Workers' Comp Regulatory Activity

March 15, 2019 – May 1, 2019

CALIFORNIA

Reg ID: CA51397

Issues: Workers' Compensation Utilization Review

Summaries: The Division has proposed amendments to the rules addressing evidence-based updates to the Medical Treatment Utilization Schedule (MTUS). The proposed evidence-based updates to the MTUS incorporate by reference the latest published guidelines from American College of Occupational and Environmental Medicine (ACOEM) for the following: (1) Low Back Disorders Guideline (ACOEM March 7, 2019); and (2) Introduction to the Workplace Mental Health Guideline (ACOEM March 13, 2019).

What Just Happened: Staff released notice of the proposed rule.

What's Next: A public hearing has been scheduled for 5/6/2019 to discuss the proposal. Comments are due the same day. Please note that these rules are exempted from the normal APA requirements and from formal publication in the California Register. Only a 30-day comment period is required.

Links:

- 5/6/2019 Hearing Notice
- Proposed rule text

KENTUCKY

Reg ID: KY37971

Issues: Workers' Compensation Coverage, Workers' Compensation Pharmacy, Workers' Compensation Prescription Drug Formulary

Summaries: The Department adopted emergency and new 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).

Historical Development:

- **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.

The RAC met 10/31/2018. An agenda for the meeting was recently released. The RAC discussed 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."?

The Board published notice of emergency rules in the register. The emergency rules are effective 1/1/2019. The Board also published notice of a new proposed rule.

What Just Happened: The Board received adverse comments, revised the rule text in response, and published the revisions in the April 2019 Kentucky Register.

What's Next: The Administrative Regulations Review Subcommittee (ARRS) must review the rules, however ARRS has removed them from its 4/9/2019 meeting agenda. The rules might be reviewed during the 5/14/2019 meeting, but this will be confirmed at a later date.

Links:

- Agenda for 4/9/2019 ARRS Meeting
- Notice of Revised Rule Text (see pages 2928 and 3003)
- Notice of ARRS review (pdf pg 6)
- Notice of proposed rule (pdf pg 244)
- Notice of emergency rules (pdf pg 26)
- H.B. 2 (2018):
- 8/30/2018 Joint MAC-RAC Meeting Minutes:
- 9/27/2018 MAC Meeting Minutes:
- 10/3/2018 RAC Meeting Minutes:
- 10/31/2018 RAC Meeting Agenda:

MONTANA

Reg ID: MT51335

Issues: Workers' Compensation Utilization Review

Summaries: The Department proposed amendments to rules concerning utilization and treatment guidelines for workers' compensation purposes. The Department intends to adopt a new edition of its utilization guidelines for medical services provided on or after before 7/1/2019. The amendments also state that the guidelines are to be read in conjunction with several CDC publications.

What Just Happened: The Department published proposed rules.

What's Next: A public hearing will be held 4/19/2019, and public comments will be accepted until 4/26/2019. After the comment period, the Department will decide whether to adopt the rules. If adopted, the rules will become final and effective a day after publication in the Montana Administrative Register.

Links:

- Montana Utilization and Treatment Guidelines Webpage
- Utilization and Treatment Guidelines (Complex Regional Pain Syndrome)
- Utilization and Treatment Guidelines (Chronic Pain Disorder)
- Proposed Rules

MONTANA

Reg ID: MT51423

Issues: Workers' Compensation Provider Fee Schedule

Summaries: The Department proposed amendments to rules concerning workers' compensation fee schedules. The amendments update both professional and facility fee schedules. The Department intends for the rules to become final and effective 7/1/2019.

What Just Happened: The Department published proposed rules.

What's Next: A public hearing will be held 5/6/2019. Public comments will be accepted until 5/13/2019. If adopted by the Department the rules will become final and effective.

Links:

- Rulemaking Webpage
- Proposed Professional Fee Schedules
- Proposed Facility Fee Schedules
- Notice of Proposed Rules

NEW YORK

Reg ID: NY34776

Issues: Workers' Compensation Coverage, Workers' Compensation Pharmacy, Workers' Compensation Prescription Drug Formulary, Workers' Compensation Provider Fee Schedule

Summaries: 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.

The Board revised several sections of the proposed rules to, among other things, clarify provisions governing both notice to the provider and notice to the claimant regarding medical necessity decision on a generic or a Formulary drug, to require Prior Authorization for all compound medications.

Historical Development: 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. The Board

published the revised version of the proposed rules in the New York State Register. Written comments were due 11/16/2018, but no public hearing is scheduled. The Board published notice of a revised proposed rule after comments were reviewed. Comments were due 2/22/2019.

What Just Happened: The Board revised the proposed rule again after reviewing stakeholder comments and published notice in the New York State Register.

What's Next: Comments are due 5/17/2019.

Links:

- Revised proposed rule (pdf pg 18)
- Board website
- Board summary of legislative changes
- Notice of drug formulary requirement
- Drug Formulary website
- Notice of proposed rule (pdf pg 50)
- Notice of revised proposed rule (pdf pg 25)

NEW YORK

Reg ID: NY50338

Issues: Workers' Compensation Pharmacy Fee Schedule

Summaries: The Board adopted amendments that update the pricing methodology for prescription drugs. Specifically, the amendments stipulate that, starting 4/1/2019, the maximum reimbursement for New York Workers' Compensation Formulary drugs or when applicable, drugs that received Prior Authorization including all brand name and generic prescription drugs, shall be the less than the calculated cost, the contract price (for designated pharmacies), or the usual and customary price for the prescription drug. The amendments add a dispensing fee of six dollars for compound drugs and that compound drugs with an non-Formulary ingredient are not reimbursable. In addition, any rebates or third-party revenue related to drugs dispensed through a contract for pharmacy benefit management and delivered to the designated pharmacy are required to be passed through in full to the insurance carrier or self-insured employer.

Note: The Board has proposed a rulemaking establishing a pharmacy prescription drug formulary. The proposed rulemaking is being followed at NY34776.

Historical Development: The Board published proposed rules. Public comments were due 2/3/2019.

What Just Happened: The Board published notice of the final rules in the New York State Register.

What's Next: The rules are effective 10/1/2019.

Links:

- Notice of Final Rules (p 9)
- Rulemaking Webpage
- Proposed Rules
- Notice of Proposed Rules (p. 24)

OHIO

Reg ID: OH51258

Issues: Workers' Compensation Pharmacy, Workers' Compensation Prescription Drug Formulary

Summaries: The Bureau proposed amendments to the outpatient medication formulary. The amendments revise the formulary appendix to the rule, which is the formulary drug list. The changes are the result of the recommendations from the Bureau's Pharmacy & Therapeutics Committee as well as a general cleanup of the formulary appendix.

Historical Development: The Bureau published notice of the proposed rules in the Register.

What Just Happened: The Bureau published notice of the proposed rule in the register.

What's Next: A public hearing is scheduled 4/23/2019. Comments are due 4/23/2019.

Links:

- Proposed rule and appendices
- Notice of proposed rule