THE SENTINEL

KEEPING WATCH OVER WORK COMP LEGAL TRENDS

SUMMER 2016

Quarterly Newsletter

NEW LAWS LIMITING OPIOID PRESCRIPTIONS

Over the last few months, legislators in the northeast have been busy proposing, and passing, legislation limiting initial opioid prescriptions.

On June 22, 2016, New York's Governor Cuomo signed Assembly Bill 10727 with provisions related to the training of pain management providers, substance abuse disorder accessibility, limitations on initial opioid prescriptions, and educational outreach. The most notable provisions, from a workers' compensation payer perspective deal with the limitation on opioid prescriptions.

Part C of the Bill states that *"a practitioner … may not prescribe more than a seven-day supply of any Schedule II, III, or IV opioid to an ultimate user upon the initial consultation or treatment of such user for acute pain."*

This seven-day limitation is limited to initial prescriptions and the Bill includes the statement that acute pain, as referenced above, does not include chronic pain, cancer related care, or hospice care.

A similar law was signed in Massachusetts on March 14, 2016, which was the first law in the nation limiting the duration of an initial opioid prescription to just 7 days. While the Massachusetts bill does not limit this requirement to just acute pain, it does permit the prescribing practitioner to prescribe more than a 7-day supply if their medical judgement indicates it is necessary and they properly document that determination in the medical records.

This Newsletter includes updates on laws affecting opioid prescriptions, recent case law decisions, and compound medications

---

The workers' compensation cost containment space is constantly evolving. Managing compliance changes across multiple jurisdictions can be a challenging and almost impossible task.

PRIUM has developed a compliance and regulatory consulting group to assist payers and stakeholders in tracking and managing their ongoing compliance efforts.

PRIUM

A brief comparison of these laws is included below:

Opioid Prescription Limitation Laws

	Massachusetts	Maine	New Hampshire	New York	New Jersey	Connecticut
Bill Title	HB 4056	LD 1646	HB 1423	AB 10727	S2035	SB 352
Enacted	3/14/2016	4/19/2016	4/28/2016	6/22/2016	In Senate	In Senate
Effective	3/14/2016	1/1/2017	8/1/2016	7/22/2016		
Limitation on Initial Opioid Prescription	7 Days	7 Days	The Bill directs various agencies to create limits for prescribers under their dominion no later than 8/1/2016	7 Days	7 days	7 days
Limitation on Subsequent Opioid Prescriptions	No Limitations	7 Days		No Limitations	No Limitations	No Limitations
Limitations	Prescriber may write a longer script if they document the reason	Only applies to prescriptions for Acute Pain		Only applies to prescriptions for Acute Pain	No limitations	Prescriber may write a longer script if they document the reason

The effect of these initial limitation laws is not yet known, but the intent of both is to curb the growing problem of opioid addiction in these states. Unfortunately most of these laws do not deal with access to opioids for patients that have been on opioids beyond the initial prescription.

Maine's New Opioid Law Sets MED Threshold

The passage of Maine's LD 1646 goes beyond just the initial opioid prescription limitations and includes provisions dealing with the maximum daily morphine milligram equivalents (MED) for different patient classes and mandatory PDMP requirements.

Morphine Equivalent Dosage Limits

Several new sections, including section 3300-F of 13.32 MRSA set several requirements regarding the prescription of opioid medications. The relevant portion is quoted below:

1. *Except as provided in subsection 2, an individual licensed under this chapter whose scope of practice includes prescribing opioid medication may not prescribe:*

   A. To a patient any combination of opioid medication in an aggregate amount in excess of 100 morphine milligram equivalents of opioid medication per day;

   B. To a patient who, on the effective date of this section, has an active prescription for opioid medication in excess of 100 morphine milligram equivalents of an opioid medication per day, an opioid medication in an amount that would cause that patient's total amount of opioid medication to exceed 300 morphine milligram equivalents of opioid medication per day; except that, on or after July 1, 2017, the aggregate amount of opioid medication prescribed may not be in excess of 100 morphine milligram equivalents of opioid medication per day;

   Sec. 13.32 MRSA §3300-F(1)

While there are some exceptions enumerated in subsection 2, they are limited to treatment and diagnosis classes that are not typically seen in workers' compensation claims. This section also mandates prescriber education and monetary penalties for anyone who violates these requirements. In essence, Maine has enacted an MED threshold by law, and providers and payers need to begin working towards that threshold with their patients and injured workers' who are on ongoing opioid therapy.

Mandatory PDMP Monitoring

Additionally, the Bill created a new *Sec. 9. 22 MRSA §§7253* which will require Prescribers to consult the PDMP upon the *"initial prescription of benzodiazepine or an opioid medication to a person and every 90 days for as long as that prescription is renewed".*

The new section also includes requirements that Dispensers consult the PDMP prior to filling a prescription for a benzodiazepine or an opioid in several circumstances. Similar to the Morphine Equivalent Dosage section, this section also contains monetary penalties for failure to adhere to the new requirements.

Texas Ruling on Compound Medications

In *Travelers Indemnity Company of Connecticut v. American Specialty Pharmacy*, the Texas State Office of Administrative Hearings (SOAH) recognized that (in at least some instances), compound medications are excluded from the closed formulary – and so require preauthorization – even when they don't contain an N drug component.

Travelers had denied payment for a compound medication because the prescribing doctor did not request preauthorization. The Medical Review Division ordered Travelers to pay for the dispensed medication. Travelers argued before the SOAH that the compound medication should have been subject to preauthorization under the closed formulary because it was "experimental or investigational in nature and has not been accepted as the prevailing standard of care."

The SOAH agreed with Travelers and ruled that because the topical cream was "*investigational or experimental…its use required preauthorization.*"

While this opinion is case and fact specific, it does set a persuasive precedent under which the SOAH has now officially recognized that at least some compounds composed of all Y drugs are excluded from the TCF.

Since the implementation of the Texas Closed Formulary, stakeholders have been vocal in their concerns about compound medications being a loop hole that providers would exploit. To address some of those concerns, the TDI-DWC has recently issued a Compound Medications Plan-Based Audit to evaluate the impact of compound medications on the Texas system.

Florida Case Law Update

There have been two major decisions by the Florida Supreme Court over the last two months involving key issues in the FL workers' compensation system.

In, Westphal v. City of St. Petersburg, etc., et al., the Florida Supreme Court ruled that the current 104 week cap on Temporary Total Disability (TTD) benefits to injured workers' is unconstitutional. The Court focused on the potential gap in benefits when an injured worker cannot return to work and is totally disabled but the provider has not determined that the worker is at MMI. The concept of a cap on TTD is not unconstitutional, just a cap on TTD that create this type of gap, as a result the Court revived the 5 year limit on TTD benefits that was controlling prior to the 1994 amendment which limited TTD to 104 weeks.

In Castellanos v. Next Door, the Florida Supreme Court ruled that FS 440.34, the state's mandatory attorney fee schedule, is unconstitutional. In this case, the effect of the mandatory scaled fee schedule for injured workers' attorney resulted in an "unreasonable" fee to the attorney, a fee which could not be challenged. In the decision, the Court stated that the "inability of any injured worker to challenge the reasonableness of the fee award in his or her individual case is a facial constitutional due process issue."

In follow-up to the Castellanos case, the National Council on Compensation Insurance recommended a 15% rate increase in Florida due to the increased attorney cost that insurers are likely to see as a result of the fee schedules removal. The NCCI has yet to weigh in on the rate effect of the Westphal decision.

Pennsylvannia Medical Marijuana

On April 17, 2016, Gov. Wolf signed SB 3 providing for the establishment of a medical marijuana program in the state of Pennsylvania. The Bill contains explicit language removing reimbursement obligations from insurers. Section 2102 of the new Act contains the following language:

> *Nothing in this Act shall be construed to require an insurer or a health plan, whether paid for by Commonwealth funds or private funds, to provide coverage for medical marijuana.*

Under the Act, insurer is not a defined term, so the explicit payment restriction is not as strong as some jurisdictions that specifically included workers' compensation insurers in the broader definition of insurers.

Illinois Compound Medication Legislation

A Bill recently introduced in the Illinois house aims to place controls around compound medications in workers composition claims. HB 6575 has been proposed as an amendment to the Workers' Compensation Act and if passed in its current form, would limit payers liability for custom compound medications and require preauthorization by the employer for any compound medication prescribed for more than 7 days. Additionally, the Bill would limit charges for custom compound medications to $75.

The Bill was referred to the Rules committee on 5/10/2016.

For more information about any of these topics, or for copies of any referenced documents, rules, publications, or laws, please contact PRIUM's compliance team at: compliance@prium.net or reach out to your account executive.

PRIUM