Workers' Comp

StateWatch: Fall 2018

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Keep current with new legislation and its potential effect on your organization. This regulatory update is for informational purposes only, and provides some key highlights on state initiatives that may impact the services Genex provides.

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National

The **FDA** has approved a non-opioid, percutaneous electrical nerve field stimulator device as an aid to reduce opioid withdrawal symptoms during detoxification. The device sends electrical pulses through tiny needles strategically positioned in the ear to relieve symptoms during the early stages of withdrawal, including, but not limited to, agitation, anxiety, depression, nausea, and cravings, and is designed to increase the level of comfort and mobility for the claimant.

The **FDA** also approved the first non-opioid pharmaceutical treatment for opioid withdrawal management. According to the administration, Lucemyra (lofexidine hydrochloride) can be used for the mitigation of withdrawal symptoms to facilitate abrupt discontinuation of opioids in adults. However, officials advised that while Lucemyra may lessen the severity of withdrawal symptoms, it may not completely prevent them and is only approved for treatment for up to 14 days. Lucemyra is not a treatment for opioid use disorder (OUD), but can be used as part of a broader, long-term treatment plan for managing OUD, researchers said.

The **Department of Justice** recently announced final adoption and publication of a new rule related to drug diversion and opioid production limits. Under the adopted final rule, the Drug Enforcement Administration (DEA) must now take into consideration the extent of a drug's diversion in the system when it sets the annual production limit for that specific drug.

WATCHLIST: **HR 5892,** a bill that would establish a committee to recommend actions that the Department of Labor could take to address opioid abuse in the workplace, has cleared the House. Under the bill, the advisory

committee would consist of 19 members appointed by the labor secretary and include representatives of employers and employer groups, employees, workplace safety experts, human resources professionals, medical doctors, licensed therapists, academic researchers, state and local officials. The committee's purpose would be to discuss/evaluate opioid abuse and its impact on workplace safety, productivity and absenteeism; employer substance abuse policies; employer-provided benefits; alternative pain management treatments; employee privacy; community-based initiatives; and workplace policies to reduce the stigma of opioid abuse. Under the proposed rules, the committee, at the end of three years, would issue a report on best practices for employers in dealing with opioid abuse among workers. The bill has been assigned to the Senate's Committee on Health, Education, Labor, and Pensions.

ARKANSAS

The **Workers' Compensation Commission** has released a proprietary formulary developed by the University of Arkansas College of Pharmacy. The initiative requires pre-approval of all compounded drugs, and limits initial opioids to a five-day supply without pre-authorization.

ARIZONA

Effective Aug. 20, the **Industrial Commission of Arizona** (ICA) is requiring insurance carriers and self-insured employers to use a specified form to accept medical-only claims. Carriers and employers must use Form 104 "Notice of Claim Status" to accept all claims. The commission previously accepted "a notated notification list" as a way to accept liability for medical-only claims. However, the agency has decided the system would be better served if all notices of claim acceptance were submitted on the same form.

ICA also recently posted a guide to best practices involving full and final settlements. The guide follows state legislation passed last year which allowed injured workers to permanently settle their claims. Previously, injured employees in Arizona could settle portions of their claims relating to loss of earnings and supportive care, but retained the right to reopen a claim for a worsening medical condition.

CALIFORNIA

The **Division of Workers' Compensation (DWC)** reports that as of early July, only 38 out of 63 UR firms that do business in the state had received accreditation from URAC, formerly known as the Utilization Review Accreditation Commission. SB 1160 required companies that review requests for authorization of treatment to be accredited by July 1 and remain accredited for as long as they continue providing UR services in California. DWC is drafting regulations and considering assessing penalties to ensure that utilization review organizations comply with the requirement to obtain accreditation.

The **Workers' Compensation Insurance Rating Bureau** (WCIRB) recently announced plans to allow insurers, agents and brokers to request authorization from policyholders to access rate sheets, inspection reports and risk summary reports online.

WCRIB has also updated its procedures for insurers, agents and brokers to access policyholders' experience rating worksheets, inspection reports and Comprehensive Risk Summary reports. Users will no longer have to print and fill out a letter of authorization (Form 810), obtain the policyholder's signature, and scan and upload the document to access policyholder data through WCIRB Connect. Bureau officials said the new authorization process enhances the security and authentication of the authorization process, in addition to saving time and effort.

According to a recent **California Workers' Compensation Institute** (CWCI) report, injured workers who are taking five or more prescription drugs at a time are more likely to be older than 50, have a back injury or have a long-running claim compared to claimants who are taking fewer drugs. CWCI used its Industry Research Information System (IRIS) to analyze claims in which at least one prescription was dispensed to an individual in 2016 or 2017.

WATCHLIST: **AB 1697** has been passed by the legislature and is awaiting approval by Gov. Brown. It would require the administrative director to establish an antifraud support unit within the Division of Workers' Compensation. The bill would set forth the duties of the unit, including coordinating and advancing antifraud activities for the division and serving as the point of contact between the division and other agencies and entities engaged in antifraud activities. The bill would require the unit to develop and implement by July 1, 2019.

AB 1749 is also awaiting governor approval. It would allow peace officer to receive workers' comp if injured while apprehending law violators or suspected law violators in or outside the state. The proposed legislation would provide that acceptance of liability shall not affect the determination of whether or not the peace officer acted within the scope of his or her employment for any other purpose.

AB 533, if signed by Gov. Brown would require the Department of Industrial Relations to issue prorated checks to zero out the $120 million appropriated for the Return to Work Supplemental Benefit Program, starting in 2020.

COLORADO

Gov. Hickenlooper recently signed into law SB 22, which enacts opioid prescribing restrictions as well as enhanced prescription drug monitoring program (PDMP) reviewing/reporting requirements. The legislation requires PDMP to develop and provide prescribers of opioids a "health care provider report card" related to their prescribing patterns.

HAWAII

HB 2375 was recently signed into law by **Gov. Ige**. The new law increases the penalty from $10 to $250 for employers that fail to comply with a carrier's request for information on wages, hours and duration of employment. The bill also allows advanced practice registered nurses to certify when a person has sustained an occupational disability.

ILLINOIS

Gov. Rauner signed SB 336 in August, which will expand access to a medical marijuana pilot program and allow injured workers to qualify for medical marijuana use in lieu of opioids. The Illinois Department of Public Health is currently drafting emergency rules which are due by Dec. 1. Illinois' original medical marijuana pilot program began in 2014 and allows the drug to be prescribed for 40 medical conditions, under certain restrictions. SB 336 will expand that to include any opioid-treatable condition. However, a physician must certify that the patient has a condition for which opioid medication has been prescribed or could be prescribed. Participants must register at a licensed dispensary. The pilot program expires July 1, 2020.

INDIANA

The **Workers' Compensation Board** (WCB) is working to enact its new drug formulary based on ODG. The new formulary is scheduled to take effect Jan. 1. In an effort to educate applicable parties, the board is hosting a free presentation on the ODG drug formulary Sept. 17 at the Indiana Government Center South, Indianapolis.

IOWA

WATCHLIST: The **Iowa Workers' Compensation Division** recently proposed rules that will lay the foundation for mandatory use of a "workers' compensation electronic system" to submit claims data and file petitions, forms and other documents. The anticipated effective date is Dec.3.

MISSOURI

Recently passed **SB 826** will modify existing laws related to medical and pharmacy practices. There are varying effective dates for specific components of the bill but the changes in the prescribing restrictions became effective Aug. 28. The new prescribing restrictions only allow a 7-day supply on all initial prescriptions of opioids used for acute pain. There are several exemptions from the prescribing limits that allow a prescriber to make medical necessity decisions for amounts exceeding 7 days and for cancer related or end-of-life treatment.

NEW JERSEY

SB 2145 was signed by **Gov. Murphy** in August and amends the state's workers' compensation law by allowing claimants' attorneys to get paid based on the full amount of a settlement, not just part of a judgment, as previously allowed. The law was effective immediately.

NEW YORK

WATCHLIST: The **New York State Workers' Compensation Board** released a three-part plan to implement electronic medical billing, which will be mandatory for all medical providers by Jan. 1, 2020.

OKLAHOMA

The **Oklahoma Workers' Compensation Commission** gave notice that it had adopted emergency rules allowing business owners to exempt themselves from workers' compensation coverage by filing an affidavit as part of recently passed SB 1249. The new law amends conditions and requirements relating to workers' compensation liability for those who are not the immediate employer.

Recently signed **SB 1446** will take effect Nov. 1. This legislation limits initial prescriptions for opioid medications to a 7 day-supply, at the lowest effective, immediate-release dosage. Practitioners may issue subsequent 7 day-supply prescriptions but must provide documentation confirming the medication is necessary and appropriate to a patient's treatment needs and does not present an undue risk of abuse, addiction or diversion.

OREGON

The **Workers' Compensation Division (WCD)** has adopted rules that impact calculations for workers who earn irregular wages and the standards of eligibility for vocational rehabilitation benefits. The rules took effect Aug. 1.

WCD has published and disseminated a revised bulletin providing the cost-of-living matrix and fee schedules for job training that incorporates recent rule changes to the vocational rehabilitation program. The rules will require carriers to make a reasonable calculation of a worker's average weekly wage even if the worker can't provide documentation. Another rule establishes the process for calculating the average weekly wage for workers who held more than one job at the time of injury. Additionally, the WCD recently revised the vocational training fee schedule to increase the professional spending limit from $17,723 to $18,530 for services provided on or after July 1.

PENNSYLVANIA

Gov. Wolf has introduced opioid prescribing guidelines for workers' compensation. The guidelines are designed to help prescribing providers determine the effective and appropriate use of opioids. Wolf indicated that members of his Prescribing Guidelines Task Force diligently worked to develop the new standards which, when added to existing opioid prescribing guidelines developed by the Department of Health, bring the total number of opioid guidelines in the state to 11.

SOUTH CAROLINA

A new law limits initial opioid prescriptions for acute or postoperative pain management to a seven-day supply, with exceptions. Additionally, **SB 918** permits that upon any subsequent consultation for the same pain, a practitioner may issue an appropriate renewal, refill or new opioid prescription. Exceptions to the days' supply limitation include treatment for cancer pain, chronic pain, hospice care, palliative care, major trauma, major surgery, sickle cell disease and treatment of neonatal abstinence syndrome or medication-assisted treatment for substance use disorder. The days' supply limitation also does not apply to prescriptions for opioids to be wholly administered in a hospital, nursing home, hospice facility or residential care facility. In addition to the initial prescription limit, the new law also directs the state's Department of Health and Environment Control to develop and maintain, as part of the state prescription monitoring program, a system to provide prescription report cards to practitioners informing them of prescribing trends, including comparisons of their prescribing trends with peer averages.

TENNESSEE

The **Bureau of Workers' Compensation** recently announced new claims-handling standards and rules that took effect Aug. 2. It includes a rule ending the requirement that carriers have a claims office in the state. The new rules address several other issues.

- A civil penalty of $500 if an employer or insurance carrier fails to provide reasonable medical treatment, or directs a legitimate workers' compensation claim to be paid by health insurance.
- Each insurance carrier, self-insured employer or third-party administrator must designate a liaison to the bureau.
- Trading partners who handle electronic transactions with the bureau must complete a trading partner agreement form.
- All parties who submit electronically must utilize anti-virus software before transmitting files to the bureau.
- Employers or carriers must send notice of injury and a copy of a workers' compensation handbook to an injured employee within two business days.
- Adjusters must contact an injured worker within two days after the worker receives the notice and guidebook.

TEXAS

The **Division of Workers' Compensation** closed a loophole on compounded drugs through a recently passed rule. The DWC now requires all compounded pharmaceuticals, not just those containing opioids, to be pre-approved before they can be dispensed.

VIRGINIA

Effective Aug. 8, physicians are now required to check Virginia's prescription drug monitoring program (PDMP) before prescribing opioids. Notice was published in the **Virginia Register of Regulations.** The rules set an initial seven-day prescription limit on opioids for acute pain. As for chronic pain, the regulation sets forth an evaluation process to follow before prescribing an opioid medication. The evaluation process includes the nature and intensity of the pain, past pain treatments, an analysis of comorbidities, and an analysis of potential addiction, including any family history of addiction. Additionally, providers must discuss with the patient known risks of opioid therapy as well as the patient's responsibilities, along with a strategy to end treatment. Lastly, the regulation states that for acute or chronic pain treatment, non-drug and non-opioid therapy must be considered before resorting to opioid treatment.

WYOMING

The **Wyoming Supreme Court** has ruled that a medical device does not need to be approved by the FDA to qualify as reasonable and necessary for the treatment of an industrial injury. However, a worker requesting a non-FDA-approved device must produce reliable documentation of its safety and effectiveness to be compensable.



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