



July 8, 2019

VIA EMAIL TO: wmelofchik@ncoil.org

Asw. Maggie Carlton
Workers Compensation Insurance Committee
National Conference of Insurance Legislators
Atlantic Corporate Center
2317 Route 34, Suite 2b
Manasquan, NJ 08736

RE: Comments Concerning the Model Workers' Compensation Drug Formulary Act

Dear Chair Carlton, Vice Chair Santiago, Representative Lehman, and other members of the Committee:

I am writing to submit comments on behalf of the American Association of Payers, Administrators and Networks (AAPAN) regarding the June 11, 2019, version of NCOIL's Model Workers' Compensation Drug Formulary Act. AAPAN is the national trade association for provider networks, payers, and other Workers' Compensation organizations, including pharmacy benefit managers (PBMs). Through our members, we work on behalf of thousands of injured workers throughout the country. You have already received testimony and comments from some of our members, but we wanted to provide additional comments to demonstrate our industry's shared support for some of the policy options reflected in the current draft and to show support for provisions that we hope the committee will consider.

AAPAN Supports Broadening Formulary Options for Consideration by States

We first wish to express our appreciation for the changes that were made to the initial draft based on Indiana statute. The current draft of the document reflects one of the major changes we saw as necessary, specifically broadening the set of nationally recognized formulary options for consideration by states. AAPAN strongly supports state efforts to utilize evidence-based drug formularies that meet the particular needs of injured workers in their states.

AAPAN Supports Consideration of a State Agency Developed Formulary

To further broaden the discussion, AAPAN believes that should NCOIL consider additional provisions in the Model Act for states that wish to develop their own formulary rather than

selecting one of the preexisting nationally recognized formularies. AAPAN members have worked with states who have developed formularies through their own administrative agencies. In some of these states, existing statutes or regulations provide for medical treatment guidelines or other policies. AAPAN believes that in these instances it is important for the formulary to be a component and complement to existing guidelines.

AAPAN believes that, when developing or adopting a formulary, the appropriate state administrative agency should consider:

- Evidence-based guidelines for the treatment of workplace injury and disease.
- Preferential use of generic or generic-equivalent drugs in the formulary pursuant to evidence-based practices, with consideration being given to the use of brand name medication only when its use is cost-effective, medically necessary, and evidence-based or when there is no therapeutic generic equivalent available.
- Inclusion of drugs that are prescribed based on medical treatment guidelines, clinical appropriateness, and injury relatedness.
- Convening stakeholders from various sectors of industry, including but not limited to representatives from the following groups: Medical Providers, Pharmacy Benefit Managers, Pharmacies, Self-Insured Employers, and Labor Unions.

Further, we believe that the Model should encourage state legislators to consider how their current administrative agencies address workers' compensation policy generally. In addition to allowing a formulary to complement existing guidelines, administrative authority should be clear. Our members seek clarification and direction in many instances in which two regulatory agencies issue overlapping rules or requirements. If the jurisdiction of workers' compensation lies with a state agency other than the labor department, or if there is dual regulation, states should consider language referencing that agency to ensure appropriate coordination of responsibilities.

AAPAN Supports Stakeholder Outreach and Reasonable Implementation Periods

In addition to providing proper direction to the appropriate state agency, AAPAN believes it is critical to allow for proper implementation. The agency should be given an adequate, if not generous, amount of time to develop rules. Also, as noted above, the inclusion of stakeholders from various sectors of industry is important during the development of the formulary, but also during implementation. The agency should be directed to consider guidance and educational outreach to impacted stakeholders regarding how to access and use the drug formulary.

AAPAN Supports Additional Direction Concerning Transition to the Formulary

When adopting a formulary, the agency should provide for an appropriate transition of treatment, if the treatment began prior to the adoption of a drug formulary, to treatment that is consistent with the application of the formulary. AAPAN supports additional language concerning prior authorization policy in the Model Act, particularly for the period leading up to

formulary implementation. We suggest that it should be made explicit that, if an employee begins use of a non-preferred drug before (perhaps six months prior to) implementation of the formulary and the use continues after implementation, that reimbursement is permitted for non-preferred drugs for a specific period of time (perhaps 12 months from adoption of the rules).

AAPAN Supports Discussion of Provisions Relating to Prior Authorization

Similarly, in addition to transition issues, AAPAN supports direction to the agency as to disputes and prior authorization generally. AAPAN believes that the Model Act should direct the state agency to develop a timely and responsive dispute resolution process for disputes related to use of the formulary, and that certain drugs that are not preferred on the formulary are subject to preauthorization.

A drug formulary should work in tandem with the state's existing preauthorization framework. When the prescription is being processed and managed by a PBM, not only will transaction and medication histories be developed, but PBMs help ensure compliance with the prescription drug formulary prior to a drug being dispensed.

Accordingly, AAPAN believes NCOIL should consider language addressing required preauthorization for the following: (1) Compounds; (2) Brand name drugs with a generic equivalent; (3) Physician dispensed; (4) Off-label; and (5) those that are unlisted on the formulary. These policies aid to ensure compliance with the formulary but also help to rein in costs.

Thank you for the opportunity to provide comments regarding this Model Act

Sincerely,

A handwritten signature in black ink, appearing to read "Julian Roberts". The signature is fluid and cursive, with the first name "Julian" being more prominent than the last name "Roberts".

Julian Roberts
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Potential Provisions for Inclusion in the Model Act

Option for State Developed Formulary: The department shall develop or adopt an evidenced-based formulary, with the maximum transparency possible, for use in the workers' compensation system.

When developing or adopting a formulary, the department should consider the following:

- (1) Evidence-based guidelines for the treatment of workplace injury and disease.
- (2) Preferential use of generic or generic-equivalent drugs in the formulary pursuant to evidence-based practices, with consideration being given to the use of brand name medication only when its use is cost-effective, medically necessary, and evidence-based or when there is no therapeutic generic equivalent available.
- (3) Inclusion of drugs that are prescribed based on medical treatment guidelines, clinical appropriateness, and injury relatedness.
- (4) Convening stakeholders from various sectors of industry, including but not limited to representatives from the following groups: Medical Providers, Pharmacy Benefit Managers, Pharmacies, Self-Insured Employers, and Labor Unions.

The department, by rule, is to develop a timely and responsive dispute resolution process for disputes related to use of the formulary.

Drugs that are not preferred on the formulary are subject to preauthorization.

Note: When adopting or developing a formulary states have considered the following as drugs that require preauthorization: (1) Compounds; (2) Brand name drugs with a generic equivalent; (3) Physician dispensed; (4) Off-label; and (5) those drugs that are unlisted.

Note: Preauthorization shall not apply to care provided in the following instances: (1) During a medical emergency; (2) In a facility-based setting; or (3) In an outpatient setting, when drugs are administered by a physician.

Note: In some states existing statute or regulations provide for medical treatment guidelines, in such instances the formulary should complement existing guidelines.

Note: If the jurisdiction of workers' compensation, lies with a state agency other than the labor department, or if there is dual regulation, a state should add language referencing that agency to ensure appropriate coordination of responsibilities.

Note: Prior to implementing a drug formulary, the department should strongly consider providing guidance and educational outreach to impacted stakeholders regarding how to access and use the drug formulary.

Note: The department should be given an adequate amount of time to develop rules to implement a formulary. AAPAN suggests no less than 6 months.