Subcommittee on Health and Human Services
Government Efficiency Task Force
401 Senate Office Building
April 26, 2012
2:00 p.m. – 4:00 p.m.

1) Call to Order

2) Roll Call

3) Recommendations on State Procurement of Mental Health and Substance Abuse Services

4) Presentation on Drug Repackaging
   Lori Lovgren, National Council on Compensation Insurance

5) Presentation on Drug Repackaging
   Thomas Panza, Panza, Maurer & Maynard, P.A.

6) Presentation on Drug Repackaging
   Jose Gonzalez, Vice-President, Governmental Affairs, Associated Industries of Florida

7) Presentation on Drug Repackaging
   Dr. Gary Kelman, Automated Health Care Solutions

8) Member discussion of Drug Repackaging

9) Adjourn

Florida Government Efficiency Task Force

Subcommittee on Health and Human Services ***Recommendations***

Subject Matter: State Procurement of Mental Health and Substance Abuse

Subcommittee Members: Chair Bob Rohrlack, Frank Attkisson, Larry Cretul, Julie Fess, and Bob Stork

RECOMMENDATION SUMMARY

The Subcommittee on Health and Human Services met on April 20, 2012, and makes the following recommendations to the Government Efficiency Task Force:

- Utilize common metrics for contracts when procuring mental health and substance abuse services.
- Ensure unit price information is available to all agencies and require agencies to check pricing for mental health and substance abuse services.
- Provide that agencies make greater use of pooled purchasing arrangements when cost effective.
- Implementing the above recommendations is estimated to achieve a cost savings of 6%-8%, or **$72- $96 million** per year based on current annual expenditures.

FULL ISSUE(S) ANALYSIS

A. BACKGROUND

Mental health and substance abuse services are provided by the State of Florida to many of its residents.[1] These services are provided through a variety of programs and agencies. Many of these services are outsourced through contracts with for profit and not-for-profit vendors.

The Florida Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) conducted research on *State Contract Management Review of Mental Health and Substance Abuse Services* in 2011.[2] As described by OPPAGA's research, for Fiscal Year 2010-11, the state held contracts totaling $1.27 billion for mental health and substance abuse services.[3] Five state agencies contract with providers to deliver mental health and substance abuse services to eligible populations: the Agency for Health Care Administration (AHCA), and the Departments of Children and Families (DCF), Corrections (DOC), Juvenile Justice (DJJ), and Health (DOH).[4] As shown in Exhibit 1, the five agencies held a total of 641 contracts in Fiscal Year 2010-11, with the number of contracts per agency ranging from 11 for DOH to 368 for DCF. Not included in this figure are the costs of services provided by managed care under the Medicaid program. This is because blended rates are paid to managed care organizations for health and behavioral health care such as mental health and substance abuse services. For the most part, institutional costs are only included when the mental health and substance abuse services could be isolated from other costs and were contracted as opposed to state operated. Of the $1.27 billion in total annual value of the contracts for Fiscal Year 2010-11, 41% was funded by federal and state trust funds, and 59% was funded by general revenue.[5] The total contract amount for each agency ranged from $2.9 million for DOH to $629.9 million for DCF.[6] The typical contract length was 3 years, but the length ranged from 4 months to 11 years.[7] Approximately 61% (392) of the contracts will end before Fiscal Year 2012-13.[8] The total lifetime value for the current Mental Health and Substance Abuse contracts, including escalators and extensions, is $5.7 billion.[9]

Exhibit 1
For Fiscal Year 2010-11, Five State Agencies Held Contracts for Mental Health and Substance Abuse Services Totaling $1.27 Billion[10]

Agency	Number of Contracts	Total Contracted Amount for Fiscal Year 2010-11		
		Trust Fund	General Revenue	Total
Agency for Health Care Administration	31	$288,595,478	$158,054,191	$446,649,669
Department of Children and Families	368	195,548,935	434,394,242	629,943,178
Department of Corrections	77	1,760,977	37,347,963	39,108,940
Department of Juvenile Justice	154	27,317,281	124,437,096	151,754,377
Department of Health	11	2,678,119	227,902	2,906,021
Total	**641**	**$515,900,791[1]**	**$754,461,395[1]**	**$1,270,362,186[1]**

[1] Totals may differ due to rounding.

[1] Mental health and substance abuse services may include: prevention programs, crisis stabilization, detoxification, residential and transitional housing support services, and outpatient treatment.
[2] OPPAGA *Substance Abuse and Mental Health Contracting*, September 28, 2011 (Copy on file with Government Efficiency Task Force staff).
[3] *Id* at p. 1.
[4] The scope of this research was to analyze the State Contract Management System database. The judicial branch also contracts for mental health services. In Fiscal Year 2010-11, the Justice Administrative Commission paid $6.3 million for contracts with approximately 400 mental health experts for assessments. The state court circuits paid $5.6 million for contracts with approximately 600 experts for assessments and testimony. *Id.*
[5] OPPAGA *Substance Abuse and Mental Health Contracting*, September 28, 2011, p. 1-2 (Copy on file with Government Efficiency Task Force staff).
[6] *Id* at p. 2.
[7] *Id*.
[8] *Id*.
[9] *Id*.
[10] Source: OPPAGA analysis of State Contract Management System database. *Id* at p. 2.

Exhibit 2 describes the types of services provided and populations served by these agencies.

Exhibit 2
Agencies with Substance Abuse and Mental Health Contracts Provide Various Services[11]

Agency	Description of Contracted Services
Agency for Health Care Administration	These contracts include the prepaid mental health plans that serve Medicaid recipients, and the Statewide Inpatient Psychiatric Program that serves Medicaid recipients 17 years of age or younger who require placement in a psychiatric residential setting due to serious mental illness or emotional disturbance. The data does not include expenditures for behavioral health care provided by Health Maintenance Organizations or Provider Service Networks, but does include prepaid mental health plans. The agency also has a contract for utilization management and a small number of research contracts with state universities.
Department of Children and Families	These contracts primarily are for a range of community-based services, including alcohol prevention programs in schools and Florida Assertive Community Treatment (FACT) teams that serve to prevent psychiatric hospitalizations.[1] They also include a limited number of contracts at the state mental health institutions for both direct services, such as therapists, and indirect services, such as food services, and a limited number of contracts for indirect services, such as training for personnel who are involved in involuntary commitment of individuals into the mental health system. The contracts also include the managing entity organizations, which are organized in a regional system of care for substance abuse and mental health clients.[2]
Department of Corrections	These contracts primarily provide services, such as group therapy, to offenders on community supervision. A limited number of contracts provide mental health services to inmates in correctional facilities.
Department of Juvenile Justice	These contracts provide services, such as psychiatric evaluations, for juveniles in detention centers and services such as crisis intervention, psychotropic medication management, and suicide prevention for juveniles with a mental health diagnosis at residential facilities.
Department of Health	These contracts provide a range of community-based services including interventions for medical licensees with substance abuse or mental health problems, group counseling for HIV/AIDS patients, and home-based visits for mothers of children at risk of abuse or neglect.

[1] Individuals served by FACT teams must meet the definition of mental illness as specified in Chapter 394, F.S.
[2] These entities will replace the department's current substance abuse and mental health contracts, thereby reducing the overall number of department contracts.

B. ISSUES

Exhibit 3 shows that in Fiscal Year 2010-11, a total of 369 vendors held the 641 contracts with the five agencies (an average of 1.7 contracts per vendor).[12] The average number of contracts per vendor ranged from 1 for DOH to 2.1 for DJJ. In addition, 48 of these vendors had contracts with multiple agencies. While most of these vendors had only two contracts, one vendor held 20 active substance abuse and mental health contracts with two agencies in Fiscal Year 2010-11.[13]

Exhibit 3
In Fiscal Year 2010-11, 369 Vendors Held 641 Substance Abuse and Mental Health Contracts[14]

Agency	Number of Contracts	Number of Vendors	Average Number of Contracts per Vendor
Agency for Health Care Administration	31	21	1.5
Department of Children and Families	368	267	1.4
Department of Corrections	77	50	1.5
Department of Juvenile Justice	154	74	2.1
Department of Health	11	11	1
Total	**641**	**369**[1]	**1.7**

[1] The total number of vendors does not equal the sum of the number of agency vendors. The total is adjusted so that there is not a duplicate count of vendors that have contracts with multiple agencies.

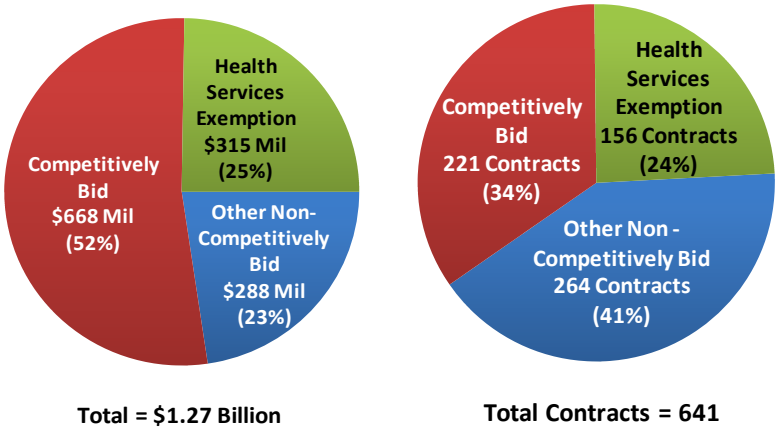
[11] Source: OPPAGA analysis of State Contract Management System database and interviews with agency staff. OPPAGA *Substance Abuse and Mental Health Contracting*, September 28, 2011, p. 2 (Copy on file with Government Efficiency Task Force staff).
[12] The Florida Accounting and Information Resource (FLAIR) System included the tax status for 262 of the vendors in this study. Of these, 178 (68%) have a status of not-for-profit. *Id* at p 3.
[13] *Id* at p. 3.
[14] Source: OPPAGA analysis of State Contract Management System database and agency data. *Id* at p. 3.

Competitively procured substance abuse and mental health contracts account for 52% of $1.27 billion. Section 287.057, F.S., provides that unless otherwise authorized by law, all contracts for the purchase of commodities or contractual services in excess of $35,000 shall be awarded by competitive procurement. The dollar value of the contracts held in Fiscal Year 2010-11 that were competitively procured was $668 million, or 52% of the $1.27 billion worth of contracts identified in the State Contract Management System.[15] State agencies made most of these competitive procurements through methods such as requests for proposals.

Florida law also provides specific exemptions from competitive procurement, including a "health services exemption."[16] The health services exemption is designated for commodities or contractual services for health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration. In Fiscal Year 2010-11, 24% of all substance abuse and mental health contracts were executed under the health services exemption. The dollar value of the contracts held in Fiscal Year 2010-11 that were executed under the health services exemption was $315 million.[17] A variety of procurement methods are used for mental health and substance abuse (see Exhibit 4).

Exhibit 4
Percent of Contract Dollars By Agency By Procurement[18]

Agency	Competitive Bid	Health Services Exempt	Other Non-Competitive	Total
DCF	20 %	40%	40%	$630 Million
AHCA	85%	14%	1%	$447 Million
DJJ	87%	0%	13%	$152 Million
DOC	67%	0%	33%	$39 Million
DOH	1%	99%	0%	$2.9 Million
Total	52%	25%	23%	$1,270 Million



In order to assess the range of prices for these services, OPPAGA reviewed a sample of 87 contracts from DCF, DOC, and DJJ.[19] The analysis focused on services in each agency using that agency's service definitions. Prices paid for the same service varied within each agency (see Exhibit 6). In some cases, the prices were different due to factors related to the level of care required by the recipient and the type of security each agency needs to provide. For example, the price of bed days ranged from $19 for adults who voluntarily

[15] OPPAGA *Substance Abuse and Mental Health Contracting*, September 28, 2011, p. 4 (Copy on file with Government Efficiency Task Force staff).
[16] See s. 287.057(3)(f)5., F.S.
[17] The remaining agency spending for Fiscal Year 2010-11 was on substance abuse and mental health contracts that were procured using other exemptions. OPPAGA *Substance Abuse and Mental Health Contracting*, September 28, 2011, p. 4 (Copy on file with Government Efficiency Task Force staff)
[18] Source: Analysis of State Contract Management System database. Data provided by Senate Budget Office.
[19] The Agency for Health Care Administration was from this sample because 11 of its contracts will not be renewed due to changes in state Medicaid law and 15 contracts are for Statewide Inpatient Psychiatric Program services, for which policy options may not apply due to federal requirements the facilities must meet. The Department of Health had a relatively small number of contracts; policy options would still apply to the department. *Id* at p. 3.

received substance abuse services while residing at a religious organization's facility to $338 for 24-hour intensive services provided to adolescent girls with mental health and substance abuse issues at a secure facility.

As shown in Exhibit 6, agencies sometimes paid different unit prices for similar types of services. For example, DOC held a contract that paid $14 per person for adults receiving mandatory community-based outpatient group counseling for substance abuse but also held another contract that paid $24 per person for this service. Exhibit 6 shows the range of prices for the 14 service categories that were included in five or more contracts.[20]

Exhibit 6
Agencies Pay Different Unit Prices for Similar Services[21]

Service Category	Agency	Mean	Minimum	Maximum
Comprehensive Evaluations Level II[2]	DJJ	$450	$350	$550
Comprehensive Evaluations Level III[2]	DJJ	717	550	750
Mental Health and Substance Abuse Treatment Services	DJJ	57	25	200
Residential Level II (Intensive Mental Health and Substance Abuse Care)[3]	DCF	156	83	213
Comprehensive Evaluations Level I[2]	DJJ	267	250	350
Outpatient (Individual or Group Therapy)[1]	DCF	53	12	84
Individual Counseling (Community-Based Outpatient Substance Abuse)	DOC	41	11	56
Community-Based Residential Program (Short-Term/Non secure)	DOC	40	19	53
Treatment Plan Review (Community-Based Outpatient Substance Abuse)	DOC	28	10	42
Intake-Screening (Community-Based Outpatient Substance Abuse)	DOC	50	42	53
Group Counseling (Community-Based Outpatient Substance Abuse)	DOC	20	14	24
Substance Abuse Education and Life Skills Training	DOC	19	14	24
Aftercare Groups (Counseling After Completing a Treatment Program)	DOC	19	14	24
Outreach (Education and Engagement of At-risk Groups)	DCF	44	42	46

[1] Outpatient services provide a therapeutic environment designed to improve the functioning or prevent further deterioration.
[2] Comprehensive evaluations levels depend on the need level of youth served; level I evaluations are for lowest-need youth. Evaluations are a service many vendors provide to state agencies in different forms and for a range of unit costs. The Department of Children and Families pays vendors a maximum unit cost of $85.91. The Justice Administrative Commission pays vendors to provide pre-trial competency or sanity evaluations, pre-trial forensic exams, evaluations for departure hearings, and psychological evaluations for juvenile cases; the rates per evaluation range from $150 to $625. While Florida's State Courts System contracts for evaluations, staff could provide costs. In addition, the Agency for Health Care Administration sets Medicaid fee-for-service evaluation rates at a maximum unit cost of $150 if conducted by non-physician staff and $210 if conducted by a physician.
[3] Residential Level II facilities are licensed, structured rehabilitation-oriented group facilities that provide supervision 24 hours per day, seven days per week. Persons who live in Level II facilities have significant deficits in independent living skills and need extensive support and supervision.

Change and Efficiency

The Subcommittee recommends that agencies utilize common metrics for contracts when procuring mental health and substance abuse services. As demonstrated in Exhibit 6, variation in unit price exists within agencies. By examining standard definitions of services, unit pricing, and common outcome measures, agencies can attain greater understanding for providing mental health and substance abuse services.

A study should be completed by regions of the state utilizing a consumer price index for services to identify common metrics for substance abuse and mental health contracts. Where practical, such metrics should be used in all mental health and substance abuse service contracts, both by state agencies and any purchasing agents who procure services on behalf of the state. This would improve accountability and procurement of services and allow agencies and purchasing entities visibility into what other programs and agencies pay for similar services.

[20] OPPAGA compared charges for Medicaid's fee-for-service behavioral health services to unit costs for services presented in Exhibit 4 and found comparable service categories for four services: group and individual counseling, intake-screening, and treatment plan review. Medicaid reimbursement rates were higher than the maximum costs for group and individual counseling and treatment plan review. Rates for intake-screening fell within the range of unit prices paid by other agencies. *Id* at p. 3-4.
[21] Source: OPPAGA analysis of contracts in the State Contract Management System database. OPPAGA *Substance Abuse and Mental Health Contracting*, September 28, 2011, p. 4 (Copy on file with Government Efficiency Task Force staff).

The Subcommittee recommends ensuring unit price information is available to all agencies and requiring agencies to check pricing for mental health and substance abuse services. Using common definitions of services and standard units of measure, agencies should enter unit prices in the State Contract Management System for all mental health and substance abuse contracts. The Department of Management Services should calculate average unit prices for each service in State Contract Management System. Agencies should then be required to review unit prices for the service prior to contracting. If an agency chooses to procure a service at a unit price higher than the average, it would have to justify this action. This requirement should be extended to entities that purchase services on behalf of the state to ensure financial accountability.

The Subcommittee recommends that agencies make greater use of pooled purchasing arrangements when cost effective. There are two options that agencies can utilize to strategically pool the procurement of mental health and substance abuse services.

First, the Department of Management Services should work in conjunction with the Department of Children and Families, as the state's subject matter expert, to determine the feasibility of regional or state term contracts for mental health and substance abuse services. This would allow the agencies to collectively leverage their buying power and achieve saving through economies of scale.

Second, allowing other state agencies to purchase mental health and substance abuse services through purchasing entities may be considered. Regional purchasing entities, such as the managing entities provided by ch. 2008-243, L.O.F., could broker mental health and substance abuse services for state agencies using Florida's state term contract methodology, if favorable unit pricing could be achieved.

Implementing the above recommendations is estimated to achieve a cost savings of 6%-8%, or **$72- $96 million** per year based on current annual expenditures. Over four years, the total savings equates to a $288-$384 million for mental health and substance abuse services for Florida.

Recommendations:

- The Subcommittee recommends that agencies utilize common metrics for contracts when procuring mental health and substance abuse services.

- The Subcommittee recommends ensuring unit price information is available to all agencies and requiring agencies to check pricing for mental health and substance abuse services.

- The Subcommittee recommends that agencies make greater use of pooled purchasing arrangements when cost effective.

Florida Government Efficiency Task Force

Subcommittee on Health and Human Services ***Background Brief***

Subject Matter: Pharmaceutical Repackaging

Subcommittee Members: Bob Rohrlack (Chair), Frank Attkisson, Larry Cretul, Julie Fess, and Bob Stork

ISSUE SUMMARY

- The term "repackaged" drugs refers to pharmaceuticals that have been purchased in bulk by a wholesaler/repackager from a manufacturer, relabeled, and repackaged into individual prescription sizes that can be dispensed directly by physicians or pharmacies to patients.

- The majority of repackaged drugs in Florida's workers' compensation system are dispensed by physicians who are authorized to dispense drugs at their offices.

- Pharmacy reimbursement amount is limited to the average wholesale price (AWP) of the drug plus a $4.18 dispensing fee. Current law does not provide a cap on reimbursements for repackaged or relabeled prescription drugs.

- The Department of Management Services (DFS) has identified pharmacy costs as a significant cost driver in workers' compensation. DFS data demonstrates that the average amount paid per practitioner-dispensed prescription has increased 62.1% over four years, compared to a 13.1% increase for pharmacy-dispensed prescriptions over the same period.

- The Workers' Compensation Research Institute (WCRI) found that Florida's average payment per workers' compensation claim for prescription drugs was the second highest of the 17 states studied and 45% higher than the median of the states studied.

- The National Council on Compensation Insurance (NCCI) has found that repackaged drug prices may be up to 679% above the same drug in a non-repackaged format, depending on the type of drug.

- Advocates for dispensing physicians state that higher reimbursement rates are justified because physicians do not purchase in bulk quantities comparable to pharmacies, do not receive medications on consignment, and do not receive discounts or rebates when purchasing from a manufacturer.

- Advocates for dispensing physicians state that higher costs for physician-dispensed repackaged drugs are offset by costs saved through reduced patient recovery time and avoidance of lengthy medical treatment, decreased employee time away from work, and decreased litigation.

FULL ISSUE(S) ANALYSIS

I. BACKGROUND

A. Prescription Drugs:

Regulation of Repackaged Prescription Drugs

The term "repackaged" drugs refers to pharmaceuticals that have been purchased in bulk by a wholesaler/repackager from a manufacturer, relabeled, and repackaged into individual prescription sizes that can be dispensed directly by physicians or pharmacies to patients.[1] A "repackager" means a person who repackages a drug, device, or cosmetic, but specifically excludes pharmacies operating in compliance with pharmacy practice standards set out in chapter 465, F.S., and rules adopted under that chapter.[2]

Rule 64F-12, F.A.C., defines "repackaging or otherwise changing the container, wrapper, or labeling to further the distribution" to mean:

- Altering a packaging component that is or may be in direct contact with the drug, device, or cosmetic, for example, repackaging from bottles of 1,000 to bottles of 100.
- Altering a manufacturer's package for sale under a label different from the manufacturer, for example packaging together a kit that contains an injectable vaccine from manufacturer A; a syringe from manufacturer B; alcohol from manufacturer C; and sterile gauze from manufacturer D; and marketing as an immunization kit under a label of manufacturer Z.
- Altering a package of multiple-units, which the manufacturer intended to be distributed as one unit, for sale or transfer to a person engaged in the further distribution of the product.

Dispensing Practitioners

Section 465.0276(1), F.S., authorizes physicians and pharmacies to dispense, as provided below:

> 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.

To become a dispensing practitioner in Florida, a practitioner is required to register pursuant to s. 465.0276, F.S., with the applicable professional licensing board as a dispensing practitioner and pay a $100 fee.[3] Dispensing practitioners must comply with all laws and rules applicable to pharmacists and pharmacies including undergoing inspections.[4] In addition, the physician must comply with all applicable statutes found in chapter 465, chapter 499, and chapter 893, F. S., all applicable rules, and federal laws regarding the dispensing of medicinal drugs.[5] Lastly, a physician must provide the patient with a written prescription and

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[1] In Florida, the Department of Business and Professional Regulation (DBPR) regulates prescription drug repackagers. A permit as a prescription drug repackager is required for any person that repackages a prescription drug in Florida. The permit authorizes the wholesale distribution of prescription drugs repackaged at the establishment. Section 499.01(2)(b), F.S.

[2] Section 499.003(50), F.S.

[3] *See* s. 465.0276(2)(a), F.S.; Rule 64B8-3.006, F.A.C.; Registration is not required for dispensing complimentary medications in the normal course of practice without payment or remuneration.

[4] Section 465.0276(2)(b), F.S.

[5] *See* s. 465.0276(2)(b), F.S.; chapter 499, F.S., contains the Florida Drug and Cosmetic Act, administered by the DBPR; chapter 893, F.S., contains the Florida Comprehensive Drug Abuse Prevention and Control Act; *see also* chapter 2011-141, L.O.F.

advise him or her, orally or in writing, that there is an option to have the prescription filled at the doctor's office or at a pharmacy.[6] Physician dispensing is regulated by the relevant licensing boards with the Department of Health.

Benefits of Physician Dispensing

Representatives of physician dispensing cite the following benefits:[7]

- Increased patient access to care;
- More convenient and timely patient access to medication;
- Increased patient compliance with prescription medication plan; and
- Reduced indemnity costs, such as lost wages and litigation expenses.[8]

Workers' Compensation

Chapter 440, F.S., is Florida's workers' compensation law. The Division of Workers' Compensation within the Department of Financial Services (DFS) is responsible for administering ch. 440, F.S. For work-related injuries, workers' compensation provides:

- Medically necessary remedial treatment, care, and attendance, including medicines, medical supplies, durable medical equipment, and prosthetics.[9]
- Compensation for disability when the injury causes an employee to miss more than 7 days of work.[10]

For such compensable injuries, an employer/carrier is responsible for providing medical treatment, which includes, but is not limited to, medically necessary care and treatment and prescription drugs. [11] To be eligible for payment under the workers' compensation law, health care providers who treat injured employees, except for emergency treatment, must apply for and be certified by DFS and receive authorization from the insurer before providing treatment.[12]

The majority of repackaged drugs in Florida's workers' compensation system are dispensed by physicians who are authorized to dispense drugs at their offices.[13]

Reimbursement for Prescription Drugs in Workers' Compensation

The reimbursement method for a prescription medication to pharmacies and dispensing physicians is found in s. 440.13(12)(c), F.S. The reimbursement amount is the average wholesale price (AWP) of the drug plus a $4.18 dispensing fee, unless the carrier has contracted for a lower amount.[14] The term AWP is not defined in the workers' compensation statute (ch. 440, F.S.) and does not have a universally-accepted definition,[15] but may be considered comparable to a wholesaler's suggested price.

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[6] *See* s. 465.0276(2)(c), F.S.
[7] Panza, Thomas, *Report on the Inaccuracy of the Claimed $62 Million Savings Related to Physician Dispensing in Florida,* April 2012, p. 4-7 (Copy on file with Government Efficiency Task Force staff).
[8] The division reported in 2010 that injured workers who have not returned to work are twice as likely as injured workers who have returned to work to hire an attorney. Division of Workers' Compensation, *2010 Annual Report*, p. 5.
[9] *See* s. 440.13(2) (a), F.S.
[10] *See* s. 440.12(1), F.S.
[11] *See* s. 440.13(2)(a), F.S. Whether an employer is required to have workers' compensation insurance depends upon the employer's industry (construction, non-construction, or agricultural) and the number of employees.
[12] Section 440.13(3)(a), F.S.; s. 440.13(1)(d), F.S.; Rule 69L-29.002, F.A.C.
[13] NCCI presentation to Three-Member Panel, November 16, 2011 (copy on file with Government Efficiency Task Force staff).
[14] *See* s. 440.13(12)(c), F.S.
[15] *See*, for example, Workers' Compensation Research Institute, *Prescription Benchmarks for Florida,* 2nd Edition, July 2011 (copy on file with Government Efficiency Task Force staff) compared with Frank Neuhauser et al., *Impact of Physician-Dispensing of*

Drug repackagers purchase pharmaceuticals in bulk from the manufacturer and relabel and repackage the drugs into individual prescription sizes. Although drug repackagers do not alter the drugs, they sell them in different quantities. Repackagers assign an AWP for a repackaged drug that differs from the AWP suggested by the original manufacturer of the drug. Current law does not provide a cap on reimbursements for repackaged or relabeled prescription drugs. [16]

B. Repackaged Drug Costs to the Workers' Compensation Industry

Department of Financial Services

The Division of Workers' Compensation has found that pharmacy payments decreased from $136.2 million in 2007 to $122.3 million in 2010. Over the same time period, practitioner payments rose from $35.9 million to $63.2 million.[17] The average amount paid per prescription increased by 13.1% over four years, compared to a 62.1% increase for practitioners over the same time period.[18] During 2010, the average amount paid per practitioner-dispensed prescription was 11.7% higher than pharmacy-dispensed items.[19]

The Division of Risk Management (division) within DFS administers the State of Florida's self-insurance program for property and casualty risk, which includes workers' compensation coverage.[20] The program covers executive, legislative, and judicial branches of Florida government and state universities and is funded by yearly assessments to participating state agencies. In 2011, the division identified medical costs, including pharmacy, as a claims cost driver.[21] The department has stated that the division's pharmacy costs increased from $12,000 in 2008 to $1.2 million in 2010.[22]

According to the division, since 2009, physicians have dispensed nearly 90% repackaged drugs.[23] DFS has estimated that providing the same rate of reimbursement for repackaged, relabeled, and non-repackaged drugs dispensed to injured state employees will reduce costs incurred by the Division of Risk Management by $1 million annually.[24]

Repackaged Drugs on California Workers' Compensation, Employers Cost, and Workers' Access to Quality Care, California Commission on Health and Safety and Workers' Compensation, 2006, http://www.dir.ca.gov/CHSWC/Reports/Physician-Dispensend-Pharmaceuticals.pdf (last accessed 04/23/2012).

[16] The Division of Workers' Compensation previously stated that it is unaware of any specific provisions of the workers' compensation law that addresses whether employers/carriers may appropriately deny authorization or reimbursement for prescription medication dispensed by a physician instead of a pharmacist. Department of Financial Services, Informational Bulletin DFS-02-2009, August 12, 2009, p. 1 http://www.myfloridacfo.com/wc/pdf/DFS-02-2009.pdf (last accessed 04/23/2012).

[17] Division of Workers' Compensation, *2011 Annual Report*, September 2011, p. 40 http://www.myfloridacfo.com/wc/pdf/DWC-Annual-Report-2011.pdf (last accessed 04/23/2012).

[18] *Id.*

[19] *Id.*

[20] Chapter 284, F.S.

[21] Department of Financial Services presentation to the House Subcommittee on General Government Appropriations, February 8, 2011 (copy on file with Government Efficiency Task Force staff). This is supported by the Three-Member Panel, which reports on methods for improving the workers' compensation medical deliver system. *Three-Member Panel Biennial Report*, 2011, p. 7, http://www.myfloridacfo.com/wc/pdf/3MP_Report_2011.pdf (last accessed 04/23/2012).

[22] Based on a study by HealthCare Solutions. Department of Financial Services presentation to the Senate Committee on Budget, November 16, 2011, http://streams.leg.state.fl.us/archive/HIGH/S_BC_2011_11_16_2011_9098.asx (last accessed 04/23/2012).

[23] Based on a study by HealthCare Solutions. *Id*.

[24] Fiscal Analysis of SB 668 by the Department of Financial Services, November 2011 (copy on file Government Efficiency Task Force staff).

Workers Compensation Research Institute (WCRI) Findings

In July 2011, the Workers' Compensation Research Institute (WCRI) published "Prescription Benchmarks for Florida, 2nd Edition,"[25] a study that compares the cost, price, and use of pharmaceuticals in workers' compensation in Florida with 16 other states.[26] Among the study's findings on Florida:

- For 2007/2008, the average payment per workers' compensation claim for prescription drugs was $536, the second highest cost of the 17 states studied, and 45% higher than the median of the states studied.[27]
- Between 2005/2006 and 2007/2008, the average cost per claim for prescription drugs in Florida increased by 14%, but remained relatively stable in the other study states.[28]
- Higher and growing costs of prescription drugs in Florida were largely due to more frequent and higher-priced physician dispensing. [29]
- Over a four-year period (from 2004/2005 and 2007/2008), the percentage of payments for physician-dispensed prescriptions increased from 17% to 46% of all prescription payments.[30]
- In 2007/2008, for many common drugs, physicians were paid 40% to 80% more than pharmacies for the same prescription.[31]
- Prices per pill paid to pharmacies were similar to the median of the 17 states studied.[32]
- 65% of physician-dispensed prescriptions were for pain medications.[33]

National Council on Compensation Insurance

In Florida, The National Council on Compensation Insurance (NCCI) is the designated licensed rating and statistical organization for workers' compensation in Florida. Among its responsibilities, NCCI collects data from workers' compensation insurers in Florida and makes rate filings on the insurers' behalf. NCCI is licensed by the Office of Insurance Regulation. NCCI provided the following data related to drug repackaging costs:[34]

- Markup on Florida repackaged drugs may be as high as 679 percent above the same drug in a non-repackaged format.[35]
- Physician dispensed drugs have grown from 9 percent of the drug costs in 2003 to 50 percent of the drug costs in 2009.[36]
- Florida has the highest rate of physician-dispensed drugs of the 46 states studied.[37]
- Most repackaged drugs are dispensed by physicians.[38]

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[25] Workers' Compensation Research Institute, *Prescription Benchmarks for Florida*, 2nd Edition, July 2011 (copy on file with Government Efficiency Task Force staff).
[26] *Id*. The 17 states in the WCRI study are California, Florida, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, Texas, and Wisconsin. Physician dispensing is not generally allowed in three of the states in its study - Massachusetts, New York, and Texas.
[27] *Id* at p. 14.
[28] *Id*.
[29] *Id*.
[30] *Id* at p. 15.
[31] *Id.*
[32] *Id* at p. 18.
[33] *Id* at p. 2.
[34] NCCI presentation to the Three Member Panel, November 16, 2011 (copy on file with Government Efficiency Task Force staff).
[35] *Id* at p. 4.
[36] *Id.*
[37] *Id*.
[38] *Id.*

Additional findings by the NCCI about Florida's workers' compensation system include the following:[39]

- The 15 most frequently dispensed drugs are 45% to 679% more expensive when a repackaged drug (rather than the identical non-repackaged drug)[40] is dispensed.[41]
- Physician-dispensed drugs account for 50% of all prescription drug dollars; the highest percentage of the 46 states studied by NCCI.
- Physician-dispensed repackaged drugs account for 36% of overall prescription drug costs (by comparison, repackaged drugs dispensed by pharmacies account for approximately 4% of overall drug costs).

NCCI has estimated that elimination of the higher reimbursements available for repackaged drugs, as compared to non-repackaged drugs, would decrease system costs by 2.5% and save Florida employers $62 million annually.[42] This figure includes $36 million in drug costs and $26 million in expenses reductions.[43]

Advocates for Dispensing Physicians

According to advocates for dispensing physicians, the average reimbursement rate for prescriptions filled by dispensing physicians is $137, compared to $121 for pharmacies, or a difference of approximately 13%.[44] They state that this higher average reimbursement rate is justified because physicians do not purchase in bulk quantities comparable to pharmacies. Also unlike pharmacies, physicians do not receive medications on consignment and do not receive discounts or rebates when purchasing from a manufacturer.[45]

Advocates further state that higher costs for repackaged drugs dispensed by physicians are offset by costs saved through reduced patient recovery time and avoidance of lengthy medical treatment, decreased employee time away from work, and decreased litigation. They note that under Florida law, carriers can select the physician that the injured worker consults for his or her injuries, giving carriers the option to utilize non-dispensing doctors and avoid the higher reimbursement rates of physician-dispensed prescriptions.[46]

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[39] NCCI presentation to Senate Committee on Budget, November 16, 2011, http://streams.leg.state.fl.us/archive/HIGH/S_BC_2011_11_16_2011_9098.asx (last accessed 04/23/2012).

[40] NCCI's cost analysis compared brand name drugs to brand name drugs and generic drugs to generic drugs. Accordingly, the calculations did not involve a comparison of brand name drugs with generic drugs, which would have inflated the price increases that were reported for repackaged drugs.

[41] The 15 drugs are Carisoprodol, Meloxicam, Ranitidine HCL, Tramadol HCL, Lidoderm®, Naproxen, Omeprazole, Hydrocodone-Acetaminophen, Etodolac, Skelaxin®, Oxycodone-Acetaminophen, Cyclobenzaprine HCL, Cephalexin, Zolpidem Tartrate, and Ibuprofen.

[42] Estimate is based on 2009 data. NCCI, *Analysis of Florida SB 1068*, March 7, 2011, p. 1 (copy on file with Government Efficiency Task Force staff). NCCI reviewed more recent data and concluded that the impact will not exceed 2.5%, or $62 million. NCCI, *Update Regarding NCCI Pricing of Florida Drug Repackaging Bills*, January 30, 2012, p. 1 (copy on file with Government Efficiency Task Force staff). *See also* testimony by NCCI at the 2012 workers' compensation rate hearing, held October 11, 2011 http://www.floir.com/siteVideos/NCCI2011.aspx (last accessed 04/23/2012); OIR commitment to seek 2.5% premium rate reduction following passage of reforms in HB 511, Letter from Commissioner Kevin M. McCarty, Office of Insurance Regulation, to The Honorable Rene Garcia, Chair, Senate Committee on Health Regulation, January 25, 2012 (copy on file with Government Efficiency Task Force staff). Estimates are not adjusted to account for elimination of physician dispensing of Schedule II and III substances, effective July 1, 2011, pursuant to Ch. 2011-141, L.O.F. NCCI has estimated that, prior to implementation of Ch. 2011-131, L.O.F., Schedule II and II substances accounted for 4.4% of workers' compensation drug prescriptions, or 5.4% of workers' compensation drug costs. NCCI presentation to Three-Member Panel, November 16, 2011 (copy on file with Government Efficiency Task Force staff).

[43] NCCI, *Update Regarding NCCI Pricing of Florida Drug Repackaging Bills*, January 30, 2012, p. 1 (copy on file with Government Efficiency Task Force staff).

[44] Correspondence on file with Government Efficiency Task Force staff.

[45] Panza, Thomas, *Report on the Inaccuracy of the Claimed $62 Million Savings Related to Physician Dispensing in Florida*, April 2012, p. 3 (Copy on file with Government Efficiency Task Force staff).

[46] *Id* at p. 6.

Advocates of physician dispensers have estimated savings for Florida employers at a maximum of $7 million, using the above average costs per prescription.[47]

[47] Panza, Thomas, *Report on the Inaccuracy of the Claimed $62 Million Savings Related to Physician Dispensing in Florida*, April 2012, p. 3 (Copy on file with Government Efficiency Task Force staff).

National Council on Compensation Insurance, Inc.

Government Efficiency Task Force 4/26/12

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What is NCCI?

- Essentially NCCI collects and analyzes workers compensation data
- Membership organization operating under not-for-profit philosophy (members are writers of workers compensation insurance)
- Organized over 85 years ago
- Operating in 40 states
- Headquartered in Boca Raton (approximately 1000 employees)

NCCI's Role in Florida

Statistical Agent Services (Contract with FL OIR)

- Collect and validate various types of data
- Summarize data and providing reports to FL OIR

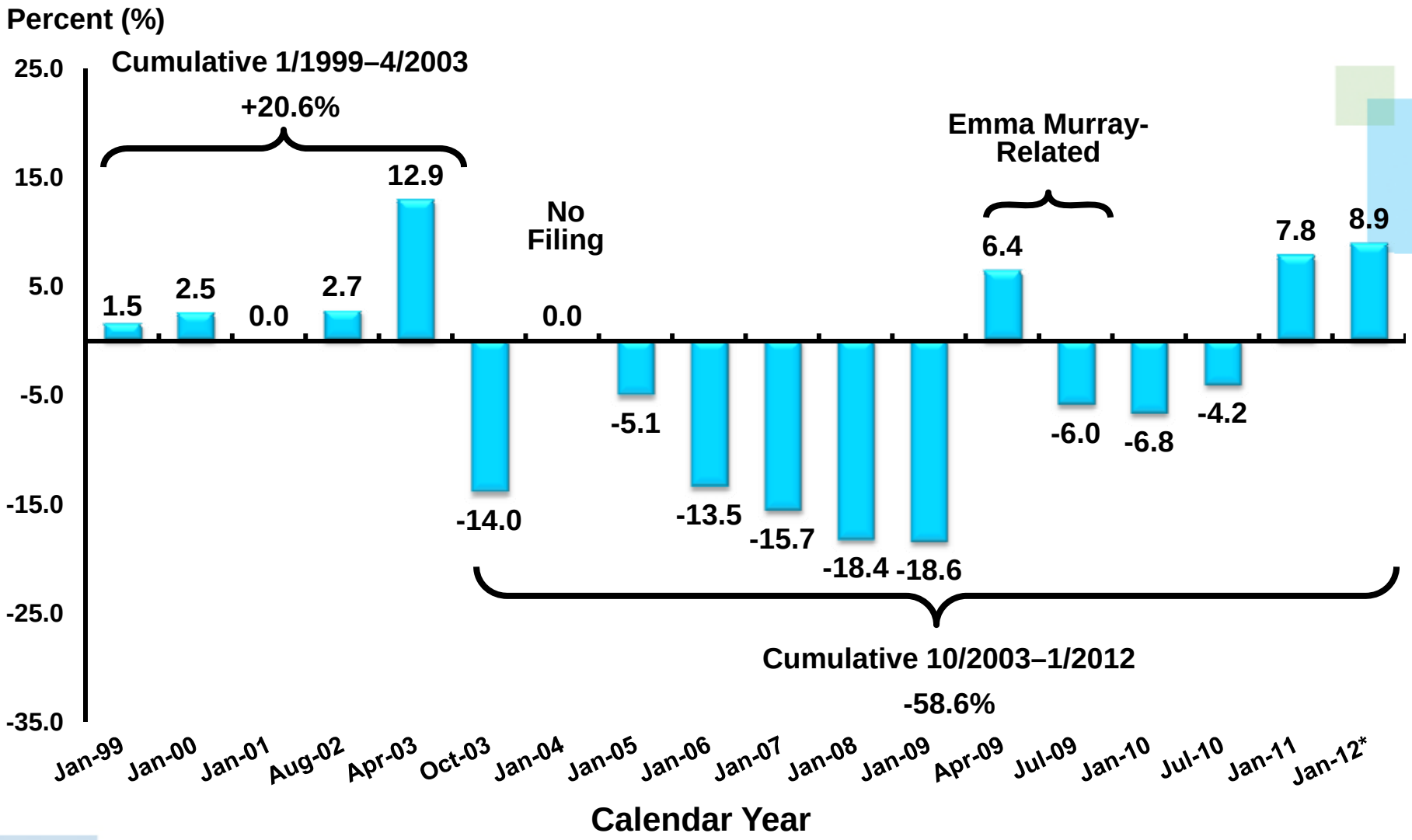
Advisory Organization Services (Licensed by FL OIR)

- File of rates & rating values
- Produce experience ratings
- Develop/maintain uniform manual rules
- Share regulatory/legislative reform analysis

Proof of Coverage Vendor (Contract with FL DWC)

- Supply policy transaction information to FL DWC

Florida Historical Rate Changes



* Pending

Drug Repackaging Identified as a Cost Driver

- Currently FL's fee schedule is AWP + 4.18 dispensing fee
- Drugs in the original manufacturer's packaging are assigned a National Drug Code (NDC) which is associated with an Average Wholesale Price (AWP)
- Changing the packaging results in the creation of a different NDC/AWP
- AWP of repackaged drug is typically multiple times same drug in non-repackaged form
- Repackaged drugs are mostly marketed to physicians

Florida Drug Repackaging Statistics

- Physician dispensed drugs have grown from 9% of drug dollar in 2003 to 50% of drug dollar in 2009
- FL has highest rate of physician dispensed drugs of 46 states studied
- Most repackaged drugs are dispensed by physicians
- Markup on Florida repackaged drugs ranges up to 679% above same drug in non-repackaged format

Florida Drug Repackaging Bills HB 511/SB 668 (2012 session)

- Caps reimbursement to original manufacturers AWP
- 2.5% savings based on 2009 Florida workers compensation data
- NCCI will update savings estimate this summer based on 2011 Florida workers compensation data

No Studies Show Physician Dispensing Improves Outcomes

- NCCI has been unable to find any studies which show correlation of physician dispensing and return to work/claim duration

- NCCI believes there is low probability there is a correlation or that any correlation would significantly impact its pricing
  - Most prescriptions are filled probably without a significant lapse of time
  - Even if 30-35% are not filled (a health care statistic; not a workers comp statistic where the cost of drugs are fully paid by employer/carrier), there is no guarantee that physician dispensed drugs are taken by injured workers
  - Drugs physicians dispense have a low potential for abuse
  - Other factors like the economy have greater impact on return to work/claim duration

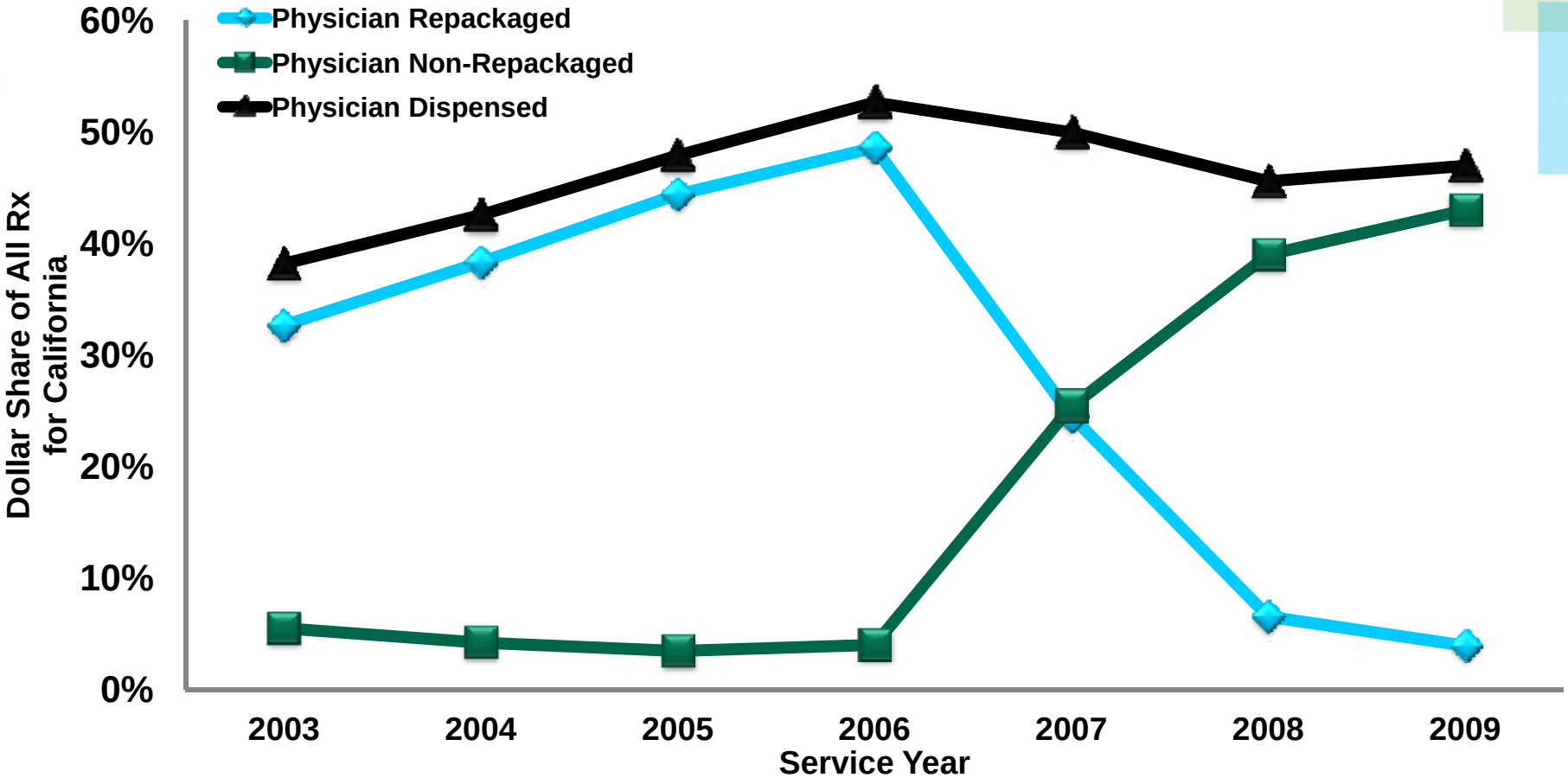
Not Only a Florida Issue

- Some states which have recently changed the law on reimbursement – GA, OK, SC, CA, CO, TN

- Some states where proposals to change the law addressing reimbursement are under consideration - CT, LA, MD, HI

- Seven states ban or make it difficult for physicians to dispense - Massachusetts, Montana, New Hampshire, New Jersey (72 hour supply plus 10% limit on profit), New York (72 hour supply), Texas (can't dispense if pharmacy within 35 miles), and Utah

California Reform Reduced Physician-Dispensed Repackaged Drugs



Source: Derived from sample data provided by carriers
Unidentifiable drugs are excluded
1st through 10th relative service year

National Council on Compensation Insurance, Inc.

Appendix

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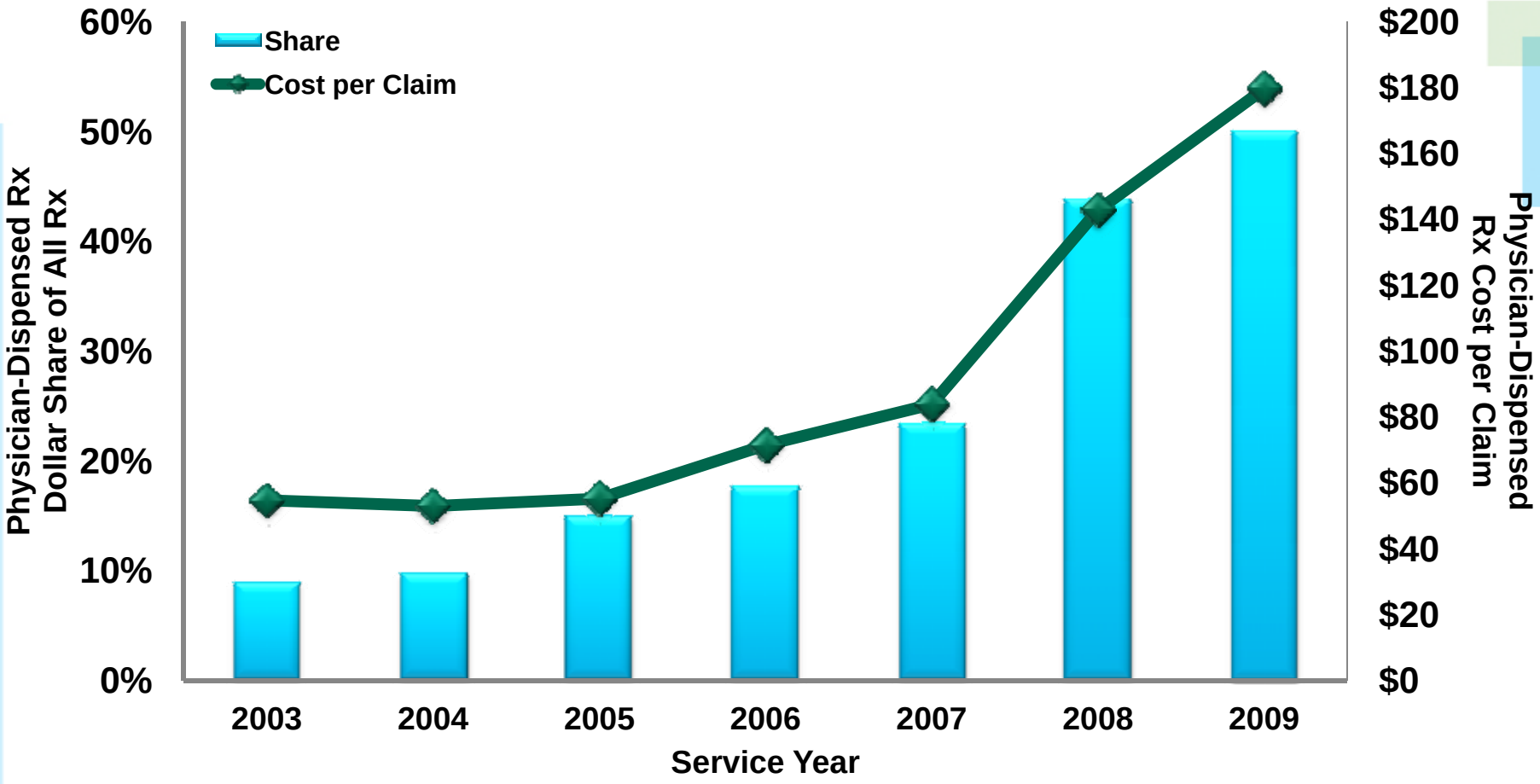
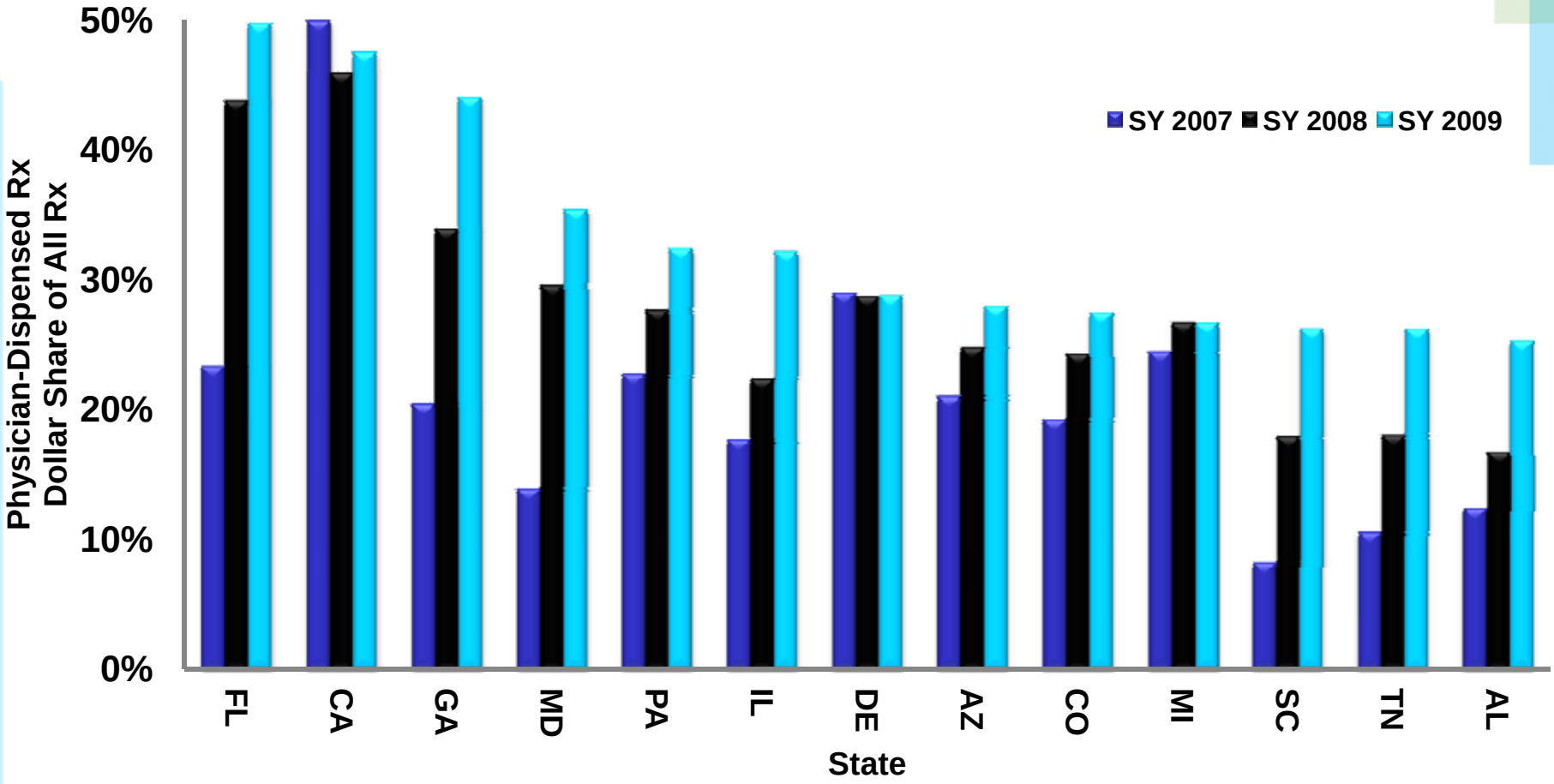
Physician Dispensing Is Recently on the Rise



Source: Derived from sample data provided by carriers
1st through 10th relative service year
Average cost per claim with physician-dispensed drugs
State: Florida only

Florida Now Has Highest Rate of Physician Dispensing

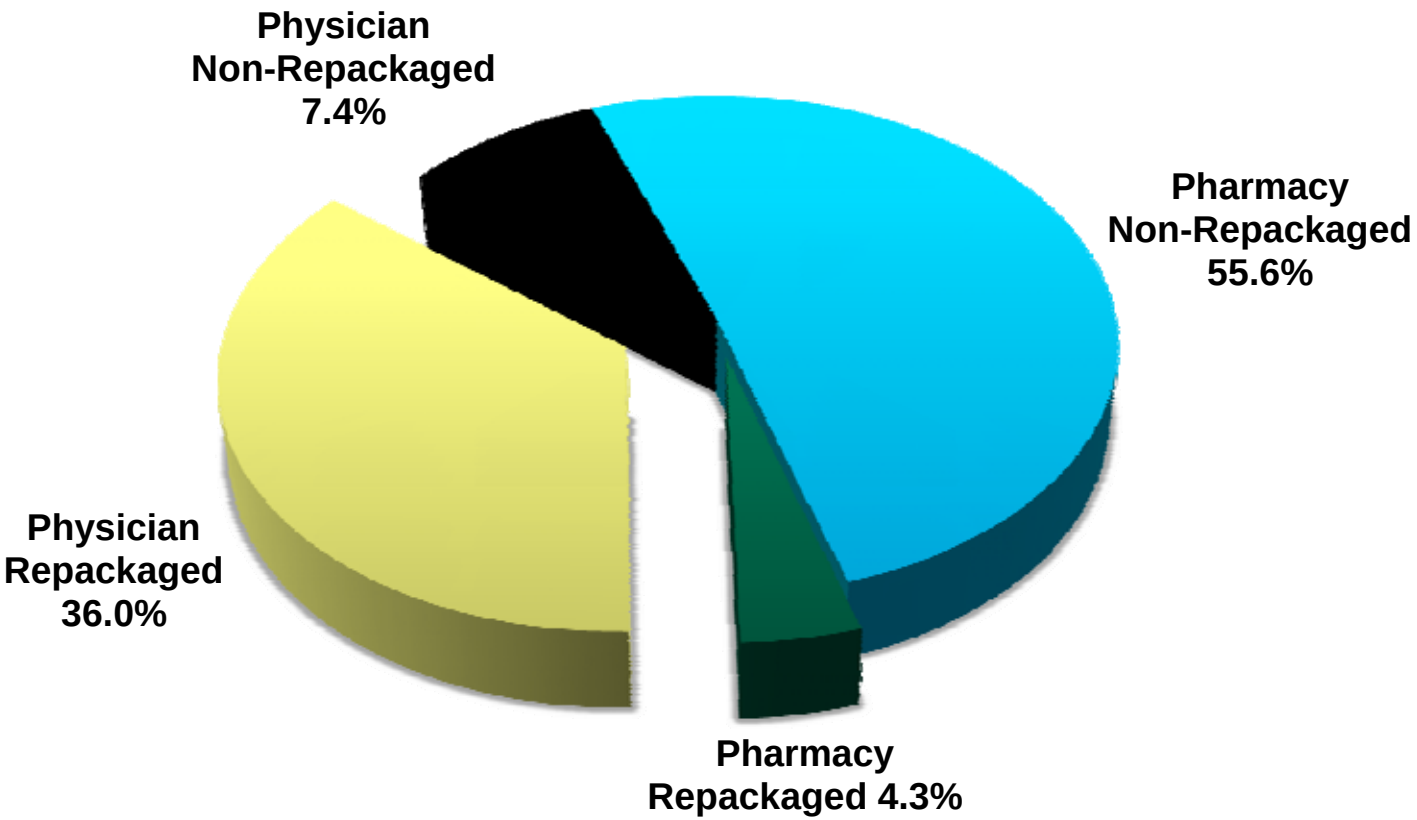
Higher Share States (top 13 of 46 state study)



Source: Derived from sample data provided by carriers
1st through 10th relative service year
Statistics are based on at least $150,000 paid Rx for each state service year combination

Most Repackaged Drug Costs Come From Physicians

Florida—Service Year 2009



Source: Derived from sample data provided by carriers

Florida Repackaged and Non-Repackaged Drugs Dispensed by Physicians, Pharmacies, and Other—For Service Year 2009

	Average Unit Price		
	Repackaged Drugs	Nonrepackaged Drugs	Difference in %
	(1)	(2)	(3) = (1)/(2) - 1
CARISOPRODOL	4.21	0.54	679.6%
MELOXICAM	5.70	3.04	87.5%
RANITIDINE HCL	3.77	1.32	185.6%
TRAMADOL HCL	1.63	0.78	109.0%
LIDODERM®	13.69	7.32	87.0%
NAPROXEN	2.10	1.09	92.7%
OMEPRAZOLE	7.53	3.85	95.6%
HYDROCODONE-ACETAMINOPHEN	1.28	0.39	228.2%
ETODOLAC	2.81	1.40	100.7%
SKELAXIN®	5.41	3.72	45.4%
OXYCODONE-ACETAMINOPHEN	3.43	0.49	600.0%
CYCLOBENZAPRINE HCL	1.95	1.05	85.7%
CEPHALEXIN	3.01	0.66	356.1%
ZOLPIDEM TARTRATE	6.81	3.72	83.1%
IBUPROFEN	0.65	0.33	97.0%

Update Regarding NCCI Pricing of Florida Drug Repackaging Bills

(Dated 1/30/2012)

Attached is NCCI's pricing of a drug repackaging bill that was considered in the 2011 session. The estimated impact was 2.5% or $62M. A preliminary look at more recent data suggests that the impact will not exceed 2.5%. Due to the similarity of bills presented for consideration in the 2012 session (original filed versions of SB 668 and HB 511), NCCI has not updated its pricing. We reserve the right however to update our pricing if these bills are amended.

The following are responses to questions received:

1. **Why does NCCI estimated dollar savings of $62M just about equal the annual dollar amount given by the Florida Division of Workers Compensation for physician dispensed drug costs in Florida ($63.2M for SY2010)?**

   NCCI's task is to provide the policymaker with an estimate of how much rates would be reduced if the bill were passed. In order to get the estimated dollar impact of $62M from an estimated rate reduction of 2.5%, one would multiply the rate impact (2.5%) against the total workers compensation premium dollars in the state ($2.5B). Because the breakdown of the premium dollar is part benefits and part expenses, there is an implicit assumption that expenses will be affected proportionally to the change in benefit costs. In other words, because of the reduction in premium related to benefits, expense items such as for example taxes and assessments have to come down. So given the benefit/expense split of the premium dollar in Florida, part of the $62M is savings in drug costs ($36M) and part of the $62M is savings in expenses ($26M).

2. **Isn't NCCI's impact skewed high because it arrives at its markup for each drug by comparing generics to non-generics of the same drug?**

   No. NCCI compared drugs by the same name. For illustration purposes only, please note the following example. Acetaminophen is the generic for Tylenol. NCCI's methodology would look at the reimbursement amounts for acetaminophen in its original packaging compared to its repackaged form, and determine the average markup for acetaminophen. Then NCCI's methodology would look at the reimbursement amounts for Tylenol in its original packaging compared to its repackaged form, and determine the average markup for Tylenol. This approach was followed for all drugs. The overall savings were determined by eliminating the markup.

3. **What would be the impact on workers compensation rates of allowing the free market to determine the price of repackaged drugs? In other words, what would be the impact on workers compensation rates if the only means for carriers to contain costs is by not doing business with dispensing physicians?**

   Fee schedules are the oldest and most widely used device to regulate workers compensation medical payments. Florida already has fee schedules in place to control reimbursements in workers compensation for pharmaceuticals and services provided by physicians, hospitals, and ambulatory surgical centers. NCCI studies show that fee schedules are effective in controlling

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medical costs. States without fee schedules reimburse at a higher markup than states with fee schedules. While Florida currently has a pharmaceutical fee schedule, it is ineffective at controlling reimbursements for repackaged drugs. In other words, there is in effect no control on the markup on repackaged drugs and therefore, it is akin to not having a fee schedule for repackaged drugs. Given its studies on markup in states without fee schedules, NCCI would not expect that a free market approach would be effective in containing the cost of repackaged drugs.

4. **Has NCCI considered in its pricing the impact of physician dispensing on injured worker outcomes? Some argue physician dispensing improves injured worker outcomes and some argue that physician dispensing leads to longer claim durations/longer periods before returning to work.**

   NCCI has not included any impact related to injured worker outcomes within its pricing because NCCI has been unable to find any studies which show correlation of physician dispensing and return to work/claim duration. NCCI believes there is low probability there is a correlation or that any correlation would significantly impact its pricing.

   Those that argue that physician dispensing improves injured worker outcomes often point to a statistic that 30-35% of prescriptions are not filled. The converse is that 65%-70% of prescriptions are filled probably without a significant lapse of time. Even if the 30-35% of prescriptions which were previously unfilled are making it into the hands of injured workers because of physician dispensing, there is no guarantee that physician dispensed drugs are actually taken by injured workers.

   Those that argue that physician dispensing leads to poorer injured worker outcomes often cite studies related to the use of narcotics in treating workers compensation injuries and the fact that narcotics use can persist many years. Particularly after the passage of the Pill Mill Bill in 2011, NCCI believes that the drugs physicians can dispense have a low potential for abuse and therefore are unlikely to extend the length of claims. It is also believed that other factors like the economy (i.e., the availability of jobs) have greater impact on return to work/claim duration.

5. **If the reimbursement for repackaged drugs is set at the original manufacturer's Average Wholesale Price (AWP) plus the dispensing fee of $4.18, is the dispensing physician's profit limited to $4.18?**

   No. The original manufacturers AWP is not the actual purchase price of pharmaceuticals. There is a built in markup within original manufacturers AWP. The gap between what is actually paid by the repackager and the original manufacturer's AWP is profit. A standard spread does not exist, but based on data from one Florida repackager, the spread , or built-in profit, for the top 15 drugs dispensed by physicians in Florida workers compensation is more than 50%. This particular repackager stated that his clients receive a significant portion of the spread, or built-in profit.

6. **Will physicians stop dispensing if the reimbursement is set at the original manufacturer's Average Wholesale Price?**

   When a similar change was enacted in California, physicians continued to dispense at close to the same levels but the dispensing of repackaged drugs tapered off and the dispensing of non-repackaged drugs grew.

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ANALYSIS OF FLORIDA SB 1068 - PROPOSAL TO REVISE REIMBURSEMENT FOR REPACKAGED OR RELABELED PRESCRIPTION DRUGS EFFECTIVE JULY 1, 2011

NCCI estimates that adopting the proposed language in SB 1068 on reimbursement of repackaged or relabeled prescription drugs would result in an impact of -2.5% ($-62M)[1] on overall workers compensation costs in Florida.

Summary of Proposal

Senate Bill (SB) 1068 proposes to introduce a change in reimbursement for drugs that have been repackaged or relabeled. Under SB 1068, reimbursements for such drugs are limited to the number of units dispensed times the per unit Average Wholesale Price (AWP) set by the original manufacturer of the drug, plus a $4.18 dispensing fee. This does not apply in situations where the carrier has contracted for a lower reimbursement amount.

Currently, prescription drugs are reimbursed at the AWP plus a $4.18 dispensing fee. There are no restrictions on reimbursements for repackaged or relabeled prescription drugs.

Actuarial Analysis

In Florida, drug costs represent 16.0[2] of workers compensation (WC) medical costs. Repackaged or relabeled drug costs represent 39.8%[2] of Florida's WC drug costs, or 6.4% (=39.8% x 16.0%) of medical costs.

In order to estimate the cost impact of this proposal, NCCI compared the cost of repackaged or relabeled drugs to the cost of drugs dispensed in its original packaging from the manufacturer (not repackaged or relabeled). A repackaged or relabeled indicator field from First Databank's *National Drug Data File™ (NDDF), Descriptive and Pricing Data*, was used to distinguish repackaged or relabeled drugs from the drugs dispensed in its original packaging from the manufacturer within the Florida Workers Compensation Data licensed to NCCI.

NCCI has assumed the difference between the current reimbursement for repackaged or relabeled drugs and the current reimbursement for the equivalent of these drugs that are not repackaged or relabeled, to be a reasonable estimate of the cost impact due to the proposed rule.

The current and proposed reimbursements for each brand name drug were calculated as follows:

Current Reimbursement = Average observed reimbursement for repackaged or relabeled drug x Total Units of repackaged or relabeled drug

[1] The $62 million in savings is derived as -2.5% x $2.5B (NCCI's estimate of Florida's overall WC system costs). The Florida overall WC system costs is comprised of Private Carrier 2009 direct written premium as reported to the NAIC ($1.7B) plus an estimate of the Self Insured 2009 premium portion ($0.8B) from the Florida Division of Workers Compensation.

[2] Based on Florida WC data licensed to NCCI for service year 2009.

National Council on Compensation Insurance, Inc.

ANALYSIS OF FLORIDA SB 1068 - PROPOSAL TO REVISE REIMBURSEMENT FOR REPACKAGED OR RELABELED PRESCRIPTION DRUGS EFFECTIVE JULY 1, 2011

Proposed Reimbursement = Average observed reimbursement for equivalent drug that is not repackaged or relabeled x Total Units of repackaged or relabeled drug

Where:
Average observed reimbursement = Total Paid divided by Total Units
Units = Total number of pills per prescription

The current and proposed reimbursement is then summed to obtain total current and total proposed costs. The estimated direct impact due to the proposed rule is the ratio of total proposed costs to total current costs.

Note that the AWP is not subject to any law or regulation. Therefore, there are no requirements for the AWP to reflect the price of any actual sale of drugs by a manufacturer. In addition, since there is a lack of control over the AWP, it may be subject to significant upward pricing pressures (much like the "sticker prices" on automobiles). For these reasons, limiting the reimbursement for repackaged drugs to the AWP set by the manufacturer may result in less savings than anticipated.

The direct impact on repackaged or relabeled prescription drugs is estimated to be -57.0%. This impact is then multiplied by the estimated Florida percentage of medical costs that are for repackaged or relabeled prescription drugs (6.4%)[2]. The resulting impact on medical costs is then multiplied by the percentage of Florida benefit costs that are medical (68.3%)[3] to yield the impact on Florida overall workers compensation system costs.

The impact due to the proposed rule is summarized in the following table:

		Impact
(1)	Impact on Repackaged or Relabeled Prescription Drug Costs in Florida	-57.0%
(2)	Repackaged or Relabeled Prescription Drug Costs as a Percentage of Medical Costs in Florida[2]	6.4%
(3)	**Impact on Medical Costs in Florida = (1) x (2)**	**-3.6%**
(4)	Medical Costs as a Percentage of Overall Workers Compensation System Costs in Florida[3]	68.3%
(5)	**Total Impact on Overall Workers Compensation System Costs in Florida = (3) x (4)**	**-2.5%**

[2] Based on Florida WC data licensed to NCCI for service year 2009.
[3] Based on Calendar-Accident Years 2008-2009 NCCI Financial Call data for Florida projected to 7/1/2011. This estimated date is subject to change depending on the date the changes become effective.

National Council on Compensation Insurance, Inc.

ANALYSIS OF FLORIDA SB 1068 - PROPOSAL TO REVISE REIMBURSEMENT FOR REPACKAGED OR RELABELED PRESCRIPTION DRUGS EFFECTIVE JULY 1, 2011

Additional Information

The same language in SB 1068 was contained last year in HB 5603. NCCI prepared a similar analysis last year dated March 15, 2010, which was based on Florida workers compensation data licensed to NCCI for service year 2008. Here is a comparison of the components that have changed from last year's analysis to the current analysis because of updated data:

		Last Year's Analysis	Current Analysis
(1)	Impact on Repackaged or Relabeled Prescription Drugs	-52.8%	-57.0%
(2)	Share of Repackaged or Relabeled Drug Costs to WC Drug Costs	23.5%	39.8%
(3)	Share of WC Drug Costs to WC Medical Costs	12.8%	16.0%
(4)	Impact on Medical Costs = (1) x (2) x (3)	-1.6%	-3.6%
(5)	Medical Costs as a percentage of Overall WC System Costs	68.9%	68.3%
(6)	Impact on Overall WC System Costs = (4) x (5)	-1.1%	-2.5%

Report on the Inaccuracy of the Claimed $62 Million Savings Related to Physician Dispensing in Florida

I. Overview of Issue

The cost of physician dispensed prescription medications in workers' compensation was at issue during the 2012 legislative session. Senate Bill 668 and House Bill 511 proposed to cap the amount of money that can be charged for repackaged medications, which are almost exclusively dispensed by physicians. The chief proponent of the cap was the National Council on Compensation Insurance ("NCCI"), a corporation owned by insurers and their carrier members.

The NCCI claims that physician dispensing of repackaged drugs adds $62 million in costs to workers' compensation annually. Despite repeated requests from legislators, the NCCI never produced any documentation, data, or other evidence to support its $62 million claim, which has been proven to be demonstrably inaccurate and unsupported.

Regardless of the inaccuracy of the NCCI's figures, this is a self-regulating issue that requires no need for government intervention. In Florida, workers' compensation carriers can send an injured patient to a physician of their choice, including any of the over 14,000 non-dispensing doctors in the State of Florida. Thus, while carriers can "just say no" to doctor dispensing, they continue to send patients to dispensing physicians because they apparently like the outcome.

The proposed cap does not eliminate dispensing *per se*, but has the net effect of eliminating dispensing because physicians do not have the ability to purchase or dispense medications at the same cost as a pharmacy, which purchases pharmaceuticals in huge quantities, enjoying discounts and reduced costs because of volume purchasing. While physician dispensed drugs are slightly more expensive than pharmacy dispensed drugs, the difference in costs is only a very small fraction of the NCCI's alleged $62 million. More importantly, the slightly higher cost of physician dispensing is greatly outweighed by the beneficial impact that doctor dispensing has on the workers' compensation system and the ultimate savings it creates for Florida's employers.

II. The NCCI And The Inaccuracy Of Its $62 Million Savings Claim.

The NCCI claims that physician dispensing of repackaged drugs adds $62 million in costs annually to the workers' compensation system. This number has been repeatedly proven to be completely inaccurate, unsupported, and is directly contradictory to the State's own data regarding physician dispensing.

A. The NCCI's Role In Setting Workers' Compensation Premiums.

Before delving into the inaccuracy of the NCCI's $62 million figure, it is important to briefly understand the NCCI's role in developing workers' compensation rates in Florida.

The NCCI is a corporation owned by insurance companies, and whose board of directors is primarily insurance company representatives.[i] The NCCI is licensed under section 627.221, Fla. Stat., to submit workers' compensation rate filings to the Office of Insurance Regulation ("OIR") on

behalf of its insurance company members. According to the OIR, there are 252 workers' compensation insurers in the State of Florida.[ii] While insurers have the right to file their own rates, a recent report by Office of Insurance Consumer Advocate states that all 252 insurers have "elected to allow the National Council on Compensation Insurance (NCCI) to file rates on its behalf."[iii]

For 2011 and 2012, the NCCI requested increases in workers' compensation rates of 8.3% and 8.9%, respectively. Based on the NCCI's rate filings, the OIR ordered increases to employer premiums of 7.8% and 8.9% - or about $132.6 million and $142.4 million, respectively - for a two year premium increase of $275 million.[iv] Despite being the basis of hundreds of millions of dollars in increased premiums for Florida's employers, the NCCI's rate filing in 2011 was copyrighted and extremely difficult to obtain under Florida's public records laws, thus limiting unfettered access and wide public review of the data supporting the rate increase.[1]

B. The Origin of the NCCI's $62 Million Figure.

The NCCI's 2011 rate filing resulted in approximately $142 million in additional premiums for its insurer-members. The NCCI impliedly attributed 2.5% of the increase, or $62 million, to physician dispensed repackaged medications.[2] The rate filing document that served as the basis for the rate increase was copyrighted, which helped shield it from the public records law and widespread public scrutiny.

However, an actuarial review of the NCCI's 1,000 page rate filing was conducted, and revealed that there is no actuarial support for the 2.5% anywhere in the 1,000 pages. Yet, the NCCI implied to the OIR, legislators, and the public that repackaged drug costs accounted for 2.5% of the 8.9% rate increase. The NCCI's press release regarding the 8.9% increase, as well as the OIR's order on the rate increase, directly reference physician dispensing as resulting in 2.5% in additional premiums.[v]

Rather, the genesis of the $62 million figure is a three-page NCCI publication, dated March 7, 2011, that is devoid of any data or comprehensive analysis of how the NCCI reached its $62 million figure.[vi] In fact, less than a year prior the NCCI claimed that repackaged drugs add $34 million in costs annually , and the AIF projected additional costs of $100 million annually.[vii] While widely ranging figures were produced, proponents of the repackaged drug cap ultimately relied on the NCCI's $62 million figure.[3]

C. The NCCI's Estimated Savings of $62 Million is Completely Inaccurate, Contradicts the State's Data, and Cannot Even Be Explained by NCCI.

There are a number of ways to demonstrate the utter inaccuracy of the NCCI's $62 million figure. The easiest way, however, is by looking to the State's own data on prescription drug costs.

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[1] The State of Florida, Office of Insurance Consumer Advocate and the American Actuarial Consulting Group, who both have reviewed past NCCI rate filings, criticized the NCCI for its excessive rates.

[2] The NCCI calculates the 2.5% off of its estimated total premium for Florida of $2.5 billion, of which $1.7 billion is direct written premiums, and the other $.8 billion is self-insured premiums. 2.5% of $2.5 billion is $62.5 million. This attribution of 2.5% increase is not part of the 8.9% rate increase, even though it is referenced in the rate increase order.

[3] The NCCI's three-page, March 7, 2011 document will be referenced to as the "NCCI Report."

i. The NCCI's $62 Million Figure Is Undermined by the State's Conclusion That Physician Dispensing Total Costs Are $63.2 Million.

The 2011 Division of Workers' Compensation ("DWC") Annual Report states that total annual payment in 2010 for all prescription drugs dispensed by physicians was $63.2 million.[viii] The $63.2 million is made up of approximately 460,000 prescriptions dispensed to injured workers at an average cost of approximately $137 per prescription.[ix] According to the DWC, the average cost of a pharmacy dispensed prescription to an injured worker was approximately $121, or a difference of $16 or 11.7%.[x]

It is indisputable that the 460,000 prescriptions for injured workers must be filled somewhere, either by physician dispensing or through a pharmacy. The 460,000 prescriptions are real medicine that injured workers need to take as per the treatment plan of the treating physician. In order to save $62 million in doctor dispensed repackaged prescription drug costs, out of a total of $63.2 million in physician dispensed medication, these 460,000 prescriptions would have to be eliminated and the prescription medication could not be dispensed to the patient at all. Given that the prescriptions still must be dispensed, even if all 460,000 physician dispensed prescriptions were filled through the pharmacy at the average pharmacy cost of $121 per prescription, those prescriptions would still cost about $55.6 million.[4] The pharmacy cost does not vanish. It is still there. The prescription medications are still being dispensed to the injured workers. If filled at the pharmacy cost of $121, this equates to a savings, at most, of approximately $7 million.[5] While not insignificant, it is nowhere near the NCCI's $62 million figure, and is only three-tenths of one-percent of the overall workers' compensation premium (.003), as opposed to the NCCI's claim of 2.5%.[xi]

Physician dispensing is also bound to be slightly more expensive because physicians cannot purchase in bulk as pharmacies do, physicians do not receive their medications on consignment like pharmacies, and physicians do not receive discounts or rebates when purchasing from a manufacturer. Physicians purchase and pay for repackaged medications in the dosage and quantity appropriate to the treatment of the patient. Regardless, the slightly higher cost of physician dispensing is outweighed by its benefits, as pointed out below.

The NCCI's math, while creative, is simply not accurate or representative of the actual prescription drug costs in the State of Florida. The NCCI's conclusions, including the $62 million claim, have been publicly demonstrated to be inaccurate in numerous ways, none of which the NCCI has yet been able to refute with any reasonable explanation.

ii. When Questioned About The State's Conflicting Data, The NCCI Could Provide No Adequate Explanation.

When presented with the State's data regarding the costs of physician dispensing, the NCCI was unable to provide any reasonable explanation as to how it reached its $62 million figure. Near the end of the 2012 legislative session, after nearly six months of being questioned about the $62 million figure, the NCCI testified that of the $62 million, only $36 million would be saved in

[4] No one, including the NCCI, has argued that the cost of a pharmacy dispensed prescription is too high.
[5] This number is likely slightly high, as the 2011 DWC Annual Report includes costs of schedule II and III prescriptions, which generally had higher costs, but no longer can be dispensed by physicians as of July 1, 2011.

reductions to drug costs, while $26 million would be saved in corresponding administrative costs.[xii] This explanation is nonsensical.

Foremost, the NCCI's claim that only $36 million is savings in drug costs is directly contradictory to the NCCI's March 7, 2011 publication, which appears to fully attribute all $62 million in savings to the difference in costs of repackaged and non-repackaged drugs.[xiii] The NCCI has never provided a chart or any data showing the $36 million in drug savings, for the public to review and test the accuracy of same. Moreover, the NCCI's claim that administrative costs would drop is contrary to logic. If anything, administrative costs would increase because all 460,000 physician dispensed prescriptions would still have to be filled (they are for real injured workers), and many of them would be filled at a pharmacy instead of the physician's office.[6]

When prescriptions are filled at a pharmacy, the carrier has to pay, at a minimum, additional travel costs and wages for the time the employee spends going to the pharmacy. In many instances, filling a prescription can be a very long and arduous process, as workers' compensation claims do not have to be filed by the employer for 21 days, workers do not have workers' compensation insurance cards, and numerous calls are often required between the pharmacy and the carrier to gain authorization to dispense the medication. This could take anywhere from multiple hours to multiple days, and in many cases the injured worker gives up and their prescription becomes part of the approximately 31% of prescriptions written by doctors that ultimately go unfilled. This process would appear to add substantial cost to the system and not create a savings as claimed by NCCI.

iii. The NCCI Asserts 600% Increases In the Cost of Prescription Medications.

The NCCI also asserted at various times that repackaged drugs are 600% more expensive than drugs received at a pharmacy. This is another red herring. As stated above, the Division of Workers' Compensation 2011 Annual Report, which is backed by data representative of all prescriptions dispensed in workers' compensation by both physicians and pharmacies, clearly demonstrates that the average cost of a pharmacy dispensed prescription is $121, and the average cost of a physician dispensed prescription is $137, which is an 11.7% difference, not a 600% difference as repeatedly asserted by the NCCI.

If physician dispensed drugs were in fact 600% higher, physician dispensed drugs would cost around $334 million, as opposed to the $63.2 million cited in the 2011 Workers' Compensation Annual Report.[7]

D. There is no Data or Methodology Supporting the $62 Million Figure.

In addition to the complete absence of any data to support the NCCI's $62 million figure in the NCCI's rate filing, the report that the NCCI uses to support its $62 million claim is also devoid of any data or reliable methodology.

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[6] The NCCI stated it would provide a handout to explain its breakdown of the $62 million calculation. A handout was never provided.

[7] The average pharmacy dispensed drug costs $121, per the Division of Workers' Compensation. If the average physician dispensed drug was six times more expensive, it would cost $726. If all 460,000 physician dispensed prescriptions were filled at an average cost of $726, they would cost $334 million total.

Foremost, in attempting to explain how it reached the $62 million figure, the NCCI Report states that it compared the "current and proposed reimbursements for each brand name drug... "[xiv] Yet physicians dispense almost entirely generic medications, and any comparison of brand name repackaged drugs to brand name non-repackaged drugs would be erroneous.

The NCCI's study also was conducted prior to the passage of House Bill 7095, better known as the "pill mill bill." As of July 1, 2011, the pill mill bill prohibited physicians from dispensing schedule II and schedule III prescription medications.[xv] The NCCI Report includes schedule II and III prescriptions medications in its calculation, and is therefore skewed as those medications – which tended to be higher priced – can no longer be dispensed by doctors in Florida.

Finally, the NCCI Report is devoid of any supporting data or methodology. The NCCI seeks to eliminate the practice of doctor dispensing based on a three page document that cannot possibly be peer-reviewed or scrutinized in any depth. For example, the Report fails to state how it was conducted, who funded the study, what medications were compared, how many medications were compared, which categories of drugs were utilized, the sampling techniques, the volume of data used, or any other information that would allow anyone other than the NCCI to analyze the methodology or data that the NCCI used to reach its conclusion of a $62 million impact. The testimony of the NCCI representative confirms the lack of data or analysis associated with the assertion of a $62 million savings.[xvi] The NCCI basically claims that the $62 million is the result of proprietary algorithms and methods that they will not disclose to be subjected to the scrutiny of valid and reliable analysis.

The NCCI also fails to measure what beneficial impact physician dispensing has on savings, including savings from increased medication compliance, better outcomes, reduced costs due to less prescription drug abuse and diversion, and quicker returns to work.

E. Overall Pharmacy Costs In Workers' Compensation Have Only Risen Slightly

While the NCCI has gone to great lengths arguing that physician dispensing adds $62 million in pharmacy costs annually, overall pharmacy costs have remained stable as physician dispensing has increased. The Division of Workers' Compensation Annual Reports demonstrate that overall pharmaceutical costs over the last four to five years have risen by only around 7%, from a total of $172 million to $185 million.[xvii] While there has been a 7% increase, prescription drug prices in general healthcare have seen an even sharper increases of around 12% for that same general timeframe.[xviii] Thus, while physician dispensing has increased in Florida during this time period, it is merely taking over a larger share of dispensing and money that would otherwise be paid to pharmacies for the same prescriptions. Overall pharmaceutical costs have not suffered the type of exaggerated increases in costs that would have occurred if the NCCI's claim of $62 million in extra costs were in fact correct.

III. No Government Intervention or Regulation Is Necessary, as Workers' Compensation in Florida is a Carrier-Directed.

While the NCCI complained about costs of physician dispensing and questioned its beneficial aspects, the evidence that physician dispensing leads to excellent outcomes is that carriers continue to utilize physicians who dispense medications.

Workers' Compensation in Florida is "carrier-directed." What this means is that the carrier selects the physician that the injured worker must see for his or her injuries.[xix] The injured employee does not have the right to select any physician that he or she desires.[xx] According to the Division of Workers' Compensation's physician database, there are approximately 19,854 physicians approved to treat workers' compensation patients.[xxi] There are only around 5,510 licensed dispensing physicians in Florida, not all of which treat workers' compensation patients.[xxii] This leaves, at a minimum, 14,344 non-dispensing physicians that carriers may utilize for treatment.

Clearly, this is a self-regulating industry that is in need of no additional regulation; if carriers do not like physicians who dispense, think it's too costly, or don't like the patient outcomes, they can utilize any of the 14,344 non-dispensing doctors. Yet carriers continue to send patients to dispensing physicians because apparently they like the results. If carriers are unhappy with the services or costs of dispensing physicians, they can "just say no" and send the injured worker to another non-dispensing authorized workers' compensation physician.

IV. Physician Dispensing Leads to Excellent Outcomes and Access to Care, While Keeping Overall Pharmacy Costs Stable.

Although the NCCI claims that physician dispensing adds $62 million in costs to workers' compensation annually, overall pharmacy costs in Florida have remained stable as physician dispensing has increased, and carriers are not facing a higher expenses as a result. Moreover, in seeking to eliminate dispensing, the NCCI and carriers continually overlook the beneficial aspects of physician dispensing and the impact it has on overall costs in workers' compensation.

A. Around Thirty Percent of Patients Will Not Fill a Prescription at a Pharmacy.

One of the chief benefits of physician dispensing is increased patient compliance. When physicians do not dispense medications, but provide the patient with a written prescription, a patient often will not fill a prescription at a pharmacy which leads to worse outcomes for the patient, a longer time out of work, an increase in more costly treatments, including surgery, and increased costs to the employer.

Two different studies – one Harvard study published in the American Journal of Medicine, and the other from the National Council on Patient Information and Education – demonstrate that approximately 1/3 of patients who receive a prescription from a physician do not fill that prescription at the pharmacy.[xxiii] Non-adherence with a prescription medication plan can lead to significant extra medical, indemnity, and indirect costs to the system. Most workers' compensation injuries are treated in a conservative manner and since most are musculoskeletal, they are treated with medication or physical therapy. A key component to the treatment regimen is the immediate taking of the medication.

For example, a delay in taking medication can lead to more severe medical problems requiring additional medical treatment (including more medications prescribed, filled, and re-filled) that would have been unnecessary had the patient began taking medication immediately. Similarly, indemnity costs, such as lost wages and litigation expenses, increase drastically when a patient spends additional time out of work due to non-compliance with a physician's treatment plan. The

Division of Workers' Compensation 2010 Annual Report states that injured workers who believe they have not received adequate medical care are twice as likely as an injured worker who received adequate care to hire an attorney and file a Petition for Benefits.[xxiv] Similarly, injured workers who have not returned to work are twice as likely as injured workers who have returned to work to hire an attorney.[xxv] Indirect costs paid by the employer, such as payment for replacement and training of new employees, also increase the longer an injured worker is out of work.

The minor increase in costs that physician dispensing presents is significantly outweighed by the money that physician dispensing saves the workers' compensation system due to increased compliance. Increased compliance helps employers avoid lengthy medical treatment, lost wages, and costly litigation.

B. No Consideration Has Been Given To The Beneficial Aspects of Physician Dispensing.

While the NCCI and its carrier-members have criticized physician-dispensing as being too costly, using bogus numbers to support their claims, the beneficial aspects of physician dispensing have gone overlooked and understudied, as is alluded to above.

The tangible costs of physician dispensing are relatively easy to measure, as the DWC 2011 Annual Report lays out the total number of physician dispensed prescriptions, and the overall cost of physician dispensing ($63.2 million). Much more difficult to analyze are the indirect costs, or indirect benefits, of physician dispensing. According to OSHA, indirect costs of a workplace accident can be up to 4.5 times the total medical and indemnity costs for a claim.[xxvi]

As noted in the preceding sections, physician dispensing has a direct and positive impact on patient compliance, access to care, and return to work outcomes. Better outcomes and a quicker return to work means less employer costs for lost productivity, training and supervising new employees, rescheduling, overtime to cover an injured employee's work, *etc.* The carrier themselves prove the value of physician dispensing repackaged medications by continuing to send patients to dispensing physicians. It is the carrier's choice which doctor the injured worker must go to. If the carriers believe there is no benefit, the costs are too high, the outcomes are bad, or that there are other negative problems when a physician dispenses, they can simply choose not to send an injured worker to a doctor that does not dispense. Simply put, the carrier is in control of what doctor the injured worker goes to in Florida.

The slightly higher cost of physician dispensed medications is outweighed by the benefits and economic savings that physician dispensing brings to patients and the workers' compensation system. Looking solely at the cost of dispensing fails to account for its overall impact on costs for the total workers' compensation system. The beneficial aspects stated above brings reduced costs to the overall workers' compensation system.

V. Conclusion

The NCCI and its carrier-members placed a significant amount of blame on physician dispensing for the most recent increase in workers compensation rates in Florida. Yet, the NCCI's claim that physician dispensing leads to $62 million in additional costs annually is directly

contradicted by the State's own data and has been proven to be completely inaccurate and unsupported.

While the NCCI has recently sought increases in workers' compensation premiums on Florida's employers, physician dispensing has numerous beneficial aspects that result in decreased costs to Florida's workers' compensation system, and any slightly higher costs of a physician dispensed prescription are far outweighed by the various other benefits resulting from physician dispensing. Yet, in an effort to eliminate dispensing as a whole, the NCCI and carriers have failed to acknowledge the benefits of dispensing, instead repeatedly arguing the bogus claim of a $62 million savings. Yet, the continued inaccurate and unsupported assertion of a $62 million savings being repeated over and over and over again does not substitute for its absolute factual inaccuracy no matter how much the NCCI and the carriers would like to have this believed. The undisputed facts contained in the Division of Workers' Compensation's 2011 Report state that the total cost of physician dispensed medication is $63.2 million, which demonstrates the absurdity of the NCCI's claim of a $62 million savings.

Endnotes

[i] NCCI Presentation; NCCI Board of Directors, from NCCI website at: https://www.ncci.com/nccimain/AboutNCCI/FactsInfo/BoardDirectors/Pages/default.aspx

[ii] 2011 OIR Annual Report on Workers Compensation, p. 9.

[iii] Analysis of Office of Insurance Regulation Rate Filing Number 10-14671, State of Florida, Office of the Insurance Consumer Advocate, p. 3. ("2010 Insurance Consumer Advocate Report"), October 1, 2010.

[iv] The dollar amount increase is determined by multiplying the percentage increase obtained by the NCCI against the written workers' compensation premium as stated in the Office of Insurance Regulation Annual Reports. The NCCI's recommended rate, and the rate ordered by the Office of Insurance Regulation can be found in: 1) State of Florida, Office of Insurance Regulation Order on Rate Filing, Case No. 119999-11, pp. 1, 6, October 24, 2011; and 2) State of Florida, Office of Insurance Regulation Order on Rate Filing, Case No. 112186-10, pp. 1, 6, October 15, 2010. The written premium for workers' compensation in Florida for the two years in which these orders were issued can be found in: 1) Florida Office of Insurance Regulation 2011 Workers' Compensation Annual Report, p. 9, December 2011; and 2) Florida Office of Insurance Regulation 2010 Workers' Compensation Annual Report, p. 9, December 2010.

[v] State of Florida, Office of Insurance Regulation Order on Rate Filing, Case No. 119999-11, pp. 5-6, October 24, 2011; Press Release of National Council on Compensation Insurance, Inc. "NCCI Proposes Increase for Workers Compensation Rates in Florida," p. 2.

[vi] National Council on Compensation Insurance, Inc. "Analysis of Florida SB 1068 – Proposal to Revise Reimbursement for Repackaged or Relabeled Prescription Drugs Effective July 1, 2011", March 7, 2011.

[vii] Associated Industries of Florida Special Notice, "AIF and the Florida Insurance Council Help Florida Employers Save More than $100 Million in Workers' Comp Costs," April 30, 2010, accessible at: http://aif.com/special_notice/2010/sn_100430.shtm; National Council on Compensation Insurance, Inc., "Analysis of Florida Draft Proposal to revise Reimbursement Rules for Repackaged or Relabeled Prescription Drugs Effective Upon Adoption".

[viii] Florida Division of Workers' Compensation, 2011 Annual Report, p. 40.

[ix] Florida Division of Workers' Compensation, 2011 Annual Report, p. 41; Florida Division of Workers' Compensation, 2010 Annual Report, p. 89.

[x] Florida Division of Workers' Compensation, 2011 Annual Report, p. 41; Florida Division of Workers' Compensation, 2010 Annual Report, p. 89.

[xi] Using the $2.5 billion premium estimated by the NCCI, $7 million equates to just under .003% of the total workers' compensation premium: $2,500,000,000 x .003 = $7.5 million.

[xii] Testimony of Lori Lovgren at Senate Insurance and Banking Committee Hearing, January 19, 2010. Video of the testimony is accessible at: http://thefloridachannel.org/video/11912-senate-banking-and-insurance-committee/

[xiii] National Council on Compensation Insurance, Inc. "Analysis of Florida SB 1068 – Proposal to Revise Reimbursement for Repackaged or Relabeled Prescription Drugs Effective July 1, 2011", March 7, 2011.

[xiv] National Council on Compensation Insurance, Inc. "Analysis of Florida SB 1068 – Proposal to Revise Reimbursement for Repackaged or Relabeled Prescription Drugs Effective July 1, 2011", p. 1, March 7, 2011.

[xv] The restrictions placed by HB 7095 on doctor dispensing can be found in s. 465.0276, Fla. Stat.

[xvi] Testimony of Lori Lovgren at Senate Insurance and Banking Committee Hearing, January 19, 2010. Video of the testimony is accessible at: http://thefloridachannel.org/video/11912-senate-banking-and-insurance-committee/

[xvii] The Division of Workers' Compensation 2011 Annual Report states that total costs of physician and pharmacy dispensed drugs went from $172 million in 2007 to approximately $185 million in 2010, a seven percent increase over four years. *See* Florida Division of Workers' Compensation, 2011 Annual Report, p. 40. During that same approximate time period, prices in prescription drugs as measured by the Consumer Price Index rose by around 12%.

[xviii] *See* Kaiser Family Foundation, "Prescription Drug Trends", p. 2, May 2010

[xix] s. 440.13, Fla. Stat. *See also St. Augustine Marine Canvas & Upholstery, Inc. v. Lunsford*, 917 So.2d 280, 283, 917 So. 2d 280 (Fla. 1st DCA 2005) ("The employer has the initial right to select the treating physician."); *Orange County School Bd. v. Ebanks*, 608 So. 2d 578, 579, 608 So. 2d 578 (Fla. 1st DCA 1992) ("This duty under section 440.13(2)(a), when read in conjunction with section 440.13(3), gives the employer the right of initial selection of a physician."); *City of Bartow v. Brewer*, 896 So.2d 931, 933 (Fla. 1st DCA 2005) (same).

[xx] The workers compensation statutes generally allow a patient to request a one-time change of physician if he or she is unhappy with the initial physician selected by the carrier. s. 440.13(2)(f), Fla. Stat. This still does not provide the patient with the right to select the initial treating physician.

[xxi] A list of approved practitioners can be found at the State of Florida, Division of Workers' Compensation website, at: https://apps.fldfs.com/provider/ (Click where it says "To **download** a zipped copy of the Health Care Providers click here.")

[xxii] A list of all licensed dispensing practitioners was provided by the State of Florida, Department of Health, to the undersigned pursuant to a public records request under Chapter 119.

[xxiii] Fischer, M.A., *et. al.*, "Trouble Getting Started, Predictors of Primary Medication Nonadherence," The American Journal of Medicine, v. 124, no. 11, November 2011; "Enhancing Prescription Medication Adherence, A National Action Plan," National Council on Patient Information and Education, August 2007.

[xxiv] Florida Division of Workers' Compensation, 2010 Annual Report, pp. 4-5.

[xxv] Florida Division of Workers' Compensation, 2010 Annual Report, pp. 4-5.

[xxvi] *See* "Safety Pays", United States Department of Labor, Occupational Safety and Health Administration, accessible at: http://www.osha.gov/Region7/fallprotection/safetypays.html; *See also* "The Hidden Costs of Workers' Compensation", AMAXX Workers' Comp Resource Center, accessible at: http://reduceyourworkerscomp.com/hidden-cost-workers-compensation.php# axzz1rHsd1dPV

Government Efficiency Taskforce

SUBCOMMITTEE ON HEALTH AND HUMAN SERVICES

April 26,2012

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"The Voice of Florida Business Since 1920"

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Vice-President Governmental Affairs

Who We Are…

- Member-driven, Business Association
- Membership Consists Of:
  - Manufacturers – State affiliate for NAM National Association of Manufacturers
  - Agriculture
  - Phosphate Companies
  - Utilities
  - Telecommunication Companies
  - Insurance Companies
  - Retailers
  - Over 40 Business and Trade Associations
  - *"And Everything-in-Between"*

Workers' Comp…A Look Back

AIF has a long history of workers' compensation advocacy:

- Late 90's & early 00's crisis of availability & affordability
- Reforms of 2003 – SB 50A leads to reductions of **over 60% in rates**
- 2008: *Emma v. Maury*: Supreme Court throws out SB 50A
- 2009: Legislature passes HB 903 restoring SB 50A

Workers' Comp Coalition

FOR BUSINESS & INDUSTRY

- American Airlines
- American Insurance Association
- Anheuser-Busch Companies, Inc.
- Associated Builders & Contractors of Florida
- Associated Industries of Florida
- AT&T
- Badcock Home Furniture & More
- BlueCross Blue Shield of Florida
- CareerXChange
- Coca-Cola Enterprises, Inc.
- Enterprise Leasing Company
- FCCI Insurance Group
- Fidelity National Financial, Inc.
- Florida Associated General Contractors
- Florida Association of Counties
- Florida Association Electrical Contractors
- Florida Association of Health Plans, Inc.
- Florida Association of Insurance Agents
- Florida Association Plumbing Heating
- Florida United Businesses Association
- Cooling Contractors
- Florida Association of School Administrators
- Florida Bankers Association
- Florida Building Material Association
- Florida Cable Telecommunications
- Association, Inc.
- Florida Chamber of Commerce
- Florida Credit Union League
- Florida Electric Cooperatives Associations
- Florida Farm Bureau Federation
- Landrum Human Resource Companies
- Laser Spine Institute
- Marriott
- Mary K. Thomas Employment Services
- National Association of Mutual Insurance
- Companies
- National Federation of Independent Business
- National Fire Sprinkler Association
- PepsiCo
- Printing Association of Florida
- Progress Energy, Inc.
- Property Casualty Insurers Association of
- America
- Publix Super Markets, Inc.
- Risk & Insurance Management Society,
- Palm Beach Chapter
- Simpson Strong-Tie, Inc.
- SingleSource Services
- Southeastern Integrated Medical, PL
- Sunbelt Rentals
- Tampa Tank, Inc.
- Temp Force
- The Boeing Company
- The Dental Genie Staffing Services
- The James Madison Institute
- United Parcel Service, Inc.
- Wachovia Bank
- Walmart Stores, Inc.
- Walt Disney World Resort
- Winn-Dixie Stores, Inc.

Drug Re-Packaging…A Background

- Florida workers' compensation is a mandatory system of protection for employees who suffer injuries at work. Section 440.015, Florida Statutes, expressly provides the intent of the system is "to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer."

- The intention of the workers' compensation system is being undermined and ignored by physicians who dispense repackaged drugs, then charge employers exorbitant prices that exponentially exceed the statutory reimbursement for pharmaceuticals.

- HB 5603, filed during the 2010 Regular Legislative Session, was critical to Florida employers who desperately needed to eliminate burdensome and unnecessary costs of doing business at every possible opportunity.

- The bill passed the Legislature unanimously, but was vetoed by Governor Crist. Critical language in the bill relating to reimbursement of repackaged or relabeled prescription drugs has not been re-adopted by the Legislature since.

Drug Re-Packaging Continued…

PROPOSED LEGISLATION IN 2011-2012:

- **House Bill 511**, sponsored by Representative Matt Hudson (R-Naples) and **Senate Bill 668**, sponsored by Senator Alan Hays (R-Umatilla), would:

  - Establish fairness with workers' compensation prescription drug reimbursement rates;
  - Reduce the rising workers' compensation rates that Florida businesses are being forced to pay; and
  - Ensure workers' compensation patients receive premium medical treatment.

What Does This Mean for Florida Businesses?

- **SAVINGS 2010:** Had Governor Crist not vetoed this bill, which unanimously passed the Legislature, Florida employers would have been saving an additional **1.1%** on their workers' compensation premiums in 2010 – representing about **$34 million back to Florida's economy.**

- **SAVINGS 2011-2012:** Adopting language in **HB511/SB668** on reimbursement of repackaged or relabeled prescription drugs would result in employers saving an additional **2.5%** on their workers' compensation premiums in 2012 – **representing $62 million back to Florida's economy**. These are millions of dollars that the state desperately needs and that Florida's business community can pump back into our economy and use to create jobs. According to the National Council on Compensation Insurance (NCCI), they are committed to immediately filing for a rate reduction upon the effective date of this legislation.

Where Are We Today?

- **In October 2011, Florida Insurance Commissioner Kevin McCarty approved an 8.9 % rate hike on workers' compensation premiums, of which 2.5 % is attributable to drug repackaging.**

- **Commissioner McCarty has committed to granting a rate reduction of at least 2.5%, upon the effective date of HB 511, representing $62 million back into Florida's economy.**

"*This practice has become a critical cost driver in the workers' compensation insurance marketplace. It is imperative that the Florida Legislature address this issue during the upcoming legislative session."* ***– Statement from Insurance Commissioner Kevin McCarty, October 25, 2011.***

Questions?

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