

Need to Know: 2017 NYS Budget Bill and Workers' Compensation Implications

On April 10, 2017 Governor Cuomo signed the 2017 Budget Bill into law. The Bill contained several legislative changes that will have significant impact on the New York State Workers' Compensation system. The changes that will most affect our self-insured clients are summarized below:

- **Claimant no longer has to prove Attachment to the Labor Market after classification.** When a claimant is classified, the WCB sets a Loss of Wage Earning Capacity (LWEC) level, which equates to a number of weeks of benefits. The claimant was required to look for work within their capabilities; if they didn't, then the carrier was able to suspend benefits. This provided NCA's clients with a two-part benefit: either compensation benefits were terminated or the threat of termination would lead to settlement of the claim. Now, the claimant will not be obligated to maintain a connection to the labor market to be entitled to their benefits. ***NCA considers this to be the loss of a substantial cost-saving tool for our clients, which last year saved a total of \$1,697,142 in indemnity/compensation costs.***
- **Compensation benefit caps begin 130 weeks (2.5 years) after the date of the accident, applicable to claims with accident date 4/10/17 or later.** Temporary Total disability weeks are not subject to this time restriction. In the 2007 Workers' Comp reforms, lifetime indemnity benefits were capped (except for extreme hardship cases, discussed below) based on the percentage of disability. The caps, measured in weeks, were to begin on the date of classification or permanency. Because of this, many claimants have postponed this permanency determination as long as possible, whether with additional surgeries or medical opinions that the claimant has not reached Maximum Medical Improvement (MMI) and is thus not ready for a permanency opinion. In NYS, the average time it is taking to reach MMI is currently 6.4 years. ***This will shorten the duration of compensation benefits by an average of 4 years, and is a win for our self-insured clients and carriers.***
- **Level at which the claimant is able to appeal for lifetime benefits under the Extreme Hardship determination has dropped from 80% LWEC to 75% LWEC.** If the Loss of Wage Earning Capacity is set by the WCB at a high enough level, the claimant is considered to have a total industrial disability and the compensation caps no longer apply. This measure is effective as of 4/10/17 for all claims. ***This will benefit claimants who have an LWEC determination over 75%, and the financial impact is unknown, as NY has not yet seen the first WCB decision on the application of this statute.***
- **New set of guidelines to be published by January 1, 2018 in regards to Schedule Loss of Use (SLU) awards.** SLU awards are given in cases where there is determined to be a permanent injury to a claimant's extremity (arms, legs etc.). The SLU award is a bulk payment, minus any wage replacement benefit the claimant received while unable to work due to the injury. The current guidelines date to 1996 and are not reflective of current medical advances and

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treatment. Proposed guidelines are due by 9/1/17. ***Impact of this section is unknown, but will at least bring a resolution to this highly controversial and costly subject by the end of the year.***

- **WCB will create a statewide drug formulary by 12/31/17 to regulate the dispensing of prescriptions to claimants.** Similar to the Medical Treatment Guidelines for certain injuries, this will allow for certain drugs to be automatically approved for an appropriate condition, while others will be restricted or subject to review. ***This formulary will likely save money in transaction costs and professional pharmacy review, and will hopefully limit the ability of claimants to abuse and overuse prescription medications.***
- **Additional aggregate penalties allowed when a self-insured employer or carrier does not achieve performance standards set by the WCB.** The WCB has enhanced their compliance efforts, and is now issuing penalties for late notice of injury (FROI/SROI filings). They have set performance standards for the state, and if a carrier or self-insured exceeds the standard, they will be exempt from the individual penalty. Now, the WCB will be issuing additional annual aggregate penalties for poor performance in this area. ***It remains important that NCA work with our clients to get notice of injury and claimant data to the WCB as quickly as possible.***

The sum of these regulatory changes will be a big impact on the way that NCA manages our clients' claims. At the end of the day, this will most likely have an impact on your claims costs, but it is currently unknown how much or which way costs will go. The biggest impacts will be seen from the new SLU guidelines and the prescription drug formulary, which will be presented more clearly by the end of 2017.

If you have any questions or concerns about how this Bill will affect you, please contact your account manager at NCAComp.

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