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National Council of Insurance Legislators (NCOIL)

Model Workers' Compensation Drug Formulary Act

**Sponsored by Rep. Matt Lehman (IN)*

**Initial Discussion Draft. To be discussed during the Workers' Compensation Insurance Committee on Saturday, March 16th, 2019*

Drafting Note: The following language is based on Indiana SB 369 (enacted on March 25, 2018) and is meant for initial discussion for development of an NCOIL Model Workers' Compensation Drug Formulary Act. This topic will be discussed throughout 2019 and the language below could change significantly depending on which drug formulary is referenced in the Model.

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Section 1. Short Title

This Act shall be known as the "Model Workers' Compensation Drug Formulary Act"

Section 2. Purpose

The purpose of this Act shall be to require the establishment of a drug formulary for use in a state's workers' compensation system.

Section 3. Definitions

“Formulary” means the Official Disability Guidelines (ODG) Workers’ Compensation Drug Formulary Appendix A published by MCG Health [or another nationally available workers’ compensation drug formulary].

“Medical emergency” means the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that in the absence of immediate medical attention could reasonably be expected to result in:

- (1) serious jeopardy to the employee's health or bodily functions; or
- (2) serious dysfunction of a body part or organ.

Section 4. Reimbursement and Prescribing Procedures for an “N” Drug

(a) Beginning [January 1, 2019/insert date] reimbursement is not permitted for a claim for payment for a drug that:

- (1) is prescribed for use by an employee who files a notice of injury under this chapter; and
- (2) according to the formulary, is an "N" drug, unless the employee begins use of the “N” drug before [January 1, 2018], and the use continues after [January 1, 2019/insert date]
- (3) If the employee begins use of the “N” drug before [July 1, 2018/insert date], and the use continues after [January 1, 2019/insert date], reimbursement is permitted for the “N” drug until [January 1, 2020/insert date].

(b) If a prescribing physician submits to an employer a request to permit use of an "N" drug described in subsection (a), including the prescribing physician's reason for requesting use of an "N" drug, and the employer approves the request, the prescribing physician may prescribe the "N" drug for use by the injured employee.

(c) If the employer does not approve the prescribing physician's request under subsection (b) to permit use of an "N" drug, the employer shall:

- (1) send the request to a third party that is certified by the [Utilization Review Accreditation Commission/another Accreditation Organization] to make a determination concerning the request; and
- (2) notify the prescribing physician and the injured employee of the third party's determination not more than five (5) business days after receiving the request.

(d) If an employer fails to provide the notice required by subsection (c)(2), the prescribing physician's request under subsection (b) is considered approved, and reimbursement of the "N" drug prescribed for use by the injured employee is authorized.

(e) If the third party's determination under subsection (c) is to deny the prescribing physician's request to permit the use of an "N" drug:

(1) the employer shall notify the prescribing physician and the injured employee;
and

(2) the injured employee may apply to the [worker's compensation board] for a final determination concerning the third party's determination under subsection (c).

(f) Notwithstanding subsections (a) through (e), during a medical emergency, an employee shall receive a drug prescribed for the employee even if the drug is an "N" drug according to the formulary.

Section 5. Rules

The [state department] shall promulgate rules for the implementation of the formulary.

Section 6. Effective Date

This Act shall take effect [xxx days] following enactment.