

# REVISED DRAFT (11/6/2017 ~~7/10/2017~~)

Following the Public Hearing & Comment Period

**“This draft is a working document. All information contained herein is subject to change and may differ substantially from the final document. The information contained in this document should not be considered the position or views of the agency or the Governor.”**

## PROPOSED RULE 099.41. ARKANSAS WORKERS' COMPENSATION DRUG FORMULARY

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Drug Formulary.

#### Part I. General Provisions

Pursuant to Ark. Code Ann. 11-9-517 (Repl. 1996) and Commission Rule 099.02 (Effective March 1, 1982) the following rule is hereby established in order to implement a workers' compensation Drug Formulary. **This Rule is adopted for all prescriptions for workers' compensation claims with a date of injury on or after ~~September 1, 2017~~ July 1, 2018, and applies to all FDA approved drugs that are prescribed and dispensed for outpatient use.**

#### A. Scope.

- 1. This rule does all the following:
  - (a) Adopts by reference as part of this rule the Public Employee Claims Division (PECD) Workers' Compensation Drug Formulary, which is maintained and updated by UAMS College of Pharmacy Evidence Based Prescription Program and any amendments to that formulary. The formulary will be reviewed and updated as needed.
  - (b) Establishes that all ~~Opioid initial~~ prescriptions for Opioids shall ~~have a 90 MED per day limit for five days for the initial prescription with a 90 day maximum duration~~

period be limited to a 5-day supply and shall not exceed ~~90~~ 50 MED per day without prior authorization. All subsequent Opioid prescriptions shall be limited to a 90-day maximum supply and shall not exceed a ~~90~~ 50 MED dosage limitation per day without prior authorization. With prior authorization, a subsequent prescription may be prescribed in excess of 50 MED but shall not exceed 90 MED.

- (c) Establishes the effective date for implementation of Rule 099.41.
- (d) Establishes procedures by which all payors shall have on staff a Pharmacist and Physician or Medical Director or shall contract with a PBM, who has a Pharmacist and a Physician or Medical Director on staff or has contracted with a Pharmacist and a Physician or Medical Director.
- (e) Establishes a procedure for pharmacists filling workers' compensation prescriptions.
- (f) Provides for the certification of all payors, determined to be in compliance with the criteria and standards established by this rule. (See Part II. A for certification requirements.)
- (g) Provides for the implementation of Medical Cost Containment Division (MCCD) review and decision making responsibility. The rule and definitions are not intended to supersede or modify the workers' compensation laws, the administrative rules of the Commission, or court decisions interpreting the laws or the Commission's administrative rules.
- (h) Provides for the right to appeal from the MCCD to an Administrative Law Judge.
- (i) Provides requirements in order for payors to be held responsible for payment of FDA approved Opioid medications.

## **B. Definitions.**

As used in this rule:

1. "Administrator" means the Administrator of the Medical Cost Containment Department of the Arkansas Workers' Compensation Commission or his/her designee.
2. "Day" means calendar day.
3. "Dispute" means a disagreement between a payor, pharmacists, provider, or claimant, regarding this rule.
4. "Filling Pharmacist" is a pharmacist filling a prescription for medication.
5. "Initial Prescription" means the beginning, starting, commencing, or first written order for a medication. Changes in dosage, addition of or removal of previously prescribed medications either individually or in combination are not considered an initial prescription.
6. "Medical Director" is a physician that is on staff or is contracted with either a PBM or the payor of the worker's compensation claim.
7. "Outpatient service" means a service provided by the following but not limited to, types of facilities: physicians' offices and clinics, hospital emergency rooms, hospital outpatient facilities, community health centers, outpatient psychiatric hospitals, outpatient psychiatric units, and free-standing surgical outpatient facilities.
8. "Payor" is a self-insured entity, third party administrator or insurance carrier which pays workers' compensation benefits.
9. "Reviewing Pharmacist" is an individual with a Doctorate in pharmacy or a Bachelor's degree in pharmacy contracted with or on staff with a Payor or Pharmacy Benefit Manager.

10. "Pharmacy Benefit Manager" (PBM) is a third-party administrator (TPA) of prescription drug programs.
11. "Provider" means a facility, health care organization, or practitioner (as defined by Commission Rule 099.30).
12. "MED" means Morphine Equivalent Dose Per Day.

**Part II. Process for Requiring all Payors to contract with a Pharmacist and Physician or Medical Director or PBM who has contracted with a Pharmacist and Physician or Medical Director.**

All payors shall have on staff or shall contract with a Pharmacist and Physician or Medical Director or PBM who has contracted with a Pharmacist and Physician or Medical Director or has a Pharmacist and Physician or Medical Director on staff. Certification requires the Payor to furnish the current name, license number, and address of their Pharmacist, PBM, and Physician or Medical Director to the Medical Cost Containment Division of the Arkansas Workers' Compensation Commission and update this information when changes occur.

**Part III. Opioid Medications**

- A. For workers' compensation injuries or illnesses with an incident date on or after ~~September 1, 2017~~ January 1, 2018 ~~July 1, 2018~~, payors will not be held financially responsible for payment for FDA approved Opioid medications in excess of ~~90~~ 50 MED per day ~~or in excess of 90 days without prior authorization.~~ With prior authorization a prescription may be prescribed in excess of 50 MED but shall not exceed 90 MED. The Arkansas Workers' Compensation Commission will adopt criteria for prior authorization for prescriptions in excess of 50 MED but not exceeding 90 MED and criteria for recertification every 90 days.
- B. Prior to prescribing Opioid medications ~~or Benzodiazepine, physicians prescribers should shall~~ check the Prescription Drug Monitoring Program (PDMP) database ~~in accordance with A.C.A. §20-7-604. for the current controlled substances that the injured employee is taking in order to make informed decisions as to what medications to prescribe.~~
- C. A Payor shall not be required to pay for more than five (5) days of medication for the first prescription of an Opioid medication ~~without prior authorization.~~ A Payor shall not be required to pay for continuing an Opioid medication beyond the first five (5) day prescription unless all of the following requirements are met:
  1. The medication is prescribed by an authorized treating ~~physician prescriber~~; and
  2. The medication is reasonable, necessary and related to the workers' compensation injury or illness; and
  3. The provider prescribing the medication examines the injured employee in a follow-up visit and ~~certifies documents to the Payor~~ that the medication taken so far is proving to be effective in ~~treating controlling pain associated with the injured~~ employee's ~~work-related~~ injury or illness; and
  4. The provider prescribing the medication ~~certifies documents to the Payor~~ that continuing the Opioid medication therapy is medically necessary.
- D. A Payor shall not be required to pay for continuing an Opioid medication beyond 90 days without written certification ~~to the Payor~~ of medical necessity ~~by the authorized treating physician prescribing the medication~~ which shall include the following:

1. ~~Follow-up visits with prescribing physician prescriber have been conducted;~~
2. ~~Documentation by prescribing physician prescriber of improved function under the medication;~~
3. ~~A plan for P periodic urinary drug screening;~~
4. ~~A detailed plan for future weaning off the Opioid medication;~~
5. ~~Documentation within patient's record showing A summary of conservative care rendered to the worker that focused on increased function and return to work; and~~
6. ~~Mandatory and documented review of the Prescription Drug Monitoring Program (PDMP) prior to issuing every prescription for a Schedule II or III narcotic or benzodiazepine;~~
7. ~~A statement on why what prior or alternative conservative measures were ineffective or contraindicated (including non-opioid pain medications); and~~
8. ~~A summary of findings, if any, of the data received from an automated Prescription Drug Monitoring Program (PDMP);~~

#### **Part IV. Process for Filling Workers' Compensation Prescriptions**

- A. Pharmacists filling a workers' compensation prescription must verify that the prescribed drug(s) are listed on the approved drug formulary.
- B. If the prescribed drug(s) is not on the approved drug formulary, the pharmacist must contact the Payor for approval of the prescribed drug(s) and must consult with the **Prescribing Physician Prescriber** before switching the medication to a formulary medication(s).
- C. The filling pharmacist must abide by the rule requirements for prescribed Opioids for the Payor to be required to pay for the medication(s). (~~90~~ 50 MED per day for five (5) days and a 90 day duration **without prior authorization**)
- D. Compounded medications require pre-authorization from the Payor and medical certification of the patient's inability to tolerate treatment by other non-compounded medications.

#### **Part V. Process for Resolving Disputes Between Provider and Reviewing Pharmacist or PBM**

When the Payor denies the medication and the injured employee, filling pharmacist, or **prescribing physician prescriber** insists on the medication that has been denied, a reconsideration may be made to the reviewing pharmacist on staff or contracted with the Payor or the Payor's PBM by submitting a Reconsideration Form. The Payor should promptly send a Reconsideration Form to the **prescribing physician prescriber** to complete and submit together with any supporting documentation to the reviewing Pharmacist. The reviewing Pharmacist shall have three (3) business days to consult with the **Physician Prescriber** or Medical Director, if necessary, and to respond to the reconsideration request. If the reviewing Pharmacist does not respond within three (3) business days, the filling pharmacist may fill the prescription. If the reviewing Pharmacist denies the reconsideration request, an appeal may be made within 10 business days to the Medical Cost Containment Division of the Arkansas Workers' Compensation Commission.

#### **Part VI. Hearings**

##### **A. Administrative Review Procedure**

An appeal may be made to the Administrator of the Medical Cost Containment Division by mail, fax, or email.



Administrator of the Medical Cost Containment Division  
P.O. Box 950  
Little Rock, AR 72203-0950  
501-682-1790 fax  
501-682-2747 fax  
Phannah@awcc.state.ar.us

1. Appeals will be reviewed by the Medical Cost Containment Division and a determination will be issued within three (3) business days of receipt of the appeal and supporting documentation.
2. An appeal may be rejected if it does not contain the following information:
  - (a) Injured employee name;
  - (b) Date of birth of injured employee;
  - (c) Social Security Number of injured employee;
  - (d) Arkansas Workers' Compensation File Number;
  - (e) Date of Injury;
  - (f) ~~Prescribing doctor's~~ Prescriber's name;
  - (g) ~~Prescribing doctor's~~ Prescriber's DEA number;
  - (h) Name of drug and dosage;
  - (i) Requestor's name (pharmacy or ~~prescribing doctor~~ prescriber);
  - (j) Requestor's contact information;
  - (k) A statement that the approval request for a prescribed drug(s) has been denied by the insurance carrier, accompanied by the denial letter if available;
  - (l) A statement that the prior approval denial poses an unreasonable risk of a medical emergency and justification from a medical perspective such as withdrawal potential or other significant side effects or complications.
  - (m) A statement that the potential medical emergency has been documented in the prior approval process.
  - (n) A statement that the insurance carrier has been notified that a request for an expedited determination is being submitted to the Arkansas Workers' Compensation Commission; and
  - (o) The signature of the requestor and the following certification by the requestor for paragraphs (g) to (o) of the above subsection, "I hereby certify under penalty of law that the previously listed conditions have been met."
3. An appeal determination shall be processed and approved or denied by the Administrator in accordance with this section. At the discretion of the Administrator, an incomplete appeal may be considered in accordance with this section.
4. A determination by the Administrator becomes final under the appeal process and shall be effective retroactively to the date of the original prescription.
5. Any party feeling aggrieved by the Order of the Administrator has the right to appeal the final decision of the Administrator to an Administrative Law Judge of the Arkansas Workers' Compensation Commission for an expedited hearing. The appeal must be made within 10 business days. The Administrative Law Judge shall have **two weeks from**

**receipt of the appeal** to conduct an expedited hearing and render a decision. The Notice of Appeal shall contain the following:

- (a) A copy of the Administrator's Order appealed from;
- (b) Copies of all materials submitted to the Administrator in the appeal proceedings.

#### **Part VII. Rule Review**

The Arkansas Workers' Compensation Commission encourages participation in the development of and changes to this Rule by all groups, associations, and the public. Any such group, association or other party desiring input or changes made to this Rule and associated schedules must make their recommendations, in writing to the Medical Cost Containment Administrator. After yearly analysis, the Commission may incorporate such recommended changes into this Rule.

#### **Part VIII. Effective Date of Rule**

This Rule is adopted for all prescriptions for workers' compensation claims with a date of injury on or after ~~September 1, 2017~~ January 1, 2018, July 1, 2018, and applies to all FDA approved drugs that are prescribed and dispensed for outpatient use.

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