Workers Compensation Benefit Overview – New York

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	Injured workers cash benefits are determined at 2/3 of the average weekly wage from 52 weeks prior to the date of loss. There is a seven day waiting period with benefits through the disability period.
Temporary Partial Benefits	Injured workers cash benefits are determined at 2/3 of the average weekly wage from 52 weeks prior to the date of loss. There is a seven day waiting period with benefits through the disability period.
Permanent Partial Benefits	Injured workers cash benefits are determined at 2/3 of the average weekly wage from the previous year, $400 maximum at present, increasing to $500.00 effective 7/1/07 and yearly thereafter. There are unlimited benefits so long as the permanent partial disability exists. Scheduled loss of use is determined if there is loss of hearing, eyesight or use of a body part and is scheduled based on law.
Permanent Total Benefits	Injured workers cash benefits are determined at 2/3 of the average weekly wage from the previous 52 weeks, $400 maximum at present, increasing to $500.00 effective 7/1/07 and yearly thereafter. . There are unlimited benefits.
Fatality Benefits	Fatality benefits are determined at 2/3 of the average weekly wage from the previous year, $400 maximum at present, increasing to $500.00 effective 7/1/07 and yearly thereafter. Benefits are paid to the survivor so long as they remain unmarried. Dependents are eligible for fatality benefits so long as they are enrolled in school through age 25.
Vocational Rehabilitation	Not required. VESID is a program in New York state that allows for injured workers to receive additional training to return to the workforce.
Settlement Allowed	Yes
Cap on benefits, exceptions	Currently no cap. Effective July 1, 2007 there will be a cap for permanent partial disabilities as listed under Major Developments section of this document. There will be no cap for Permanent Total Disabilities.

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Medical Issues

Initial Choice of Provider	Injured worker does have the right of choice unless the employer is enrolled in a managed care program for WC. Then, employer has the right of control for 30 days.
Change of Provider	Injured worker, if not in managed care, has the right to change providers.
Medical Fee Schedule	Yes, Medical Fee schedule is published and distributed by Ingenix
Managed Care	Yes, if employer is enrolled. Currently available in 26 counties.
Utilization Review	No
Treatment Guidelines	Does the state mandate the use of evidence based guidelines? If so, which one? No
Medical Mileage Reimbursement Rate	.485 per mile
Ability to Terminate Medical Treatment	No, symptomatic care is allowed in New York state.
Settlement Allowed	Yes
Cap on benefits, exceptions	none
Cap on benefits, exceptions	No, medical benefits continue for the life of the claim so long as it is related to the original injury.

Other Issues

Staff Counsel	Law firm, address, phone number
Hearings require attorney or claim handler participation	Yes, attorney involvement
Occupational Diseases	Covered depending on type of accident
Second Injury Fund availability	Yes, however will be eliminated in 2010 as part of current reform. Application will only be taken up to July 2007.
Other Offset Opportunities	Yes, apportionment, contribution and third party settlement credits.

State workers compensation website link: http://www.wcb.state.ny.us/

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