

## Assessment of Public Comment

During the public comment period, the Board received 12 comments, including a form letter from 15 individuals.

The Board received 15 copies of a form letter objecting to the proposal as a whole with no specific objections and no suggestions in lieu of the proposal. The Board has made no changes in response to this form letter.

The Board received several comments that the change will negatively impact injured workers, cause delays in the system and is unnecessary due to the Medical Treatment Guidelines and medical portal. Providing notice to non-network pharmacies and specifying how payments should be made to these pharmacies will not impact the flow of medication to injured workers. Accordingly, no changes were made as a result of these comments.

Another comment from a pharmacy network requested specific language changes to the proposal that would eliminate the need to notify the non-network pharmacy. No change was made as a result of this comment.

Section 13-o of the Workers' Compensation Law (WCL) required the Chair to adopt a pharmaceutical fee schedule, and section 13(i) of the WCL allows a carrier to contract with a pharmacy to provide prescribed medicine to claimants. When the pharmacy fee schedule was first adopted in 2012, there was no provision for how carriers would notify pharmacies of the existence of this contract requiring use of specific pharmacies. The feedback the Board received was that this was unfair to the pharmacies in practice because the pharmacy did not know there was a network, and when they supplied medication to injured workers, the non-network pharmacy was required to be paid at the network rate.

The regulations (section 440.8) added a paragraph requiring notice to the claimant and pharmacy to alleviate the problems caused by this lack of notice. Over the years, almost every carrier had a pharmacy network in place and has for years, so the Board removed this paragraph during updates for the OnBoard: Limited Release process, believing that this notice was no longer necessary since the carrier network pharmacy contracts have been settled. However, the Board received feedback that pharmacies are not receiving notice of networks from carriers, and thus there was no mechanism to provide for payment to out-of-network pharmacies or non-payment when proper notice has been made. Accordingly, the Board proposed this amendment to restore the exact language that previously appeared in this section of the regulation. This protects the non-network pharmacy as well as the carrier by requiring notice and if failure to provide notice, they must pay at the pharmacy fee schedule rate, not the network rate. Therefore, no change has been made in response to these comments.

A comment from an association objected to the proposal, opining that it would eliminate injured workers' access to specialized pharmacies that specialize in the PAR system. All medication for prior authorization requests must come from the prescriber's office, so pharmacies are not required to specialize in the PAR process, as the requests and the prescriptions come from the prescriber's office. No change has been made in response to this comment.

The Board received a comment from an injured worker opposing any restrictions on their pharmacy options. The statute already allows a carrier to contract with a pharmacy, and this regulation simply restores language about notice of such a network, no change has been made in response to this comment.

Two comments opined that the proposal expressly nullifies the Third Department *Rivera* case, and the *Liebman* case as well. These cases were based on situations that arose before the final regulation was adopted by the Board, including the section the Board proposes be restored, so no change has been made in response to these comments.

The Board received a comment from a company supporting the proposal.

Changes Made:

None