

2009 Amendments to the Workers' Compensation Act and Its Interpreting Rules

**Luanne Clarke, Esq.
G. Robert Ryan, Jr., Esq.
Moore, Clarke, DuVall & Rodgers, P.C.
Albany Valdosta Columbus Atlanta**

Workers' compensation is a statutory Act created by the General Assembly to provide certain wage and medical benefits for Georgia's injured workers. The system is administered by the State Board of Workers' Compensation and disputed issues are decided by Administrative Law Judges. Columbus area employers and employees are fortunate to have the Honorable Tasca Hagler, a highly experienced Judge, hear your cases.

Each year, there are legislative changes to the Workers' Compensation Act by the General Assembly and subsequent amendments to the Rules as recommended by the Chairman's Advisory Council. These changes typically take effect July 1 of each calendar year. This year, several changes to the Workers' Compensation Act went into effect which may impact your workers' compensation cases.

O.C.G.A. §34-9-207(a), creates a waiver of confidentiality for medical records in workers' compensation cases.¹ Board Rule 61(b)(32), creates form WC-207 for authorization for the release of medical records. A topic of frequent debate has been whether this provision allows Employers/Insurers to obtain records of other treatment, prior treatment or records not directly relating to the work injury.

The 2009 amendment clarified (and arguably broadened) the scope of the WC 207 release. Previously, the pertinent language read: "[the] employee shall be deemed to have waived any

¹Please note that the combined effect of O.C.G.A. §34-9-207 and 45 C.F.R. 164.512(l) is to create a specific waiver under HIPAA and under state law for disclosure of protected health information in a workers' compensation claim.

privilege or confidentiality concerning any communications related to the claim or history or treatment of injury arising from the incident that the employee has had with any physician....” The 2009 amendment added a sentence which reads: “This waiver shall apply to the employee’s medical history with respect to any condition or complaint reasonably related to the condition for which such employee claims compensation.” Thus, it clarified that the Employer/Insurer is entitled to medical history, even for other conditions, but leaves open the question of what is “reasonably related” to the work injury and who will make that determination. When asked to comment on this recent change, Judge Hagler stated that non-work related treatment has often been a heated debate between the parties, and each side was certain of its interpretation of the law. This added sentence should help clarify that some additional records are pertinent.

O.C.G.A. §34-9-207(b) was amended to change other issues pertaining to medical releases. First, the statute clarified the employee must provide a signed release to the Employer/Insurer, but only upon request, and, second, the release must designate a specific provider. Finally, the release expires on the date of hearing, if a hearing is pending. This expiration is a somewhat confusing and perhaps contradictory since the statute also states that the Employer/Insurer is entitled to obtain a release from the injured worker anytime the injured worker is receiving income benefits, or if the Employer/Insurer is paying medical benefits, regardless of whether a hearing is pending. Judge Hagler noted that she and the other judges are available through Motions or conference calls to assist the parties with this issue should we fail to agree on discoverable records.

Board Rule 205(a) specifies what medical reports must be submitted by a medical provider in order to ensure payment under the Workers’ Compensation Act. The Rule has been amended to delete any reference to the following forms: HCFC 1450 and UB92. Forms WC-20(a); HCFA 1500;

or UB-04 are now required.

Rule 205(b)(3)(a) allows an authorized medical provider to request advance authorization for treatment or testing by completing Board Form WC-205 and faxing or emailing the form to the insurer/self-insurer. A faxed or emailed response is required within five business days, or the requested treatment or testing stands pre-approved. The Rule was amended to require the medical provider to provide “supporting medical documentation” along with the Form WC-205. Therefore, a WC-205 that does not include supporting medical documentation would presumably not result in automatic pre-approval of the requested treatment or testing, even if the insurer/self insurer fails to respond within five business days. Judge Hagler suggested that claims handlers be mindful of the time sensitive requirement of a WC 205 request as it can become a binding Order without the ruling of a hearing judge, and physicians should not assume authorization if the required medicals were not attached.

Board Rule 202(b) was amended to increase from \$500.00 to \$600.00 as the prepayment for an Independent Medical Examination (IME). This prepayment is the base rate for the first hour. Any additional charges should be submitted on the usual forms and are to be paid within thirty days of receipt by the payor.

Conclusion

While there are several other amendments to the statute and rules for 2009, the items discussed have the greatest impact on the medical aspect of a claim. If you would like a list of all amendments or a copy of a case law update for 2008-2009, or have any question, please call 706-565-7207 in the Columbus area or email LClarke@mcd-r-law.com or RRyan@mcd-r-law.com.