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MAE News: Newsletter from the Office of Monitoring, Audit and Enforcement, Spring 2013

Maine Workers' Compensation Board

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Newsletter from the Office of Monitoring, Audit and Enforcement Maine Workers' Compensation Board

Spring 2013

Volume 9, Number 1



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Compliance Training for Employers/Insurers

The June 20th and 21st open training session is filling fast so contact Anne Poulin as soon as possible if you would like to attend. Additional sessions will be held October 24th and 25th. Open training is now held at the Maine Department of Labor at 45 Commerce Drive in Augusta. Registrants will receive directions prior to training.

The Board has also been busy doing on-site training for insurers, self-insurers, 3rd-party administrators as well as employers. If you would like information about on-site training for your organization, please contact Gordon Davis at 207-287-6327, or by email at Gordon.Davis@Maine.Gov.

Return to Work with Restrictions/Limitations and Notice or Knowledge of a Claim for Incapacity Benefits

Pearson v. Freeport Sch. Dep't, 2006 ME 78, ¶ 17, n. 9 addresses notice as follows:

[A]lthough the employee may not be required to give affirmative notice of a claim in all cases, the employer must have some knowledge, either from the employee or from the circumstances of the injury, that it has an obligation to pay incapacity benefits before it will be deemed to have accepted an injury by failing to controvert a claim.

The question then is when an employee returns to work with restrictions/limitations, could that constitute sufficient knowledge of a claim for incapacity benefits? The answer has significant implications for claim administrators not just during Board audits but also with regard to potential 14-day violations.

During the course of an audit, the auditor is looking for documentation in the file that the employee that returned to work with restrictions/limitations is not suffering any wage loss due to the restrictions/limitations. Proof of wage verification or a note in the file documenting that the adjuster confirmed with the employee that there is no wage loss due to the restrictions/limitations is sufficient. At audit time, it is not sufficient to simply state that there was no verification of wages because "there was no request for incapacity benefits" or "we didn't think the wage loss was related to the injury." Adjusters must demonstrate that they took reasonable steps to ascertain if incapacity benefits were due.

In the absence of such reasonable steps documented in the file, the auditor will utilize the Comp Rate Method outlined in Appendix D of the Board's Forms Manual to determine when the seven day waiting period has been met. For purposes of Board audits, auditors will also accept the AWW Method also outlined in Appendix D or any other reasonable method documented in the file for calculating the seven day waiting period/first day of compensability.

If you have any questions or concerns regarding audit expectations, please contact Rick Giffin, Director of Audits, at 207-287-8873, or by email at Rick.Giffin@Maine.Gov.

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From the Office of Medical/Rehabilitation Services Pre-authorization Myths and Realities

Myth 1: Pre-authorization is required for certain medical and other services like massage therapy, acupuncture, and physical therapy, and for certain medical procedures such as CT scans and MRIs.

Reality: A health care provider may have a contract that requires it to get pre-authorization for certain medical services; however there are no pre-authorization requirements in the Maine Workers' Compensation Act (Act) or in the Maine Workers' Compensation Board Rules and Regulations.

Myth 2: Pre-authorization is a guarantee that medical or other services will be paid for by the employer/insurer.

Reality: Final determination regarding payment takes place only after a bill for medical or other services is received. Within 30 days of receipt of a properly coded bill, the employer/insurer shall pay the health care provider's usual and customary charge or the maximum allowable payment under the Workers' Compensation Board's Medical Fee Schedule, whichever is less, unless the bill or previous bills from the same health care provider or the underlying injury has been controverted or denied. If an employer/insurer controverts whether a health care provider's bill is reasonable and proper under § 206 of the Act, the employer/insurer shall send a copy of the notice of controversy to the health care provider.

New definition of "Independent Contractor"

Beginning January 1, 2013, there is a uniform definition of independent contractor for the Workers' Compensation Board (Board) and the Maine Department of Labor (MDOL).

For the first time, all workers are presumed to be employees for purposes of workers' compensation. The employing entity is responsible for proving an individual performing services for remuneration is not an employee.

The Board's voluntary predetermination process remains in effect. It is important to remember that predeterminations (except for landowners who hire wood harvesters) are "rebuttable." This means that the Board can still find that the person is an employee in a later proceeding before the Board. Also, MDOL cannot rely on a Board predetermination as evidence of employment status for proceedings with MDOL.

Individuals hiring and those seeking work as independent contractors should become familiar with their rights and responsibilities under Maine law to make informed decisions and avoid future problems. More information can be found on the Board's website: www.maine.gov/wcb/departments/Coverage/independetcontractor.htm or by contacting Lisa Bachelder at (207) 287-7071 or 1-888-801-9087.