

# Legislative Update

## March 2009



Coventry Workers' Comp Services (Coventry) continuously evaluates pending and/or enacted legislation for its impact on Coventry's products and services, and cost savings and quality for our clients. This document summarizes pending and/or enacted legislation that directly impacts or relates to the services provided by Coventry. This information is intended solely for informational purposes and is not intended as legal advice for clients.

### **Federal**

HB 685 would create a study group formed for the purpose of studying the adequacy of state workers' compensation laws and making recommendations regarding needed changes. While this legislation is not likely to be a short-term priority in Congress, and any direct impacts would in any event be in the long term, it bears watching.

### **Texas**

On March 10, the House Insurance Committee received testimony on HB 223, a rental network bill identical to legislation that was heard during the 2007 session. The bill differs markedly from the rental network model legislation adopted by the National Conference of Insurance Legislators in November 2008. Some areas of divergence include limitations on the number of downstream rentals, applicability to workers' compensation, and the right of providers to seek a private cause of action (i.e., litigation) in response to alleged violations. The sponsor of the legislation, Rep. Craig Eiland, stated at the hearing that he would be forming a work group to negotiate a compromise bill. As a result, it is anticipated that the legislation may ultimately differ markedly from the current version of HB 223. However, it appears that the provisions related to a private cause of action may ultimately be the primary sticking point in those negotiations. Coventry has been actively involved in negotiations on this bill.

HB 1166 would require a Texas residency requirement for doctors performing utilization review for workers' compensation treatment requests. On a more favorable note, HB 3625 would change the utilization review timeframe for responding to requests from three calendar days to three working days, making it consistent with the time frames outside the certified networks.

On March 5, the Division of Workers' Compensation held a stakeholders meeting to discuss a pre-proposal draft of rules adopting a closed formulary. Representatives of all stakeholder groups expressed concerns about implementation. Most of those concerns related to the formulary being subject to the preauthorization process governed under current utilization review rules and to the relationship between the formulary and the ODG guidelines that were previously adopted as treatment guidelines by the Division.

### **Tennessee**

House Bill 1192 would virtually eliminate the use of rental networks in workers' compensation. We are urging clients to actively oppose this bill. In early March, the Workers' Compensation Advisory Council, whose voting members include representatives of management and labor, voted unanimously not to recommend passage of the bill.

Numerous other rental network bills are pending, but none of those are as threatening as this bill.

The Division of Workers' Compensation has proposed amendments to its utilization review rules. The changes, among other things, would require utilization review doctors to be licensed in Tennessee and require that utilization review approvals be completed by a registered nurse. A hearing will be held on May 5.

### **Indiana**

Senate Bill 559 has already passed in the Senate, but it is the subject of negotiations among stakeholders and will likely be revised significantly prior to consideration in the House. The legislation as currently drafted would create a registration process for workers' compensation bill review companies, increase fines for violations by those companies, subject hospital inpatient services to a Medicare-based fee schedule, and establish requirements for utilization review.

### **Maryland**

House Bill 141, as proposed, would prohibit the transfer of a provider's contracted rates to a workers' compensation payor without the express written consent of the provider. The legislation created concerns, as it is supported by the administration. However, conversations with the Department regarding the bill determined that it actually goes beyond their intentions for the legislation. There will be substitute language amending the bill prior to its consideration. The substitute language will prohibit a network from requiring participation in workers' compensation panels as a condition of inclusion in an HMO network.

**Pennsylvania**

House Bill 723 would extend employer direction of care to 180 days. Current law limits direction of care to 90 days. The bill has not been set for a hearing.

**Washington**

House Bill 2256 would require seven days written notice to the employee or the employee's representative prior to a case manager or a vocational rehabilitation provider could contact a treating or examining physician. The bill has not been scheduled for a hearing.

**Maine**

Regulators in the Department of Health and Human Services are exploring the possibility of introducing legislation that would create a "24 hour care program" that would include workers' compensation in a universal care program. No bill has yet been drafted.

**Oregon**

While most of the rental network legislation proposed this year follows, with varying degrees of modification, the NCOIL model act, SB 509 includes a number of problematic provisions that are being strongly opposed by insurers, health plans, and the PPO industry. Among the concerns, the legislation would put into statute restrictions on the use of PPOs in workers' compensation along the lines of those adopted by rule by the Workers' Compensation Division late last year.