

# Workers' Comp Regulatory Activity

January 15, 2019 – March 1, 2019

## CALIFORNIA

### Amendments to the Proposed Evidence-Based Updates to the Medical Treatment Utilization Schedule

Reg ID: CA50543

**Summaries:** The Division has proposed amendments to the rules addressing evidence-based updates to the Medical Treatment Utilization Schedule (MTUS). The proposed evidence-based updates to the MTUS incorporate by reference the latest published guidelines from American College of Occupational and Environmental Medicine (ACOEM) for the following: (1) Cervical and Thoracic Spine Disorders Guideline (ACOEM October 17, 2018); (2) Elbow Disorders Guideline (ACOEM August 23, 2018); (3) Hand, Wrist, and Forearm Guideline (ACOEM January 7, 2019); (4) Ankle and Foot Disorders Guideline (ACOEM July 16, 2018); and (5) Workplace Mental Health: Posttraumatic Stress Disorder and Acute Stress Disorder Guideline (ACOEM December 18, 2018).

**Historical Development:** Notice of the discussion was released. This rulemaking is exempted from formal APA process.

**What Just Happened:** Notice of the discussion was published.

**What's Next:** Public meeting is scheduled 2/15/2019 and comments are due 2/15/2019.

**Links:** [Notice of 2/15/2019 Public Hearing](#)

## FLORIDA

### Workers' Compensation Reimbursement

Reg ID: FL37757

**Summaries:** The Department withdrew proposed amendments to rules concerning workers' compensation reimbursement. The Three-Member Panel reviewed schedules for maximum reimbursement allowances for physicians, hospital inpatient care, hospital outpatient care, and ambulatory surgical centers. The Department proposed amendments to rules concerning workers' compensation reimbursement to adopt the Florida Workers' Compensation Health Care Provider Reimbursement Manual, 2018 Edition, and the Florida Workers' Compensation Reimbursement Manual for Ambulatory Surgical Centers, 2018 Edition.

**Historical Development:** The Three-Member Panel met 4/10/2018 to review the fee schedules. Comments were accepted. The Three-Member Panel was scheduled to meet 7/6/2018 to review the fee schedule for hospital outpatient care, but the meeting was cancelled. The Department

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published a notice of rule development, and it held a rule development workshop 8/24/2018. The Department published a notice of the proposed rules. The Department published a notice of a correction. The correction does not change the text of the rules. It provides language regarding legislative ratification. The Department accepted comments until 11/27/2018.

**What Just Happened:** The Department withdrew the proposed rules.

**Links:**

- [Notice of Withdrawal](#)
- [Notice of Correction](#)
- [Notice of Proposed Rules](#)
- [Notice of Rule Development](#)

## KENTUCKY

### Pharmaceutical Formulary

**Reg ID:** KY37971

**Summaries:** The Department adopted emergency and proposed new rules related to establishing a drug formulary within the workers' compensation program. H.B. 2 (2018) directs the Commissioner of the Department to establish a drug formulary for medications prescribed for the cure of and relief of the effects of a work injury or occupational diseases on or before 12/31/2018. In addition, the measure requires that evidence-based treatment guidelines for medical treatment [...] including but not limited to chronic pain management treatment and opioid use be developed on or before 12/31/2019.

**Historical Development:**

**8/30/2018 Joint RAC/MAC Meeting:** During the meeting, Dr. Robert Synder, the Medical Director for the Tennessee Bureau of Workers' Compensation, provided an overview of the decisions considered during the development of Tennessee's guidelines. Further, Dr. Snyder provided an overview of how six other states - California, Colorado, Montana, New York, Ohio and Washington - have approached the adoption of treatment guidelines.

**9/27/2018 MAC Meeting:** During the meeting, Commissioner Swisher stated that he will make a recommendation to the Secretary of Labor to establish a standing Medical Advisory Committee that will meet three to four times a year. The purpose of the standing committee will be to review the formulary guidelines (once final) and their implementation. The RAC is also developing a system to expedite the reconsideration process when denials are made. He expects that conferences on a peer-to-peer basis will be required within a short period following a request for reconsideration.

**10/3/2018 RAC Meeting:** Minutes from the 10/3/2018 RAC meeting were recently released. During the meeting, discussion began with the Commissioner's initial preference for a seven-day supply of "first fill" medication. A committee member questioned why the fill was seven instead of three days. The Commissioner assured members the regulations would be written in conformity with the other

guidelines that govern medical practitioners' license and dispensing practices. A committee member also reviewed the proposed effective dates of the formulary – July 1, 2019, for claims of injury on and after that date, and for new prescriptions for injuries that occurred prior to that date; and January 1, 2020, for refills of medications prescribed prior to January 1, 2019 (with certain conditions). The Commissioner explained the rationale for the dates chosen. A committee member suggested that the employer and carrier notify the physicians and PBMs of the formulary.

The RAC met 10/31/2018. An agenda for the meeting was recently released. The RAC discussed a draft of the drug formulary regulation. According to a press release, the Department announced the adoption of ODG by MCG as its treatment guidelines and pharmaceutical formulary provider. "We are honored to add Kentucky to the roster of ODG-mandated states, joining the neighboring states of Ohio, Tennessee, and Indiana. The Department of Workers' Claims and the Medical Advisory Committee should be commended on a thorough, transparent evaluation of evidence-based guidelines and formulary options, placing confidence in a proven solution," commented Phil LeFevre, Managing Director, ODG by MCG. "The ODG by MCG team is prepared and excited to work with DWC and stakeholders on a successful implementation to deliver improved outcomes for injured workers and the system. Complementary training and support will be offered including Webinars and onsite visits."?

**What Just Happened:** The Board published notice of emergency rules in the register. The emergency rules are effective 1/1/2019. The Board also published notice of a new proposed rule.

**What's Next:** A public hearing is scheduled 2/22/2019. Comments are due 2/28/2019.

#### Links:

- [Notice of proposed rule \(pdf pg 244\)](#)
- [Notice of emergency rules \(pdf pg 26\)](#)
- [H.B. 2 \(2018\):](#)
- [8/30/2018 Joint MAC-RAC Meeting Minutes:](#)
- [9/27/2018 MAC Meeting Minutes:](#)
- [10/3/2018 RAC Meeting Minutes:](#)
- [10/31/2018 RAC Meeting Agenda:](#)

## NEW YORK

### Amendments to Prescription Drug Formulary

Reg ID: NY34776

**Summaries:** The Board proposed new rules to create a pharmacy prescription drug formulary. The rules define terms such as preferred and non-preferred drug, unlisted drug, compound drug, generic drug, and dispense, among others. The rules also set forth Prior Authorization (PA) and Utilization Review (UR) procedures for non-preferred or unlisted drugs and exempt certain "Special Fill drugs" or "Perioperative Fill drugs" from the regular PA procedures. As anticipated, a new rule section (441.5) includes a new method by which requests to add pharmaceuticals to the preferred list are reviewed. Legislation enacted in April 2017 required the Board to create the formulary by 12/31/2017, among other changes.

**Historical Development:** Notice of the intent to create the formulary was published on the Board's website. The published notice of the proposed rules in the New York State Register. Written comments were due 2/25/2018. As of October 2018, staff confirmed that the Board is making revisions to the draft rules. The Board plans to publish a revised version of the draft rules and re-open a 30-day comment period. However, when asked about a timeline, staff declined to provide a concrete date of when they will publish the revised proposed rules; only that it would happen in the near future. The Board published the revised version of the proposed rules in the New York State Register. Written comments were due 11/16/2018, but no public hearing is scheduled.

**What Just Happened:** The Board published notice of a revised proposed rule after comments were reviewed.

**What's Next:** Comments are due 2/22/2019.

**Links:**

- [Revised proposed rule \(pdf pg 18\)](#)
- [Board website](#)
- [Board summary of legislative changes](#)
- [Notice of drug formulary requirement](#)
- [Drug Formulary website](#)
- [Notice of proposed rule \(pdf pg 50\)](#)
- [Notice of revised proposed rule \(pdf pg 25\)](#)

## OREGON

### Medical Fee and Payment, Medical Services, and Managed Care Organizations

**Reg ID:** OR50713

**Summaries:** The Division proposed amendments to medical fee and payment, medical services, and managed care organization rules. Proposed changes to Oregon Medical Fee and Payment rules include changes to definitions, the adoption by reference of new medical billing codes and related references, other updated references, and updates to fees and fee schedules. Changes to Medical Services Rules include general updates which add clarity and new provisions. Changes to Managed Care Organization Rules include minor wording updates and additional MCO requirements.

**Historical Development:** The Division drafted proposed rule amendments and posted notice on its website.

**What Just Happened:** The Workers' Compensation Division posted proposed amendments.

**What's Next:** A public hearing will be held on 2/19/2019. In addition, written comments will be accepted until 2/25/2019.

**Links:** [Notice of the Proposed Rule](#)