

Need to Know: Draft SLU Guidelines

On April 10, 2017 Governor Cuomo signed the 2017 Budget Bill into law. As part of this bill, a **new set of guidelines is 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 contemporary medical advances and treatment. Proposed guidelines were released September 1st of this year.

Awards are still based on a percentage Loss of Use, which equates to a number of weeks of benefits (2/3 the average weekly wage, subject to a cap). Below are highlights of the **changes to the SLU system** for evaluating medical impairment:

- Arm and leg injuries and some neuropathies are categorized into “Impairment Categories” A through C which provide a possible range of the final SLU determination.
- Digit and wrist injuries are excluded from categorization, “given their elevated occupational significance.” These injuries are evaluated based on range of motion.
- Additional percentage points are added to the baseline award, for weakness, range of motion, and pain.

- A workers’ compensation law judge evaluates the doctor’s calculation and opinion, then has the ability to add up to 15 percentage points for “loss of earning power”.
- The judge may also determine that the injury(ies) may be classified instead as a permanent partial disability. This is for progressive, persistent and severe conditions in one or more body part.

Pain Rating	Points
No pain or pain does not influence ability to perform job.	0
Pain that occasionally influences ability to perform job.	1
Pain that requires modification of job functions; but allows task specific work to be accomplished.	2
Pain that intermittently prevents the injured worker from performing the essentials of the job – the type of work that the injured worker was engaged in at the time of the accident.	3
Pain that consistently prevents one from performing the essentials of the job – the type of work that the injured worker was engaged in at the time of the accident.	4
Pain that prevents the injured worker from engaging in meaningful work, leisure or household duties.	5

- A new SLU-1 form will be created, on which the claimant provides information relevant to their prospective loss of earning power. This form has not yet been published.

Analysis:

- There is concern over vague, undefined terms in the guidelines, namely “loss of earning power” which is the basis for 15 potential SLU points that the judge is able to apply at their discretion (at the current max benefit rate, that is \$37,610.35 for a leg or \$40,720.68 for an arm injury!). The term is specifically described as not “based upon ‘loss of wage earning capacity’ or ‘wage earning capacity’ as those terms are utilized with respect to [permanent partial LWEC determinations].”
- The guidelines do not provide guidance on what classifies a surgical result as *good*, *very good* or *poor*. These conclusions, made by the treating doctors, impact which impairment category an injury is placed in, and therefore can effect a range of 0% to 90%!
- The SLU-1 form appears to have significant weight, however there is no form or forum through which the employer may counter what the claimant submits. (The claimant is required to be truthful when completing the form)
- There is hope that the maximum and minimum percentages given in the Impairment Categories will limit SLU awards that come through unreasonably high based on a medical opinion.
- In the short term, unless there is more guidance from the WCB, expect ancillary costs, especially litigation costs to be high. The new system will also provide challenges to adjusters in their reserving practices.

If you have any questions about these new regulations, please contact Erin Jordan at 716-362-6493 or ejordan@ncacomp.com or speak to your adjuster at NCA!