
2013 Changes in New York State Workers Compensation Law

We have seen multiple changes in the NYS Workers Compensation law during 2013. Highlights surrounding these changes are outlined below.

March 1, 2013 – Medical Treatment Guidelines – Updates and Additions

The Medical Treatment Guidelines originally went into effect on December 1, 2010. The guidelines were updated effective March 1, 2013, to include certain process changes as well as the addition of guidelines for Maintenance Care and Carpal Tunnel Syndrome.

Process Changes - The following forms were revised in order to streamline the Variance process.

MG-1 and MG-1.1

- Requires same day transmission to all involved parties.

MG-2 and MG-2.1

- Additional response options for variance requests (granted in part, burden of proof not met, and substantially similar request pending or denied)
- Default resolution path changed to medical arbitrator if neither party opts for resolution at a hearing.
- Section was added allowing a carrier to update a prior denial based on informal resolution.

C4-AUTH

- Chondroplasty and anterior acromioplasty of the shoulder were removed from the list of procedures requiring pre-authorization.

C8.1

- Additional response option for a Variance request already denied by a WCB decision.

Maintenance Care

The Medical Treatment Guidelines enacted in December 2010 primarily addressed treatment for the acute and sub-acute injury phases, and made limited recommendations for the management of chronic pain and chronic conditions. Maintenance Care provisions have now been added to the existing Medical Treatment Guidelines to recognize that in certain situations (chiropractic and occupational or physical therapy) such recommendations should be available. These provisions were also aimed at lifting the administrative burden of reviewing and processing numerous Variance requests for Maintenance Care related to chronic pain. Maintenance care guidelines do not allow Variance requests for treatment beyond specified annual limits. Treatment for an exacerbation is still permitted and will not reduce the allowable calendar year visits for Maintenance Care.

Revisions to the Medical Treatment Guidelines authorize an ongoing maintenance program that can include up to 10 visits per year if all of the following conditions are met:

- Injured worker has reached maximum medical improvement;
- Injured worker has a permanent disability;
- Injured worker has participated in a self-management program;
- Injured worker has undergone a trial of therapeutic withdrawal to determine if function can be maintained without maintenance care; and
- Medical provider has observed and documented an objective deterioration in functional status after the identified treatment ceased.

Carpal Tunnel Medical Treatment Guidelines

Carpal Tunnel Medical Treatment Guidelines were adopted as the standard of care for the treatment of injured workers with carpal tunnel syndrome, becoming the fifth set of treatment guidelines adopted in New York. The carpal tunnel guidelines are evidence-based and aim to:

- Improve the quality of care,
- Speed up the delivery of the most beneficial treatment, and
- Control the use of ineffective treatment.

March 29, 2013 – Changes to the Workers' Compensation Law

Governor Cuomo signed legislation that includes numerous changes to the Workers Compensation statute as part of the New York State budget negotiations. Below are some of the highlights:

- **Closure of the Reopened Case Fund (WCL § 25-a)**

The Reopened Case Fund provides carriers relief in cases where additional liability arises after a case has been closed at the Workers' Compensation Board. The Reopened Case Fund is managed by the Special Funds Conservation Committee. When a case is accepted by the Reopened Case Fund, the employer and workers compensation carrier are no longer liable. The fund takes over full administration and liability for these cases. Claims are eligible after three years following the last payment of compensation to the injured worker, provided that it has been at least seven years from the date of accident. No further applications for this relief will be accepted after January 1, 2014.

- **Increased Minimum Compensation Rate**

The minimum weekly compensation benefit amount rose from \$100 per week to \$150 per week effective May 1, 2013. If the injured worker earns less than \$150 per week, he/she is entitled to full wage replacement.

- **Assessment Process**

The assessment process is now consolidated into a unified annual assessment. In the past, assessments to self-insured employers as well as employers insured by private carriers were based on premium equivalents or premium, whereas assessments to employers insured by the State Insurance Fund were based on indemnity payments. The new process will assess all employers based on premium or premium equivalents.

Other Miscellaneous Changes

- **Maximum Weekly Compensation Rate**

The maximum workers' compensation weekly benefit is two-thirds of the prior year's New York State Average Weekly Wage. The NYS Department of Labor determined that the 2012 average weekly wage was \$1,204.81, up 1.4% from 2011. The maximum weekly benefit increased to \$803.21 effective for all injuries occurring on or after July 1, 2013.

- **Proposed Non-Acute Medical Treatment Guidelines**

The Workers' Compensation Board's Medical Advisory Committee (MAC) has developed and proposed additional medical treatment guidelines for the management of chronic pain conditions. The guidelines include recommendations for the long term use of narcotics to treat pain. These guidelines remain under review with an anticipated implementation during 2014.

- **Electronic Data Interchange (EDI)**

In March 2012, the Workers Compensation Board announced it would be implementing EDI for the submission of claims data (eClaims). This will allow for the electronic transmission of information between the carrier/self-insured employers and the WCB. This implementation is being executed in phases, with Travelers beginning August 2013. As part of the implementation of EDI, the WCB has replaced many commonly used prior forms. Defined claim events trigger the necessity of electronic filing either a First Report of Injury (FROI) or a Subsequent Report of Injury (SROI). The most common FROI will be the initial report of injury (previously captured on a C2, or a C669). The SROI will replace prior forms including, the C8 and C7.