



New Indiana Workers' Comp Laws

May 24 - Indiana Legislature Enacts New Law Affecting the Worker's Compensation Act: Sets Statute of Limitations for Provider Fee Claims

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On May 9, 2011, the Indiana General Assembly enacted S.B. 576, which amends the Worker's Compensation Act, effective July 1, 2011. This was the only bill of several which were introduced pertaining to the Indiana Worker's Compensation system that became law in this session of the General Assembly.

The law amends various sections of the Worker's Compensation Act ranging from changes in title of Worker's Compensation Board-appointed positions to adding new sections to the code; however, the newly enacted legislation has a significant impact upon the filing of provider fee claims.

Among other things, the law establishes a two year statute of limitations for provider fee claim filings in Indiana. The statute begins to toll from the date the health care provider receives the initial written communication from the employer, their insurance carrier, or an agent acting on behalf of the employer (such as a bill review agency) after the provider has submitted a bill for services.

In addition, the law institutes a filing fee on provider fee claims which must accompany all filings in the amount of \$60.00 for balance billing matters. The Worker's Compensation Board (Board) does not require a filing fee to accompany an Application for Adjustment of Claim for Provider Fee filed for denied or unpaid (total billing) matters. The Board will also allow for up to ten individual claims to be combined into one Application when all of the claims involve the same employer, carrier, or billing review service and the amount of each individual claim does not exceed \$200.00. This will allow providers an economical way to collect on smaller balances by combining up to ten of these matters into one Application and only pay one, \$60.00 filing fee (or possibly no filing fee if all claims included on the same Application were total billing matters).

The law also includes language that urges legislative council to assign to the commission or other committee the task of studying the current medical payment provisions of the Act and potentially amend the definition of "pecuniary liability" to establish that services

or products provided by a medical services facility should be paid at a percentage of the amount determined by using Medicare rates in effect on the date the service or product is provided.

This is not a new concept for the Worker's Compensation Board or the legislature. A bill was introduced in a previous legislative session that provided for payment of medical products and services under the Act to be at a percentage of Medicare rates, such as 200% of Medicare charges (rather than the current requirements regarding determination of pecuniary liability which includes payment at the "eightieth percentile"). These measures have previously been opposed and the bill ultimately died in committee. However, the newly enacted legislation provides that if the commission or committee is assigned the topic that a final report should be issued containing the entities findings and recommendations, including any recommended legislation, by November 1, 2011.

In addition to the provisions regarding provider fee claims, the law also:

- Requires that all members of the Board be attorneys in good standing admitted to the practice of law in Indiana.
- Allows the second injury fund to be used to pay certain fund liabilities.
- Authorizes the Board to resolve claims using mediation, with the consent of all parties, and allows the Board to set fees and charges for mediation.
- Requires an employer to provide a copy of an injury report to the Board upon request.
- Requires an injury report within seven days after the first day of a disability arising from a work place injury (rather than the occurrence of the injury).
- Increases civil penalties for failure to: (1) post certain notices; (2) file certain records; and (3) determine liability for claims in a timely manner.
- Permits the Board to request evidence of worker's compensation and occupational diseases compensation coverage from an employer.
- Establishes a civil penalty of \$50 per employee per day for an employer's failure to provide proof of coverage.
- Requires the Board to waive a civil penalty assessed whenever an employer provides proof of coverage by the twentieth day after the Board provides written notice of the employer's failure to provide evidence of the coverage.
- Allows the Board, after notice and a hearing, to post on the Board's web site the name of an employer who fails or refuses to provide proof of coverage or pay a civil penalty assessed for the failure or refusal to provide coverage.
- Provides that an employer's name may not be removed from the Board's web site until the employer provides proof of coverage and pays the civil penalties assessed.
- Requires that civil penalties be deposited in the worker's compensation supplemental administrative fund, instead of the state general fund.
- Provides that a court may temporarily order an employer who fails to pay worker's compensation or occupational disease benefits when due to cease doing business, until such time the employer furnishes to the Board proof of insurance or other named assurances to establish that the employer has the ability to meet all worker's compensation and occupational disease liabilities.

- Allows an owner of a sole proprietorship who is an independent contractor to obtain a certificate of exemption of coverage.
- Urges the legislative council to assign the commission the task of studying the issue of increasing benefit schedules for worker's compensation and occupational disease compensation. If the commission is assigned the topic, requires that the commission issue a final report of findings, recommendations, and recommended legislation by November 1, 2011.
- Makes other administrative (renames the position of executive secretary as executive administrator) and technical corrections to the Act.

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