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2017 workers' comp and auto no-fault legislative session overview

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While many enjoy barbeques, baseball, water sports, camping, vacations and general summer fun, there are a few state legislatures embroiled in budget battles while others are gearing up for special sessions to complete unfinished business. In this report, we highlight some of the more pertinent issues from the legislative and regulatory venues across the country.

Opioid analgesics

The use of prescription and non-prescription opioid analgesics continues to plague the country, though recent efforts have demonstrated some positive results. The Centers for Disease Control and Prevention (CDC) released a report on July 7, 2017, indicating "the amount of opioids prescribed in the United States peaked at 782 morphine milligram equivalents (MME) per capita in 2010 and then decreased to 640 MME per capita in 2015." Additionally, the CDC reports prescribing rates "decreased by 13.1 percent to 70.6 per 100 persons from 2012 to 2015." A similar experience has been noted in the workers' compensation system and in our book of business, as we reported earlier this year in Addressing opioid analgesic use in workers' comp and auto no-fault and our annual drug trend report.

The Workers' Compensation Research Institute (WCRI) also released a report indicating there were "noteworthy reductions in the amount of opioids received by injured workers across several states." States with "substantial" decreases in opioid prescribing for injured workers included Kentucky, Maryland, Michigan and New York. Much of the decrease was attributed to mandatory use of prescription monitoring programs, stricter opioid treatment guidelines and greater awareness in the prescribing community. Despite those gains, the WCRI report goes on to say, "the utilization of opioids remained higher in several states. The CDC report also expresses caution, stating, "… in 2015, at 640 MME per capita, it (opioid prescribing) remains approximately three times as high as in 1999, when 180 MME per capita were sold in the United States …"

Regulatory and legislative efforts to control prescribing continue

Numerous states proposed and adopted new controls on the prescribing of opioid analgesics. Most of the controls had application across the broad spectrum of health care and were not specific to, but will influence, worker's compensation and auto no-fault.

After an attempt last year, **Alaska** adopted HB 159 limiting initial prescriptions of an opioid to seven days, with some exceptions, and requires prescribers to participate in continuing education related to pain management and the prescribing of opioid analgesics. The bill is awaiting action by the Governor.

HB 7052 passed in **Connecticut** and is effective July 1, 2017. This bill also limits initial opioid prescriptions to seven days with exceptions.

Hawaii passed SB 505, a bill limiting initial concurrent opioid analgesic and benzodiazepine prescriptions to seven days, with exceptions. The bill also requires patients be given an informed consent document if opioid analgesics are prescribed beyond 30 days, in conjunction with a benzodiazepine, or if the morphine equivalent dose (MED) exceeds 90 per day. The informed consent provisions of SB 505 take effect on July 1, 2018, with other provisions taking effect earlier.

SB 226 made its way through the **Indiana** Legislature and was signed by the Governor. The new law, effective July 1, 2017, limits initial opioid prescriptions to seven-days and requires various licensing boards to develop additional prescribing guidelines.

The **Kentucky** Legislature passed HB 333, granting rulemaking authority to the medical licensing boards to establish prescribing limits for opioid analgesics, including a provision (in line with the CDC Guideline for Prescribing Opioids for Chronic Pain) prohibiting issuing a Schedule II controlled substance prescription for more than a three-day supply if intended to treat acute pain.

Louisiana joins the ranks of states limiting initial opioid prescribing, passing HB 192, imposing a seven-day limit on initial opioid analgesic prescriptions, with some exceptions, beginning August 1, 2017.

Maryland adopted HB 1432, a bill requiring prescribers to use the lowest effective dose of opioid analgesics possible for the patient's situation along with demonstration of medical necessity when using opioid analgesics to treat chronic pain.

On the regulatory front, the **Mississippi** Workers' Compensation Commission adopted a comprehensive opioid treatment guideline in May of this year covering treatment for acute and chronic pain and requiring a patient risk assessment and treatment plans when utilizing opioid analgesics longer than 90 days.

The **Ohio** Medical Board also proposed new opioid prescribing guidelines limiting the prescribing of opioids for acute pain to seven days, with some exceptions. Next step for these rules will be a public hearing in late July 2017.

Governor Sandoval of **Nevada** signed AB 474, effective January 1, 2018. The bill limits initial prescriptions for a controlled substance to treat pain to 14 days. It also requires a prescription treatment agreement when prescribing any controlled substance for pain beyond 30 days, and requires licensing boards to develop continuing education programs on the prescribing of opioid analgesics and opioid addiction.

The **New Jersey** Legislature passed SB 3, an act dealing with substance abuse disorders but also included a five-day limit on opioid analgesics using the lowest effective dose possible. These changes took effect on May 16, 2017.

North Carolina advanced HB 243 the "STOP Act", defining acute and chronic pain and limiting the initial prescription of opioid analgesics for acute pain to five days. The bill also broadened access to opioid antagonists, shortened the controlled substance database reporting time to the end of the next business day and requires e-prescribing. The bill was signed by the Governor and the opioid limitation section takes effect on January 1, 2018.

Similar to Kentucky, the **Washington** Legislature passed HB 1427 requiring licensing boards to adopt rules limiting the prescribing of opioid analgesics.

Drug Formularies maintain popularity

Drug formularies continue to be a popular solution among workers' compensation policy makers to help ensure quality pharmacy care for claimants while reining in unnecessary medication costs. A number of states advanced formulary laws or regulations this year.

California recently released a second version of their proposed formulary rule in synergy with a 15 day comment period which expires on August 2, 2017. A final adopted rule, with an effective date of January 1, 2018, is expected before the end of the year.

New York slipped an amendment into a budget bill at the 11th hour directing the Workers' Compensation Board to develop a drug formulary to be used for injured workers. The now effective statutory language establishes an implementation deadline of December 31, 2017.

The **Louisiana** Legislature attempted once again to pass legislation establishing a workers' compensation drug formulary. HB 592 advanced through the House but stalled when the governor and workers' comp advisory board registered opposition to the bill.

Montana passed SB 312, authorizing the Department of Labor and Industry to commence rulemaking to institute a drug formulary for injured workers. The Department continues to hold stakeholder meetings and a decision on the formulary is expected by the end of the summer.

The **Pennsylvania** Legislature continues to consider HB 18, a bill would authorize the creation of a drug formulary for their workers' compensation system. The bill is pending in the House and negotiations are continuing.

Arkansas held a public hearing on a draft formulary rule. The Commission heard testimony from a number of stake holders and is currently considering input and revisions to the initial rule.

The **Illinois** Legislature passed HB 2525, a comprehensive bill containing a number of workers' comp reform provisions, including granting rulemaking authority to the Illinois Workers' Compensation Commission to develop a drug formulary. The Governor has concerns over various other reform provisions and is expected to veto the bill.

Nebraska also attempted to pass a workers' compensation drug formulary bill for the second year. The bill once again stalled.

Compounded Medications

While in our book of business, the number of prescriptions and total spend attributed to compounded medication has returned to pre-2012 levels, compounded medications continue to see widespread use in the workers' compensation system, often as a first-line treatment. These high-cost medications are raising concern among policy makers because of their prevalence, escalating cost and lack of clinical evidence of efficacy. Several states have taken or are taking steps to put controls in place so compounded medications are reimbursed only when they are documented to be medically necessary.

A provision in the proposed **California** drug formulary rule would also subject all compounded medications to prior authorization.

Florida amended its provider reimbursement manual and reclassified compounded medications as specialty medications, which under statute, require preauthorization. The rule change, which became effective July 1, 2017 also permits a 10-day response period when prior authorization is sought by the provider.

The **Texas** Division of Workers' Compensation has informally proposed a change to their drug formulary rule, when finalized/adopted, would subject all compounded medications, including those with "Y" only ingredients, to pre-authorization.

Physician Dispensing

There was very little activity around physician dispensing this legislative season. Physician dispensing levels remain high, but stable.

California will likely impose restrictions on physician dispensing through language included in their drug formulary rule. The current draft would require physicians to obtain prior authorization before dispensing medications to a claimant with an exemption for medications dispensed during an initial visit within the first seven days from the date of injury.

Texas once again offered legislation expanding the ability of physicians to dispense medication. The bill did not pass.

Medical Marijuana

States continue to look at legalizing medical marijuana or expanding its use where already legal under state law.

The **Florida** Legislature, in a specially called session, passed legislation to implement a voter-approved medical marijuana ballot initiative from 2016.

The **Indiana** Legislature adopted a resolution urging the appropriate study committee to examine the efficacy of using medical marijuana to treat medical conditions. Typically these studies precede legislation in a subsequent year.

The **Massachusetts** Legislature and Governor continue to discuss the future of HB 1050 which would establish a medical marijuana pilot program.

There are several other related bills pending that would change laws to allow for the possession and cultivation of medical marijuana. A number of states with legalized medical marijuana made changes to their laws to further tighten control on the use and distribution and to expand the conditions for which the use of medical marijuana qualifies.

Missouri and **Nebraska** attempted but failed to pass legislation authorizing the use of medical marijuana.

Utah passed legislation funding clinical studies on the long-term benefits and effects of medical marijuana.

Texas attempted to establish a special committee to study creating a medical cannabis program in the state. That bill failed.

Auto No-Fault

As state legislators look for solutions to help contain personal automobile insurance costs, the no-fault provisions are receiving more scrutiny. Legislators are seeking more flexibility for consumers while the federal government is looking for ways to ensure costs related to auto accidents are not pushed into the Medicaid or Medicare systems.

The **Florida** Legislature considered HB 461 and HB 1063, bills which would have repealed the auto no-fault provisions in the Florida statutes. Both bills failed to make it out of committee.

Hawaii passed HB 235, capping acupuncture treatment and tying reimbursement to the workers' compensation fee schedule.

Michigan introduced legislation to create a tiered personal injury protection benefit that could be selected by the policyholders. The bill has not yet been heard by a committee.

At the **federal** level, Congress is considering HR 938 and HR 1122 which would expand recovery efforts for Medicaid and Medicare when benefits should be paid by other plans, including those related to auto accidents.

Looking ahead

Looking ahead, we expect courts will continue to examine the adequacy of benefits and the constitutionality of various provisions of state workers' compensation laws. Legislators and regulators will also maintain attention on, and attempt to stave off, unfriendly tort outcomes by re-evaluating and retooling their laws and regulations to reflect the evolving landscape. This, coupled with the on-going challenges surrounding the use of opioid analgesics and compounded medications, will continue to generate significant activity in state capitols and regulator's offices around the country. Our government affairs team will continue to monitor, engage and inform as we become aware of pending changes.

For additional information or questions regarding this or other legislative and regulatory matters, please contact Kevin Tribout, Executive Director of Government Affairs, at 1-813-627-2445 or via email at Kevin.Tribout@optum.com. You may also contact AskGA@optum.com or view the Workers' Comp Pharmacy Resource Guide and Auto No-Fault Pharmacy Resource Guide.

Resources:

1. CDC – "Vital Signs: Changes in Opioid Prescribing in the United States, 2006-2015." *Morbidity and Mortality Weekly Report*, July 7, 2017.

2. WCRI – *Interstate Variations in Use of Opioids* 4th edition, June 2017.

About Optum for Workers' Compensation

Optum Workers' Comp Solutions collaborates with clients to lower costs while improving health outcomes for the claimants we serve. Our comprehensive pharmacy and ancillary care services combine data, analytics, and extensive clinical expertise with innovative technology to ensure injured workers receive safe, efficacious and cost-effective care throughout the lifecycle of a claim. For more information, email us at expectmore@optum.com.