Workers' Comp

New York State Workers' Compensation Board Proposes Pharmacy Rule Change

July 1, 2022
2 MIN READ

The New York State Workers' Compensation Board (WCB) has proposed additional language to 12 NYCRR 440.8 (c) dealing with pharmacy notification. The new language requires payers to notify out-of-network pharmacies or pharmacy processing agents when a claimant is subject to a pharmacy network when one has been established. The proposed language also requires payers to reimburse out-of-network pharmacies at the fee schedule rate until the pharmacy has been notified the claimant is subject to an established pharmacy network. Notice should be provided in the same manner that the prescription was billed and is deemed provided 5 days after the payer sends the notice. The rule also states that liability for out-of-network prescriptions for controlled substances ends 90 days after notice has been provided to the claimant and 60 days for other prescriptions. Notice to out-of-network pharmacies would not be required after these time frames.

While the WCB is adding this language to the rule, most payers in New York will recognize this language from the original version of the rule authorizing the use of pharmacy networks by employers. The pharmacy notification language was removed when the drug formulary was adopted. However, since that time, there has been a persistent level of complaints from out-of-network pharmacies that were not being paid for medications and did not know the claimant was subject to a pharmacy network. The reinstatement of this language is being proposed to help curb those non-payment issues.

The proposed change will be published in the New York State Register on June 29, 2022.

Comments on the proposed change will be accepted for 60 days following the date of publication. Comments can be sent to regulations@wcb.ny.gov. Complete information about the proposed change can be found HERE.

For questions about this alert, please contact Brian Allen, Vice President of Government Affairs for Mitchell Pharmacy Solutions at Brian.Allen@mitchell.com or at 801-903-5754.

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