

Illinois Workers' Compensation Changes

Effective Dates

Changes effective June 28, 2011:

- **“Arising out of and in the course of employment”:** Section 1 changes that codify case law requiring an employee to bear the burden of showing, by a preponderance of the evidence, they have sustained an accidental injury arising out of and In the course of employment.
- **Commission Standards of Conduct:** Section 1.1 changes implementing Standards of Conduct for Commissioners and Arbitrators, who shall conduct hearings in a fair manner without bias or prejudice. Portions of the canons of the Code of Judicial Conduct have been adopted and are to apply to the Commission and Arbitrators. We also note that pre-trials are specifically addressed as a practice that is permitted as long as the pretrial is performed in accordance with the rules of the Commission.
- **Employee Leasing Company Reporting:** Section 4(a)(2) defines Employee Leasing Companies under the Act and compels them to provide the Commission with proof any client company of the Employee Leasing Firm is listed as an additional named insured on their policy.
- **Commission fines for lack of insurance:** The Amendment to Section 4(d) of the Illinois Workers' Compensation Act allows an investigator with the Illinois Workers' Compensation Commission Insurance Compliance Division to issue citations to employers that are not in compliance with their obligation to establish workers' compensation insurance under the Act. Fines range from \$500.00 to \$2,500.00 for violations.
- **Pilot program for collectively bargained compensation:** New Section 4b creates a collective bargaining “pilot program” which applies only to two “construction” unions selected by the Illinois Department of Labor.
- **Third Party Medical Accounts Receivables:** Section 8(a) clarifies that medical bill payments fall within the fee schedule even where the accounts receivable of the provider are sold to a third party.
- **Temporary Partial Disability Computation:** Temporary Partial Disability Computation is changed to two-thirds the difference between the average amount the employee would be able to earn in his regular employment and his/her gross earnings (instead of net) at the modified employment position.
- **Commission Changes:** All arbitrators are terminated July 1, 2011 but continue to serve until their reappointment or their replacement has been named. The Workers' Compensation Advisory Board may make recommendations regarding the initial set of arbitrators reappointed or new. The initial set of arbitrators must have advice & consent of Senate. Arbitrator terms are staggered every 3 years with 12 subject to reappointment by Commission on July 12012, 12 on July 1, 2013 and the remainder on July 1, 2014. Training requirements for Commissioners and arbitrators in the areas of ethics, fraud detection, improving health care outcomes, AMA Guidelines, UR practices and aspects of black lung are added. A minimum of 3 arbitrators may be assigned per site with cases assigned randomly. No more than 2 years of an arbitrator term at 1 site except for Cook County sites. Newly appointed arbitrators must be an attorney. Current non-attorneys are grandfathered. Commission employee claims are to be handled by an independent arbitrator not employed by the Commission.

- **Carpal Tunnel Injuries:** Carpal tunnel hand injuries are limited to 15% of 190 weeks except for cause shown by clear and convincing evidence in which case the award may not exceed 30% of 190 weeks. The limit applies to injuries that occur on or after June 28, 2011.
- **Fraud:** An intentional submission of medical bills for services not provided is added as fraud. It provides for step up of criminal penalties based on severity of crime starting with misdemeanor to Class 1 felony. Disclosure of the complainant to an alleged perpetrator will be eliminated. Restitution may be sought in a civil action regardless of the result in a criminal prosecution. The ability to subpoena a medical provider and a requirement for the Department of Insurance to purchase a fraud system also are added.
- **Gift Ban:** A new section prohibiting an attorney appearing before the Commission from providing compensation or any gift to any person in exchange for the referral of a client involving a matter to be heard before the Commission has been added.
- **Preferred Provider Programs (PPP)/Employer Directed Medical Care:** New Section 8.1a allows limited employer direction of care through a PPP. An employee may opt out of the network care at any time. In addition, it provides for a third choice of doctor outside of the network if the injured worker petitions the Commission claiming the second network provider care is improper or inadequate. A PPP must meet adequacy, geography, economic profiling criteria and other standards to be approved by the Illinois Department of Insurance. An employer utilizing a PPP must provide notice of the availability of the PPP to its workforce. The notice will be on a form determined by the Illinois Workers' Compensation Commission. An employee may opt out of the network at anytime upon notice to the employer. If an employee does opt out, they are limited to one choice of physician and any referrals that become the responsibility for payment by the employer. Injured employees of employers without a PPP are allowed two choices of physicians and all referrals.

The choice of physician changes made to Section 8 (a) applies to injuries that occur on or after June 28, 2011 and where the employer has an approved PPP.

- **Insurer Reporting Requirements:** Department of Insurance will collect specific items reported by insurers. While this section is effective immediately, The Department of Insurance must promulgate rules for insurance carriers to report data to DOI by March 1 of 2012.

Changes effective September 1, 2011:

- **AMA Guidelines:** The new law introduces to Illinois statute for the first time AMA guidelines to help determine impairment. The new section adds medical based records, age, occupation and future earnings as additional subjective factors for consideration by arbitrators in determining disability. The new Section 8.1b regarding use of AMA Guidelines applies to injuries incurred on or after September 1, 2011.
- **Utilization Review (UR):** The new law strengthens the statutory provisions for UR and may be used to help control medical expenses. A provider is required to make reasonable efforts to provide timely and complete reports of clinical information needed to support a request for treatment. If the provider fails to make such reasonable effort, the charges for service may not be compensable or collectable from the employer or the employee. A written notice of UR decisions including clinical rationale and references to applicable standards of care or evidence based medicine be provided to provider and employee is

required. The burden is shifted to the employee by a preponderance of evidence that the variance of care from the standard of care used by the UR entity is reasonably required. A deposition procedure to allow deposition of reviewers outside of Illinois is created. An admissible utilization review must be considered by the Commission, along with all other evidence and in the same manner as all other evidence, and must be addressed along with all other evidence in the determination of the reasonableness and necessity of the medical bills or treatment.

The UR changes are effective for health care services provided or proposed on or after 9/1/2011.

- **Medical Fee Schedule:** The new law establishes a 30% reduction to the fee schedule for covered procedures, treatments, services or supplies. For out of state medical services, the reimbursement rate paid is the lower of the other state fee schedule, the charge or the region fee schedule rate where the employee resides. If a medical claim does not contain data elements to adjudicate the bill, within 30 days, an employer/insurer must provide the basis for denial and describe any additional data elements needed. Any interest penalty for nonpayment of medical bills is to be paid within 30 days of bill payment. A prescription drug fee schedule for drugs dispensed outside of a licensed pharmacy at no more than average wholesale price (AWP) plus a \$4.18 dispensing fee is created. The physician dispensed pharma fee provision is effective immediately. Implants are to be reimbursed at 25% above the net manufacturer's invoice price less rebates plus reasonable & customary shipping charges. Providers may no longer bill or attempt to recover from an employee the difference between the provider's charge and the amounts paid by the employer for treatment determined by the Commission to be excessive or unnecessary.
- **Caps wage differential awards:** Caps wage differentials at the later of age 67 or five years from date when the award becomes final. This change applies to injuries incurred on or after September 1, 2011.
- **Alcohol & Drug Intoxication:** A standard of 0.08 alcohol and any finding of illicit drugs as a measurement of intoxication is established and the burden of proof is shifted to the injured employee. The language restricts the finding to "sole cause" instead of "proximate cause" which does not adequately place the responsibility on the employee for their use of drugs or alcohol in the workplace. All sample collection and testing for alcohol and drugs must be performed in accordance with rules adopted by the Illinois Workers' Compensation Commission.

The intoxication changes apply to accidental injuries that occur on or after September 1, 2011.

- **NCCI Rate Calculation:** Requires NCCI recalculation of rates on or before September 1, 2011

Changes Effective January 1, 2012

- **Medical Fee Schedule Regions:** Four non-hospital regions and 14 hospital regions are to replace the 29 geozips.
- **Rules for Electronic Claims:** Requires electronic medical payment system rules from Department of Insurance.

Changes Effective June 30, 2012

- **Acceptance of Electronic Bills:** compliance with acceptance of electronic billing by payers