Workers' Comp

New York Adopts Final Drug Formulary Rule

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Author profile image

Brian Allen

Vice President, Government Affairs

After an extensive public review process, the New York Workers' Compensation Board adopted its final drug formulary rule on June 5, 2019.

The formulary should be operational for all new claims six months from the date of adoption, which would be December 5, 2019. This gives stakeholders the time necessary to complete the programming for systems to manage the new formulary. For renewal and refill prescriptions on existing claims, the formulary will take effect on June 5, 2020.

Summary

The New York Drug Formulary is unique in the marketplace but does bear some similarity to the California MTUS Drug Formulary. The following summarizes the various provisions of the New York Drug Formulary:

- By December 5, 2019, carriers should identify all claimants currently using non-formulary drugs and provide notice to the injured worker receiving the medication and to their prescribing physician to aid in the transition to a formulary drug or to establish approval to continue using the non-formulary medication.
- Where the formulary applies:
    - The formulary does not apply to medications administered in a hospital or medical provider's office.
    - The formulary does apply to physician-dispensed medications.
    - The formulary does apply to controverted claims.
- OTC drugs should be billed directly to the carrier or its pharmacy benefit manager.

Formulary Structure

The formulary is organized into three lists of medications:

- **Phase A:** Drugs designated as Phase A drugs may be prescribed and dispensed without prior authorization during the first thirty days following the injury, when the claim is accepted, or when the Board establishes the claim, whichever comes first.
    - Phase A drugs can be prescribed for up to a 30-day supply.
    - However, controlled substances and muscle relaxants are limited to a 7-day supply (drugs indicated with a “1” in the “special consideration” column).
    - Anti-infectives indicated with a “2” in the “special consideration” column can be prescribed for their appropriate course of treatment.
- **Phase B:** Drugs designated as Phase B drugs may be prescribed and dispensed without prior authorization for up to a 90-day supply at the earliest of 30 days following the injury, when the carrier has accepted the claim, or when the Board has established the claim.
    - Drugs must be prescribed in accordance with established treatment guidelines.
    - Phase B drugs designated as “2nd” in the drug formulary may be prescribed and dispensed without prior authorization following a trial of a first line drug prescribed in accordance with Phase B and with the applicable treatment guidelines.
    - Phase B anti-infectives indicated with a “2” in the “special consideration” column can be prescribed for their appropriate course of treatment.
- **Perioperative Formulary Drugs:** Drugs designated as Perioperative may be prescribed and dispensed without prior authorization when prescribed during the perioperative period — four days before and four days following surgery.
    - Carriers are encouraged to notify their pharmacy network or pharmacy benefit manager of any authorized and scheduled surgery.
    - Controlled substances and muscle relaxants are limited to a 7-day supply (drugs indicated with a “1” in the “special consideration” column)
    - Anti-infectives indicated with a “2” in the “special consideration” column can be prescribed for their appropriate course of treatment.

Prior Authorization and Review

- Prior Authorization is required in the following circumstances:
    - Phase A drugs when not prescribed in accordance with the formulary;
    - Phase B drugs when not prescribed in accordance with the formulary;
    - Perioperative drugs when not prescribed in accordance with the formulary;
    - Brand name drugs with an available generic, including a brand name drug formulated in a different strength or dosage;
    - Non-formulary drugs (drugs not listed in the formulary);
    - Compounded medications, even if the ingredients are listed in the formulary; or
    - Formulary drugs prescribed outside of adopted Medical Treatment Guidelines once the claim has been accepted by the carrier or established by the Board.
- Prior authorization should be obtained prior to the time the drug is prescribed or dispensed.
- Insurance carriers should provide two levels of review for prior authorization requests:
    - First level review is the initial request from a prescriber for a prior authorization.
    - Second level review may be requested by the medical provider within 10 days of a denial or partial approval of a prior authorization request and should include relevant medical information to support the request for review and be submitted to the carrier's physician for determination.
    - Carriers have four days to respond to a request for prior authorization. If they do not respond, the request is deemed approved.

    - Communication regarding prior authorization requests, determinations and reviews should be done electronically in the manner prescribed by the Chair.
- By July 5, 2019, carriers should provide to the Board the name and contact information for the designated point(s) of contact for first and second level reviews.
- A medical provider may seek review by the Board's Medical Director Office, when a carrier has upheld a denial or partial approval of a prior authorization following the second level review.
- The drug formulary may be reviewed and updated periodically, but not less than annually.
- The formulary rule includes the drug list as published by the Board on January 29, 2019.

We applaud the Board for conducting a thorough process that engaged stakeholders and genuinely sought constructive input. The rule has evolved over time as the Board listened and responded to that input. The result is a rule that should serve the needs of injured workers well in New York.

The rule contains specific information related to the information summarized in this alert. We recommend impacted entities review the rule carefully to ensure compliance. Mitchell is prepared to have their systems programmed for New York in advance of the December 5, 2019 implementation date. We will also assist our customers in identifying injured workers who are currently prescribed non-formulary medications.

A complete copy of the drug formulary rule can be found here.

The New York Drug Formulary list of Phase A, Phase B and Perioperative Drugs can be found here.

For questions regarding this alert, or for other legislative or regulatory questions, please contact Brian Allen, Vice President of Government Affairs, at Brian.Allen@mitchell.com or at 801.903.5754.



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