Workers' Comp

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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

Centers for Medicare and Medicaid Services (CMS) said it will reject claims dated Oct. 1 or later that don't contain a valid code from the 10th edition of the *International Statistical Classification of Diseases and Related Health Problems*, better known as ICD-10. This includes codes from ICD-9, or a mix of codes from ICD-9 and ICD-10, the agency said. Offices that aren't able to use the ICD-10 codes by Oct. 1 may be able to work with their billing service on devising a solution, or ask insurance companies if they have a customer portal that accommodates the new codes as a short-term fix. At the same time, state workers' compensation divisions are taking various approaches to handling the new diagnostic codes, including mandated new forms and requirements. State workers' compensation programs aren't required to transition to ICD-10, but industry experts indicate the move is advisable to avoid having two sets of codes in use. In 13 states — Arizona, Arkansas, Hawaii, Iowa, Kansas, Kentucky, Mississippi, Missouri, Oklahoma, Rhode Island, Utah, Vermont and Virginia — the regulations employed by workers' compensation divisions don't use the diagnostic codes and thus haven't addressed the ICD-10 transition. For more info, visit www.wedi.org/workgroups/icd-10

Former employees and contractors who worked at nuclear weapons facilities in Colorado, California and Washington could qualify for benefits after the U.S. Department of Health and Human Services moved to include three sites in a special class of locations where workers were exposed to cancer risks.

The National Safety Council is calling on employers to develop workplace policies for opioid prescription painkillers after reviewing research and court cases detailing the negative impacts of these medicines on worker

safety and workers' compensation costs. Many workers who have taken opioid painkillers following on-the-job injuries have become addicted, suffered additional injuries or have fatally overdosed. As a result, courts have ordered employers and worker's compensation insurance carriers to pay for detoxification, medication-assisted treatment and death benefits to surviving family members.

The American Medical Association (AMA) is requesting more doctors use prescription drug-monitoring databases (PDMD). Currently, prescribers in about half the states aren't required to check a PDMP before writing a prescription. Data suggests when prescribers aren't required to check the database, they usually don't. In Kentucky, university researchers found only 27.5% of prescribers in the state were even registered with PDMP in 2009 when checking the database wasn't mandatory. According to *WorkCompCentral*, Kentucky saw usage by 650% when the state began requiring physicians to use the database in 2012.

A National Association of Insurance Commissioners (NAIC) proposal would require insurers to audit TPAs. As the insurance industry continues to outsource functions like specialty underwriting and claim adjusting, NAIC is calling on states to keep a closer eye on third-party vendors. NAIC's Financial Analysis Working Group, part of its Financial Condition Committee, discussed a proposal to essentially mandate insurer audits of TPAs. The group recommended NAIC study costs and benefits of tweaking Model Guideline 1090, which covers third-party administrator regulations, to extend mandatory audits to workers' comp.

With the Social Security Trust Fund teetering on insolvency, the federal government is looking to squeeze whatever savings it can out of the program, according to a report issued by the Government Accountability Office. Social Security disability benefits are meant to replace claimants' wages lost due to disability, and the SSA is charged to reduce benefits for people who are also receiving workers' compensation indemnity benefits. However, according to the report which several Congressional committees requested the GAO conduct, these actions rarely happen.

ARIZONA

The state's Industrial Commission adopted a revised Physician Fee Schedule that will increase reimbursements by an average of 4.5%. The change became effective Oct. 1. The National Council on Compensation Insurance estimates the changes will result in an overall increase in system costs of 1.1%.

CALIFORNIA

In July, the Department of Industrial Relations (DIR) and its Division of Workers' Compensation (DWC) posted a new progress report on implementing Gov. Brown's workers' compensation reforms. The report details increased payments to injured workers and significant cost-saving benefits for employers.

Also, the Office of Administrative Law (OAL) has approved DWC's final version of the Qualified Medical Evaluator (QME) regulations. The effective date of the new regulations was Sept. 1 .The new QME regulations establish a mandatory online QME panel request process for claims where the injured worker is represented by an attorney. Effective Oct. 1, all represented initial panel requests must be submitted through the DWC website.

In other state news, the California Workers' Compensation Institute (CWCI) recently reported average medical and indemnity payments during the initial stages of a claim declined in accident year 2014, which that Senate Bill 863 is having an impact.

WATCHLIST: California. AB 1124, a workers' compensation formulary bill, is pending governor signature. The bill would establish a prescription drug formulary in California's workers' compensation system and result in millions in cost savings, according to the bill's authors. The initiative is designed to ensure injured workers get

the necessary level of care to help them return to work.

FLORIDA

The state Division of Workers' Compensation has adopted two rule changes regarding record maintenance and stop-work orders. The rules became effective Sept. 16**.** A change to Rule 69-L-6.015 reduces the business record retention period requirements for employers to two, rather than three, years of employment activity. Division officials said the new rule will decrease the administrative burden on employers and therefore decrease costs. A change to Rule 69L-6.025 modifies the terms and conditions under which the Division of Workers' Compensation is authorized to release employers from stop-work orders. The change allows employers to resume work if they pay a minimum penalty of $1,000 as a down payment and make periodic payments on the remaining penalty amount. The rule also creates a new form, DFS-F4-1602 Agreed Order of Conditional Release, to lay out the terms when employers ask to pay penalties in installments.

LOUISIANA

WATCHLIST: HB205 was introduced in March and relates to workers' compensation treatment disputes. This bill provides dispute and appeals procedure for determining the workers' compensation medical director's decision.

NEW MEXICO

WATCHLIST: Injured workers in New Mexico would be reimbursed up to $10,904 a year for purchasing up to two pounds of marijuana under the nation's first set of fee schedule rates and maximum quantities regulations for medical marijuana in a state workers' compensation system. On Oct. 2, the Workers' Compensation Administration proposed revisions to its fee schedule that would set the maximum reimbursement for marijuana at $12.02 per gram. Carriers would be required to reimburse the injured worker for up to 8 ounces of medical marijuana – 226.8 grams (a half-pound) – every three months.

NORTH DAKOTA

The state's Workforce Safety & Insurance department has placed its initial medical treatment guidelines on its website. Used in workers' compensation utilization review and claim management, the guidelines were developed primarily from the Work Loss Data Institute's Official Disability Guidelines. These listed procedures are designed to ensure the use of latest available medical evidence to facilitate optimal treatment decisions for injured workers, according to the notice.

NORTH CAROLINA

With the adoption of HB 97, North Carolina has moved a step closer to starting a workers' compensation drug formulary aimed at reducing prescription drug costs for injured workers — a measure implemented in several other states. The governor signed the Formulary Study Bill into Law Sept. 16. HB 97 directs the state Industrial Commission to conduct a study of a drug formulary implementation in workers' compensation claims with an expectation of a report due April 1, 2016, outlining the findings. Click here for more information and refer to section 15.13a (A).

FYI Drug Formulary Note: North Carolina is the latest state to eye a prescription drug formulary as a workers' compensation claim cost-reduction strategy. Texas was the trailblazer in workers' compensation formularies, adopting its own in 2011. Oklahoma, Ohio and Washington have followed suit. In California, a bill that would create a drug formulary is awaiting Gov. Jerry Brown's signature. Regulators in Louisiana, Nebraska, and South

Carolina have also said they're considering formularies. While officials in Arkansas had been interested in a formulary, they have since backed off the idea.

OREGON

Oregon's Workers' Compensation Division (WCD) adopted revisions to its medical rules that went into effect Oct. 1. The revised rules clarify that disputes under Oregon Revised Statutes Sections 656.260 or 262.327 must include certification in the record packet of whether there is a question of compensability on the underlying claim or condition. Revised rules also only allow carriers to deny payment to ancillary service providers for services rendered before submitting a treatment plan. The rules also require a carrier to respond in writing to a provider's request for pre-authorization within 14 days. The regulations also encourage providers to adhere to opioid guidelines approved by the Medical Advisory Committee.

The WCD also revised a notification form for injured workers on the need to perform invasive procedures during independent medical examinations as well as an elective surgery recommendation form for physicians. Doctors performing independent medical exams can ask an injured worker to submit to an invasive procedure as part of the evaluation. Before doing so, the provider must have the injured worker sign Form 3227 affirming the risks of the procedure were discussed. The WCD changes clarify the definition of "invasive procedures." At the same time, the division revised Form 3228, used for correspondence between carriers and providers about elective surgery. After the provider recommends elective surgery, the carrier must use Form 3228 to indicate whether it will seek an independent consultation or approve the request. If the carrier disagrees with the need for surgery, the provider can use the form to inform the injured worker that an agreement can't be reached. Both revised forms became effective Oct. 1.

Texas

A bill (HB 1621) that requires utilization review agents to provide notice of an adverse determination for a concurrent health care services review was signed into law and became effective Sept. 1. Under HB 1621, agents are required to provide notice no later than the 30th day before the health care services discontinuation date.

Another bill (SB 978) signed by the governor June 1 extends Government Code Chapter 552, which allows regulators to keep proprietary information and trade secrets confidential, to workers' compensation rate filings. The law, which went into effect Sept. 1, also requires the Insurance Department to disclose information concerning the department's general process and methodology for rate review, including factors that contribute to the disapproval of a rate.



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