

All About Claims

Colorado Department of Labor & Employment
Division of Workers' Compensation
Communications Unit, 633 17th St., Suite 400
Denver, CO 80202-3660
www.coworkforce.com/dwc/

Bill Owens
Governor

Rick Grice
Executive Director

MaryAnn Whiteside
Director



August 2005

Volume 23

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.

Hearing for Repeal and Readoption of Workers' Compensation Rules - August 17 & 18, 2005

On August 17 and 18 of this year, the Director of the Division of Workers' Compensation will conduct hearings on the complete reorganization and renumbering of the rules of procedure along with the annual update of the medical fee schedule including the establishment of facility fees. The principal goals are to renumber and regroup the rules in a more logical sequence, incorporate simpler language and update policy. This rulemaking session also addresses the need to implement recent legislation and perform the statutorily required update of the medical fee schedule.

To give you an idea on the massive amount of work involved in a project such as this, it began with more than 6 months internal work by division staff to produce a draft for review by the community. In May 2004, the Director released the draft both in electronic and hard copy to contact lists consisting of individual self-insured employers, risk managers, physicians, insurance carriers, health care professionals, employers, attorneys, adjusters and professional associations representing these groups (e.g., the Colorado Self Insured Association, the Workers' Compensation Coalition, the Colorado Medical Society, the Colorado Municipal League, the US Chamber of Commerce, the Colorado Association of Commerce and Industry), as well as those individuals and groups requesting to be placed on the Director's mailing list pursuant to the Administrative Procedures Act (APA). In all, the letter was sent to about 600 contacts by e-mail and another 180 by regular mail advising of the project and referring people to the division website for further information and exact proposal language.

This phase of the project was designed specifically to solicit written comments from parties interested in the workers' compensation system. Forms were created on-line to allow for ease of response with the option to submit written comments by standard mail. The Division then held a series of public meetings (4 during the months of October and November, 2004) to discuss the written comments. For those individuals residing outside the Denver-metro area, arrangements were made to allow participation via conference call. At the conclusion of these meetings, further changes were made based on comments received, and the draft was again made available for review and response.

When the first formal notice of rulemaking was published on July 10, 2005, setting hearings for August 17 & 18, 2005, the division had already exceeded the APA requirement for making rules available 5 days prior to hearing, by over 15 months.

Written comments will continue to be accepted prior to hearing. For ease of review, the proposed language is available on the division website at www.coworkforce.com/dwc/ under *Proposed Rules/Adopted Rules* with cross walks detailing the current rule, the proposed rule language and the proposed change. Though not required in the absence of a formal request, it is the division's practice to prepare regulatory analyses on all proposed rules. A regulatory analysis for these rules is available on the Division website.

Date and Time of Hearing: August 17 & 18, 2005, 9 a.m.
Place of Hearing: 2nd Floor Conference Room, 633 17th Street, Denver, CO

Colorado Workers' Compensation Health Care Facility Fee Schedules will be Changing --- Get Ready by 1/1/06!

Have you noticed over the past several years that healthcare facility bill charges, such as inpatient, outpatient surgery, and emergency room, seem to be growing faster than the professional fee bills? It's not your imagination! Healthcare cost in general has returned to double-digit inflation and in particular, facility and hospital-related facility fees are growing at a faster rate than professional healthcare fees, according to the "All City Average CPI" for the past several years. In an effort to contain these rapidly growing fees, but at the same time not harm access to care, the Division spent an entire year creating new facility fee schedules. We then spent another six to seven months refining the new facility fee proposal as we worked with a Focus Group. The Focus Group was made up of representatives from hospitals, Ambulatory Surgical Centers (ASC), the Colorado Health and Hospital Association, the Colorado Medical Society, and various insurers and bill review companies. All of these processes were taken to move our primarily '80% of billed charges' facility fee schedules to more specific facility fees, in order to create greater equity and predictability in facility fees.

The primary focus of the proposed facility fee schedule is to clarify specific facility fees, contain facility fee cost using as clear, simple, and fair a method as possible, and at the same time, ensure injured workers have access to care in rural areas of Colorado. The table on page 3 of this newsletter provides a general comparison of the proposed changes to the current maximum facility fee schedules. To thoroughly understand the changes, the Division encourages you to review and evaluate all of Rule 18 for completeness, clarity of the proposed rule, reasonableness of the methodology and fees, and to determine how these changes affect your individual organizations.

The actual proposed Rule 18, that includes the new facility fee schedule changes in sections 18-6 (I-M), and exhibits 1-6, is available on the Division's website at www.coworkforce.com/dwc/ under Proposed Rules/Adopted Rules. Once you've evaluated these changes the Division encourages you to provide us with your written comments prior to the hearing. You may also provide written comments on the day of or at the rule hearing itself. The hearing is scheduled for August 17th and 18th at the Division of Workers' Compensation located at 633 17th Street, 2nd Floor Conference Room. More information regarding the specific days and times that the various Division rules will be open for testimony may be found on the Division's website.

The Division is particularly requesting your review and commentary on some specific areas of the proposed Rule 18 facility fee changes. These include:

- ✓ Acute care hospitals assign the correct DRG code by using 3M's "DRGs Definition Manual version 22" and identify this code in their billing invoice to the payer; however, payers are encouraged to implement a review system to verify the correct DRG code assignment. In order to do this the payer would need to invest in available software packages that assign the DRG based upon several data elements provided on the UB92. The Division is requesting your commentary on the assignment of the DRG code.
- ✓ Currently outpatient surgery facility fees are allowed at 80% of billed charges. The proposed outpatient surgery fee schedule creates specific fees for each procedure done during a scheduled

outpatient surgical episode. The primary (highest valued) surgery code is allowed at 100% of the assigned fee and all other subsequent procedures are allowed at 50% of the assigned fee. The Division is requesting all payers to review outpatient codes and values in exhibit #4, to ensure all procedures performed in an outpatient surgical setting are present and the values are reasonable.

- ✓ Currently ER Department facility fees are allowed at 80% of billed charges. The proposed ER Department facility fee creates five possible levels of specific fees. The ER Department level is not determined by the ER Room physician's level; it is determined by the number of points assigned for the interventions completed by the ER staff. The point assignment is listed in Rule 18 itself. The fees assigned to each level include "ordinary supplies, drugs, etc.", unless the "supply et al." criterion is met. If an injured worker is subsequently admitted to the hospital after being evaluated in the ER, the ER visit charges are considered as a part of the inpatient fee schedule. The Division is requesting your review and commentary on the point system and the fee levels.
- ✓ Currently the fee schedule rule is silent on Urgent Care and Trauma Care fees. The proposed rule creates fees for the first time for Urgent Care facilities and Trauma Centers. Urgent Care facilities are not state licensed facilities; however, in some cases they can provide a reasonable alternative to ER room visits. The proposed rule states that a facility must meet all of the criteria listed in the proposed rule to qualify for a separate Urgent care facility fee. Urgent care facilities should enable the injured worker to be seen more quickly and for less cost than if the injured worker went through an ER department. Trauma centers are valuable assets to our health care infrastructure in Colorado; therefore, fees need to be set to support and control that system. The Division is requesting your review and commentary on the Urgent Care and Trauma Center criteria and fees.
- ✓ The proposed inpatient facility fees use each individual hospital's "base rate" and "cost-to-charge" ratios in the fee calculations. We intend to use values for these ratios as currently assigned to each hospital by Medicare. The proposed Rule 18 shows values for these in Exhibit 2. We are requesting that all hospitals tell us if the Exhibit 2 ratios are not the same as their Medicare values. Once the Rule is adopted, the values in Exhibit 2 cannot be changed until the Rule itself is amended.

Your commentary on any rule change is very valuable to the Division. If you have any questions regarding these changes before you send your comments, please feel free to contact Debra J. Northrup, RN at (303) 318-8761. Your commentary enables the Director to evaluate the complete impact these proposed changes could have on the workers' compensation system. Therefore, we encourage you to review all of the proposed rule changes; then send the Director your comments on or before the public hearing scheduled on August 17, 2005.

Once the Director has finalized and adopted Rule 18 it will become effective for all dates of service on and after January 1, 2006. Given this short time frame the Division encourages your office to begin looking at the implementation of these adopted facility fee schedule changes as soon as they are adopted by the Director. To know when the Director adopts these rules, please monitor the Division's Website.

Comparison of Current to Proposed Colorado Workers' Compensation Facility Fee Schedules

Type of Facility Bill		
<i>Inpatient</i>	<i>Current Fee Method</i>	<i>Proposed Fee Method</i>
Acute Care Hospitals	Medical or Surgical Per Diem or 80% of billed Charges	(Medicare DRG Relative Wt. X Individual Hospital Medicare Base Rate) X 200% = Max fees (Individual Hospital Cost to Charge ratio X total billed charges = hospital cost) See rule for full explanation of cost outlier calculation specifics. (Exhibits 1 and 2)
Acute Care Hospitals with length of stay of 1-2 days	80% of Billed Charges	(Medicare DRG Relative Wt. X Individual Hospital Medicare Base Rate) X 200% = Max fees (Individual Hospital Cost to Charge ratio X total billed charges = hospital cost) See rule for full explanation of cost outlier calculation specifics. (Exhibits 1 and 2)
Acute Care Hospitals with average daily charges three times the current applicable per diem rate	80% of Billed Charges	(Medicare DRG Relative Wt. X Individual Hospital Medicare Base Rate) X 200% = Max fees (Individual Hospital Cost to Charge ratio X total billed charges = hospital cost) See rule for full explanation of cost outlier calculation specifics. (Exhibits 1 and 2)
Acute Care Hospitals - Medicare Rehab Cert	Medical or Surgical Per Diem or 80% of billed Charges	(Medicare DRG Relative Wt. X Individual Hospital Medicare Base Rate) X 200% = Max fees (Individual Hospital Cost to Charge ratio X total billed charges = hospital cost) See rule for full explanation of cost outlier calculation specifics. (Exhibits 1 and 2)
Acute Care Hospitals - Medicare Long Term Care Cert	Medical or Surgical Per Diem or 80% of billed Charges	80% of Billed Charges
Acute Care Hospitals - Medicare Psychiatric Cert	Medical or Surgical Per Diem or 80% of billed Charges	(Medicare DRG Relative Wt. X Individual Hospital Medicare Base Rate) X 200% = Max fees (Individual Hospital Cost to Charge ratio X total billed charges = hospital cost) See rule for full explanation of cost outlier calculation specifics. (Exhibits 1 and 2)
Critical Access Hospitals (CAH)	Medical or Surgical Per Diem or 80% of billed Charges	80% of Billed Charges
Psychiatric Licensed Hospital - Private	80% of Billed Charges	80% of Billed Charges
Psychiatric Licensed Hospital - State	80% of Billed Charges	100% of Billed
Rehabilitation Licensed Hospital - Private	80% of Billed Charges	80% of Billed Charges
Children's Hospitals	Rule was silent	100% of Billed
Veteran's Administration Hospitals	Rule was silent	100% of Billed
<i>Outpatient</i>		
<i>Surgery</i>		
Ambulatory Surgery Centers (ASC)	80% of Billed charges	Medicare APC X 200% or 230% for selected surgery codes (includes all supplies, except if any "supply et al" items and any "reasonable and necessary" observation room charges at \$50.00/hr.)
Outpatient Surgery In a Hospital	80% of Billed charges	Medicare APC X 200% or 230% for selected surgery codes (includes all supplies, except if any "supply et al" items and any "reasonable and necessary" observation room charges at \$50.00/hr.)
<i>ER Department Charges</i>	80% of Billed charges	Established maximum fees for 5 different levels based upon the assigned points for ER Room staff interventions during the ER episode, including all supplies, except if any "supply et al" items and any "reasonable and necessary" observation room charges at \$50.00/hr up to (3) three hours.
<i>Urgent Care Facility Fees</i>	Rule was silent	Established a definition and qualifiers since no licensure is required for Urgent Care Facilities. Established maximum proposed fee of \$75.00, including supplies, except any "supply et al" and any reasonable and necessary observation room charges at \$50.00/hr up to (3) three hours.
<i>Clinic Visits (revenue code 510)</i>	No clinic visits allowed at all.	80% of billed charges only if the facility is designated by Medicare as "Primary Rural Facility" are allowed a separate clinic visit
<i>Diagnostic Testing</i>	(RVP RVUs X Applicable Conversion Factor)	RVP RVUs * Applicable Conversion Factor
<i>Trauma Center Fees</i>	Rule was silent	Established maximum fees based upon the activation of a Trauma Center call and their certification level as determined by the Colorado Department of Public Health and Environment
<i>Expensive "supplies et al" in and outpatient</i>		
Any single DME, supply, orthotic, prosthesis, implant with charges > \$500.00	Cost plus 20%	The definition changed from with charges > \$500.00 to the provider's cost > \$300.00



HB 1139 - Increased Enforcement Against Non-insured Employers

Recent changes in Colorado's Workers' Compensation laws beginning July 1, 2005, require that Colorado employers who are required to have Workers' Compensation insurance coverage for their employees be fined if they fail to obtain or maintain that insurance. Non-insured employers may be prohibited from continuing business operations. The purpose of the new legislation is to increase enforcement of Workers' Compensation laws.

Some of the provisions of HB 1139 [§ 8-43-409 (1), (2), and (7) C.R.S.] are:

When it is determined that an employer has failed to obtain the required insurance or has allowed the insurance to lapse, the new law requires the Director of the Division of Workers' Compensation to:

1. Impose fines on the defaulting employer and/or
2. Compel the employer to cease and desist its business operations

Fines up to \$250/day for each day of default will be assessed for the initial violation and will escalate thereafter from a minimum of \$250/day up to \$500/day for subsequent violations.

The law also provides that defaulting employers who are fined will be unable to avoid the increasingly severe penalties resulting from additional violations by reorganizing their businesses.

Fines may also be imposed for any period where it is determined that the employer should have had Workers' Compensation insurance coverage for its employees but did not irrespective of when the default occurred.

Additional information regarding the provisions of the new law will be available on-line at: <http://www.coworkforce.com/dwc/> and by calling the Colorado Division of Workers' Compensation's Coverage Enforcement Unit at 303.318.8744.

Tom McBride joins the Division

The Division of Workers' Compensation is happy to announce that attorney Thomas McBride, known for his extensive work in the workers' compensation arena, has joined the division's ranks.

Tom is a graduate of the University of Dayton (B.A.) and the Cleveland Marshall College of Law (J.D.). Prior to moving to Colorado in 1981, he served as a hearing officer (Administrative Law Judge) for the Ohio Bureau of Workers' Compensation and was Risk Manager of State Fund Operations at Industrial Advisors Bureau, Inc., a third party claims administrator. He was lead workers' compensation defense counsel with the Cleveland, Ohio law firm of Kelley, McCann and Livingstone immediately prior to relocating to Colorado.

Tom co-authored Colorado Workers' Compensation Law Practice, (Colorado Legal Publishing Company, 1986 et seq.). He is the past co-chair of the Colorado Defense Lawyers Association, Workers'

Compensation Section and is currently a member of the Colorado Bar Association, the Arapahoe County Bar Association and the Colorado Self-Insurers' Association.

Tom has extensive trial and appellate advocacy experience. He has argued cases before the Colorado Court of Appeals and the Colorado Supreme Court. He successfully argued the landmark case of *Christie v. Coors Brewing Company*, 933 P2d. 1330 (Colo. 1997) before the Colorado Supreme Court that upheld the constitutionality of the "any wages" standard in Permanent Total Disability (PTD) determinations. Tom holds Martindale-Hubbell's highest attorney rating of "AV".

Tom is currently engaged in implementation of HB 1139. He is assisting in all regulatory compliance efforts - drafting proposed emergency and permanent rules for carrier practice audits and uninsured employers, as well as compliance procedures for uninsured employers.

New Executive Director for Colorado Department of Labor & Employment

In May of this year, Governor Bill Owens appointed Rick Grice as Executive Director of the Department of Labor and Employment filling the position vacated by Leroy Williams who joined the Ball Corporation. Mr. Grice comes to the department having directed the Governor's Office of Energy Management and Conservation, which is the lead state agency promoting energy conservation for state and other governmental operations. Also responsible for administration of the state's weatherization program, the agency provides no-cost weatherization service to nearly 4,000 Colorado citizens every year. Prior to that appointment, the new executive director was a principal with Douglas, Richmond and Grice, a firm that provided personnel recruitment and merger and acquisition services to the environmental engineering and air pollution control industry. On a personal note, Mr. Grice was raised in Midland, Texas, and is a 28 year resident of Colorado. He is a Vietnam-era veteran who served in the Far East as an Air Traffic Controller in the United States Navy and is a graduate of the University of Texas (Austin) School of Business Administration.

New Website!

The Colorado Division of Workers' Compensation will be debuting a new website designed to provide greater access to information for the workers' compensation community. Injured workers and practitioners will be able to locate information on pages specific to their areas of concern. For example, an adjuster may go to the adjuster page and link to definitions, instructions, important time limits, forms and publications related to their work. Information on pages specific to Employers, Self- Insureds, Medical Providers and Attorneys will also be available. *Look for the new website soon!*

Colorado State Website
<http://www.colorado.gov/>
Workers' Compensation Home Page
www.coworkforce.com/dwc/

**ANNOUNCEMENT
FOR
NON-PHYSICIAN MEDICAL PRACTITIONERS, INSURANCE ADJUSTORS, CASE
MANAGERS, ATTORNEYS, RISK MANAGERS, AND OTHER WORKERS'
COMPENSATION PROFESSIONALS**

**Division of Workers' Compensation Seminar:
Impairment Ratings for Non-Physicians**

The Colorado Department of Labor and Employment, Division of Workers' Compensation, will present a special full-day seminar providing information for the non-physician on impairment rating methodologies under the AMA Guides, 3rd Edition (rev.) and related topics.

Date: Wednesday, August 24, 2005
Time: 8:00 am – 4:45 pm (registration begins at 7:15; a continental breakfast will be served)
Location: This seminar is being hosted by:
Pinnacol Assurance
7501 E. Lowry Blvd.
Denver, CO 80230
Cost: \$35.00 (seminar materials, continental breakfast, and snacks included)

Agenda Topics

Experts from the Division of Workers' Compensation, and other medical professionals will provide information on :

Administrative/Legal and other General Principles
Assessment of Medical Causality
Impairment ratings of the spine, upper and lower extremity
Use of the Inclinator for measuring range of motion
Apportionment principles, with special review of Spinal Range of Motion
Impairment ratings for brain injuries and mental disorders

CLE and CCMC credits are being applied-for.

To obtain a registration form or for more information, please contact the Physicians' Accreditation Program at (303) 318-8763. Seating is limited, so early registration is recommended. Pre-registration is required as walk-ins cannot be accommodated.

**REGISTRATION FORM
IMPAIRMENT RATINGS FOR NON-PHYSICIANS
AUGUST 24, 2005**

Please type or print clearly

NAME: _____

BUSINESS ADDRESS: _____

CITY & ZIP: _____ BUSINESS PHONE NO.: _____

PROFESSIONAL TITLE OR DESIGNATION: (Please be specific in stating your professional title or credentials, such as: insurance adjustor, case manager, attorney, paralegal, physical therapist, occupational therapist, nurse-practitioner, etc.) _____

- Course Objectives:* Information provided at this one-day seminar should enable participants to:
- Describe the general principles of impairment rating using the AMA Guides, 3rd edition (revised). There will be special emphasis on interpreting impairment reports for the spine, and upper and lower extremities.
 - List the elements included in an assessment of medical causality
 - Explain the calculations and assumptions used to determine psychological impairment
 - Describe the principles of apportioning impairment including spinal range of motion

Location
The seminar is being hosted by: **Pinnacol Assurance**
7501 E. Lowry Blvd.
Denver, CO 80230

THE FEE FOR THIS FULL-DAY COURSE IS **\$35.00**. AMOUNT ENCLOSED: \$ _____

Please return this registration form with the course fee (payable to the Division of Workers' Compensation) to:

DOWC/Physicians' Accreditation
P.O. Box 628
Denver, Colorado 80201-0628

If you have any questions, please call the Accreditation Program Office at (303) 318-8763. A confirmation letter will be sent to you prior to the date of the seminar.

Office Information Only

Amt. Received: _____ Date Received: _____ Log # _____