

StateWatch

Notice of Regulatory Alerts

Winter 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.

IN THIS ISSUE

National

Arkansas

California

Colorado

Florida

Georgia

Illinois

Maryland

Massachusetts

Montana

New York

North Carolina

North Dakota

Ohio

Oklahoma

Pennsylvania

Tennessee

Texas

Virginia

National

An **OSHA** rule requiring employers to electronically report injury and illness data through the agency's injury-tracking application (ITA) went into effect Dec. 15 after a two-week extension intended to give employers more time to become familiar with the system. OSHA's final rule to *Improve Tracking of Workplace Injuries and Illnesses* requires companies with 250 or more employees, and those with 20 to 249 employees in certain industries with high-injury rates, to use the system for submitting information from already-completed 2016 Form 300A. However, the following OSHA-approved state plans have not yet adopted the requirement to submit injury and illness reports electronically and are not required to do so: California, Maryland, Minnesota, South Carolina, Utah, Washington and Wyoming. Also, state and local government establishments in Illinois, Maine, New Jersey and New York, are not currently required to submit their data through the ITA. OSHA is reviewing other provisions of its final rule and intends to publish a notice of proposed rule-making to reconsider, revise or remove portions of the rule in 2018.

The **FDA** has approved the first sensor-imbedded pill in the U.S. to detect whether a patient has taken it. The drug, AbilifyMyCite, is approved for the treatment of schizophrenia, manic episodes associated with bipolar disorder, and as an add-on treatment for depression in adults. The system works by *sending a signal from the pill's sensor to a wearable patch*. The patch transmits the information to a mobile application so that patients

can track the ingestion of the medication on their smart phones. Patients can also permit their caregivers and physicians to access the information through a web-based portal. The ingestible sensor is about the size of a grain of sand and is made of copper, magnesium and silicon, ingredients found in food. The sensor is activated when it comes in contact with stomach fluid. Being able to track ingestion of medications prescribed for mental illness may be useful for some patients, the FDA said. However, the agency noted that the potential of Abilify MyCite to improve patient compliance with prescribed treatment has not been shown.

Pfizer has received approval from the **FDA** for an extended-release form of Lyrica (pregabalin), an anti-seizure medicine also used to treat neuropathic pain, which arises from nerve damage. The medication is one of the most prescribed drugs in workers' comp. Lyrica CR *is designed to be taken once a day* as compared to two to three times a day as with the original Lyrica formula. Lyrica CR is expected to be available in January making some workers' comp professionals hopeful it will help patients stick to their prescribed drug regimen.

The **FDA** has also granted marketing authorization of *the first device used to reduce the symptoms of opioid withdrawal*. The NSS-2 Bridge is a small electrical nerve stimulator placed behind the ear. It emits electrical pulses to stimulate branches of certain cranial nerves and may provide relief from opioid withdrawal symptoms, which include

sweating, gastrointestinal upset, agitation, insomnia and joint pain. Patients can use the device for up to five days during the acute physical withdrawal phase.

Arkansas

Implementation of **Rule 099.41 Arkansas Workers' Compensation Drug Formulary** *has been approved*. This rule is adopted for all prescriptions for workers' compensation claims with a date of injury on or after July 1, 2018, and applies to all FDA-approved drugs that are prescribed and dispensed for outpatient use. The rule adopts a formulary already in use for state government employees injured on the job, with additional provisions for opioid prescriptions based on guidelines established by the CDC.

California

The **California Office of Administrative Law** has *approved the final MTUS Drug Formulary regulations* submitted by the Division of Workers' Compensation (DWC), fully adopting a workers' compensation drug formulary. The formulary and related rules will go into effect Jan. 1.

Also, the **DWC** is *extending an amnesty program* designed to allow claims administrators to comply with subsequent reports of injury (SROI) data. According to *WorkCompCentral*, the amnesty period has been extended through March 2018. The program is designed to provide a variance on the requirement to submit historical SROI data electronically to the state's Workers' Compensation Information System (WCIS). Twenty-nine claims administrators have signed up for the amnesty program after it was launched in April, according to WCIS. Another 12 administrators submitted plans and are in the process of starting to submit current SROI reports without needing to address their backlogs, *WorkCompCentral* reported.

In other **DWC** news, the division has posted an order *adopting regulations to update the evidence-based treatment guidelines* of the medical treatment utilization schedule (MTUS). The updates, effective for medical treatment services rendered on or after Dec. 1, incorporate by reference the American College of Occupational and Environmental Medicine's most recent treatment guidelines to the General Approaches, Clinical Topics, and Special Topics sections of the MTUS.

Gov. Jerry Brown signed into law **SB 430**, allowing the California Insurance Guarantee Association (CIGA) *to purchase reinsurance* from any reinsurer authorized to transact business in the state. Current law requires CIGA to purchase reinsurance from a company that is a member of the association. SB 430 will go into effect Jan. 1. The bill will allow the association to purchase reinsurance from any reinsurer licensed in California, so long as the insurance commissioner has approved the transaction.

California's new UR rules under **SB 1160** will go into effect Jan. 1. The new law is designed to set major regulations and restrictions around liens *to help curb workers' compensation fraud* and prohibit the use of financial incentives to a physician based on a UR decision (e.g. to deny or modify treatment), and give the Division of Workers' Compensation (DWC) the authority to review UR compensation arrangements.

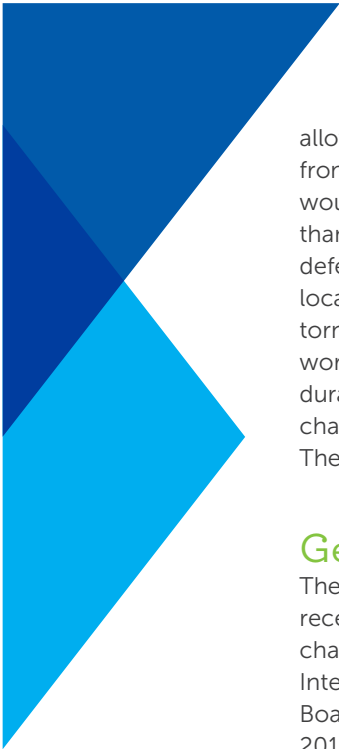
Colorado

The **Division of Workers' Compensation** has revised its treatment guidelines for *complex regional pain syndrome* and *chronic pain disorder*. New guidelines went into effect for services provided starting Nov. 30.

Florida

WATCHLIST: Gov. Scott has announced he will *propose major legislation* and more than \$50 million as part of his 2018-2019 recommended budget to combat opioid abuse in Florida. The proposed legislation will reportedly include: placing a three-day limit on prescribed opioids, unless strict conditions are met for a seven-day supply; requiring all health care professionals that prescribe or dispense medication to participate in the Florida Prescription Drug Monitoring Program — a statewide database that monitors controlled substance prescriptions and; adding reforms to fight unlicensed pain management clinics, requiring continuing education courses on responsibly prescribing opioids, and creating new opportunities for federal grant funding.

WATCHLIST: House Insurance & Banking Subcommittee has pre-filed for the 2018 session legislation that *would cap claimants' attorney fees at \$150 an hour* and would require the annual adoption of schedules of maximum reimbursement



allowances. HB 7009 would allow departure fees from the state's statutory fee schedule if the rate would amount to less than 40 percent or greater than 125 percent, of the customary amount a defense attorney would have earned in the same locality, based on an analysis of local defense attorneys' hourly rates. The bill also includes other workers' comp revisions including increasing the duration of temporary total disability benefits and changing how outpatient services are reimbursed. The Legislature's regular session convenes Jan. 9.

Georgia

The **State Board of Workers' Compensation** recently announced that all electronic data interchange (EDI) vendors must comply with recent International Association of Industrial Accident Boards and Commissions standards by Oct. 1, 2018. Questions or concerns about EDI matters can be addressed by the board at 800-533-0682, ext. 4, or via e-mail at edirelease3.1@sbwc.gav.gov.

Illinois

Insurers are *not required to pay a registration fee* for preferred provider networks assembled without administrator assistance, the **Illinois Department of Insurance** has determined. Also, insurers who have previously submitted payments for administrator fees will be reimbursed. The fees include an initial new administrator fee of \$1,000, followed by a \$500 renewal fee each year.

Maryland

Parties with a vocational rehabilitation (VR) dispute can *get their issue resolved faster* by filing a Vocational Rehabilitation Dispute form, the **Maryland Workers' Compensation Commission** recently reminded stakeholders. To access the Vocational Rehabilitation Dispute form, known as Form VR04, log into the [MWCC's Online Services portal](#). One business day after the form is submitted, the duty commissioner will contact the parties by phone, according to the commission. If the duty commissioner cannot resolve the dispute, a hearing will be scheduled within five business days.

Massachusetts

The **Department of Industrial Accidents** has rolled out another phase of its two-year pilot program to combat opioid abuse by fast-tracking injured workers and insurers to mediation. The new phase calls for opioid care coordinators to work with injured workers and restore them to maximum function. The pilot targets workers who have settled claims but are still taking opioids and insurers that want to stop paying for the drugs. Both parties must volunteer, which sends them straight to mediation and bypasses court proceedings that often last a year. The workers are matched with nurse case managers, who develop individualized treatment plans aimed at weaning them off painkillers. Insurers pay the care coordinator for the treatment, the pilot project follows enactment of [HB 4056](#), which the governor signed on March 14, 2016.

Montana

The **Labor-Management Advisory Committee** has voted to *adopt the Official Disability Guidelines drug formulary*. State lawmakers authorized the committee to adopt a formulary in legislation passed earlier this year. There are reportedly several issues that still need to be worked out before the state proceeds, including how to deal with prior authorization, legacy claims and dispute resolution, according to officials.

New York

WATCHLIST: A bill approved by the New York Legislature that would allow *physical therapist assistants to treat injured workers* was vetoed by Gov. Cuomo. Under **AB 2859**, a physician would be able to decide that physical therapy for an injured worker may be provided by a certified physical therapist assistant, if the assistant is working under the supervision of a licensed physical therapist. Physical therapists would be required to co-sign the physical therapist assistant's treatment notes. In a veto memo, Gov. Cuomo said the legislation "*would place injured workers at risk*" and "drive additional costs to insurers and employers by requiring additional care providers to directly supervise physical therapy (sic) assistants."

North Carolina

Employers who are late filing certain workers' compensation forms *could be fined hundreds of dollars* more under the **North Carolina Industrial Commission's** new sanctions policy. Under the new rule, employers and carriers who fail to file Forms 60, 61 or 63 within 30 days of receiving notice of a claim will be sanctioned \$400 (up from \$200). Employers file Form 60 accept a workers' comp claim, Form 61 to deny a claim, and Form 63 when they are ready to provide benefits.

WATCHLIST: Nine months after formation, the **North Carolina Workers' Compensation Opioid Task Force** *has issued draft rules that would limit daily dosages* for acute pain to a 50-morphine equivalent dose (MED) and would cap initial prescriptions for non-surgical patients at five days. The proposal breaks down appropriate medication usage at the various stages of pain, including first and subsequent opioid, and other pain medication prescriptions during the acute and chronic pain stages. The draft rules would apply to non-cancer pain in workers' compensation claims and exclude claims in which the worker takes opioids for more than 12 consecutive weeks immediately before the proposed May 1 effective date of the rules. The draft includes a requirement for providers to prescribe an opioid antagonist — naloxone hydrochloride, approved by the FDA for treating drug overdoses — to injured workers under certain circumstances.

North Dakota

Workforce Safety & Insurance *has discontinued the requirement* for a provider to submit the Pain Questionnaire and Surgery Expectation Questionnaire forms as part of the prior authorization process for elective lumbar fusion. The change took effect Nov. 1.

Ohio

WATCHLIST: The **Workers' Compensation Bureau** is planning to update a rule to reflect legislature shortening the statute of limitations for claim filing, from two years to one. *Rule 4123-3-08 was recently sent* to the Common-Sense Initiative Office, an office created in 2011 that reviews agency rules impacting businesses. When returned, BWC *plans to file the rule and set a public hearing*, officials said.

Oklahoma

The **Oklahoma Workers' Compensation Commission** will require all *claims information be submitted via electronic data interchange* (EDI) Jan. 1. The EDI mandate was included as one of nearly 200 reforms under SB 1062, which became law in February 2014. All EDI reports will be required to include the last five digits of the claimant's Social Security number, and all claim administrators must submit to the commission's EDI vendor a completed EDI trading partner profile at least two business days before submitting a claim via the interchange.

Pennsylvania

WATCHLIST: The Senate recently passed **SB 936**, which charges the state's Department of Labor and Industry with *selecting a nationally recognized, evidence-based prescription drug formula* appropriate for resolving issues related to drugs prescribed for or related to the treatment of work-related injuries. The bill has now been moved to the House for vote. *Similar drug formulary legislation*, HB 18, was introduced in the state House and is currently pending in the House Rules Committee.

Tennessee

WATCHLIST: The Bureau of Workers' Compensation *has proposed amendments to rules relating to appeals* at the **Workers' Compensation Appeals Board**, and *procedures for updating medical treatment guidelines*. The bureau is proposing to replace Chapter 0800-22-01, which sets out procedures for filing a notice of appeal and appeals of interlocutory orders; compensation orders; rules for oral argument, costs on appeal and settlement during appeal; and appeals of workers' comp cases filed against the state. The bureau is also proposing a change to Chapter 800-02-25 to clarify the procedures for updating medical treatment guidelines.

Texas

Health care networks created by Texas lawmakers in 2005 reform legislation are *lowering costs and improving outcomes* in the state, according to the **Division of Workers' Compensation's** latest analysis. The average medical costs for workers in networks fell by 16.2 percent over seven years, from \$2,917 in FY 2010 to \$2,445 in FY 2017.

The **DWC** also recently released its *finalized Designated Doctor Plan-Based Audit* to ensure the program remains "cost-effective." To be selected for the plan, physicians must have examined injured workers between Jan. 1, 2016, and March 31, 2017, and performed at least 25 exams that are not pending in the dispute-resolution process.

WATCHLIST: The **Texas Department of Insurance, Division of Workers Compensation**, is proposing rules that would *require all compounded medications to go through a preauthorization process* to be eligible for reimbursement. It is anticipated that the formal proposal will be completed by the end of the 2017, officials said. It will then be followed by a formal public comment period so the effective date could occur in Q1 2018. Lawmakers, regulators and insurers became alarmed after the DWC learned through its data on pharmacy billing that the overall cost of compounded drugs doubled to \$12 million between 2010 and 2014, and that the average cost per prescription increased 133 percent, from \$356 in 2010 to \$829 in 2016, according to *WorkComp-Central*.

Virginia

The **Workers' Compensation Commission** recently approved draft regulations that will *implement new medical fee schedules* starting Jan. 1. Virginia will become the 44th state to set maximum medical reimbursements in workers' compensation. The medical fee schedules cover all providers and services, and are different for each of six geographic regions. The maximum fees were designed to reflect "actual average historical costs for services" based on average reimbursements paid in 2014 and 2015, officials said.

Meanwhile, the **Board of Medicine and Board of Pharmacy** recently implemented *regulatory changes aimed at controlling opioid analgesic utilization* through procedures for both prescribing and dispensing. The Board of Medicine amended a finalized emergency rule which took effect Sept. 24.



Genex Services
440 East Swedesford Road, Suite 1000 > Wayne, PA 19087
888.GO.GENEX > genexservices.com

© 2017 Genex Services, LLC

Genex provides this publication only as a general resource guide to certain information regarding state workers' compensation laws. It should not be relied upon as a complete reference source for such laws. The contents of this document were compiled by Genex's staff based in part upon information obtained directly from state agencies, statutes and available publications. No assurance can be made as to the accuracy or completeness thereof. The information is not to be construed as legal advice or opinion. You are urged to consult an attorney to respond to any questions you may have regarding any aspect of the workers' compensation laws covered in this document.