

AMENDMENT SUGGESTION

SB 95 – AS INTRODUCED

2013 SESSION

13-0887

01/10

SENATE BILL **95**

AN ACT relative to choice of pharmacy under workers' compensation.

SPONSORS: Sen. Carson, Dist 14; Rep. Goley, Hills 8; Rep. Theberge, Coos 3; Rep. D. Eaton, Ches 3

COMMITTEE: Commerce

ANALYSIS

This bill establishes that an injured employee has the right to choose his or her own pharmacy or pharmacist for purposes of medicines required under workers' compensation. This bill also establishes pharmacy fee formula caps for reimbursement for prescription drugs required under RSA 281-A.

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Explanation: Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

13-0887

01/10

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Thirteen*

AN ACT relative to choice of pharmacy under workers' compensation.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 New Paragraph; Workers' Compensation; Pharmacy Choice. Amend RSA 281-A:23 by inserting after paragraph VII the following new paragraph:

VIII.(a) An injured employee shall have the right to select his or her own pharmacy or pharmacist for dispensing and filling prescriptions for medicines required under this chapter.

(b) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs using a pre negotiated or contractual reimbursement rate, or the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription is dispensed: No reimbursement may exceed the reimbursement rate arrived at using this formula

(1) Generic drugs:  $(\text{AWP per unit}) \times (\text{number of units}) \times 1.25 + \$4.00$  dispensing fee=reimbursement amount;

(2) Brand name drugs:  $(\text{AWP per unit}) \times (\text{number of units}) \times 1.09 + \$4.00$  dispensing fee=reimbursement amount.

2 Effective Date. This act shall take effect January 1, 2014.

## Overview of New Hampshire Workers' Compensation Market

### New Hampshire – One of the Top 10 Highest Premium States in the Country

According to the Oregon Dept. of Consumer & Business Affairs, New Hampshire's workers' compensation premium rates averaged 9th in the nation in 2012. With an index rate of \$2.49 per \$100 of payroll, New Hampshire employers are paying substantially more than the average national rate. See: [http://www.cbs.state.or.us/external/dir/wc\\_cost/files/report\\_summary.pdf](http://www.cbs.state.or.us/external/dir/wc_cost/files/report_summary.pdf)

- Iowa and North Carolina are both rank 25<sup>th</sup>, with an average index rate of 1.90.
- The rate difference between the New Hampshire and these two states is \$.59.

Additionally, when compared to the average index rates of the other states in New England (CT, ME, MA, NH, RI & VT), as categorized by the U.S. Census Bureau, New Hampshire's index rate is HIGHER (2.13).

- NCCI often cherry picks states for comparisons purposes. The categorization of states included in this analysis (CT, ME, MA, NH, RI & VT) is provided by the U.S. Census Bureau. See: [https://www.census.gov/gco/www/us\\_regdiv.pdf](https://www.census.gov/gco/www/us_regdiv.pdf)

### Nationally Premium Rates are Declining

Nationally, workers' compensation premiums for private carriers are down 1.3% in 2010 to 29.9 billion. See: <http://websrvr92va.audiovideoweb.com/va92web25048/sotl2011/sotl2011.html>

- This is the fourth straight year premium rates have declined: 2007 (37.6%), 2008 (33.8%), 2009 (30.3%).
- State funds are also down: 2007 (44.3%), 2008 (39.3%), 2009 (34.6), 2010 (33.8%).

### New Hampshire's Claims Frequency is Lowest in the Region

According to NCCI, claim frequency in New Hampshire "increased in 2010" and as "is a key cost driver in New Hampshire." See: [https://www.ncci.com/documents/SAF\\_nh.pdf](https://www.ncci.com/documents/SAF_nh.pdf)

However, when frequency per 100,000 workers is compared to other states in the region, New Hampshire's average claim frequency is the LOWEST for combined lost time and medical. See: [https://www.ncci.com/documents/SAF\\_nh.pdf](https://www.ncci.com/documents/SAF_nh.pdf) (p. 64)

- NH – 4,244
- CT – 4,248
- ME – 5,898
- RI – 4,583

### **Medical Costs on a slight DECLINE Nationally**

According to NASI “the total benefits (cash plus medical) were 0.07 percent LOWER in 2010 than in 2009. Furthermore,

- “this DECREASE in total benefit payments was solely due to a decrease in medical benefits of 2.1 percent, because cash benefits increase by 0.7 percent.”
- “ In 2010, the share of medical benefits DECLINED slightly to 48.8 percent of total benefits.”

### **Combined Ratio (Profitability) in New Hampshire Increase**

Combined ratio is a measure of the profitability of an insurance company. The combined ratio equals expenses and losses divided by revenue from premiums. The result is expressed as a percentage, and a value greater than 100% means the company is paying out more than it's taking in, and a value less than 100% means it is taking in more than it is are paying out.

NCCI reports that New Hampshire’s accident year combined ratios have remain high. (2007: 105.8%, 2008: 109.1%, 2009: 120.7%, 2010: 119%, 2011: 130.1%) See: page 36 at: [https://www.ncci.com/documents/SAF\\_nh.pdf](https://www.ncci.com/documents/SAF_nh.pdf)

According to NCCI, only 15 states had higher combined ratios in 2010 (IN, UT, IL, IA, SC, FL, KY, MS, RI, LA, MD, AZ, CO, CT, OR)

See page 36 at: [https://www.ncci.com/documents/SAF\\_nh.pdf](https://www.ncci.com/documents/SAF_nh.pdf)

### **Workers’ Compensation Investment Returns Are Up Nationally**

Investment income (gain on insurance transaction-to-premium ration for private carriers) is up three points from previous year, nationally for workers compensation. (2007: 12.7%, 2008: 9.7%, 2009: 10.8% and 2010: 14%) See: <http://webrsvr92va.audiovideoweb.com/va92web25048/sotl2011/sotl2011.html>

### **Nationally Employer Workers’ Compensation Costs Trend Down**

According to a recent presentation by NCCI, workers’ compensation employer costs as a percentage of total compensation has been trending DOWN from 1.7% in 2000 to 1.6% in 2010 in the last decade. See: <http://webrsvr92va.audiovideoweb.com/va92web25048/sotl2011/sotl2011.html>

- VT – 4,511
- MA – (data not included in NCCI analysis)

### **Claims Frequency Nationwide is Decreasing**

Claim frequency, countrywide declined in 2011. NCCI reports, “a cumulative change of -55.5% from 1991 – 2010.” See: p. 59 at: [https://www.ncci.com/documents/SAF\\_nh.pdf](https://www.ncci.com/documents/SAF_nh.pdf)

### **Workers' Compensation Benefits Per \$100 of Covered Wages in New Hampshire**

According to a report recently released by the National Academy of Social Sciences (NASI), *Workers' Compensation Benefits, Coverage & Costs*, (Table 10) 33 states paid more in workers' compensation benefits per \$100 of covered wages than New Hampshire (\$0.88) in 2010.

These states are: AL (\$0.95), AK (1.57), CA (1.25), DE (1.11), FL (0.93), HI (1.09), GA (0.92), HI (1.10), ID (1.21), IL (1.10), IA (1.05), KY (1.02), LA (1.14), ME (1.24), MN (0.89), MS (1.01), MT (1.95), NE (0.98), NV (0.94), NJ (0.97), NM (1.01), NY (0.93), NC (0.90), OH (1.14), OK (1.66), OR (0.98), PA (1.20), SC (1.45), VT (1.25), WA (1.25), WV (1.25), WI (1.25), & WY (1.25)

See: <http://www.nasi.org/research/2012/report-workers-compensation-benefits-coverage-costs-2010>

### **Total Benefits Paid in New Hampshire**

Table 9 provides state specific payout data for medical, cash and total benefits. The total benefits for New Hampshire in 2010 were a mere \$237,168.

- This is less than total benefits paid in the following 41 states: AL (629,069), AZ (698,459), CA (9,396,443), CO (809,707), CT (788,701), FL (2,526,580), GA (1,410,753), HI (242,400), ID (245,622), IL (2,916,379), IN (603,193), IA (554,973), KS (407,776), KY (650,701), LA (839,821), ME (253,872), MD (953,533), MA (1,013,343), MI (1,271,892), MN (1,038,272), MS (337,633), MO (811,427), MT (266,850), NE (313,066), NV (429,686), NJ (1,999,801), NM (276,697), NY (4,606,295), NC (1,316,291), OH (2,268,515), OK (845,726), OR (633,054), PA (2,909,341), SC (891,283), TN (782,091), TX (1,483,708), UT (257,522), VA (790,025), & WA (2,308,748), WV (362,375), WI (1,070,534).
- Only 8 states and D.C. paid less in benefits than New Hampshire: AK (221,327), AR (204,066), DE (211,921), D.C. (105,636), ND (114,985), RI (160,105), SD (100,348), VT (138,370), WY (163,497).

See: <http://www.nasi.org/research/2012/report-workers-compensation-benefits-coverage-costs-2010>



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State: NH

Frequency and Medical Costs Fueling Minor Increase in Loss Costs: EAST [2012-09-19]

An uptick in claims frequency and higher-than-average medical costs are driving a call by the National Council on Compensation Insurance (NCCI) to increase New Hampshire workers' compensation loss costs by 0.6%, effective Jan. 1.

The Boca Raton, Fla.-based rate maker held its annual State Advisory Forum in New Hampshire last week and reported that the number of lost-time claims per million dollars of on-leveled premium increased slightly in 2010, following steady declines since 2000.

NCCI reported that claim frequency reached 18 claims per million dollars of on-leveled premium in 2010. Average medical costs per claim declined slightly – to \$36,600 – in 2010 but had increased steadily since 2000, NCCI said.

NCCI said medical costs comprise 73% of all workers' compensation benefits paid in New Hampshire, compared to a countrywide average of 59%. NCCI said medical costs in New Hampshire are generally increasing faster than the national average and comprise a higher share of costs for permanent partial disability (PPD) claims.

New Hampshire Insurance Commissioner Roger Sevigny has not issued a decision on the requested loss-cost increase.

If the filing is approved, loss costs in the construction sector would increase by 2.8%, and loss costs in the goods-and-services sector would increase by 0.2%. Loss costs in the manufacturing sector would decrease by 0.3%.

The NCCI annual report on New Hampshire is [here](#).

Source: NCCI

# Pharmacy Benefit Managers (PBMs) in New Hampshire

All New Hampshire employers and insurers can utilize the services of a PBM or other entity to manage and negotiate pharmacy services and prices.

## IWP statistics show:

- A total of 66 insurers and self-insured are providing prescription coverage for injured workers using IWP.
- Of those, 48 insurers utilize either a PBM or some other third party to manage pharmacy claims.
- Of the 11 insurers that do not have a third party processor or PBM, only 6 insurers have not negotiated reduced fees with IWP.

## Key questions:

- Why does New Hampshire need to mandate the use of PBMs when they are already heavily utilized by insurance carriers in the state?
- How does a PBM make money?
- How can the promoters of the PBM mandate prove cost savings and that those supposed cost savings aren't at the expense of the injured worker?
- Define the problem that needs to be fixed.

Presented by:

# IWP

*The Patient Advocate Pharmacy*

# IWP

*The Patient Advocate Pharmacy*

Contrary to popular belief, a state mandated Pharmacy Benefits Manager (PBM) would not necessarily translate into cost savings for New Hampshire. In reality, PBMs offer very little in the way of pricing transparency; so much so, in fact, that many states have introduced legislation to require it. We challenge any PBM to reveal its pricing structure so that the alleged cost savings can be evaluated.

Injured Workers Pharmacy (IWP) has been operating in the state of New Hampshire since 2003, providing hassle-free prescription assistance to thousands of injured workers. Under state law, pharmacies are allowed to bill insurance carriers at the Usual & Customary (U & C) rate; however **IWP, on average, accepts a discount of almost 39% off of its total billings from the more than 50 carriers it works with on a regular basis in the state of New Hampshire.** In fact, the discounts offered to carriers range from 16% to 78% off of the U & C rate. The range of discounts offered to carriers and self-insured payers are based on several important criteria: prompt payment, complete payment and anti-poaching protection. However, IWP consistently has problems with carriers and the self-insured underpaying invoices thus creating additional work around collection efforts which ultimately results in short pays by those responsible for providing medical benefits to the injured worker.

A closer look into the manner in which IWP operates within the state of New Hampshire reveals a company willing to operate outside the "traditional" pharmacy pricing model so that the needs of the injured worker can be best served. In the interest of true transparency, IWP presents its operations to date in the state of New Hampshire:

- On average, 78% of IWP's invoicing is discounted from its U & C rate
  - 75% of prescriptions provided by IWP in 2011 were discounted at rates averaging 22%
  - 74% of IWP patients who received medication were billed at this discounted rate
- In 2011, on average, 27% of the new cases presented to IWP were in legal dispute
  - 82% of those were ultimately decided in favor of the patient and IWP
  - Disputed cases typically take more than 1 year for settlement and ultimate reimbursement of prescription expense, however, they continue to follow the pattern of short payment and collection delay
  - ***This translates into an interest-free loan, with further protection against wrongful lawsuits for withholding necessary medication***
- In 2011, through its Continuity of Care program, IWP has been able to convert 66% of all prescriptions to generic through the use of A/B equivalent medications, and when not available therapeutically equivalent alternatives
  - Working with patients, physicians and attorneys, IWP has been able to convert 26 prescriptions from brand to generic per month
  - Every prescription that typically would have been provided as brand, but as been converted to generic, represents a cost savings of **\$299** per prescription
  - ***This translates into an annualized cost savings of over \$92,000.00 for the carriers and self-insured***
  - Over the typical 5-10 year lifetime of patient, this represents up to \$920,000 in savings for the carriers and self-insured

Despite short pays, write-offs, additional expenses and lengthy collection cycles, IWP continues to provide quality prescriptions services that exceed those of any other pharmacy as proven by an independent study conducted by IGS. IWP has been given a Net Promoter Score (NPS) of 95%, placing its customer service capabilities in the upper echelon of all businesses operating in the United States.

*"Live Free or Die"*