

REGULATORY AGENDA

Workers' Compensation Board Regulatory Agenda: September 2007

Pursuant to section 202-d of the State Administrative Procedure Act, the Workers' Compensation Board presents its regulatory agenda for July 2007. All references are to Title 12 of the New York Code of Rules and Regulations. The Board reserves the right to add, delete or modify any item presented in this agenda.

The Workers' Compensation Board is considering proposing the following:

1. Pursuant to Chapter 6 of the Laws of 2007, add Subchapter M to Title 12 NYCRR which includes new Parts 440 and 442 to provide fee schedules to govern the cost of prescription medicines and durable medical equipment in order to control the cost of workers' compensation insurance. Additionally, such proposal would provide process and guidance for claimants, employers, insurance carriers, third party administrators and self-insured employers regarding the operation of pharmacy networks and the payment of prescription bills and durable medical equipment bills according to a uniform standard so that delays in reimbursement or payment to claimants or pharmacies are reduced or eliminated.

2. Pursuant to Chapter 6 of the Laws of 2007, add new regulations regarding the introduction of Diagnostic Networks, which are authorized to contract with carriers, self-insured employers and the State Insurance Fund. Specifically, add regulations to define reasonable distance from the claimant's residence or place of employment; define the claimant's geographic location; determine the minimum number of providers/testing facilities that must be available to claimants; establish procedures that would address the issue of a claimant's failure to use the contracted network after being properly notified; and revise Parts 325-2.2, 325-2.3, and 325-2.10.

3. Amend Section 300.2, pursuant to Chapter 6 of the Laws of 2007, to impose a penalty not to exceed \$10,000, revoke the Entity's registration, and refer to the Attorney General upon finding that an Independent Medical Examination (IME) Entity has materially altered or caused to be altered an IME report.

4. Amend Part 326, pursuant to Chapter 6 of the Laws of 2007, to implement procedures to revoke authorization of a physician who is guilty of professional or other misconduct or incompetence or practice outside his/her scope with regard to rendering medical services.

5. Amend Subparts 325-1.4 (a)(1), 325-1.5, 329.5(b) and 331.4(b) to increase the threshold from \$500 to \$1,000 for prior authorization for special services, pursuant to Chapter 6 of the Laws of 2007.

6. Amend Subpart 325-1.4 to adopt a list of Pre-Authorized procedures – those that will not require prior authorization from the carrier – pursuant to Chapter 6 of the Laws of 2007.

7. Pursuant to Chapter 6 of the Laws of 2007, add new regulations that establish an independent review and appeal by an outside agent or entity of the Board's choosing of any administrative law judge's determination to discontinue or suspend medical services for a claimant

who has surpassed his/her number of maximum benefit weeks before a final determination of the Board.

8. Pursuant to Chapter 6 of the Laws of 2007, amend the regulations to increase the assessment for failure to obtain workers' compensation insurance coverage from a flat \$250 to \$1000 for each 10 day period or a sum not in excess of two times the cost of compensation for its payroll. This applies to all injuries suffered on or after 3/13/07.

9. Pursuant to Chapter 6 of the Laws of 2007, add new regulations that establish the method of calculating the cost of a workers' compensation policy for purposes of Workers' Compensation Law §52(5) and §131.

10. Add a new Part 304 to implement the provisions contained within Chapter 638 of the Laws of 2004, as amended by Chapter 70 of the Laws of 2005. Chapter 638 of the Laws of 2004 provided for the direct deposit of workers' compensation benefit payments upon written request of the injured employee. Chapter 70 of the Laws of 2005 clarified that participation by employers in the direct deposit program was voluntary and not mandated.

11. Add a new Part 325-9, pursuant to Workers' Compensation Law sections 13 (e) and 20, to establish guidelines and parameters for the use of impartial medical specialists when an established claim requires an expert opinion or examination.

12. Amend Section 300.2 regarding independent medical examinations regarding the time period within which reports of such examinations must be filed with the Board and served on all others, procedures for review of records without an examination of a claimant, and the process to revoke the authorization of an independent medical examiner whose medical license has been restricted or Board Certification revoked.

13. Repeal Part 310.1, pursuant to Chapter 635, Section 58 of the Laws of 1996, which omitted Section 110(b) of the Workers' Compensation Law and made Rule 310.1 obsolete.

14. Amend Sections 300.22, 300.23, 300.29, and 403.1 to eliminate references to obsolete forms.

15. Amend Part 300 to remove references to obsolete bureaus, and board staff, as well as provide for technological advancements and the appropriate location of the Board's executive offices.

16. Amend Parts 300, 315, 316, 317, 355, 356, 357, 358-1, 358-3, 359, 360, 361, 362, 363, 364, 375, 376, 377, 378, 379, 390, 391, and 393 to change all references from "Chairman", "chairman" and "chair" to "Chair" for uniformity and to connote gender neutrality and to correct punctuation, grammatical and typographical errors. Subpart 358-3 and sections 363.12 and 378(1) are being amended so that the headings conform to the text of the rules contained in the subpart and sections. Section 363.11(a) is being further amended to comply with notice filing requirements established in section 217 of the Workers' Compensation Law.

The Board will continue to review its rules in an effort to provide for clearer and more accurate references to Board policies and procedures, while also eliminating typographical errors and obsolete

forms/practices, etc.

To obtain information or submit written comments regarding this regulatory agenda, contact Cheryl M. Wood, General Counsel, Workers' Compensation Board, 20 Park Street, Rm. 401, Albany, NY 12207, (518) 486-9564, e-mail: OfficeofGeneralCounsel@wcb.state.ny.us.