

Subdivision (d) of section 440.3 of Title 12 NYCRR is hereby amended to read as follows:

In any claim controverted by the self-insured employer or insurance carrier pursuant to Workers' Compensation Law [S]section 25(2) or after an initial claim has been accepted, but the self-insured employer or insurance carrier has filed or will file a legal objection to the prescription medication contending that the medication treats a non-established body site or that the self-insured employer or insurance carrier has not accepted liability for the body site or condition, and where the self-insured employer or insurance carrier will not reimburse the designated independent pharmacy, pharmacy chain, or pharmacy benefits manager for prescription medicines dispensed to the claimant until the controversy is resolved and the claim established, or until the legal objection is resolved, [even under the provisions of Workers' Compensation Law Section 21-a,] the self-insured employer or insurance carrier shall provide notice of this decision in writing to the claimant, the board, and the independent pharmacy, pharmacy chain, or pharmacy benefit manager it has designated [with the notice] that either the right to compensation is controverted or that it will not be paying for the prescribed medication pending resolution of such legal objection. Such notice shall be in the format prescribed by the [C]chair, which may be electronic. Upon receipt of such notice, [, and shall state that the self-insured employer or insurance carrier does not intend to reimburse the independent pharmacy, pharmacy chain, or pharmacy benefit manager it has designated while the claim is controverted and until it is established, and] the claimant may elect to use a pharmacy not designated pursuant to this Part during the period that the claim is controverted or the legal objection to payment is pending. Prior to the filing of such prescribed notice and service upon the claimant, the pharmacy must dispense the prescribed medication to the claimant [may be prescribed and dispensed] and the insurance carrier or self-insured employer will be responsible for the cost (as set forth in section 440.5 of this Part) of medications from, as applicable, Phase A, B or the Perioperative section of the Pharmacy Formulary.

(1) Failure of the designated pharmacy to dispense and/or failure of the self-insured employer or insurance carrier to pay for such prescribed medications prior to providing such notice shall subject the self-insured employer or insurance carrier, following a hearing, to penalties under section 114-a (3) of the Workers' Compensation Law of at least two-thousand dollars, with increased penalties thereafter for any subsequent failures to dispense.

(2) In the event the claimant prevails [on his or her claim] and the claim is established or the legal objection is resolved in favor of the provider, the self-insured employer or insurance carrier shall reimburse either:

[(1)] (i) the claimant, the pharmacy processing agent, or other third party that has made payment for such medication; or

[(2)] (ii) the pharmacy from which the claimant has obtained such medication where the pharmacy has not received payment from the claimant, the pharmacy processing agent, or any third party. Such reimbursement shall not exceed the maximum amount set by the fee schedule for controverted claims in section 440.5 of this Part. In the event the self-insured employer or insurance carrier prevails, it shall have no obligation to reimburse the claimant, the pharmacy processing agent, or any third party that paid for such medication, or pharmacy. Nothing in these regulations shall bar the pharmacy or pharmacy processing agent or other third-party payor from seeking payment or reimbursement from the claimant if the claim is not established as otherwise permitted by law.

Subdivision (c) of Section 440.4 of Title 12 NYCRR is hereby amended to read as follows:

(c) The requirement to use a designated independent pharmacy, chain pharmacy, or pharmacy benefit manager, shall not be effective until all notification requirements set forth in subdivisions (a) and (b) of this section have been met. Additionally, when the insurance carrier or self-insured employer or their agent has previously served the claimant with the prescribed notice required by subdivision (d) of section 440.3 of this Part, the self-insured employer, insurance carrier, or their agent, must re-serve the claimant with the notice required in subdivision (b) of this section in order to require a claimant to resume use of a designated pharmacy.

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

(b) The Formulary shall apply to prescriptions for accidents or injuries that are controverted or body parts or conditions not yet accepted by the insurance carrier or self-insured employer.