



REP. BOB HASEGAWA

WASHINGTON STATE HOUSE OF REPRESENTATIVES
11th LEGISLATIVE DISTRICT

TO: *Jane Plant*

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NUMBER OF PAGES *(including cover sheet):*

FROM: *Phone Number: (206) 587-5554*

ADDITIONAL MESSAGE:

SEATTLE DISTRICT OFFICE: 1265 S. MAIN STREET, SUITE #203, SEATTLE 98144



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23 Jun.09

Bob Hasegawa, Chair
Joint Administrative Rules Review Committee
PO Box 40600
Olympia, WA 98504-0600

From: Medical Director, Occupational Medical Clinic of Tacoma

RE: A rule change by the Department of Labor and Industries was disguised as a fee schedule change thereby circumventing those procedures specified by the RCWs for rule changes including that of public vetting.

Since the time of Hippocrates, and prior to the advent of pharmacists, physicians have dispensed medications for profit. A 12 Oct.06 Washington State Supreme Court decision [Wright v. Jeckle, No.78635-6] upheld this right. Prior to 1 Jul.06, the Department of Labor and Industries had compensated dispensing physicians on a par with pharmacies. On 1 Jul.06, this changed. Presently, the Department of Labor and Industries will not compensate dispensing physicians. Making such dispensing an out of pocket expense for physicians has obviously curtailed this practice and has awarded the pharmacy lobby a monopoly on this profitable activity. This is in effect a de facto rule change disingenuously presented as a fee schedule change. Fee schedule changes are within the department's power [RCW 51.04.030], however, this was a rule change. By this artifice, the department has initiated a rule change without following the necessary administrative procedures as required by law [RCW 34.05.320, RCW 34.05.325, RCW 34.05.328, etc.]

The proof for this contention is contained in a letter from James O. King, Policy and Payment Manager, Health Services Analyst, Department of Labor and Industries responding to my complaint. Although Mr. King quotes in his letter [Attachment 1]:

"The department has legal authority to make periodic changes to its fee schedule RCW 51.04.030 (2), Medical Aid Rules – Rules – Maximum Fees – Records and Payment stipulates that the director shall in consultation with interested persons, establish and, at his or her discretion, periodically change and make available a fee schedule of maximum charges."

Mr. King then goes on to justify this rule change with motives that have nothing to do with changes to the fee schedule (and are also duplicitous.) Mr. King states:

"The change to the dispensing of medication was done primarily for safety reasons, not at the request of anyone. Medications dispensed from physicians offices are not screened for administrative edits such as drug-to-drug interactions, duplicative therapy, dosage exceeding the Food and Drug Administrations maximum, preferred drug list (PDL) and endorsing practitioners requirements."

However, that is not correct and possibly not truthful but also parroted by Jason T. McGill, Assistant Attorney General. In his response to my complaint [see Attachment 2]:

As you know, the Department is charged with protecting the injured worker . . . To that end, the Department, uses the "Point of Service" (actually this is called "Point of Sale") system . . . checks to see . . . that drugs being dispensed are not contraindicated to drugs the injured worker already takes . . . "

Besides confirming the motivations as being more than a fee schedule change - and as such requiring the vetting process pursuant to RCW 34.05.320, RCW 34.05.325, RCW 34.05.328, etc.- this argument is disingenuous on the following points:

1. In an L&I publication of July 2005, dispensing physicians were invited to utilize this "Point of Sale" system (Attachment 3.)
2. Presently dispensing physicians are not given the option to enter this system.
3. In fact, the Summe Clinic had completed procedures and is capable of accessing this system but still is not allowed to bill anything for medications dispensed (and of course, they don't do so at a financial loss for L&I claims.)
4. In fact, this system has no interface with non-L&I associated dispensing from other private physicians who may be treating high blood pressure, diabetes, arthritis etc. However, by asking the patient about medication use prior to dispensing, dispensing physicians have available this crucial information.

However, Mr. McGill further adds:

"It appears that the new policy, which itself was necessitated by a change in the law, resulted in the consequence of precluding physicians from dispensing certain outpatient drugs."

First of all, that is just wrong. No such law exists. Although Mr. McGill does not mention the law he is referring to, I had heard this same argument in my initial telephone contacts with L&I. The law I was quoted, and to which I assume Mr. McGill refers is Engrossed House Bill 2105, Chapter 134, Laws of 2007. Reading this law, there is no mention made of physician dispensing, in fact, the neither the words "physician" nor "pharmacy" are mentioned.

The law does state:

"The department . . . shall pay . . . any initial prescription drugs provided in relation to that initial visit, without regard to whether the worker's claim for benefits is allowed."

Prior to this, the department would only pay if the claim was approved. If it wasn't, the dispensing physician's or pharmacy's only recourse was to bill the patient and good luck getting paid. As a side bar, it is curious how when the law now makes dispensing a sure thing and financial plum, physicians are removed from competition.

Furthermore, after parsing out the law, the implication is that physician dispensing is considered and covered:

"Upon the occurrence of any injury . . . he or she shall receive . . . medical services . . . state fund claims shall pay . . . any initial prescription drugs provided in relation to that initial visit . . ."

On this change in the law, the department issued WAC 296-20-17004 [Attachment 4.] Although Engrossed House Bill 2105 does not even contain a reference to nor the word "pharmacies", the word has been inserted by whomever wrote the WAC, and as such the author has taken great legislative extralegal liberties.

The Department of Labor and Industries has enacted a rule change disingenuously disguised as a change in fee schedule and has done so contrary to legislative intent and the various procedures regarding public vetting as described in the numerous aforementioned RCWs.

A handwritten signature in black ink, appearing to read "Nick W. Uruga", with a horizontal line drawn underneath it.

Nick W. Uruga, M.D.

ATTACHMENT

1



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
PO Box 44322 • Olympia, Washington 98504-4322

1 February 2008

Nick W. Uruga, M.D.
Occupational Med Clinic
4703 Pacific HWY E.
Tacoma, WA 98424-2620

RE: Medications dispensed by your clinic; Letter to the Governor dated 18 January 2008

Dear Doctor Uruga:

Thank you for your letter concerning the Department's decision to bundle miscellaneous oral medications dispensed from a physician's office. It raised important issues. You state that the department's decision:

1. Is in violation of existing law and at the behest of the pharmacy factions.
2. Was done in secret and without prior notification.
3. Alters an existing department policy from 1985 allowing payment for medications dispensed directly to the patient.
4. Allows the same exact service to be reimbursed if performed at a pharmacy, thereby limiting beneficial competition.
5. Is in violation of the actual words of the Engrossed House Bill (EHB) 2105.
6. As a separate issue you indicate that the department also changed its policy on reimbursing telephone calls regarding patient care beginning January 1, 2008.

First, thank you for treating injured workers. We appreciate the care that you provide to our clients.

I will answer your questions in the order that I have listed them above.

1. The department has the legal authority to make periodic changes to its fee schedules.

RCW 51.04.030(2), Medical aid – Rules- Maximum fees – Records and bill payment, stipulates that the director shall, in consultation with interested persons, establish and, at his or her discretion, periodically change, and make available a fee schedule of maximum charges.

The change to the dispensing of medications was done primarily for safety reasons not at the request of anyone. Medications dispensed from physicians' offices are not

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1 February 2008
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screened for administrative edits such as drug-to-drug interaction, duplicative therapy, dosages exceeding the Food and Drug Administration's maximum, Preferred Drug List (PDL) and endorsing practitioner requirements.

Our pharmacy payment system does evaluate the medication being dispensed to make sure that it is in compliance with all the safety and administrative edits before the workers receive the medication. Because our workers can see multiple specialists, it's paramount that screening for drug related therapies be done prior to workers receiving the medications.

Although a physician may dispense medications as part of his or her medical practice, dispensing medication is not the primary professional service provided. The physician must also be compliant with all laws and regulations which govern pharmacy practice (access <https://fortress.wa.gov/doh/hpqa1/HPS4/Pharmacy/laws.htm> for applicable laws and regulations).

Since the physician is required to bill only the acquisition costs for drugs dispensed [See Non-Injectable Medication, page 84, Payment Policies], the new policy lessens the administrative burden and storage costs involved in keeping a drug inventory; costs that must be incurred by pharmacies as a part of their business.

2. The department gave ample notice of the policy change.

On July 14, 2007, we informed both the Washington State Medical Association (WSMA) and the Washington State Osteopathic Association (WOMA) of our intent to change the policy. WSMA, in their reply, indicated that physicians could merely write a prescription for a worker to take to the pharmacy.

On November 16, 2007 we posted the change on our web site on the Fee Schedules Updates and Corrections page. Here is the link to the web site <http://www.lni.wa.gov/ClaimsIns/Providers/Billing/FeeSched/2007/Updates2007.asp>

On November 19, 2007 we posted a notice on the LNI Medical Provider News listserv informing subscribers of the policy change. Here is the link to sign up for the listserv <http://www.lni.wa.gov/Main/Listservs/Provider.asp>

During the week of November 19, 2007 we mailed out a notice to each physician or the clinic that had been paid for the affected codes.

3. You are correct that L&I reimbursed physicians for oral or non-injectable medications dispensed from the office prior to January 1, 2008.

Medications dispensed from a physician's office were primarily for short-term outpatient use until the workers could have their prescriptions filled at a pharmacy (see Non-Injectable Medication, page 84, Payment Policies). The department allowed this practice because of the reluctance of pharmacies to fill prescriptions until the claim had been accepted by L&I. However, this reluctance has been

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removed with EHB 2105, Chapter 134, Laws of 2007 which guarantees payment for prescriptions written during the initial visit before claim acceptance.

4. We are not quite sure what you mean by 'beneficial competition.'

As we have stated before, physicians must charge only their acquisition costs for the dispensed medications (see Non-Injectable Medication, page 84, Payment Policies). This is to remove any potential conflict of interest that may exist when a provider both prescribes and dispenses medication.

5. We do not believe this violates the language of EHB 2105.

You are correct that that EHB 2105 does not exclude health care providers from being reimbursed for dispensing medication on the initial visit. The nine (9) codes that we have bundled into the price of an office visit in no way impacts the physician primary practice, nor does it affect workers' access to prescribed medications. We encourage you to foster a relationship with the local pharmacies.

6. We do pay for telephone calls.

On January 1, 2008, the American Medical Association changed the codes and descriptions that providers may use for reimbursement when making phone calls.

We have posted a notice of this change on the Fee Schedules Updates and Corrections page (access <http://www.lni.wa.gov/ClaimsIns/Providers/Billing/FeeSched/2007/Updates2007.asp> for details).

A notice was also sent via the LNI Medical Provider News listserv. If you are not part of this listserv, please sign up at <http://www.lni.wa.gov/Main/Listserys/Provider.asp>.

Again, thank you for treating injured workers.

Sincerely;



James O. King
Policy and Payment Manager
Health Services Analysis
Department of Labor and Industries

cc:

Judy Schurke, Director of the Department of Labor and Industries
Robert Malooly, Assistant Director, Insurance Services; Labor and Industries
Governor Christine O. Gregoire

ATTACHMENT

2



Rob McKenna
ATTORNEY GENERAL OF WASHINGTON

Labor & Industries Division
PO Box 40121 • Olympia, WA 98504-0121 • (360) 586-7707

March 7, 2008

Nick W. Uruga, M.D.
Occupational Medical Clinic of Tacoma
4703 Pacific Hwy East
Tacoma, WA 98424

RE: *Response to your inquiries regarding the Department of Labor and Industries' (Department) Physician Dispensing Policy*

Dear Dr. Uruga:

On behalf of Attorney General Robert M. McKenna, thank you for your letter received February 14, 2008, and your follow up letters received on February 22, 28, and March 3, 2008. Your letters were forwarded to me for response. As you already know, I am the Assistant Attorney General representing the Health Services Analysis Section of the Department of Labor and Industries, the unit of the Department that has the responsibility under the Industrial Insurance Act to establish the medical fee policies.

The Attorney General's Office serves as a legal counsel to state agencies and certain elected officials and cannot, by law, provide legal advice to private citizens. It is, however, our policy to provide members of the public with information of a general nature whenever possible. I note that you have already communicated your concerns to other entities of which I would have likewise suggested, such as the Department's Director, the Governor's Office, and your legislators. As with any legal question, you may want to contact your own attorney for legal advice.

As far as the substantive matters that you have raised in your correspondence, I will recommend that the Department look at ways that would permit you and others similarly situated, to continue to dispense and bill for initial prescriptions that the Department's policies otherwise may prohibit, namely, those prescriptions that fall under Code "J8499". It appears that the new policy, which itself was necessitated by a change in the law, resulted in the consequence of precluding physicians from dispensing certain outpatient drugs. Therefore, I believe the Department will be amenable to reconsider its approach, and reimburse you for your January and February dispensed medication at your Acquisition Cost.

ATTORNEY GENERAL OF WASHINGTON

Nick W. Uruga, M.D.

March 7, 2008

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As you know, the Department is charged with protecting the injured workers of the State of Washington, and as such, it has the obligation and authority to enact certain requirements to help it meet its mandated obligations. To that end, it has implemented both payment policies at issue: (1) the acquisition pricing policy; and (2) the limitation of the series of J-Codes (the particular codes do not list the particular and specific drug critical for preventing problem interactions with other drugs).

To that end, the Department, operating as its own Pharmacy Benefit Manager, uses the "Point of Service" system. As such, it maintains all the medication information on an injured worker that has been given for any approved injury. When a pharmacy sends in a request to dispense drugs, the Department checks to see if the injury has been approved, that the drugs being dispensed are not contraindicated to drugs the injured workers already takes on a previous claim or on the same claim but prescribed by another physician; that the drugs are being dispensed on a specified schedule, that the injured worker gets no more than the 30-day supply. *And, this system ensures that all this is done before the injured worker leaves the pharmacy with the medication.*

This system follows the National Council for Prescription Drug Programs, Inc. (NCPDP), called "ONLINE REALTIME DRUG UTILIZATION REVIEW (ORDUR)". This mirrors the Medicare program which the U.S. Congress enacted in 1990. The program has an impressive track record of catching and avoiding thousands of inappropriate prescriptions, including duplicate drug therapies and dangerous drug combinations.

A physician's bill, on the other hand, often arrives 15 to 30 days after the service has been given, and, if utilizing an unspecific J-code, it may provide only a written comment indicating the specific drug dispensed to the injured workers. This situation has the potential of placing the injured worker at an unnecessary risk because none of the checks and balances described above are utilized. Considering that there are 27,000 potential prescribers, the potential risk to workers is immense. The State auditors have also instructed the Department to be more vigilant concerning the dispensing of medication, especially opioids.

The Department has the authority to implement the program that your letters refer to. However, in light of the consequences that these changes have had, the Department offers to reimburse you for all of your January and February 2008 dispensed medication at your Acquisition Cost. Furthermore, the Department will continue to work with stakeholders on implementing a more user friendly electronic system that would allow physicians to continue dispensing certain drugs

ATTORNEY GENERAL OF WASHINGTON

Nick W. Uraga, M.D.

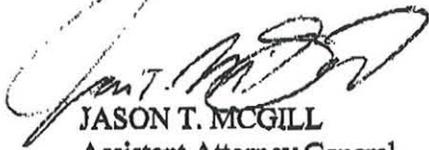
March 7, 2008

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that fall within the otherwise prohibited J- Code, at least on an initial basis so as to provide an opportunity for the injured worker to receive medication without delay.

I appreciate you contacting the Attorney General's Office. I hope that the resolution that the Department offers above removes your concerns. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason T. McGill", written over a circular stamp or seal.

JASON T. MCGILL
Assistant Attorney General

JTM:mdm

ATTACHMENT

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GENERAL PROVIDER BILLING MANUAL

State of Washington

Department of
LABOR AND
INDUSTRIES



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Introduction

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Electronic billing is available to all providers of services to injured workers while employed by companies insured by the State of Washington (workers' compensation).

There are two accepted format structures for billing the L&I proprietary and the Federal HIPAA Compliant EDI transaction formats. This booklet will detail the proprietary format structure and provide information regarding conducting e-commerce with the department via the new secure Provider Express Billing web site (PEB). PEB is one of the Department's initiatives to comply with HIPAA and industry standards for electronic data interchange (EDI). This web site is provided as the conduit for your billing, no matter which format structure you use. Your clearinghouse, software vendor, and our L&I Electronic Billing Unit are available to answer questions and assist you in your PEB billing. To view PEB go to: <http://www.fortress.wa.gov/lni/providerbilling/>.

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Workers' Compensation programs are legally exempt from HIPAA requirements. Regardless of this exemption, the Department has chosen to adopt the new transaction and security standards in order to be as consistent as possible with other payers and the provider community. In order to accommodate our varied provider community, the Department will accept both HIPAA compliant and current L&I proprietary formats. In addition, the Department will continue to accept bills on paper.

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Whichever format structure you use, you may either batch your bills and send them directly to L&I, which may require customized programming on your system, or use a clearinghouse/intermediary to send your bill to us. We do not supply software for this purpose.

If you are interested in pharmacy billing, we support a Point of Sale system that allows you to enter your bills in real time and get an accepted/rejected notification immediately. For more information on this system, please call our Provider Hotline at 1.800.848.0811.

For more information, please see our web site at <http://www.lni.wa.gov/ClaimsInsurance/ProviderPay/Billing/Electronic/Learn/default.asp>.

Paper Bill Processing

Paper bills received by L&I are screened for basic required information. Acceptable bills are batched by bill type, microfilmed, assigned an internal control number and then placed on a shelf in the order received.

Approximately 70 percent of all paper bills are either paid or denied upon entry. Suspended bills are held in the system pending final adjudication. These are usually processed to a final status within three to five weeks.

The payment cycle cutoff schedule is every two weeks with a cutoff every other Friday. Information regarding bills by our data entry staff by 4:30 p.m. on Friday appears on your Remittance Advice mailed the following week.

To view the cutoff and warrant schedule, go to <http://www.lni.wa.gov/ClaimsInsurance/ProviderPay/PayDates/default.asp>.

ATTACHMENT

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WACs > Title 296 > Chapter 296-20 > Section 296-20-17004

[296-20-17002](#) << [296-20-17004](#) >> [296-20-19000](#)

WAC 296-20-17004

[Agency filings affecting this section](#)

Billing and payment for initial prescription drugs.

(1) Pharmacies may bill the department for initial prescription drugs prior to claim acceptance upon the presentation to the pharmacy of a state fund identification card or a copy of the *Report of Industrial Injury or Occupational Disease* with a valid claim number.

(2) The department will pay pharmacies or reimburse the worker for initial prescription drugs prescribed during the initial visit except when the prescription is:

(a) A second or subsequent filling of the initial prescription drugs prescribed for the same industrial injury or occupational disease prior to claim acceptance; or

(b) Associated with a self-insurer claim.

(3) Payment for initial prescription drugs shall be in accordance with the department's fee schedule including, but not limited to screening for drug utilization review (DUR) criteria, the preferred drug list (PDL) provision and formulary status.

[Statutory Authority: RCW [51.04.020](#), [51.04.030](#) and 2007 c 134. 08-02-021, § 296-20-17004, filed 12/21/07, effective 1/21/08.]

