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THE SAF SOURCE

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SC State Accident Fund's Quarterly Workers' Compensation News and Information Resource

New Law May Affect Medical Records

Editor's Note: Some data in this article was extracted from an article written by Rona Finkelstein, Esq. (Maryland Injured Workers' Fund), which appeared in the Fall '99 issue of AASCIF News.

There has been a national movement over the past couple of years to limit insurance carriers' access to medical records of injured or sick persons. The **Health Insurance Portability and Accountability Act** passed in 1996 mandated that a set of recommendations be developed to protect the privacy and confidentiality of medical records. It was hoped that a national standard of protection would be established. In 1997, the recommendations were presented to Congress. Recently, an exclusion for workers' compensation insurance carriers from the federal regulations was passed. The proposed regulations have a 60 day comment period and are expected to become final in February, 2000.

Even though it appears that workers' compensation carriers will be excluded from the regulations, confusion still abounds over some of the wording and its implications. Therefore, the workers' compensation industry is asking for clarification concerning the wording and to have the regulation clearly state that health care providers can release medical records to w/c carriers. Of most concern is the fact that managed care organizations operating in the w/c system must comply with some of the regulations even though they are working for an exempt w/c carrier. The regulations generally require that steps be taken to protect medical information and in most cases permission must be obtained from the patient before records can be released.

Prior to the passage of this Act, carriers were able to obtain medical records by subpoena in order to view information about an injured person's medical history. The person was not always aware that his records had been obtained and he usually did not have to consent to the release of the records. Many became concerned about the release of their entire medical history, especially information having no bearing on the current injury or illness. In response, many states enacted laws to protect the privacy of individuals while allowing access to appropriate and needed information by a w/c carrier. Most of these laws require either the patient's consent to release records or notice be given to the patient of a pending release, with an opportunity to object before the records are released.

The need for medical records in the w/c system is substantial. **Medical records are used to determine if an injury has occurred, how severe, what the course of treatment should be, and whether the condition pre-existed the alleged injury.** The records are also used to establish access to the Second Injury Fund if a prior condition causes an increase in disability. Sometimes the records reveal that no injury occurred at work, but rather at home or under different circumstances than originally reported. Medical records are the very backbone of a claim and almost always direct the course of action taken by the carrier regarding compensability and medical case management.

SC has several statutes concerning the disclosure of medical information. SC Code Section 42-15-95 states that *"all existing information compiled by a health care facility... or a health care provider pertaining directly to a workers' compensation claim must be provided to the insurance carrier, the employer, the employee, their attorneys or the Workers' Compensation Commission, within fourteen days after receipt of a written request."* SC Code Section 42-15-80 states that *no fact communicated to or otherwise learned by any qualified physician or surgeon shall be privileged in a w/c claim.* Finally, SC Code Section 42-19-40 states that the records of the Commission **shall not be open to the public**, but only to parties satisfying the Commission of their interest in such records and of the right to inspect them.

This privacy area of law is expected to grow in the next few years and appears to be the "new" w/c issue that must be dealt with by carriers. Hopefully, the confusion concerning the w/c aspect of the legislation will be addressed before final passage of the Act in February. Please contact Rose Mary McGregor with any questions or concerns at (803) 896-5891 or rmcgregor@saf.state.sc.us.

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State Accident Fund: ALWAYS Here For You!

Amidst signs of a hardening workers' compensation insurance market, we thought it important to remind you, our valued customers, that we will continue to be here to serve you with the same exceptional service that you have come to expect.

As most of you know, the workers' compensation market has been good for policyholders over the past several years. Strong financial growth, decreases in workers' compensation cases, and changes in workers' compensation laws have led to increased competition and competitive rates in all states. However, signs indicate the market is beginning to harden. What that means for the customer is rising premiums, a change in coverage, or perhaps even coverage being cancelled.

You, however, do not have to worry about the possibility of losing coverage. Our wise legislators saw fit years ago to mandate that the State Accident Fund GUARANTEE coverage to all state agencies

and other government entities who choose to participate. The Fund provides guaranteed coverage to you regardless of risk or market conditions.

For over 50 years South Carolina, like all other states, has found it more prudent to guarantee a source of workers' compensation insurance by self-insuring rather than purchasing coverage from the private insurance market. The State Accident Fund, the result of this wisdom, is not profit-driven and thus provides this guaranteed coverage at reasonable rates on which you have come to rely. SAF continues to have rates that are among the lowest in the state. Those reasonable rates, combined with guaranteed coverage and exceptional customer service, mean that our customers, as well as the taxpayers of our state, are the winners.

The State Accident Fund has been there for you in the past and will continue to be here for you in the new millennium.

Are You "On-Line" With SAF???

As highlighted in the Fall, 1999 edition, SAF now hosts its own website, including an electronic reporting program for filing First Reports of Injury (WCC Form 12-A) via the Internet at www.state.sc.us/saf.

We are pleased to report that a number of our major state and municipal policyholders have begun electronic filing of accident claims. Electronic filing means faster processing of required documentation and quicker payment of benefits to injured employees.

In addition, the website features technical information on a variety of workers' compensation topics, as well as, electronic versions of this newsletter and other publications produced by SAF.

Policyholders who have a User ID and password also

have access to the "Policyholders Only" section where historical claims and premium information is archived.

A caveat - - information contained in the "Policyholders Only" page is intended for use by authorized claims and premium contacts. The User ID and password should be protected against unauthorized access. Data (hard copies or electronic records) related to individual workers' compensation claims is confidential and should only be reviewed by authorized individuals.

To receive your User ID, ask questions regarding on-line accident reporting, or make suggestions as to how we can improve our web site, please contact webmaster Vickie Harris at (803) 896-5863 or vharris@saf.state.sc.us.

THE SAF SOURCE is a quarterly newsletter published by the SC State Accident Fund as a vehicle to provide news, technical information, and guidance to state/local government policyholders, policymakers, and others concerned with the management of workers' compensation programs.

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Prompt Filing Of Claims Paperwork Is Critical

Did you know that delayed filing of the First Report of Injury (WCC Form 12-A) can cause serious problems in processing a new claim?

All employers are required by SC law to file claims with their insurance carriers in a timely fashion. Per SC Code 67-412, an employer must file a claim with their insurance carrier **immediately** upon notification by the employee of an accident, unless the injury requires less than \$500 in medical treatment and does not cause more than one (1) lost workday. Insurance carriers can't determine compensability and pay benefits to injured workers without having notice of an accident.

Problems caused by delays in filing claims:

- the ability to conduct a complete investigation is seriously impeded over time, particularly when there is a need for accurate witness statements;
- an employer/carrier can't maximize effective medical and administrative case management because employees may seek medical care outside the realm of an authorized treating physician;
- payment of benefits are delayed, causing unnecessary hardship to workers who may be unable to work...and collect a paycheck;
- an employee might mistrust their employer and may retain an attorney because of perceived problems regarding their claim;
- administrative fines may be levied against a carrier and/or employer by the SC Workers' Compensation Commission;
- questionable claims litigated before the SC WCC may be resolved for the claimant, in large part, because of an employer's repeated failure to file claims as required.

Late and/or inaccurate filing of claims causes administrative problems for everyone and increases the dollar payout on individual claims. **Ultimately, increased payouts translate into higher premiums.**

What can a policyholder do to ensure that claims are filed in a timely fashion?

First, review your internal accident reporting process. Is it too complicated? Is it documented? Does everyone (especially supervisors) know what to do when an accident occurs? Do your employees know that all accidents must be reported?

Second, make sure that the First Report of Injury (WCC Form 12-A) is legible and properly completed by the **employer**, including:

- a clear description of the accident;
- location (including county) of the injury;
- employee's wage information;
- current work (or return-to-work) status; and
- the worker's Social Security Number.

Also, remember that the filing of a claim does not equate to an automatic payment of benefits. Questionable claims should be filed as "**alleged**." Let SAF make the call as to whether a claim is compensable.

During 2000, SAF will begin analyzing the timeframes associated with the claims filing process. Information compiled will document the time lag from the date of accident to the date the accident is reported to the employer, as well as, when the claim is received by SAF.

We are also soliciting policyholders to participate in a review of current and future claims intake procedures utilized by SAF. In addition to our Internet reporting protocol, we will also begin a pilot program for 24 hour-a-day claims processing via telephone.

For general information on filing claims, refer to the **SAF Employer's Manual**. Call your claims adjuster for help on a specific claim. If you would like to volunteer to review claims intake procedures or participate in the pilot program, please contact Janis Howard at (803) 896-5908 or jhoward@saf.state.sc.us.

Federal W/C System Ripe For Fraud

Editor's Note: *This Associated Press article relates to the federal government's workers' compensation insurance program. The US government and its employees are exempt from coverage under any individual state's workers' compensation laws.*

Generally, workers' compensation laws enacted by most states (including SC) impose maximum benefit caps and more stringent medical requirements for injured employees to collect long-term benefits.

Albert Slugocki had collected over \$300,000 in federal workers' compensation benefits for a back injury when investigators received an anonymous tip that he was leading adventure tours on the Amazon River.

While captain of the boat, Slugocki was receiving as much as \$1888 per month in tax-free disability benefits for an injury he sustained in 1980 while working as a deputy US marshal. To keep the checks coming, he simply filled out a form each year saying he wasn't employed.

Slugocki said in an interview that the company run out of his Florida home was his wife's business and he wasn't paid. "I never made any money," he said.

But the government requires employees to report any work they do - paid or volunteer. Slugocki was convicted in 1996 of making false statements, served a year in prison, and was ordered to repay \$217,000.

Federal watchdogs say they fear many others are taking advantage of the (federal) government's \$1.9 billion workers' compensation program, which is more generous than most state programs.

About 49,000 federal workers are on long-term disability. This tax-free benefit replaces most of their salary after being out of work for 45 days or longer. Nearly half have collected benefits for over 10 years.

The annual cost of long-term cases is now \$1.1 billion, compared with \$740 million in 1988. Administrators contend abuse is rare, noting that only 160 workers, out of hundreds of thousands receiving benefits, have been convicted of fraud in the past five years. The number of disability cases has remained constant over the past few years as the federal work force became smaller and agencies stepped up monitoring for fraud.

But several investigators who check for abuse in the program told the Associated Press that they believe

many people are getting away with fraud. The investigators at the US Labor and Veterans Affairs departments and other federal agencies estimate fraud could be involved in 3.5 to 10 percent of cases, at a potential cost of tens of millions of dollars.

"It's a great program if you're really hurt, but it's so generous that it's tremendously abused," said Jim Reed, manager of financial investigations for the Tennessee Valley Authority, the federal agency that runs the nation's largest power producer.

Nearly 265,000 of 3 million federal employees collected benefits for job-related injuries or illnesses in 1997, the last year for which figures are available. More than half received reimbursements for medical expenses only; the rest got wage benefits.

A congressional audit showed some employees' tax-free benefits exceeded their pre-injury take-home pay. Such benefits can be collected indefinitely.

Federal managers have recommended cutting benefit levels - something employee unions strongly oppose - to make fraud less tempting. Shelby Hallmark, deputy director of workers' compensation at the Labor Department, said ineligible employees are weeded out by case monitoring and other safeguards. "Obviously fraud occurs, but a very small number of cases are prosecuted each year," Hallmark said.

Nevertheless, the Labor Department began two (2) projects to monitor cases more closely in 1992 and 1993. Officials said the screening already has helped reduce long-term cases by 8% - after years of annual increases - and saved \$400 million by getting people who could work or were no longer eligible off the rolls.

WELCOME NEW POLICYHOLDERS!!!

Lynchburg-Elliott Child Development Ctr.

*Coastal Rapid Public Transportation
Authority*

City of Laurens Housing Authority

Una Fire Department

SC Transportation Infrastructure Bank

May We Have A Moment Of Your Time???

We need your help. As your workers' compensation insurance carrier, it is our responsibility to provide you and your employees with the highest level of service.

Within the next 90 days, we will be mailing out the sixth **Annual Policyholder Survey** to a random sampling of policyholders.

The Annual Policyholder Survey is our primary tool for gathering information on how well we are meeting your needs. It also provides us with ideas as to how we can enhance the services we provide.

Over the six (6) years we have been surveying our policyholders, the information has led to many changes in our

service delivery system. Your feedback and recommendations initiated the simplification of our claims handling system, the installation of electronic mail for our adjusters, the development of our publications, the "On Demand" training program, and the creation of the agency's web page.

From an internal perspective, the overall results from the survey also directly affect whether SAF employees qualify for the agency's pay-for-performance program.

Please take a few minutes out of your busy schedule to complete and return the survey. Remember, only **you** know how we can best serve you.

SAF Employer Manual Updated For Y2K

The **SAF Employer Manual** has been revised and updated yet again for Y2K. It now reflects the significant technological changes in SAF operational processes brought about because of our ongoing conversion to an integrated information management system since early 1999.

Originally published in 1996, this document remains a comprehensive technical guide for all aspects of claims filing, paperwork management, and premium determination.

This document is an ideal professional resource for anyone involved in the SAF workers' compensation process. It contains the most up-to-date forms, process guidelines, reporting procedures, as well as, a glossary of common workers' compensation terms, definitions, and concepts.

On or around February 1st, a hard copy of the **SAF Employer Manual** will be sent to every claims and premium contact listed in our policyholder database. At that time, please dispose of any earlier editions you may have on hand.

But why wait for your paper copy? An electronic version of this reference tool will be posted at SAF's new website (www.state.sc.us/saf) prior to January 15, 2000. In the future, this electronic copy will be updated as circumstances warrant - - prior to the publication and distribution of another paper version.

If you have suggestions on how to improve the Manual, need further information, or want to request additional copies of this or any SAF publication, please contact Walter Caudle at (803) 896-5814 or via e-mail at wcaudle@saf.state.sc.us.

Don't Forget To Post Your 1999 OSHA 200 Log!

Remember that OSHA requirements dictate that every employer shall post an annual summary of all OSHA-reportable injuries and illnesses.

The 1999 OSHA 200 Log must be posted in a conspicuous location no later than **February 1, 2000**, and shall remain posted for one (1) month until March 1, 2000. To protect the confidentiality of individual employees, you should fold the 200 Log on the dotted lines to cover the column which lists employee names.

In addition, all OSHA 200 logs must be retained for a period of at least five (5) years, to include copies of all associated First Reports of Injury (WCC Form 12-A).

Further, SC workers' compensation regulations (67-411) require that employers complete and retain a First Report of Injury (WCC Form 12-A) for **every** on-the-job injury or illness for a period of two (2) years.

This requirement applies regardless of whether the injury/illness is documented on the OSHA 200 log, medical treatment is required, and/or whether a claim is filed with SAF.

For more information on OSHA reporting requirements, contact your SAF safety and loss control specialist. Relay questions or concerns about claims filing procedures to your claims adjuster.

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STATE DOCUMENTS

Is Our Mailing List Information Correct? Should We Add Someone To Our List?

Contact **Walter Caudle** at (803) 896-5814, via e-mail at wcaudle@saf.state.sc.us, or on the Web at

www.state.sc.us/saf

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