

PMA Workers' Compensation Bulletin

Illinois Reform—July 2011

On June 28, 2011, Illinois Governor Pat Quinn signed into law House Bill 1698 (HB 1698) which comprehensively amends the Illinois Workers' Compensation Act. While many provisions are effective as of June 28, 2011, several provisions have effective dates of September 1, 2011 or later.

PMA Companies has prepared the following overview for our clients to keep you informed of the significant changes to Illinois Workers' Compensation.

Medical Fee Schedule

- ◆ For treatment and services incurred on or after 9/1/2011, reimbursement will be 70% of the current fee schedule.
- ◆ For treatment and services incurred on or after 9/1/2011 that are not subject to the fee schedule, reimbursement will be 53.2% of the billed charges.
- ◆ Prescriptions filled and dispensed outside of a licensed pharmacy on or after 9/1/2011 are not to exceed the average wholesale price (AWP) plus a \$4.18 dispensing fee.
- ◆ Out-of-state treatment and services incurred on or after 9/1/2011 will be reimbursed at that state's fee schedule or the fee schedule for the region in which the employee resides, whichever is less.
- ◆ Effective 1/1/2012, a new fee schedule will be established on a regional basis. For non-hospital services, there will be 4 regions and for hospital services, there will be 14 regions in Illinois.
- ◆ Effective 1/1/2012, employers and insurers will be required to accept electronic billing from medical providers.

Preferred Provider Networks

- ◆ Effective immediately, employers may utilize a preferred provider program approved by the Illinois Department of Insurance to manage employee choice of physician for non-emergency care.
- ◆ Employers are required to provide notice of a preferred provider program to an injured employee at the time of the accident using an Illinois Workers' Compensation Commission (IWCC) form.
- ◆ Employees can opt out of using the preferred provider program physician but must do so in writing. The declination of the preferred provider physician will constitute one of the two choices of physicians that Illinois Workers' Compensation law permits.

Utilization Review

- ◆ Effective for services provided on or after 9/1/2011, utilization review will be used to evaluate the extent and scope of the injured worker's treatment but not to determine the cause of injuries.
- ◆ Upon proper notice, the medical provider is required to submit to the review and make all reasonable efforts to provide timely and complete reports or the charges for treatment and services may not be compensable or collectable.
- ◆ Employees have the burden to show by a preponderance of the evidence that a variance from the standards of care used to perform the utilization review is reasonably required to cure or relieve the effects of the injury.

- ◆ Utilization review providers must be registered with the Department of Insurance and must be available for interview or deposition.
- ◆ Admissible utilization reviews shall be considered by the IWCC along with all other evidence and in the same manner as all other evidence.

Permanent Partial Disability/Wage Loss/Temp Partial Benefits

- ◆ For accidents occurring on or after 9/1/2011, a licensed physician will provide a written report on the impairment rating using the American Medical Associate 6th edition guidelines.
- ◆ The IWCC will base its determination on the written impairment rating, occupation, age, future earning capacity and evidence of disability in the medical records with no one factor controlling.
- ◆ Effective immediately, the schedule for Carpal Tunnel Syndrome from repetitive or cumulative trauma has been reduced from 205 weeks to 190 weeks with maximum of 15% loss of use of a hand. However, with clear and convincing evidence, the award can be up to 30% loss of use of a hand.
- ◆ For accidents occurring on or after 9/1/2011, a wage differential benefit is payable until the employee reaches the age of 67 or five years from the date the award becomes final, whichever is later.
- ◆ Effectively immediately, the calculation of temporary partial benefits will use “gross” earnings instead of “net” earnings to determine partial comp rate.

Compensability Standards

- ◆ Effective immediately, the Act requires the employee to bear the burden of showing, by a preponderance of evidence, an accidental injury arose out of and in the course of employment.
- ◆ Effective for accidents on or after 9/1/2011, if intoxication is the proximate cause of the injury or if the employee was so intoxicated the intoxication constituted a departure from employment, then compensation will be denied.

Arbitrators

- ◆ Effective 7/1/2011, all arbitrators are terminated, but will continue to serve until re-appointed or replaced by the Governor with consent of the Illinois Senate.
- ◆ Arbitrator terms will be three years with new arbitrators being required to be a licensed attorney in Illinois. All arbitrators will be required to follow new standards of conduct.
- ◆ All venues will now have a minimum of three Arbitrators with non Cook County assignments rotating every two years.

Administrative Practices

- ◆ Effective immediately, Employee Leasing Companies are specifically defined by the Act and are required to provide proof of insurance for any of their clients and are required to list the clients as an additional insured.
- ◆ Effectively immediately, the Act allows the IWCC to issue citations to employers not in compliance with insurance provisions. Fines range from \$500 to \$2,500 for violations.
- ◆ Effectively immediately, the Act creates a collective bargaining “pilot program”, which applies only to business involved in construction. These employers and unions representing employees can essentially create their own workers’ compensation system. They are prohibited from diminishing or increasing an employer’s entitlements or an employee’s entitlement to benefits under the Illinois Workers’ Compensation Act.

For additional information, please contact your PMA Representative.