ALL ABOUT CLAIMS

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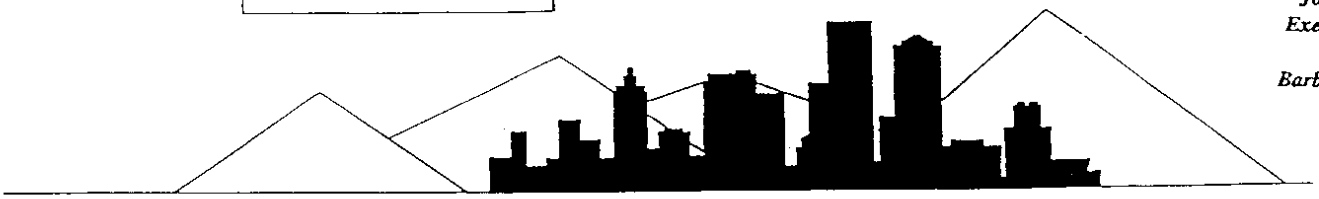

DEPARTMENT OF LABOR AND EMPLOYMENT
DIVISION OF WORKERS' COMPENSATION
CLAIMS SERVICES SECTION

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This newsletter is furnished by the Claims Services Section of the Colorado Division of Workers' Compensation. The purpose is to provide information on claims handling practices relative to the adjustment of workers' compensation claims. Questions or comments regarding this newsletter may be referred to JoAnne Ibarra, Manager of Claims Services, at (303) 575-8816.

Permanent Impairment Rating Guidelines
By Barbara Kozelka, Director

You or your company may have received a recent mailing from the Division containing discussion drafts of various proposed rule amendments. Included in the packet was a courtesy draft of Rule XIX, the Permanent Impairment Rating Guidelines. The rule has been readopted without part B and relettered accordingly. Rule XIX becomes effective on November 30, 1995.

Lump Sum Task Force Results
by JoAnne Ibarra, Manager, Claims Services Section

A lump sum task force was convened by the Director last spring to address ongoing questions and issues related to the processing of lump sum applications for injuries arising on or after July 1, 1991. In the last newsletter, we promised to provide you with the results of that meeting. Representatives included Connie Kellner from TIG, Mark Zoltay from the Colorado Compensation Insurance Authority (CCIA), and Tom Permenter from Liberty Mutual. Marshall Fogel, Bill MacDonald and Michelle Holland presented perspectives from the claimants' bar. JoAnne Ibarra, Harry Ferris and Mary Miller attended on behalf of the Director.

Questions addressed by the task force:

1. Are lump sums for scheduled impairment processed any differently than awards for medical impairment?

Staff of the Division of Workers' Compensation advised that Rule XI (C), is specific to §8-42-107 (8) only, and does not include awards for scheduled impairment. Therefore, an individual seeking payment of a scheduled impairment award need not seek payment of the initial $10,000.00 from the carrier, but would apply directly to the Division. Further, an agreement to the rating is not a prerequisite for approval of a lump sum for scheduled impairment. In cases of medical impairment, Rule XI addresses concerns of carriers that a Division IME may result in a reduced impairment rating and possible overpayment if an award is paid out in a lump sum.

A consensus was reached on this response and represents current Division policy.

2. Must the claimant request the initial $10,000.00 in writing? Can the carrier automatically pay it so the file can be closed?

Mark Zoltay asked whether a carrier would be in violation of the statute by failing to pay out an award in periodic payments absent a written request for a lump sum by the claimant. Connie Kellner advised that carriers often pay out a permanency award without a request and without discount. Tom Permenter agreed, as did Mark Zoltay.

The statute was reviewed and it was determined that a request for lump sum by the claimant must be in writing if a discount

is to be applied. In the event monies are paid in a lump sum without discount the carrier may do so without a request from the claimant.

Mark Zoltay asked whether an award can be paid in a lump sum without Division approval if the parties agree to the discount?

The group discussed concerns over safeguards for non-represented claimants, and the necessity that individuals be fully apprised of the discount provisions of the statute. It was the consensus of the group that the parties are free to enter into agreements provided that the claimants are **represented by counsel**. That is, claimants and their attorneys may enter into agreements with carriers/self-insured/non-insured employers, without making application to the Division for calculation of the lump sum, requiring the Director's signature.

Tom Permenter expressed concern over entering into agreements for lump sums solely with claimants who are represented by counsel and excluding those who are unrepresented. For this reason, Liberty requested that the Division engage in rule making for implementation of the above.

While Liberty's concern is not without merit, Division representatives perceived no harm in providing greater latitude for the parties to enter into agreements when both are fully informed. We recognize that our role is to facilitate resolution rather than encumber it. However, a carrier places itself at greater risk by entering into an agreement for payment of a discounted lump sum with an unrepresented claimant when a fail-safe mechanism exists for obtaining a lump sum and discount through the Division. A Lump Sum Award Order from the Director is essentially an unappealable order establishing and endorsing the carrier's right to a discount. We will watch to see if rule-making becomes necessary.

3. Should a full lump sum be granted if a carrier files a Final Admission of Liability and the claimant objects to the admission based on an issue other than the impairment award (i.e., Grover meds., disfigurement, etc.)?

None of the carrier representatives, Tom Permenter, Connie Kellner or Mark Zoltay disagreed with the policy in effect. A consensus of "yes" was reached on this issue.

4. Should a full lump sum be granted if a carrier files a Final Admission based on a Division IME result, and the claimant disputes the impairment award?

Bill MacDonald argued that a carrier has already admitted liability consistent with the IME findings, and must pay in accordance with that admission. The claimant may challenge it, but must overcome the opinion with clear and convincing evidence. If the carrier disagreed with the IME, the carrier had the option of setting the matter for hearing in the first instance, rather than admitting to the IME rating.

Mark Zoltay pointed out that benefits would continue to be paid out periodically pursuant to the admission and, from a practical standpoint, would likely be paid out by the time a final decision was reached in a case. It was further noted that if a claimant disputes the IME rating, it is based on a belief that there is greater impairment than the admission provided for. Connie Kellner agreed that at a minimum, the carriers would be paying out the admitted award, and didn't see a problem with paying it out in a lump sum. Neither Tom Permenter nor Mark Zoltay had an objection to payment of the award in a lump sum.

The group agreed lump sums should be granted in these instances.

5. If the claimant gets the initial $10,000.00 lump sum and applies for a lump sum for the remainder, how is it calculated?

Harry Ferris responded to this question, and advised that the lump sum discount is calculated as if no previous lump sum had been paid. The beginning date for calculating the lump sum is established by statute as the date of maximum medical improvement. See §8-42-107 (8)(d), C.R.S.

6. Is there any basis for awarding a lump sum for medical impairment benefits over and above the $10,000.00 referenced under §8-42-107 (8)?

Following review of the statute, the group agreed that the above section must be read in concert with §8-43-406, which provides for payment of "all or any part of the compensation awarded in a lump sum" at the discretion of the Director. The task force did not disagree with the interpretation of statute that allows the Director to review applications for lump sums over and above the initial $10,000.00. No change or additional implementation indicated.

7. If the claimant does not object to the medical impairment rating, but contends that he/she is permanently and totally disabled, should a lump sum be granted?

Marshall Fogel argued that the claimant should be allowed a lump sum on the amount of the permanent partial disability rating up to a maximum of $37,560.00. To require an agreement to the impairment rating would have a "chilling effect" on the claimant's ability to prosecute a claim for permanent total disability when there may be entitlement to such an award.

Connie Kellner indicated she did not foresee a problem with the payment of a lump sum in the face of such an objection. Mark Zoltay agreed with the payment of a lump sum but voiced concern over how the lump sum would be offset

against weekly benefits if a claimant is determined to be permanently and totally disabled.

Tom Permenter recommended this be implemented by policy with rule promulgation on the appropriate method for calculating the payout rate of benefits if a claimant is later determined to be permanently and totally disabled.

Mark Zoltay also agreed with the policy of granting lump sums when the claimant objects to an admission based on his/her desire to prosecute a claim for permanent total disability benefits. He had specific comments, however, related to the method for calculating the payout rate in the event the claimant receives an award for PT. These comments can be found under question # 8 .

As of the date of this newsletter, an amendment to Rule XI (C)(3)(c) has been proposed by including the following language: "Where the claimant asserts permanent total disability, the Director may consider an application for lump sum on benefits awarded by final admission."

8. If a lump sum is granted on an award for permanent partial disability, and the claimant is later determined to be permanently and totally disabled, how are benefits applied?

Marshall Fogel stated that if the claimant doesn't object, the prior lump sum could be treated as an overpayment, and the offset could be negotiated and resolved either by agreement or at hearing.

The group achieved consensus on how an award for permanent partial disability is recovered when a lump sum has been paid out and the claimant is later determined to be a Permanent Total. Specifically, the parties will consider the PPD award to be an overpayment and credit against PT. The parties may enter into an agreement for the offset of these benefits against the weekly PT award, or have the issue resolved at hearing.

A question arose as to how a PT lump sum would be calculated in the event a lump sum had previously been awarded for PPD.

Bill MacDonald recommended that a lump sum for PT benefits be calculated crediting the periodic PPD payments against the PT award using the date the PT order or admission becomes final.

Mark Zoltay noted the high probability of PPD payments occurring before and after the initial payment of the $10,000.00 lump sum award (pursuant to §8-42-107 (8)(d)). In this instance, he felt it was only fair to have the PT lump sum calculated as of the date of MMI rather than the later date when an order or admission for PT becomes final. He also pointed out the importance of having a policy in effect so that litigation is minimized.

Understanding that the cost of a PT lump sum will be charged against the claimant's benefits over his/her lifetime and this accounts for the reduction in the weekly rate, the starting date for figuring life expectancy on a PT lump sum is the date the lump sum is calculated by the Division. This is based on the premise that the claimant will not receive the proceeds of such an award until calculated and ordered by the Director.

The most straightforward method for calculating a PT lump sum when a prior PPD lump sum has been awarded, is to layout the time frame of the PPD award as if it would have been paid out periodically and proceed as follows:

1. If the effective date of PTD is after the ending date of the PPD, then the regular rate is not affected when calculating the cost of the lump sum. **(The regular rate is the rate prior to offsets or discounts).**

2. If the ending date of the PPD award extends beyond the effective date of PT, then the remainder of the PPD award offsets the regular rate until the credit is used.

3. If the claimant is adjudicated to be permanently and totally disabled as of the date the lump sum was granted or before, then the benefit rate for PT is reduced by the weekly costs for the lump sum using the life expectancy of the claimant on the date of the PPD lump sum. EXCEPTION: For those cases in which the automatic $10,000.00 lump sum has been awarded, the lump sum award would be reduced by $10,000.00 but there would be no credit for time pursuant to the calculation set forth under §8-42-107 (8) (d), C.R.S.

The value of a rule-making session would be questionable, because, once again, the subject is difficult to grasp without a specific case requiring these applications and few fall under this category. Further, it is the opinion of the Claims Services Section that the above methods for calculating the cost of a PT lump sum are fair considering that the cost of a lump sum is recovered over the period in which an award would have been paid out and begins only upon receipt of the lump sum.

The parties are free to enter into agreements to establish the weekly benefit rate for a PT following a lump sum. However, the Division is available to provide information to the parties relative to the present value of an individual case based upon the life expectancy of the claimant.

$10,000 Lump Sum Discount
by Ron Gale, Claims Manager

The following table is designed to provide the 4% per annum discount when you grant payment of the first $10,000.00 of a working unit PPD award. The maximum PPD payout rates in effect as of July 1 of the year shown has been calculated and the payment and discount have been provided in the last two columns. If you have a PPD award which is less than $10,000.00, please feel free to call the Claims Management Unit at 575-2915 for help.

10,000 Lump Sum/4% Discount

7-1-Year	Rate	Discount	Lump
1991	217.42	174.71	9,825.29
1992	227.48	167.23	9,825.29
1993	237.50	160.41	9,839.59
1994	243.18	156.78	9,843.22
1995	247.91	153.89	9,846.11

Average Weekly Wage Worksheet
by Darla Olds, Supervisor, Claims Management Unit

In an effort to improve the error letter process, the Claims Services Section formed a process action team to address issues related to customer satisfaction, administrative efficiencies and cost effectiveness. In researching the process we found that by far, the greatest number of errors on admissions of liability were attributable to average weekly wage discrepancies. Please take a look at the attached Average Weekly Wage Worksheet which was developed by the team as a guideline for computing the wages. It is intended as a desk aid and is not a required document. If the worksheet is attached to the Employer's First Report of Injury, it is only necessary to provide the total AWW information in the appropriate box. We hope you find this helpful in your work.

Clarification Regarding the Issue of Penalties
By Dee Hyslop, Carrier Practices Unit

Consideration of penalties against carriers in "extreme cases of noncooperation" as it relates to failure or refusal to comply with recommendations in the compliance review process was referenced in the last newsletter. The article was intended to address consideration of penalties applicable to the compliance review process only, and is not reflective of our approach to instances of specific claims adjusting issues brought to our attention on a case-by-case basis.

The Colorado Workers' Compensation Medical Fee Schedule (maximum reimbursement to health care practitioners providing care to injured workers under the Colorado Workers' Compensation Act) has been reviewed and revised. Rule XVIII (Medical Fee Schedule) in the Colorado Workers' Compensation Rules of Procedure was adopted and is effective for dates of service occurring on or after October 1, 1995.

The most significant changes to Rule XVIII include: the incorporation by reference (except Physical Medicine and Rehabilitation Codes and Values 97000 series of codes) of the December of 1994 edition of the Relative Values for Physicians (94.2) as published by McGraw-Hill, the incorporation by reference of the 1995 edition of Relative Values for Dentists as published by Relative Value Study Inc., and the incorporation by reference the 1994 Study: Physicians as Assistants at Surgery. Many service and procedure codes and fees not found in the RVP or RVD are in the new Rule XVIII.

Copies of these items may be purchased as follows:

Rule XVIII
(containing general instruction, limitations and the Physical Medicine and Rehabilitation codes and fees)
Public Records Corp., 303-832-8262

Relative Values for Physicians
(94.2 Edition)

McGraw-Hill, 1-800-544-8168 (please ask for edition 94.2 and mention Colorado Workers' Compensation for a 10% discount); and

Relative Values for Dentists
1995 Edition
Relative Value Studies, Inc., Denver, 303-534-0506

1994 Study: Physicians as Assistants at Surgery
Prepared by Janet L Martin, MS, Rph
Health Data Management

American College of Surgeons, Washington DC,
Attention Marcia Banks (202) 337-2701,
Fax (202) 337-4271

If you have questions or comments, please contact Debra J. Northrup, RN, Medical Cost Containment Supervisor, at 575-8761.

AVERAGE WEEKLY WAGE WORKSHEET

The definition of wages can be found in §8-40-201(19), C.R.S. Calculation of average weekly wage can be found in §8-42-102(2), C.R.S. Use earnings immediately prior to the date of injury.

Time Period used for calculations: From__/__/__ TO __/__/__

Employee Name_____ SS#_____

WAGES (Choose one from lines 1 though 7, then add other wages from lines 8 - 10, if applicable)

			TOTALS
1.	Hourly (exclude overtime)	Hourly wage $_____ x average hours/week _____ =	
2.	Daily (per diem)	Daily rate $_____ x # of days (and fractions of days) in a week that employee worked (or would have worked, but for the injury) _____ =	
3.	Weekly	Weekly wage $_____ =	
4.	Bi-Weekly	Bi-weekly wage (every other week) $_____ ÷ 2 =	
5.	Semi-Monthly	Semi-Monthly wage $_____ x 24 ÷ 52 =	
6.	Monthly	Monthly wage $_____ x 12 ÷ 52 =	
7.	Yearly	Yearly wage $_____ ÷ 52 =	
8.	Piecework or Commission	Average weekly value = Total amount earned with this employer in the 12 months immediately preceding injury $_____ ÷ # of weeks (and fractions of weeks) worked _____ =	
9.	Mileage (only if mileage is a form of salary)	Rate per mile $_____ x average # of miles per day driven in service of the employer 60 days preceding the injury _____ = daily rate $_____ x days (& fractions of days) per week worked _____ =	
10.	Other (wages not addressed above)	(Attach explanation) Average weekly value $_____ =	
11.	Total Wages	Enter amounts from 1 - 7, plus any amounts in 8 - 10	

ADDITIONS TO WAGES (Use the same time period as stated above)

12.	Overtime	Overtime rate $_____ x # of overtime hours per week _____ =	
13.	Tips	Weekly amount reported to IRS $_____ =	
14.	Total Additions	Enter total of lines 12 + 13	

BENEFITS (If Discontinued During Disability)

15.	Health Insurance	Effective date benefit discontinued:_____ Employer's monthly contribution $_____ x 12 ÷ 52 =	
16.	Meals / Board	Effective date benefit discontinued:_____ Weekly value $_____ =	
17.	Rent / Housing	Effective date benefit discontinued: _____ Monthly value $_____ x 12 ÷ 52	
18.	Total Benefits	Enter total of lines 15 - 18	

19.	TOTAL AVERAGE WEEKLY WAGE	Enter total of lines 11 + 14 + 18	

Enter the number in line 19 on the Employer's First Report of Injury in the "Average Weekly Wage at Time of Injury" Box

Completed by:_____ Date_____

See important instructions on the back of this worksheet

Division of Workers' Compensation
1515 Arapahoe Street
Denver, Colorado 80202-2117
(303) 575-8700

- This worksheet may be reproduced as needed -

This worksheet is provided by the Division of Workers' Compensation as a guideline in computing the Average Weekly Wage on the Employer's First Report of Injury form. It is intended as a desk aid worksheet and is not a required document.

The final Average Weekly Wage amount on Line 19 of this worksheet should be inserted in the box, "Average Weekly Wage at Time of Injury," on the Employer's First Report of Injury form.

Notice to Employers:

This worksheet may be attached to the Employer's First Report of Injury form. The worksheet is not required. However, if the worksheet is attached to the Employer's First Report of Injury form submitted to the Division, you do not need to complete other wage and hourly information in that section of the form except the "Average Weekly Wage at Time of Injury" box.

If you have questions on completing this worksheet, contact your workers' compensation insurance adjustor.

Notice to Insurance Carriers or Self-Insured Employers:

If you receive this worksheet from the employer and only the "Average Weekly Wage at Time of Injury" box is completed in the wage information section of the Employer's First Report of Injury , attach the worksheet to the Employer's First Report of Injury form that is submitted to the Division of Workers' Compensation.