

Regulatory Flexibility Analysis for Small Businesses and Local Governments:

1. Effect of rule:

All insurance carriers, self-insured employers and third-party administrators (payers) will need to comply. While most payers are not small businesses, those that are will need to comply. Additionally, many municipalities are self-insured for workers' compensation.

2. Compliance Requirements:

Payers will need to comply with the proposed regulation when it is adopted. The proposal requires payers to provide injured workers with written notice, which may be electronic, when they are required to begin going to a designated pharmacy for prescribed medication when they were not required to previously for a particular body part or condition, and provides regulatory guidance about when they may go out-of-network.

3. Professional Services:

Small businesses and local governments should not need any new professional services to comply with this rule.

4. Compliance Costs:

Overall, this proposal is expected to be cost neutral but will provide added clarity for an injured worker attempting to get prescribed medication. The notice that payers may provide will be created by the Board and may be delivered electronically. These minimal compliance costs are balanced by the anticipated reduction in frictional costs associated with resolving the disputes and the necessity of assuring that injured workers have access to medically necessary medication even when it is unclear if the need for the medication is due to their work-related injury or not.

While there are possible penalties included in this proposal for payers who do not follow the notice requirements, whether or not payers incur such penalties is within their control.

5. Economic and technological feasibility:

It is economically and technologically feasible for small businesses and local governments to comply with the proposed amendments. The proposal requires the payer to be aware of an injured worker possibly going to a non-designated pharmacy for prescribed medication when a particular body part or condition has not yet been accepted, and requires written notification when the injured worker must go to the designated pharmacy, but nothing in the proposal is specialized or particular different than the requirements payers have now, except the form of the notice may change as it is prescribed by the Chair.

6. Minimizing adverse impact:

This proposal provides guidelines and clear rules so that the injured worker can obtain needed prescription medication. The proposal minimizes adverse impacts by allowing the payers to elect whether to provide medically necessary medication within the network or notify the injured worker that they will not be paying for the medication and the injured worker may obtain the medication outside of the workers' compensation pharmacy network.

The legislature has taken notice of this interest and introduced legislation to help combat this issue as well, but a regulatory approach is more streamlined and more efficient – both with guiding payer behavior and with ensuring injured workers continue to have access to their prescribed medication even when there is a legal objection/the claim is controverted. This proposal should avoid the unnecessary litigation and hearings that would be required under the bill.

7. Small business and local government participation:

The Board has solicited comments for the proposal on its website from all participants in the workers' compensation system, including small businesses and local governments.

The Board does not have a small employer or municipality database but has sent an electronic communication describing the proposal to the insurer and employer subscribers on December 6, 2024.