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Payers Calling for Changing Emergency Comp Rules: Top [2014-01-06]

[By Michael Whiteley](#), Southern Bureau Chief

Insurers, employers and a Georgia cost-containment firm are calling for changes to the emergency rules proposed by Oklahoma's new Workers' Compensation Commission to implement wholesale reforms scheduled to take effect next month.

The commission proposed 86 pages of emergency rules on Nov. 26 to implement Senate Bill 1062, signed into law last May by Gov. Mary Fallin, and held a public hearing last Thursday to take public comments.

Critics contend the commission's proposed rules allow too much time for a transition to a closed drug formulary mandated by the bill. The formulary, which the bill says must be in place by Nov. 1, 2014, will phase out the use of opioids and other drugs that are not recommended for specific injuries by the Work Loss Data Institute's Official Disability Guidelines. Doctors would have to get preauthorization from carriers before prescribing any drugs not recommended by the ODG, which are known as N-drugs.

Subchapter 5 of Chapter 3 of the proposed rules also designates claims for injuries occurring between Feb. 1, 2014, and Oct. 31, 2014, as "legacy claims" and allows continued use of N-drugs for injured workers filing those claims without preauthorization through Nov. 1, 2016.

Proposed Rule 810:3-5-3 provides that doctors "should" include a statement of medical necessity when prescribing N-drugs during the grace period for legacy claims and would allow carriers to request explanations from doctors in those cases.

Carriers would have to alert workers and doctors by May 1, 2016, of plans to cease paying for the N-drugs the following November or reach an agreement with doctors to continue the drugs on a case-by-case basis.

Georgia-based cost-containment firm Prium warned the commission last week that the rules create three groups of workers:

- Those who were injured prior to Feb. 1, 2014, and whose treatment will never be subject to the closed formulary.
- Those who were injured between Feb. 1, 2014, and Nov. 1, 2014, and can continue receiving the drugs through most of 2016 without preauthorizations.
- Those who are injured on or after Nov. 1, 2014, and will be immediately subject to the closed formulary.

In written comments to the commission, Prium asked the commission to authorize the Court of Existing Claims to adopt the closed formulary and apply it to older injuries or to ask lawmakers for the authority to apply the closed formulary to existing claims.

Prium argued that Texas, which also allowed continued use of N-drugs to treat workers with legacy claims in reforms passed in 2005, closed the formulary to all injuries on Sept. 1, 2013.

Mark Pew, senior vice president of product development at Prium, said in an interview Friday that the formulary rules are leaving workers with older injuries at risk of drug addiction and abuse.

"The good news is that workers injured on or after Feb. 1, 2014, will be covered by the closed formulary," Pew said. "But workers injured prior to that date are being subjected to the same harmful effects of drugs that are driving patient-safety issues throughout workers' compensation systems."

Property Casualty Insurers of America asked the commission to end the use of N-drugs for workers with legacy claims by May 1, 2015, instead of waiting until Nov. 1, 2016.

"Many of the 'N' drugs applicable to workers' compensation injuries are Schedule II narcotics that are intended to treat pain for end-stage cancer patients," Trey Gillespie, senior workers' compensation director for PCI, said in written comments to the commission.

"It would be bad public policy to allow physicians to prescribe inappropriate medication without required preauthorization to these injured workers for a two-year period of time following the adoption of the closed formulary," Gillespie said.

Jonathan Buxton, vice president of policy development and government affairs for the State Chamber of Oklahoma, said Friday the business group is not requesting changes to the emergency rules governing the closed formulary, but is concerned about the time allowed for resolving claims disputes under the rules.

The rules give administrative law judges at the commission 30 days to issue rulings in claims disputes and allow parties 50 days to appeal decisions to the full commission and 20 days to file responses in appeals.

"We feel like the period for the timeliness of decisions should be shortened. These rules could drag out the process. Employers and workers need outcomes more quickly," Buxton said.

The chamber also is calling on the commission to allow Oklahoma corporations and other businesses to be able to appear at claims hearings without attorneys.

"Our members have people who have worked on workers' compensation cases for decades. They have infinitely more experience than some attorneys. We want those people to be able to represent their businesses at hearings as long as they have settlement authority," Buxton said.

Other changes to the emergency rules requested Thursday include:

- Barring counselors appointed by the commission to assist injured workers and employers from having

ex parte communications with administrative law judges. Proposed Rule 810:2-1-12 bans the communications between judges and other parties in contested claims.

- Limiting the filing of medical disputes to one year after a carrier reduces or denies payment of a medical bill.
- Allowing carriers to deny authorization for medical treatment when doctors fail to respond to requests for medical necessity during the grace period allowed for legacy claims.

Gov. Fallin appointed the three-member Workers' Compensation Commission last year to implement Senate Bill 1062, which created an administrative court to replace the Oklahoma Workers' Compensation Court effective Feb. 1.

The bill also decreased benefits and allows employers to opt out of the workers' compensation system by taking out supplemental insurance plans with benefits at least equivalent to workers' compensation requirements. The plans will have to be approved by the Oklahoma Insurance Department.

Under the new law, the Workers' Compensation Court will become the Court of Existing Claims, which will continue to rule on disputes about claims filed before the Workers' Compensation Commission takes over next month.

Rick Farmer, executive director for the new commission, said Friday the commission will meet again on Jan. 16 to adopt the rules before forwarding them to Fallin for approval. He said the commission will adopt permanent rules later this year for submission to the Oklahoma State Legislature in early 2015.

Farmer said the commission also is discussing further legislative reforms with the governor, but he said it would be premature to discuss them.

"There a lot of people talking about a lot of different ideas at this point," Farmer said.

Farmer said the deadline for submitting comments to the proposed rules ended Thursday.

The proposed emergency rules are [here](#).