

REFERENCE TITLE: **workers' compensation; opioids; dispensed medications**

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SB 1111

Introduced by
Senator Fann

AN ACT

AMENDING SECTION 23-1062.02, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 6, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-1062.04; RELATING TO WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-1062.02, Arizona Revised Statutes, is amended
3 to read:

4 23-1062.02. Use of controlled substances; prescription of
5 schedule II controlled substances; reports;
6 treatment plans; monitoring program inquiries;
7 preauthorizations; definitions

8 A. A PHYSICIAN SHALL LIMIT THE INITIAL PRESCRIPTION FOR ANY OPIOID
9 MEDICATION FOR AN EMPLOYEE TO NOT MORE THAN A FIVE-DAY SUPPLY, EXCEPT THAT
10 AN INITIAL PRESCRIPTION FOR AN OPIOID MEDICATION FOLLOWING A SURGICAL
11 PROCEDURE IS LIMITED TO NOT MORE THAN A FOURTEEN-DAY SUPPLY.

12 B. SUBSECTION A OF THIS SECTION DOES NOT APPLY TO INITIAL
13 PRESCRIPTIONS FOR ANY OPIOID MEDICATION IF THE EMPLOYEE:

- 14 1. HAS AN ACTIVE ONCOLOGY DIAGNOSIS.
- 15 2. HAS A TRAUMATIC INJURY, NOT INCLUDING A SURGICAL PROCEDURE.
- 16 3. IS RECEIVING HOSPICE CARE.
- 17 4. IS RECEIVING END-OF-LIFE CARE.
- 18 5. IS RECEIVING PALLIATIVE CARE.
- 19 6. IS RECEIVING SKILLED NURSING FACILITY CARE.

20 ~~A.~~ C. A physician shall include in the report required under
21 commission rule THE FOLLOWING information pertaining to the following:

22 ~~1. The off-label use of a narcotic, opium-based controlled~~
23 ~~substance or schedule II controlled substance by a claimant.~~

24 ~~2. The use of a narcotic or opium-based controlled substance or the~~
25 ~~prescription of a combination of narcotics or opium-based controlled~~
26 ~~substances at or exceeding a one hundred twenty milligram morphine~~
27 ~~equivalent dose per day.~~

28 ~~3. The prescription of a long-acting or controlled release opioid~~
29 ~~for acute pain.~~

30 ~~B. The information required pursuant to subsection A of this~~
31 ~~section shall include the USE OF A NARCOTIC OR OPIUM-BASED CONTROLLED~~
32 ~~SUBSTANCE THAT IS LISTED IN SCHEDULE II OR THE PRESCRIPTION OF ANY OPIOID~~
33 ~~MEDICATION:~~

34 1. Justification for THE use of the controlled substance, ~~and~~
35 INCLUDING DOCUMENTATION OF THE FOLLOWING:

- 36 (a) THAT A PHYSICAL EXAMINATION OF THE EMPLOYEE WAS CONDUCTED.
- 37 (b) THAT A SUBSTANCE USE RISK ASSESSMENT OF THE EMPLOYEE WAS
38 CONDUCTED.
- 39 (c) THAT THE EMPLOYEE GAVE INFORMED CONSENT FOR ANY OPIOID
40 TREATMENT.

41 2. A treatment plan ~~that includes a description of~~ DESCRIBING THE
42 measures that the physician will implement to monitor and prevent the
43 development of abuse, dependence, addiction or diversion by the employee.
44 The physician shall include in the treatment plan ALL OF THE FOLLOWING:

- 45 (a) A medication agreement. ~~, a plan for subsequent~~

1 (b) THE FREQUENCY OF FACE-TO-FACE follow-up visits ~~and~~ TO
2 REEVALUATE THE EMPLOYEE'S CONTINUED USE OF OPIOIDS.

3 (c) Random drug testing. ~~and~~

4 (d) Documentation that the medication regime is providing relief
5 that is demonstrated by clinically meaningful improvement in function.

6 (e) CRITERIA AND PROCEDURES FOR TAPERING AND DISCONTINUING OPIOID
7 PRESCRIPTION OR ADMINISTRATION AS PART OF THE TREATMENT.

8 (f) CRITERIA AND PROCEDURES FOR OFFERING OR REFERRING THE EMPLOYEE
9 FOR TREATMENT FOR DEPENDENCE ON OR ADDICTION TO OPIOIDS.

10 D. If the drug test of the employee reveals inconsistent results,
11 the physician within five business days shall provide a written report to
12 the carrier, self-insured employer or commission setting forth a treatment
13 plan to address the inconsistent drug test results.

14 ~~E. Within two business days of writing or dispensing an initial~~
15 ~~prescription order for at least a thirty-day supply of an opioid~~
16 ~~medication for the employee, a physician shall submit an inquiry to the~~
17 ~~Arizona state board of pharmacy requesting the employee's prescription~~
18 ~~information that is compiled under the controlled substances prescription~~
19 ~~monitoring program prescribed in title 36, chapter 28.~~ BEFORE PRESCRIBING
20 AN OPIOID ANALGESIC OR BENZODIAZEPINE CONTROLLED SUBSTANCE THAT IS LISTED
21 IN SCHEDULE II, III OR IV FOR AN EMPLOYEE AND AT LEAST QUARTERLY WHILE
22 THAT PRESCRIPTION REMAINS A PART OF THE TREATMENT, THE PHYSICIAN SHALL
23 MAKE INQUIRY OF AND OBTAIN A UTILIZATION REPORT REGARDING THE EMPLOYEE
24 FROM THE CONTROLLED SUBSTANCES PRESCRIPTION MONITORING PROGRAM'S CENTRAL
25 DATABASE TRACKING SYSTEM AS REQUIRED BY SECTION 36-2606. The physician
26 shall report the results to the carrier, self-insured employer or
27 commission as soon as reasonably practicable but ~~no~~ NOT later than thirty
28 days ~~from~~ AFTER the date of the inquiry. Thereafter, the carrier,
29 self-insured employer or commission may request ~~no~~ NOT more than once
30 every two months that the physician perform additional inquiries to the
31 ~~Arizona state board of pharmacy~~ CONTROLLED SUBSTANCES PRESCRIPTION
32 MONITORING PROGRAM'S CENTRAL DATABASE TRACKING SYSTEM.

33 ~~F.~~ F. If the result of an inquiry to the ~~Arizona state board of~~
34 ~~pharmacy~~ CONTROLLED SUBSTANCES PRESCRIPTION MONITORING PROGRAM'S CENTRAL
35 DATABASE TRACKING SYSTEM reveals that the employee is receiving opioids
36 from another undisclosed health care provider, the physician shall within
37 five business days report the results to the carrier, self-insured
38 employer or commission.

39 ~~F.~~ G. If the physician does not comply with this section:

40 1. The carrier, self-insured employer or commission is not
41 responsible for payment for the physician's services until the physician
42 complies with this section.

43 2. Except for a self-insured employer that provides medical care
44 pursuant to section 23-1070, ~~an~~ THE employer, carrier or commission may
45 request a change of physician after making a written request to the

1 physician to comply with this section and the request identifies the area
2 of noncompliance. If a change of physician is ordered and the order
3 becomes final, the employee shall select a physician ~~whose practice~~
4 ~~includes pain management and~~ who agrees to comply with this section. If
5 other medical providers are not available in the employee's area of
6 residence, the employer, carrier or commission shall pay in advance for
7 the employee's reasonable travel expenses, including the cost of
8 transportation, food, lodging and loss of pay, if applicable.

9 ~~F.~~ H. If medically necessary, the carrier, self-insured employer
10 or commission shall provide drug rehabilitation and detoxification
11 treatment for an employee who becomes dependent on or addicted to opioids
12 that are prescribed for a work-related injury. In the event of a medical
13 conflict regarding the necessity for drug rehabilitation and
14 detoxification, the carrier, self-insured employer or commission shall
15 continue to provide the opioids until a determination is made after a
16 hearing by an administrative law judge.

17 ~~G.~~ I. If the employee resides out of state, the carrier,
18 self-insured employer or commission ~~may~~ IS not ~~be~~ responsible for
19 providing medications that are subject to this section if the out-of-state
20 physician fails to comply with this section. If the other state has a
21 controlled substances monitoring program, the physician shall submit an
22 inquiry to the database as prescribed by subsection ~~F.~~ E of this section.

23 ~~H. This section does not apply to medications administered to the~~
24 ~~employee while the employee is receiving inpatient hospital treatment.~~

25 ~~I.~~ J. A carrier, A self-insured employer or THE commission may
26 require physician compliance with this section notwithstanding the
27 existence of a prior award addressing medical maintenance benefits for
28 medications. A carrier or self-insured employer is not liable for bad
29 faith or unfair claims processing for any act taken in compliance of and
30 consistent with this section OR ANY ACT REASONABLY NECESSARY TO MONITOR OR
31 ASSESS THE APPROPRIATENESS AND EFFECTIVENESS OF AN EMPLOYEE'S OPIOID USE.

32 ~~J.~~ K. For the purposes of this section:

33 1. "Clinically meaningful improvement in function" means ~~any~~ BOTH
34 of the following:

35 ~~(a) A clinically documented improvement in range of motion.~~

36 ~~(b)~~ (a) An ~~increase~~ A SIGNIFICANT IMPROVEMENT in the performance
37 of activities of daily living OR A REDUCTION IN WORK RESTRICTIONS.

38 ~~(c) A return to gainful employment.~~

39 (b) A REDUCTION IN DEPENDENCY ON CONTINUED MEDICAL TREATMENT.

40 2. "Inconsistent results" means:

41 (a) The employee's reported medications, including the parent drugs
42 or metabolites, are not detected.

43 (b) Controlled substances are detected that are not reported by the
44 employee.

1 ~~3. "Off-label use" means use of a prescription medication by a~~
2 ~~physician to treat a condition other than the use for which the drug was~~
3 ~~approved by the United States food and drug administration.~~

4 3. "INITIAL PRESCRIPTION" MEANS A PRESCRIPTION THAT HAS NOT BEEN
5 FILLED WITHIN THE PREVIOUS SIXTY DAYS.

6 4. "SUBSTANCE USE RISK ASSESSMENT" MEANS AN EVALUATION OF AN
7 EMPLOYEE'S UNIQUE LIKELIHOOD FOR ADDICTION, MISUSE, DIVERSION OR ANOTHER
8 ADVERSE CONSEQUENCE RESULTING FROM THE EMPLOYEE BEING PRESCRIBED OR
9 RECEIVING TREATMENT WITH OPIOIDS.

10 5. "TRAUMATIC INJURY" MEANS A SERIOUS AND LIFE-THREATENING PHYSICAL
11 INJURY CAUSED BY EXTERNAL FORCE AND POTENTIALLY RESULTING IN SECONDARY
12 COMPLICATIONS SUCH AS SHOCK, RESPIRATORY FAILURE OR DEATH.

13 Sec. 2. Title 23, chapter 6, article 9, Arizona Revised Statutes,
14 is amended by adding section 23-1062.04, to read:

15 23-1062.04. Dispensed medications: definition

16 A. AN INSURANCE CARRIER, A SELF-INSURED EMPLOYER OR THE COMMISSION
17 IS RESPONSIBLE FOR THE PAYMENT FOR MEDICATIONS ONLY IF THE MEDICATIONS ARE
18 DISPENSED BY A LICENSED PHARMACIST IN A PHARMACY SETTING, INCLUDING AN
19 ONLINE PHARMACY, THAT IS ACCESSIBLE TO THE GENERAL PUBLIC.

20 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, AN INSURANCE
21 CARRIER, A SELF-INSURED EMPLOYER OR THE COMMISSION IS RESPONSIBLE FOR THE
22 PAYMENT FOR MEDICATIONS THAT ARE DISPENSED IN A CLOSED-DOOR PHARMACY IF
23 ALL OF THE FOLLOWING APPLY:

24 1. THE MEDICATION IS DISPENSED WITHIN SEVENTY-TWO HOURS AFTER THE
25 EMPLOYEE FIRST SEEKS MEDICAL TREATMENT FOR THE INJURY.

26 2. THE MEDICATION DISPENSED IS FOR NOT MORE THAN AN INITIAL,
27 ONETIME FIVE-DAY SUPPLY OF OPIOID MEDICATION OR A FOURTEEN-DAY SUPPLY OF A
28 NONOPIOID MEDICATION.

29 3. THE MEDICATION CONFORMS TO DOSAGES THAT ARE CUSTOMARILY
30 AVAILABLE WHEN THE MEDICATION IS DISPENSED BY A LICENSED PHARMACIST IN A
31 PHARMACY SETTING THAT IS ACCESSIBLE TO THE GENERAL PUBLIC.

32 C. FOR THE PURPOSES OF THIS SECTION, "CLOSED-DOOR PHARMACY":

33 1. MEANS A PHARMACY THAT PROVIDES PHARMACEUTICAL CARE TO A DEFINED
34 AND EXCLUSIVE GROUP OF PATIENTS WHO HAVE ACCESS TO THE SERVICES OF THE
35 PHARMACY BECAUSE THEY ARE TREATED BY OR HAVE AN AFFILIATION WITH A
36 SPECIFIC ENTITY OR PRACTITIONER.

37 2. DOES NOT INCLUDE A HOSPITAL PHARMACY.