

StateWatch

Notice of Regulatory Alerts

Fall 2017

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. This information is also available online at genexservices.com/legislative-updates.

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National

The Centers for Medicare and Medicaid Services (CMS) is now offering to *re-evaluate Medicare set-aside amounts* that it has already approved in cases where medical cost projections have substantially changed, a step that may allow more workers' compensation claims to move to settlement. CMS introduced the so-called re-review option in the latest version of its **Workers' Compensation Medicare Set-Aside Portal User Guide** dated July 10.

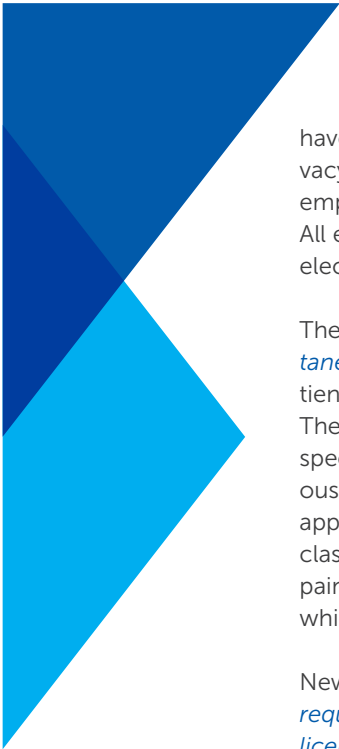
In other **CMS** news, the agency has *proposed removing knee replacements* from the Medicare "inpatient- only" list of procedures starting next year — a step which may spur movement of the surgeries from hospitals to ambulatory centers. The CMS proposal comes as some are predicting an increase in the number of knee replacements that will be covered by workers' comp as a result of the aging workforce.

The 16 percent of Americans who have mental health disorders *receive more than half of all opioids* prescribed in the U.S., according to a new study published in the *Journal of the American Board of Family Medicine*. The **University of Michigan** and **Dartmouth College** researchers estimate that among the 38.6 million Americans with mental health disorders, 18.7 percent use prescription opioids. Adults with mental health conditions received 60 million of the 115 million prescriptions distributed in the U.S., or 51.4 percent, the authors found. The researchers analyzed a sample of the noninstitutionalized U.S. adult

population from the Medical Expenditure Panel Survey. Prescription opioid use was defined as receiving at least two prescriptions in a calendar year. Mental health disorders included depression and anxiety, which are the predominate mental health disorders among U.S. adults, the authors said.

A recent **Workers Compensation Research Institute** (WCRI) study notes that workers' compensation *reforms have had limited impact on physician dispensing*. Among states in the study, "A Multistate Perspective on Physician Dispensing, 2011–2014," Illinois saw the largest increase in payments for drugs dispensed from doctor 57 percent in 2011 to 64 percent in 2014. Florida (58 percent) and California (54 percent) were also at the top of the list. One reason the percentage of total drug spend remained high, according to WCRI, was the shift to dispensing new strengths of frequently prescribed medications. Many states have capped payments for physician-dispensed drugs at amounts based on the average wholesale price (AWP) of the drugs. But by switching to new drug strengths with higher AWP, dispensing doctors have been able to circumvent the reforms.

In its continued effort to improve safety for workers across the nation, **OSHA** has *changed the way injury and illness are tracked* in the workplace through electronically submitted records. Organizations employing more than 250 workers must now submit electronic records of onsite OSHA Injury and Illness forms. Though many employers



have voiced concerns of breaching employee privacy, OSHA officials say the practice will motivate employers to focus on safety in the workplace. All employers must be in compliance with the electronic system by Dec. 1.

The **FDA** has [granted fast-track designation for tanezumab](#), a medication for the treatment of patients with chronic low back pain or osteoarthritis. The FDA's fast-track designation is intended to speed the review of new therapies to treat serious conditions and fill unmet medical needs. If approved, tanezumab would be the first in a new class of non-opioid medications to treat chronic pain, according to Pfizer Inc. and Eli Lilly and Co., which are working together to develop the drug.

New legislation has been proposed that would [require states to adopt uniform and reciprocal licensing laws](#) for independent claim adjusters. The **Claims Licensing Advancement for Interstate Matters, or CLAIM Act (HB 3363)**, is similar to another bill (HR 2998) which failed to pass in the 114th Congress. Currently, 34 states require independent adjusters to hold operational claims licenses, but inconsistencies within state requirements cause adjusters to face licensing and regulatory barriers when working across state lines. The CLAIM Act would give states four years to adopt uniform and reciprocal licensing laws for independent claims adjusters. If states do not meet this requirement, adjusters would be able to apply to the National Association of Registered Agents and Brokers for a license. The bill is supported by the Association of Claims Professionals, which recently [commissioned a survey](#) which found about 125,000 commercial insurance claims adjusters working in the U.S. who, on average, hold licenses in 10 states. The association hoped that the statistics persuade lawmakers to vote for the CLAIM Act. The Act has been referred to the Committee on Financial Services.

The **International Association of Industrial Accident Boards and Commissions**, has [issued its most recent EDI Claims Standards release](#). The release applies to electronically submitted first report of injury and subsequent report of injury forms.

The **U.S. Drug Enforcement Administration** recently announced that it is [proposing a reduction for controlled substances](#) that may be manufactured in the U.S. next year by 20 percent.

The signing of legislation by North Carolina Gov. Roy Cooper on July 20, triggered the enactment of the **Enhanced Nurse Licensure Compact (eNLC)**, which [allows nurses to have greater licensure mobility across state borders](#). The compact is designed to increase access to care while maintaining public protection. The eNLC, which is an updated version of the original NLC, allows for registered and licensed practical/vocational nurses to have one multistate license, with the ability to practice in person or via telehealth in both their home state and other eNLC states. States in the compact include: Arizona, Arkansas, Delaware, Florida, Georgia, Idaho, Iowa, Kentucky, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia and Wyoming.

California

The **Department of Industrial Relations (DIR)** and its Division of Workers' Compensation (DWC) recently posted a [progress report on the Independent Medical Review \(IMR\) program](#). IMR is the medical dispute resolution process that uses medical expertise to obtain consistent, evidence-based decisions. The review report provides an evaluation of the program during the third complete year in which IMR data was available for all dates of injury.

In August, the **DWC** dismissed more than 292,000 unresolved liens by operation of law. The liens belong to claimants who did not properly file the required Supplemental Lien form and 4903.05(c) Declaration form. Lien claimants who failed to file the forms as required will have their liens dismissed. [Labor Code section 4903.05\(c\)](#) was amended as part of recently enacted SB 1160 reform measures to combat fraud in the workers' compensation system. To comply with SB 1160's requirements, DWC made available an e-form declaration and the Workers' Compensation Appeals Board promulgated [regulations](#) requiring the use of this form. Lien claimants should be aware that DWC will not send notification to claimants whose liens have been dismissed. DWC has posted [frequently asked questions on the supplemental lien form](#).

MTUS Update: Aug. 2 marked the close of the first 15-day comment period for the *California Medical Treatment Utilization Schedule (MTUS) – Formulary (AB 1124)*, which becomes effective Jan. 1, 2018. The second comment period ends Sept. 22.

WATCHLIST: The **DWC** says its proposal to update the Medical Treatment Utilization Schedule (MTUS) will also serve as the basis of the prescription drug formulary set to go into effect at the start of next year. In August, the division *proposed rules that would adopt 14 chapters* from the most recent American College of Occupational and Environmental Medicine treatment guidelines. The rules would update some sections of the MTUS based on guidelines that are more than 10 years old, which the division said is its main goal. The DWC said in its rule-making notice that restructuring MTUS as a “single-source guideline” will reduce administrative burdens by ensuring all treatment recommendations are consistent and contained in a single set of guidelines. While updating the guidelines is DWC’s primary objective, the proposal to adopt new chapters from ACOEM also ties in to plans to launch a prescription drug formulary at the start of 2018, according to officials. The proposed formulary is based on ACOEM’s, and the organization’s treatment guidelines are used to determine whether medications are appropriate for a worker’s given condition. Under California’s proposed formulary rules, drugs classified as “exempt” can be prescribed to injured workers without the need for prospective utilization review if the prescription is in accordance with ACOEM’s treatment guidelines. Drugs classified as “non-exempt” or that aren’t included on the proposed MTUS drug list, must go through utilization review. But whether a drug is recommended for a worker’s condition depends ultimately on the diagnosis and the recommendations in the pertinent chapter of ACOEM’s guidelines, according to officials. The enactment of SB 1160 last year exempted the DWC from the formal rule-making process step governed by the Administrative Procedure Act (APA) to update MTUS. The APA requires state agencies to respond to comments received during a 45-day public comment period. However, the division must still accept comments for 30 days and hold a public hearing before it can revise the treatment guidelines. The division met these requirements earlier this month.

Colorado

WATCHLIST: The **Division of Workers’ Compensation** has *released a draft update to its medical treatment guidelines for chronic pain*, more than doubling the length of the section on opioid prescribing. The guidelines now specify a threshold dose for opioids at which a doctor should consider tapering the dosage or referring the patient to a pain or addiction specialist. The threshold dose of 90 morphine milligram equivalents per day would bring it more in line with the *CDC’s opioid prescribing guideline*. Colorado’s draft guideline also calls for a sequence in which physicians should first prescribe opioid alternatives for treating neuropathic pain, starting with tricyclic anti-depressants, followed by gabapentin or pregabalin, then anticonvulsants, and finally low doses of opioids such as tramadol.

Florida

As of July 1, compounded drug *prescriptions billed at more than \$1,000 require preauthorization*. A new section of the *Florida Health Care Provider Reimbursement Manual* defined the dispensing of compound drugs as a “specialty service” on par with specialist consultations, surgeries, X-rays and special diagnostic tests. The new designation triggers Paragraph 440.13(3)(i) of the Florida Statutes which requires the pre-authorization contingent, unless a carrier fails to respond within 10 days to a written request for authorization. Emergency care is also exempt from preauthorization.

Gov. Scott recently signed three workers’ compensation bills which become effective June 1. **HB 1007** requires all insurers *to establish and maintain an anti-fraud unit* or contract with a fraud investigation and reporting unit. Insurers have to adopt an anti-fraud plan and designate at least one employee to implement HB 1007’s requirements. Annual reports are required to be submitted to the state Division of Investigative and Forensic Services. HB 1009 *keeps the insurers’ anti-fraud plans confidential* and exempt from disclosure under the state’s public information act. HB 1107 exempts injured workers’ contact information from public records requests *to keep lawyers and providers from seeking out potential clients*. The governor also signed HB

837 which adopts the National Association of Insurance Commissioners' [recommendations on large-deductible workers' compensation policies](#).

HB 837 became effective July 1.

Kentucky

The state has recently [classified all gabapentin products as a Schedule V Controlled Substance](#) to help reduce the risk to public health. This new state regulation took effect July 1. While not federally classified as a controlled substance because it has little potential for addiction and abuse, gabapentin has been associated with misuse as it reportedly boosts the high or euphoric effects abusers experience when taken with opioid analgesics and other abusive drugs. Prescribers and pharmacists will now have to follow stricter rules for writing and dispensing gabapentin prescriptions in Kentucky.

Missouri

In July, Gov. Greitens signed an executive order to [create a prescription drug monitoring program](#). Missouri had been the only state to implement such a system.

The governor also signed SB 66, a workers' compensation law [intended to improve the state's business climate](#) and put restrictions on trial lawyers. It defines maximum medical improvement as the point at which an injured worker's medical condition has stabilized and can no longer reasonably improve with additional medical care. Temporary total and temporary partial disability benefits continue only until the worker reaches maximum medical improvement (MMI), while permanent total disability compensation continues from the date of MMI for the worker's lifetime at the appropriate weekly rate. For all compromise settlements offered after a claimant has reached MMI, the worker has 12 months after receiving an initial permanent disability rating from the employer's physician to acquire a rating from a second physician of his or her own choosing, the law states. Absent extenuating circumstances, if after 12 months the claimant has not acquired a second rating, any compromise settlement will be based on the initial rating.

It also reduces an injured worker's benefits by 50 percent if "the injury was sustained in conjunction with the use of alcohol or non-prescribed drugs" as proven by a positive drug test taken within 24 hours of the injury.

Montana

WATCHLIST: The **Montana Department of Labor and Industry** is [proposing to adopt recommendations for treating lower-extremity injuries](#) as part of the annual update to its workers' compensation treatment guidelines. The plan is to incorporate a new chapter into its treatment guidelines to cover treatment provided on or after Jan. 1.

New Mexico

The state's pharmacy board has [amended its rule governing remote telepharmacies](#) effective June 23. The board defines "remote telepharmacies" as brick-and-mortar dispensing facilities staffed by one or more pharmacy technicians who are supervised by pharmacists through video feeds.

North Carolina

WATCHLIST: Lawmakers recently passed **SB 407**, legislation designed [to curb employee misclassification](#), three years after journalists reported the practice costing the North Carolina \$467 million in state and federal tax revenues annually in the construction industry alone. There generally are two types of misclassification — improperly classifying an employee as an independent contractor to avoid the expense of workers' compensation coverage and other employee benefits, and assigning a worker a less-risky job classification code to decrease premiums.

Oklahoma

The **Oklahoma Workers' Compensation Commission** has adopted new rules for electronic data interchange (EDI). Beginning Jan. 1, 2018, claim administrators [will be mandated to submit all information via EDI](#), according to electronic record layouts adopted by the International Association of Industrial Accident Boards and Commission in its Release 3 standards.

Ohio

WATCHLIST: The **Bureau of Workers' Comp** (BWC) Board of Directors approved a proposed rule last month *designed to steer injured workers away from lumbar fusion surgery* in favor of non-surgical therapy. An internal audit geared at improving quality of care in the workers' comp system had shown that claimants receiving spinal fusions were among the longest-lasting claims, had the highest rates of disability and medical care needs, and were among the highest users of opioids, officials said. The proposed rule is now before the state's Joint Committee on Agency Rule Review. If adopted, it will go into effect Jan. 1.

Virginia

A new law *requiring employers to purchase suitably equipped automobiles* for certain injured workers went into effect July 1. **SB 1201** charges the Workers' Compensation Commission to direct employer purchase of adaptive vehicles if modification to the workers' existing vehicles are too costly or not technically feasible. The new law requires the employer either purchase or modify workers' vehicles if there is a loss of function to feet, legs, hands or arms. The law caps vehicle purchase or modification at \$42,000.

Washington

The **Department of Labor & Industries** (L&I) and **Harborview Medical Center**, Seattle, recently *announced a new state Center of Excellence for medical care for burns*. The new agreement expands workers' access to a range of specialists who will collaborate throughout the worker's recovery. National data has shown that nearly 50 percent of adult burn patients do not return to work two years after injury and 28 percent never return. In contrast, a recent study in the Journal of Burn Care & Research showed that 93 percent of workers with work-related burns who were treated at the University of Washington Medicine

Regional Burn Center at Harborview returned to work on average 24 days after injury. The research attributes these dramatically improved outcomes to the broad support workers typically receive from employers and workers' compensation claims staff, and to the specialized and comprehensive burn care at Harborview. The new center is part of an L&I project to improve care for catastrophically injured workers.

Treatment for injured workers requiring *sacral nerve stimulation for fecal incontinence* now requires preauthorization. Providers treating patients who are covered through Washington's state fund must contact **Qualis Health** for utilization review before performing the procedure.

WATCHLIST: The **Department of Labor & Industries** is *launching an acupuncture pilot program* for treating low back pain. Beginning Oct. 1, qualified providers participating in the program will be paid to use acupuncture to treat injured workers with low back pain related to an accepted condition on a workers' compensation claim. L&I currently does not reimburse for acupuncture treatment. This pilot program will run for up to two years and L&I will cover up to 10 visits of acupuncture treatment per injured worker claim. Providers are expected to continue treatment only if clinically meaningful improvement is documented midway through the protocol, and only if the medically necessary number of treatments can be provided.



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