

March 11, 2024

Maureen Gray, Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
1515 Clay Street, 18th floor
Oakland, CA 94612

Re: Pharmaceutical Fee Schedule

Dear Ms. Gray,

On behalf of Concentra, which operates 101 occupational clinics in California treating more than 200,000 injured workers a year, we appreciate the opportunity to provide comments on the proposed regulations for the physician fee schedule and the pharmaceutical fee schedule. We have strong concerns with the proposed change to Section 9789.40.5(f) that eliminates the dispensing fee paid when a drug is dispensed by a physician. It is Concentra's position that the Medi-Cal professional dispensing fee should be maintained for physician dispensed drugs and should follow the same requirements as for pharmacy dispensed drugs as defined in Section 9789.40.1 of the proposed amendment.

We take issue with the statement on page 22 of the Initial Statement of Reasons that "Many of the tasks involved in dispensing a drug to a patient are already included in the physician's reimbursement". This is not accurate. The Evaluation and Management (E&M) fee for a patient encounter (codes 99202-99215) only includes the work value associated with the management of the medication regarding the decision to prescribe. It does not address the cost and value of actual medication dispensing.

In further support of our position that the value of the dispensing itself is not part of Prescription Drug Management, the industry standard is that the E&M MDM component is strictly intended for the physician to assess the patient's medication needs and determine the action to take, nothing more.

The MGMA Guidance for Prescription Drug Management states:

Prescription drug management is based on documented evidence that the provider has evaluated the patient's medications as part of a service. This may be a prescription being written or discontinued or the decision to maintain a current medication/dosage.

- *Simply listing current medications is not considered prescription drug management.*
- *Prescription drug management differs from "drug therapy requiring intensive monitoring for toxicity."*

The American Medical Association (AMA) Guidance for Prescription Drug Management on their website states:



“Appropriate documentation of prescription drug management continues to be an opportunity for many physicians. Doctors need to know that simply adding the current medication list to the progress note is not adequate. Prescription drug management is based on documented evidence that the physician has evaluated medications as part of a service that is provided. Physicians should make a direct connection between the medication that is prescribed to the patient and the work that was performed on the day of the clinic visit, such as: “Stable hypertension; continue valsartan 10 milligrams, will refill for 4 months until next follow-up visit.” Simply stating that the medication list was reviewed will not meet the definition of prescription management. The American Academy of

Professional Coders (AAPC) as well as the American Health Information Management Association (AHIMA) also apply this same guideline to the Medical Decision Making component of the E&M service.”

It is clear that the cost and work value of in office physician dispensing is not included in the Evaluation and Management medical decision making for Prescription Drug Management and should therefore be continued to be paid to a Physician dispensing in the same manner as a pharmacist dispensing.

The Medi-Cal professional dispensing fee is defined in Section 14105.45 (a)(12) of the California Welfare and Institutions code to have the same meaning as defined in 42 CFR 447.502 of the Code of Federal Regulations. This meaning includes the overhead associated with dispensing (procurement and inventory management), preferred drug formulary (MTUS) review, patient drug utilization review, patient counseling on how to take the medication and any side effects. None of these tasks are included as part of the E&M fee. All of these tasks are performed by Concentra physicians when dispensing a prescription medication.

We maintain that the steps that need to be taken to dispense a prescription medication to a patient largely follow the same path and work value, regardless of whether it is done in a clinic by a physician or a pharmacy by the pharmacist. Furthermore, California Labor Code Section 5307.1, which is the authority for establishing the workers comp pharmacy fee schedule, does not differentiate between pharmacies and physician dispensing. It states that “Pharmacy services and drugs shall be subject to the requirements of this section, whether furnished through a pharmacy or dispensed directly by the practitioner pursuant to subdivision (b) of Section 4024 of the Business and Professions Code.”

In addition to the reimbursement issue, eliminating the dispensing fee for physician dispensed medications is contrary to the requirements of California Labor Code Section 5307.1(f) which states that “Within the limits provided by this section, the rates or fees established shall be adequate to ensure a reasonable standard of services and care for injured employees.”

In 2023, Concentra dispensed almost 200,000 medications from its California clinics, charging payors the same amount as if these same medications were dispensed and billed from a retail pharmacy. The following table shows two commonly prescribed medications for occupational



injuries and the different reimbursement rates for physicians and pharmacies, as proposed by these regulations.

| Medication | Class | Concentra Cost | Proposed Fee Schedule | |
|----------------------|-------------------|----------------|-----------------------|-------------------|
| | | | Physicians | Pharmacies |
| Cephalexin 500mg #28 | Antibiotic | \$7.49 | \$4.12 | \$14.17 - \$17.32 |
| Naproxen 500mg #14 | Anti-inflammatory | \$6.80 | \$0.90 | \$10.95 - \$14.10 |

To highlight the monetary impact of these proposed regulations on physicians, we have included our cost for these medications. Our clinics would be forced to stop dispensing due to the financial losses created by these proposed rates as the costs to acquire would be more than the proposed fee schedule rate.

If clinics stop dispensing, the standard of services and care for injured employees will be negatively impacted:

- When the types of injuries covered by Workers’ Compensation are considered, medication adherence is essential to lowering the overall cost of care and returning the injured worker to work. A back sprain or a wound injury can develop into a much more complicated case if the injured worker does not adhere to their doctor’s orders. Ensuring adherence begins by filling those prescriptions at the clinic.
- The proposed regulations would shift Concentra’s in-office dispensing, along with most other workers’ compensation physician dispensing, to retail pharmacies which are already understaffed and overworked. The Los Angeles Times on Sept 5, 2023, cited a survey by the California Board of Pharmacy, in which 91% of surveyed pharmacists working at California retail pharmacies like Walgreens, CVS and Rite-Aid, said staffing was not high enough to provide patients with proper care.
- Patient adherence has been shown to be better when a physician dispenses medications. In a 2014 report by CVS Pharmacy on medication adherence, they cite a statistic that up to a third of all prescriptions are never filled and furthermore, they report that the relative influence of prescribers on medication adherence is 34% vs. pharmacists at 26%.
- Pharmacies require payment for medications up front. Injured workers, particularly those newly injured without an approved workers’ comp claim, may not be able to afford to pay for the medications. Our clinics will dispense the medications assuming risk that the claim may not be accepted.
- If the injured worker cannot afford to pay for medications out of pocket, they will simply go to the emergency room. In the aftermath of the COVID pandemic, and the impact on staffing, California emergency rooms are already overcrowded.



- There can be significant language barriers at pharmacies that intimidate injured workers which results in them not filling their prescriptions.
- Many injured workers will need to coordinate transportation to the pharmacy which can result in needless delays in filling a prescription.

The reasons outlined above will lead to injured workers either delaying in taking their medications or not filling their prescription at all. This will result in the prolonging of the workers' injuries and further delay their return to work. The net effect of this is an increase in costs to the Workers' Compensation system. These costs will exceed any cost savings that might be gained from the currently proposed regulations.

California has implemented significant controls on workers' compensation medications over the last several years such as the MTUS medication formulary, RFA requirements and treatment guidelines that control for medical necessity and overutilization of medications. In addition, the proposed regulation closes the loophole related to pricing of medications not in the current fee schedule, which we support. With these controls, coupled with the lowest medication fee schedule in the nation, we question the need to make additional changes that will hamper the ability for California injured workers to receive timely and appropriate medications at the time of treatment.

There is no reasonable and defensible argument to remove the dispensing fee only for physician dispensed medications. The proposed regulations will only amplify the already existing issues with proper and timely patient care without providing any cost savings to California employers.

If you have any questions or would like additional information I can be reached at (972) 364-8172 or Greg_Gilbert@Concentra.com.

Respectfully,

Greg Gilbert

Greg M. Gilbert
EVP Concentra