Workers' Comp

New York Workers' Compensation Board Clarifies Opioid Tax Rule

August 22, 2019
2 MIN READ
Author profile image

Brian Allen

Vice President, Government Affairs

On April 12, 2019, New York Governor Cuomo signed S1509, a comprehensive budget bill. Included in the bill was the creation of Article 20-D, imposing an excise tax on opioids. The tax is to be imposed on the “first sale” of every opioid unit into New York State. The law specifically excludes the “dispensing of an opioid unit pursuant to a prescription to an ultimate consumer…” from the definition of a sale. The tax was effective on July 1, 2019.

There has been some confusion on the imposition and payment of the tax. Entities being taxed were passing the tax along the distribution chain down to the retail pharmacy. Some pharmacies were passing the tax along to the consumer, and in some instances injured workers were being asked by pharmacies to pay the tax out of pocket.

The New York Workers' Compensation Board released a clarification on August 19, 2019, indicating that injured workers are not required to pay and should not be charged for the opioid excise tax. The Board further noted that the tax is not reimbursable by payers per the medical fee schedule or the new drug formulary.

The Board has taken prompt action to address the issue and claims administrators should take steps to ensure injured workers in New York are not being asked to pay the new opioid excise tax. Payers should also be aware that they are not required to reimburse pharmacies for the tax. If an injured worker has been charged the tax, the injured worker should reach out to the pharmacy for a refund. If that is not successful, the Board has indicated that it is willing to intervene on behalf of the injured worker.

The Board clarification can be found here.

Information about and text of the law on the New York Health Department site can be found here.

For questions regarding this alert or for other regulatory or legislative matters, please contact Brian Allen at Brian.Allen@mitchell.com or at 801.903.5754.

Regulatory updates are provided for informational purposes only. This update does not constitute legal advice. Readers of this update should contact their attorney if they wish to obtain advice with respect to any particular legal matter.



©2022 Enlyte Group, LLC.

mitchell | genex | coventry