 Is there anyone else who wishes to make any
15 comments?

16 MS. RICE: Mr. Chairman, Emily Rice with
17 B3 Strategies on behalf of the Arizona Self-Insurers
18 Association.

19 CHAIRMAN SCHULTZ: Thank you, Emily.

20 MS. RICE: I just want -- I'll keep my
21 comments very brief.

22 The Arizona Self-Insurers Association just
23 wanted to express their gratitude for the Industrial
24 Commission of Arizona's goals and staff's past and
25 ongoing effort to control costs without impacting the

1 care to injured workers. We look forward to the
2 continued discussions with the ICA and other
3 stakeholders regarding finding a balanced approach to
4 addressing pharmaceutical costs without impacting care.

5 So thank you, all, for all of your efforts.

6 CHAIRMAN SCHULTZ: Well, thank you very
7 much, Emily. We appreciate it, and we appreciate very
8 much our relationship with the Self-Insurers Association
9 and our many, many, many wonderful self-insured
10 employers through the -- throughout the state of Arizona
11 who truly help lead the way in implementing effective
12 programs and truly being incredibly responsive whenever
13 we ask for help or for information. So thank you to
14 your organization, and thank you to all of your members.
15 We appreciate you very much.

16 Anyone else who wishes to make any comments?

17 Hearing none, this will conclude the annual
18 fee schedule public hearing. We appreciate your
19 participation.

20 As a reminder, although the oral proceeding
21 has concluded, written comments will be accepted through
22 the close of business on August 5, 2021; that's
23 August 5, 2021. Written comments may be submitted to
24 Charles Carpenter, Manager of the Medical Resource
25 Office. His contact information is available on the

1 Commission's MRO webpage linked through the ICA website
2 at azica.gov; that's azica.gov. All written comments,
3 along with the transcript of this hearing, will be
4 posted on the MRO webpage.

5 Thank you, all, for joining us. For those
6 of you who have joined us for the public hearing, you
7 are certainly welcome to stay on to listen to the rest
8 of the business of the Industrial Commission, but you're
9 also free to move on and do other things if you so wish.

10 So now I'd like to move back to the agenda
11 of our regular Commission meeting.


12 (Hearing concluded at 2:18 p.m.)
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CERTIFICATE

I, Nicola Bauman, Certified Court Reporter for the State of Arizona, do hereby certify that the foregoing 57 printed pages constitute a full, true and accurate transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

Dated at Phoenix, Arizona, this 13th day of August, 2021.



Nicola Bauman, CCR
Certified Reporter No. 50830
For the State of Arizona