

# Workers' Comp Regulatory Activity

July 15, 2020 – September 1, 2020

## CALIFORNIA

Reg ID: CA39798

**Issues:** Workers' Compensation Pharmacy Fee Schedule

**Summaries:** The Division drafted regulations that would align the workers' compensation pharmacy fee schedule with the new Medi-Cal pharmacy fee schedule. Specifically, this includes the following changes: elimination of the Average Wholesale Price (AWP) minus 17 percent as a benchmark for the drug ingredient; revised methodology for payment of drug ingredients to align with the new Medi-Cal system and adopts a bifurcated Medi-Cal dispensing fee structure for pharmacies (which increases the dispensing fee from \$7.25 to \$10.05 or to \$13.20 for pharmacies listed as Medi-Cal); and addresses fees for compounded drugs and repackaged drugs. With regards to physician dispensing of compounded drugs, the maximum reasonable fees will be lower of:

- (1) 300 percent of document paid costs for the drug ingredients, but not more than \$20.00 above the documented paid costs; or
- (2) The drug ingredient cost (determined by subdivision (c), plus the compounding and sterility fees, if applicable.

The draft rule will amend the workers' compensation pharmaceutical fee schedule to align with the Labor Code section 5307.1 and Medi-Cal payment system changes. The updates provide information for pharmacy dispensed and physician dispensed pharmaceuticals and set forth fee caps for some physician dispensed pharmaceuticals.

The following sections are being updated:

Section 9789.12.1 Physician Fee Schedule: Official Medical Fee Schedule for Physician and Non-Physician Practitioner Services – For Services Rendered on or After January 1, 2014.

Section 9789.13.2 Physician-Administered Drugs, Biologicals, Vaccines, Blood Products

Section 9789.13.3 Physician-Dispensed Drugs

Section 9789.40. Pharmacy – Pharmaceuticals Dispensed and Pharmaceutical Services Rendered Prior to XXX XX, 2020 (date to be updated 60 days after filed and approved by OAL)

Section 9789.40.1 Pharmaceuticals Dispensed and Pharmaceutical Services Rendered By a Pharmacy on or after XXX XX, 2020 (date to be updated 60 days after filed and approved by OAL)

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Section 9789.40.2 Compounded Pharmaceuticals Dispensed By a Pharmacy on or after XXX XX, 2020 (date to be updated 60 days after filed and approved by OAL)

Section 9789.40.3 Miscellaneous Provisions - Pharmaceuticals Dispensed By a Pharmacy on or after XXX XX, 2020 (date to be updated 60 days after filed and approved by OAL)

Section 9789.40.4 Pharmaceuticals Dispensed By a Physician on or after XXX XX, 2020 (date to be updated 60 days after filed and approved by OAL)

Section 9789.40.5 Compounded Pharmaceuticals Dispensed By a Physician on or after XXX XX, 2020 (date to be updated 60 days after filed and approved by OAL)

Section 9789.111. Effective Date of Fee Schedule Provisions

**What Just Happened:** Staff published notice of the updated draft rule for public review.

**Links:**

- [Public Forum 2020 Website](#)
- [Draft 2020 Rule Text:](#)
- [Draft Rule Notice June 2020](#)

## KENTUCKY

**Reg ID:** KY57979

**Issues:** Workers' Compensation Provider Issues

**Summaries:** The Department proposed amendments to the rules governing the selection of physicians, treatment plans, and statements for medical services. The proposed amendments would apply to employers in Kentucky and employees who seek to have medical treatment covered by workers' compensation.

Section 12: The proposed amendments would update the list of materials which are incorporated by reference into the rule. The amendments would update the referenced editions of material and certain addresses.

**What Just Happened:** Comments on the proposed rule are due 7/31/2020.

**Links:**

- [8/11/2020 ARRS Meeting Agenda](#)
- [Notice of Cancellation of Public Hearing](#)
- [Proposed Rule \(doc. pp. 3015-3018\)](#)

## MONTANA

Reg ID: MT56889

**Issues:** Workers' Compensation Provider Fee Schedule

**Summaries:** The Department adopted amendments to the medical fee schedules for workers' compensation purposes. The fee schedule references are updated to provide for dates into June 2020. Further, the references to the "Montana Workers' Compensation Facility Fee Schedule Instruction Set" is for the effective date of 7/1/2020. It adds that as of 7/1/2020 the base rate is \$8,909, an increase from \$8,599 that ends 6/30/2020. Additionally, payments for inpatient acute care hospital services formula remains the same, the references the increase rates laid out above.

The new fee schedule is references for being effective 7/1/2020 as well. Lastly, the conversion factors for services as of 7/1/2020 will now be \$63.41, an increase from \$64.04 under section 2. And under section 3, the 7/1/2020 is increased from \$69.58 to \$67.32.

**What Just Happened:** The Department published notice of the final rule in the register.

**Links:**

- [Notice of final rule \(pdf Pg. 11\)](#)
- [Notice of proposed rule \(pdf Pg. 7\)](#)

## NEW YORK

Reg ID: NY55929

**Issues:** Workers' Compensation Prescription Drug Formulary

**Summaries:** The Board adopted emergency amendments and final rule amendments to its Prescription Drug Formulary. The final rule amendments are identical to the emergency rule amendments.

Specifically, the Board updates Section 441.2 of Title 12 NYCRR to reference the 3/3/2020 fourth edition of the New York Workers' Compensation Formulary. The previous version of the rule referenced the 11/20/2019 edition.

**What Just Happened:** The Board published notice of a final rule in the 6/17/2020 Register. The final rule is effective 6/17/2020.

**Links:**

- [Final Rule \(Doc. Pg. 24\)](#)
- [Emergency and Proposed Rule \(Doc. Pg. 33\)](#)

## OHIO

Reg ID: OH58037

**Issues:** Opioid Prescribing Guidelines

**Summaries:** The Bureau adopted new rules which update the workers' compensation reimbursement requirements to ensure that opioid use guidelines are followed by practitioners. The adopted rules also update the reimbursement rules for first fill medications. The rules apply to prescribing healthcare professionals who treat individuals who are eligible for workers' compensation reimbursement.

4123-6-21.6: Amends the rule to provide that reimbursement of outpatient medications under the first fill program be subject to quantity limits pursuant to the rule's appendix.

4123-6-21.7: Repeals and replaces the rule governing the Bureau's reimbursement of opioid prescriptions for treatment of a work-related injury or occupational disease. The new rule requires that opioid prescriptions to treat an occupational injury only be reimbursed when the current best medical practices were used pursuant to rules 4731-11-13 and 4731-11-14 of the Administrative Code. Opioid utilization for acute, subacute, and chronic pain may only be reimbursed when the prescriber has complied with all opioid prescribing guidelines laid out in the Administrative Code.

4123-6-21.8: Creates a new rule which creates procedures for reimbursement of services to help injured workers discontinue medications that have a high risk of dependency, misuse, and/or substance use disorder. The Bureau reimburses the following services: 1) assessment services; 2) ongoing services; 3) inpatient services; 4) outpatient services; and 5) medically necessary and appropriate medications.

4123-18-04: The new rule would make living maintenance payments from the surplus fund to an injured worker approved to participate in vocational rehabilitation pursuant to rule 4123-18-03 of the Administrative Code.

**What Just Happened:** The Bureau published notice of the final rules in the Register of Ohio. The rules are effective 9/1/2020.

**Links:**

- [Final Rule 4123-18-04](#)
- [Notice of Public Hearing](#)
- [Final Rule 4123-6-21.8](#)
- [Final Rule 4123-6-21.7](#)
- [Final Rule 4123-6-21.6](#)

## OHIO

Reg ID: OH58047

**Issues:** Workers' Compensation Provider Issues

**Summaries:** The Bureau adopted rule amendments which update minimum criteria for provider certification. The adopted amendments apply to healthcare providers seeking to obtain or maintain provider certification in the health partnership program (HPP).

4123-6-02.2(A): Amends the rule to forbid a provider from participating in the HPP if the state of Ohio has denied the provider's application for a professional license or the provider's license is under revocation or suspension.

4123-6-02.2(B)(5): Amends the rule to require a provider to be ineligible to participate in HPP due to a criminal conviction or having pleaded guilty to a criminal offense.

4123-6-02.2(C): Updates the minimum credential requirements for individual provider types.

**What Just Happened:** The Bureau published notice of the final rule in the Register of Ohio. The final rule is effective 9/1/2020.

**Links:** [Final Rule 4123-6-02.2](#)