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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 codes or regulations 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. Re-adopted by the NCOIL Workers' Compensation Insurance Committee on July 13, 2018 and the NCOIL Executive Committee on July 15, 2018. Amended by the NCOIL Workers' Compensation Insurance Committee and Executive Committee on December 8, 2018

**Sponsored by Rep. Marguerite Quinn (PA)*

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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 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 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, or combined with another ingredient.

“Average Wholesale Price” The wholesale price charged on a specific commodity that is assigned by the drug manufacturer and is listed in a nationally recognized drug pricing file.

“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. All pharmaceutical bills submitted for a Repackaged Pharmaceutical Products must include either:

- (1) The National Drug Code (NDC) Number of the original manufacturer registered with the U.S. Food & Drug Administration (FDA). Under no circumstance shall an NDC Number other than the original manufacturers NDC number be used. A repackaged NDC Number shall not be used 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 manufacturer's Average Wholesale Price (AWP) of the

product, plus a dispensing 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:

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 or deny coverage until the appropriate NDC is furnished.

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

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 or mandated by (State).

Section 5. Reimbursement for Physician Distributed Pharmaceutical Products

A. An employer, their workers' compensation insurance carrier or their designated third-party 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 allowable supply of seven (7) days' 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 allowable supply of thirty (30) days' 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.

B. Physician distributed pharmaceutical products shall be limited to the initial treatment provider only and reimbursable for no more than a first fill within 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.

C. 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.

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

Section 6. Reimbursement for Compounded Pharmaceutical Products

A. 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.

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. 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.

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*