

TITLE 810. WORKERS' COMPENSATION COMMISSION
CHAPTER 15. MEDICAL SERVICES

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. General Provisions
810:15-1-2. Definitions [NEW]
Subchapter 5. Pharmaceutical Benefits
810:15-5-4. Medical Interlocutory Order [NEW]

AUTHORITY:

Workers' Compensation Commission; 85A O.S. § 50(l)

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

810:15-1-2. Definitions [NEW]

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INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The rules are necessary as emergency measures under 75 O.S. § 253(A)(1)(a), to protect the public health, safety or welfare. 810:15-1-2 and 810-15-5-4 provide for a prescribing doctor or pharmacy an ability to obtain a medical interlocutory order (MIO) in instances where preauthorization denials of a previously prescribed and dispensed drug excluded from the closed formulary poses an unreasonable risk of a medical emergency.

ANALYSIS:

85A O.S. § 50(l) provides that Rules adopted by the Commission shall allow an appeals process for claims in which a treating doctor determines and documents that a drug not included in the formulary is necessary to treat an injured employee's compensable injury.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S. § 253(F):

SUBCHAPTER 1. GENERAL PROVISIONS

810:15-1-2. Definitions

In addition to the terms defined in 85A O.S., § 2, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"AWCA" means the Administrative Workers' Compensation Act, 85A O.S., §§ 1, et seq.

"Brand name drug" means a drug marketed under a proprietary, trademark-protected name.

"Case manager" means a person who is a registered nurse with a current, active unencumbered license from the Oklahoma Board of Nursing, or possesses one or more of the of the following certifications:

- (A) Certified Disability Management Specialist (CDMS);
- (B) Certified Case Manager (CCM);
- (C) Certified Rehabilitation Registered Nurse (CRRN);
- (D) Case Manager - Certified (CMC);
- (E) Certified Occupational Health Nurse (COHN); or
- (F) Certified Occupational Health Nurse Specialist (COHN-S).

"Certified workplace medical plan" means an organization that is certified by the Oklahoma State Department of Health to provide management of quality treatment to injured employees for injuries and diseases compensable pursuant to the workers' compensation laws of the State of Oklahoma.

"Claimant" means a person who claims benefits for an alleged work injury, occupational disease or illness, or death pursuant to the provisions of the AWCA.

"Closed formulary" means all available Food and Drug Administration (FDA) approved prescription and nonprescription drugs prescribed and dispensed for outpatient use, excluding:

- (A) drugs identified with a status of "N" in the current edition of the Official Disability Guidelines Treatment in Workers' Comp (ODG)/Appendix A, ODG Workers' Compensation Drug Formulary, and any updates thereto;
- (B) any compound drug;
- (C) any investigational or experimental drug for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, but which is not yet broadly accepted as the prevailing standard of care; and
- (D) drugs that are not preferred, exceed or are not addressed by the ODG in effect on the date of treatment.

"Commission" means the Oklahoma Workers' Compensation Commission, a designee, or an administrative law judge to whom the Commission has delegated responsibility as authorized by 85A O.S., § 21(D).

"Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:

- (A) as a result of a practitioner's prescription drug order based on the practitioner-patient-pharmacist relationship in the course of professional practice;
- (B) for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;
- (C) in anticipation of a prescription drug order based on a routine, regularly

observed prescribing pattern; or

(D) for or as an incident to research teaching or chemical analysis and not for selling or dispensing except as may otherwise be allowed by law.

"Generic" or "Generically equivalent" means a drug that, when compared to the prescribed drug, is pharmaceutically equivalent and therapeutically equivalent.

"Independent medical examiner" means a licensed physician authorized to serve as a Commission appointed medical examiner as provided in the AWCA.

"Insurance carrier" means any stock company, mutual company, or reciprocal or interinsurance exchange authorized to write or carry on the business of workers' compensation insurance in this state, and includes an individual own risk employer or group self-insurance association duly authorized by the Commission to self fund its workers' compensation obligations.

"Maximum allowable reimbursement" or "MAR" means the maximum amount payable to a health care provider in the absence of a contractual fee arrangement that is consistent with 85A O.S., § 50(H)(5).

"Medical emergency" means the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain that in the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the patient's health or bodily functions in serious jeopardy; or

(B) serious dysfunction of any body organ or part.

"Medical interlocutory order" or "MIO" means a medical interlocutory order provided a prescribing doctor or pharmacy in instances where preauthorization denials of a previously prescribed and dispensed drug(s) excluded from the closed formulary poses an unreasonable risk of a medical emergency.

"Nonprescription drug" means a non-narcotic drug that may be sold without a prescription and that is labeled and packaged in compliance with state or federal law. This may also be referred to as over-the-counter medication.

"Official Disability Guidelines" or "ODG" means the current edition of the Official Disability Guidelines and the ODG Treatment in Workers' Comp, excluding the return to work pathways, published by the Work Loss Data Institute.

"Pharmaceutically equivalent" means drug products that have identical amounts of the same active chemical ingredients in the same dosage form and that meet the identical compendia or other applicable standards of strength, quality, and purity according to the United States Pharmacopoeia or another nationally recognized compendium.

"Preauthorization" means prospective approval obtained from the employer or insurance carrier by the requestor or injured employee before providing pharmaceutical services for which preauthorization is required. For purposes of this chapter, "preauthorization" relates to prospective evaluation of only the medical necessity and reasonableness of healthcare to be prescribed or provided to an injured employee.

"Prescribing doctor" means a physician or dentist who prescribes prescription drugs or over-the-counter medications in accordance with the physician's or dentist's license and state and federal laws and rules. For purposes of this Chapter, "prescribing doctor" includes an advanced practice nurse or physician assistant to whom a physician has delegated the authority to carry out or sign prescription drug orders, as and to the extent authorized by Oklahoma law, who prescribes prescription drugs or over-the-counter medication under the physician's supervision and in accordance with the health care practitioner's license and state and federal laws and rules.

"Prescription" means an order for a prescription or nonprescription drug to be dispensed.

"Prescription drug" means:

(A) a substance for which federal or state law requires a prescription before the

substance may be legally dispensed to the public;

(B) a drug that under federal law is required, before being dispensed or delivered, to be labeled with the statement: "Caution: federal law prohibits dispensing without prescription"; "Rx only"; or another legend that complies with federal law; or

(C) a drug that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a prescribing doctor only.

"Requestor" means the health care provider or designated representative, including office staff or a referral health care provider/health care facility that requests preauthorization.

"Retrospective review" means the process of reviewing the medical necessity and reasonableness of health care that has been provided to an injured employee.

"Statement of medical necessity" means a written statement from the prescribing doctor to establish the need for treatments or services, or prescriptions, including the need for a brand name drug where applicable. A statement of medical necessity shall include:

(A) the injured employee's full name;

(B) date of injury;

(C) the last four digits of the injured employee's social security number;

(D) diagnosis code(s);

(E) whether the drug has previously been prescribed and dispensed, if known, and whether the inability to obtain the drug poses an unreasonable risk of a medical emergency; and

(F) how the prescription treats the diagnosis, promotes recovery, or enhances the ability of the injured employee to return to or retain employment.

"Substitution" means the dispensing of a drug or a brand of drug other than the drug or brand of drug ordered or prescribed.

"Therapeutically equivalent" means pharmaceutically equivalent drug products that, if administered in the same amounts, will provide the same therapeutic effect, identical in duration and intensity.

"Work-related injury" means a single event injury, cumulative trauma injury, or occupational disease or illness that arises out of and in the course of employment as provided in the AWCA.

"Workers' compensation fee schedule" means a state mandated schedule of maximum allowable reimbursement levels for health care providers, including hospitals, ambulatory surgical centers, and inpatient rehabilitation facilities, rendering reasonable and necessary health care services and supplies to an injured employee for a compensable injury pursuant to the Oklahoma workers' compensation laws.

SUBCHAPTER 5. PHARMACEUTICAL BENEFITS

810:15-5-4. Medical Interlocutory Order

(a) The purpose of this Section is to provide a prescribing doctor or pharmacy an ability to obtain a medical interlocutory order (MIO) in instances where preauthorization denials of a previously prescribed and dispensed drug excluded from the closed formulary poses an unreasonable risk of a medical emergency as defined in 810:15-1-2.

(b) An MIO will be issued if the request for an MIO contains the following information:

(1) injured employee name;

(2) date of birth of injured employee;

(3) prescribing doctor's name;

(4) name of drug and dosage;

(5) MIO requestor's name (pharmacy or prescribing doctor);

- (6) MIO requestor's contact information;
- (7) a statement that a preauthorization request for a previously prescribed and dispensed drug, which is excluded from the closed formulary, has been denied by the insurance carrier;
- (8) a statement that the preauthorization denial poses an unreasonable risk of a medical emergency as defined in 810:15-1-2;
- (9) a statement that the potential medical emergency has been documented in the preauthorization process;
- (10) a statement that the insurance carrier has been notified that a request for an MIO is being submitted to the Commission; and
- (11) a signature and the following certification by the MIO requestor for Paragraphs (7) through (11) of this Subsection, "I hereby certify under penalty of perjury that the previously listed conditions have been met."

(c) A complete request for an MIO under this Section shall be processed and approved by the Commission in accordance with this Section. At the discretion of the Commission, an incomplete request for an MIO under this Section may be considered in accordance with this Section.

(d) The request for an MIO may be submitted on the designated Commission form. The form is available on the Commission's website, <http://www.wcc.ok.gov>. If the Commission form is not available, the written request must contain the provisions of Subsection (b) of this Section.

(e) The MIO requestor shall provide a copy of the MIO request to the insurance carrier, prescribing doctor, injured employee, and dispensing pharmacy, if known, on the date the request for MIO is submitted to the Commission.

(f) An approved MIO shall be effective retroactively to the date the complete request for an MIO is received by the Commission.

(g) The MIO shall continue in effect until the later of:

- (1) final adjudication of a medical dispute regarding the medical necessity and reasonableness of the drug contained in the MIO;
- (2) expiration of the period for a timely appeal; or
- (3) agreement of the parties.

(h) A party shall comply with an MIO entered in accordance with this Section and the insurance carrier shall reimburse the pharmacy for prescriptions dispensed in accordance with an MIO.

(i) The insurance carrier shall notify the prescribing doctor, injured employee, and the dispensing pharmacy once reimbursement is no longer required in accordance with Subsection (g) of this Section.

(j) A party may seek to dispute, reverse or modify an MIO issued under this Section by filing a written request for a hearing before an Administrative Law Judge of the Commission.