

Subdivision (i) of section 441.1 of Title 12 NYCRR is hereby amended to read as follows:

- (i) **Non-Formulary drug** means a drug that does not appear on the Formulary and which is one of the following: an FDA-approved prescription drug; an FDA-approved nonprescription drug; or a nonprescription over the counter drug that is marketed pursuant to an FDA OTC Monograph. Non-Formulary drugs do not include non-FDA approved drugs and such drugs may not be prescribed. [Medical marijuana prescribed and dispensed in accordance with Title V-A of the Public Health Law is not subject to this Part. The use of medical marijuana for work-related injuries will be regulated by the Board pursuant to section 324.3 of this Chapter, regardless of where the medical marijuana was prescribed or dispensed.]

Section 441.2 of Title 12 NYCRR is hereby amended to read as follows:

The New York Workers' Compensation Formulary, [fourth]fifth edition (March 15[3], 20[19]21), incorporated by reference herein, identifies drugs using three lists:

- (a) phase A for prescriptions within the first 30 days following an accident or injury;
- (b) phase B for prescriptions after, the sooner of, the first 30 days following an accident or injury or acceptance or establishment of the claim; and
- (c) perioperative for use during the perioperative period.

Copies of the formulary may be downloaded from the board's website free of charge. The formulary may be examined at the office of the Department of State, 99 Washington Avenue, Albany, New York 12231, the Legislative Library, the libraries of the New York State Supreme Court, and the district offices of the board, or obtained from the Board's website. [by submitting a request in writing, with a fee of \$5, to the New York State Workers' Compensation Board, 328 State Street, Schenectady, New York 12305-2318. Payment of the fee shall be made by check or money order payable to "Chair WCB."] Information about the formulary can be requested by email at [GENERAL\_INFORMATION] [WCBFormularyQuestions@wcb.ny.gov](mailto:WCBFormularyQuestions@wcb.ny.gov), or by telephone at 1-800-781-2362.

Subdivision (a) of section 441.3 of Title 12 NYCRR is hereby amended to read as follows:

(a) Effective Dates.

(1) New Prescriptions. Six months from the effective date of this Part, every new prescription shall be prescribed and dispensed consistent with the Formulary and this Part regardless of the date of accident or disablement and subject to any required Prior Authorization.

(2) Refill and Renewal Prescriptions. [12 months from the effective date of this Part] On or after September 13, 2021, every refill and renewal prescription shall be prescribed and dispensed consistent with the Formulary and this Part regardless of the date of accident or disablement and subject to any required Prior Authorization.

Subdivision (f) of section 441.3 of Title 12 NYCRR is hereby amended to read as follows:

(f) Notice. [Within six months of the effective date of this Part] I[t]he insurance carrier or self-insured employer shall identify all claimants with current prescriptions for Non-Formulary drugs and provide written notification to the claimant and to the prescribing medical provider. Notice

to the prescribing medical provider and to the claimant shall be in the format prescribed by the Chair.

Subdivision (d) of section 441.5 of Title 12 NYCRR is hereby amended to read as follows:

d) Insurance carriers and self-insured employers shall provide two levels of review as the Prior Authorization process. When a request for Prior authorization is approved or partially approved, the carrier may not thereafter deny payment for the approved medication as set forth in section 440.5 of this Title. The Prior Authorization process replaces the process set forth in section 324.3 of this Chapter (the variance process) for Non-Formulary drugs.

(1) First level review. To initiate the Prior Authorization process, the medical provider shall submit a request for Prior Authorization to the insurance carrier, self-insured employer, or when designated by section 440.3 of this Subchapter, the pharmacy network, to the designated contact for First level review as described in subdivision (c) of this section. Such request shall be submitted in the manner prescribed by the Chair.

(2) A Prior Authorization request for a Non-Formulary drug may include the requested length of time that the Prior Authorization will remain in effect or the quantity prescribed and the number of refills. In no event may a Prior Authorization request exceed 365 days. If the requested length of time for the Prior Authorization is not stated, the default shall be 30 days.

(3) The carrier, self-insured employer, or pharmacy benefits manager shall approve, partially approve or deny a Prior Authorization request within four calendar days of submission by a provider.

(i) A partial approval authorizes the requested drug but limits the length of time, quantity prescribed or number of refills from that requested by the medical provider.

(ii) A request for Prior Authorization that is not responded to within four calendar days (by an approval, denial or partial approval) may be approved for the period requested upon issuance of an Order of the Chair. A carrier may not object to payment in accordance with section 440.5 of this Title for Non-Formulary drugs approved by an Order of the Chair and any such objection or non-payment may be subject to penalties pursuant to [section 114-a\(3\) of the Workers' Compensation Law](#).

(4) A partial approval or denial of a request for Prior Authorization must:

(i) Provide a specific reason for the denial or partial approval with reference to the specific Prior Authorization request made by the medical provider.

(ii) Provide information regarding how to request review of the denial from the Carrier's Physician.

(5) A first level review of a prior authorization request for medical marijuana must be conducted in conformity with New York State law regarding medical marijuana.

Elements that must be included in a prior authorization request for medical marijuana include:

(i) serious life-threatening condition, and associated condition, as defined by New York State Public Health Law;

(ii) compensable work-related condition;

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(iii) indication that claimant has been certified by New York State Department of Health to receive medical marijuana;

(iv) description of other treatments that have been tried and have not yielded results; and

(v) expected functional improvement from medical marijuana