

Physician Legal Alert: New Workers' Compensation Regulations Press Physicians to Make a Choice.

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As of April 1, 2009, all New York physicians treating workers' compensation patients are now required to use a new series of forms for any and all treatment so provided on and after April 1, 2009. To enforce this change, and new requirements, the Workers' Compensation Board ("WCB") will not enforce payment for any examination, service and/or treatment provided that is not reported using the correct new "C-4 form" for services provided on and after April 1, 2009. Adding additional import to physicians' complying with these new requirements, the WCB has threatened that the State of New York will investigate any physician who does not use the correct new form and, if warranted, initiate proceedings to impose a temporary suspension or revocation proceedings.

These new rules, originated in September of, 2008, when the WCB announced the implementation of a revised set of core forms including changes to the Attending Doctor's Report (Form C-4) and the addition of new medical forms. Form C-4 has been renamed the *Doctor's Initial Report* and is only completed the first time a doctor treats a claimant for a particular workers' compensation claim. This initial report must be filed within 48 hours of first rendering treatment. For subsequent visits the WCB created Form C-4.2 (*Doctor's Progress Report*), a shorter version of Form C-4. Form C-4.2 must be filed at intervals of 45 days during continuing treatment, unless change of condition necessitates additional reporting. When a patient with a permanent impairment reaches maximum medical improvement, doctors will now complete a third form, Form C-4.3 (*Doctor's Report of MMI/Permanent Impairment*). All of the new C-4 family of forms can be submitted electronically through the WCB's website, or by mail in paper form.

Subsequent to the release of these forms, the WCB also released an additional form, C-4AMR (Ancillary Medical Report), for providers of ancillary services to report their services in a simplified format. Further, an electronic narrative version of Forms C-4 and C-4.2 (Form EC-4NARR), was developed, which contains significantly fewer questions than C-4 and C-4.2. Doctors submitting Form EC-4NARR must include a narrative attachment with the form that will provide all the additional information which otherwise would be on the other forms. Form EC-4NARR will only be accepted by the WCB through electronic submission.

Doctors were informed that they should begin using the new forms as soon as possible, but no later than January 1, 2009. The WCB extended this deadline to April 1, 2009 to allow doctors additional time to familiarize themselves with the changes and to implement them into their

office software and/or business practices. As the deadlines were not extended further, these changes and attendant regulations are now the law of the State of New York.

While the new C-4 forms must be used to report services and/or treatments provided effective April 1, 2009, physicians have the option of including a HCFA-1500 or CMS-1500 form for billing purposes only along with the prescribed WCB medical report. All of the new and recently revised forms are available in the "Health Care Providers Forms" section of the WCB's website – http://www.wcb.state.ny.us/content/main/forms/Forms_HEALTH_PROVIDER.jsp.

Doctors and/or facilities contracting with an XML Submission Vendor, (Clearinghouse) for the submission of Form EC-4NARR have the option of submitting to the carrier, the CMS 1500 along with the required narrative and the other required fields contained in the submission. There are exceptions for (1) Ophthalmologists - continue using Form C-5 (7-07) (2) Psychologists - continue using Form PS-4 (7-07) and (3) Self-employed occupational or physical therapists - continue using Form OT/PT-4 (7-07).

Of recent, many physicians, faced with the administrative burdens of these new requirements, have expressed an unwillingness to treat workers' compensation patients. While becoming, or remaining, a WCB authorized practice remains elective; any physician that has so obtained authorization must comply with **all** of the regulations of the WCB. Therefore, every physician now faces choice of either fully complying with the new regulations - or immediately, appropriately and formally removing themselves from the ranks of authorized WCB physicians. To do so, such physicians must write to the WCB and confirm that he or she is voluntarily surrendering their WCB authorization/standing. Further, each withdrawing physician must also give adequate notice to all present workers' compensation patients of this change in their status and assist such patients in securing new sources of care.

As clearly mandated by the WCB, no presently WCB authorized practice should ever indicate to any patient, present or potential, that it is unwilling to accept a workers' compensation new patient or that they do not treat workers' compensation patients until such time as the physician/practice's removal is confirmed and documented. Physicians embarking on removing themselves as WCB practices can, and should, verify the change on the WCB web site – www.wcb.state.ny.us before making any such statements to patients. Any unwillingness to treat, even while the change is being confirmed, will result in a referral by the WCB to the NYSDOH/OPMC and is punishable as an act of professional misconduct.

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