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2007 WORKERS' COMPENSATION LEGISLATIVE CHANGES

This is a general overview and does not include all workers' compensation legislation passed by the General Assembly. For a complete, detailed review of this information and all workers' compensation bills introduced in this legislative session, please go to www.legislature.state.tn.us.

MAXIMUM & MINIMUM BENEFIT CHANGES

Temporary Benefits – The maximum weekly benefit rate for injuries occurring July 1, 2007 through June 30, 2008 is 110% of the state's average weekly wage, \$784.00.

Permanent Benefits – The maximum weekly benefit rate for injuries occurring July 1, 2007 through June 30, 2008 is 100% of the state's average weekly wage, \$713.00.

Minimum Weekly Benefit – The minimum weekly benefit rate for injuries occurring July 1, 2007 through June 30, 2008 for both temporary and permanent benefits is \$106.95.

TEMPORARY APPORTIONMENT OF LIABILITY BETWEEN CARRIERS OR CARRIER AND SELF-INSURED EMPLOYER

Public Chapter 378 gives the Commissioner of Labor and Workforce Development or commissioner's designee the responsibility of ordering appropriate workers' compensation benefits and loss adjustment expenses associated with a claim to be paid on an equal basis by the insurance carrier (or carriers) and the self-insured employer, as appropriate, in any case where an employer changes insurance carriers, the employer having been self-insured, becomes insured or, having been insured, is approved to be self-insured and one of the following applies: compensability of the claim is not disputed or a workers' compensation specialist has determined the claim is compensable or has ordered benefits be provided. There must be a dispute as to which entity is responsible for the payment of the benefits. Whenever a court determines or the parties agree which entity is ultimately responsible for the provision of workers' compensation benefits, that entity shall reimburse the other entity for all monies paid to or on behalf of the injured employee ordered paid by the Commissioner or the Commissioner's designee. This payment shall include interest at the rate set in Tenn. Code Ann. § 47-14-121 from the date of payment. Additionally, this Chapter extends the termination date of the

General Assembly's Special Joint Committee on Workers' Compensation from June 30, 2007 until June 30, 2012. This Act became effective June 8, 2007.

**SOCIAL SECURITY OFFSET NOT APPLICABLE TO DEATH BENEFITS;
PROHIBITION ON CONFIDENTIALITY OF INFORMATION SUBMITTED
TO A SPECIALIST IN TEMPORARY DISABILITY AND/OR MEDICAL
BENEFITS CASES**

Public Chapter 403 clarifies that the statutory social security offset does not apply in cases in which workers' compensation benefits are paid on behalf of the deceased employee to that employee's dependents.

This Act also amends Tenn. Code Ann. § 50-6-238(a) to specify that if a party submits written or electronic documents, medical records, video and/or audio tapes, x-rays, etc. to a workers' compensation specialist considering a request for assistance for temporary disability benefits and/or medical benefits, the party must provide a copy of all such information to the opposing party or that party's attorney at the time the information is provided to the specialist or upon request by the opposing party or the party's attorney. Further, if requested, a specialist must provide an employee, employer, insurer, and/or their attorneys the opportunity to review the information the specialist has in the Department's file on which the specialist may base his or her decision. The reviewing party has the right to request a copy of any record in the Department's file. The Department may charge a copying fee up to \$10.00 for the first 25 pages and \$0.25 for each additional page. No additional fee may be charged for postage. If copies of x-rays, video and/or audio tapes are requested, the party providing those to the specialist must provide copies to the requesting party. If they do not, a specialist has the authority to order a party to provide such copies to the requesting party. This Act became effective June 11, 2007.

**UNEMPLOYMENT COMPENSATION AND WORKERS' COMPENSATION
TEMPORARY DISABILITY BENEFITS; REQUIREMENT OF GOOD FAITH
MEDIATION AND THOROUGH PREPARATION FOR WORKERS'
COMPENSATION BENEFIT REVIEW CONFERENCES**

Public Chapter 513 amends Tenn. Code Ann. § 50-6-207 to require any employee who has drawn unemployment compensation benefits who later receives temporary disability benefits under workers' compensation law for the same period of time must repay the unemployment compensation benefits up to the amount of temporary disability benefits received.

This Act also amends Tenn. Code Ann. § 50-6-237(c) to require that all parties mediating at a benefit review conference mediate in good faith and be prepared to consider all offers of settlement. If a specialist determines that any party is not prepared or is not mediating in good faith, then the specialist must include comments reflecting this in the Benefit Review Conference report. Any party or that party's representative

may be subject to a civil penalty of not less than \$50.00 nor more than \$5,000.00 for failing to comply with these requirements. This Act becomes effective July 1, 2007.

WORKERS' COMPENSATION MEDICAL FEE SCHEDULE

SB0445/HB0454 (No Public Chapter at this time.) This Act amends Tenn. Code Ann. § 50-6-204(i)(7) and addresses the issue known as “silent PPOs” under the Medical Fee Schedule. This Act imposes various requirements, applicable upon entering or renewing a provider contract, on every contracting agent who sells, leases, assigns, transfers, or conveys a list of contracted healthcare providers and their contracted reimbursement rates. It defines “contracting agent” as any person who is in direct privity of contract with a medical provider to reimburse the medical provider for medical services provided to an injured worker pursuant to the Workers’ Compensation Law at rates other than those provided under the Workers’ Compensation Medical Fee Schedule. These requirements on such agents, which take effect on January 1, 2008, are: (1) disclose to the provider whether the list of contracted providers may be sold, leased, transferred, or conveyed to other payors or agents including workers' compensation insurers or self insureds; (2) disclose whether payors to which the list of contracted providers may be sold, leased, transferred, or conveyed may be permitted to pay a provider's contracted rate if less than the workers’ compensation fee schedule; (3) allow providers, upon the initial signing or renewal of a provider contract, to decline to participate in networks solely to serve workers’ compensation payors that are sold, leased, transferred, or conveyed to workers’ compensation payors; and (4) maintain a Web page that contains a complete listing of customers to whom the network is sold, leased, transferred or conveyed that is accessible to all contracted providers and updated at least twice a year and maintain a toll-free telephone number accessible to all contracted providers whereby providers may access workers compensation payor summary information and a list of lessees of the network.

This Act also adds the following requirements for workers’ compensation payors, also beginning on January 1, 2008: (1) the workers’ compensation payor's explanation of benefits or explanation of review must identify the name of the network that has a written agreement signed by the provider whereby the workers’ compensation payor is entitled, directly or indirectly to pay a preferred rate for the services rendered; and (2) a workers’ compensation payor must demonstrate that it is entitled to pay a contracted rate within 30 business days of receipt of a written request from a provider who has received a claim payment from the workers' compensation payor. The provider must include in the request a statement explaining why the payment is not at the correct contracted rate for the services provided. The failure of the provider to include a statement will relieve the payor from the responsibility of demonstrating that it was entitled to pay the disputed contracted rate. A payor will be deemed to have demonstrated that it is entitled to pay a contracted rate if it identifies the contracting agent who has contracted with the medical provider to pay the reimbursement at the contracted rate. This Act will become effective upon the governor signing it. However, its requirements do not begin until January 1, 2008.

**PROHIBITION OF CONSIDERATION OF OWNERSHIP OF FACILITY IN
SETTING MAXIMUM REIMBURSEMENT RATES UNDER WORKERS'
COMPENSATION MEDICAL FEE SCHEDULE**

SB1474/HB1518. (No Public Chapter at this time.) Present law authorizes the Commissioner of Labor and Workforce Development to develop rules for a comprehensive medical fee schedule and a related system. This Act (as amended) amends Tenn. Code Ann. § 50-6-204(i) (1) and prohibits any consideration of physician ownership of a physical or occupational therapy facility providing services in setting the medical fee schedule. It specifically prohibits setting different rates for reimbursement or conversion factors for reimbursement of physical or occupational therapy services based on whether the services are performed in independently-owned facilities or in physician-affiliated facilities. However, it does authorize different reimbursement rates if Tennessee data presented by the Department demonstrates there is a need for differing rates for physical and occupational therapy services and the Department holding a public hearing on the issue. This Act becomes effective July 1, 2007.

WORKERS' COMPENSATION POLICY INSURANCE MULTIPLIERS

Public Chapter 359 amends Tenn. Code Ann. § 56-5-307. Present law requires workers' compensation insurers to file multipliers and supporting information with the Commissioner of Commerce and Insurance by 15 days after the effective date of a policy. This provision of present law was scheduled to expire July 1, 2007, but this Act provides that this provision be retained indefinitely. This Act became effective June 5, 2007.

**CORRECTION TO CROSS-REFERENCE TO DEFINITION SECTION
REGARDING MAXMUM TOTAL BENEFITS**

Public Chapter 330 amends Tenn. Code Ann. §§ 50-6-102 and 50-6-205(b)(1) by correcting the cross reference to the definition of "maximum total benefit." This Act becomes effective July 1, 2007.

**TOTAL DEATH BENEFITS IN NO DEPENDENT CASES; SECOND INJURY
FUND ASSESMENT IN DEATH CASES; DEPARTMENT APPROVAL OF
ATTORNEY'S FEES**

Public Chapter 300 changes present law by removing a provision requiring employers to pay the Second Injury Fund assessment in cases where death results from the work related injury or occupational disease. Lastly, this Act changes present law by authorizing the Department to approve any attorney's fee if the fee does not exceed 20 percent of the award to the injured worker, or 20 percent of the first 400 weeks of benefits in cases of permanent and total disability. This Act became effective May 30, 2007.