Edging up

Short takes on emerging industry issues – prescription drug legislation, OSHA's new reporting requirement and state disability changes

State legislative changes impact prescription drugs

BY **ROXANNE BROWN**

Director, Regulatory Compliance, Sedgwick

Arizona, Tennessee and New York recently passed legislation related to prescription drugs that will provide added safety for patients who are prescribed narcotics. The following pages include brief summaries on each of the state updates.

ARIZONA

Gov. Doug Ducey signed Senate Bill 1283 on May 12, 2016 requiring medical providers to access a patient utilization report before prescribing opioids or benzodiazepines. This will be required for all medical providers in Arizona beginning October 2017. Hospital in-patients or cancer/hospice patients are exempt from the database checks. Sedgwick's pharmacy management team will begin to educate healthcare providers and injured employees about this important tool prior to the October 2017 implementation date so that prescribers have the opportunity to develop treatment plans for continuation or weaning well in advance of the requirement.

TENNESSEE

A new formulary will go into effect on August 28, 2016 for new prescriptions written after January 1, 2016. In May, the Sedgwick team began working with pharmacy benefit managers to notify providers and injured employees about the state's new formulary and requirements. This will allow time for patients, pharmacists and doctors to review and understand the formulary, and for the clinical team to assist in developing plans for weaning or continuation of the medications after August 28.

NEW YORK

On June 22, 2016, New York Gov. Andrew M. Cuomo signed significant legislation limiting opioid drug prescriptions among other provisions. The new law becomes effective 30 days after receiving the governor's approval. The legislation includes the following changes:

- **Limits initial prescription of opioid medication to a seven day supply and requires subsequent medical follow up for a renewal, refill or new prescription for an opioid or any other drug**
- **Requires coverage for medication for detoxification or maintenance treatment of a substance use disorder**
- **Allows inpatient coverage for unlimited medically necessary treatment for substance use disorder in a residential setting**
- **Establishes a Prescription Pain Medication Awareness program to educate healthcare practitioners and the public about the risks associated with prescribing and taking controlled substance pain medications**
- **Requires course work and training in pain management, palliative care and addiction for every person registered with the Drug Enforcement Administration (DEA) and every medical resident prescribing under a DEA registration number**

This outlines the basic provisions and the requirements have varying implementation dates. Sedgwick will monitor and implement processes to comply with the changes as they take effect. Our pharmacy management team will be essential in developing workflows and processes to ensure compliance and provide safe, quality care for injured employees.

OSHA's new electronic reporting requirement

BY **MALCOLM DODGE**

VP, Risk Services, Sedgwick

On May 12, 2016, the Occupational Safety and Health Administration (OSHA) published its final rule on a new requirement for employers to submit OSHA records electronically. For U.S. employers that are subject to recordkeeping obligations, the rule requires that records be submitted electronically starting with 300A reports for calendar year 2016. The submission deadline for the first transmittal is July 1, 2017.

The rule breaks out electronic submission deadlines. There is a set of rules for employers with establishments that have at least 250 employees and another set of rules for employers with establishments with 20–249 employees. Note that the rule is specific that the submissions will be required based on headcount at each establishment, not by the firm as a whole.

For employers that have establishments with a headcount of at least 250 employees, the reports that must be filed and their submission deadlines are:

- For the 2016 reporting year, employers must submit their OSHA 300A reports by July 1, 2017
- For the 2017 reporting year, employers must submit their OSHA 300A along with certain elements of their OSHA 300 and 301 by July 1, 2018
- For the 2018 reporting year, employers must submit their OSHA 300A along with certain elements of their OSHA 300 and 301 by March 2, 2019

For employers that have establishments with a headcount of 20–249 employees, the reports that must be filed and their submission deadlines are:

- For the 2016 reporting year, employers must submit their OSHA 300A reports by July 1, 2017
- For the 2017 reporting year, employers must submit their OSHA 300A by July 1, 2018
- For the 2018 reporting year, employers must submit their OSHA 300A by March 2, 2019

Sedgwick has confirmed with the Department of Labor that we will be able to submit reports on behalf of customers that utilize our OSHA services to meet this electronic reporting requirement. However, employers will ultimately be responsible for the completeness and accuracy of the data. The specific format of the files to be prepared for submission has not yet been developed by OSHA. As information on the format is made available to us, we will share it with our customers.

For questions about OSHA's electronic reporting requirement, please contact your Sedgwick client services representative or Malcolm Dodge, VP of risk services, at malcolm.dodge@sedgwick.com.

State law changes impact disability benefits

BY **DESIREE TOLBERT-RENDER**

AVP, National Technical Compliance, Sedgwick

FLORIDA SUPREME COURT INCREASES LENGTH OF TEMPORARY TOTAL DISABILITY BENEFITS

On June 9, 2016, the Supreme Court of Florida revived the limitation in the workers' compensation law preceding the 1994 amendments, which provided temporary total disability (TTD) benefits not to exceed 260 weeks, or five years.

In *Westphal v. City of St. Petersburg*, the court deemed unconstitutional the portion of the workers' compensation statute that cuts off disability benefits after 104 weeks to an employee who is totally disabled and incapable of working, but who has not reached maximum medical improvement (MMI).

The case involved Bradley Westphal, a former firefighter and paramedic for the City of St. Petersburg, Florida, who sustained compensable injuries to his back and knee. He was provided TTD benefits and medical treatment that included multiple surgeries. Westphal was recovering from his final surgery, a five-level lumbar fusion, when his entitlement to 104 weeks of TTD was exhausted. Although completely unable to work, because MMI had not been attained, Westphal was not entitled to impairment benefits or permanent total disability (PTD) benefits under the Florida workers' compensation act.

The state high court found that Westphal and similarly situated injured employees are deprived of common law and statutory remedies during the "statutory gap" when TTD is no longer due, yet there is no entitlement to any other indemnity benefits despite the inability to work while recovering from injuries. The court concluded that this result does not keep with the notion of legal justice because it violates the injured employee's state constitutional rights of access to courts and the administration of justice "without . . . denial or delay" under Article I, Section 21, of the Florida constitution.

The court reasoned that whereas "almost seven years or even five years post-accident should be a reasonable period for an injured worker to achieve maximum medical improvement, clearly two years is not for the most severely injured of workers, like Westphal, who might be in need of multiple surgical interventions."

Impact of this decision

This decision will impact any Florida workers' compensation claim with a date of accident on and after Jan. 1, 1994, that has not been settled or not reached the statute of limitation if the injured employee falls into the described "statutory gap."

Most injured employees attain MMI within 104 weeks, so the decision is not expected to affect a large number of claims. However, it may provide an incentive for some injured employees and their attorneys to pursue more medical treatment and extend the attainment of MMI, resulting in the payment of additional weeks of TTD. Alternatively, some believe that the extension of TTD to 260 weeks may actually delay the filing of some claims for PTD and limit or mitigate exposure on those claims.

Because the *Westphal* decision involved only the claimant's entitlement to TTD benefits, the decision is silent as to the statutory cap on temporary partial disability (TPD) benefits. The current statute maintains a statutory cap of 104 weeks for TPD benefits. It is anticipated that claimant attorneys will seek to have the *Westphal* decision applied to TPD benefits as well, but the rationale explained by the court in *Westphal* may not be relevant to claims involving an employee released to work with restrictions. Based upon the decision, any workers' compensation claims that have exhausted 104 weeks of TTD and for which PTD benefits are not being paid must be evaluated for reinstatement of TTD.

Rate changes

The National Council on Compensation Insurance (NCCI) submitted an amended rate filing to address the impact of the *Westphal* decision on the Florida's workers' compensation system. This amended filing increases NCCI's initial proposed combined average rate increase from 17.1% to 19.6%.

Individual projected rate impacts for three recent legal changes in Florida include the following:

A 2.2% projected rate increase for the June 9, 2016 Florida Supreme Court decision in the case of *Westphal v. City of St. Petersburg* described above. NCCI indicates the anticipated impact to be a combined 260-week limitation on temporary disability benefits (temporary total and/or temporary partial disability).

A 15% projected rate increase for the April 28, 2016 Florida Supreme Court decision in the case of *Castellanos v. Next Door Company* that held the mandatory attorney fee schedule in Florida Statute unconstitutional as a violation of due process under both the Florida and United States Constitutions. The anticipated impact, according to NCCI, is the return to hourly attorney fees.

A 1.8% projected rate increase related to updates within the Florida Workers' Compensation Health Care Provider Reimbursement Manual per Senate Bill 1402. The manual became effective on July 1, 2016.

The Florida Office of Insurance Regulation has scheduled a public rate hearing for August 16, 2016.

What's next?

The Florida legislature adjourned March 11, 2016. Given that this is a major election year, it remains uncertain whether a special session will occur. If it does not, it will be 2017 before legislation to address the benefit issue is a possibility. In the meantime, there is growing debate about changes needed in the Florida workers' compensation system.

Sedgwick is actively involved in efforts by the Workers' Compensation Coalition, led by the Associated Industries of Florida, to develop a broad strategy addressing this and other challenges to workers' compensation in the state, including recommendations regarding legislative changes.

RECURRENT PERIODS CHANGE IN CALIFORNIA DISABILITY PLANS

California Senate Bill 667 became effective July 1, 2016 and includes changes in the state and voluntary disability insurance plans. Below are the amendments in SB 667:

- Under the previous law, a disabled individual [in California] was eligible to receive disability benefits equal to one-seventh of his/her weekly benefit amount for each full day during which he/she is unemployed due to a disability if the director of employment development makes specified findings, including that the individual was unemployed and disabled for a waiting period of seven consecutive days during each disability benefit period. The law provided that during this seven-day waiting period, no disability benefits were payable.

  As of July 1, 2016, this bill waives the seven-day waiting period for an individual who has already served the seven-day waiting period for the initial claim when that person files a subsequent claim for disability benefits for the same or a related condition within 60 days after the initial disability benefit period. The bill also requires the director to submit a report regarding the effect of the modified waiting period to the legislature on or before Jan. 1, 2020, as specified.

- Before this change, the law provided that if an individual received two consecutive periods of disability benefits due to the same or a related cause or condition and separated by not more than 14 days, they were considered as one disability benefit period.

  SB 667 bill extends to 60 days the time between claims for the same or related cause or condition to be considered one disability benefit period. Therefore, for all claims incurred on or after July 1, 2016, the recurrent period of disability changes from the 14-day period to a 60-day period for the same or related cause or condition. (The 14-day recurrent period applies to claims initially incurred prior to July 1, 2016.) This change applies to all CA state disability insurance claims administered by California's Employment Development Department as well as to California voluntary disability insurance claims administered by Sedgwick.

As a result of this new law, Sedgwick has updated its systems and processes, and we are fully ready to ensure compliance for our customers.

Sedgwick customers that have questions regarding the recent state changes should contact their client services representative.

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