Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 217 (Senator Klausmeier)
Finance

Workers' Compensation - Payment for Controlled Dangerous Substances Prescribed by Physicians - Limitations

This bill specifies that, under the Workers' Compensation Law, an employer or its insurer may not be required to pay for a controlled dangerous substance (CDS) that is *prescribed* by a physician to a covered employee who has suffered an accidental personal injury, compensable hernia, or occupational disease unless specified conditions are met.

Fiscal Summary

State Effect: State expenditures (all funds) decrease to the extent that the bill reduces the incidence of Schedule II and III drug abuse and addiction in workers' compensation claimants.

Chesapeake Employers' Insurance Company Effect: Chesapeake Employers' Insurance Company (Chesapeake) expenditures decrease to the extent that the bill reduces the incidence of Schedule II and III drug abuse and addiction in workers' compensation claimants.

Local Effect: Self-insured counties' and municipalities' expenditures decrease to the extent that the bill reduces the incidence of Schedule II and III drug abuse and addiction in workers' compensation claimants.

Small Business Effect: Minimal. Costs to small businesses decrease to the extent that the bill reduces the incidence of Schedule II and III drug abuse and addiction in workers' compensation claimants.

Analysis

Bill Summary: An employer or its insurer may not be required to pay for a CDS that is prescribed by a physician for an employee covered under workers' compensation unless the following conditions are met.

- The physician received preauthorization from the employer or its insurer before prescribing the CDS.

- The physician and the covered employee entered into a management plan that describes (1) the limitations of the use of a CDS in controlling the employee's pain; (2) the possible side effects of its long-term use; (3) the risk of dependency; (4) the importance of therapy and other activities to relieve any pain; (5) the physician's obligation to document clinically significant improvements in the function control of the pain as a condition of continuing to provide the prescription; and (6) the employee's responsibility to fully disclose all substances being taken.

- The physician provides to the employer or its insurer documentation of the covered employee's physical function and pain intensity at each visit, as well as documentation of the daily dose of all CDS that the physician has prescribed for the covered employee. If treatment for chronic pain by use of a CDS continues for more than 90 days, the physician must also provide to the employer or its insurer a written report that details a (1) treatment plan with time-limited goals for eliminating the use of the CDS; (2) relevant prior patient medical history, including substance abuse; and (3) relevant patient psychiatric history, including whether the employee has been diagnosed with or suffers from an affective disorder or personality disorder.

- The covered employee takes a urine drug test administered by the physician at least every 30 days while being prescribed the CDS by the physician.

A "controlled dangerous substance" means a substance listed in Schedule II or Schedule III in §§ 5-403 and 5-404 of the Criminal Law Article.

Current Law: Generally, if an employee covered under workers' compensation suffers an accidental personal injury, compensable hernia, or occupation disease, the employer or its insurer must promptly provide specified medical and pharmaceutical care, as required by the Workers' Compensation Commission (WCC).

In addition to prescribing authority, a licensed physician may personally prepare and *dispense* prescription drugs or devices if he or she holds a written dispensing permit from the State Board of Physicians and meets other specified criteria. Chapter 184 of 2013 repealed an exception that had allowed certain physicians to dispense without such a permit at a medical facility or clinic that specializes in the treatment of medical cases reimbursable through workers' compensation insurance. If the Chairman of WCC finds or has cause to believe that a physician or health care provider has a pattern of providing excessive medicine, services, or treatment, the chairman must refer the case to the State Board of Physicians for review. The board may then revoke the physician's or health care provider's license and impose a fine.

A physician who dispenses prescription drugs or devices must comply with prescription drug labeling requirements, record the dispensing on a patient's chart, allow the Division of Drug Control to enter and inspect the practitioner's office at all reasonable hours, provide the patient with a written prescription, and maintain prescription files in a specified manner. According to the State Board of Physicians, 1,509 physicians hold dispensing permits in Maryland. A physician who holds a dispensing permit may dispense prescription drugs or devices to a claimant in a workers' compensation case for any period of time and for an unlimited amount of refills.

Maryland's Prescription Drug Monitoring Program (PDMP) was established by Chapter 166 of 2011 to address issues of prescription drug abuse and drug diversion by monitoring all Schedule II – V CDS by all prescribers and dispensers in the State. For each monitored prescription drug dispensed, a dispenser must electronically submit data to PDMP. Dispensers include not only pharmacies but also physicians, podiatrists, and dentists that hold a dispensing permit from their respective licensing board. Prescribers, including physicians and other health care practitioners authorized to prescribe drugs, are encouraged but *not required* to access PDMP regarding a patient's history of prescribed CDS before prescribing a monitored drug. As of January 2014, Maryland's PDMP is almost fully operational. Health care practitioners began registering to access PDMP data on December 20, 2013.

Background: In August 2013, a study titled, *Reducing Inappropriate Opioid Use in Treatment of Injured Workers*, was released by the International Association of Industrial Accident Boards and Commissions. The report states, "The impact of opioid abuse in the general population is well documented, but research is just beginning to show the extent of opioid use and abuse in the U.S. workers' compensation system. The epidemic is damaging lives and driving up costs." The report discusses the increased costs to the workers' compensation system caused by opioid abuse due to additional medical care required in the case of addiction and delays with injured employees returning to work. It recommends that states may take various policy actions to address the issue, including (1) requiring physicians to meet specified standards when monitoring and evaluating

patients who are using opioids to manage chronic pain; (2) establishing documentation requirements for physicians who prescribe opioids to mange chronic pain; and (3) determining whether treatment guidelines will describe any preauthorization requirements.

Schedule II Opioids such as hydrocodone (Lorcet, Norco, and Vicodin) and oxycodone (Percocet, Oxyfast, and OxyContin) are commonly used as pain relievers in cases of workers' compensation injuries. Opioids provide extremely effective pain relief that work by binding to receptors present in the brain and spinal cord; however, they have inconvenient and dangerous side effects such as constipation and respiratory depression. Despite the effectiveness of these types of drugs, long-term opioid use can lead to dependence and addiction. The U.S. Census Bureau reports that prescription painkillers, including opioids, were involved in 14,800 overdose deaths in the United States in 2008. Additionally, they report, the misuse and abuse of prescription painkillers was responsible for more than 475,000 emergency room visits in the United States in 2009.

The Department of Health and Mental Hygiene estimates that, between 2007 and 2010, the percentage of prescription drug-related admissions to State-funded drug abuse treatment programs nearly doubled compared to previous rates, accounting for about one in five admissions in 2010. According to the National Council on Compensation Insurance, Schedule II and III CDS represent 35.7% of total workers' compensation drug payments in the State, which is higher than the national average of 26.2%.

State/Chesapeake/Local/Small Business Effect: Because the bill does not limit and may not otherwise affect the total number of Schedule II and III prescriptions paid for under the Workers' Compensation Law, costs related to the total number of prescriptions cannot be reliably estimated at this time.

The bill may result in cost savings by reducing the incidence of abuse and addiction to Schedule II and III CDS prescribed to workers' compensation claimants. This kind of drug addiction and abuse may lead to increased costs to the workers' compensation employers and insurers due to additional required medical care to treat the addiction and abuse, as well as delays in claimants returning to work. To the extent that the bill reduces the incidence of this type of drug abuse and addiction in workers' compensation claimants, expenditures decrease. The number of workers' compensation claimants who will be assisted by the bill's requirements as well as any related expenditure reduction cannot be reliably estimated at this time.

Additional Information

Prior Introductions: None.

Cross File: HB 281 (Delegate Jameson) - Health and Government Operations and Economic Matters.

Information Source(s): Department of Budget and Management; Department of Health and Mental Hygiene; Maryland Insurance Administration; Injured Workers' Insurance Fund/Chesapeake Employers' Insurance Company; Charles, Frederick, and Montgomery counties; Subsequent Injury Fund; Workers' Compensation Commission; International Association of Industrial Accident Boards and Commissions; U.S. Census Bureau; National Council on Compensation Insurance; Department of Legislative Services

Fiscal Note History: First Reader - February 5, 2014
ncs/ljm

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