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Pennsylvania Develops New Opioid Prescribing Guidelines in Workers' Compensation

The opioid epidemic in America has become a fixture in the national news cycle in recent years. Calls to action to combat the epidemic and the apparent overprescribing of these powerful pain medications are finally gaining traction. One area that has become the subject of reform is in state workers' compensation systems. Injured workers who receive opioid medications are often presented with the additional challenge of not only overcoming their work injury but also having to deal with potential addiction that comes with long-term use and the withdrawal that accompanies discontinuation. Carriers are met with bearing the financial costs of these additional challenges. Employers are left with a diminished labor force. However, while there appears to be plenty of momentum surrounding the issue and willingness from both the medical and legal communities to develop solutions, just how to go about affecting impactful change remains uncertain.

Earlier this year, Pennsylvania Governor Tom Wolf vetoed legislation, Senate Bill No. 936 (a copy can be accessed [here](#)), that would have established a "formulary" of approved drugs that treating physicians could prescribe to injured workers in Pennsylvania. The Wolf administration cited that the bill would limit care options for physicians and, as an alternative to the proposed formulary, Wolf issued a multi-faceted executive action plan to help combat the overprescribing of opioid medications in workers' compensation care. As part of this plan, Wolf established a task force, the "Safe and Effective Prescribing Task Force," to create new prescribing guidelines for opioids in workers' compensation.

On July 16, 2018, the new guidelines were released publicly. Wolf stated that Pennsylvania ranks third highest in the nation in the percentage of injured workers who become long-term opioid users, and he believes that the new guidelines could help prevent and reduce addiction and promote functional restoration. Further the Wolf administration instructed that the goals of the guidelines were to "supplement, not replace clinical judgment." The seven page guide outlines specific recommendations for prescribing opioids both in the context of acute and chronic pain.

It will take some time before the impact of the new prescribing guidelines is truly known, but as stated by the administration, the guidelines are designed to be just that, guidance. Nonetheless, this is certainly a good step in combating the overprescribing of opioids in workers' compensation. One area where the guidelines could receive noticeable attention is in the area of Utilization Review, as the Pennsylvania code specifically states that the criteria for a utilization review should "consist of documented criteria, standards and *guidelines*." 34 Pa. Code § 127.401. It is certainly reasonable to assume that the guidelines will become a new cited authority during utilization review process, and it would behoove attorneys, physicians, and insurance adjusters to familiarize themselves with their content.

From a Medicare Compliance standpoint, opioids have been a cost driver in Medicare Set-Aside allocations since prescription drugs were first included in MSAs in 2006. If the guidelines are successfully utilized by the parties, they may provide further support to limit opioids in MSA allocations through the UR process, as noted above. Additionally, the guidelines give support to a common sense argument that has been made in the workers' compensation and MSA industries for years, that the prolonged use of opioids not only during the life of a workers' compensation case

but projected use over the duration of a Claimant's life contradicts the intended use of the medications and can have an adverse impact on the Claimant's overall health and well-being.

Aside from the impact on MSAs, if the guidelines call additional attention to what is commonly referred to as an "epidemic" and serve as a beneficial step in reducing the overprescribing of opioids, then nothing but positive things are to be gained. Additionally, the role that the guidelines may play in the workers' compensation system can potentially cause medical providers to give pause before considering opioids as the only option for the treatment of a workers' compensation injury and provide a check and balance to those providers who continue to use opioids in a manner that serves to be ineffective and detrimental to patient health.

The Dickie, McCamey & Chilcote Medicare Compliance Group is available to your organization for all aspects of MSP compliance, including Medicare Set-Aside preparation, CMS approval, and the resolution of Medicare conditional payment issues. If you have any questions regarding the information outlined above, or any other inquires, please feel free to contact us.



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