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## **NCOIL ADOPTS WORKERS' COMPENSATION DRUG FORMULARY MODEL ACT** *Facilitates Safe and Appropriate Use of Prescription Drugs in State Workers' Comp Systems*

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Manasquan, NJ – During the 2019 NCOIL Annual Meeting in Austin, TX, the organization adopted the NCOIL Workers' Compensation Drug Formulary Model Act sponsored by Indiana Representative Matt Lehman, 2020 NCOIL President. The Model passed without objection on a by both the Workers Compensation and the NCOIL Executive Committees.

The Workers' Compensation Committee had been working on this Model since its introduction at the NCOIL Spring Meeting in Nashville, TN in March 2019. The initial discussion draft of the Model was based on Indiana SB 369 which Rep. Lehman sponsored and was signed into law in March 2018. Essentially, the IN law requires the adoption of the Official Disability Guidelines (ODG) Workers' Compensation Drug Formulary Appendix A published by MCG Health, and prohibits workers' compensation reimbursement for drugs specified in said formulary as "N" drugs, except during a medical emergency.

However, in order to provide states with flexibility, the Model does not require the selection of a specific formulary but rather provides states the option of either selecting a nationally recognized, evidence-based drug formulary, or developing such a formulary, by rule.

"I am proud to sponsor this Model for NCOIL, and I commend the Committee for acting promptly on this issue. In efforts to combat the opioid crisis and lower drug costs, it is our duty as State legislators to ensure that the treatment provided to injured workers is related to and most appropriate for their work-related injury," stated Rep. Matt Lehman, NCOIL President. "My goal when developing NCOIL Models is always to develop a framework for states to consider, knowing that states may need to make certain changes to reflect the market and other realities. I am pleased we were successful in ultimately ending up in a good place with this Model," he concluded.



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During the drafting discussions, NCOIL legislators and staff heard from a wide array of interested parties such as: the Tennessee Bureau of Workers' Compensation; Mitchell, ODG by MCG Health; ReedGroup; MAXIMUS; the California Workers' Compensation Institute (CWCI); Baker & Welsh LLC; the American Medical Association Advocacy Center (AMA); the California Labor Federation; the American Association of Payors, Administrators, and Networks (AAPAN); the Maryland State Medical Society (MedChi); the Physicians Research Institute (PRI); the American Property Casualty Insurance Association (APCIA); and Medtronic.

The purpose of the Model is "to require the establishment of a drug formulary for use in a states' workers' compensation system in order to facilitate the safe and appropriate use of prescription drugs in the treatment of work-related injury and occupational disease."

Highlights of the Model include the requirement for the appropriate state agency/department to select a nationally recognized, evidence-based drug formulary or to develop such a formulary by rule; setting forth factors the appropriate state agency/department must consider while selecting or developing a drug formulary for adoption; solicitation of public comments and holding a public hearing regarding the selection of a formulary;; requiring the appropriate state agency/department to review updates by the publisher of a selected formulary; ensuring the formulary is available through the department/state agency's publicly accessible Internet website; requirements for operation of a formulary, including the process by which an employee can obtain a drug that is listed but no approved on the formulary; and third party conflict of interest requirements. The Model also requires the state department/agency to promulgate rules necessary for the implementation of the formulary.

Commissioner Tom Considine, NCOIL CEO, stated, "I am confident that the NCOIL Workers' Compensation Drug Formulary Model Act will serve its purpose and provide states options so that they can determine what is best for their state. NCOIL Models are developed to better equip the states to act in the best interest of the public. In this instance of the Workers' Compensation Drug Formulary Act, NCOIL provides the framework for states to make their workers' compensation system safer and more efficient, while having the opportunity to expand provisions as they deem appropriate."

A full copy of the model is below.

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Sen. Travis Holdman, IN

**National Council of Insurance Legislators (NCOIL)**

## Model Workers' Compensation Drug Formulary Act

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

*\*Adopted by the Workers' Compensation Insurance Committee on December 12<sup>th</sup>, 2019 and the Executive Committee on December 13<sup>th</sup>, 2019.*

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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 in order to facilitate the safe and appropriate use of prescription drugs in the treatment of work-related injury and occupational disease.

### **Section 3. Selection or Development of Drug Formulary**

(A) It is the intent of the Legislature that the [insert appropriate state agency/department] select a nationally recognized, evidence-based drug formulary, for use in the workers’ compensation system, or to develop such a formulary, by rule. Such formulary shall apply to prescription drugs that are prescribed and dispensed for outpatient use in connection with workers’ compensation claims with a date of injury on or after [insert date]. The drug formulary shall not apply to care provided in an emergency department or inpatient setting.

(B) In developing by rule or selecting a nationally recognized, evidence-based drug formulary for adoption, the [department] shall consider the following factors:

- (1) Whether the formulary focuses on medical treatment specific to workers' compensation.
- (2) Whether the basis for the formulary is readily apparent and publicly available.
- (3) Whether the formulary includes measures to aid in management of opioid medications.
- (4) The cost of implementation and post-implementation associated costs of the formulary.
- (5) Evidence-based guidelines for the treatment of workplace injury and disease.

(C) Within [thirty (30)] days of the effective date of this Act, the [department] shall solicit public comments regarding the selection of a nationally recognized, evidence-based prescription drug formulary under this section. The public comment period shall be [ninety (90) days]. During the public comment period, the [department] shall conduct at least one public hearing on the selection of a drug formulary. The [department] shall publish notice of the public comment period and public hearings on its website. The public hearing shall include, but not be limited to, employers, insurers, private sector employee representatives, public sector employee representatives, treating physicians actively practicing medicine, pharmacists, pharmacy benefit managers, attorneys who represent applicants, and injured workers.

(D) Commencing [insert date], and concluding with the implementation of the formulary, the [administrative director] shall publish at least two interim reports on the internet web site of the [division of workers' compensation] describing the status of the selection of the formulary.

(E) The [department] shall [annually] review updates issued by the formulary publisher to the selected formulary.

(F) The [department] shall ensure that the current nationally recognized, evidence-based prescription drug formulary is available through its publicly accessible Internet website for reference by physicians and the general public.

#### **Section 4. Operation of Formulary**

(A) Beginning [insert date] reimbursement is not permitted for a claim for payment of a drug that:

- (1) is prescribed for use by an employee who files a notice of injury under this Act; and

(2) is listed but not approved in the formulary, or omitted from the formulary, unless the employee begins use of such drug after [insert date], and the use continues after [insert date].

(3) if the employee begins use of the such drug before [insert date], and the use continues after [insert date], reimbursement is permitted for such drug until [insert date].

(B) If a prescribing physician submits to an employer a request to permit use of a drug that is listed but not approved in the formulary, or omitted from the formulary, including the prescribing physician's reason for requesting use of such drug and the employer approves the request, the prescribing physician may prescribe such 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 a drug that is listed but not approved in the formulary, or omitted from the formulary, the employer shall:

(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

(2) notify the prescribing physician and the injured employee of the third party's determination not more than [three (3)] 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 drug that is listed but not approved in the formulary, or omitted from the formulary, and 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 the drug that is listed but not approved on the formulary, or omitted from the formulary:

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

(2) the injured employee may apply to [workers' 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 a drug that is listed but not approved on the formulary, or omitted from the formulary.

## **Section 5. Third Party Conflict of Interest**

(A) The URAC certified third party identified in Section 4(C)(1) shall be independent of any workers' compensation insurer or workers' compensation claims administrator doing business in this state.

(B) No URAC certified third party identified in Section 4(C)(1) shall have any material professional, material familial, or material financial affiliation with any of the following:

- (1) The employer, insurer or claims administrator.
- (2) Any officer, director, employee of the employer, or insurer or claims administrator.
- (3) A physician, the physician's medical group, the physician's independent practice association, or other provider involved in the medical treatment in dispute.
- (4) The facility or institution at which either the proposed health care service, or the alternative service, if any, recommended by the employer, would be provided.
- (5) The development or manufacture of the drug proposed by the employee whose treatment is under review, or the alternative therapy, if any, recommended by the employer.
- (6) The injured employee or the employee's immediate family, or the employee's attorney.

## **Section 6. Rules**

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

## **Section 7. Effective Date**

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