

## 2011 Changes to North Carolina Workers Compensation Act

### Overview

On June 24, 2011, the Governor of North Carolina signed into law HB 709, "Protecting and Putting NC Back to Work Act." Although it's very difficult to estimate the impact of each of the sections, it is believed that the net effect of this reform would be a slight reduction in overall claim cost.

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### Medical Changes

#### ◆ Reasonable Access to Medical Information

*(effective on all claims as of 6/24/2011)*

In today's environment, a signed release from the employee or a state medical questionnaire is often required by a health care provider in order to release an employee's medical records to an insurer. As there is no oral communication allowed between medical providers and insurers, this is the primary mechanism used to gather medical information about an injured employee.

#### Future State:

- **Obtaining medical records:** Medical records may be obtained without express authorization or release as long as the records are related to the claim or injury.
- **Written communication** to the health care provider to obtain relevant information not available in the employee's medical records is allowed without the express authorization of the employee. However, the written communication must be contemporaneously provided to the employee, as well as any response received from the health care provider, within 10 days of receipt.
- **Oral Communication** with the authorized physician to obtain relevant medical information not contained in the written communication is allowed. However, the employee must be provided an opportunity to participate in the communication. If unable to participate, the employee must be provided with a written summary of the communication within 10 days.

#### Analysis/Impact:

The change to the types of communication allowed between health care providers and insurers is an enhancement to what is currently allowed, but still has many limitations. The regulation states that an annual fee will be established to compensate health care providers for the time spent communicating with both the employer and the employee. The amount of the fee is still undetermined. Over time, as the commission further defines the term "relevant medical information," the true impact will become more apparent.

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◆ **Independent Medical Examinations and Second Opinions**

*(effective on all claims as of 6/24/2011)*

Currently, an employee can refuse an Independent Medical Exam (IME).

**Future State:**

- An employee must attend an Independent Medical Exam (IME) if he or she is claiming compensation, whether or not that claim for compensation is denied. If he or she does not attend, benefits can be suspended while the refusal persists.
- An employee can request a second opinion in writing. If denied, the employee can ask the commission to order a second opinion.
- If an employee is dissatisfied with the permanency rating received from the treating health care provider, he or she may request a second opinion solely for the review of the rating. The commission must either disregard or give less weight to the added information given by the second opinion physician.

**Analysis of Reform:**

This should facilitate the ability to terminate benefits if the employee does not comply with having an IME. Currently, we have to file a motion to compel and then a Form 24 to terminate benefits. In the future state, we can move straight to the Form 24 process, which should expedite the process in terminating benefits.

◆ **Health Care Provider Change Requests**

*(effective on all claims as of 6/24/2011)*

In the current environment, an employee can ask to change health care providers for any reason, such as not agreeing with the treatment being prescribed.

**Future State:**

- If an employee wishes to change health care providers, he or she will have to prove to the commission by a preponderance of evidence that the change is reasonably necessary, and it will affect a cure, provide relief, or lessen the period of disability.
- If the employee refuses medical treatment authorized by the commission, the benefits will cease until he or she complies.

**Analysis of Reform:**

This change makes it more difficult for an employee to change treating physicians. This will help control costs and prohibit an employee from changing health care providers if the treatment is more aggressive than desired or if he or she doesn't agree with the treatment.

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## **Indemnity Changes**

### ◆ **Suitable Employment**

*(effective for claims arising after 6/24/2011)*

Currently, the definition of suitable employment allows for employees to refuse work if the job is considered "makeshift," or is not a standard job within the company.

#### **Future State:**

- Definition of Suitable Employment is formally defined:
  - Pre Maximum Medical Improvement
    - Any work that is within the employee's work restrictions and approved by the health care provider. If the wages will be reduced, then they will receive Temporary Partial Disability.
  - Post Maximum Medical Improvement
    - Any work that is within the employee's physical and mental limitations and is located within a 50-mile radius of his or her residence.
- The employer is also allowed to contact the employee directly about returning to suitable employment as long as the employer gives notice to the attorney contemporaneously.

#### **Analysis of Reform:**

The change in definition of suitable employment is seen as a benefit, as the injured worker is no longer allowed to refuse work. Financially, we should see a reduction in temporary total disability but this could be offset with an increase in temporary partial benefits if an employee returns to work at reduced wages.

### ◆ **Willful Misrepresentation**

*(effective for claims arising after 6/24/2011)*

There are currently no laws regarding willful misrepresentation.

#### **Future State:**

- Willful Misrepresentation
  - An employee can be denied benefits if the employer can prove:
    - The employee knowingly and willfully made a false representation about his or her physical condition at the time of employment.
    - The employer relied on the false representation(s), and it was a substantial factor in the decision to hire that employee.
    - There is a causal connection between the false representation(s) and the injury or occupational disease.

#### **Analysis of Reform:**

- Proving willful misrepresentation will not be easy to prove and, therefore, the application of this change may not have a significant positive impact.

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◆ **Indemnity Benefits**

*(effective for claims arising after 6/24/2011)*

In the current environment, there is no limit on Temporary Total Disability (TTD), but Temporary Partial Disability (TPD) is limited to 300 weeks. Permanent Total Disability (PTD) is applicable to catastrophic injuries and occupational disease.

**Future State:**

- TTD is limited to 500 weeks from the first date of disability.
  - An employee can file for an extension of benefits, but must prove by a preponderance of evidence that he or she has sustained a total loss of wage earning capacity.
  - If entitled to an extension, once an employee reaches retirement age and is receiving Social Security benefits, a credit of 100 percent of the Social Security benefits can be taken.
- TPD is limited to 500 weeks total and is cumulative with TTD. (TPD and TTD combined only 500 weeks allowed)
- PTD is limited to specific catastrophic injuries: burns, head injuries, spinal cord injuries, or loss of two body parts (hands, feet, eyes, etc)

**Analysis of Reform:**

While the increased number of TPD weeks allowed could increase costs, we believe there will be more significant cost savings from the cap on TTD and the PTD definitions. It will be more difficult for an employee to be considered permanently and totally disabled given the new definitions.

◆ **Vocational Rehabilitation**

*(effective for claims arising after 6/24/2011)*

Today, vocational rehabilitation is allowed only once an employee reaches MMI.

**Future State:**

- Vocational rehabilitation can be instituted at any point in the life of the claim.
- Vocational rehabilitation can be terminated by agreement or by order of the Commission.
- If an employee refuses vocational rehabilitation when ordered by the Commission, then he or she will be barred from further compensation until such refusal ceases, unless the commission finds that circumstances justified the refusal.

**Analysis of Reform:**

This change is expected to have little impact on claim outcomes.

◆ **Death Benefits**

*(effective for claims arising after 6/24/2011)*

Currently, death benefits are limited to 400 weeks of compensation and burial expenses are limited to \$3,500.

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**Future State:**

Death benefits are limited to 500 weeks of compensation and burial expenses are limited to \$10,000.

**Analysis of Reform:**

This change is expected to increase costs slightly.

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**Miscellaneous Changes**

◆ **North Carolina Industrial Commission**

Today, the Commission is composed of seven commissioners, all of whom are appointed by the Governor and can serve for unlimited terms.

**Future State:**

- Composition of the Commission:
  - six commissioners
  - two term limit (6 years per term)
  - three commissioners affiliated with employees and three affiliated with employers
  - Appointed by the Governor and confirmed by the General Assembly

**Analysis of Reform:**

It will take a number of years to fully observe the impact of this change. There are two commissioners (one being replaced) with a term ending in April of 2012. One commissioner will turn over each year thereafter. As the current make-up of the commission is composed of all employee-oriented commissioners, the expectation is that commission rulings will be more favorable for insurers over time.

◆ **Determination of disputes by Commission or Deputy**

*(effective for claims arising after 6/24/2011)*

Going forward, the commission shall decide the case and issue findings of fact based upon the preponderance of the evidence in view of the entire record.

◆ **Standards of Judicial Contact**

The Code of Judicial Conduct for judges of the General Court of Justice and the procedures for discipline of judges shall apply to commissioners and deputy commissioners. Commissioners and deputy commissioners shall be liable for impeachment for the causes and in the manner provided for judges of the General Court of Justice.

◆ **Reinstatement of Compensation**

*(effective for all claims after 6/24/2011)*

In the current environment, an employee requesting a reinstatement of compensation would need to file for a hearing if the employer does not agree with the decision. The hearing could take up to six months to be scheduled.

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**Future State:**

- A form has been created to expedite the process of reinstatement. If the employer does not agree with the reinstatement, a process will be created so that the question is resolved within 60 days.

◆ **Resignation and Release:**

*(effective for all claims after 6/24/2011)*

Currently, you cannot execute a resignation and release contemporaneously with a settlement agreement.

**Future State:**

- It is permitted to execute a resignation and release contemporaneously with a settlement agreement.