



Via Email to William Melofchik, Esq.: wmelofchik@ncoil.org
The Honorable Maggie Carlton, Chair
The Honorable David Santiago, Vice Chair
The Honorable Matt Lehman
National Council of Insurance Legislators
Workers' Compensation Insurance Committee
2317 Route 34, Suite 2B
Manasquan, NJ 08736

December 11, 2019

Dear Assemblywoman Carlton, Representative Santiago & Representative Lehman,

On behalf of Sedgwick Claims Management (<http://www.sedgwick.com/>) we want to thank you for your hard work in the formulation of the Fourth Draft of the National Council of Insurance Legislators' (NCOIL) proposed "Model Workers' Compensation Drug Formulary Act" (draft model act). We are grateful for the opportunity to provide commentary on the draft model act as we mutually support the adoption of workers' compensation drug formularies nationally.

Since the 2011 adoption by the State of Texas of its drug formulary, Sedgwick and its employer and carrier clients nationwide have been engaged with each state that has considered or adopted a workers' compensation drug formulary. Throughout the years we have partnered with legislators in the drafting of language to mandate formulary adoption and worked with regulators to help implement the processes which help bring the benefit of a prescription drug formulary to providers, payers and most importantly, injured workers. Our comments regarding the draft model act are a reflection of some of the real-world lessons we have learned in these years of drug formulary implementation.

Regarding Section 4(C)(1), we have some concerns over the following language, which addresses how requests for medication that are not approved by the formulary should be administered:

"(1) send the request to a third party that is certified by the [Utilization Review Accreditation Commission (URAC) or another Accreditation Organization] to make a determination concerning the request. The use by the employer of an independent review organization selected by the [department] shall also satisfy this subsection; and"

While we are fully supportive of the use of a URAC accredited organization for the evaluation of medication authorizations, we are concerned about the need to have these review entities be a fully independent third party.



Our concerns are as follows:

- (1) URAC accredited organizations already have a duty to render unbiased decision-making as part of their continued certification under URAC standards. Therefore, the need to be URAC accredited and fully-independent would appear to be unnecessarily duplicative.
- (2) Eliminating the URAC or other Accredited Organization's ability to have any "material professional, material familial, or material financial affiliation with" the employer, insurance carrier, claims administrator, medical provider or medical facility as is recommended in Section 5 (A) and (B) are going to make implementing a review process, impractical or impossible.

In virtually all jurisdictions, there are only so many accredited professionals (URAC or otherwise) that are capable of rendering the quality of medical review which is necessary to evaluate whether or not a medication that is not included in the workers' compensation drug formulary should be provided to an injured worker. Of those accredited professionals or accredited organizations, there are fewer still that do not already provide this service today to a workers' compensation carrier, self-insured employer or claims administrator. In fact, most of the accredited review organizations are fully or partially owned and operated by workers' compensation carriers or claims administrators. This is due in large part to the fact that insurance carrier and claims administrators already realize the value in having URAC accredited organizations review medications, outside of a drug formulary mandate, and have been employing these services for years. Therefore, as a matter of practicality, the requirements of Section 5 (A) and (B) would make it so that in most states there would be no existing resource capable of providing both an accredited independent review, while also being completely separate from the rest of the workers' compensation ecosystem.

As an alternative, we would respectfully suggest the following amendments to the draft model act:

Section 4 (C)(1):

"(1) send the request to a ~~third~~ party that is certified by the [Utilization Review Accreditation Commission (URAC) or another Accreditation Organization] to make a determination concerning the request. The use by the employer of an independent review organization selected by the [department] shall also satisfy this subsection; and"

Section 5 – Strike entirely.

Understandably, there is concern from the medical provider/prescriber community about the need for there to be a review of medications prescribed to an injured worker that is rooted in the application of current medicine and treatment guidelines to the injured worker, and not based on dollars and cents. However, we



would suggest (and other states which have adopted drug formularies would validate this suggestion), that the requirement of a completely independent 3rd party reviewer is impractical and unnecessary.

We would point out that Texas, Tennessee, California, and Indiana have adopted successful workers' compensation formularies without the inclusion of an independent review organization, except as a mechanism for arbitrating a dispute between the medical provider and the initial reviewer of the request for a non-approved medication. In that instance, an independent medical review affords both the provider and initial reviewer an opportunity to make their case for the use of the medication and results in an efficient and fair resolution for the injured worker.

Thank you for your consideration of these amendments to the draft model act. If you have any questions, please contact Donald Lipsy, AVP of Managed Care Government Relations at Donald.lipsy@sedgwick.com or (520) 309--1037.

Sincerely,

Donald Lipsy