

## **DWC REVERSES POLICY, NOW REQUIRING CARRIERS TO AUTHORIZE DISPENSED AND REPACKAGED MEDICATION**

On March 31, 2020 the Florida Department of Financial Services, Division of Workers' Compensation issued Informational Bulletin DWC-01-2020, requiring carriers to authorize physician dispensed medication. §440.13(3)(j), Fla. Stat. grants an injured worker the right to select his pharmacy. The new Informational Bulletin establishes a new policy, as the Division previously held that a provider of physician dispensed medication was required to obtain authorization prior to dispensing, and that the carrier could refuse authorization.

The bulletin examines §465.0276, Fla. Stat., which exempts a licensed practitioner from the legal requirement that only a pharmacist may legally dispense medicinal drugs, and apparently concludes that this exemption from pharmacy licensure makes the physician a pharmacist. The bulletin then examines section 440.13(3)(j), Fla. Stat., which allows the employee to select his own pharmacy. The bulletin concludes that, because injured workers may select their pharmacy, carriers must authorize all physicians to dispense drugs in their offices at the higher price demanded for such.

The Informational Bulletin is a change in policy for two primary reasons: (1) the Division previously informed carriers that they did not have to authorize physician dispensed medication, and (2) the Department of Financial Services previously took positions in favor of free market, rather than government mandated solutions to pricing disagreements.

The Division's apparent policy change is a bad idea. Division data suggests that repackaged drugs dispensed by physicians are often many times more expensive than pharmacy distributed drugs. The statutory amendments relating to prescription reimbursement, which were meant to control spiraling prescription costs, nonetheless set a payment basis which is at least 12.5% higher for physician dispensed drugs than for other drugs, in the absence of any negotiated agreement on the price of those drugs. While the pharmacy industry negotiates and accepts payment at less than the "AWP" list price, mandated physician-dispensed drugs generally lack incentive for physician dispensers and the corporations managing their billing, to enter into market based price negotiation. As a result, physician-dispensed drugs are much more, sometimes several times more, expensive than prescriptions dispensed in a pharmacy.

This policy change also has Constitutional implications. The Workers' Compensation Law requires employers to have workers' compensation insurance coverage. If they don't, they can be fined, have their business shut down, and go to jail for insurance fraud.

The State of Florida also essentially sets the rate for workers' compensation premiums. Those rates are based on costs, and the Division of Workers' Compensation data suggests that roughly 68% of the cost of workers' compensation insurance in Florida is for medical benefits. In most states, medical benefits account for only half of the insurance cost, if not less. Prescription drugs, surgical expenses and hospital expenses are the three largest categories of medical payments in the system. Each of these components is rising dramatically. If the State of



Florida has the authority to shut down a business for not securing payment of medical benefits, and removes that employer's or their carrier's right to choose a provider and negotiate on price, due process questions arise. If the state mandates that the employer authorize doctors for pharmaceutical services, and that they pay the much higher price demanded by a doctor's billing agent, with whom the employer or its carrier does not want to do business, the system then operates for the benefit of the vendors, rather than the mandatory participants in the system. The mandatory participants, the employee and the employer, are stuck with reduced benefits at a higher cost, and they have no legal alternative. Once this occurs, this part of the system becomes constitutionally suspect and, at one level or another, likely violates constitutional notions of fairness and due process.

The State of Florida has historically been against "picking winners and losers" in the marketplace, and friendly to the notion of open market competition and transparent price negotiation. Where the state has mandated insurance coverage, including in the field of workers' compensation, the law has also mandated the use of commercially reasonable cost standards. Whether the state will travel down the path of deciding who must do business with whom, and that employers must pay any amount demanded of them, without reference to commercially reasonable standards, remains to be seen.

In the meantime, we recommend that all carriers who authorize physician dispensed medication include the following language with authorization:

Medication dispensed in the office or by the treating physician has not been reviewed by the carrier prior to dispensing, is subject to denial. All treatment and medication dispensed must be in compliance with §440.13, Fla. Stat., and must be determined to be medically necessary, causally related to the subject accident, and in compliance with the practice parameters and standards of care established in this law. The carrier requires documentation of compliance prior to payment, including but not limited to medical notes, medication administration records, and drug pedigree documentation. Please provide all such documentation with request for payment.

If any of employers and carriers wish to discuss issues relating to medical authorization and reimbursement, please do not hesitate to contact our office.



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**INFORMATIONAL BULLETIN**  
**DWC-01-2020**  
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Florida Department of Financial Services  
**Jimmy Patronis**  
Chief Financial Officer

**All Employer/Carriers Providing Reimbursement for Dispensed Medication Under  
Chapter 440, Florida Statutes**

The Division of Workers' Compensation has received inquiries as to whether it is appropriate for employers/carriers to deny authorization or reimbursement for prescription medication solely because the medication is dispensed by the treating physician who is a licensed Florida dispensing practitioner instead of a pharmacist. The answer is "no". Sick or injured employees have the right to choose to have their prescriptions dispensed by a dispensing practitioner as authorized in Florida law.

The following sections of Florida Statute are relevant to the issue:

465.0276 Dispensing practitioner.—

- (1) A person may not dispense medicinal drugs unless licensed as a pharmacist or otherwise authorized under this chapter to do so, except that a practitioner authorized by law to prescribe drugs may dispense such drugs to her or his patients in the regular course of her or his practice in compliance with this section.
- (2) (b) A practitioner who dispenses medicinal drugs for human consumption for fee or remuneration of any kind, whether direct or indirect, must: Comply with and be subject to all laws and rules applicable to pharmacists and pharmacies, including, but not limited to, this chapter...

440.13 Medical services and supplies; penalty for violations; limitations.—

- (3) (j) [A] sick or injured employee shall be entitled, at all times, to free, full, and absolute choice in the selection of the pharmacy or pharmacist dispensing and filling prescriptions for medicines required under this chapter. It is expressly forbidden for the department, an employer, or a carrier, or any agent or representative of the department, an employer, or a carrier, to select the pharmacy or pharmacist which the sick or injured employee must use; condition coverage or payment on the basis of the pharmacy or pharmacist utilized; or to otherwise interfere in the selection by the sick or injured employee of a pharmacy or pharmacist.

Further, it is noted that Chapter 440, Florida Statutes, as well as the Florida Workers' Compensation, Health Care Provider Reimbursement Manual, 2016 Edition, explicitly recognize the dispensing of medicinal drugs by a licensed dispensing practitioner to injured employees and provide a methodology for determining the appropriate reimbursement to such dispensing practitioners. *See Manual*, at p. 36 ("The dispensing of medicinal drugs will be limited to a pharmacist or a licensed dispensing practitioner and billed under the NDC number."); § 440.13(12)(c), Fla. Stat. ("As to reimbursement for a prescription medication, the reimbursement amount for a prescription shall be the average wholesale price plus \$4.18 for the dispensing fee. For repackaged or relabeled prescription



medications dispensed by a dispensing practitioner as provided in s. 465.0276, the fee schedule for reimbursement shall be 112.5 percent of the average wholesale price, plus \$8.00 for the dispensing fee.”).

Prescriptions for compensable medication, written and dispensed by the carrier’s authorized treating physician, shall be reimbursed, if the authorized treating physician is a practitioner registered to dispense under s. 465.0276, F.S., and the injured worker chooses to have its prescription dispensed and filled by the authorized treating physician. Reimbursement will be in accordance with the Health Care Provider Reimbursement Manual 2016 edition and s. 440.13(12)(c), F.S. Thus, failure to authorize and/or reimburse for prescription medication solely because the medication is or will be dispensed by a licensed Florida dispensing practitioner instead of a pharmacist, interferes with the full, free and absolute choice of the sick or injured employee and, therefore, is contrary to law.

Questions regarding this may be directed to Brittany O’Neil at [Brittany.ONeil@myfloridacfo.com](mailto:Brittany.ONeil@myfloridacfo.com).