Workers' Comp

New York Adopts New Pharmacy Fee Schedule and Proposes New Draft of Drug Formulary Rule

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The Workers' Compensation Board in New York has been busy with two rulemakings that will affect how pharmacy care is delivered and reimbursed in the Empire State. The first is a new pharmacy fee schedule and the second is a new draft of the state's drug formulary rule.

Fee Schedule

Effective October 1, 2019, the maximum reimbursement or payment for New York Workers' Compensation Formulary drugs or when applicable, drugs that received Prior Authorization in accordance with section 441.4 of this Chapter, including all brand name and generic prescription drugs or medicines, shall be the lesser of the calculated cost, the contract price (for designated pharmacies), or the usual and customary price for the prescription drug or medication.

- The calculated cost is defined as the Average Wholesale Price (AWP) minus 12% plus a dispensing fee of $4 for brand drugs and AWP minus 20% plus a dispensing fee of $5 for generic drugs — no change from the current fee schedule amount.
- Contract price is the amount a designated pharmacy (or PBM) will pay a network pharmacy.
- Usual and customary is defined as the amount a member of the general public would pay for a drug in a retail setting.

Another significant addition is a new provision requiring pharmacy benefit managers to pass through any rebates received to the employer or insurance carrier and to provide an annual accounting to the carrier or employer of those rebates. Carriers or self-insured employers would be required to report those passed through rebates to the Board. Many of the workers' compensation PBMs were already building the rebates into their contract pricing so the net result will likely be little change in overall reimbursement.

There were also provisions added in the fee schedule to conform with the new drug formulary once that rule is adopted.

Drug Formulary

The Board simultaneously released a revised draft of their proposed drug formulary rule. One of the significant changes from previous drafts was a change requiring prior authorization for all compounded medication, whether or not the ingredients are included in the formulary. This is a positive change and should help curb some of the abuses seen in the use and pricing of compounded medications.

Another change was a clarification that lidocaine may only be prescribed without prior authorization in the 4% strength.

Most of the proposed rule was not changed from the previous version. **The proposed effective date is October 1, 2019**.The Board will be accepting comments on the proposed formulary rule until May 16, 2019.View a detailed summary of that proposed rule.

Text of the adopted fee schedule rule can be found here.

Text of the proposed drug formulary rule 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.



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