

Compliance and Regulations Newsletter

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ARKANSAS

Drug Formulary for State Employees Being Considered by Commission

The Arkansas Workers' Compensation Commission has proposed a drug formulary hoping to see savings similar to the 30% for state employee claims. The Commission has proposed a drug formulary through Rule 099.41, a new rule for a drug Formulary for all Food and Drug Administration (FDA) approved drugs prescribed for workers' compensation claims with a date of injury on or after September 1, 2017.

The rule would establish a process requiring all payers to have a medical director on staff or contract with a PBM, a process for filling workers' compensation prescriptions, and a process for resolving disputes between providers and pharmacist or pharmacy benefit manager (PBM).

The proposed formulary rule indicates payers would not be financially responsible for payment of FDA approved opioids that exceed 90 MED (milligram morphine equivalent dose per day) per day. Payers would not be required to pay for more than five days of medication for the first prescription of an opioid medication. Payers would not be required to pay for continued opioid medication beyond the first five-day prescription unless all of the following requirements are met.

- The medication is prescribed by an authorized treating physician.
- The medication is reasonable, necessary, and related to the workers' compensation injury or illness.
- The prescribing provider examines the injured worker in a follow-up visit and certifies that the medication taken thus far is effective in treating the injury or illness.
- The prescribing provider certifies that continuing opioid therapy is medically necessary.
- Authorized treating physician prescribing the medication must certify the medical necessity for continued opioid medication beyond 90 days.

When a payer denies medication not on the formulary, the injured worker, filling pharmacist, or prescribing physician must submit a Reconsideration Form to the payer or PBM. If the reconsideration request is denied, an appeal may be made within ten business days to the Medical Cost Containment Division of the Arkansas Workers' Compensation Commission.

A public hearing was held on May 23rd, and the state has not yet posted the outcome of the hearing.

[Source](#)

CALIFORNIA

DWC Pushes Back Formulary Effective Date to January

In 2015, AB 1124 was passed, requiring the division to adopt an evidence-based prescription drug formulary by July 1, 2017. Those speaking at the public hearing in May asked the division to consider pushing back the effective date to allow more time for payers to prepare.

Amid concerns from stakeholders who commented they need more time to adopt the new rules of the proposed formulary, the Division of Workers' Compensation will delay the effective date until January 1, 2018.

Many had concerns as to whether workers would have adequate time to transition to drugs on the formulary. The DWC set a specific time from for workers to transition from a non-formulary drug to a formulary drug in the original draft of the rules. In a more recent draft, the time frame was removed.

Comments in a number of letters stated the formulary was too restrictive. Other letters stated a majority of prescription drug payments would still require preauthorization under the formulary so the impact to utilization review would be minimal. Another area of concern is that the proposed formulary does not include provisions as a preference for generic drugs over name-brand drugs.

[Source 1](#)

[Source 2](#)

TEXAS

Proposed Exemption from Preauthorization Requirements

[House Bill 2058](#), sponsored by Rep. Rene Oliveira, would exempt work-hardening or work-conditioning services provided by a credentialed health care provider from preauthorization and concurrent review requirements.

If HB 2058 is approved, Labor Code, Section 413.014, would still require preauthorization and concurrent review for:

- Spinal surgery, as provided by Section 408.026;
- Inpatient hospitalization, including any procedure and length of stay;
- Physical and occupational therapy;
- Outpatient or ambulatory surgical services, as defined by commissioner rule; and
- Any investigational or experimental services or devices

If this bill is signed into law, it would be effective September 1, 2017, and apply to health care services provided on or after the effective date regardless of the date of injury.

The last action taken on this legislation was on May 9th when it was *“laid on the table.”* Bills *“laid on the table”* may be considered only if the committee adopts a motion to call it from the table.

[Source](#)