

## WORKERS' COMPENSATION

**NOTE:** The Department of Labor & Industries (L&I) is in a statutorily-mandated process of implementing a new L&I provider network to care for injured workers and expanding Centers for Occupational Health and Education (COHEs). Rulemaking for the network and COHE expansion is not complete as of December, 2012. We will update the Legal Guide when new rules become implemented.

### **May a physician refuse to treat a patient with a worker's compensation claim?**

Yes. There is no legal requirement that a physician must treat a patient with a workers' compensation claim. But see **PHYSICIAN-PATIENT RELATIONSHIP** for information as to how to terminate an existing physician-patient relationship.

### **What is the Department of Labor & Industry (L&I) provider network?**

Legislation passed in the 2011 legislative session directed L&I to establish a medical provider network, which will become effective on January 1, 2013, and to expand Centers for Occupational Health and Education (COHEs). Physicians (and all other health care providers) who wish to participate in the L&I provider network must meet minimum standards, and must agree to follow L&I evidence-based coverage decisions, treatment guidelines, and policies.<sup>1</sup> Detailed information about the background of the L&I provider network, and the expansion of COHEs, including a link to sign up, may be found on the L&I website at: <http://www.lni.wa.gov/ClaimsIns/Providers/ProjResearchComm/ProvNetwork/default.asp>.

### **What are the minimum standards for a physician to participate in the L&I provider network?**

To be eligible for enrollment and participation in the L&I provider network a physician must meet and maintain the minimum health care provider network standards.<sup>2</sup> The physician must:

- Submit an accurate and complete provider application, and sign a L&I provider agreement without modification;
- Submit proof of professional liability coverage;
- Not have had clinical admitting and management privileges denied, limited, or terminated for quality of care issues;
- Not have been excluded, expelled, terminated, or suspended from any federally or state funded health care programs (such as Medicare and/or Medicaid) on cause or for quality of care issues;

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<sup>1</sup> RCW 51.36.010.

<sup>2</sup> WAC 296-20-01030.

- Not have made any material misstatement or omission to L&I regarding licensure, disciplinary history, or other material matter covered in the application or credentials materials;
- Not have been convicted of a felony or pled guilty or no contest to a felony for a crime including (but not limited to) health care fraud, patient abuse, or the unlawful manufacturing, distribution, prescription, or dispensing of controlled substances;
- Be currently licensed in Washington or in any other jurisdiction where the physician treats injured workers; and
- Have a current DEA registration.

### **What is a physician's duty to a patient with respect to a worker's compensation claim?**

A physician has a duty under Washington law to lend all necessary assistance to a patient in making an application for workers' compensation benefits.<sup>3</sup> If a physician fails to do so, then the physician may be subject to civil liability.<sup>4</sup> A physician's duty is to:<sup>5</sup>

- Tell the worker about the relationship of his or her specific injury to the worker's rights for compensation.
- Make it possible for the worker to furnish the Department of Labor & Industries (L&I) with accurate and complete information in support of his or her application for workers' compensation benefits.

It is not the purpose of the statute to place upon the physician the primary duty of timely making a claim. The responsibility of initiating a claim is on the worker.<sup>6</sup>

The worker initiates a claim by filling out the "Worker Information" section of the "Report of Industrial Injury or Occupational Disease" form and presenting it to the physician for completion of the "Doctor Information" section. Once this section has been completed by the physician, the form is processed by the physician's office as indicated on the form (page one is sent to L&I and the remainder of the form is sent to the employer).

### **How long does a patient have from the time of industrial injury to make a claim for workers' compensation?**

The claim form must be received by L&I within one year after the date of the injury.<sup>7</sup> If the claim is not filed within one year, the claim will not be allowed.<sup>8</sup>

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<sup>3</sup> RCW 51.28.020(1)(b).

<sup>4</sup> RCW 51.48.060.

<sup>5</sup> WAC 296-20-020.

<sup>6</sup> *Pate v. General Elec. Co.*, 43 Wn.2d 185 (1953).

<sup>7</sup> *Wilbur v. Department of Labor & Indus.*, 38 Wn. App. 553 (1984).

This means a physician must promptly complete and forward a claim form to L&I and employer once it has been received from the patient.<sup>9</sup>

**How long does a patient have to file a workers' compensation claim relating to an occupational disease, infection or hearing loss?**

A worker has two years from the date that the worker had written notice from a physician: (1) of the existence of an occupational disease, infection or hearing loss, and (2) that a claim for disability benefits may be filed.<sup>10</sup>

A physician must file a copy of the written notice to the patient with L&I, and the notice must contain a statement that the worker has two years from the date of the notice to file a claim.

**How does a physician process a "Report of Industrial Injury or Occupational Disease" once it has been signed by the physician?**

The patient must complete the "Worker Information" portion of the form and give it to the physician for completion of the "Doctor Information" section.

The physician must then forward one part of the application to L&I and forward another part of the application to the employer within five days of treatment.<sup>11</sup> The physician may transmit the completed application electronically using facsimile.<sup>12</sup>

**What should a physician do if a patient believes that the injury or disease is work-related, but the physician does not agree?**

If the patient wants to file a workers' compensation claim, but a physician does not believe that an injury or disease is work related or believes that the relationship between the injury or disease and the patient's work are unlikely, then the physician should so indicate in the space provided in the "Doctor Information" section on the "Report of Industrial Injury or Occupational Disease" form, and should then sign the form and process it as described above.<sup>13</sup>

The physician should also specifically advise the patient of the physician's opinion that the injury or disease is not work-related and should make a notation of that discussion in the patient's medical record.<sup>14</sup>

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<sup>8</sup> RCW 51.28.050.

<sup>9</sup> *Roth v. Kay*, 35 Wn. App. 1 (1983).

<sup>10</sup> RCW 51.28.055.

<sup>11</sup> RCW 51.48.060.

<sup>12</sup> RCW 51.28.020(2)(a).

<sup>13</sup> WAC 296-20-025.

<sup>14</sup> WAC 296-20-025(2).

**What should a physician do if the physician believes the injury or disease is work-related, but the patient does not agree or does not want a claim filed?**

If a physician believes an injury or disease to be work related, the physician must notify the worker. Once the determination of work relatedness has been made by either the physician or the patient, a “Report of Industrial Injury or Occupational Disease” must be filed with L&I.<sup>15</sup>

**May a physician collect the difference between the usual and customary fee and the amount allowed by the Department of Labor and Industries for the patient?**

No. When a claim has been accepted by L&I, the worker may not be charged for anything related to the medical care or management of his claim.<sup>16</sup> A physician also may not charge a worker a fee for writing a report that is required by L&I, for interest, or for completion of forms related to a claim.<sup>17</sup>

In cases, however, where there is questionable eligibility (i.e., a particular service is not usually allowed or a claim investigation by the L&I is ongoing), a physician may require the worker to pay for the treatment rendered. If the claim is subsequently allowed, the physician must promptly refund fees received from the worker (or insurer if applicable) and bill L&I for services rendered at fee schedule rates.

**May a physician charge a worker for a missed appointment?**

A physician may charge a worker for a missed appointment if the appointment for an examination was arranged by L&I or a self-insurer. In addition, a physician may charge a worker for a missed appointment if the physician has a missed appointment policy that applies to all of the physician’s patients, and the physician routinely notifies all patients of the missed appointment policy. Implementing such a policy is between the physician and the worker.<sup>18</sup>

**Will L&I pay the physician to prepare reports?**

Yes. L&I will pay the physician, according to a L&I schedule, for preparing narrative reports that L&I requests.

**Is there a physician-patient privilege in workers’ compensation proceedings?**

Yes and no. With respect to inquiries about the physician’s care and treatment of the patient from the general public, the physician-patient privilege exists. However, with respect to actions or proceedings before L&I or the Board of Industrial Insurance Appeals, and inquiries from L&I, claims adjusters, vocational rehabilitation providers, the employer’s representatives, or attorneys for any party involved in the workers’ compensation claim, there is no physician-

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<sup>15</sup> WAC 296-20-025(2).

<sup>16</sup> WAC 296-20-010(7).

<sup>17</sup> WAC 296-20-010(7).

<sup>18</sup> WAC 296-20-010(6).

patient privilege.<sup>19</sup> Under those circumstances the physician may discuss the claim, the patient, and the patient's care and treatment with such persons inquiring about the claim.

**Must a physician, upon request in workers' compensation cases, make reports and release medical information in the physician's possession?**

Yes. Physicians examining or attending injured workers must, upon request by L&I or the employer, make reports concerning the worker's condition or treatment and must, upon request of L&I, the employer, or the worker's representative, release all medical information about the worker relevant to the worker's occupational injury or disease which is in the physician's possession or control. Under workers' compensation law, physicians do not incur legal liability for releasing such information.<sup>20</sup>

**May a physician meet with the employer's attorney, L&I representative, or the claims adjuster without notice to or the presence of the patient (claimant) or the patient's representative?**

Yes, although there is a general prohibition against such contacts between the defendant's attorney and the treating physician in civil cases, see **CONFIDENTIAL AND PRIVILEGED INFORMATION**, no such prohibition exists in a workers' compensation case, as long as the inquiry relates to the workers' compensation claim.

Direct contact with a physician without notice to the patient/claimant by the employer, claims adjuster or their representatives or L&I is common practice in the administration of workers' compensation cases as it helps to expedite claim resolution.

**Must a physician meet with the employer, the employer's attorney, the L&I, or the claims adjuster without notice to, or presence of, the patient or the patient's representative in workers' compensation cases?**

No. A physician is not required by law to meet with the employer, claims adjuster or their representatives without notice to or the presence of the patient/claimant.

**What should a physician do if a patient has questions about the administrative handling of a workers' compensation claim?**

Refer the patient to L&I or advise the patient to consult an attorney.

L&I's "help" number is printed on the patient's claim card. It is 1-800-LISTENS (1-800-547-8637).

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<sup>19</sup> RCW 51.04.050, RCW 51.28.070, RCW 51.36.060, *Holbrook v. Weyerhaeuser*, 118 Wn.2d 306 (1992).

<sup>20</sup> RCW 51.36.060.

<sup>20</sup> RCW 51.36.060.

A physician should not volunteer or attempt to resolve such questions for the patient. It is the patient's responsibility to obtain legal help when necessary. A physician is not expected to give legal advice.

### **What are quick resources for the physician in the event of a question regarding a workers' compensation claim?**

The L&I website ([www.lni.wa.gov](http://www.lni.wa.gov)) provides extensive information for physicians treating workers' compensation patients. The providers' section of the L&I website has information about treating injured workers, drugs and prescriptions, helping a worker return to work, treatment guidelines, and information concerning independent medical examinations. In addition, L&I publishes a physician's guide, the "Attending Doctor's Handbook," (<http://www.lni.wa.gov/FormPub/results.asp?Keyword=Medical%20Providers>) that provides substantial information regarding workers' compensation claims.

L&I also provides assistance through its provider hotline at 1-800-848-0811. A substantial amount of general information about the workers' compensation system can also be found on the claim application form.

### **What role can physician assistants take in handling workers' compensation claims?**

Physician assistants (PAs) are "treating providers" under the L&I rules,<sup>21</sup> and be approved for payment for the medical services they provide under the supervision of a licensed physician.<sup>22</sup> Beginning in 2013, PAs must also be an approved provider in the L&I provider network.<sup>23</sup> PAs may treat L&I patients within the scope of their license.<sup>24</sup> PAs may also sign and attest to any certificates, cards, forms or other documentation required by L&I that the supervising physician could sign, so long as such actions are within the PAs' practice arrangement.<sup>25</sup> This includes reports of accident or provider's initial report forms, time-loss certification, referrals for consultations, facilitating early return to work, and expediting the vocational process by estimating the worker's physical or mental capacities.

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<sup>21</sup> WAC 296-20-01002.

<sup>22</sup> WAC 296-20-01501(1).

<sup>23</sup> WAC 296-20-01010.

<sup>24</sup> WAC 296-20-01501(2).

<sup>25</sup> WAC 296-20-01501(4).