



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET

MEMO

TO: Human Resource Personnel

FROM: Debra Lawhead, AIC, CPIW, Insurance Coverage Administrator *DL*

DATE : July 23, 2008

SUBJECT: Delaware's Workers' Compensation Statute Changes

As you know, the Delaware Workers' Compensation Statute went through major reform. Some of the reforms were effective January 17, 2007 and others were not effective until May 23, 2008. Here is a summary of the changes in this legislation.

Effective January 17, 2007:

- 19 Del. C. 2032 - Wages: definition and computation; valuation of board and lodging
This part of the act now requires employers to provide 26 weeks of wages.
- 19 Del. C. 2322 - Payments without prejudice This part of the act allows for claim benefit payments to be made without agreements being completed. This means that if PMA pays claim benefits without an agreement being completed and if, at a later time, information is obtained that would overturn our decision to pay benefits, PMA would stop paying benefits.

The second part of the statute, developed by the Health Care Committee, took effect on May 23, 2008. It included:

- **Provider Certification**
- **Forms**
- **Practice Guidelines**
- **Utilization Review**
- **Fee Schedule**



Provider Certification

Health care providers must be certified with the Industrial Accident Board to treat an injured worker beyond the first visit. If the health care provider is not certified, treatment after the initial visit must be pre-approved. Certified providers are listed on the Industrial Accident Board website:

<http://dowc.ingenix.com/docs/Certified%20Health%20Care%20Providers%20PDF.pdf>

Forms

The legislation now requires both a form to be completed by the Health Care Provider (Physician's Report of Worker's Compensation Injury) and an Employer's Form (Employer's Modified Duty Availability Report.) The intent of these forms is to improve the overall communication process in the handling of workers' compensation claims and to facilitate return to work for the injured worker.

Every health care provider who evaluates and treats an injured worker shall complete the physician's form within 10 days after the date of the first evaluation or treatment. This report outlines the injured worker's condition and limitations. The provider shall provide a copy to the injured worker, employer and carrier, if applicable.

Every employer shall provide to the health care provider and the employer's insurance carrier, if applicable, an outline of modified-duty jobs that may be available to the employee within fourteen (14) days of receiving a notice of injury. We also suggest that the agency/school district include a job description and job analysis if available of the injured worker's current job for the provider to review.

Failure to comply with this provision will expose the offender; whether provider, employer or carrier, to mandatory fines that will be no less than \$1,000 and no more than \$5,000.

These forms are available on the Industrial Accident Board website:

<http://dowc.ingenix.com/info.asp?page=forms>

Practice Guidelines

Treatment rendered by a certified provider is presumed to be reasonable and necessary if such treatment falls within the practice guidelines. Practice Guidelines have been established for five physical conditions. **Treatment by a non-certified provider must be pre-approved.** The Health Care Advisory Committee continues to research other conditions and will expand the Practice Guidelines in the future.

- Carpal Tunnel
- Cumulative Trauma
- Chronic Pain
- Shoulder
- Lower Back Disorders

Practice guidelines can be found on the Industrial Accident Board website:
<http://dowc.ingenix.com/info.asp?page=pracguid>

Utilization Review

Utilization Review has been established to facilitate the prompt resolution of issues related to treatment and/or compliance with Practice Guidelines. Utilization Review can only be initiated by the insurance carrier on claims that have been acknowledged as compensable, and the compensable injury has to be one covered by the current Practice Guidelines. Requests for Utilization Reviews are sent to the Industrial Accident Board who assigns one of four vendors contracted to perform the Utilization Review in the State of Delaware.

The guidelines for utilization review are provided on the Industrial Accident Board website:
<http://dowc.ingenix.com/info.asp?page=utilguid>

Fee Schedule

The Act established a fee schedule for the first time in Delaware. The fee schedule has established the maximum allowable payment for treatment and procedures as the lesser of the provider's charges or the fee set by the payment system. Prescriptions as well as durable medical treatment are also covered under the fee schedule.

Bills must be paid within 30 days of receipt of a clean bill – a bill with all appropriate codes and supporting records.

Providers are prohibited from balance billing injured workers.

The Industrial Accident Board website has provided the fee schedule on their website at:
<http://dowc.ingenix.com/download.asp>

So, what does this mean to you?

As agency representatives you should make injured workers aware of the requirement to go to a certified health care professional. If the employee goes to a health care provider who is not certified their treatment after the initial visit may be delayed while waiting for the approval process.

You are also required to complete the Employer's Modified Duty Availability Report and to send the form to the health care provider and the Third Party Administrator (PMA). This needs to be completed within 14 days of being notified of the injury. As suggested previously, copy of the employee's current job description and job analysis should be provided as well.

If there are any questions regarding the State's workers compensation program or these changes, please do not hesitate to contact me at Debra.Lawhead@state.de.us or 302 739-3651.