

# THE INDUSTRIAL COMMISSION OF ARIZONA



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## Notice Regarding Payers' Obligation to Provide Prescription Medications Under the Arizona Workers' Compensation Act

Express Scripts Inc. has served notice that Walgreens will no longer be a participating pharmacy within its network effective January 1, 2012. This notice has raised some questions with regard to the workers' compensation obligations of Arizona workers' compensation payers ("payers") who contract with Express Scripts for pharmacy benefit management ("PBM") services. Under the Arizona Worker's Compensation Act, payers are required to provide prescription medications to injured workers. A.R.S. § 23-1062. This obligation is separate and distinct from any contractual agreement between a payer (or its PBM) and a pharmacy regarding reimbursement for prescription medicines required to treat an injured worker. More importantly, the absence of a contract between a payer (or its PBM) and a pharmacy does not change or alter in any way a payer's obligations to ensure that prescription medications are promptly provided to injured workers. In short, a workers' compensation payer has the obligation to ensure that prescription medications required to treat an injured worker are provided to the injured worker regardless of where the prescription is filled. Additionally, absent authority to direct care through an authorized self-insurance program for workers' compensation, a payer is not permitted to prohibit or dissuade an injured worker from having prescriptions filled at a pharmacy of the workers' choice. If the prescription is filled at a pharmacy that does not have a separate contractual agreement with the payer (or its PBM) governing reimbursement for prescription medicines, then reimbursement is required to be made as provided in the Arizona Pharmaceutical Fee Schedule, which provides, in part as follows:

4. Reimbursement for prescription medicines shall be based on this fee schedule in the absence of a contractual agreement between the pharmacy and payer governing reimbursement. Network discounts may not be applied in the absence of a contractual agreement with the pharmacy authorizing such discounts.

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7. Reimbursement for prescription medicines shall be based on a discount from "average wholesale price" (AWP). Average wholesale price is the AWP established by a wholesaler that sells that brand name or generic drug to a pharmacy...

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9. Reimbursement for prescription medicines shall be based the following formulas:
  - a. Generic drugs: 15% discount from the average wholesale price.
  - b. Brand name drugs: 5% discount from the average wholesale price.