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July 7, 2022

What's New In Our Industry

Florida

WORKERS' COMPENSATION

Administrative

DWC RESCINDS CONTROVERSIAL PRACTITIONER (i.e., Doctors, Nurses and Physician Assistants) PRESCRIBING AND DISPENSING BULLETIN

The Dept. of Financial Services, Division of Workers' Compensation ("DWC") has agreed to rescind a controversial bulletin relating to authorization of practitioner (i.e., doctors, nurses, and physician assistants) prescribing and dispensing, after a group of workers' compensation carriers challenged this unadopted rule. The DWC initially published Bulletin DWC-01-2020 on March 31, 2020, stating that a carrier's refusal to pre-authorize and pay for medication prescribed and dispensed by doctors and nurses was "inappropriate" and "contrary to law." We have long maintained that this Bulletin is legally and procedurally invalid. We believe that rescission vindicates our position.

After the DWC began issuing Reimbursement Dispute Determinations based on the Bulletin and its logic, our Firm filed multiple appeals via Petitions for Administrative Hearing, as well as an Administrative "Rule Challenge" on behalf of a consortium of workers' compensation carriers. As a result of our Rule Challenge and administrative appeals, the DWC has agreed to rescind the bulletin retroactively to the date it was issued. The settlement agreement provides that DWC will not apply the Bulletin to any pending reimbursement disputes.

The DWC plans to hold new "rulemaking" hearings to more fully and thoughtfully address practitioner dispensing issues. Unfortunately, we have not yet fought the last battle. The lure of easy money, with no practical market-pricing mechanism in the "AWP" based payment system, suggests that drug vendors and management companies will be back for another fight. The drug vendors and managers will likely continue to argue that doctors, nurses, and physician assistants are "pharmacies or pharmacists" in the system, and drug-selling in their offices should be mandated, not just allowed. We therefore encourage all our industry clients to participate in the rulemaking proceedings to address these issues.

We will monitor the DWC's rulemaking proceedings on behalf of responsible workers' compensation carriers. We also recommend that any carriers who have noticed improper or abusive dispensing and pricing practices specifically document such examples and related data, with a claimant's personal information redacted. These examples and data could be presented to the DWC during rulemaking. We would be happy to work with our clients to coordinate any such presentation to the DWC.

If you would like to discuss the significance of this Rescission of the Bulletin, or any other matters relating to authorization and reimbursement of medical bills, please contact Ralph Douglas in our Tallahassee office.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

NORMANDY INSURANCE COMPANY,
ZENITH INSURANCE COMPANY,
BRIDGEFIELD EMPLOYERS INSURANCE
COMPANY, BRIDGEFIELD CASUALTY
INSURANCE COMPANY, BUSINESSFIRST
INSURANCE COMPANY, AND
RETAILFIRST INSURANCE COMPANY

Petitioners,

vs.

Case No. 22-001474RU

DEPARTMENT OF FINANCIAL SERVICES,
DIVISION OF WORKERS' COMPENSATION

Respondent,

and

PRESCRIPTION PARTNERS, LLC

Intervenor.

SETTLEMENT STIPULATION

Petitioners, Normandy Insurance Company, Zenith Insurance Company, Bridgefield Employers Insurance Company, Bridgefield Casualty Insurance Company, Businessfirst Insurance Company, Retailfirst Insurance Company; Intervenor, Prescription Partners, LLC; and Respondent, Department of Financial Services, Division of Workers' Compensation, stipulate to the settlement of this case as follows:

I. To avoid costly and time-consuming litigation, the Respondents agree to publish the attached Notice of Rule Development (Exhibit A), and rescind Informational Bulletin DWC-01-2020 retroactively to the date it was issued. Bulletin DWC-01-2020 has no effect on any past or future

DOAH Case No. 22-001474RU: Settlement Stipulation

reimbursement dispute. Rescission will be accomplished on the Respondent's website (Bulletins (myfloridacfo.com)) by restating the Description as "RESCINDED: Providing Reimbursement for Dispensed Medication" and modifying Informational Bulletin DWC-01-2020 (available at SKM C36820021401400 (myfloridacfo.com)) to contain a prominent watermark stating "RESCINDED", and adding "RESCINDED" to the bulletin's header and footer. The Parties agree that nothing in this Agreement modifies any Reimbursement Dispute Determinations made by the Respondent prior to, up to and including the date of this Agreement. In the event of review or litigation of any Reimbursement Dispute Determination(s) issued prior to or after the date of this Agreement, the issuance or publication of Bulletin DWC-01-2020 shall have no effect.

2. Immediately following the publication of the Notice of Rule Development, and rescission of Information Bulletin DWC-01-2020, or reasonably soon thereafter, the Petitioners will voluntarily dismiss their petition and the Intervenor agrees to this dismissal.

3. Each Party shall be responsible for their own costs and attorney's fees and waives any right that they may have against any other Party for costs and attorney's fees associated with this action.

4. The Parties acknowledge that this Settlement Stipulation ("Agreement") has been freely and voluntarily executed, after being apprised of all relevant information concerning the Agreement, that they have had the opportunity to consult with and have received the advice of counsel in entering into this Agreement. In executing this Agreement, the Parties acknowledge that they do not rely on any inducements, promises, or representations other than those contained herein. In this regard, the Parties acknowledge that this Agreement is the product of mutual negotiation and no doubtful or ambiguous provision that may exist in this Agreement is to be construed against any of the Parties based upon a claim that one of the Parties drafted the Agreement, or that the language of the Agreement was intended to favor one of the Parties.

5. This Agreement shall be deemed to have been made and to be performed in Leon County Florida, and shall be interpreted, construed, and enforced, in accordance with the laws of the

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State of Florida in any court of competent jurisdiction therein by any Party to this Agreement. Any Party to this Agreement shall be able to seek specific performance of its terms by suit in the Circuit Court of competent jurisdiction and venue.

6. The Parties acknowledge that in deciding to execute this Agreement and then in executing this Agreement, they have not relied upon any agreement, statement, or representation that is not specifically set forth herein, that this Agreement contains the entire agreement between the Parties hereto regarding the resolution of this dispute, and that the terms of the Agreement are contractual and not mere recitals.

7. This Agreement cannot be amended, modified, or amplified except by agreement and written document, which is signed by all Parties hereto. No oral or written statement made by any person shall operate to supplement or modify this Agreement in any manner or otherwise affect its terms and provisions.

8. In the event that any term or provision of this Agreement is deemed unenforceable or unlawful for any reason, the remainder of the Agreement shall be deemed enforceable and in effect.


9. This Agreement is effective upon the date it is executed on behalf of all the Parties hereto.


10. The failure of any Party to enforce at any time any of the provisions of this Agreement shall not constitute a waiver of any such provisions.


11. The signatories hereto each warrant and represent that they have the requisite authority to enter into this Agreement on behalf of the respective Party.

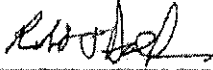
12. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, and all such counterparts shall comprise but one Agreement. Further, this Agreement may be executed by facsimile and/or by electronic mail transmission. Execution by facsimile and/or electronic mail transmission shall be deemed to be execution in the original in accordance with Florida law.

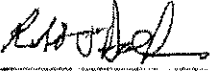
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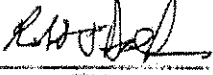

Signature/Title Pr. CEO
Normandy Insurance Company
Date: 7/7/2022


Signature/Title VP
Zenith Insurance Company
Date: 7/5/22



Signature/Title SVP
Bridgefield Employers Insurance
Company
Date: 7/5/2022


Signature/Title SVP
Bridgefield Casualty Insurance Company
Date: 7/5/2022


Signature/Title SVP
Businessfirst Insurance Company
Date: 7/5/2022

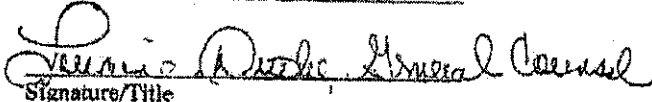

Signature/Title SVP
Retailfirst Insurance Company
Date: 7/5/2022

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Signature/Title

Department Of Financial Services,
Division Of Workers' Compensation

Date: 07-06-22


Signature/Title

Prescription Partners, LLC

Date: 7/5/2022