2022 Legislative Changes to the Indiana Worker's Compensation Act

By Lisa Dillon & Ann Stewart

On March 15, 2022, the Indiana Legislature revised the Indiana Worker's Compensation Act in several ways: it increased the time to file an application for adjustment of claim related to a compensable claim, it increased statutory compensation and disablement rates beginning next year (July 1, 2023), and changed the medical reimbursement provisions of the Act to add "ambulatory outpatient surgical services" to the definition of "medical services facility." In addition to these revisions, the Legislature added a new section establishing clean claim payment requirements related to worker's compensation claims.

Statute of Limitations

The revision that received little discussion but may have an impact on worker's compensation litigation is the revision of Indiana Code § 22-3-3-3 *Limitations of action* which contains the time limit for filing a claim with the Board. Effective on July 1, 2022, the Act was revised to extend the limitations period for filing an application for adjustment of claim to two years from the last date *for which compensation was paid* (temporary total disability or temporary partial disability). The revised statute reflects the Board's current practice related to compensable claims and is similar to the filing requirement for a change of condition claim found in Indiana Code § 22-3-3-27. The filing requirement for securing the Board's jurisdiction related to disputed claims or medical-only claim (where no statutory compensation was paid) continues to be two years from the date of injury.

New Compensation and Disablement Rates

After many years, without changing benefits rates, the Legislature included increased rates for the consecutive years. The new statutory compensation and disablement rates will go into effect July 1, 2023, and are found in Indiana Code § 22-3-3-10. The benefits increase 3 percent per year for the next three years. The new rates for impairment calculations are as follows:

Date of Injury	Degrees	Dollars per Degree
On or after,		
July 1, 2023	1-10	$1803.00
	11-35	$2,011.00
	36-50	$3,282.00
	51-100	$4182.00
July 1, 2024	1-10	$1857.00

	11-35	$2,071.00
	36-50	$3,380.00
	51-100	$4,307.00
July 1, 2025	1-10	$1913.00
	11-35	$2,133.00
	36-50	$3,481.00
	51-100	$4,436.00
July 1, 2026	1-10	$1970.00
	11-35	$2,197.00
	36-50	$3,585.00
	51-100	$4,569.00

Similar increases to disablement rates for occupational diseases claims are found in Indiana Code § 22-3-7-16.

The maximum limits for average weekly wage (AWW) and compensation, found in Indiana Code § 22-3-3-22, were also increased as follows:

On or after	Max AWW	Max Compensation
July 1, 2023	$1,205.00	$402,000.00
July 1, 2024	$1,241.00	$414,000.00
July 1, 2025	$1,278.00	$426,000.00
July 1, 2026	$1,316.00	$439,000.00

Amended Medical Service Facility Definition

Indiana Code § 22-3-6-1 *Definitions* was amended to add "Ambulatory Outpatient Surgical Centers" to paragraph (j) "Medical service facility" definition for purposes of Medicare reimbursement. Adding ambulatory outpatient surgical centers (as defined in Indiana Code § 16-18-2-14) to the Act's definition of medical service facility, will make reimbursement to all

medical facilities consistent at either a negotiated rate or 200 percent of Medicare's reimbursement rate.

Ambulatory outpatient surgical centers is defined as a public or private institution that meets the following conditions:

(1) Is established, equipped, and operated primarily for the purpose of performing surgical procedures and services.

(2) Is operated under the supervision of at least one (1) licensed physician or under the supervision of the governing board of the hospital if the center is affiliated with a hospital.

(3) Permits a surgical procedure to be performed only by a physician, dentist, or podiatrist who meets the following conditions:

(A) Is qualified by education and training to perform the surgical procedure.

(B) Is legally authorized to perform the procedure.

(C) Is privileged to perform surgical procedures in at least one (1) hospital within the county or an Indiana county adjacent to the county in which the ambulatory outpatient surgical center is located.

(D) Is admitted to the open staff of the ambulatory outpatient surgical center.

(4) Requires that a licensed physician with specialized training or experience in the administration of an anesthetic supervise the administration of the anesthetic to a patient and remain present in the facility during the surgical procedure, except when only a local infiltration anesthetic is administered.

(5) Provides at least one (1) operating room and, if anesthetics other than local infiltration anesthetics are administered, at least one (1) post-anesthesia recovery room.

(6) Is equipped to perform diagnostic x-ray and laboratory examinations required in connection with any surgery performed.

(7) Does not provide accommodations for patient stays of longer than twenty-four (24) hours.

(8) Provides full-time services of registered and licensed nurses for the professional care of the patients in the post-anesthesia recovery room.

(9) Has available the necessary equipment and trained personnel to handle foreseeable emergencies such as a defibrillator for cardiac arrest, a tracheotomy set for airway obstructions, and a blood bank or other blood supply.

(10) Maintains a written agreement with at least one (1) hospital for immediate acceptance of patients who develop complications or require postoperative confinement.

(11) Provides for the periodic review of the center and the center's operations by a committee of at least three (3) licensed physicians having no financial connections with the center.

(12) Maintains adequate medical records for each patient.

(13) Meets all additional minimum requirements as established by the state department for building and equipment requirements.

(14) Meets the rules and other requirements established by the state department for the health, safety, and welfare of the patients.

(a) The term does not include a birthing center.

(b) "Ambulatory outpatient surgical center," for purposes of Ind. Code § 16-34, refers to an institution described in subsection (a) and that has a majority ownership by a hospital licensed under Ind. Code § 16-21.

As mentioned, by expanding the definition of medical services facility the Legislature's aim is to make statutory medical care reimbursement more uniform and efficient.

Clean Claim Language

Lastly, the legislation added a new chapter to the Act, Indiana Code § 22-3-7.2 *Payments of Claims,* known as the clean claim section. This new section becomes effective January 1, 2023, and adds the following definitions:

(1) A 'clean claim' means a claim submitted by a medical service provider for payment under Ind. Code § 22-3-2 through Ind. Code § 22-3-7 that has no defect, impropriety, or particular circumstance requiring special treatment preventing payment.

(2) Payor means an employer or an employer's insurance carrier that is liable for a claim for a service or product under Ind. Code § 22-3-2 through Ind. Code § 22-3-7.

(3) Medical service facility means any of the following that provides a service or product under Ind. Code § 22-3-2 through Ind. Code § 22-3-7 and uses the CMS 1450 (UB-04) form or the CMS1500 (HCFA-1500) form for Medicare reimbursement. This Section mirrors Ind. Code § 22-3-6-1 definitions of medical service facility, outlined above.

(4) Medical service provider means a person or an entity that provides services or products to an employee under Ind. Code § 22-3-2 through Ind. Code § 22-3-7. Except as otherwise provided in this chapter, the term includes a medical service facility.

Paragraphs 5 of the clean claim section, Ind. Code § 22-3-7.2, includes new procedures and requirements.

(a) A payor shall pay or deny each clean claim in accordance with section 6 of this chapter.

(b) A payor shall notify a medical service provider of any deficiencies in a submitted claim not more than:

(1) thirty (30) days after the date the claim is received by the payor, for a claim that is filed electronically; or

(2) forty-five (45) days after the date the claim is received by the payor, for a claim that is filed on paper;

and describe any remedy necessary to establish a clean claim.

(c) Failure of a payor to notify a medical service provider as required under subsection (b) establishes the submitted claim as a clean claim.

Paragraph 6 of Ind. Code § 22-3-7.2 provides additional payor requirements, including interest payments.

(a) A payor shall pay or deny each clean claim as follows:

(1) If the claim is filed electronically, not more than thirty (30) days after the date the claim is received by the payor.

(2) If the claim is filed on paper, not more than forty-five (45) days after the date the claim is received by the payor.

(b) If a payor fails to pay or deny a clean claim in the time required under subsection (a) and the payor subsequently pays the claim, the payor shall pay the medical service provider that submitted the claim interest on the amount of the payor's pecuniary liability under Ind. Code § 22-3-2 through Ind. Code § 22-3-7 for the claim paid under this section.

(c) Interest paid under subsection (b) accrues beginning either thirty-one (31) days after the date the claim is received under subsection (a)(1) or forty-six (46) days after the date the claim is received under subsection (a)(2). Interest stops accruing on the date the claim is paid.

(d) In paying interest under subsection (b), a payor shall use the same interest rate as provided in Ind. Code § 12-15-21-3(7)(A).

Finally, section 7 requires that a medical service provider submit only the following forms for payment by a payor (1) CMS 1450 (UB-04), (2) CMS 1500 (HCFA-1500), or (3) American Dental Association (ADA) claim form.

Conclusion

The extension of the non-claim filing requirement became effective July 1, 2022. Other provisions will take effect January 1, 2023, and July 1, 2023, with benefit rates increasing in July

of subsequent years. If you have questions about how these revisions may affect your claim administration, please contact counsel.

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