

**Chapter 45. Compensation, Medical Benefits,  
and Proceedings Before the Alaska  
Workers' Compensation Board**

8 AAC 45 is amended by adopting a new section to read:

**8 AAC 45.081. Dispensing of generic drug products.** (a) When filling a prescription provided to an employee as a medical benefit under the Act, an available generic drug product must be dispensed in place of a name-brand drug product when the cost of the generic drug product is less. However, a name-brand drug product that is more expensive than an available generic drug product may be dispensed if the prescribing physician has provided written justification of the medical necessity for dispensing the name-brand drug product. A notation that the prescription for the name-brand drug product must be dispensed only as written is not a sufficient justification of medical necessity.

(b) The prescribing physician must prepare the written justification of the medical necessity of dispensing a name-brand drug product and submit it along with the prescription to the dispensing pharmacist and the insurer. The written justification need not be submitted to the dispensing pharmacist if the prescription itself expressly notes that the prescription is being provided as a medical benefit under the Act and that written justification of the medical necessity for dispensing a name-brand drug product has been submitted to the insurer.

(c) Written justification of the medical necessity for dispensing the name-brand drug may consist of the following:

(1) Treatment failure with the generic drug;

(2) Past medical history that suggests an anticipated treatment failure with the equivalent generic drug;

(3) Clinically significant adverse reaction to the generic drug;

(4) A medical condition that causes a contraindication for the use of the equivalent generic drug; or

(5) Allergic reaction to the generic drug.

(d) An employee may choose to have a name-brand drug dispensed, even if a less costly generic drug product is available and no written justification of medical necessity has been provided. In such cases the difference in cost between the generic and name-brand drug products must be paid by the employee and neither the employer nor its insurer are liable for- reimbursing the employee for the additional cost.

(e) The State of Alaska Medicaid Preferred Drug List is hereby incorporated as the preferred drug list for purposes of the Alaska Workers' Compensation Act.

(f) For purposes of this chapter "generic drug product" means an "equivalent drug product" as that term is defined in AS 08.80.480. (Eff. \_\_/\_\_/\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.005 AS 23.30.095

8 AAC 45.082(d) is amended to read:

**8 AAC 45.082. Medical treatment.** (d) Medical bills for an employee's treatment are due and payable within 30 days after the date the employer received the medical provider's bill, **a written justification of the medical necessity for dispensing a name-brand drug product if required for the filling of a prescription that was part of the treatment**, and a completed

report on form 07-6102. Unless the employer controverts the prescription charges or transportation expenses, an employer shall reimburse an employee's prescription charges or transportation expenses for medical treatment within 30 days after the employer received the medical provider's completed report on form 07-6102, **a written justification of the medical necessity for dispensing a name-brand drug product if required for the filling of a prescription that was part of the treatment**, and an itemization of the prescription numbers or an itemization of the dates of travel, destination, and transportation expenses for each date of travel. If the employer controverts

(1) a medical bill or if the medical bill is not paid in full as billed, the employer shall notify the employee and the medical provider in writing the reasons for not paying all or a part of the bill or the reason for delay in payment within 30 days after receipt of the bills, **a written justification of the medical necessity for dispensing a name-brand drug product if required for the filling of a prescription that was part of the treatment**, and completed report on form 07-6102;

(2) a prescription or transportation expense reimbursement request in full, the employer shall notify the employee in writing the reason for not paying all or part of the request or the reason for delay within the time allowed in this section in which to make payment; if the employer makes a partial payment, the employer shall also itemize in writing the prescription or transportation expense requests not paid. (Eff. 5/28/83, Register 86; am 12/14/86, Register 100; am 7/1/88, Register 107; am 10/28/88, Register 108; am 3/16/90, Register 113; am 7/20/97, Register 143; am 7/2/98, Register 146; am 2/3/2001, Register 157; am \_\_/\_\_/\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.005 AS 23.30.045 AS 23.30.095  
AS 23.30.030

8 AAC 45.086 is amended to read:

**8 AAC 45.086. Physician's reports.** (a) A provider who renders medical and dental services under the Act shall file with the board and the employer a substantially complete form 07-6102, **and a written justification of the medical necessity for dispensing a name-brand drug product if required for the filling of a prescription that was part of the services,** within 14 days after each treatment or service.

(b) The board will, in its discretion, deny a provider's claim of payment for medical or dental services if the provider fails to comply with this section.

(c) For purposes of this chapter and AS 23.30.095, "continuing and multiple treatments of a similar nature" does not include a medical doctor's prescription for pharmaceutical products, a prosthesis or an orthotic device. (Eff. 5/28/1983, Register 86; am 3/16/1990, Register 113; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.005 AS 23.30.095