

MAE News

Newsletter from the Office of Monitoring, Audit and Enforcement Maine Workers' Compensation Board

Summer 2012

Volume 8, Number 2



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Compliance Training

Open training is a two day course offered in Augusta four times a year. It consists of both basic and advanced topics, making it a great fit for those new to Maine Workers' Compensation and those that are more experienced. Upcoming dates for open training are as follows: October 25-26, 2012 (full); January 24-25, 2013; April 25-26, 2013; June 20-21, 2013; and October 24-25, 2013. To reserve a spot for one of the upcoming sessions, please contact Anne Poulin.

From the Office of the Executive Director

An Act To Review and Restructure the Workers' Compensation System

The 125th Maine Legislature enacted LD 1913, *An Act to Review and Restructure the Workers' Compensation System* which was signed into Public Law, Chapter 647 on April 18, 2012 by Governor LePage. It has been hailed as **"the first major workers' compensation reform in 20 years."** A summary of the changes is attached.

Twentieth Annual Workers' Compensation Conference

"The new workers' compensation law is the gateway to valuable discussions at this year's Comp Summit!" Comp Summit 2012 is a production of Northern New England Law Publishers, Inc. Workshops focus on legal issues, governance, insurance, case management, and occupational health. For more information and online registration, click on the following link: www.mainecompsummit.com.

From the Office of Medical/Rehabilitation Services Attention Providers: Anesthesia Billing

Based on several recent complaints from providers regarding anesthesia reimbursement, the Office of Medical/Rehabilitation Services has identified a disparity between the way providers often bill for anesthesia services and the way payor's reimbursement systems are set up to process these same services.

In billing for anesthesia services, providers should report the five digit anesthesia procedure code (00100-01999) plus the addition of a physical status modifier (other optional modifiers may also be appropriate) in Box 24.D. of the Form CMS-1500. Providers should bill time units only in Box 24.G. Note: additional procedure codes (99100, 99116, 99135, or 99140) may also be reported in addition to the anesthesia procedure code when circumstances qualify.

Pursuant to Board Rules and Regulations, Chapter 5, Section 2.04, Subsection 5, "One time unit is allowed for each 15 minute time interval, or fraction thereof (7.5 minutes or more) of anesthesia time. If anesthesia time extends beyond three hours, 1.0 unit for each 10 minutes or significant fraction thereof (5 minutes or more) is allowed after the first three hours. Documentation of actual anesthesia time may be required, such as a copy of the anesthesia record in the hospital file."

Reimbursement is determined by the addition of the base unit (RVU of the procedure code plus any modifying units) and time unit, and multiplying the total units by a conversion factor of \$50.00 per unit.

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Provisional Medical Payments to Workers' Compensation Claimants

If a workers' compensation claimant is awaiting a Board determination on a claim in which the employer/workers' compensation insurer has filed a Notice of Controversy contesting the work-relatedness of the claimant's condition, and the claimant is covered under an insured health plan, then the health plan must provide benefits to the claimant, according to the terms of the health plan but without regard to any policy exclusion for work-related injury or disease.

When a health plan is no longer liable for provisional payments (i.e. employer/workers' compensation insurer acknowledges that the claimant's condition is work-related, Board determines that the claimant's condition is work-related, or if the employer/workers' compensation insurer makes or agrees to any payment in settlement of the workers' compensation claim), the employer/workers' compensation insurer is obligated to reimburse the health plan or make payment directly to the claimant or health care provider as follows:

- If **MaineCare** made the provisional medical payments, the employer/workers' compensation insurer must reimburse MaineCare 100% of any expenses incurred for the treatment of an injury of an employee under Title 39-A. See Title 39-A M.R.S. §209-A, Subsection 7. MaineCare requests that payment be made directly to MaineCare rather than to the provider. See Summer 2011 *MAE News*.
- If a **notice of offset** (i.e. lien) is in effect, the employer/workers' compensation insurer is obligated to reimburse the health plan in such amounts and at such times as it would otherwise be obligated to pay on behalf of the claimant until the amount requested, reduced by any amount the health plan has not yet paid or has already sought to recover directly from the claimant, has been paid in full. If additional amounts are due (because the maximum allowable fee under the workers' compensation medical fee schedule is greater than the health plan reimbursement), these amounts must be paid directly to the claimant or health care provider in accordance with Chapter 5 of the Board's Rules and Regulations. See Bureau of Insurance Rules and Regulations, Chapter 530.
- If **no notice of offset** (i.e. lien) is in effect, the employer/workers' compensation insurer must pay the claimant or health care providers directly in accordance with Chapter 5 of the Board's Rules and Regulations.

Reminders From the Claims Management Unit

The new Cost of Living Adjustments and State Average Weekly Wage notices effective July 1, 2012 are now available at: www.maine.gov/wcb/departments/Claims/index.htm.

The Forms.WCB@Maine.gov e-mail address was set up as a special address for claim administrators to send Board forms. The Claims Management Unit has recently noted that several attorneys are now using the address to copy the Board on legal matters, to request copies, etc. **Please note that this e-mail address is to be used for Board forms only.**

If you have questions or concerns, please contact Sherill Creamer at (207) 287-2002.

The 125th Maine Legislature enacted LD 1913, *An Act to Review and Restructure the Workers' Compensation System* which was signed into Public Law, Chapter 647 on April 18, 2012 by Governor LePage. The Act requires that the Workers' Compensation Board report, at least annually, to the Legislature, on costs to employers associated with long-term partial incapacity benefits and permanent impairment ratings. In addition, the Act makes the following changes to our Workers' Compensation Act effective August 30, 2012:

1. Eliminates the requirement that an employer, insurer or group self-insurer continue paying benefits to an employee pending a motion for findings of fact and conclusions of law or pending an appeal of a hearing officer decree by the employee;
2. Adds a presumption that work is unavailable for an employee participating in a rehabilitation plan ordered by the Workers' Compensation Board for as long as the employee continues to participate in vocational rehabilitation;
3. Establishes the time from which the statute of limitations for filing a petition begins from either 2 years from the date an employer is required to file a first report of injury, or the date of the injury if no first report is required;
4. Creates a new Appellate Division made up of panels of no fewer than 3 full-time hearing officers and gives the board authority to adopt routine technical rules of procedure for any review made by the newly created Appellate Division; and
5. Eliminates the permanent impairment threshold index from an adjusted impairment threshold, based on an actuarial review of cases receiving permanent impairment ratings to a threshold of greater than 12% whole body for injured employees with partial incapacity for injuries on or after January 1, 2006 and before January 1, 2013.
6. The Act also made several changes for injuries on or after January 1, 2013:
 - A. Shortens the time in which a notice of injury must be given from 90 to 30 days;
 - B. Increases the percent of the state average weekly wage calculation from 90% to 100% for the maximum benefit level computation;
 - C. Changes the calculation for determining the weekly compensation for total incapacity, partial incapacity, and death benefits from 80% of the injured employee's net average weekly wage, but not more than the maximum benefit level, to $\frac{2}{3}$ rds of the injured employee's gross average weekly wage, but not more than the maximum benefit level;
 - D. Establishes 520 weeks as the end date of benefit eligibility for permanently partially incapacitated injured employees and changes the eligibility requirements for the extension of benefits for permanently partially incapacitated injured employees. In order to qualify for an extension, the following requirements must be met:
 - The injured employee must have a whole person permanent impairment rating resulting from an injury in excess of 18%. The injured employee must have worked 12 of the last 24 months. The injured employee's earnings over the most recent 26 week period must be 65% or less of the pre-injury average weekly wage;
 - The injured employee's actual earnings must be commensurate with the injured employee's earning capacity which includes consideration of the injured employee's physical and psychological work capacity as determined by an independent medical examiner.

In addition, while the injured employee is receiving extended partial incapacity benefits, the injured employee must complete and provide quarterly employment status reports and tax returns. If an injured employee's weekly earnings over the most recent 26-week period are equal to or greater than the injured employee's pre-injury weekly earnings, the extension of benefits is terminated permanently. Finally, if an injured employee does not qualify for an extension at the end of 520 weeks, the injured employee's benefits expire.