

# NOTICES

## DEPARTMENT OF LABOR AND INDUSTRY

### Bureau of Workers' Compensation: Amendments to the Workers' Compensation Act

The Department of Labor and Industry, Bureau of Workers' Compensation (Department) issues this notice regarding the recently enacted amendments to the Workers' Compensation Act (WC Act), (77 P. S. §§ 1—1041.4).

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2. Determination of Earning Power
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#### *Background*

On June 24, 1996, Governor Tom Ridge signed into law the act of June 24, 1996 (P. L. 350, No. 57) (Act 57), which substantially amended the WC Act. Although the amendments provide for many changes, all the amendments are intended to address the high cost of workers' compensation in the Commonwealth with respect to premiums, wage benefits, medical treatment and review, and litigation. Among the amendments are provisions which allow the offset of workers' compensation benefits from certain amounts received from social security (old age) benefits, severance and pension benefits. These offsets are intended to counteract the disincentive to return to work when workers' compensation recipients receive more in benefit payments than in pre-injury wages. The amendments also call for the abrogation of the Reconsideration step of the Utilization Review process. Providers, insurers and employes wishing to contest the initial determination of a Utilization Review Organization (URO) will instead file a Petition for Review. The amendments also place time limitations on providers wishing to file applications for Medical Fee Review. The new limitation will resolve fee disputes in an expeditious and more economical manner. The amendments also require that an employe's earning power be determined by expert opinion. The Department is charged with the duty of establishing a list of experts approved for this purpose. Further, the act provides for an automatic request for supersedeas when termination petitions are filed which allege full recovery and are accompanied by a physician's affidavit alleging full recovery. Two additional sections were added to the WC Act which are intended to address situations in which employes, who have returned to work, receive both workers' compensation benefits and wages. Act 57 places new reporting requirements on employes who file for or are receiving compensation under section 306(A) or (B) of the WC Act. In addition to the reporting requirements referred to in section 204, employes are required to report information, regarding employment and self-employment, as well as any other information which is relevant in determining their entitlement to, or the amount of,

compensation. Further, insurers are permitted to submit verification forms to injured employes for verification that the employes' status regarding entitlement to receive workers' compensation benefits has not changed. These reporting requirements are intended not only to facilitate the management of workers' compensation claims, but also to reduce fraud within the workers' compensation system. The amendments transfer the authority for certification of Coordinated Care Organizations (CCOs) from the Department of Health to the Department of Labor and Industry. In an effort to promote workplace safety and reduce employe injuries and employer costs, the new amendments grant qualified employers a discount on workers' compensation insurance premiums for a period of 5 years. These and several other areas are addressed by the act. The Department is moving rapidly to develop and issue the forms required by the amendments and to establish lists of approved experts.

#### *Purpose*

The purpose of this notice is to give guidance to workers' compensation insurers, employers, employes and other interested parties regarding the Department's interpretation of certain amendments of Act 57. In view of the August 23, 1996, effective date of most portions of Act 57, the Department anticipates the need for guidance in complying with these provisions. This notice will serve to inform interested members of the public of the Department's interpretation of these provisions.

With this notice, the Department is providing limited guidance with respect to certain provisions having an immediate effect on claims. These and other provisions will be addressed more fully when the Department issues a formal Statement of Policy.

#### *Force and Effect*

This notice does not constitute a rule or regulation with the force or effect of law; it is temporary in nature. The Department intends to promulgate regulations implementing Act 57.

#### *Effective Date*

The provisions contained in this notice are effective upon publication.

#### *Further Information*

Further information regarding this notice may be obtained by writing to Richard A. Himler, Director, Bureau of Workers' Compensation, 1171 South Cameron Street, Room 103, Harrisburg, PA 17104-2501. In addition, parties interested in participating in the formulation of the Statement of Policy and the proposed rulemaking process should submit written comments to Richard A. Himler, Director, at the address listed above.

JOHNNY J. BUTLER,  
*Secretary*

#### **Annex A**

##### *Offsets*

Section 204 requires employes to acknowledge, in addition to the receipt of unemployment compensation benefits, receipt of social security (old age), severance and pension benefits received subsequent to the date of injury, on a form prescribed by the Department.

The employe's failure to supply the required form under section 204(c) may subject the employe to prosecution

under the provisions of Article XI of the WC Act relating to fraud; however, such failure will not result in the suspension of compensation.

*Determination of Earning Power*

(a) Proof of earning power.

Section 306(b)(2) of the act establishes that "earning power" will now be determined by proof of the employee's capacity to perform a job(s) and the existence of a job(s) in the usual employment area. This section does not require that the employer either offer the employee a job, or provide proof of a job offer of any kind, except that an employer with a specific job vacancy within the employee's capacity must offer such job with the liable employer to the employee. Departmentally approved vocational experts will provide expert opinion evidence under this section. The procedure to obtain an examination by a vocational expert is set forth in section 314 of the WC Act.

(b) Departmentally approved experts.

For purposes of section 306(b)(2), the Department will establish a list of approved vocational experts for use in the determination of earning power. The list will be published in the *Pennsylvania Bulletin* for the use of all interested parties.

(c) Interim approval of experts.

A Workers' Compensation Judge may approve experts with knowledge of job listings with agencies of the Department, private job placement agencies and advertisements in the usual employment area to provide testimony relative to section 306(b)(2) until publication of the Department's list of experts.

(d) Notice to employe.

Under section 306(b)(3), if an insurer receives evidence that the employe's earning power has increased, the insurer must give notice to the employe prior to or upon filing a petition to modify or otherwise reduce benefits.

*Certification of Coordinated Care Organizations (CCOs)*

(a) Transfer of authority.

Section 306(f.2) transfers the authority for certification of CCOs from the Department of Health to the Department of Labor and Industry. In due course, the Department will develop procedures and issue an application form for CCO certification.

The Department will notify interested parties, by publication in the *Pennsylvania Bulletin*, of the availability of applications and the relevant procedures for filing such applications.

(b) Interim Certification.

CCOs currently certified by the Department of Health will continue to be certified until such time as the new procedures for CCO certification are published in the *Pennsylvania Bulletin*.

(c) Operation under Existing Statement of Policy.

Section 31.2 of Act 57 provides that the regulations promulgated by the Department of Health under section 306(f.2)(7) of the WC Act shall be deemed regulations of the Department. The Department intends to operate under the existing Statement of Policy published by the Department of Health at 28 Pa. Code §§ 9.201—9.227, as it relates to the continued operation as a certified CCO.

*Application for Fee Review*

Under section 306(f.1)(5), a provider seeking review of a fee dispute must file the required application form within

30 days following notification by an insurer that a dispute exists or 90 days from the provider's original date of billing, whichever is later. The provider's period for filing a fee review is tolled during the period that the insurer has a right to suspend payment due to the filing a Request for Utilization Review.

The limitation periods apply to treatment rendered on or after August 23, 1996.

*Utilization Review—Reconsideration*

Requests for Reconsideration have been eliminated by the amendments to section 306(f.1)(6)(ii). However, requests made on or before August 22, 1996 shall be processed in accordance with the regulations relating to reconsideration requests found at 34 Pa. Code §§ 127.501—127.515. No requests for reconsideration will be honored on or after August 23, 1996.

If the initial determination finds that the treatment reviewed was reasonable and necessary, the insurer shall pay the bills submitted for the treatment in accordance with 34 Pa. Code § 127.208 (relating to time for payment of medical bills). This interpretation is consistent with the current practice, under the act of July 2, 1993 (P. L. 190, No. 44), when a Petition for Review has been filed after a determination on Reconsideration.

With respect to initial requests for UR, in the case of physical therapy or occupational therapy, the review shall be performed by a reviewer licensed in the Commonwealth in the same profession and having the same specialty as the provider of treatment under review, regardless of the profession of the provider who prescribed the therapy. This is a departure from previous practice, as specified in 34 Pa. Code § 127.466 (relating to the assignment of a UR request to a reviewer by URO).

It shall be the responsibility of the URO to forward the report of the reviewer and all medical records utilized by the reviewer to the Workers' Compensation Judge, and such report shall become part of the record. Regulations which forbid action ordered by this section are considered repealed to the extent they are inconsistent with this section of Act 57.

*Employe Reporting Requirements*

(a) Section 311.1(a) form.

The information required to be reported under section 311.1(a)(7) includes information regarding the receipt of benefits referred to in section 204 of the WC Act, if applicable. The employe is continuously obligated to report any change of information which is relevant to determining the entitlement to, or the amount of, compensation.

Failure to supply the form and information under this section may not result in a suspension of compensation benefits under section 311.1(g); however, such failure may subject the employe to prosecution under the provisions of Article XI of the WC Act relating to fraud.

(b) Section 311.1(d) form.

The employe's failure to return the completed verification form to the insurer within 30 days may entitle the insurer to suspend payments of compensation, under section 311.1(g). The suspension may remain in effect until the completed form is returned by the employe. Upon receipt of the completed form, the insurer shall immediately reinstate compensation benefits as of the date of receipt, as evidenced by postmark, or other reliable indicator of receipt. Employes are not entitled to payments of compensation during the period of noncom-

pliance. Further, failure to complete and return the verification form under this section may subject the employe to prosecution under the provisions of Article XI of the WC Act relating to fraud.

It is the employer's burden to show that the verification form was forwarded to the employe.

*Full Recovery Termination*

The automatic request for supersedeas under section 413(a.1) applies only in cases where a petition has been filed which requests a termination of benefits due to full recovery of the employe. An employe is fully recovered when all medical disability caused by the work injury has ceased.

All other requests for supersedeas in connection with a suspension/modification petition are governed by section 413(a.2) of the WC Act.

Where the Judge fails to conduct a special supersedeas hearing as required by this section or fails to render a decision within the prescribed time period, the supersedeas shall be deemed denied.

*Return-to-Work Suspension/Modification*

Under section 413(c) and (d), the employer may suspend or modify compensation upon the employe's return to work. If the employe is receiving wages equal to or greater than the pre-injury wage, the employer may suspend compensation. If the employe is receiving less than the pre-injury wage, the employer may modify compensation based upon the amount of wages the claimant is receiving.

These sections require the employer to notify the employe of the suspension/modification. It is the employer's burden to show that notice has been given.

An employe may file a Notification of Challenge to the suspension/modification by checking off the box on the Notification of Suspension/Modification form. The employe must return the form to the Bureau within 20 days of the receipt of the Notification of Suspension/Modification from the insurer.

Where the Judge fails to conduct a special supersedeas hearing under this section or fails to render a decision within the prescribed time period, the employer does not maintain the right to suspend or modify compensation.

*Premium Discount*

Under section 1002(b), qualified employers may receive an annual 5% discount, for a period of 5 years, on the cost of yearly workers' compensation insurance premiums. The employer must annually provide a verification to the Department and the insurer that the safety committee continues to be operative and continues to meet the certification requirements.

Employers which have previously obtained the 5% discount, prior to the effective date of Act 57, are entitled to apply for recertification. Upon recertification, the employer is entitled to receive the discount for a period limited to 4 additional years.

[Pa.B. Doc. No. 96-1361. Filed for public inspection August 16, 1996, 9:00 a.m.]