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Workers' Comp

StateWatch Winter 2016

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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

A November **National Council on Compensation Insurance** (NCCI) report indicates that eliminating the Affordable Care Act, with its focus on promoting wellness (particularly obesity reduction), would result in the workers' compensation industry missing out on three-four percent annual savings.

Meanwhile, prescription drugs represent a significant portion of workers' compensation medical costs and are a primary focus of WC-related legislative activity. **NCCI** estimates that for every $100 paid for medical services provided to workers injured in 2014, $17 were spent on prescription drugs. Furthermore, NCCI concluded that the prescription portion of medical costs increases rapidly as claims age. For instance, for claims over 10 years, approximately $45 to $50 of every $100 medical costs spent are for prescription drugs.

Health care costs for injured workers diagnosed with opioid abuse were more than double that of non-abusers in the first 12 months following injury, per a report in the November edition of the ***Journal of Occupational and Environmental Medicine***. The study looked retrospectively at U.S. insurance claims from 2003 to 2014 in which patients received at least one opioid prescription. The Pfizer-funded study included 35,967 opioid-treated injured workers.

Medical severity of workers' compensation claims fell 2.6 percent last year in states administered by the NCCI. Medical severity is driven by the combination of price and utilization of services, per the institute's quarterly economics briefing. Because medical expenses rose last year, utilization fell resulting in an overall decrease in

severity, NCCI concluded. The **NCCI** economics briefing also provides forecasts for economic factors expected to have an impact on workers' compensation. It uses Moody's Analytics and U.S. Department of Labor data as sources.

The **Federal Drug Enforcement Administration (DEA)** has reduced its 2017 quota of U.S. manufactured opioids by at least 25 percent, citing a decreased demand from prescribers. This includes oxycodone, fentanyl, hydromorphone and morphine. Quotas for a few opioids, such as hydrocodone (33 percent), were reduced even further. The DEA published its final order on the quota in the Federal Register on Oct. 5. The controlled substance quota is designed to ensure an ample supply of controlled substances are available to meet medical need, while limiting the amount available for diversion from legitimate use, agency officials said. The DEA establishes quotas for more than 250 Schedule I and II controlled substances each year.

U.S. Labor Secretary Thomas Perez recently said there might be a role for federal oversight of workers' compensation systems if states continue to strip away benefits and shift costs to taxpayers. Perez made the comments in light of the **U.S. Department of Labor's** recently released 43-page report, "Does the Workers' Compensation System Fulfill its Obligation to Injured Workers?" The authors concluded employers bear just a fraction of overall workplace injury costs, and injured workers are in danger of falling into poverty because states are failing to provide adequate benefits. Many insurers and other industry stakeholders challenged the findings in this report.

States without workers' compensation medical fee schedules paid the most for medical services in 2015, according to a study by the **Workers Compensation Research Institute.** In looking at a group of 28 states, researchers indicated that lack of a fee schedule increased medical prices by more than 50 percent.

Statewide

ARIZONA

The state has recently implemented evidence-based rules governing appropriate use of opioids for chronic pain. Arizona also has a utilization review process intended to fast track resolution of disputes when a treatment request is denied. Rules adopted by the **Arizona Industrial Commission** require that certain treatment requests comply with the recommendations in the chronic pain section of the Official Disability Guidelines, published by the Work Loss Data Institute. The commission has also adopted changes to self-insured pool excess coverage requirements in September.

CALIFORNIA

SB 1160 was signed by Gov. Brown Oct. 1. This new workers' comp regulatory legislation is designed to make several changes in the current state program. Among the changes is a provision preventing physicians convicted of fraud from participating in the state's workers' comp system. SB1160 will also imposes new lien filing requirements and prohibit utilization review for some treatments provided within the first 30 days of an injury. Starting in 2018, many services provided by a member of a payer's medical network for an accepted body part or condition will not be subject to prospective utilization review in the first 30 days of an injury. Hospitalization and surgical services will still require prospective UR under terms of the bill, as will psychological treatment, home health care, imaging and radiology, and durable medical equipment costing more than $250.

Gov. Brown also passed **SB 482**, a bill designed to reduce "doctor-shopping" for those addicted to opioids. The new law, which goes into effect Jan. 1, requires prescribers to consult the Controlled Substance Utilization Review and Evaluation System (CURES), the state's prescription drug monitoring program, to review a patient's prescription history before beginning a Schedule II-IV drug regimen for the first time. The law also requires

further review with CURES every four months if the patient is still using a controlled substance. If it is determined the patient is already on a Schedule II or III drug, prescribers cannot provide an additional controlled substance until determining there is a legitimate medical need. Physicians who fail to comply will be referred to the appropriate state licensing board for sanctioning.

Another approved workers' comp bill, **AB 2883**, will mandate all business workers' compensation insurance policies, including in-force policies, to cover, among others, certain officers and directors of private corporations, working members of partnerships and limited liability companies that may have been previously excluded from coverage. The law goes into effect Jan. 1.

In other California news, the **Division of Workers' Compensation** (DWC) posted its New Release No: 2016-106, a progress report on the state's Independent Medical Review (IMR). Highlights of the report include system improvements, data on who's filing IMRs, issues of dispute and further refinements. The analysis also indicates there has been some improvement in the dispute resolution process.

The **Workers' Compensation Insurance Rating Bureau of California** (WCIRB) recently released its Senate Bill No. 863 WCIRB Cost Monitoring Report — 2016 Retrospective Evaluation. The annual report is part of a multi-year cost-monitoring plan developed by WCIRB following the 2012 signing of SB 863, a workers' comp reform initiative designed to increase benefits to injured workers and initiate cost-saving efficiencies into the system. The 2016 report includes WCIRB's final comprehensive retrospective evaluation of the cost impact of SB 863 based on data emerging through the third quarter of the year. Based on the most current information, WCIRB estimates the impact of SB 863 has resulted in an annual net system-wide savings of $1.3 billion, or 7 percent of total system costs.

A November report by the **Department of Industry Relations** (DIR) indicates 470,000 nonfatal workplace injuries and illnesses were reported by California employers in 2015, resulting in an overall incidence rate of 3.8 cases per 100 workers, the lowest rate in more than a decade. However, the same report showed that Hispanic workers sustain the highest number and incidence of workplace injuries, accounting for 53 percent of all state cases in 2015. The percentage is higher in construction, manufacturing, mining and natural resource industries, where Hispanics make up more than two-thirds of the state's injured workers. Sprains, strains and tears are the leading cause of injuries that require employees to miss time from work, according to DIR.

COLORADO

The state **Department of Labor** recently posted adopted rules focusing on workers' compensation. Rule 16 addresses utilization review, defining the standard terminology, administrative procedures and dispute resolution procedures required to implement the division's medical treatment guidelines and medical fee schedule. Rule 18 details the state's medical fee schedule. The rules take effect Jan. 1.

Colorado voters overwhelmingly rejected a state ballot initiative that would have created a universal health care system to cover all medical treatment, including care for work injuries. The Colorado Secretary of State reports that 79.7 percent of voters opposed **Amendment 69,** which would have levied a 10 percent payroll tax to fund the ColoradoCare single-payer program. The measure would have covered work injuries as well, but did not specify how work comp would be folded into the universal health care system. Instead, the measure would have left those questions to an administrative board and the legislature.

The **Colorado Division of Workers' Compensation** has adopted changes to its medical fee schedule that include new conversion factors for calculating reimbursement rates under the state's Resource-Based Relative Value Scale. The new fee schedule will apply to services rendered on or after Jan. 1, 2017. Over-the-counter medications will be reimbursed using the National Drug Code and associated average wholesale price set by the

manufacturer; but these meds will not be eligible for dispensing fees.

WATCHLIST: On Nov. 14, the **Colorado Department of Labor and Employment** posted a notice of hearing to consider amendments to Rule 17, Exhibit 5 for medical treatment guidelines for cumulative trauma conditions. You can review the rules here.

FLORIDA

Two reports released last November signal that Florida attorney fees are rising in the wake of the state Supreme Court's decision in April finding the statutory fee cap on claimants' fees unconstitutional.

ILLINOIS

WATCHLIST: After 17 months, the state House finally held a hearing for **HB 4248**, legislation that would reduce the Illinois medical fee schedule by 30 percent and require a major contributing cause standard. According to the 2016 Oregon Workers' Compensation Premium Rate Ranking Summary, Illinois is tied for seventh with Oklahoma for the highest medical fee rates, at $2.23 per $100 of payroll.

INDIANA

The **Indiana Department of Insurance Commissioner** recently approved a 9.3 percent reduction for workers' compensation rates effective Jan 1, 2017. The approved rate decrease will reportedly result in savings of approximately $82.7 million dollars for Indiana businesses.

NEW MEXICO

On Jan.1, the **New Mexico Workers' Compensation Administration** (WCA) will no longer accept paper copies of the first report of injury and subsequent report of injury forms. Claims administrators must file these forms online. The WCA also updated utilization review rules. Employers can now establish their own system of case management or UR at their own expense, or refer issues to the WCA or its contractor. The intent is for UR processes to be designed to consider only the medical reasonableness or necessity of a treatment request. The process should not address issues of compensability, according to WCA.

NEW YORK

WATCHLIST: The **New York State Workers' Compensation Board** has issued a pharmacy benefit plan calling for a drug formulary to provide stronger medication oversight. Under the board's plan, the formulary would bar compounded topicals dispensed by physicians and reimburse for medications dispensed at doctor's offices only at commercial pharmacy rates. It would also require carriers and employers to contract with pharmacy benefit managers. The board has invited stakeholders to weigh in on its proposed plan.

OREGON

The **Oregon Workers' Compensation Division** adopted new certification regulations requiring claims examiners to spend more time reviewing rules, statutes and case law, and less time studying interactions with independent medical examination providers. Starting in January, claims examiners will now need to spend 6 hours (instead of 4) studying the state's regulations for certification. At the same time, the new rules will reduce to one hour from three the amount of training time that must be dedicated to interactions with IME providers. The new rules also clarify insurer responsibilities relating to claims examiners.

PENNSYLVANIA

Gov. Wolf signed **SB 1202,** which requires prescribers and dispensers to check with the newly created prescription drug monitoring database each time a patient receives an opioid or benzodiazepine. It also requires prescribers and dispensers to update the monitoring program within 24 hours of writing or dispensing medication. Currently, new information must be loaded within 72 hours. The measure also requires that health care providers obtain initial and ongoing education in pain management, including identification of addiction and the appropriate use of opioids.

TEXAS

Per a recent **Texas Department of Insurance** (TDI) report, injuries requiring time off work were down 12.3 percent in 2015**.** Just over 46,000 Texans spent time away from work due to occupational injuries and illnesses in 2015, TDI stated.

About half of Texas' workers' comp claims were treated in-network and those claims tended to perform better and cost less than out-of-network claims, per the **Texas Department of Insurance** report on 2014-15 claims data. This year's report card is the first to show networks outperforming non-network care by nearly every metric. According to the Texas Research and Evaluation Group, the networks represent about 47 percent of all new claims in the system and tend to be doing better and improving at a faster rate than non-network claims.

VIRGINIA

WATCHLIST: The **Virginia Workers' Compensation Commission** has released its complete timeline to implement medical fee schedules mandated by **HB 378.** The commission will review final proposed fee schedules on Jan. 4, and discuss implementation and maintenance requirements. Officials say the schedules will reduce the 2,000 medical fee disputes that occur each year in Virginia.

WASHINGTON

Gov. Inslee has issued an executive order aimed at bringing together state agencies, public health organizations, law enforcement and others to combat the opioid crisis. The order contains a wide range of goals, including decreasing the supply of illegal opioids such as heroin and Fentanyl in the state. The governor also wants to expand programs that help primary care providers work with patients who use opioids, such as a pharmacy hotline or the University of Washington's TelePain program.

WYOMING

The state **Department of Workforce Services** recently issued several provider bulletins regarding treatment of injured workers. Coflex (an interlaminar stabilization device) can now be approved for treatment if the procedure meets the preauthorization guidelines. Also, a dorsal root ganglion stimulation procedure will only be approved if the claimant is definitively diagnosed with complex regional pain syndrome (CRPS) as per the FDA recommendations and meets preauthorization guidelines. Lastly, the anticonvulsant drug Lyrica (pregabalin) can be prescribed for 60 days' treatment of radicular pain if documentation demonstrates the claimant has trialed gabapentin and failed. If there is no documented improvement, then the prescription will be denied.

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