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May 13, 2019

Administrative Regulations
Review Subcommittee
Capitol Annex, Rm. 029
702 Capitol Ave.
Frankfort, KY 40601

RE: 803 KAR 25:270 Pharmaceutical Formulary

Honorable Members of the Administrative Regulations Review Subcommittee:

My name is Peter Naake, and I am an attorney who represents injured workers in Kentucky Workers' Compensation claims. I am currently president of the Kentucky Workers Association, a group of attorneys also representing injured workers in Kentucky workers' compensation claims. Collectively we represent and have represented thousands of injured workers through the difficult ordeal of an on-the-job injury. I was privileged to be have been included in discussions of the development of regulations implementing the pharmaceutical formulary promulgated by Commissioner Robert Swisher. The resulting administrative regulation is, for the most part, an excellent and well thought-out law, which takes into consideration the interests of all stakeholders in the workers' compensation system. On behalf of injured workers, however, I must object to one significant omission in the regulation, as follows:

The regulation as drafted does not require that an insurance company or PBM (pharmacy benefit manager) send a notice of why a prescription is being denied to the injured worker at the very first step of the prescribing process, if the PBM determines that the prescription is designated as an "N" drug under the formulary. This seems fundamentally wrong, because the injured worker has the right to know about the formulary and why his or her prescription is being denied. It may cause him to take action to solve the problem by bringing a form explaining the denial notice to his doctor, and urge him to explain the reason that the doctor prescribed a drug outside the formulary (provide sound medical reasoning), or ask the doctor to change the prescription to a "Y" status drug. Instead, the injured worker is left to wonder why a prescription for a work-related injury is being denied.

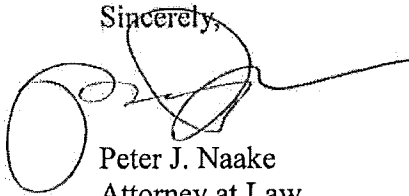
I have discussed my concerns about a lack of notice to the injured worker that his prescription is being denied under the formulary at its initial stage during the Regulatory Advisory Committee's meeting. Several commentators raised this

As a representative of injured workers, it is unclear to me why a failure to give notice to the injured worker that the drug prescribed for his injury has an "N" status, and his prescription will not be filled unless pre-authorization is granted, is "sufficient notice". At that stage, the injured worker has no notice that his prescription is being denied under the formulary at all. Only if the medical provider requests pre-authorization from the insurance company, which would be the first step of appeal, and that pre-authorization request is denied under the utilization review regulations, will the injured worker ever find out that his prescription is being rejected under these formulary regulations. Being the person most affected by the rejection of a prescription, the injured worker should certainly have notice concerning the requirement of formulary regulations. **No notice is not "sufficient notice".**

I urge the Administrative Regulations Review Subcommittee to ask Commissioner Swisher to require a notice provision to the injured worker when his prescription is being denied as not in conformance with the pharmaceutical formulary. This can be done at the same time that the provider is given the same notice. In fact, many private healthcare insurance plans provide a form to covered individuals that their physician has prescribed a drug outside of the formulary which is has adopted, and advising that the individual bring the form to his or her doctor. At the early stages of implementation of the formulary, many prescribing physicians will simply not know about the required formulary for workers' compensation, and a notice to the injured worker will help educate them.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter J. Naake", with a long horizontal flourish extending to the right.

Peter J. Naake
Attorney at Law

PJN/ea