NATIONAL COUNCIL OF INSURANCE LEGISLATORS (NCOIL)
Workers' Compensation Pharmaceutical Reimbursement Rates Model Act

Drafting Note: This model language is intended for inclusion in state insurance code or regulation related to workers' compensation medical fee schedules. This model succeeds and augments the previous model Act on Workers' Compensation Repackaged Pharmaceutical Reimbursement Rates adopted by NCOIL on July 12, 2013.

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Section 1. Short Title

This Act shall be known as the "*Workers' Compensation Pharmaceutical Reimbursement ~~Rates~~ Model Act*."

Section 2. Purpose

The purpose of this Act is to establish clear guidelines for balanced reimbursement of pharmaceutical products in order to help reduce workers' compensation insurance costs.

Section 3. Definitions

Drafting Note: Definitions for language in this Act would track definitions in [insert relevant workers' compensation statute].

For the purpose of this Act, these defined words have the following meaning:

"Repackaged Pharmaceutical Product" -- A finished drug product removed from the container in which it was distributed by the original manufacturer and placed it into a different container without further manipulation of the drug. The term also includes the act of placing the contents of multiple containers of the same finished drug product into one container, as long as the container does not include other ingredients. The term does not include a drug that is manipulated in any other way, including if the drug is reconstituted, diluted, mixed, compounded or combined with another ingredient.

"Average Wholesale Price" The wholesale price charged on a specific commodity ~~that is~~ assigned by the drug manufacturer as ~~and is~~ listed in a nationally recognized drug pricing file or source.

"Emergency Room" The facility within a licensed hospital that provides urgent medical treatment for acute illnesses and injuries.

"Compounded Pharmaceutical Products" a pharmaceutical product created by a licensed pharmacist by virtue of mixing or altering drugs and/or components to meet the unique needs of an individual patient when a commercially available drug does not meet those needs and when the finished product does not recreate a commercially available product.

Section 4. Reimbursement for Repackaged Pharmaceutical Products*

A. BAll pharmaceutical bills submitted for a Repackaged Pharmaceutical Product/Drug must include either:

(1) The National Drug Code (NDC) Number of the original manufacturer registered with the U.S. Food & Drug Administration (FDA) as well as the repackaged NDC. Under no circumstance shall an NDC Number other than the original manufacturers NDC number be used. The submitted A repackaged NDC Number shall not be used for reimbursement and shall not be considered the original manufacturer's NDC Number.

(2) An authorized distributor's stock package used in the repackaging process.

B. The reimbursement rate for Repackaged Pharmaceutical Product bills shall be as follows:

(1) If submitted in accordance with Section (4)(A)(1), reimbursement shall be based on the current published original manufacturer's Average Wholesale Price (AWP) of the product, plus a dispending fee, calculated on a per unit basis, as of the date of dispensing.

(2) If submitted in accordance with Section (4)(A)(2), where the original manufacturer's NDC Number is not provided on the bill, then the reimbursement shall be based on the AWP of the lowest priced therapeutically equivalent drug, calculated on a per unit basis.

Drafting Note: A state where a workers' compensation pharmacy fee schedule is already in place should use the following subsection B, in place of subsection B above:
B. The maximum reimbursement allowed shall be based on the current pharmacy fee schedule reimbursement methodology, utilizing the original manufacturer's NDC and corresponding Average Wholesale Price (AWP) of the drug product, calculated on a per unit basis, as of the date of dispensing.

C. When medications are dispensed by a physician, and they have been repackaged, the maximum reimbursement shall be the lesser of: (this should be included above)

1. The fee schedule amount of the underlying or original manufacturer's NDC, assigned by the **FDA; or**
2. **The contract rate as agreed upon between the payer and the provider**

D. If the provider fails to furnish the underlying or original manufacturer's NDC, the payer has discretion to **determine the appropriate NDC to use**

E. The dispense fees otherwise provided in *[insert relevant workers' compensation statute]* **shall be payable when applicable.**

Commented [TKC1]: I think you might want to consider asking for BOTH NDCs – the repackaged NDC and the Original NDC. It is helpful in tracking for data and processes

Commented [TKC2]: You might want to consider adding in "lessor of contract rate or" as this would reduce the FS even further if the FS is higher than contract rate, contract rate would apply.

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Drafting Note: Calculation of the AWP should be based on one or both of the universally accepted reporting databases, Medispan or Redbook, as selected by the payer.

Section 5. Reimbursement for Physician Distributed Pharmaceutical Products

A. An employer, their workers' compensation insurance carrier or their designated third-part administrator, may restrict reimbursement for pharmaceutical products to a ~~directed a~~ directed network of preferred pharmaceutical providers as follows:

(1) At any time, when a prescription is obtained other than when from a provider described in Subsections 5(A)(2) and 5(A)(3).

(2) After a maximum time of ~~allowable supply of~~ seven (7) days' from the date of injury~~medication~~, when a prescription is obtained by the patient for an acute illness or injury from a provider in an emergency room.

(3) After a maximum time of ~~allowable supply of~~ thirty (30) days' from the date of injury~~medication~~, when a prescription is distributed by the ~~hospital~~ provider to the patient ~~upon discharge from in-patient care~~.

(4) ~~-~~Nothing in this section shall apply to pharmaceutical products dispensed for in-patient hospital care or for pharmaceutical products provided to the patient at time of hospital discharge. ~~.~~

B. Physician dispensed~~tributed~~ pharmaceutical products shall be limited to ~~the initial treatment provider only~~ and only reimbursable for no more than thirty (~~a first fill within~~30) ~~7~~ days from the date of injury.

(1) Notwithstanding this restriction, reasonable exceptions to this policy would be appropriate in the following situations:

a. The injured worker does not have access to a retail pharmacy within 20 miles of the patients' home or work address.

b. Emergency treatment where the injured worker would be placed at higher risk if medications did not begin immediately upon departure from physician's office.

~~B. Medications dispensed either after the initial visit or greater than 7 days' post-accident must meet all the following conditions:~~

~~(1) A licensed pharmacist must dispense the medications.~~
~~(2) It must be in a pharmacy setting which is accessible to the general public.~~

~~C. Medications dispensed shall conform to dosages which are widely available to the general public.~~

Section 6. Reimbursement for Compounded Pharmaceutical Products

A. Pursuant to existing requirements (statute or regulation) An employer, their workers compensation insurance carrier, or their designated third-party administrator may require a critical evaluation, or utilization review, of compounded pharmaceutical products prescribed for patients~~-~~.

Commented [TKC3]: For both the carrier and the PBM, the DATE OF INJURY is much easier to track and use as a data element than the days supply of the medication. We may not have visibility to the doctor dispensing treatment time frames, but we DO know the date of injury

B. An employer, their workers compensation insurance carrier, or their designated third-party administrator may restrict reimbursement for compounded pharmaceutical products to a directed network of preferred pharmaceutical providers.

C. ~~C.~~ Nothing in Subsections 6(A) or 6(B) shall apply to in-patient hospital care. A maximum supply of 30 days medication may be distributed by the hospital provider upon discharge from in-patient care.

D. All compounded medicaitons shall be billed at the individual ingredient level and include the original manufacturers assigned NDC for each individual ingredient and quantity of each individual ingredient

E. Reimburserment for compounds shall be the lessor of contract or existing fee schedule for each individual ingredient plus a dispensing fee of $xx.zz. Reimbursement shall not be provided for any ingredient which is not an active ingredient in the compounded medication.

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Section 7. Enforcement

The *[insert applicable state agency]* **shall have enforcement authority as provided under** *[insert workers' compensation statute].*

Section 8. Effective Date

This Act shall take effect *[insert months]* **after enactment.**

*Drafting Note: * Based on provisions in TN Dept. of Labor & Workforce Development, Division of Workers' Compensation Rule 0800-02-18-.12*