

# MAE News

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

Winter/Spring 2016

Volume 12, Number 1



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### *From the Office of the Executive Director*

**LD 1553** was signed by the Governor and enacted on April 14, 2016. This law makes the following changes to the Maine Workers' Compensation Act of 1992:

1. It modifies the law after the Law Court's decision in Workers' Compensation Board Abuse Investigation Unit v. Nate Holyoke Builders, Inc., et al., 2015 ME 99 and ensures employers that misclassify employees as independent contractors are subject to penalties under the Maine Workers' Compensation Act of 1992.
2. It requires the Board to consider an employer's efforts to comply with the coverage requirements of the Act when imposing a monetary penalty; requires that a violation be knowing before criminal prosecution can be pursued; and, establishes that revocation of authority to operate pursuant to § 324(3)(C) can only be pursued if the employer has committed a knowing violation as defined in paragraph D, has failed to pay a penalty assessed pursuant to this subsection or continues to operate without required coverage after a penalty has been assessed pursuant to this subsection.
3. It increases the Workers' Compensation Board's assessment cap starting in fiscal year 2017-18.
4. It establishes that appeals to the Law Court from the Workers' Compensation Board are from decisions of the Workers' Compensation Board's Appellate Division and not an individual administrative law judge.
5. It also requires the Board, by January 15, 2017, to study the predetermination provisions of the Act and report to the Joint Standing Committee on Labor, Commerce, Research and Economic Development any recommended changes to these provisions. After receipt and review of the report, the joint standing committee may report out a bill to the First Regular Session of the 128<sup>th</sup> Legislature.

To view the Bill in its entirety, click:

<http://legislature.maine.gov/legis/bills/getPDF.asp?paper=SP0608&item=3&snum=127>

The **February 2016 Annual Report on the Status of the Maine Workers' Compensation System** is now available on the web at:

[www.maine.gov/wcb/Departments/administration/troika.html](http://www.maine.gov/wcb/Departments/administration/troika.html)

### *MAE Personnel Changes*

MAE Secretary Associate Anne Poulin retired after 43 years of service with the State of Maine. Her duties have been taken over by Kimberly Ward. We wish Anne a long and happy retirement and welcome Kimberly to the Board!

Dan Harrington transferred from the Claims Management Unit into the Monitoring Division, replacing Eben Gilman.

Seanna Crasnick has been promoted to Deputy General Counsel, and is in charge of the Monitoring, Audit, and Enforcement (MAE) unit.

Deputy Director Kimberlee Barriere is now focusing all of her attention on the Office of Medical and Rehabilitation Services. The Board would like to thank Kimberlee for the years of dedication and hard work that she put into the MAE program!

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### *Compliance Training for Employers/Insurers*

Due to numerous requests, the Board scheduled two Medical Fee Schedule training sessions for claim administrators on April 5 and 6, 2016 in Augusta. Claim administrators should all be familiar with the Medical Fee Schedule - we now check compliance with the MFS in audit.

The next open training sessions are scheduled for June 23-24 and October 27-28. Please contact Kimberly Ward to reserve a spot at one of these sessions.

The Board continues to be busy performing on-site training for insurers, self-insurers, and third party administrators. If you would like information about on-site training for your organization, please contact Gordon Davis.

Training modules on the Board's web site have been updated and new modules have also been added: <http://www.maine.gov/wcb/Departments/mae/trainingmodules.html>

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### *From the Office of Medical and Rehabilitation Services Medical Bill Review*

The application of various medical bill review edits continues to generate the most provider complaints and is the prime reason for claim administrator non-compliance with the Medical Fee Schedule. Worker's Compensation is purely a creature of statute; thus, any allowance or restriction of benefits must be by statute.

In the event a provider fails to properly complete and submit a prescribed form or to follow the fee schedule, the insurer or self-insurer may withhold payment of fees and the insurer or self-insurer is not required to file a notice of controversy but may simply notify the provider of the failure.

When there is a dispute whether the provision of medical, surgical and hospital services, nursing, medicines, and mechanical, surgical aids is reasonable and proper under §206 of the Act, the employer/insurer must pay the undisputed amounts, if any, and file a notice of controversy. A copy of the notice of controversy must be sent to the health care provider from whom the bill originated. A health care provider, employee or other interested party may file a petition for payment of medical and related services for determination of any dispute regarding the provision of medical services.

The offices of Medical/Rehabilitation Services and Monitoring, Audit, and Enforcement continue to see medical, surgical and hospital services, nursing, medicines, and mechanical, surgical aids "denied" on various explanation of benefit or explanation of review forms. These forms do not meet the requirement to file a notice of controversy with the Workers' Compensation Board.

These "denials"/restrictions of medical benefits are most commonly due to the application of various medical bill review edits based on Medicare's National Correct Coding Initiative (NCCI) or other Medicare payment policies/reimbursement rules. Unless the Board has adopted a particular initiative/policy established by Medicare, a denial based on such a policy is not appropriate.

Failing to file the required Notice of Controversy may be considered a questionable claims-handling technique. In addition, "denials"/restriction of medical benefits may be considered unreasonable if the basis for the "denial" is contrary to law or rule.