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**From:** Jim Mann [jmann@millironassociates.com]

**Sent:** Wednesday, July 05, 2006 12:11 PM

**To:** RA-LI-BWC-Administra@state.pa.us

**Subject:** ltr to Bureau re proposed rulemaking for PA Chpt 127 6-27-06 (2).doc

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

Dear Ms. Wunsch -

Attempts to fax the original document to the Bureau have failed. The following text is the content of the memo to the Bureau regarding the proposed rulemaking on cost containment for the W/C program from my client, the Workers' Compensation Pharmacy Alliance (WPCA). You should receive the original via USPS prior to the meeting on July 11th.

Please direct questions or concerns regarding this e-mail to me.

Regards,

James G. Mann, Esquire  
Milliron Associates  
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June 27, 2006

Ms. Eileen Wunsch, Chief  
Health Care Services Review Division  
Bureau of Workers' Compensation  
Department of Labor and Industry  
Chapter 127 Regulations—Comments  
P.O. Box 15121  
Harrisburg, PA 171015

**RE: Proposed Regulation by Department of Labor and Industry, amending 34 PA Code Chapter 127 (relating to Medical Cost Containment), published June 10, 2006.**

Dear Ms. Wunsch,

The Workers Compensation Pharmacy Alliance ("WCPA") is a not-for-profit organization whose core mission is to educate public policymakers, by being a technical resource and constructive participant, on workers' compensation pharmacy-related issues. Our goal is to play a role in shaping public policy initiatives that facilitate an open workers' compensation pharmacy marketplace. An open marketplace should:

- preserve access to pharmacy healthcare for injured workers;
- effectively manage drug costs for insurance carriers and other payers; and

- preserve the ability of pharmacists to continue to fill workers' compensation prescriptions.

After reviewing the language in the above-mentioned proposed regulations, I am writing to seek clarification on some of the language that is found in the proposal. Specifically the WCPA is requesting clarification on two of the rules:

### 1. Section 127.3 Definitions

Contained within the definitions section (Section 127.3) of Chapter 27, the Department references "agency related to health care services."

In workers' compensation systems across the country, including the Pennsylvania program, there are entities that perform a valuable, cost-containment service on behalf of providers, including third party administrators, bill review companies and billing entities. Would such entities be included in the definition of "health care provider" as "an agency related to health care services"?

If these entities are not inclusive within the definition of "health care provider", we would ask that the proposed regulation be amended to clearly include these entities. For example, the definition could be amended by inserting the phrase "or an agent the health care provider has contracted with or utilizes for the purpose of fulfilling the health care providers obligations related to health care services and billing" after the phrase "scope of employment."

### 2. Section 127.129 Out-of-State Medical Treatment

The intent of this rule, per the proposal, is to forego capping out-of-state providers at the Pennsylvania fee schedule due to difficulties enforcing the Act. In the proposal provided by the Bureau no applicable pricing model was indicated. The WCPA would propose the following, normally accepted language in workers' compensation.

"When injured employees are treated outside of the Commonwealth by properly licensed providers to provide health care services, the applicable reimbursement shall be the fee negotiated between the out-of-state provider and the employer or carrier."

### 3. Section 127.132 Payments for prescription drugs and pharmaceuticals – direct payment

Subsection (b) of the amended Section 127.132 provides that "[w]hen agreements are reached under subsection (a), insurers shall promptly notify injured employees of the names and locations of pharmacists who have agreed to directly bill and accept payment from the insurer for prescription drugs. However, insurers may not require employees to fill prescriptions at the designated pharmacies, except as provided in Subchapter D (relating to employer list of designated providers)."

We are concerned that the amended section might create a situation where the injured worker is precluded from accessing a provider from whom they received care for a substantial period of time, perhaps prior to the injury. For example, an injured worker has a long-standing claim and has been going to his/her local corner pharmacy. Months into the claim, the employer selects a list of "designated providers" and the local corner pharmacy is not on the list. We are concerned that the injured worker will no longer have access to this local corner pharmacy.

Also, we are not sure what recourse the local pharmacist if he/she dispenses to an injured employee who, unbeknownst to him/her, is subject to a "list" that does not include the pharmacy. Would the carrier deny payment to a provider if the provider is not on the injured employee's "list"?

Thank you for your review and consideration of our questions. Should you need further information, please feel

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free to contact me at (904) 710-7870.

Sincerely,

Kim Diehl, Director  
MSC-Medical Services Company

WCPA Member Company

cc: Independent Regulatory Review Commission