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Emerging Issues in Arkansas Workers' Compensation Law

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In the past year, there have been some significant changes in the area of workers compensation law in Arkansas that could impact your defense of workers compensation claims. It would be advisable that you develop an action plan with your client to address these changes.

Death and Permanent Total Disability.

The Arkansas legislature has recently enacted legislation to effectively abolish the Death and Permanent Total Disability Trust Fund. Under prior law, the employer or its insurance carrier paid weekly benefits for death or permanent total disability up to a statutory maximum and then the claimant continued to draw benefits which were payable from the Death and Permanent Total Disability Trust Fund. The new legislation provides that the trust fund is not liable for any claims for permanent total disability or death filed after June 30, 2019. For any claims filed after June 30, 2019, the employer at the time of the employee's compensable injury is liable for permanent total disability or death benefits. It is important to note that the statute is based upon the date a claim for permanent total disability is filed rather than the date of the injury. A.C.A. § 11-9-502.

Settlement.

The legislature also passed legislation which allows final settlement on all issues other than future medical treatment, when the claimant is Medicare eligible, provided that settlement is in the best interest of the parties. A.C.A. § 11-9-805. This will greatly increase the ability of the parties to settle

cases where future medical treatment is a significant concern.

Drug Formulary.

The Arkansas Workers' Compensation Commission is proposing to create, by rule, a new drug formulary for all FDA approved drugs prescribed for an accepted workers' compensation claim filed after September 1, 2017. The proposed rule would establish a process for filling workers' compensation prescriptions, a process for reviewing and prescribing opioid medications, and would implement a dispute resolution process between a provider and the reviewing pharmacists or PBMs, as well as a process for appealing to the AWCC. The Commission has held public hearings but the Rule has not gone into effect at this time.

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The AADC thanks R. Scott Zuerker of Ledbetter Cogbill, Arnold & Harrison for submitting this article.

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