

Closure of Claims

There have been some questions recently about the closure of claims and the application of Rule X. The majority of claims close by operation of law based on an unchallenged final order or final admission. Rule X A.2 states that when no action in furtherance of prosecution has occurred in a claim for at least 6 months, any of the parties may file a petition to close the claim for lack of prosecution. Sometimes a party will file a motion to close for lack of prosecution in a claim that has already closed by operation of law. There is no need to file such a motion once a claim is closed.

In addition, some parties have filed motions to close for lack of prosecution directed at specific issues within the claim. For instance, in one case a final order had been issued that included an award of maintenance medical benefits. ICAP affirmed the order and no further appeals were taken, so the issue became final and closed by operation of law. The claimant had not obtained any medical services for approximately one year and the Respondents requested that the issue of medical maintenance benefits be closed due to a lack of prosecution. The Division will not issue an Order to Show Cause in this type of situation.

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Even if an order was issued inadvertently, the Division's position is that it would not serve to cut-off awarded medical maintenance benefits. A benefit that has been awarded, such as medical benefits after MMI, cannot be terminated through the application of Rule X. A Respondent is required to provide benefits that have been awarded, and modification of the award should be sought by petitioning to reopen the issue and presenting evidence at hearing.

Level II Accreditation Seminar Lectures Available for Purchase

In May 2004, the Division videotaped the primary lectures that were presented during the Level II Accreditation seminar for physicians with the intention of making these available to the public.

The following topics are covered:

- Overview of the Workers' Compensation System
- Upper Extremity Impairment Causality and Medical Reporting
- Skin Impairment Neurological Impairment
- Pulmonary Impairment Spine/Lower Extremity Impairment
- Inclinometry Vision, ENT, and Gastrointestinal
- Mental Impairment Spinal Apportionment

The entire series must be purchased as one "package," at a cost of \$20.00. It is available in DVD and VHS format. For further information, contact the Physicians' Accreditation unit at 303-318-8763 or e-mail PhysAccred@state.co.us.

All About Claims

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All About Claims is a newsletter published by the Colorado Division of Workers' Compensation designed to provide information to claims handlers. Please send comments or suggestions for future topics to JoAnne Ibarra at 303.318.8790 or by e-mail to JoAnne.Ibarra@state.co.us.

Proposed Legislation-2005

As a result of the 2004 State Auditor's Office's report on the DOWC, the Legislative Audit Committee has indicated it will propose legislation in 2005 on various topics: uninsured employers, pattern and practice violations by carriers or self-insured employers, clarification of the reporting requirements in instances involving occupational diseases, and electronic filing. Rep. Coleman and Sen. Takis, members of the Legislative Audit Committee, will sponsor the bill.

As of early January, this proposed legislation is expected to address the continuing problem of uninsured employers by strengthening the authority of DOWC to collect penalties from employers who repeatedly and willfully violate requirements to maintain workers' compensation insurance. Penalties for a first violation is up to \$250 per day, while penalties for subsequent violations are no less than \$250 per day and up to a maximum of \$500 per day. Penalties would apply for all periods during which an employer is out of compliance with insurance requirements. Proposed legislation would apportion 25% of penalties to the Workers' Compensation Cash Fund and 75% to the state general fund. The division director would adopt rules to administer this section, i.e., definition of subsequent violations, criteria for assessing penalties.

In the area of pattern and practice violations by carriers, the bill would clarify the authority to penalize carriers for overall non-compliance with claim adjusting requirements. The legislation would require the director to promulgate rules to specify the circumstances under which a fine may be issued and criteria for determining the

amount of fine. In addition, penalties would be apportioned 25% to the Workers' Compensation Cash Fund and 75% to the state general fund.

Proposed legislative language would also require summary reporting by employers to carriers of occupational diseases that do not involve lost time. The bill clarifies occupational diseases should be admitted or denied within 20 days by stating that notices of admission or denial of liability are to be filed within 20 days after a claim was or should have been filed with the division; and, clarifies that an employer is to report within 10 days the contraction of an occupation disease by an employee even if there is no lost time.

Lastly, the legislation would require certain reports to be filed with DOWC in an electronic format unless exempted pursuant to rule.

DOWC Presentations Now Offered Statewide

Regional Seminars

In an effort to educate and increase access to services across the state, the Division of Workers' Compensation initiated a series of informational seminars in 2004, addressing practitioners in Grand Junction, Ft. Morgan, Pueblo and Durango. The intent was to create dialog on issues particular to the region and to effect efficiencies in interaction between the agency and those it serves.

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Subject matter experts presented information on topics that included changes to the medical fee schedule, legislative and case law updates and premium cost containment. Whenever possible, the Division made use of venues afforded by local community colleges and public convention centers. Additional seminars are anticipated in the spring, summer and fall of 2005. Seminars have followed a Friday morning format to afford greater opportunity for attendance and are free to the public.

Workforce Presentations to Employers

Another important educational outreach expected to continue into 2005, is the Workforce Presentation to Employers. This presentation is the brainchild of the Claims Management Unit whereby Claims Managers act out a skit introducing employers to the basics of how to file, when to file, and with whom to file an Employer's First Report of Injury, as well as tips for managing claims. Presentations are offered in Workforce Center locations (hence, the name), and are made available to employers in the region. Thus far, employers in Longmont, Ft. Morgan, Limon, Burlington, Colorado Springs, Sterling, and Arapahoe County have taken advantage of this offering.

Hearing Date Targeted for Rule Revision Project

The Rules Revision Project is in the process of concluding its public meeting sessions.

As you may recall, the Division has been working on a major revision to the Colorado Workers' Compensation Rules of Procedure in an effort to update and simplify the rules for its users. As part of this effort, the Division provided a draft and initiated an informal public review period in June 2004 for the purpose of soliciting comments. Public meetings have been held to discuss comments made during the review period. Once these meetings are complete, the Division will make any necessary revisions and the rules will be available once again for a formal review. The Division anticipates a late spring or summer date for the formal rule making hearings. Questions on the Rules Revisions Project may be directed to Timiann Flores at (303) 318-8769, or Karen Hoppes at (303) 318-8771.

Workers' Compensation Home Page
www.coworkforce.com/DWC/

Notable Changes at Liberty Mutual

In November 2004, the Division met with Liberty Mutual Insurance Company and several issues of public interest came up. First, Liberty Mutual has changed its internal procedures on settlement checks, which in turn changes their time frames for having individual settlement checks available. Due to their corporate changes, settlement checks will no longer be available at the date of settlement hearing. Second, Liberty Mutual has also made changes to its managed pharmacy program in Colorado.

The Division asked for short summaries explaining these two issues. In hopes of avoiding any confusion and reducing any inconvenience to parties, the summaries prepared by Liberty Mutual are posted on the Division's web site at www.coworkforce.com/DWC/

MaryAnn Whiteside, Director
Division of Worker's Compensation

Self-Insurance Update

The Self-Insurance unit has experienced numerous changes over the past year with more planned for the upcoming year. 2004 brought several personnel changes that included the retirement of Reserve Officers, Tommy Munoz and John Napier. Mary Thompson, formerly a Claims Manager with the Division of Worker's Compensation's Claims Management unit, has over 17 years of experience in the workers' compensation claims arena and was hired as a replacement for Tommy Munoz. The retirement of Everett Fitzgerald, Self-Insurance Manager, also provided a vacancy, which was recently filled by Terry Lee. Terry has approximately 18 years experience in the insurance industry and prior to his employment with the Division, he held the position of Director of Risk Management for the University of Colorado, Health Sciences Center. Terry also currently serves as the President of the Public Risk Management Association's (PRIMA) Colorado Chapter and is Past President of the Colorado Self-Insurer's Association.

In addition to these personnel changes, there are also some administrative changes that are currently being developed by the Self-Insurance unit staff that includes Sarma Paritala; Actuary, Mimi Sacone; Reserve Officer, and Eileen Sandoval; Administrative Assistant, that will be implemented in an effort to provide better customer service to the self-insurance community. These changes involve utilizing the latest technology, including an enhanced comprehensive website, for the delivery of both

communications and Division forms to self-insured employers, insurance brokers, TPA's, and other customers. These changes will help provide customers with immediate access to self-insurance information while increasing productivity and reducing costs for the Division. The Self-Insurance unit is also developing and implementing a new scheduling approach regarding the frequency for which a self-insured entity is subject to a reserve field claim audit. This new approach will include various financial risk factors to ensure that self-insured entities that pose a higher risk, in the event of a bankruptcy, are audited appropriately. This approach will allow the Self-Insurance unit to maximize their efforts with identifying and proactively rectifying problems in order to reduce the potential for any future assessments to the self-insurance community. The Self-Insurance unit is also working with the Carrier Practices unit with the development and implementation of a new software application that will enable the Reserve Officers to conduct audits out in the field with improved speed and accuracy, which will also increase the unit's productivity.

For more information, please contact the Division of Workers' Compensation Self-Insurance Unit at (303) 318-8640.

Did You Know...

The Workers' Compensation Cost Containment Board is responsible for promoting cost containment and risk management programs in the administration of the Premium Cost Containment Program? Board members certify employers who can demonstrate that they have implemented a loss prevention/loss control program that consists of six minimum requirements. All requirements must be in place for at least one full year. Certification requirements for the Workers' Compensation Cost Containment Program amount to basic, but sound, principles of risk management which should be a part of any business plan. Certified employers are eligible to receive a 5% discount, over and above all other discounts, on their workers' compensation insurance premium.

The positive risk management decisions the Cost Containment Program promotes are important for the long-term profitability of individual companies, which in turn is beneficial to the overall state economy. The Program's strategy to reduce accidents and injuries at the same time lowering costs is based on factors of loss prevention and loss control that all employers can easily implement without interfering with their company's nor-

mal business activities. Since the best method of avoiding the high cost of accidents and injuries is to keep them from happening in the first place, an effective safety program means putting into action a plan that involves everyone in the workplace. A sound safety program addresses and reduces the overall cost of work-related claims as well as preventing employees from being injured. Another reason for the employer to take part in the Cost Containment Program is the financial savings and increased profits that result from effective claims management. The indirect costs associated with on-the-job accidents will, in all probability, exceed the direct costs paid out in workers' compensation insurance.

Of note, Darrell Dinkle of Design Drywall Specialties, Inc., Englewood Colorado and Matthew J. Krell of Arthur J. Gallager & Co. Littleton, Colorado have been appointed for a three-year term beginning December 13, 2004. Both individuals are distinguished in their fields and serve as executives with risk management experience in the insurance industry.

For more information regarding the Cost Containment Program, please contact Brenda Maez, Cost Containment Program Manager at 303.318.8646.

Division Says Goodbye to Carolyn Boyd

Carolyn Boyd retired this past December, having worked at the Division as Special Assistant to the Director, beginning in 1998. Taking advantage of both a career in teaching and in law, Carolyn was assigned to the development of a division training program, wherein she provided training to division and departmental staff on worker's compensation law and practice. In her role as Special Assistant, Carolyn analyzed laws and recommended procedures and policies for improved customer service.

Carolyn's background included work as in-house counsel for the Colorado Compensation Insurance Authority, Assistant Attorney General with the Office of Attorney General, and work with the law firms of White and Steele, P.C., and Holmes & Star, P.C.

Though possessing an impressive work history, Carolyn was especially valued by division staff for her good humor and accessibility. The Division counts itself fortunate to have benefited from the shared knowledge and commitment of one such public servant. We wish Carolyn a magnificent retirement and wonderful days of family and adventure.