



ILLINOIS WORKERS' COMPENSATION COMMISSION

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ROD R. BLAGOJEVICH
GOVERNOR

DENNIS R. RUTH
CHAIRMAN

On July 20, 2005, Governor Rod R. Blagojevich signed HB 2137 (Public Act 94-0277), amending the Workers' Compensation Act and Workers' Occupational Diseases Act. A summary of the bill's provisions follows. To read the complete bill, click on the following link:
<http://www.ilga.gov/legislation/publicacts/94/094-0277.htm>

Medical Fee Schedule Established

Medical Fee Schedule - New Section 8.2 of the Act requires the Commission to establish a medical fee schedule effective February 1, 2006. The maximum allowable payment for medical treatment and procedures covered under Section 8(a) of the Act shall be the lesser of the health care provider's actual charges or the fee set by the schedule. The fee schedule will set fees at 90% of the 80th percentile of actual charges within a geographic area based on geozip (a geographic area with the same first three digits of a zip code), utilizing information contained in employers' and insurers' national databases. The fee schedule will be adjusted yearly based on percentage changes to the Consumer Price Index.

Effective Date: February 1, 2006

Workers' Compensation Medical Fee Advisory Board - New Section 8.3 of the Act creates a Workers' Compensation Medical Fee Advisory Board to advise the Commission on the establishment of fees for medical services and accessibility of medical treatment. The Board consists of 9 members appointed by the Governor with the advice and consent of the Senate. Of the 9 members, 3 represent the employee class, 3 represent the employer class and 3 represent the medical provider class. Each member serves for a 4-year term and continues to serve until a successor is appointed.

Effective Date: Effective immediately

Report to Governor and General Assembly - New Section 8.2 (g) of the Act provides that on or before January 1, 2010 the Commission shall provide to the Governor and General Assembly a report regarding the implementation of the medical fee schedule and the index used for the annual adjustment to the schedule.

Effective Date: Report due on or before January 1, 2010.

Utilization Review Program Established

Utilization review - New Section 8.7 of the Act provides that an employer may engage in utilization review to evaluate the quality and medical necessity of proposed or provided health care services and sets forth requirements for a utilization review program. Any person conducting a utilization review program for workers' compensation must register with the Department of Financial and Professional Regulation once every 2 years and certify compliance with Workers' Compensation Utilization Management standards or Health Utilization Management Standards of URAC sufficient to achieve URAC accreditation or submit evidence of accreditation by URAC (or an alternative standard certified by the Secretary of Financial and Professional Regulation).

The Commission will consider utilization review, along with all other evidence and in the same manner as all other evidence, in the determination of the reasonableness and necessity of the medical bills or treatment. When an employer denies payment or refuses to authorize medical services, if that denial or refusal complies with a registered utilization review program that complies with all requirements under Section 8.7 there shall be a rebuttable presumption that the employer shall not be responsible for payment of additional compensation under Section 19(k) of the Act. If the denial or refusal does not comply with a utilization review program registered under Section 8.7 and does not comply with other requirements of Section 8.7, then that will be considered by the Commission, along with all other evidence and in the same manner as all other evidence, in the determination of whether employer is responsible for the payment of additional compensation under Section 19(k) of the Act.

Effective Date: Effective immediately

Balance Billing Prohibited

Employer to pay charges directly to provider within 60 days - New Section 8.2(d) of the Act provides that when an employee notifies a medical provider that the treatment or service is for a work-related injury, the provider shall bill the employer directly. If the employer does not dispute payment of first aid, medical, surgical, or hospital services, Section 8(a) provides that the employer shall make payment directly to the provider on behalf of the employee. The employer is required to pay the bill within 60 days of receipt of the bill as long as the claim contains substantially all the required data elements necessary to adjudicate the bills. Unpaid bills incur interest at a rate of 1% per month payable to the provider. A provider cannot hold an employee liable for costs related to non-disputed services for a compensable injury and shall not bill or attempt to recover from the employee the difference between the provider's charge and the amount paid by the employer or insurer on a compensable injury.

Provider prohibited from seeking payment of bills from employee while claim is pending - New Section 8.2(e) (5-20) of the Act provides a provider may seek payment of the actual charges from the employee if the employer notifies a provider that it does not consider the illness or injury to be compensable. If an employer notifies a provider that it will pay only a portion of a bill, the provider may seek payment of the unpaid portion from the employee up to the lesser of the actual charge, the negotiated rate, or the rate in the fee schedule.

If an employee informs the provider that a claim is on file at the Commission, the provider must cease all efforts to collect payment from the employee. Any statute of limitations or statute of repose applicable to the provider's efforts to collect from the employee is tolled from the date that the employee files the application with the Commission until the date that the provider is permitted to resume collection.

While the claim at the Commission is pending, the provider may mail the employee reminders that the employee will be responsible for payment of the bill when the provider is able to resume collection efforts. The provider may request information about the Commission claim and if the employee fails to respond or provide the information within 90 days, the provider is entitled to resume collection efforts and the employee is responsible for payment of the bills. The reminders shall not be provided to any credit agency.

Upon final award or settlement, a provider may resume efforts to collect payment from the employee and the employee shall be responsible for payment of any outstanding bills plus interest awarded. If the service is found compensable, the provider shall not require a payment rate, excluding interest, greater than the lesser of the actual charge or payment level set by the Commission in the fee schedule. The employee is responsible for payment for services found not covered or compensable unless agreed otherwise by the provider and employee. Services not covered or not compensable are not subject to the fee schedule.

If a provider is informed that the employee participates in a group health plan, the provider may submit the claim for services to the group plan. If the services are covered by the plan, the employee's responsibility is limited to applicable deductibles, co-payments or co-insurance.

Effective Date: Immediately

Benefits Increased and Changed

Burial expense - Section 7(f) of the Act is amended to increase the burial expense from \$4,200 to \$8,000.

Effective Date: Accidental injuries or diseases that occur on or after February 1, 2006

Increase in maximum death benefit - Section 8(b) 4.2 of the Act is amended to increase the maximum death benefit under Section 7 of the Act from the greater of \$250,000 or 20 years to the greater of \$500,000 or 25 years.

Effective Date: Accidental injuries or diseases that occur on or after February 1, 2006

Increase in minimum compensation rates - Section 8(b) of the Act is amended to increase the minimum rate for TTD and PPD to 66 2/3% of the sum of the Federal minimum wage or the Illinois minimum wage, whichever is higher, multiplied by 40 hours. The percentage rate shall be increased by 10% for each spouse and child, not to exceed 100% of the total minimum wage calculation. The TTD or PPD rate shall not exceed the employee's average weekly wage.

As of 2/1/06, the Illinois minimum wage of \$6.50 per hour will apply.

Base rate:	$\$6.50 \times 40 =$	\$260
Single person:	$\$260 \times 66 \frac{2}{3}\%$	= \$173.32
Person with 1 dependent:	$\$260 \times 76 \frac{2}{3}\%$	= \$199.32
Person with 2 dependents:	$\$260 \times 86 \frac{2}{3}\%$	= \$225.32
Person with 3 dependents:	$\$260 \times 96 \frac{2}{3}\%$	= \$251.32
Person with 4+ dependents:	\$260 (100% of calculation)	

Section 8(b) 4.1 of the Act is amended to increase the minimum rate for the amputation of a member or enucleation of an eye under Section 8(e) to 50% of the statewide average weekly wage.

Effective Date: Accidental injuries or diseases that occur on or after February 1, 2006

Increase in the maximum rate for 8(d)(1) wage differentials - Section 8(b) of the Act is amended to provide that the maximum rate for a wage differential award under Section 8(d)(1) is 100% of the statewide average weekly wage.

Effective Date: Accidental injuries or diseases that occur on or after February 1, 2006

Temporary Partial Disability benefits defined - Section 8(a) of the Act is amended to provide that when an employee is working light duty on a part-time basis or full-time basis and earns less than he or she would be earning if employed in the full capacity of the job or jobs, the employee shall be entitled to temporary partial disability (TPD) benefits. TPD shall be paid at two-thirds of the difference between the average amount that the employee would be able to earn in the full performance of his or her duties in the occupation in which he or she was engaged at the time of the accident and the net amount which he or she is earning in the modified job for the employer or in any other job that the employee is working.

Effective Date: Accidental injuries or diseases that occur on or after February 1, 2006

Maintenance benefits defined - Section 8(a) of the Act is amended to provide that the maintenance benefit for vocational rehabilitation shall not be less than the employee's temporary total disability rate. Maintenance shall also include costs and expenses incidental to the vocational rehabilitation program.

Effective Date: Accidental injuries or diseases that occur on or after February 1, 2006

Increase in the maximum weeks for disfigurement and specific loss of scheduled body parts - Section 8(c) of the Act is amended to increase the maximum number of weeks for disfigurement from 150 weeks to 162 weeks.

Section 8(e) of the Act is amended to increase the maximum number of weeks payable as follows:

Thumb: from 70 weeks to 76 weeks

First, or index finger: from 40 weeks to 43 weeks

Second, or middle finger: from 35 weeks to 38 weeks

Third, or ring finger: from 25 weeks to 27 weeks

Fourth, or little finger: from 20 weeks to 22 weeks

Great toe: from 35 weeks to 38 weeks

Each toe other than the great toe: from 12 weeks to 13 weeks

Hand: from 190 weeks to 205 weeks

Arm: from 235 weeks to 253 weeks

Amputation above elbow: from 15 additional weeks to 17 additional weeks

Amputation at shoulder joint: from 65 additional weeks to 70 additional weeks

Foot: from 155 weeks to 167 weeks

Leg: from 200 weeks to 215 weeks

Amputation at leg above knee: from 25 additional weeks to 27 additional weeks

Amputation at hip joint: from 75 additional weeks to 81 additional weeks

Eye: from 150 weeks to 162 weeks

Enucleation: from 10 additional weeks to 11 additional weeks

Hearing Loss:

One ear: from 50 weeks to 54 weeks (Workers' Compensation Act)

Both ears: from 200 weeks to 215 weeks

Testicle: from 50 weeks to 54 weeks

Both testicles: from 150 weeks to 162 weeks

Effective Date: HB2137 does not list an effective date for these increases; therefore, they become effective immediately for accidents occurring on or after 7/20/05. However, it is anticipated that as a result of the agreed bill process in November 2005 the Act will be amended to define these increases as becoming effective on February 1, 2006.

Vocational Rehabilitation Certification Required

Vocational rehabilitation certification - Section 8(a) of the Act is amended to provide that any vocational rehabilitation counselor who provides services under the Act shall have appropriate certifications that designate he or she is qualified to render opinions relating to vocational rehabilitation. Vocational rehabilitation may include, but is not limited to, counseling for job searches, supervising a job search program, and vocational retraining, including education at an accredited learning institution. The employee or the employer may petition the Commission to decide disputes relating to vocational rehabilitation, including the payment of the vocational rehabilitation program by the employer.

Effective Date: Accidental injuries or diseases that occur on or after February 1, 2006

Rate Adjustment Fund and Benefits Altered

Rate Adjustment Fund assessment increased - Section 7(f) of the Act is amended to increase the assessment rate for employers' contributions to the Rate Adjustment Fund from three-fourths of 1% to 1%. The Commission's borrowing authority from the General Revenue Fund is increased from \$15,000,000 to \$19,000,000.

Effective Date: Effective immediately

Employer to begin paying the annual rate adjustments in death and permanent total disability cases - Section 8(g) of the Act is amended to provide that for accidents occurring after the effective date of the Act, the employer shall pay the annual adjustments to the employee's or dependent's compensation rate in awards of death or permanent total disability. (The Rate Adjustment Fund will continue to pay the rate increases in cases in which the accident occurred before the effective date of the Act.)

Effective Date: Accidental injuries or diseases that occur after July 20, 2005

Commission Process Expedited

Commission panel added - Section 13 of the Act is amended to increase the Commission from 7 to 10 members. Of the 10 members, 3 represent the employer class, 3 represent the employee class and 4, including the chairman, represent the public class. Not more than 6 members can be of the same political party. In the promulgation of procedural rules, the determination of cases heard en banc, and other matters determined by the full Commission, the chairman's vote shall break a tie in the event of a tie vote. Of the 3 additional members, 1 shall be appointed to a term ending on the third Monday in January 2007 and 2 to a term ending on the third Monday in January 2009.

Due to the increase in the Commission to 10 members, Section 19(e) of the Act is amended to increase from 5 to 7 the number of commissioners necessary to determine that oral argument should be heard en banc. Section 14 of the Act is also amended to increase from 5 to 8 the number of votes necessary to not reappoint an arbitrator to a subsequent 6-year term upon a recommendation by the chairman.

Effective Date: Effective immediately

Expedited hearings - Section 19(b) of the Act is amended to provide for an expedited arbitration hearing at the request of an employee who is not receiving or has not received TTD, TPD, medical, vocational rehabilitation, maintenance, or other benefits, regardless of whether the employee is working.

An employer may request an expedited hearing on the issue of whether the employee is entitled to such benefits as long as the employer continues to pay compensation to the employee until a decision is rendered that the employee is not entitled to benefits or has been released to return to work by the treating physician or has returned to work.

An insurance carrier, self-insured or group self-insured may also request an expedited hearing if 2 or more carriers, self-insureds, or group self-insureds dispute coverage for the same injury if all benefits are being paid to the employee and the issue of coverage is the only issue in dispute.

Neither the employer nor employee is entitled to an expedited hearing where the employee has returned to work and the only benefit in dispute amounts to less than 12 weeks of TTD.

A copy of the *Application for Adjustment of Claim* shall be attached to the notice for an expedited hearing. The Commission is required to file its decision on review of an expedited hearing no later than 180 days from the date the *Petition for Review* is filed.

Effective Date: Effective immediately

Arbitrator decisions to include findings of fact if requested by a party - Section 19(b) of the Act is amended to provide that arbitrator decisions will include findings of fact and conclusions of law if requested by a party.

Effective Date: Effective immediately

Certified treating records, reports, and bills admissible - Section 16 of the Act is amended to provide that in addition to certified hospital records, certified reports, records and bills of a treating physician or other healthcare provider that renders treatment to the employee as the result of accidental injuries shall be admissible without any further proof. Records, reports, and bills received as a result of a subpoena are presumed to be certified.

Effective Date: Effective immediately

Employer to deliver employee expenses with notice of Section 12 examination - Section 12 of the Act is amended to require the employer to include payment of the employee's travel expenses with the notice to the employee of the time and place of the examination.

Effective Date: Effective immediately

Time to file for review 8(d)(1) award based on change in disability increased - Section 19(h) of the Act is amended to provide that a petition to review an award on the grounds that the disability has subsequently recurred, increased, diminished or ended is increased from 30 months to 60 months in the case of an award under Section 8(d)(1).

Effective Date: Accidental injuries or diseases that occur on or after February 1, 2006

Penalties Increased

19(k) Penalties determination - Section 19(k) of the Act is amended to provide that in determining penalties, the Commission shall consider whether an arbitrator has determined that the claim is not compensable or whether the employer has made payments under Section 8(j).

Effective Date: Accidental injuries or diseases that occur on or after February 1, 2006

19(l) Penalties increased - Section 19(l) of the Act is amended to provide for an increase in the penalty for unreasonable delay of the payment of TTD benefits, and medical benefits, from \$10 a day to \$30 a day and from a maximum of \$2,500 to a maximum of \$10,000.

Section 19(l) also adds the provision that if the employee has made written demand for payment of benefits under Sections 8(a) or 8(b), the employer shall have 14 days after receipt of the demand to provide a written reason for the delay. If the demand is for medical benefits, the time for the employer to respond does not begin until the expiration of the 60-day period allotted the employer to pay medical bills under Section 8.2.

Effective Date: Accidental injuries or diseases that occur on or after February 1, 2006

Workers' Compensation Advisory Board Reconstituted

Workers' Compensation Advisory Board reconstituted - Section 13.1 of the Act is amended to increase the Workers' Compensation Advisory Board from 9 members to 12 members; 6 represent the employee class, 6 represent the employer class, and the chairman of the Workers' Compensation Commission serves as the ex-officio chairman of the Board. Members of the Board serve for 4-year terms until their successors are appointed and qualified. Prior to making appointments to the Commission, the governor shall request that the Advisory Board make recommendations as to candidates to consider for appointment and the Board may then make such recommendations.

Effective Date: Effective immediately

Workers' Compensation Fraud Statute Established

Criminal penalties for workers' compensation fraud; establishes a fraud and insurance non-compliance investigatory unit - New Sections 25.5 (a) through (g) of the Act set forth fraud provisions and the penalties for violating those provisions. Any person, company, corporation, insurance carrier, healthcare provider, or any other entity that violates any of the fraud provisions is guilty of a Class 4 felony and must pay complete restitution in addition to any fine imposed. A unit is established within the Division of Insurance of the Department of Financial and Professional Regulation to investigate violations of the fraud and insurance non-compliance provisions of Section 25.5.

Effective Date: Effective immediately

Benefit ineligibility - Subsection (f) of Section 25.5 of the Act provides that any person convicted of fraud shall be subject to penalties in the criminal code and shall be ineligible to receive or retain compensation benefits if they were owed or received as the result of the fraud for which the recipient was convicted.

Effective Date: Applies to accidents that occur on or after July 20, 2005

Civil liability - Subsection (g) of Section 25.5 of the Act provides that any person convicted of fraud who knowingly obtains, attempts to obtain, or causes to be obtained any benefits by making a false claim or who knowingly misrepresents any material fact shall be civilly liable to the payor of benefits in an amount equal to 3 times the value of the benefits or insurance coverage wrongfully obtained or twice the value of the benefits or coverage attempted to be obtained, plus reasonable attorney's fees and expenses incurred in bringing the claim.

Effective Date: Applies to accidents that occur on or after July 20, 2005

Insurance Non-Compliance Penalties Increased

Work-stop order - Section 4(d) of the Act is amended to provide that whenever a panel of 3 Commissioners (1 labor, 1 business and 1 public), with due process and after a hearing, finds that an employer knowingly failed to provide insurance coverage, the failure is deemed an immediate serious danger to public health, safety and welfare. The Commission may serve a work-stop order on the employer, requiring the cessation of all business operations at the employer's place of business or job site until the employer provides proof of insurance coverage. A work stop order issued by the Commission is appealable to the Circuit Court.

Effective Date: Effective immediately

Criminal penalties for knowing failure to insure - Section 4(d) of the Act is amended to provide that an individual employer, corporate officer or director of a corporate employer (except a publicly owned corporation), partner of an employer partnership, or member of an employer limited liability company who knowingly fails to provide insurance coverage is guilty of a Class 4 felony. An employer, corporate officer or director (except a publicly owned corporation), partner or member of a limited liability company who negligently fails to provide insurance coverage is guilty of a Class A misdemeanor. Each day's violation constitutes a separate offense.

The criminal penalties shall not apply where there exists a good faith dispute as to the existence of an employment relationship. Evidence of good faith shall include, but not be limited to, compliance with the definition of employee as used by the Internal Revenue Service.

Effective Date: Effective immediately

Uninsured employer liable in civil action - Section 4(d) of the Act is amended to provide that an employer who knowingly fails to comply with the insurance coverage requirements of the Act is not entitled to the benefits of the Act during the period of non-compliance. An injured employee can pursue a civil action against the employer and the employer shall not avail itself of the defenses of assumption of risk or negligence or that the injury was due to a co-employee. In the civil action, proof of the injury shall constitute prima facie evidence of negligence on the part of the employer and the burden shall be upon the employer to show freedom of negligence resulting in the injury. The employee or the employee's dependents may, instead of proceeding in a civil action, file a claim with the Commission. All proceedings under subsection 4(d) are to be reported annually to the Workers' Compensation Advisory Board.

Effective Date: Effective immediately

Attorney General to bring Section 4(d) civil penalty case before Commission - Section 4(d) of the Act is amended to provide that upon investigation of the insurance non-compliance unit of the Commission, the Attorney General has the authority to prosecute employers to recover the civil penalties provided for in Section 4(d).

Effective Date: Effective immediately

Employer who transfers property to avoid payment of compensation guilty of Class 4 felony - Section 4(d) of the Act is amended to provide that an employer, corporate officer or director of a corporate employer or, partner of an employer partnership, or member of an employer limited liability company who knowingly transfers, sells, encumbers, assigns or in any manner disposes of, conceals, secretes, or destroys any property belonging to the employer, officer, director, partner, or member to avoid payment of compensation is guilty of a Class 4 felony.

Effective Date: Effective immediately

Fund Created to Pay Benefits to Injured Workers of Non-Compliant Employers

Injured Workers Benefit Fund - Section 4(d) of the Act is amended to create the Injured Workers' Benefit Fund consisting of penalties and fines collected under Section 4 (d). The fund is to be used to pay workers' compensation benefits to the injured employees of uninsured employers when those employers fail to pay. The fund disburses money annually after July 1, 2006 to claimants who have within the previous fiscal year obtained a final award for benefits against the employer and the Injured Workers' Benefit Fund, and who notify the Commission within 90 days of receipt of the final award. If there are insufficient moneys to pay all claims, each eligible claimant shall receive a pro-rata share, as determined by the Commission, of available moneys in the fund for that year. The State Treasurer, as ex-officio custodian of the fund, is required to be joined with the employer as a party respondent in the *Application for Adjustment of Claim*.

Effective Date: Effective immediately