

# Workers Compensation Claim State Environmental Guide - Delaware

DELAWARE – <http://www.delawareworks.com/industrialaffairs/services/workerscomp.shtml>

## Indemnity issues

Temporary Total Benefits	Effective 7/1/18 the max comp rate is \$713.65 and the Min rate is \$237.88. 2/3 of AWW is the compensation rate. 3 day waiting period that is retro on the 7 <sup>th</sup> day. Payment of benefits must be made or denied within 15 days. AWW is the average of the last 26 weeks or if employed less, the average of the last 13 weeks. All weeks count except for \$0.00 weeks. Temporary Total cap: "No Cap"
Temporary Partial Benefits	2/3 of the difference between the pre-injury wages/AWW & gross earnings upon RTW. 300 week maximum. TPD rate cannot exceed TTD rate
Permanent Partial Benefits	No minimum. Some body parts are scheduled by weeks (See 19 Del. Code Sect. 2326) however many body parts are unscheduled losses and to determine the value must refer to case law. The rate used is the same as TTD rate but in "max rate" cases the "max rate" can bump up to the max rate in effect at the time perm manifests. Permanent Partial based on AMA Guidelines: "Yes" (but only 5th or 6th Edition)
Permanent Total Benefits	No
Fatality Benefits	Burial expense maximum \$3500 unless increased by the Board. We have seen up to \$20,000 being awarded. Dependency: 2/3 of AWW to spouse for a minimum period of 400 weeks <b>and not less than \$15/wk</b> . Children would be entitled to benefits until age 18 or 25 if they are in school. Rate is 2/3-1 child, 70%-2 children, 75% for three, 80% for 4 or more. DE does not recognize common law marriage – marriage certificate must be produced. <b>Children born outside of marriage can qualify as dependents.</b>
Vocational Rehabilitation	Not required, but if offered, claimant must cooperate or risk Section 2353 forfeiture of benefits. Use Labor Market Survey (LMS) to evaluate TPD exposure; LMS evidence is usually well-received. <b>Under recent case law, illegal aliens cannot be removed from TTD based on Labor Market Survey evidence alone--- must use the testimony of any economist plus LMS to establish that the undocumented realistically do hold jobs and what kind.</b>
Settlement Allowed	Yes, Full commutation
Cap on benefits, exceptions	No

## Medical issues

Initial Choice of Provider	Employee has choice of Work Comp certified providers. <b>Out-of-state providers not licensed in DE do not have to be comp certified to treat without pre-authorization; they are also subject to UR. Providers licensed in DE must be comp certified or obtain pre-auth in order to treat.</b>
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Medical issues

Change of Provider	Employee has choice of providers. Employee is entitled to second or even third opinion and to engage in multiple treatment modalities simultaneously.
Medical Fee Schedule	Effective 5/23/08 Medical Fee Schedule percent over Medicare: n/a There is no tie-in with Medicare rates.
Managed Care	<b>No Must be pre-approved by plaintiff counsel. Rarely allowed. Nurse case manager not allowed direct access to doctors without claimant's atty's authorization other than obtaining med recs.</b>
Utilization Review	<b>UR is for comp-certified providers and for non-certified providers NOT licensed in DE- UR is for accepted claims/body parts only. NOTE: Submission of treatment to UR creates WAIVER of any causation defense</b>
Treatment Guidelines	<u>Development of Health Care Practice Guidelines (Section 2322C)</u> Effective 5/23/08, the HCAP adopted a coordinated set of health care practice guidelines and associated procedures to guide utilization of health care treatments in workers' compensation claims, to include prescription drug utilization, inpatient hospitalization, diagnostic testing, physical therapy, chiropractic care and palliative care for 7 injury types: carpal tunnel syndrome, chronic pain treatment, cumulative trauma disorders, low back, shoulder, cervical spine and lower extremities.
Generic Drug Substitution	The state allows generic substitution; however, it is not mandatory. 9/11/13 the Preferred Drug Formulary was updated. Actiq and Transmucosal Fentanyl are off the list.
Medical Mileage Reimbursement Rate	40 cents a mile
Network Information	
Ability to Terminate Medical Treatment	For certified provider or non-certified providers not licensed in DE, treatment can be denied only with a referral to UR and followed by a favorable UR decision, but not simply with a DME. DE has no formal concept of "MMI" and palliative and maintenance care are allowed. NOTE: Treatment can always be denied when the basis of the denial is lack of causation. Denial must say that. . <b>In the case of an accepted claim where there are significant recent priors, you can deny treatment based on a "back to baseline" argument if medically supported by the DME.</b>
Settlement Allowed	Yes Medical can be settled Full & Final - "Yes"
Cap on benefits, exceptions	No, except for 300 week limit on Section 2325 temp partial.

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Other Issues

WC Hearing Docket Speed	Litigation Exposure: Hearing docket speed-Once a petition is filed, hearing is scheduled in 120 days (more than 50% of all hearings are continued at least once)
Staff Counsel	No staff counsel in Delaware. Panel used.
Hearings require attorney or claim handler participation	Attorney
Occupational Diseases	Occupational disease claims have a 1 year statute of limitations (SOL) whereas injuries have 2 year SOL. Occupational Disease claims have a higher burden of proof.
Second Injury Fund availability	Yes, but rare.
Other Offset Opportunities	Apportionment only in rare situations ; apportionment of pre-existing degenerative conditions are not allowed.
EDI	No
In-State Adjusting Required	No
License or Certification Required	Yes