



## Edging up

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*Short takes on emerging industry issues – state legislative changes, formulary updates and workers' compensation changes*

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# California Consumer Privacy Act update

BY **BRENDA COREY**

*SVP, Compliance & Regulatory, Sedgwick*

California Governor Jerry Brown signed the new California Consumer Privacy Act (CCPA) into law on June 28, 2018 and it will become effective in January 2020. The new law is found in Title 1.81.5, Section 1798.100.

Amendment activity started in August 2018 with SB 1121 and incorporates 47 changes, but only a few are substantive. The California Attorney General sent additional recommended changes to the California Legislature on August 22, 2018 and the Governor approved the bill on August 23, 2018. Additional filings have been made with the Federal Trade Commission complaining that state laws of this nature are creating a patchwork privacy policy approach in the U.S. The California Attorney General was granted regulatory rulemaking authority under the CCPA and additional regulatory work started in 2019 with the Attorney General's office hosting public forums and accepting comments through March 8, 2019. Summaries of the meetings are found at <https://oag.ca.gov/privacy/ccpa>.

Sedgwick's services fall within the scope of the CCPA. The new law focuses on the following:

- Transparency and notice obligations in websites and other privacy notices and authorizations are required. Notices will require language informing the consumer of their rights around the use of their information and their right not to be discriminated against for asking to facilitate those rights. Sedgwick maintains privacy notices and authorizations and will update them where needed.
  - Responses to requests must be made in writing within 45 days and free of charge with some exceptions. Sedgwick's privacy office will assist with responses to requests.
  - Rights to erasure, objection to sale and non-discrimination are granted with exceptions. Use of information for claims activity will be exempted under several exceptions such as: to complete transactions, to provide goods or services the consumer requested, to perform contracts, to detect security incidents, to comply with legal obligations, and for fraud or prosecution.
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- New civil penalties of up to \$2,500 are included if there is no cure for unintentional actions or up to \$7,500 for intentional actions.
- Private right of action of \$100 to \$750 is included or the actual damages are recoverable if the amount exceeds the statutory damages found.

SB 1121, passed and approved by the Governor on September 23, 2018, includes amendments and addresses substantive changes to:

- Limit the definition of “personal information”
- Clarify the Health Insurance Portability and Accountability Act exemption
- Clarify the Gramm-Leach-Bliley Act and insurance-related exemptions
- Limit the right of action
- Delay California Attorney General enforcement actions until July 2020

Currently, there are several potential additional bills pending in the California legislature relating to the CPA speaking to issues such as facial recognition, establishing a commission on tech equity, financial incentive programs, making a contact email address available to consumers, enhancement of enforcement measures and clarifications on definitions, exemptions and non-substantive changes.

*Sedgwick is monitoring this important area of law to ensure our policies and procedures continue to meet the requirements. For questions, please contact your client services director at Sedgwick.*



## RESOURCES

### CCPA (Title 1.81.5, Section 1798.100)

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB375](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB375)

### SB 1121

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB1121](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1121)

### California Legislative Information website

<https://leginfo.legislature.ca.gov/>

### CCPA Current Rulemaking Activity

<https://oag.ca.gov/privacy/ccpa>

# State formulary updates

BY **ROXANNE BROWN**

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## **ARKANSAS**

The Arkansas Workers' Compensation Commission adopted a drug formulary that regulates all prescriptions for workers' compensation claims with a date of injury on or after July 1, 2018, and applies to all drugs approved by the Food and Drug Administration that are prescribed and dispensed for outpatient use. At this time, the rule does not include provisions for folding in existing or "legacy" claims as other state-mandated formularies have previously done. The state's formulary has been incorporated into the pharmacy benefit management vendor platforms (Optum and myMatrixx) so that examiners and nurses will receive authorization requests only related to the new formulary for impacted claims as of the effective date. At Sedgwick, one of the many critical steps for our pharmacy utilization review team includes checking any prescriptions requiring prior authorization.

## **INDIANA**

On January 1, 2019, Indiana adopted Appendix A in the Official Disability Guidelines. With this change, Indiana joins other states looking to control prescriptions for certain drugs often prescribed for injured workers. Sedgwick is watching for additional guidance from the commissioner and we have already begun preparations to notify healthcare providers and injured employees about the formulary and what it means to them. Our team of experienced pharmacists and nurses will work to ensure weaning protocols are in place where indicated, and injured workers receive the best treatment options focused on their safety and well-being.

## **KENTUCKY**

On October 22, 2018, Commissioner Robert Swisher announced the adoption of the Official Disability Guidelines (ODG) formulary and medical treatment guidelines based on the requirements in Kentucky House Bill 2, which included adopting a pharmaceutical formulary and treatment guidelines for work-related injuries and occupational diseases. The Department of Workers' Claims is in the process of drafting administrative regulations to implement





the ODG formulary and treatment guidelines and will establish an effective date. Sedgwick is following the rulemaking process carefully and has begun to anticipate the impact on “legacy” claims (prescriptions prior to the implementation of the formulary). We will be ready to educate prescribers and injured workers about this new process and help them make the transition as seamless as possible.

### **MONTANA**

Since 2007, Montana has recognized the usefulness of medical treatment guidelines in its regulatory scheme. The Department of Labor amended rules related to medical utilization and treatment guidelines and adopted rules for a workers’ compensation drug formulary. The Official Disability Guidelines (ODG) were adopted for all “legacy” claims defined as injuries occurring prior to April 1, 2019. Sedgwick anticipates the adoption of the ODG and our experienced pharmacy team will embrace the role of educator and reviewer to ensure the safety of injured employees.

### **NEW YORK**

New York continues to work toward the adoption of a drug formulary by publishing a revised version of proposed regulations. As written, the formulary will apply to all prescriptions regardless of the date of the accident with an effective date to be determined. The rules will include a prior authorization process for specified drugs and allow for dispute resolution by the board’s medical director. Sedgwick is following the proposed formulary, and we will be watching for the final adoption and implementation date in order to facilitate communications with healthcare providers and injured workers.

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# Changes impacting workers' compensation claims

BY **DESIREE TOLBERT-RENDER**

AVP, National Technical Claims Compliance, Workers' Compensation, Sedgwick

## NEW MEDICAL FEE SCHEDULE IN NEW YORK

The New York State Workers' Compensation Board (NYWCB) adopted an updated workers' compensation medical fee schedule for medical, podiatry, chiropractic and psychological treatment provided on or after April 1, 2019. This is the first update since 1996.

Below are some of the key changes in the new medical fee schedule:

- According to the NYWCB Regulatory Impact Statement, an overall fee increase of 5% is expected
- Areas of the state experiencing medical provider shortages may see greater increases due to the regional conversion factors
- It applies to out-of-state medical providers treating injured workers living in New York by including a provision to use the regional conversion factor for the zip code where the claimant resides
- It will not apply to no-fault providers until 18 months later or on October 1, 2020

## EDI WILL SOON BE MANDATORY IN ILLINOIS

Beginning June 14, 2019, the Illinois Workers' Compensation Commission (IWCC) will require the electronic submission of accident reports via the International Association of Industrial Accident Boards and Commissions (IAIABC). Release 3.1 XML format. The IWCC will no longer collect the paper accident reports (Forms IC45-First Report of Injury and IC85-Supplemental Report of Injury).

*Sedgwick is prepared to implement these upcoming changes for New York and Illinois workers' compensation claims. If you have questions, please contact your Sedgwick client services director.*

