

APRIL 2020

# NYS Workers' Compensation Board COVID-19 Outbreak Response

Over the past month, the New York State Workers' Compensation Board (Board) has issued important guidance regarding process and other changes related to the novel coronavirus (COVID-19) outbreak. These actions have been taken to keep both the public and Board staff safe, and to address some of the challenges Board stakeholders may currently be facing. Below is a summary of the Board's COVID-19 response actions to date, with links to detailed information. As the situation continues to evolve in the coming weeks, please watch the [Board's website](#) for updates. You can also sign up to receive [notifications](#) right to your inbox or phone.

## Guidance on Changes to the NYS Workers' Compensation System

On March 16, the Board issued guidance to stakeholders to help them handle the effects of COVID-19 on the New York State workers' compensation system. This provided comprehensive details on how the Board is addressing all areas that could be affected by the outbreak. Changes include:

1. All hearings will be by remote attendance until further notice (*see page 3 for more information on virtual hearings*).
2. The 90-day requirement for medical evidence of ongoing disability has been relaxed.
3. Claimants should notify their attorney, the doctor and the Board if they can't attend Independent Medical Examinations (IMEs).
4. A conflicting opinion may be based on a record review, instead of an in-person exam, when an **Attending Doctor's Request for Authorization and Carrier's Response (Form C-4 AUTH)** is filed and an IME is not able to be scheduled in time to meet the 30-day requirement.
5. Extensions may be possible for other IMEs.
6. Extensions may be possible for depositions (cross-examination of medical witnesses).
7. The Board may consider excusing untimely filings of applications involving appeals and rebuttals.
8. The Bureau of Compliance will consider applications to excuse delays and defaults in redetermination requests. **NOTE: These changes do not remove the requirement of an employer to obtain and maintain the required coverage.**
9. The Payor Compliance Unit will consider applications to excuse delays and defaults in complying with

provisions used in measurements of timely *First Report of Injury (FROI)*, timely *Subsequent Report of Injury (SROI)* showing initial payment, timely initial payment, timely initial installment payment and timely notice of controversy.

Full details on each of the areas listed in this section can be found on the Board's website under [NYS WCB Response to the Novel Coronavirus, COVID-19](#).

## Some Original Signature Requirements Waived During COVID-19 Pandemic

The Board is offering relief from the requirement for handwritten signatures on 27 forms until further notice. We understand many attorneys and law firm staffers, as well as people who work for payers and administrators, are working from home during the outbreak and in some cases cannot submit required forms with original handwritten signatures. The forms affected, as well as new processes to follow, are listed on the [Board's website](#).

More guidance about requirements regarding handwritten signatures and IMEs is available on the Board's website under [WCB COVID-19 Guidance: Frequently Asked Questions](#).

## Telemedicine Allowed

Due to the COVID-19 outbreak, Board Chair Clarissa M. Rodriguez has adopted emergency amendments allowing telemedicine in some circumstances for social distancing purposes. The requirements and telemedicine billing codes are detailed in the [Text link](#) provided on the Board's web page announcing the [emergency amendment](#).

## Letter to Payers

Recognizing that workers' compensation will be a lifeline to many workers who are affected by COVID-19, Chair Rodriguez issued a **letter** to insurance carriers and payers of workers' compensation. The letter encourages payers to proactively provide information to first responders, other front-line employees and policy holders on how to file a claim; reinforce with employers that discrimination against those who file claims is illegal; conduct speedy investigations into claims; and in situations where they aren't sure if a claim is compensable, consider issuing a payment without initially accepting liability (using WCL § 21-a), rather than disputing the claim.

## Formulary Deadline for Prescription Renewals Extended

To ensure the current health crisis does not negatively affect injured workers who are on non-formulary medications, Chair Rodriguez has modified the **New York Workers' Compensation Drug Formulary (NY WC Formulary)** regulation (12 NYCRR 441.3(a)(2)) to extend the date by which health care providers must obtain prior authorization for renewals of non-formulary medications. The change moves the deadline from June 5 to January 1, 2021.

## Submitting Prior Authorization Requests to Carriers' Designated Email Contact

In response to staffing and other changes put in place related to the COVID-19 pandemic, the Board is updating some processes to ensure timely continuity of programs within the workers' compensation system.

Health care providers are advised to submit prior authorization requests for medical procedures to insurance carriers' designated email contact as posted on the Board's website, and not via fax.

Prior authorization requests for non-formulary medications should continue to be submitted through the medical portal. All insurance carriers, self-insured employers, and third-party administrators should forward their fax number to their designated email contact to ensure that these requests are received and acted upon accordingly.

The Board will only issue an Order of the Chair (OOC) for emailed prior authorization requests listed below that are not responded to in a timely manner. An OOC will not be issued for a faxed prior authorization request.

These instructions pertain to the following forms:

- **Attending Doctor's Request for Optional Prior Approval and Carrier's/Employer's Response (Form MG-1)**
- **Attending Doctor's Request for Approval of Variance and Carrier's Response (Form MG-2)**

- **Attending Doctor's Request for Authorization and Carrier's Response (Form C-4 AUTH)**

**Medical Treatment Guidelines Administrators:** Please verify (and if necessary, update) your designated email contact.

## Changes to Submission of Medical Bills and Attached Reports

The Board has issued new guidance to payers that are submitting medical bills and attached reports to help accommodate those with staff working from home during the pandemic.

- **If the medical bill is already in the case folder**, the submitter should complete the form and note the Document ID for the medical bill. A copy should not be attached.
- **If the medical bill is not already in the case folder**, and the submitter cannot attach it to the **Notice of Treatment Issue(s)/Disputed Bill Issue(s) (Form C-8.1B)**, then the medical bill can be submitted separately, if the medical bill is submitted on the same day as the **Form C-8.1B**. A notation on the form of a same-day medical bill submission is also acceptable proof.

A photo or image of the medical bill is acceptable in lieu of a scanned copy; however, photos taken on mobile devices may produce files that are too large. Our scanning vendor recommends downloading the free Genius Scan app to scan medical bills instead. Genius Scan is available on **Apple iOS** and **Android devices**.

Forms should be submitted by email to [wcbclaimsfilings@wcb.ny.gov](mailto:wcbclaimsfilings@wcb.ny.gov).

Detailed guidance can be found on the **Board's website**.

## Labor Market Attachment Requirement Suspended

Recent restrictions put in place to help keep New Yorkers safe and slow the spread of COVID-19 have disrupted some normal economic activity. These changes may cause challenges for claimants who are searching for a job or trying to participate in vocational rehabilitation. Given these conditions, the Board is not requiring injured workers to demonstrate that they're attached to the labor market to continue receiving partial disability payments during this emergency period. This also applies to cases ready for permanency classification in which the carrier has raised the issue of labor market attachment. In each of those cases, Workers' Compensation Law Judges will adjourn the matter so that it can be addressed at a time when the claimant is able to demonstrate labor market attachment.

More information on these emergency changes is available in the Board's **Labor Market Attachment Q&A**.

## Virtual Hearings Ensure Workers' Comp Hearings Continue

One of the Board's most innovative services is helping to keep the claims process moving and ensure there is no delay in benefits to injured workers during the current public health crisis. Virtual hearings, which rolled out statewide in 2018, are now being used for all hearings to keep the public and Board staff safe and follow social distancing recommendations. Injured workers, attorneys, representatives, witnesses and other participants are all attending their hearings remotely using a computer or mobile device while Board offices are closed to the public. Virtual hearings also allow Workers' Compensation Law Judges to cover cases from home, further helping to prevent the spread of COVID-19.

Injured workers can still choose to appear by phone by calling **(844) 337-6301**.

Complete details on how to attend a hearing remotely are available on the [Board's website](#).

## Cancellation of Workers' Compensation, Disability and Paid Family Leave Benefits Insurance Policies Affected by Executive Order 202.13

The Board has issued guidance to insurance carriers to comply with Executive Order 202.13. The **Executive Order** directs workers' compensation, disability and Paid Family Leave benefits insurance carriers to cease canceling, non-renewing and conditionally renewing insurance policies issued to an individual or small business (or, in the case of a group insurance policy, cease insuring certificate holders that are individuals or small businesses) in certain cases where the COVID-19 pandemic is causing financial hardship. The Department of Financial Services (DFS) has issued a **new regulation** stating an employer may establish that it is facing financial hardship as a result of the pandemic by filing an attestation with its workers' compensation and/or disability and Paid Family Leave benefits insurance carrier.

The 60-day moratorium took effect March 30. The Board expects insurance carriers to voluntarily comply. Sanctions may be imposed on insurance carriers that file prohibited coverage transactions.

More information on the Executive Order and sanctions can be found on the [Board's website](#).

## New Paid Leave for COVID-19

In response to the COVID-19 outbreak, Governor Cuomo has guaranteed workers job protection and pay in the event **they**, or their **minor dependent child**, are subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the Department of Health, local board of health, or any government entity duly authorized to issue such order due to COVID-19.

Most employees will get financial compensation by using a combination of benefits, which may include new employer-provided paid sick leave (depending on the size and annual net income of the employer), Paid Family Leave and disability benefits. These benefits are not available to employees who are able to work through remote access or other means. There are also federal benefits workers may be eligible to receive. Those must be used before state benefits.

A diagnosis of COVID-19 is also considered a serious health condition, so eligible employees may be able to take Paid Family Leave to **care for a family member** who contracts the virus.

You can find comprehensive information on eligibility and benefits at [PaidFamilyLeave.ny.gov/COVID19](https://PaidFamilyLeave.ny.gov/COVID19).

## New Nature/Cause of Injury Codes in Response to COVID-19

New nature and cause of injury codes are now available in response to the COVID-19 pandemic. The Workers' Compensation Insurance Organizations (WCIO) has updated the Injury Description Tables that are used by the International Association of Industrial Accident Boards and Commissions (IAIABC) to reflect this specific coding. The new codes were approved by the WCIO and are now available on the [WCIO website](#).

## April Board Meeting to be Live Webcast

This month's Board meeting will be available to attend via a live webcast due to COVID-19 restrictions. The meeting is scheduled for April 21, at 10 a.m. More information, as well as a link to the webcast, will be available at this [link](#).

## Contact the Board

If you need to contact the Board during the COVID-19 health crisis, you're urged to call the Customer Service Toll-Free Number: **(877) 632-4996**.

The New York State Workers' Compensation Board protects the rights of employees and employers by ensuring the proper delivery of benefits and by promoting compliance with the law. To learn more about the Workers' Compensation Board, visit [wcb.ny.gov](http://wcb.ny.gov).



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