Workers Compensation Benefit Overview – Massachusetts

Major Developments: Last major legislation in 2004 (SB899), affected indemnity rates, disability rating, medical treatment, medical-legal disputes, penalties, and apportionment. 2007 legislation affects caps on TD and post-surgical treatments.

Indemnity Issues

Temporary Total Benefits (Post 12/23/91 Injuries) Section (§) 34	• Incapacitated for 1-5 days: No benefits are payable • Incapacitated for 6-20 days: The employee is entitled to benefits from the sixth day of incapacity through the return to work. • Incapacitated for more than 21 days: The employee is entitled to benefits from the first date of incapacity. Minimum Rate: $200.09 Maximum Rate: $1000.43 • 60% of the employee's average weekly wage (i.e. $1000 x .60 = $600.00 temporary total rate) • An employee may receive temporary total benefits for 156 weeks. • The temporary total rate shall never exceed the State Average Weekly Wage (SAWW). • If the employee's average weekly wage is less than the minimum rate, the employee's temporary total rate will be equal to the average weekly wage.
Temporary Partial Benefits (Post 12/23/91 Injuries) Section (§) 35	• 60% of the difference between the pre-injury average weekly wage and the wage the employee is able to earn after the injury, but no more than 75% of the temporary total rate (i.e. $600 temporary total rate x .75 = $450.00 max partial rate). • An employee may receive temporary partial benefits for 260 weeks, but the total number of weeks an employee may receive benefits under both § 34 and § 35 may not exceed 364. • The 260 week period may be extended to 520 weeks if the Insurer agrees, or a judge finds, that the Employee's injury has resulted in a loss of function of 75% of sight in either eye, either arm, hand, leg, or foot, or the employee has developed a permanently life-threatening physical condition, or contracted a permanently disabling occupational disease which is of a physical nature and cause.

© 2009 The Travelers Companies, Inc. All rights reserved. CE-10190 New 8-09

Medical Issues

Initial Choice of Provider	The employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital services, medicines, crutches and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. (Sec. 72-432 (1))
Permanent Total Benefits (Post 12/23/91) Section (§) 34A	• During the period of permanent and total disability, the insurer shall pay the employee weekly compensation equal to 2/3 of the pre-injury average weekly wage, but no more than SAWW nor less than the minimum compensation rate (i.e. $1000 average weekly wage x 2/3 = $666.66 permanent and total incapacity benefit rate). • An employee may receive permanent and total incapacity benefits as long as the employee is permanently and totally disabled. • An employee may receive permanent and total incapacity benefits prior to the exhaustion of the temporary total and temporary partial incapacity benefits.
Fatality Benefits (Post 12/23/91) Section (§§) 31 and 32	• An insurer shall pay death benefits to the dependents of an employee if death results from the injury. • A widow or widower will receive a minimum of $110 per week, or 2/3 of the deceased employee's average weekly wage at the time of the industrial accident. • The initial maximum benefit under § 31 is 250 x the state's average weekly wage (SAWW) on the date of the industrial accident, however, the benefits may be extended if the spouse is not fully self supporting and remains unmarried. If the spouse remarries, each dependent child will continue to receive $60 per week. • In order for death benefits to be due under either § 31 or § 32, the deceased worker would have to be married, have children from a previous marriage, or have dependents in fact. • In all cases, the insurer shall pay reasonable burial expenses, not to exceed $4,000.

© 2009 The Travelers Companies, Inc. All rights reserved. CE-10190 New 8-09

Vocational Rehabilitation	• Under 452 CMR § 4.05, whenever an insurer makes payments, the Office of Education and Vocational Rehabilitation (OEVR) may contact the injured employee to determine whether an initial interview is appropriate to determine their suitability and eligibility for vocational services. • After reviewing the employee's age, educational background, disability, restrictions, work skills and history, vocational interests, financial needs and earnings, the Review Officer assigned to the claim will determine the employee's eligibility for service. • The OEVR does not provide vocational services. Rather, private vendors must be retained by insurers to perform such services if an employee is deemed suitable. • If an Employee fails to attend the mandatory meeting, the employee is not entitled to benefits during the period of refusal. • An employee, who fails to cooperate with the vendor assigned to the claim after a suitability determination has been made, may suffer a 15% reduction in weekly compensation benefits. However, a team meeting must occur prior to the implementation of the aforementioned reduction. The benefits must be reinstated when the services commence. • An employee may seek vocational services for 2 years following the approval of a lump sum settlement, if liability is accepted.
Cost of Living Adjustments Section (§) 34B	• An employee that is receiving benefits pursuant to § 31 or § 34A may qualify for cost of living adjustments (COLA). • To qualify, the injury must occur 24 months prior to the yearly October 1 review date. • The COLA benefit is limited to a maximum of 5%, which may never be more than 3 times the base benefit.
Pay Without Prejudice Section (§) 8	• 180 days if weekly benefits timely paid within 14 days of First Report of injury or Initial Written Claim, Pay or Deny. • In order to terminate or modify benefits during the payment without prejudice period, the insurer must give the employee and Division of Administration at least 7 days notice. • No 7 day notice is required if the employee returns to work and the modification is based on an adjustment due to the employee's actual wages. • The Notification of Termination must include all grounds and factual bases and advise the employee how to file a claim for benefits. • The Notification of Termination must be sent to the employee by certified mail.
Settlement Allowed	Under the law, employers with an experience modification that could be affected by the settlement must give a written consent for the settlement between the insurer and the employee.

© 2009 The Travelers Companies, Inc. All rights reserved. CE-10190 New 8-09

Medical Issues

Initial Choice of Provider	The employer has the right to designate a health care provider for the first visit. After the first visit, the employee has the right to choose his/her own health care providers. The employee may change these providers one time without the permission of the insurer. To change providers again, the employee will need to the insurer to agree to the change. The insurer has the right to send the employee to see its doctor for an evaluation of capacity (§ 30)
Change of Provider	When referred by the treating health care professional to another provider in a particular specialty, the employee may also change once to a different provider in such specialty. In cases of emergency or where the insurer or administrative judge agrees, the employee may seek treatment from additional providers. (§ 30)
Medical Fee Schedule	A medical fee schedule was first authorized in the late 1960's. The Division of Health Care Finance and Policy (DHCFP) has statutory authority to regulate rates of payment for hospitals and health care providers providing services covered by insurers and other purchasers under the Worker's Compensation Act. In 2002, the Massachusetts legislature mandated that DHCFP utilize the same levels of prescription fees for workers compensation as for Medicaid. (§ 30)
Managed Care	Any insurer may enter into a preferred provider arrangement in compliance with the requirements of chapter one hundred and seventy-six of the General laws and the regulations. If an insurer enters into a preferred provider arrangement for health care services required under this chapter, those employees who are subject to the arrangement shall receive such care in the manner prescribed by the arrangement; provided, however, that a worker may receive immediate emergency treatment from a health care provider who is not a member of the managed care organization, and the insurer shall pay the reasonable and necessary costs of such treatment. (§ 30)
Utilization Review	Insurers and self-insurers are required to undertake utilization review for health care services rendered to injured workers on and after October 1, 1993, either by performing utilization review themselves or by contracting with agents who provide utilization review services. (452 CMR 6.00 et. seq)
Treatment Guidelines	Treatment guidelines were accepted and per statute M.G.L. c. 152 promulgated on July 1, 1993, to be used for all health care services rendered on or after October 1, 1993. These treatment guidelines cover a total of 28 medical conditions which are meant to cover the majority of tests and treatments for each condition for which they apply. The treatment guidelines are not mandatory but are meant to be used as "guides" and it is expected that up to 10% of treatments may deviate from the guidelines.

© 2009 The Travelers Companies, Inc. All rights reserved. CE-10190 New 8-09

Medical Mileage Reimbursement Rate	• The current reimbursement rate is .30¢ per mile. • Employees are reimbursed for traveling to and from medical visits and for parking and toll fees.
Ability to Terminate Medical Treatment	No limit on medical treatment reasonably and necessarily required to cure or relieve the injury. Can use IME to help stop excessive treatment. Can use IME to terminate benefits.
Settlement Allowed	No

Other Issues

Staff Counsel	Law Offices of Thomas M. Niarchos, 100 Summer Street, Suite 201, Boston, MA 02110 617-772-2800 Law Offices of Donald E. Phillips, One Monarch Place, 1414 Main Street, Suite 550, Springfield, MA 01144 413-730-6350 Law Office of James Clark, 400 Westminster St., Providence, RI 02903 401-273-4344 Law Offices of Donna Gulley-Brown, 446 Main Street, Suite 1990, Worcester, MA 01608 508-753-0306
Hearings require attorney or claim handler participation	Attorney
Occupational Diseases	"Personal injury" includes infectious or contagious diseases if the nature of the employment is such that the hazard of contracting such diseases by an employee is inherent in the employment.
Second Injury Fund availability	For Injuries after 12/23/91: A claim for reimbursement can be made for 75% of all benefits paid under § 30 (Medical), 31, 32 and 33 (Death), 34A (Permanent and Total), S36A (Brain Death). Four elements of proof must be established.
Other Offset Opportunities	None

State workers compensation website link: www.mass.gov/dia

The Travelers Indemnity Company
and its property casualty affiliates
One Tower Square
Hartford, CT 06183

travelers.com

This material does not amend, or otherwise affect, the provisions or coverages of any insurance policy or bond issued by Travelers. It is not a representation that coverage does or does not exist for any particular claim or loss under any such policy or bond. Coverage depends on the facts and circumstances involved in the claim or loss, all applicable policy or bond provisions, and any applicable law. Availability of coverage referenced in this document can depend on underwriting qualifications and state regulations.

© 2009 The Travelers Companies, Inc. All rights reserved. CE-10190 New 8-09