

Workers Compensation Claim State Environmental Guide - Delaware

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

Indemnity issues

Temporary Total Benefits	Effective 7/1/15 the max comp rate is \$679.63 and the Min rate is \$226.54. 2/3 of AWW is the compensation rate. 3 day waiting period that is retro on the 7 th 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 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"
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 not less than \$15/wk for a period of 400 weeks. Children would be entitled to benefits for 400 weeks or until age 18 or 25 if they are in school. Rate changes 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
Vocational Rehabilitation	Not required, but if offered, claimant must cooperate or risk Section 2353 forfeiture of benefits. Use Labor Market Survey to evaluate TPD exposure; Labor Market Survey evidence is usually well-received in spite of the Watson case. Under recent case law, illegal aliens cannot be removed from TTD based on Labor Market Survey evidence (the <i>Guardado v. Roos Foods</i> case) and as such, absent settlement, illegals remain on TTD indefinitely as their own class of displaced worker. That issue currently on appeal to the state Supreme Ct
Settlement Allowed	Yes, Full commutation
Cap on benefits, exceptions	No

Medical issues

Initial Choice of Provider	Employee has choice of Work Comp certified providers. If employee does not reside locally, the IAB will upon application award treatment with non-certified providers. If claimant is local and treats with non-comp-certified providers without pre-authorization, those bills are not subject to payment. Recent change in law- Providers not licensed in DE do not have to be comp certified to treat; they are also subject to UR. Providers licensed in DE must be comp certified or
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Medical issues

	obtain pre-auth in order to treat.
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	Must be pre-approved by plaintiff counsel. Rarely allowed.
Utilization Review	UR is for comp-certified providers and under recent law change, for non-certified providers in NOT licensed in DE- UR is for accepted claims/body parts only. NOTE: Submission of treatment to UR creates WAIVER of any causation defense.
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 then following 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.
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.

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	Same as Occupational Injury, Occupational disease claims have a 1 year statute of limitations whereas injuries have 2 years. 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 is not allowed.
EDI	Not Applicable
In-State Adjusting Required	No
License or Certification Required	Yes