

## **Medical Fee Table for Workers Compensation Update (10/17/11) – Senate Bill 71**

During the 2011 legislative session, AGC proposed a medical fee table for workers compensation that was retained by the Senate Commerce Committee. A number of senators had issues utilizing the Medicare fee table but recognized that our state statute needed changes, as it currently required insurance carriers to pay any amount billed for services.

During the summer, the state Workers Compensation Advisory Committee worked on the issue and made three recommendations that would help contain and control future costs. The three proposals include a 10-day rule, a pharmacy benefit managed care program, and require generic drugs when appropriate.

Below are the detailed recommendations.

### **10 Day Employer choice provisions**

An employee sustaining a personal injury arising out of and in the course of employment or disabled by occupational disease is entitled to reasonable and proper medical, surgical, hospital, pharmaceutical and other appropriate health services.

Employer selection. The employer initially has the right to select for the employee a health care provider authorized to practice as such under the laws of the State.

Employee selection. After 10 days from the inception of health care [under the employer selection provision], the employee may select a different health care provider.

### **New Hampshire Workers Compensation Pharmacy Benefit Management Law**

**General authorization provision:** A employer, employer's insurance carrier or self-insurer may designate a Pharmacy Benefit Management System using a network of pharmacies, including mail order pharmacies, that injured employees shall use to obtain outpatient prescription medications and medical supplies.

**Authorization:** Requirements and process of initial approval, expirations, re-approvals, and withdrawal of approval similar to that of Workers Compensation managed care programs; including affirmative vote of ratification such approval by the Workers Compensation Advisory Council.

**Sponsorship:** Sponsorship allowed for employer, employer's insurance carrier or self-insurer.

**Required information to be submitted to the Commissioner:** updated at least annually, a listing of all pharmacy chains and independent pharmacies it has designated; and the name and contact information for a pharmacy benefit manager if one is used.

**Notification and education of injured worker:** Upon hire, upon injury. Within 48 hours of notification of injury, the sponsor shall notify or issue a card to the injured worker with pharmacy benefit management instructions. Issuance of the card is not evidence that the sponsor has accepted compensability of injury. The card shall have a phone number at which the worker may call to talk with a live person between 8 AM and 8 PM on weekdays excepting holidays for information and advice about obtaining prescribed medications.

**Exemptions from use of the PBM:** (1) first fill of the prescription(s) issued to the worker at the first medical service at which at least one prescription is issued for an injury; (2) when there is no network pharmacy within ten miles of the injured worker's residence if the worker resides in a rural area or three miles if the worker reside in a non-rural area; (3) a medical emergency occurs and it is not reasonably possible to obtain immediately required prescribed medicine from a network pharmacy, and (4) the worker was not informed about the necessity of using a network pharmacy. The sponsor shall not unreasonably deny an exemption.

**Sponsor's financial liability in event the worker uses a non-network pharmacy without a proper exemption:** The sponsor shall be liable solely for costs that would have been incurred had the service been rendered by a network pharmacy. Nothing in law shall prohibit the pharmacy from obtaining from the worker any balance of charges in excess of this amount.

### **Generic Drugs**

**Generic Drugs:** Providers shall prescribe generic drugs whenever medically acceptable for the treatment of an injury or disease for which compensation is claimed. An employee shall purchase generic drugs for the treatment of an injury or disease for which compensation is claimed if generic drugs are available at the time and place of purchase, unless the prescribing provider indicates that substitution of generic drugs is not medically acceptable. If an employee chooses to purchase a non-generic drug when a generic drug is medically acceptable and available at the time and place of purchase, the insurer or self-insurer is required to reimburse the employee for only the cost of the generic drug.