



Workers' Comp Industry & Regulatory Update

The Workers' Comp Industry & Regulatory Update is from Coventry Workers' Comp Services. This monthly email reports the latest news and regulatory happenings in the workers' comp industry.

For additional information, links and web addresses are provided.

Regulatory Updates

Recent legislative and regulatory happenings affecting the workers' comp industry:

Arizona

In the process of adopting an annual update of its medical fee schedule, the Industrial Commission received a number of comments related to the use of provider networks in the system. In its summary of comments received, the Commission took the position that providers are free to contract with networks while expressing some concern over transparency in the system. The Director of the Commission is forming a study group to look at ways to improve transparency. A representative from Coventry has been invited to participate in that group.

California

The General Assembly passed AB 933, which would require California licensure for physicians performing utilization review services. The bill now goes to the governor, who vetoed similar legislation passed during the last session. The governor has until the end of the month to act on legislation. In addition, it should be noted that provisions in a previous version of the bill that would have created new re-filing requirements for MPN's were stripped out prior to passage of the final version of the legislation.

Illinois

The Workers' Compensation Commission has adopted emergency rules changing the methodology for reimbursing implantables. For dates of service after July 6, they will be reimbursed at manufacturer's invoice cost plus 25% and applicable shipping charges. The invoice must reflect any rebates and other discounts. The Commission is also proposing to adopt the rule permanently through the regular rulemaking process. The permanent rules have been submitted to the Joint Committee on Administrative Rules (JCAR), which delayed action on them in order to give hospital groups an opportunity to respond. Action on the rules by JCAR is expected at a September meeting.

The Medical Fee Schedule Advisory Committee discussed and then decided not to make any recommendation for changes to fee schedule provisions related to air ambulance services. The discussion was precipitated by receipt of a copy of a letter from the U.S. Department of Transportation to a Kansas official inquiring about the right of a state to regulate air ambulance fees. The letter stated that any such regulations were pre-empted under a federal statute adopted in the 1970's. The committee decided, in the absence of any challenges to date, to leave its fee schedule requirements in place.

Louisiana

The Office of Workers' Compensation doesn't expect the resignation of its medical director to keep it from meeting a statutory deadline to adopt treatment guidelines by the end of this year. Previous legislation required that regulations be implemented by October 2010, but a bill passed earlier this year extended the date to January 1, 2011.

New York

The Chairman of the State Workers' Compensation Board issued a press release in which he announced a proposal to increase reimbursement for E&M codes by 30%. He also announced that the agency will undertake a comprehensive review of the Medical, Podiatry, Psychology and Chiropractic fee schedules over the next year. A press report indicates that the Chairman intends to implement the increase by December 1, though no actual proposed regulation has yet been published.

As of the date of this writing, the Board has not yet indicated whether it is adopting rules proposed earlier this summer that would implement review requirements related to its medical treatment guidelines.

The rules are problematic due to a lack of clarity in terminology, varying timeframes, and confusion with regard to how they relate to current requirements for UR inside a certified PPO or IME's. The comment period for the rules closed on August 16.

South Carolina

Reversing a state circuit court decision, the South Carolina Supreme Court ruled that the state was not required to adopt a new regulation in order to make changes to its ambulatory surgical center fee schedule in 2006. The ruling paves the way for the fee schedule to be applied to ASC's.

Texas

Participants in the annual workers' compensation conference of the Insurance Council of Texas were told by an array of speakers and panelists, including former DWC Commissioner Albert Betts and a Republican and a Democratic legislator not to expect major legislative changes to come about as a result of the "sunset" process. In Texas, under the sunset process all agencies undergo a periodic legislative review. The process is so named because an agency would no longer exist if the legislature does not adopt legislation extending it. The DWC's review will be considered in the 2011 legislative session. The Sunset Report developed by a committee as a part of that process focused primarily on needed changes to dispute resolution processes.

Washington

The Secretary of State has certified the signatures of a ballot petition to let voters decide whether to allow private workers' compensation insurers to do business in the state. Washington currently has a monopolistic system. The issue will appear on the ballot in the November elections.

National

The International Association of Industrial Accident Boards and Commissions will hold its annual convention September 20-23 with the theme, "Collaborating for Success." More information can be found here:

<http://www.iaibc.org/4a/pages/index.cfm?pageid=3696>

Pharmacy Updates

Recent legislative news about pharmacy related topics in the workers' comp industry:

FEE SCHEDULES

Arizona

Fee Schedule - Effective 10/1/10

On September 1st the Arizona Industrial Commission released the 2010-2011 Physicians' and Pharmaceutical Fee Schedule, effective October 1st. The Fee Schedule includes a number of updates to workers' compensation services, including the following changes related to pharmaceutical reimbursement:

Average Wholesale Price (AWP) Calculation - AWP may now be determined using either of the following calculations, at the determination of the payer:

- "Except as provided below (in this subsection), AWP shall be determined on the date a drug is dispensed from pricing published in the most recent issue, as updated in the most recent update, of a nationally recognized pharmaceutical publication designated by the Commission."
- "An entity responsible for payment of prescription drugs may select the following as an alternative to the foregoing if the selection is made no later than October 1st of each year. This selection shall be communicated in writing to the Commission and remain in effect until the following October 1st: AWP shall be determined on the date a drug is dispensed from pricing published in the most recent issue, as updated quarterly, of the publication designated by the Commission. For purposes of this paragraph, quarterly means the first day of the month on January, April, July and October."

Application of Network Discounts - Where contracts which address reimbursement exist between pharmacies and payers, those contracts govern the amount to be reimbursed.

Generic Substitution - Prescribers must now indicate through plain language when a generic medication *may not* be substituted for a brand name medication.

It should be noted that the current reimbursement rates for brand and generic medications (and their dispensing fees) remains unchanged.

http://www.ica.state.az.us/Director/DIR_FSSignUp.aspx

Florida

Proposed Fee Schedule with DME Prior Authorization Requirement - Effective February 2011

On September 1st, the Division released a proposed version of the 2011 Workers' Compensation Health Care Provider Reimbursement Manual (HCPRM). Amongst the proposed changes was a change that requires medical suppliers to obtain written authorization and a written payment agreement from an insurer prior to furnishing an injured worker with medical supplies or equipment.

The Division will conduct a Rule Development Workshop on 9/16/2010, which will be attended by a Coventry representative. If you have questions about the Rule Development Workshop, you are encouraged to contact the Division directly through Samuel Willis, Medical Health Care Program Analyst, in the Office of Medical Services at (850) 413-1898 or Sam.Willis@myfloridacfo.com.

[Florida Workers' Compensation Health Care Provider Reimbursement Manual, 2010 Edition](#)

GENERAL WORK COMP LEGISLATION

California

Assembly Bill 2779 - Prior Authorization of Compound Medications

Assemblyman Jose Solorio re-introduced a version of AB2779 which would have established clinical guidelines for compound medications which include a requirement that all requests for compounds to go through utilization review processes to determine medical necessity. The Bill would also:

- Require that all active ingredients be FDA approved
- Require prescribers to attempt using an FDA approved alternative prior to prescribing the compound

Despite the support of Coventry and the best efforts of the legislation's authors, the Bill was passed committee review but failed to make it to a general vote prior to the fall session deadline. It is anticipated that these issues will be revisited in the first legislative session of 2011, and Coventry will certainly continue to support all efforts to curb unnecessary use of compound prescriptions. http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_2751-2800/ab_2779_bill_20100830_status.html

ADMINISTRATIVE RULE CHANGES

Oregon

EDI Reporting System Changes - Effective 01/2011

On 08/12 the Workers' Compensation Division published proposed changes to the Medical Fee and Payment Rules, which impact **only state reporting** in the following manners:

- Language added to clarify transition from the use of 2 state reporting formats (old form 220 and new EDI from 837), to the sole use of the 837 format as of 01/11.
- Language added to clarify that state reporting is only required for insurers which average over 100 claims per year.

<http://wcd.oregon.gov/policy/rules/rules.htm#proprules>

Texas

Closed Formulary - Proposed Effective 01/2011

On 08/16 the Department of Insurance, Division of Workers' Compensation held its stakeholder meeting in relation to the ongoing implementation of a closed pharmacy formulary. Coventry provided written commentary and was represented at the meeting. The Division has provided a webcast of the hearing, which can be obtained here:

<http://www.tdi.state.tx.us/webcast/audio10.htm#aug16dwc>

NOTE: This information is neither intended to be all-inclusive for the industry, nor for public redistribution. Please feel free to send your questions, comments, suggestions, and requests for further information to Regulatory Compliance at Regulatory@cvty.com.

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