Workers' Comp

Oklahoma House Committee Advances Workers' Compensation Reform Legislation

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4 MIN READ

By Brian Allen, VP of Government Affairs

On February 28, 2018, the Oklahoma Legislature House Judiciary Committee amended HB3277 with a 173-page substitute bill detailing a comprehensive set of reforms for their workers' compensation system. The bill, sponsored by Assistant Majority Floor Leader, Chris Kannady, encompasses a wide range of proposed changes affecting administrative procedures, benefits reform, medical care and cost containment.

The following is a summary of the highlights:

- Definitions of disability were clarified and several areas around disability determinations were amended
- Clarified the duties and responsibilities of the employer under the Act and clarified the coordination of claims and benefits in multiple jurisdictions
- Shifts exclusive jurisdiction from the workers' compensation commission to the district courts
- Makes the use of the Official Disability Guidelines (ODG) mandatory unless the Commission allows a deviation for reasons of medical necessity
- A number of provisions clarify administrative procedures of the Commission
- Adds a provision allowing the Commission to pay for uninsured injuries from civil penalties paid by the uninsured employer
- Makes substantive changes to the vocational rehabilitation section of the Act
- Adds a provision allowing an administrative law judge to require an employer to provide detoxification treatment for employees prescribed opioids or other narcotics.
    - If the employee refuses such treatment the judge may terminate pain management services after notice and hearing
- Changes reimbursement for prescription drugs and compounded medications to 125% of the Oklahoma Medicaid fee schedule established by the Centers for Medicare and Medicaid Services (CMS)
- Prohibits physicians from dispensing drugs out of their offices
- Changes reimbursement for repackaged drugs and compounded medications.
    - Bases it on the sum of the allowable fee for all ingredients plus a $5 dispensing fee.
    - Removed language addressing the use of the underlying National Drug Code (NDC) of the manufacturer's product

- Adds a provision during the pendency of an appeal by an employer to require the employer or its insurer to continue payment for prescription medication while the appeal is being adjudicated.
    - If, at the end of the appeal, it is determined that the claim was not compensable, the employer or insurance carrier may seek reimbursement from the employee for the cost of medications during the time of the appeal
- Makes changes to the conditions when a closed claim may be reopened
- Adds a provision changing the process for appeal to the Supreme Court of an en banc decision by the Commission where an injured employee has received compensation
- Makes amendments to some notice provisions
- Makes changes to the process for the Governor to appoint judges
- Makes a number of other technical changes

There are several interesting changes in this legislation, including the changes regarding reimbursement for prescription and compound medications as well as the prohibition of physician dispensing. Considering the high costs of physician dispensing and repackaged medications, we expect the prohibition of physician dispensing to have a positive impact. The removal of language requiring the use of the underlying National Drug Code (NDC) could be concerning unless the prohibition on physician dispensing remains in the bill, since repackaged drugs are primarily utilized by dispensing physicians. The change in reimbursement from an Average Wholesale Price (AWP) model to the Medicaid pricing model may present some challenges to programming payment systems because of the number of variables CMS uses to determine Medicaid reimbursement.

Another noteworthy provision is the requirement that would allow an administrative law judge to order detoxification treatment for an injured employee taking opioids or other narcotics. The bill does not define what would encompass detoxification treatment. Typically, detoxification treatment entails shorter-term programs to wean an individual from an addictive substance but do not include longer-term substance abuse treatment designed to modify behaviors that led to the addiction. Clarity around this provision may be helpful to stakeholders when trying to understand the potential financial impact and potential services to offer to injured employees.

Finally, the provision addressing payment of prescription drugs while an employer appeals a claim is an issue around the country. We are not aware of any other states that have codified a solution for providing payment for medications while a claim is being controverted or appealed. Some enterprising pharmacies have developed business solutions to continue to provide prescription drugs to injured employees in these instances and assume the risk for the dispensed medications.

However, we are unsure of the practicality of an employer or insurer returning to an employee for payment of prescription medications if the employer wins on appeal. Presumably, the employee's health benefit plan, if they have one, could be a backstop for payment. However, it could be awkward for an employer or insurer to initiate a collection proceeding against an employee who just lost an appeal.

Recent court and other activity in Oklahoma has precipitated much of this change and the legislation is in response to that activity. As the bill develops, it is important for stakeholders to voice concerns and provide relevant feedback to ensure that any changes will benefit the workers' compensation system.

A copy of the current version of the bill can be found here.

For questions regarding this legislation or for other legislative or regulatory questions, please contact Brian Allen, Vice President of Government Affairs at Brian.Allen@mitchell.com or at 801.661.2922.



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