

2010 Disability Duration Guidelines

NYS Workers' Comp Law reform of 2007 accomplished two important system changes:

- *increased* the Maximum weekly indemnity benefit
- introduced *limitations* on how long indemnity benefits would be paid for non-schedule permanent partial disability claims

Along with the legislation, Gov. Spitzer requested a Task Force to develop guidelines related to loss of wage-earning capacity (Disability Duration Guidelines), comprised of three segments:

- Medical Impairment Guidelines (Treatment Guidelines)
- Residual Functional Abilities/Losses Guidelines
- Loss of Wage Earning Capacity Guidelines

The first two segments have been completed. Proposed Guidelines can be found on the WCB website (www.wcb.state.ny.us)

- The Loss of Wage Earning Capacity Guidelines are incomplete, as the Task Force was unable to reach a consensus on a methodology by which to calculate this figure.

These three segments are interrelated. Once a claimant reaches maximum medical improvement, the guidelines dictate how to proceed through each stage. Each stage of the process will conclude with a WCB Judicial Decision.

- The process will end with the final determination of the claimant's Loss of Wage Earning Capacity as a result of injuries sustained on the job.

A Note on the Medical Impairment Guidelines:

- Medical Impairment Guidelines have the potential to serve as favorable or unfavorable to the employer, depending on their use by treating physicians:

“With few exceptions, all treatment in accordance with the Guidelines is Pre-authorized, so providers will no longer have to obtain prior approval if their treatment conforms to the Guidelines. **The regulations require that insurers pay providers for services rendered in accordance with the Guidelines.** Treatment that is outside the Guidelines will not be paid unless a variance is approved by the insurer or the Board.”

Letter from Chair of WCB to Workers' Comp Insurers, 9/29/10

- The limitations in treatment set by the guidelines are meant to offset an increase in the max indemnity benefit (2/3 NYS Average Weekly Wage = \$739.83).

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- The New York State WCB also made the following change to the NYS fee schedule effective 12/1/10:
 - The new fee schedules will increase the Evaluation & Management codes by 30%, except for chiropractic, modify Chiropractic Fee Schedule to allow chiropractors to bill by modality with limitations on relative value units, update the CPT (Current Procedural Terminology) codes, and include requirement that treatment must be in accordance with the Medical Treatment Guidelines that took effect 12/1/10.
- This fee increase is justified by the increased work that will be required of physicians in compliance with the new guidelines, and hopefully will be offset by the limitations in those guidelines.

For more information on the NYS Disability Duration Guidelines, please contact Erin Gregory, Business Development Manager at 716-842-0045