

# Workers' Comp Regulatory Activity

October 15, 2018 – December 1, 2018

## Alaska

### AK Workers' Compensation Board final rule effective 1/1/2019: Medical Fee Schedule Changes

**Upcoming Action:** Nothing Scheduled

**Regulation ID:** AK38870

#### Rule Summary:

The Board has adopted changes to the medical fee schedule as part of their annual update. The Board has released a draft of the fee schedule which includes areas for consideration as follows:

- (1) Address whether geographic practice cost index (GPCI) numbers are rounded before multiplying Relative Value Units (RVU);
- (2) Address how multiple procedure payment reduction (MPPR) is applied;
- (3) Clinical Laboratory (CLAB) no longer has a state-specific modifier so need to update language to reflect this;
- (4) Address whether need guidelines for hearing aid payment;
- (5) Address how anesthesia modifiers in appendix A are paid;
- (6) Physical therapist and other non-physician providers reimbursement/utilization/frequency limitations and acute care inpatient hospital services;
- (7) Long-term, non-acute inpatient hospital stays and
- (8) Define Maximum Allowable Reimbursement (MAR) and whether it means MAR for the procedure as calculated under the physician fee schedule.

Notice of Final Rule:

<https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=191926>

Official Alaska Medical Fee Schedule:

<https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=113808>

Proposed Rule:

<https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=113807>

Notice of Proposed Rule:

<https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=191143>

8/10/2018 Meeting Agenda:

[http://labor.alaska.gov/wc/med-serv-comm/2018-08-10-Agenda\\_MSRC.pdf](http://labor.alaska.gov/wc/med-serv-comm/2018-08-10-Agenda_MSRC.pdf)

7/27/2018 Meeting Agenda and Packet:

<http://labor.alaska.gov/wc/med-serv-comm/meeting-materials-2018-07-27.htm>

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7/13/2018 Meeting Agenda:

[http://labor.alaska.gov/wc/med-serv-comm/2018-07-13-Agenda\\_MSRC.pdf](http://labor.alaska.gov/wc/med-serv-comm/2018-07-13-Agenda_MSRC.pdf)

6/15/2018 Meeting Minutes:

[http://labor.alaska.gov/wc/med-serv-comm/2018-07-13-MSRC\\_Packet.pdf](http://labor.alaska.gov/wc/med-serv-comm/2018-07-13-MSRC_Packet.pdf)

6/15/2018 Meeting Materials:

[http://labor.alaska.gov/wc/med-serv-comm/2018-06-15-MSRC\\_Packet.pdf](http://labor.alaska.gov/wc/med-serv-comm/2018-06-15-MSRC_Packet.pdf)

6/15/2018 7/13/2018 and 7/27/2018 Meeting Notice:

<https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=189749>

Board Website:

<http://labor.alaska.gov/wc/>

### **Rule Development:**

Notice of the rule was published in the Alaska Online Public Notice System. The rule is effective 1/1/2019.

Minutes from the Board's Medical Services Committee 6/15/2018 were recently released. At the meeting, the Committee decided that GPCI numbers should be rounded to the nearest two decimal places after the conversion factor has been applied, that the MAR means the physician fee schedule maximum allowable amount, not to make a carve-out to allow physical therapists to bill at 100% of the physician MAR, and that all Q modifier codes should be included in the Anesthesia section of the Fee Schedule. These decisions will be reflected in the next draft Fee Schedule that will be presented to the Committee at the next meeting. Additionally, the Committee discussed options for hearing aid payment rules, the difference in MPPR between Medicare and Alaska Fee Schedule, and additional reimbursement for extended inpatient hospital stays resulting from long-term non-acute care. The Committee will continue discussion of these items at the next meeting upon receiving more information.

The Medical Services Review Committee met 7/13/2018 and 7/27/2018. The Committee and the Board convened a joint meeting on 8/10/2018, in which the Board discussed whether to approve the recommendation. Notice of the proposed rule was published through the Alaska Online Public Notices. Comments were due 9/24/2018. A public hearing was held 10/4/2018.

## **Arizona**

### **AZ Industrial Commission departmental discussion: Physician Dispensing**

**Upcoming Action:** Nothing Scheduled

**Regulation ID:** AZ39463

### **Rule Summary:**

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The Commission is discussing guidelines for medications dispensed in settings that are not accessible to the general public. The discussion is in response to SB 1111 (2018), which requires the Commission, on or before July 1, 2019, to review information and data, consult with stakeholders and hold at least one public hearing regarding the guidelines.

Physician Dispensing - Public Comments Received:

<https://www.azica.gov/physician-dispensing-public-comments>

Public Hearing Notice:

<https://www.azica.gov/sites/default/files/Notice%20of%20Public%20Hearing%208-23-2018%20Physician%20Dispensing.pdf>

SB 1111 (2018):

<https://www.azleg.gov/legtext/53leg/2R/laws/0101.pdf>

**Rule Development:**

The Commission is internally reviewing any comments received. The Commission held a public hearing 8/23/2018 to discuss the treatment guidelines. Action taken by the Commission will be proposed in the 2019/2020 Arizona Physicians' and Pharmaceutical Fee Schedule Staff Proposal and Recommendations document that will be posted on the Commission website in April 2019. Stakeholders may provide comment on the guidelines as part of the annual fee schedule hearing process.

Please note comments have been submitted by the following organizations: Arizona Self-Insurers Association, Concentra, CopperPoint, CorVel, Mitchell, Property Casualty Insurer's Association of America and Travelers.

## Colorado

### CO Division of Workers' Compensation final rule effective 1/1/2019: Rules of Procedure With Treatment Guidelines

**Upcoming Action:** Nothing Scheduled

**Regulation ID:** CO37802

**Rule Summary:**

The Division adopted amendments to Workers' Compensation rules pertaining to treatment guidelines. The rules apply to parties and physicians participating in the Division Independent Medical Examination (DIME) program. The rules and the changes impact all aspects of DIME procedures.

Final Rule Language:

[https://www.colorado.gov/pacific/sites/default/files/Rule\\_11\\_Division\\_Independent\\_Medical\\_Examination\\_2019\\_Adopted.pdf](https://www.colorado.gov/pacific/sites/default/files/Rule_11_Division_Independent_Medical_Examination_2019_Adopted.pdf)

Proposed Rule Language:

<https://www.sos.state.co.us/CCR/Upload/NoticeOfRulemaking/ProposedRuleAttach2018-00093.rtf>

Notice of the Proposed Rule:

[https://www.colorado.gov/pacific/sites/default/files/Rule\\_11\\_Notice.pdf](https://www.colorado.gov/pacific/sites/default/files/Rule_11_Notice.pdf)

Division Webpage:

<https://www.colorado.gov/pacific/cdle/workers-compensation-proposed-and-adopted-rules>

**Rule Development:**

The Division adopted final rules, which were published on the Division's webpage. The final rules are effective 1/1/2019. Notice of the final rules is pending publication in the State Register.

The proposal was published in the State Register. A regulatory hearing was held on 4/25/2018. Written comments were accepted up until the hearing.

## Colorado

### CO Department of Labor and Employment final rules effective 1/1/2019: Amendments to Medical Fee Schedule and Utilization Review - Annual Update

**Upcoming Action:** Nothing Scheduled

**Regulation ID:** CO38794

**Rule Summary:**

The Department adopted amendments to its rules. The chapters impacted include the medical fee schedule and utilization review guidelines. Specifically, the amendments rescind existing rules and reorganize the rules into new sections. Although the amendments primarily clarify specific rules, there are notable changes as specified below.

**Definitions**

The amendments clarify that "payer" includes self-insurers and specifies that the use of agents, including PPO networks, bill review companies, TPAs and case management companies does not relieve the self-insured employer or insurer from their legal responsibilities. In addition, the amendments remove the definition of "supply" which included any single supply, DME, biologic item or single drug dose for which the billed amount exceeds \$500.

**Required Use of Fee Schedule**

The amendments specify that all providers and payers must use the Medical Fee Schedule to determine the maximum allowable payments for any medical treatments or services within existing law and regulation, except in the following circumstances: (1) the payer and an out-of-state provider negotiate reimbursement in excess of the fee schedule when required to obtain reasonable and necessary care for the worker and (2) the Uninsured Board may negotiate rates of reimbursement for medical providers.

The Final Rule 18 (Medical Fee Schedule):

[https://www.colorado.gov/pacific/sites/default/files/Rule\\_18\\_Medical\\_Fee\\_Schedule\\_2019\\_Adopted.pdf](https://www.colorado.gov/pacific/sites/default/files/Rule_18_Medical_Fee_Schedule_2019_Adopted.pdf)

The Final Rule 16 (Utilization Standards):

[https://www.colorado.gov/pacific/sites/default/files/Rule\\_16\\_Utilization\\_Standards\\_2019\\_Adopted.pdf](https://www.colorado.gov/pacific/sites/default/files/Rule_16_Utilization_Standards_2019_Adopted.pdf)

Notice of the Proposed Rule:

<https://www.sos.state.co.us/CCR/DisplayHearingDetails.do?trackingNumber=2018-00249>

Detailed Rulemaking Information:

[https://www.dora.state.co.us/pls/real/SB121\\_Web.Show\\_Rule?p\\_rule\\_id=7483](https://www.dora.state.co.us/pls/real/SB121_Web.Show_Rule?p_rule_id=7483)

Draft Rules:

[https://www.colorado.gov/pacific/sites/default/files/Rule\\_16\\_Proposed\\_2019.pdf](https://www.colorado.gov/pacific/sites/default/files/Rule_16_Proposed_2019.pdf)

### **Rule Development:**

The Department adopted final rules, notice of which was published on the Division of Workers' Compensation webpage. The final rules are effective 1/1/2019.

The Department drafted amendments. The Department published notice of the medical fee schedule and utilization review changes as part of their annual update. A public hearing was held 8/14/2018.

## **Florida**

### **FL Department of Financial Services proposed rules: Workers' Compensation Reimbursement**

**Upcoming Action:** Comments Due 11/27/2018; If Requested, Public Hearing 11/27/2018

**Regulation ID:** FL37757

### **Rule Summary:**

The Department proposed amendments to rules concerning workers' compensation reimbursement. The Three-Member Panel reviewed schedules for maximum reimbursement allowances for physicians, hospital inpatient care, hospital outpatient care, and ambulatory surgical centers. The Department proposed amendments to rules concerning workers' compensation reimbursement to adopt the Florida Workers' Compensation Health Care Provider Reimbursement Manual, 2018 Edition, and the Florida Workers' Compensation Reimbursement Manual for Ambulatory Surgical Centers, 2018 Edition.

**Notice of Proposed Rules:**

[https://www.flrules.org/gateway/notice\\_Files.asp?ID=21123707](https://www.flrules.org/gateway/notice_Files.asp?ID=21123707)

**Notice of Rule Development:**

[https://www.flrules.org/gateway/notice\\_Files.asp?ID=20703115](https://www.flrules.org/gateway/notice_Files.asp?ID=20703115)

**Notice of Cancellation of 7/6/2018 Public Meeting:**

[https://www.flrules.org/gateway/notice\\_Files.asp?ID=20612420](https://www.flrules.org/gateway/notice_Files.asp?ID=20612420)

**Notice of 7/6/2018 Public Meeting:**

[https://www.flrules.org/gateway/notice\\_Files.asp?ID=20581962](https://www.flrules.org/gateway/notice_Files.asp?ID=20581962)

Notice of 4/10/2018 Public Meeting:

[http://www.flrules.org/gateway/notice\\_Files.asp?ID=20221510](http://www.flrules.org/gateway/notice_Files.asp?ID=20221510)

**Rule Development:**

The Department published a notice of the proposed rules. Comments will be accepted until 11/27/2018. If a person requests a public hearing, the Department will hold one 11/27/2018. After the comment period closes, the Department may revise the rules and file them with the Secretary of State. The rules must be ratified by the Legislature before they can become effective.

The Three-Member Panel met 4/10/2018 to review the fee schedules. Comments were accepted. The Three-Member Panel was scheduled to meet 7/6/2018 to review the fee schedule for hospital outpatient care, but the meeting was cancelled. The Department published a notice of rule development, and it held a rule development workshop 8/24/2018.

## Florida

### **FL Department of Financial Services draft rule: Florida Workers' Compensation Reimbursement Manual for Hospitals**

**Upcoming Action:** If Requested, Rule Development Workshop  
**Regulation ID:** FL40189

**Rule Summary:**

The Department drafted amendments to a rule concerning the Florida Workers' Compensation Reimbursement Manual for Hospitals. The amendments incorporate by reference the 2018 edition of the Florida Workers' Compensation Reimbursement Manual for Hospitals. The manual contains the updated list of maximum reimbursement allowances for various medical services.

Notice of Rule Development:

[https://www.flrules.org/gateway/notice\\_Files.asp?ID=21123998](https://www.flrules.org/gateway/notice_Files.asp?ID=21123998)

**Rule Development:**

The Department published a notice of rule development. If requested, the Department will hold a rule development workshop 11/27/2018. The Department will publish a notice of the proposed rule as soon as possible and accept comments for at least 21 days after it publishes the notice.

## Idaho

### **ID Industrial Commission departmental discussion: Medical Fee Schedules**

**Upcoming Action:** Nothing Scheduled  
**Regulation ID:** ID38628

**Rule Summary:**

The Commission is discussing amendments concerning the annual adjustment of the medical fee schedule for physician and hospital reimbursements. The Commission will determine the appropriate annual adjustments to the medical fee schedule.

Notice of Intent to Promulgate Rules- Negotiated Rulemaking (p. 71):

<https://adminrules.idaho.gov/bulletin/2018/06.pdf>

**Rule Development:**

The Commission will prepare draft rules. Once draft rules are complete, the Commission will publish proposed rules in the Idaho Administrative Bulletin and hold a public hearing and a comment period.

The Commission published notice of intent to promulgate rules. A public hearing was held 6/20/2018, and public comments were accepted until 6/27/2018.

## Illinois

### **IL Department of Insurance proposed rule: Registration of Workers' Compensation Utilization Review Organizations**

**Upcoming Action:** Nothing Scheduled

**Regulation ID:** IL36779

**Rule Summary:**

The Department proposed amendments to its rules to expand the list of organizations that may be accepted as Utilization Review Organizations for the state's workers' compensation program. Specifically, the amendments recognize the Accreditation Association for Ambulatory Health Care (AAAHC) among the list of accreditors from which utilization organizations may receive accreditation and qualify for reduced registration and renewal fees.

Notice of Correction (pdf pg 199):

[http://www.cyberdriveillinois.com/departments/index/register/volume42/register\\_volume42\\_issue5.pdf](http://www.cyberdriveillinois.com/departments/index/register/volume42/register_volume42_issue5.pdf)

Notice of Proposed Rule (pdf pg 58):

[http://www.cyberdriveillinois.com/departments/index/register/volume41/register\\_volume41\\_issue51.pdf](http://www.cyberdriveillinois.com/departments/index/register/volume41/register_volume41_issue51.pdf)

**Rule Development:**

Staff will review the comments received and make any necessary revisions to the rule text. After the Department adopts the rules, they must be reviewed by JCAR, a legislative committee.

The Department published notice of the proposed rule change in the Illinois Register. The Department published a notice of correction to fix an error in the rule notice. Comments were still due 2/9/2018. No

public hearing was scheduled.

## Illinois

### IL Department of Insurance departmental discussion: Workers' Compensation Administrative Provisions

**Upcoming Action:** Nothing Scheduled  
**Regulation ID:** IL36991

#### Rule Summary:

The Department is discussing amendments to several provisions of its workers' compensation program rules. Although there is no draft rule text available yet, the changes are likely to be administrative in nature, and will include: 1) relocating a misplaced 30-day requirement for rate and manual filing from subsection 2902.40(a)(1) to subsection 2902.50, the rate filing section; 2) removing a superfluous requirement for a narrative discussion of a company's reason to re-file corrected data about workers compensation insurance coverage after the company makes an erroneous or incomplete filing; and 3) making technical corrections to remove redundancies, outdated references, and generally superfluous language.

Notice of Discussion (pdf pgs 619-620):

[http://www.cyberdriveillinois.com/departments/index/register/volume42/register\\_volume42\\_issue2.pdf](http://www.cyberdriveillinois.com/departments/index/register/volume42/register_volume42_issue2.pdf)

#### Rule Development:

The Department included the potential rulemakings on its 2018 regulatory agenda, indicating that it may publish proposed rules between January and March 2018. However, the draft rules are still under development, and this timeline is subject to change.

## Illinois

### IL Department of Insurance departmental discussion: Amendments to Registration of Workers' Compensation Utilization Review Organizations

**Upcoming Action:** Nothing scheduled  
**Regulation ID:** IL38985

#### Rule Summary:

The Department is discussing possible amendments to the registration of workers' compensation utilization review organizations. Specifically, Exhibit B is the Utilization Review Organization Officers and Directors Biographical Affidavit, in which the requirements are also contained in the current NAIC Biographical Affidavit. Therefore, the amendments will not the use of the current NAIC Biographical Affidavit and remove the reference to Exhibit B. Some housekeeping changes will also occur.

Notice of discussion (pdf pg 950):



[https://www.cyberdriveillinois.com/departments/index/register/volume42/register\\_volume42\\_issue27.pdf](https://www.cyberdriveillinois.com/departments/index/register/volume42/register_volume42_issue27.pdf)

**Rule Development:**

The Department published notice of the discussion in the register. Staff anticipated publishing a proposed rule in Summer 2018, but that timeline has been delayed.

**Iowa****IA Division of Workers' Compensation proposed rule: Electronic Filings**

**Upcoming Action:** Nothing scheduled

**Regulation ID:** IA39591

**Rule Summary:**

The Division has proposed amendments to the workers' compensation rules. The amendments will update forms, dispute procedures and electronic data interchange (EDI) among other amendments. The changes to the rules impacting electronic data will add a new rule addressing the use of the workers' compensation electronic system (WCES) for submission of filings and new language to address the rules of electronic procedure.

Notice of the proposed rule:

<https://www.legis.iowa.gov/docs/aco/arc/3968C.pdf>

**Rule Development:**

Staff are internally reviewing the rule and any comments received. Once the final rulemaking package is completed, the rule will be filed with the Administrative Rules Committee (ARC) for review and when approved notice of a final rule will be published in the Iowa Bulletin.

The Division released notice of the proposed rule for review. Comments were due 9/18/2018. A public hearing was scheduled, but interested parties could have requested a hearing.

**Kansas****KS Department of Labor, Division of Workers Compensation final rule effective 11/26/2018: Electronic Filing System**

**Upcoming Action:** Nothing scheduled

**Regulation ID:** KS39389

**Rule Summary:**

The Department adopted amendments to the workers compensation rules. The amendments add new requirements and update the rule addressing the electronic filing (e-filing) system. The new rule addresses the mandatory e-filing with the Division of workers compensation on and after 11/30/2018.

Notice of the final rule: (pdf pg 1081)

[http://www.kssos.org/pubs/register/2018/Vol\\_37\\_No\\_45\\_November\\_8\\_2018\\_pages-1065-1092.pdf](http://www.kssos.org/pubs/register/2018/Vol_37_No_45_November_8_2018_pages-1065-1092.pdf)

Notice of the proposed rule:

[http://www.kssos.org/pubs/register/2018/Vol\\_37\\_No\\_31\\_August\\_2\\_2018\\_pages-791-808.pdf](http://www.kssos.org/pubs/register/2018/Vol_37_No_31_August_2_2018_pages-791-808.pdf)

**Rule Development:**

The final rule was adopted and is effective 11/26/2018.

The Department released notice of the proposed rule. Comments were due 10/9/2018. A public hearing was held 10/9/2018. Staff internally reviewed the rule and any comments received. Notice will be published in Kansas Register.

## Kentucky

### **KY Department of Workers' Claims, Workers' Compensation Board departmental discussion: Drug Formulary**

**Upcoming Action:** RAC Committee Meeting 10/31/2018

**Regulation ID:** KY37971

**Rule Summary:**

The Department is discussing rules related to establishing a drug formulary within the workers' compensation program. H.B. 2 (2018) directs the Commissioner of the Department to establish a drug formulary for medications prescribed for the cure of and relief of the effects of a work injury or occupational diseases on or before 12/31/2018. In addition, the measure requires that evidence-based treatment guidelines for medical treatment [...] including but not limited to chronic pain management treatment and opioid use be developed on or before 12/31/2019.

Please note there is a parallel Regulatory Advisory Committee (RAC) which will develop the process for implementing the recommendations of the Medical Advisory Committee (MAC).

10/31/2018 RAC Meeting Agenda:

<https://labor.ky.gov/comp/Documents/RAC%20Meeting%20Agenda%2010-31-2018.pdf>

Department Press Release:

[http://statelink.stateside.com/Attachments/42601\\_Kentucky\\_Labor\\_Cabinet\\_Press\\_Release.pdf](http://statelink.stateside.com/Attachments/42601_Kentucky_Labor_Cabinet_Press_Release.pdf)

10/3/2018 RAC Meeting Minutes:

<https://labor.ky.gov/Documents/RAC%20Meeting%20Minutes%2010-3-2018.pdf>

10/3/2018 RAC Meeting Agenda:

[http://statelink.stateside.com/Attachments/42601\\_Kentucky\\_Labor\\_Cabinet\\_RAC\\_Meeting\\_10.3.2018.docx](http://statelink.stateside.com/Attachments/42601_Kentucky_Labor_Cabinet_RAC_Meeting_10.3.2018.docx)

9/27/2018 MAC Meeting Minutes:

<https://labor.ky.gov/Documents/MAC%20Meeting%20Minutes%209-27-18.pdf>

9/27/2018 MAC Meeting Agenda:

[http://statelink.stateside.com/Attachments/42601\\_KY\\_MAC\\_Meeting\\_Sept\\_2018.docx](http://statelink.stateside.com/Attachments/42601_KY_MAC_Meeting_Sept_2018.docx)

8/30/2018 Joint MAC-RAC Meeting Minutes:

<https://labor.ky.gov/Documents/Minutes%20of%20JOINT%208-30-18%20RAC-MAC%20Mtg.pdf>

8/30/2018 RAC and MAC Joint Meeting Agenda:

[http://statelink.stateside.com/Attachments/42601\\_joint\\_meeting\\_agenda\\_8.30.2018.pdf](http://statelink.stateside.com/Attachments/42601_joint_meeting_agenda_8.30.2018.pdf)

H.B. 2 (2018):

<http://www.lrc.ky.gov/recorddocuments/bill/18RS/HB2/bill.pdf>

### **Rule Development:**

The RAC is scheduled to meet 10/31/2018. An agenda for the meeting was recently released. The RAC will discuss a draft of the drug formulary regulation. According to a press release, the Department announced the adoption of ODG by MCG as its treatment guidelines and pharmaceutical formulary provider. "We are honored to add Kentucky to the roster of ODG-mandated states, joining the neighboring states of Ohio, Tennessee, and Indiana. The Department of Workers' Claims and the Medical Advisory Committee should be commended on a thorough, transparent evaluation of evidence-based guidelines and formulary options, placing confidence in a proven solution," commented Phil LeFevre, Managing Director, ODG by MCG. "The ODG by MCG team is prepared and excited to work with DWC and stakeholders on a successful implementation to deliver improved outcomes for injured workers and the system. Complementary training and support will be offered including Webinars and onsite visits."?

### **8/30/2018 Joint RAC/MAC Meeting**

During the meeting, Dr. Robert Synder, the Medical Director for the Tennessee Bureau of Workers' Compensation, provided an overview of the decisions considered during the development of Tennessee's guidelines. Further, Dr. Snyder provided an overview of how six other states - California, Colorado, Montana, New York, Ohio and Washington - have approached the adoption of treatment guidelines.

### **9/27/2018 MAC Meeting**

During the meeting, Commissioner Swisher stated that he will make a recommendation to the Secretary of Labor to establish a standing Medical Advisory Committee that will meet three to four times a year. The purpose of the standing committee will be to review the formulary guidelines (once final) and their implementation. The RAC is also developing a system to expedite the reconsideration process when denials are made. He expects that conferences on a peer-to-peer basis will be required within a short period following a request for reconsideration.

### **10/3/2018 RAC Meeting**

Minutes from the 10/3/2018 RAC meeting were recently released. During the meeting, discussion began with the Commissioner's initial preference for a seven-day supply of "first fill" medication. A committee

member questioned why the fill was seven instead of three days. The Commissioner assured members the regulations would be written in conformity with the other guidelines that govern medical practitioners' license and dispensing practices. A committee member also reviewed the proposed effective dates of the formulary – July 1, 2019, for claims of injury on and after that date, and for new prescriptions for injuries that occurred prior to that date; and January 1, 2020, for refills of medications prescribed prior to January 1, 2019 (with certain conditions). The Commissioner explained the rationale for the dates chosen. A committee member suggested that the employer and carrier notify the physicians and PBMs of the formulary.

## Kentucky

### KY Department of Workers Claims departmental discussion: Pharmacy Fee Schedule

**Upcoming Action:** Nothing Scheduled

**Regulation ID:** KY38897

**Rule Summary:**

The Department is considering revising the pharmacy fee schedule regarding reimbursement methodology.

7/31/2018 Meeting Notice:

[http://statelink.stateside.com/Attachments/43918\\_KY\\_Pharmacy\\_Fee\\_Schedule.pdf](http://statelink.stateside.com/Attachments/43918_KY_Pharmacy_Fee_Schedule.pdf)

**Rule Development:**

The Department met 7/31/2018 to discuss the pharmacy fee schedule. The Department is internally reviewing any comments received. A draft of the fee schedule is not yet available. Comments were due 8/10/2018.

According to Commissioner Swisher, the Department hopes to have a draft of a pharmacy fee schedule complete by January 2019. Commissioner Swisher noted that although discussions will continue on the pharmacy fee schedule between now and January 2019, the Department's focus will be on the drug formulary regulations (currently monitored KY37971).

## Kentucky

### KY Department of Workers' Claims emergency rule effective 7/1/2018 and adopted rule: Amendments to the Workers' Compensation Medical Fee Schedule for Physicians

**Upcoming Action:** Nothing Scheduled

**Regulation ID:** KY38949

**Rule Summary:**

The Department adopted emergency amendments and permanent amendments to the workers' compensation medical fee schedule for physicians. The rule updates the fee computation to be the Maximum Allowable Reimbursement (MAR) listed in the 2018 fee schedule for physicians for those

procedures or items for which a specific amount is listed. For those without an MAR, the amount will be determined and calculated in accordance with numerical paragraph six of the General Instructions of the medical fee schedule generally.

Text of ARRS Revisions (page 1193):

[http://www.lrc.ky.gov/kar/contents/registers/45Ky\\_R\\_2018-19/05\\_Nov.pdf](http://www.lrc.ky.gov/kar/contents/registers/45Ky_R_2018-19/05_Nov.pdf)

10/9/2018 ARRS Meeting Agenda (page 3):

<http://www.lrc.ky.gov/CommitteeMeetingDocuments/3/11486/October%202018%20Agenda%20-%20Tentative.pdf>

9/11/2018 ARRS Meeting Minutes (page 14):

[http://www.lrc.ky.gov/minutes/adm\\_regs/180911OK.PDF](http://www.lrc.ky.gov/minutes/adm_regs/180911OK.PDF)

9/11/2018 ARRS Meeting Agenda:

<http://www.lrc.ky.gov/CommitteeMeetingDocuments/3/11447/Tentative%20September%20ARRS%20Agenda.pdf>

Notice of Hearing Cancellation:

<https://labor.ky.gov/comp/Documents/Medical%20Fee%20Public%20Meeting%20Cancelled.pdf>

Notice of Extended Hearing and Comment Deadline:

[http://statelink.stateside.com/Attachments/43987\\_LaborAmendmentHearing.pdf](http://statelink.stateside.com/Attachments/43987_LaborAmendmentHearing.pdf)

Notice of Proposed Rule (pdf pg 162):

[http://www.lrc.ky.gov/kar/contents/registers/45Ky\\_R\\_2018-19/01\\_Jul.pdf](http://www.lrc.ky.gov/kar/contents/registers/45Ky_R_2018-19/01_Jul.pdf)

Notice of Emergency Rule (pdf pg 19):

[http://www.lrc.ky.gov/kar/contents/registers/45Ky\\_R\\_2018-19/01\\_Jul.pdf](http://www.lrc.ky.gov/kar/contents/registers/45Ky_R_2018-19/01_Jul.pdf)

Order form for 2018 Workers' Compensation Schedule of Fees for Physicians:

[https://labor.ky.gov/Documents/Order\\_Form\\_for\\_Physicians\\_Fee\\_Schedule\\_2018.pdf](https://labor.ky.gov/Documents/Order_Form_for_Physicians_Fee_Schedule_2018.pdf)

Memo for 2018 Workers' Compensation Schedule of Fees for Physicians:

<https://labor.ky.gov/Documents/Memo%20for%20Physician's%20Medical%20Fee%20Schedule%202018.pdf>

#### **Rule Development:**

ARRS revised the rule during its 10/9/2018 meeting and published the revised text in the November Kentucky Register.

A second legislative committee must now review the rule before it can become effective.

The Department published notice of the emergency rule. The rule and the fee schedule are effective 7/1/2018. The Department published notice of the proposed rule. A public hearing was scheduled 7/26/2018. Comments were due 7/31/2018. The Department determined that it needed additional time

to accept public comments and hearing requests. Staff have not made any changes to the text of rule since the original proposal in July 2018. The Department notified stakeholders via email that a public hearing was tentatively scheduled for 8/16/2018, however if no one submits a written hearing request by 8/9/2018, the Department may cancel it. The Department cancelled the hearing that was tentatively scheduled for 8/16/2018. All written comments were still due 8/31/2018. The Department received negative comments on the proposed rule, but staff decided not to revise the rule text in response. The Department adopted the rule and submitted it to the Administrative Regulation Review Subcommittee (ARRS) for review. ARRS removed the rule from its 9/11/2018 meeting agenda, but was tentatively scheduled to review the rule during its 10/9/2018 meeting.

## Kentucky

### **KY Workers Compensation Funding Commission adopted rules: Special Fund Assessments, Payment of Audit Expenses**

**Upcoming Action:** ARRS Meeting 11/13/2018

**Regulation ID:** KY39483

#### **Rule Summary:**

The Commission adopted amendments to one of its rules regarding special fund assessments and repeal another rule regarding payment of audit expenses. Recent legislation (HB388) modified the manner in which the Commission is to treat expense payments. The Commission conducts periodic audits of all entities subject to the special fund assessments charged to insurers in the workers' compensation sphere. These rules identify audit expenses and provide procedures for collection of assessments and expenses, and define penalty and interest procedures.

11/13/2018 ARRS Meeting Agenda:

<http://www.lrc.ky.gov/CommitteeMeetingDocuments/3/11487/Tentative%20ARRS%20November%20Agenda.pdf>

Minutes from 10/9/2018 ARRS Meeting (page 9):

[http://www.lrc.ky.gov/minutes/adm\\_regs/181009OK.PDF](http://www.lrc.ky.gov/minutes/adm_regs/181009OK.PDF)

10/9/2018 ARRS Meeting Agenda (page 3):

<http://www.lrc.ky.gov/CommitteeMeetingDocuments/3/11486/October%202018%20Agenda%20-%20Tentative.pdf>

Official Notices of Proposed Rule and Proposed Repeal (pages 774 and 873):

[http://www.lrc.ky.gov/kar/contents/registers/45Ky\\_R\\_2018-19/03\\_Sept.pdf](http://www.lrc.ky.gov/kar/contents/registers/45Ky_R_2018-19/03_Sept.pdf)

Advance Notice of Proposed Amendment to 803 KAR 30:010:

[http://statelink.stateside.com/Attachments/44759\\_803\\_KAR\\_30\\_010.pdf](http://statelink.stateside.com/Attachments/44759_803_KAR_30_010.pdf)

Advance Notice of Proposed Repeal of 803 KAR 30:020:

[http://statelink.stateside.com/Attachments/44759\\_803\\_KAR\\_30\\_020.pdf](http://statelink.stateside.com/Attachments/44759_803_KAR_30_020.pdf)

**Rule Development:**

The Commission received negative comments in response to one of the proposed rules (803 KAR 030:010, "Special fund assessments"), and ARRS removed the rules from its October meeting agenda.

The Commission will revise the rule text to address comments received and resubmit the rules for legislative review. ARRS is now tentatively scheduled to review the other proposed rule ((803 KAR 30:021, "Repeal of 803 KAR 030:020") during its 11/13/2018 public meeting.

The Commission released advance notice of the rule proposal. The Commission published official notice of the proposed rule in the September 2018 Kentucky Register. The Commission tentatively scheduled a public hearing for 9/27/2018, but if staff did not receive a written hearing request by 9/20/2018, the Commission could cancel the hearing. All written comments were due 9/30/2018. The Department adopted the rules and submitted them to the Administrative Regulation Review Subcommittee (ARRS) for review. ARRS was tentatively scheduled to review the rules during its 10/9/2018 meeting.

**Louisiana****LA Department of Labor, Workers' Compensation Commission draft rule: Chronic Pain Disorder Medical Treatment Guidelines**

**Upcoming Action:** Comments Accepted on Ongoing Basis

**Regulation ID:** LA39713

**Rule Summary:**

The Commission has drafted amendments to the chronic pain disorder medical treatment guidelines. The guidelines specify how opioids should be used in the treatment of chronic pain and how specific chronic pain conditions should be treated, regardless of whether opioids are used. With respect to opioids, when considering opioid use for moderate to moderately severe chronic pain, a trial of opioids must be accomplished and the patient must have failed other chronic pain management regimes. Physicians should complete the education recommended by the FDA, risk evaluation and mitigation strategies (REMS) provided by drug manufacturing companies

Notably, the amendments establish the specific injections which are to be considered reasonable treatment for patients with chronic pain when therapy is continuing and specific indications are met. This includes epidural steroid injections and sacroiliac joint injection, amongst others. For epidural steroid injections, this may include caudal, transforaminal or interlaminar injections.

Further, the amendments clarify what constitutes a non-operative therapeutic procedure and recommend acupuncture for subacute or chronic pain patients who are trying to increase function and/or decrease medication usage and have an expressed interest in this modality. It is also recommended for subacute or acute pain for patients who cannot tolerate NSAIDs or other medications.

Draft Rules:

[http://www.laworks.net/Downloads/OWC/NoticeOfIntent\\_RedLine.pdf](http://www.laworks.net/Downloads/OWC/NoticeOfIntent_RedLine.pdf)

Informational Website:

[http://www.laworks.net/WorkersComp/OWC\\_MedicalGuidelines.asp](http://www.laworks.net/WorkersComp/OWC_MedicalGuidelines.asp)

9/20/2018 Council Meeting Agenda

[http://statelink.stateside.com/Attachments/45082\\_9-20\\_rules.docx](http://statelink.stateside.com/Attachments/45082_9-20_rules.docx)

**Rule Development:**

The Council met 9/20/2018 to discuss drafting a notice of intent (NOI) regarding the amendments. Since then, the Commission has released a draft version of the chronic pain guidelines. Comments will be accepted on the draft for an indeterminate period of time. The Commission has not determined a date of when they expected to formally propose the rule. Please note that once the formal process begins (i.e. when an NOI is filed) the rulemaking process takes a minimum of five months and includes a period for public comments and a public hearing.

According to the introduction of the treatment guidelines, although the primary purpose is advisory and educational, the guidelines are enforceable under the Workers' Compensation Act. A timeline for further consideration has yet to be established.

## Maine

### ME Workers' Compensation Board proposed rule: Medical Fees and Reimbursement

**Upcoming Action:** Public hearing 11/26/2018; Comments due 12/6/2018

**Regulation ID:** ME40216

**Rule Summary:**

The Board has proposed a rule to review the medical fee schedule. The Board is required to review the fee schedule every three years. The rule is a result of the review.

Notice of Proposed Rule: (2018-P223)

<https://www.maine.gov/sos/cec/rules/notices/2018/110718.html>

Proposed Rule:

<https://www.maine.gov/wcb/Departments/legaldivision/05%20Ch%205%20draft%20rule%209-18-18.pdf>

**Rule Development:**

Notice of the rule was published in the Maine Register. A public hearing is scheduled for 11/26/2018. Comments are due 12/6/2018.

## Michigan

### MI Workers' Compensation Agency adopted rules: Health Care Services



**Upcoming Action:** Nothing Scheduled

**Regulation ID:** MI39401

**Rule Summary:**

The Department adopted amendments to rules related to health care services. The amendments are intended to provide updated health care fee schedules for reimbursement to providers for treatment of injured workers and to guide providers and payers on the scope of reimbursement. Specifically, the amendments add a definition of telemedicine and state only the procedure codes in Appendix P of the CPT code book may be used, excluding CPT codes 99241-99245 and 99251-99255, among other stipulations. The amendments also remove language that stated the modifier code "GF" could only be used when a non-physician provides services "in an office or clinic setting or in a hospital," among other changes.

Notice of Proposed Rules (p. 124):

[https://www.michigan.gov/documents/opt/MR14\\_081518\\_630117\\_7.pdf](https://www.michigan.gov/documents/opt/MR14_081518_630117_7.pdf)

**Rule Development:**

The rules were forwarded to the Joint Committee on Administrative Rules (JCARR) for review. If JCARR does not disapprove the rules, they will be considered approved. The rules can then be filed with the Secretary of State's Office of the Great Seal. The rules will become effective seven days after filing with the Secretary of State.

The Department published notice of the proposed rules. A public hearing was held 8/24/2018, and comments were accepted until 8/24/2018. The Department adopted the rules, and the Legislative Service Bureau and the Office of Regulatory Reinvention certified the rules.

## Minnesota

### **MN Department of Labor and Industry departmental discussion: Rules Governing Workers Compensation Medical Services and Fees**

**Upcoming Action:** Comments accepted ongoing

**Regulation ID:** MN27547

**Rule Summary:**

The Department of Labor and Industry is discussing possible amendments to its rules governing workers' compensation medical services and fees. The Department is specifically considering the following amendments: (1) Rules establishing payment for outpatient surgical services provided by hospitals and ambulatory surgical centers; (2) Rules establishing maximum fees for surgical implants; and (3) Amendment or repeal of Minn. R. 5218.0600, which limits the ability of certified managed care plans to negotiate payment rates with health care providers. Legislation was passed Spring 2015 establishing payment for inpatient hospital services based on the Medicare Diagnosis-Related Group (MS-DRG) system.

Notice of request for comments (pdf pg 9):

[http://statelink.stateside.com/Attachments/28702\\_SR\\_40\\_49\\_WC.pdf](http://statelink.stateside.com/Attachments/28702_SR_40_49_WC.pdf)

Notice of request for comments: (pdf pg 14)

[http://www.comm.media.state.mn.us/bookstore/stateregister/39\\_30.pdf](http://www.comm.media.state.mn.us/bookstore/stateregister/39_30.pdf)

Workers' Compensation Rule Docket Web Page:

<http://www.dli.mn.gov/RulemakingWC.asp>

### **Rule Development:**

The Department published a further notice of request for comments accepted until further notice. A draft is still not yet available.

A request for comments was published in the 1/26/2015 state register. Staff were contacted for additional information regarding which conversion factors they might be considering. The Department did not draft the possible rules, but anticipated that when a draft becomes available it will be posted in the Department's workers' compensation rule docket web page. According to staff, comments were still being accepted, except that the DRG payment system for in hospitalization was adopted by the legislation. The Department worked with interested payers and providers on the adoption of a hospital and ambulatory surgical center outpatient payment system, with the goal of adopting legislation in 2017.

## **Montana**

### **MT Department of Labor and Industry proposed rules: Workers' Compensation Formulary**

**Upcoming Action:** Public Hearing 11/9/2018; Comment Period Ends 11/16/2018

**Regulation ID:** MT37576

### **Rule Summary:**

The Department's Drug Formulary Committee has drafted rules implementing a workers' compensation formulary. The draft creates new rules related to definitions; the integration of the formulary with Montana Utilization and Treatment Guidelines; first fill procedures; expedited case review by the Department's medical director and a dispute resolution process.

The rules specify, with respect to prior authorization, that although insurers are obligated to pay for medications prescribed in a manner consistent with the formulary, the insurer must consider whether the medical provider has furnished sound medical reasoning for prescribing a medication that is not authorized under the formulary before the insurers denies authorization for that medication. Insurers may delegate prior authorization decisions regarding the formulary to a PBM or other agent with which it contracts. An insurer has the legal responsibility for the decisions made by the PBM on behalf of the insurer.

With respect to first fill requirements, prior authorization is not needed for first fill medications listed as "N" status on the formulary, provided that the medication is injury-appropriate for the injured worker at

the time the worker seeks medical care

The rules are in response to SB 312 (2017), which authorized the Department to adopt a drug formulary as part of its utilization and treatment guidelines, along with a timely and responsive dispute resolution process for disputes related to the formulary. The bill did not specify a timeline for promulgation.

Notice of Proposed Rules (PDF p. 24):

<https://sosmt.gov/download/191/2018/36171/issue-20-current.pdf>

Drug Formulary Committee Minutes (9/25/2018):

[http://statelink.stateside.com/Attachments/42015\\_Formulary\\_Committee\\_Minutes\\_09262018.docx](http://statelink.stateside.com/Attachments/42015_Formulary_Committee_Minutes_09262018.docx)

Drug Formulary Committee Agenda (9/25/2018):

[http://statelink.stateside.com/Attachments/42015\\_Agenda\\_9-25-2018.pdf](http://statelink.stateside.com/Attachments/42015_Agenda_9-25-2018.pdf)

Draft Rules (September 2018):

[http://erd.dli.mt.gov/Portals/54/Documents/Work-Comp-Claims/Medical-Regs/Formulary%20Committee/5ba53291b77a1-18%2009%2021a%20EXPANDED%20%20formulary%20rules%20mec%20\(002\)%20\(1\).pdf?ver=2018-09-21-130217-690](http://erd.dli.mt.gov/Portals/54/Documents/Work-Comp-Claims/Medical-Regs/Formulary%20Committee/5ba53291b77a1-18%2009%2021a%20EXPANDED%20%20formulary%20rules%20mec%20(002)%20(1).pdf?ver=2018-09-21-130217-690)

Draft Rules (August 2018):

<http://erd.dli.mt.gov/Portals/54/Documents/Work-Comp-Claims/Medical-Regs/Formulary%20Committee/Working%20Draft%20Rules.pdf>

Drug Formulary Committee Agenda (7/16/2018):

[http://statelink.stateside.com/Attachments/42015\\_MT\\_Agenda\\_w\\_Gantt\\_7-16-2018.pdf](http://statelink.stateside.com/Attachments/42015_MT_Agenda_w_Gantt_7-16-2018.pdf)

Draft Rules (June 2018):

[http://statelink.stateside.com/Attachments/42015\\_MT\\_drug\\_formulary\\_draft\\_rules.pdf](http://statelink.stateside.com/Attachments/42015_MT_drug_formulary_draft_rules.pdf)

Drug Formulary Committee Minutes (6/19/2018):

<http://erd.dli.mt.gov/Portals/54/Documents/Work-Comp-Claims/Medical-Regs/Formulary%20Committee/Formulary%20Committee%20Meeting%206-19-18.pdf>

Drug Formulary Committee Minutes (5/2/2018):

<http://erd.dli.mt.gov/Portals/54/Documents/Work-Comp-Claims/Medical-Regs/Formulary%20Committee/Formulary%20Committee%20Meeting%205%202%202018.pdf>

S.B. 312 (2017):

<http://leg.mt.gov/bills/2017/sesslaws/ch0433.pdf>

### **Rule Development:**

The Department published notice of proposed rules in the Montana Administrative Register. A public hearing will be held 11/9/2018, and public comments will be accepted until 11/16/2018. After the comment period ends, the Department will review the comments and make revisions if necessary. The

Department will then decide whether to adopt the rules, with or without revisions. If adopted, the rules will become final and effective and notice will be published in the Montana Administrative Register. The rules will become effective a day after publication in the register unless otherwise specified.

According to staff, the Committee considered three formularies - ODG (Work Loss Data Institute), ACOEM (ReedGroup) and Washington L&I Outpatient Formulary (State of Washington) - for adoption. Based on the information provided by each of the representatives, the Committee recommended adoption of the ODG formulary to the Department's Labor-Management Advisory Council. The Council approved the Committee's recommendation during their 10/3/2018 meeting. The Committee established the following next steps:

- (1) Research into what other states have done, their lessons learned, and their overall experience with formulary implementation is currently in progress;
- (2) Review and update of U&T Guidelines currently in progress and
- (3) Determine first fill procedures, prior authorization process, dispute resolution process, legacy claims, adopting MED and potentially establishing a P&T Committee.

The Committee met 3/16/2018 and discussed first fill requirements, prior authorization requirements, dispute resolution, and legacy claims. Items of discussion also included Colorado's potential formulary. Staff stated the rules are early in the development process. Staff are working with stakeholders representing pharmacy benefits managers, physicians, adjusters, and others to ensure all stakeholders have ample time to contribute to the process.

Minutes from the 5/2/2018 meeting were released. The Committee discussed draft rules regarding prior authorization and first fill requirements and dispute resolution.

The Committee met 6/19/2018. Per staff, the Committee finalized portions of the draft addressing: prior authorization (Rule IV), first fill requirements (Rule V) and expedited dispute review (Rule VII). Please note this is a working draft and additional revisions can be made.

The Committee met 9/10/2018. Per Mr. Wheeler, the Committee received feedback from stakeholders and is working on incorporating that feedback into the next iteration of the draft.

Minutes from the 9/25/2018 meeting were released. During the meeting, Commissioner Wheeler outlined the changes from the 8/1/2018 draft to the new 9/21/2018 revised draft. Changes include, among other things, adding a definition of "claim"; adding the minimum requirements for the notice of legacy claims and removing "business" from 14 days as it was inadvertently added in (Tennessee and Texas use calendar days in their formulary rules).

## New York

### NY Workers' Compensation Board proposed rule: Drug Formulary

**Upcoming Action:** Comments Due 11/16/2018

**Regulation ID:** NY34776

**Rule Summary:**

The Board proposed new rules to create a pharmacy prescription drug formulary. The rules define terms such as preferred and non-preferred drug, unlisted drug, compound drug, generic drug, and dispense, among others. The rules also set forth Prior Authorization (PA) and Utilization Review (UR) procedures for non-preferred or unlisted drugs and exempt certain "Special Fill drugs" or "Perioperative Fill drugs" from the regular PA procedures. As anticipated, a new rule section (441.5) includes a new method by which requests to add pharmaceuticals to the preferred list are reviewed. Legislation enacted in April 2017 required the Board to create the formulary by 12/31/2017, among other changes.

Notice of Revised Proposed Rule (pdf pg 25):

<https://docs.dos.ny.gov/info/register/2018/october17/rulemaking.pdf>

Notice of Proposed Rule (pdf pg 50):

<https://docs.dos.ny.gov/info/register/2017/dec27/pdf/rulemaking.pdf>

Full Text of Drug Formulary:

<http://www.wcb.ny.gov/drug-formulary-regulation/DRAFT-MTG-Formulary.pdf>

Board Formulary Website:

<http://www.wcb.ny.gov/drug-formulary-regulation/>

Notice of Drug Formulary Requirement:

[http://www.wcb.ny.gov/procurements/Formulary\\_MTG\\_LOI.pdf](http://www.wcb.ny.gov/procurements/Formulary_MTG_LOI.pdf)

Board Summary of Legislative Changes:

[http://www.wcb.ny.gov/content/main/SubjectNos/sn046\\_936.jsp](http://www.wcb.ny.gov/content/main/SubjectNos/sn046_936.jsp)

Board Website:

<http://www.wcb.ny.gov/>

**Rule Development:**

The Board published the revised version of the proposed rules in the New York State Register. Written comments are due 11/16/2018, but no public hearing is scheduled.

Notice of the intent to create the formulary was published on the Board's website. The published notice of the proposed rules in the New York State Register. Written comments were due 2/25/2018. As of October 2018, staff confirmed that the Board is making revisions to the draft rules. The Board plans to publish a revised version of the draft rules and re-open a 30-day comment period. However, when asked about a timeline, staff declined to provide a concrete date of when they will publish the revised proposed rules; only that it would happen in the near future.

**New York****NY Workers' Compensation Board proposed rules: Medical Fee Schedule**

**Upcoming Action:** Comments Due 11/1/2018  
**Regulation ID:** NY38627

**Rule Summary:**

The Board proposed rule amendments to update the Medical Fee Schedule provisions. The amendments update the rule text to reference the 6/6/2018 "Official New York Workers' Compensation Medical Fee Schedule" published by OptumInsight, as well as the corresponding psychology, podiatry and chiropractic fee schedules.

Notice of Revised Public Comment Assessment (pdf pg 24):  
<https://docs.dos.ny.gov/info/register/2018/october17/rulemaking.pdf>

Notice of Revised Medical Fee Schedule (pdf p. 67):  
<https://docs.dos.ny.gov/info/register/2018/october3/rulemaking.pdf>

Notice of Proposed Rules (pdf p. 13):  
<https://docs.dos.ny.gov/info/register/2018/jun6/rulemaking.pdf>

**Rule Development:**

The Board published an incorrect assessment of public comments with its previous notice, and published a corrected assessment two weeks later in the 10/17/2018 New York State Register. Written comments on the revised medical fee schedule are still due 11/1/2018. When the Board is ready to adopt the rules, it will vote to adopt the rulemaking during one of its regular public meetings. Under New York law, the Board must adopt the rules within one year of proposing them or it must begin the process again.

The Board published notice of the proposed rules in the New York State Register. Written comments were due 8/5/2018. The Board has not scheduled a public hearing, nor is it required to do so. The Board published notice of the revised Medical Fee Schedule in the New York State Register.

## Ohio

### OH Bureau of Workers' Compensation proposed rule: Amendments to Outpatient Medication Formulary

**Upcoming Action:** Public hearing 11/20/2018; Comments due 11/20/2018  
**Regulation ID:** OH38170

**Rule Summary:**

The Bureau has proposed changes amending coverage of several drug classes listed within the drug formulary. Specifically, changes are as follows: (1) Medications to be removed from the formulary: Treximet and generic equivalents and relistor tablets and injections; (2) Medications to be added to the formulary: Symproic (an opioid-based constipation treatment) will be added to the BWC formulary appendix with specific limitations and (3) Medications with changes in coverage: Reimbursement for anxiolytic benzodiazepine medications (e.g. Valium, Ativan) (including clonazepam) will be limited to one

product per month. The amendments are scheduled to be effective 1/1/2019.

Notice of the proposed rule:

[http://www.registerofohio.state.oh.us/pdfs/phn/4123\\_NO\\_323136\\_20181011\\_1210.pdf](http://www.registerofohio.state.oh.us/pdfs/phn/4123_NO_323136_20181011_1210.pdf)

Copy of the proposed rule:

[http://www.registerofohio.state.oh.us/jsps/publicdisplayrules/processPublicDisplayRules.jsp?entered\\_rule\\_no=4123-6-21.3&doWhat=GETBYRULENUM&raID=0](http://www.registerofohio.state.oh.us/jsps/publicdisplayrules/processPublicDisplayRules.jsp?entered_rule_no=4123-6-21.3&doWhat=GETBYRULENUM&raID=0)

Draft Rule:

[http://statelink.stateside.com/Attachments/42893\\_BWC\\_formulary\\_rules.pdf](http://statelink.stateside.com/Attachments/42893_BWC_formulary_rules.pdf)

#### **Rule Development:**

Staff have released notice of the proposed rule.

A public hearing is scheduled 11/20/2018 with comments due at the hearing. The rules were filed concurrently with JCARR which begins their jurisdiction period for review.

The Bureau emailed specific stakeholders requesting comments on the changes. Comments were due 5/18/2018. Stakeholders include: BWC's Managed Care Organizations; BWC's internal medical provider stakeholder list - 68 persons representing 56 medical provider associations/groups; BWC's Healthcare Quality Assurance Advisory Committee; Ohio Association for Justice; Council of Smaller Enterprises (COSE); Ohio Manufacturer's Association (OMA); National Federation of Independent Business (NFIB) and Ohio Chamber of Commerce. CSI internally reviewed the rules and any comments received. CSI issued a recommendation to the Board based upon comments received.

## **Oregon**

### **OR Workers' Compensation Division departmental discussion: Document Standards**

**Upcoming Action:** Comments accepted until further notice

**Regulation ID:** OR37934

#### **Rule Summary:**

The Division is discussing a rule change related to documentation requirements. The Access to Justice Committee of the Workers' Compensation Section of the Oregon State Bar has asked the Division to adopt a rule that would require certain documents sent to injured workers, which are in English, be accompanied by a separate notice in multiple languages (Spanish, Russian, Vietnamese, and Chinese), advising workers of the importance of the document and where to turn for assistance. The Division intends this notice to be included with any document that contains a deadline and affects a substantial legal right, including but not necessarily limited to, claim denials, acceptances, closure notices; and orders from the Workers' Compensation Board or the Division.

Division Webpage:

<http://wcd.oregon.gov/Pages/index.aspx>

**Rule Development:**

As reported previously, the Advisory Committee is currently drafting rules.

The Division recruited members to join an advisory committee. The Advisory Committee recently met on 5/30/2018.

**Oregon****OR Workers' Compensation Division departmental discussion: Review of Medical Fee & Payment, Medical Services, and Managed Care Organizations Rules**

**Upcoming Action:** Meeting 11/19/2018

**Regulation ID:** OR39310

**Rule Summary:**

The Division is discussing possible amendments to Workers' Compensation Rules. Division staff intend to review and make changes to medical fee and payments rules, medical services rules, and managed care organization rules. The Division is interested in discussing telemedicine and how this is affecting the care of workers injured on the job, as well as the standards for independent medical exams. Division staff intend to develop a list of issues and potential rule amendments to discuss with a rulemaking advisory committee.

Possible Rule Issue Form:

[https://wcd.oregon.gov/laws/Documents/5141\\_final\\_pdf\\_form.pdf](https://wcd.oregon.gov/laws/Documents/5141_final_pdf_form.pdf)

OAR 436-009, Oregon Medical Fee and Payment (Current Rules):

[https://wcd.oregon.gov/Rules/div\\_009/9-18053.pdf](https://wcd.oregon.gov/Rules/div_009/9-18053.pdf)

OAR 436-010, Medical Services (Current Rules):

[https://wcd.oregon.gov/Rules/div\\_010/10-18054.pdf](https://wcd.oregon.gov/Rules/div_010/10-18054.pdf)

OAR 436-015, Managed Care Organizations (Current Rules):

[https://wcd.oregon.gov/Rules/div\\_015/15-18055.pdf](https://wcd.oregon.gov/Rules/div_015/15-18055.pdf)

**Rule Development:**

A meeting will be held on 11/19/2018 to discuss telemedicine and general issues.

Staff accepted recommendations for additional agenda topics until 8/31/2018. Interested parties were encouraged to fill out a "Possible Rule Issue" Form. A meeting was held on 11/13/2018 to discuss independent medical exams.

**Pennsylvania****PA Department of Labor and Industry departmental discussion: Compound Medications and Topical**



## Opioid Treatment

**Upcoming Action:** Nothing Scheduled  
**Regulation ID:** PA40062

### Rule Summary:

The Department is currently gathering information related to workers' compensation experiences with all compound medications, including those involving opioids. Staff stated it is too early in the process to determine exactly what the Department's next steps will be related to this subject.

8/7/2018 Pennsylvania Commonwealth Court Decision:

[http://www.pacourts.us/assets/opinions/Commonwealth/out/1613cd17\\_8-7-18.pdf#search=%22armour%20%27Commonwealth%2bCourt%27%22](http://www.pacourts.us/assets/opinions/Commonwealth/out/1613cd17_8-7-18.pdf#search=%22armour%20%27Commonwealth%2bCourt%27%22)

4/26/2018 Governor Tom Wolf (D) Press Release:

<https://www.governor.pa.gov/governor-wolf-takes-executive-action-curb-overprescribing-opioids-workers-compensation/>

### Rule Development:

The Department has yet to determine their next steps regarding compound medications and is in the process of gathering information. The discussion is aligned with Governor Tom Wolf's (D) policy priority to curb the use of topical opioid compound prescriptions. According to an April 2018 press release: "Using its regulatory authority, Labor & Industry will propose regulations for opioid and non-opioid compound prescriptions by requiring them to be billed at the ingredient level. Regulating the price of opioid compounds will result in cost savings for Pennsylvania. The department will also review the scientific efficacy of compound prescriptions across the board."

Is also worth noting that the Pennsylvania Commonwealth Court issued a decision in Summer 2018 regarding prescription compound creams. In *Armour Pharmacy v. Bureau of Workers' Compensation Fee Review Hearing Office (National Fire Insurance Company of Hartford)* the Court held that a compromise and release (C&R) agreement could not be used to avoid payments owed to a provider by an employer. Specifically, the Court refused to disregard a fee review determination that an employer owed reimbursement to a pharmacy for prescription compound creams.

## Texas

**TX Department of Insurance final rule effective 11/1/2018: Benefit Guidelines for Medical Services, Charges and Payments**

**Upcoming Action:** Nothing scheduled  
**Regulation ID:** TX38235

### Rule Summary:

The Department has adopted a rules concerning return to work rehabilitation programs. The rules are related to work conditioning and work hardening services and reimbursement rates for those services.

**Notice of Final Rule:**

<https://www.sos.state.tx.us/texreg/archive/October262018/Adopted%20Rules/28.INSURANCE.html#122>

**Notice of Proposed Rule:**

<https://www.sos.state.tx.us/texreg/archive/May42018/Proposed%20Rules/28.INSURANCE.html#84>

**Rule Development:**

The final rule was published in the Register. The final rule is effective 11/1/2018. The Department withdrew some of the amendments that were originally published. Those amendments are not expected to be re-proposed.

Notice for proposed rule was published in the Texas Register. Comments were due 6/4/2018.

**Texas****TX Department of Insurance; Division of Workers' Compensation proposed rule: Dispute Resolution Procedures**

**Upcoming Action:** Comments due 12/3/2018

**Regulation ID:** TX40168

**Rule Summary:**

The Department has proposed various rules concerning dispute resolution. The rules require all requests to presiding officers from carriers, carrier representatives, claimants represented by an attorney or claimants assisted by the Office of Injured Employee Counsel must include a statement noting that efforts were made to confer with other parties about the request. The rules create timeframes for parties to respond to such requests. The rules make other changes to the dispute resolution regulations.

**Notice of Proposed Rule:**

<https://www.sos.state.tx.us/texreg/archive/November22018/Proposed%20Rules/28.INSURANCE.html#52>

**Rule Development:**

Notice of the rule was published in the Texas Register. Comments are due 12/3/2018.

**Vermont****VT Department of Labor proposed rules: Vermont Workers' Compensation and Occupational Disease Rules 1-27**

**Upcoming Action:** Nothing Scheduled

**Regulation ID:** VT39123

**Rule Summary:**

The Department proposed amendments to Vermont workers' compensation and occupational disease rules. The amendments update definitions as well as clarify that the timeframe for reporting a "first aid only" claim is five business days. The amendments also state that, once approved or ordered, a preauthorization is valid for six months or until a change in the injured worker's medical conditions necessitates reevaluation of the request. Additionally, the amendments update the reference to the Vermont Department of Health's Rule Governing the Prescribing of Opioids for Pain, being followed at VT35220, among other changes.

Please note that, in the notice of proposed rule, the rule is incorrectly listed as adopted.

Notice of Proposed Rule:

[http://statelink.stateside.com/Attachments/44255\\_18P038.prop.rule.pdf](http://statelink.stateside.com/Attachments/44255_18P038.prop.rule.pdf)

Proposed Rules:

<http://labor.vermont.gov/wordpress/wp-content/uploads/WCRules1-27-Proposed.pdf>

**Rule Development:**

The Department may approve the proposed rules. The Department will file the final proposed rules with the Secretary of State and the Legislative Committee on Administrative Rules (LCAR). If LCAR does not object to the rules, the Agency may adopt the rules and file them with the Secretary of State 30 days after the rules are first placed on LCAR's agenda, or 45 days after filing the final proposed rules, whichever occurs first. The rules will become effective upon filing.

The Department published notice of the proposed rules. Public hearings were held 8/21/2018, 8/23/2018, and 8/24/2018. The Department accepted comments until 8/31/2018.

## Virginia

### VA Workers' Compensation Commission draft rules: Amendments to Electronic Medical Billing Rules

**Upcoming Action:** Nothing Scheduled

**Regulation ID:** VA31843

**Rule Summary:**

The Commission drafted rules related to the electronic medical billing rules. The amendments would establish standards and methods by which employers, workers' compensation insurance carriers, and providers of workers' compensation medical services adopt and implement infrastructure under which (i) providers of workers' compensation medical services shall submit their billing, claims, case management, health records, and all supporting documentation electronically to employers or employers' workers' compensation insurance carriers and (ii) payers shall return actual payment, claim status, and remittance information electronically to providers that submit their billing and required supporting documentation electronically.

Notice of Proposed Rules:

<http://register.dls.virginia.gov/details.aspx?id=6921>

Draft Proposed Rules:

<http://townhall.virginia.gov/L/ViewXML.cfm?textid=11754>

Notice of Intended Regulatory Action:

<http://register.dls.virginia.gov/details.aspx?id=5693>

#### **Rule Development:**

As previously reported, the Commission may adopt the draft final rules. Pending executive review, the final rules will be published in the Virginia Register.

Notice of the intended regulatory action was published in the Virginia Register. Comments were due 7/13/2016. A public hearing was not scheduled. Staff reviewed any comments received. The Commission drafted proposed rules. The Attorney's General, Department of Budget and Planning, and the Secretary of Independent Agencies completed their reviews.

The Governor reviewed and approved the draft proposed rules. The proposed rule was scheduled to be published in Virginia Register on 6/11/2018 and a comment period on the rules was scheduled to open 6/11/2018 and remain open through 8/10/2018.

The Commission published notice of the proposed rules. Comments were accepted until 8/10/2018. The Commission did not receive any comments.

## **Washington**

### **WA Department of Labor and Industry Medical Provider Group Network: Advisory Committee Meetings**

**Upcoming Action:** Nothing Scheduled

**Regulation ID:** WA22652

#### **Rule Summary:**

The Advisory Committee on Healthcare Innovation and Evaluation (Committee) (formerly known as the Network Advisory Group) meets periodically to provide the Department of Labor and Industry with input and advice related to the provider network. The Committee provides input on:

- Standards for accepting health care providers into the statewide network.
- Criteria for removing providers from the network and requiring peer review.
- Policies for managing the provider network.
- Expectations for providers who participate in the second tier of the network.

10/26/2018 Meeting agenda:

<https://www.lni.wa.gov/ClaimsIns/Providers/ProjResearchComm/PNAG/ACHIEV102518/ACHIEVAgenda>

[10252018.pdf](#)

7/26/2018 Meeting agenda:

<http://www.lni.wa.gov/CLAIMSINS/PROVIDERS/PROJRESEARCHCOMM/PNAG/ACHIEV072618/180726FinalACHIEVagenda.pdf>

4/26/2018 Meeting agenda:

<http://www.lni.wa.gov/ClaimsIns/Providers/ProjResearchComm/PNAG/ACHIEV042618/ACHIEVAgenda04262018.pdf>

Committee Meeting Dates and Agendas:

<http://www.lni.wa.gov/ClaimsIns/Providers/ProjResearchComm/PNAG/default.asp>

### **Rule Development:**

The Commission met 10/26/2018. An agenda for the meeting was released. The next meeting has yet to be determined.

The Committee met 4/27/2017. There were no relevant rulemaking discussions. The Committee met 10/26/2017 to discuss provider networks and other topics. The 1/25/2018 Committee meeting was cancelled. The Committee met 4/26/2018. No relevant rules were discussed. The Commission met 7/26/2018 and discussed issues related to telemedicine.

## **Wisconsin**

### **WI Department of Workforce Development departmental discussion: Updated Treatment Guidelines**

**Upcoming Action:** Nothing Scheduled

**Regulation ID:** WI37659

### **Rule Summary:**

The Department is discussing amendments that would update workers' compensation treatment guidelines. The Department uses treatment guidelines to resolve the necessity of treatment disputes of employees with compensable workers' compensation injuries. The Department intends to clarify the description of guidelines, update the guidelines to include new modalities of treatment procedures and treatment options, and expand the guidelines to cover new types and classes of injuries.

Scope Statement:

[https://docs.legis.wisconsin.gov/code/register/2018/747A3/register/ss/ss\\_026\\_18/ss\\_026\\_18](https://docs.legis.wisconsin.gov/code/register/2018/747A3/register/ss/ss_026_18/ss_026_18)

### **Rule Development:**

The Department published a scope statement outlining the amendments. The Department and the Workers' Compensation Advisory Council (an entity that advises the Department on the development and administration of workers' compensation policy) will consult with the Health Care Provider Advisory Committee prior to drafting the rule. If the Department decides to move forward with the rulemaking, the Department will prepare draft rules. Once draft rules are finalized, the Department will publish

proposed rules and hold a public hearing and a comment period.

## Wyoming

### WY Department of Workforce Services final rules effective 11/13/2018: Utilization Guidelines

**Upcoming Action:** Nothing Scheduled

**Regulation ID:** WY39487

#### **Rule Summary:**

The Department adopted amendments to rules concerning workers compensation. Specifically, the amendments update the effective date of chiropractic utilization guidelines to 3/1/2018 and would incorporate by reference federal rules as of 1/1/2018. The amendments make other changes as well.

#### **Notice of Final Rules:**

[https://rules.wyo.gov/DownloadFile.aspx?source\\_id=13597&source\\_type\\_id=81&doc\\_type\\_id=110&include\\_meta\\_data=Y&file\\_type=pdf&filename=13597.pdf&token=016080129049117177093034168132119196205154210223](https://rules.wyo.gov/DownloadFile.aspx?source_id=13597&source_type_id=81&doc_type_id=110&include_meta_data=Y&file_type=pdf&filename=13597.pdf&token=016080129049117177093034168132119196205154210223)

#### **Notice of Proposed Rules:**

[https://rules.wyo.gov/DownloadFile.aspx?source\\_id=1741&source\\_type\\_id=109&doc\\_type\\_id=2122&file\\_type=pdf&filename=1741.pdf&token=030240096138092139113025107060142049144125111089](https://rules.wyo.gov/DownloadFile.aspx?source_id=1741&source_type_id=109&doc_type_id=2122&file_type=pdf&filename=1741.pdf&token=030240096138092139113025107060142049144125111089)

#### **Rule Development:**

The rules were approved by the Governor and filed with the Secretary of State. The effective date of the rules is 11/13/2018.

The Department published proposed rules. Comments were accepted until 10/8/2018.