

Delaware Workers Comp Highlights for the Chiropractic Profession

(c) Representation. The Health Care Advisory Panel shall include one (1) representative of insurance carriers providing coverage pursuant to this chapter, one (1) representative of employers, one (1) representative of employees, two (2) attorneys licensed to practice law, one who regularly represents employees and one who regularly represents employers in matters arising under this chapter, three (3) public members, and nine (9) provider members. A public member may not be nor may ever have been certified, licensed, or registered in any health-related field; may not be the spouse of someone certified, licensed, or registered in any health-related field; at the time of appointment may not be a member of the immediate family of someone certified, licensed, or registered in any health-related field; may not be employed by a company engaged in a directly health-related business; and may not have a material financial interest in providing goods or services to persons engaged in the practice of medicine. The nine (9) provider members appointed to the Health Care Advisory Panel shall include a diverse group of health care providers (or provider representatives) who are most representative of those providing medical care to employees pursuant to this chapter. The provider members shall include representatives nominated by the following professional societies or associations:

1. Four (4) representatives of the Medical Society of Delaware (including one in the field of primary care, one in the field of neurosurgery, one in the field of occupational medicine and one at large representative);
2. One (1) representative of the Delaware Society of Orthopaedic Surgeons;
3. One (1) representative of the Delaware Academy of Physical Medicine and Rehabilitation;
4. One (1) representative of the Delaware Healthcare Association;
5. One (1) representative of the Delaware Chiropractic Association (has been corrected to DCS); and
6. One (1) representative of the Delaware Physical Therapy Association.

One member may represent more than one category. In addition to their ability to represent the perspective of their profession, provider members shall be selected for their ability to represent the interests of the community at large. The Department of Labor, Office of Workers' Compensation shall provide at least one non-voting staff to assist the Panel in its work.

The health care payment system shall include payment rates, instructions, guidelines, and payment guides and policies regarding application of the payment system. When completed, the payment system shall be published on the Internet at no charge to the user via a link from the Office of Workers' Compensation website at www.delawareworks.com/industrialaffairs/services/workerscomp.shtml, or a successor website

The payment system will set fees at ninety percent (90%) of the 75th percentile of actual charges within the geozip where the service or treatment is rendered, utilizing information contained in employers' and insurer carriers' national databases.

(e) Whenever the health care payment system does not set a specific fee for a procedure, treatment or service in the schedule, the amount of reimbursement shall be at eighty-five (85%) of actual charge.

(2) Services covered by the payment system shall include evaluation and management, surgery, physician, medicine, radiology, pathology and laboratory, chiropractic, physical therapy, and other services covered under the CPT.

(d) Treatments, evaluations and therapy provided by a certified health care provider shall be paid within thirty (30) days of receipt of the health care provider's bill or invoice together with records or notes as provided in this section, unless compliance with the health care payment system or practice guidelines adopted pursuant to §2322B or §2322C is contested, in good faith, to the utilization review system set forth in subsection (j) below.

(e) Denial of payment for health care services provided pursuant to this chapter, whether in whole or in part, shall be accompanied with written explanation of reason for denial.

(a) The Health Care Advisory Panel shall adopt and recommend a coordinated set of health care practice guidelines and associated procedures to guide utilization of health care treatments in workers' compensation, including but not limited to care provided for the treatment of employees by or under the supervision of a licensed health care provider, prescription drug utilization, inpatient hospitalization and length of stay, diagnostic testing, physical therapy, chiropractic care and palliative care. The health care practice guidelines shall apply to all treatments provided after the effective date of the regulation referred to in subsection (g) of this section, regardless of the date of injury.

(f) Services rendered by any health care provider certified to provide treatment services for employees shall be presumed, in the absence of contrary evidence, to be reasonable and necessary if such services conform to the most current version of the Delaware health care practice guidelines. Services provided by health care

providers that are not certified shall not be presumed reasonable and necessary unless such services are pre-authorized by the employer or insurance carrier, subject to the exception set forth in §2322D(b) of this title. It is intended that these guidelines will be produced by Health Care Advisory Panel subcommittees in coordination with a qualified contractor with expertise in establishing treatment guidelines, developing the rules that define the use of such guidelines, and disseminating the guidelines in a manner that streamlines the delivery of health care.

- (g) Such regulations shall be adopted and effective not later than one (1) year after the first meeting of the Health Care Advisory Panel. Health care practice guidelines shall be subject to review and revision by the Health Care Advisory Panel on at least an annual basis. It is the intent of the General Assembly that the development of health care guidelines will be directed by a predominantly medical or other health professional panel, recognizing that health care professionals are best equipped to determine appropriate treatment

“§2322D. Certification of health care providers

(a) Certification shall be required for a health care provider to provide treatment to an employee, pursuant to this chapter, without the requirement that the health care provider first pre-authorize each health care procedure, office visit or health care service to be provided to the employee with the employer or insurance carrier. The provisions of this subsection shall apply to all treatments to employees provided after the effective date of the rule provided by subsection (c) of this section, regardless of the date of injury. A health care provider shall be certified only upon meeting the following minimum certification requirements:

- (1) Have a current license to practice, as applicable;
- (2) Meet other general certification requirements for the specific provider type;
- (3) Possess a current and valid Drug Enforcement Agency (“DEA”) registration, unless not required by the provider’s discipline and scope of practice;
- (4) Have no previous involuntary termination from participation in Medicare, Medicaid or the Delaware workers’ compensation system, which shall be determined to be inconsistent with certification under regulations adopted pursuant to subsection (c) hereof;
- (5) Have no felony convictions in any jurisdiction, under a federal-controlled substance act or for an act involving dishonesty, fraud or misrepresentation, which shall be determined to be inconsistent with certification under regulations adopted pursuant to subsection (c) hereof; and
- (6) Provide proof of adequate, current professional malpractice and liability insurance.

The certification rules shall require that any health care provider to be certified agree to the following terms and conditions:

- (1) Compliance with Delaware workers' compensation laws and rules;
- (2) Maintenance of acceptable malpractice coverage;
- (3) Completion of state-approved continuing education courses in workers' compensation care every two (2) years;
- (4) Practice in a best-practices environment, complying with practice guidelines and Utilization Review Accreditation Council ("URAC") utilization review determinations;
- (5) Agreement to bill only for services and items performed or provided, and medically necessary, cost-effective and related to the claim or allowed condition;
- (6) Agreement to inform an employee of his or her liability for payment of non-covered services prior to delivery;
- (7) Acceptance of reimbursement and not unbundled charges into separate procedure codes when a single procedure code is more appropriate; and
- (8) Agreement not to balance bill any employee or employer. Employees shall not be required to contribute a co-payment or meet any deductibles.