



Members' Reference Guide

General Reference Guide

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Reinsurance Agreement
 Enabling Statute
 Restated Plan of Operation

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**WORKERS' COMPENSATION REINSURANCE
ASSOCIATION**

**CLAIMS REFERENCE GUIDE
OPERATING RULE**

December 2010

Claims and Rehabilitation Overview

Background

Claims and rehabilitation services are an integral part of the reinsurance protection that the WCRA provides its members. To maximize this protection, the WCRA has developed a philosophy that emphasizes a collaborative relationship between members and the Association's claims and rehabilitation staff. Only with the cooperation and support of each member can the WCRA achieve the best possible results in its mission of providing high-quality, low-cost workers' compensation reinsurance for all of its members in Minnesota.

WCRA's Role in Claims Management and Reimbursement

The WCRA provides its members with criteria that facilitate the early recognition and reporting of serious claims that may present reinsurance exposure to the WCRA. Once reported, claims are monitored and opportunities identified for cost-effective claims, rehabilitation, and medical management. When a claim exceeds a member's retention limit, the WCRA assists the member to properly file reimbursement requests, assuring prompt payment of the correct reimbursement amount. The WCRA staff can also assist members in areas such as reserving practices and settlement evaluation. This Claims Reference Guide (Guide) sets forth the procedures members must follow to comply with the requirements of their WCRA Reinsurance Agreement.

Claims Reviews and Mail Surveys

The WCRA claims services staff seeks to maintain close working relationships with its members. To that end, the staff contacts active members each year, either through on-site reviews or via mail surveys. The on-site reviews give staff the opportunity to identify unreported claims that may involve exposure to the WCRA and to verify reported claims data and payment information. The reviews also provide members with an evaluation of the effectiveness of their claims management practices and verification that their claims procedures are adequate to protect the WCRA's liabilities. The WCRA's mail surveys focus primarily on identifying reportable claims, but they also identify areas in which the WCRA can be of assistance. Finally, these reviews give members the opportunity to ask questions about the WCRA and to learn about the reinsurance services available to them from WCRA staff.

Intervention in Member Claims Management

Although the WCRA normally takes only an advisory and monitoring role with respect to the management of a member's claims, there may be instances when a member's claims procedures are deemed inadequate to protect the interests of the Association. Those situations are described in this Guide. In those cases, the WCRA has the legal right to withhold reimbursement payments or to take over adjustment of one or all of a member's claims. In rare situations, the Association may recommend that the Commissioner of the Minnesota Department of Commerce revoke the member's authorization to offer workers' compensation insurance or to self-insure.

WCRA Website and Calculators

The WCRA website at www.wcra.biz provides general information regarding the WCRA and also has links to other workers' compensation entities in Minnesota. The site also provides calculators to assist in claims and premium management. We urge our members to utilize these calculators because they save time, improve accuracy, and simplify the claims process for both members and the WCRA claims staff.

- *CompCalc* calculates workers' compensation indemnity benefits on Minnesota claims.
- *Dependency Calc* calculates benefits in fatality claims.
- *TPDCalc* computes Temporary Partial Disability benefits.
- *InterestCalc* calculates interest on late workers' compensation benefits.
- *PPD Calc* consists of calculators that compute the percent of whole body disability when two or more body parts are injured and the amount of permanent partial disability payable.
- *PresentValueCalc* lets the user choose escalation and discount rates to compute present value.
- *LifeExpectancyCalc* computes the additional life expectancy depending on gender and current age. The program uses the 2000 Minnesota life expectancy tables from the Minnesota Center for Health Statistics.
- *PremCalc* assists WCRA members in determining their organization's estimated WCRA reinsurance premium for the following coverage year.
- *Ultimate Value Calc* computes the total of future payments based on selected escalation rate.
- *SubroCalc* allocates third party proceeds according to statutory formula.

eMembership

The eMember site is a secure website that can only be accessed after an eMember account has been created. eMembership permits members to receive electronic diary letters and to obtain premium, claims, and contact data from the WCRA's database. Also, all individual Loss Reporting Forms and Reimbursement Requests must be submitted electronically via the eMember service. If you are not already an eMember, please to go the WCRA website at www.wcra.biz to access the application form and additional information about this service.

Third-Party Administrators (TPAs)

Some members prefer to outsource all or part of their WCRA reporting responsibilities. When a WCRA member contracts with a TPA to perform some or all of its business responsibilities with the WCRA, *it is the member's responsibility to assure that the TPA is reporting properly to the WCRA.* Members contracting with TPAs to work with the WCRA are required to complete a WCRA Member Third-Party Administrator Authorization Agreement. The agreement notifies the WCRA that a TPA is authorized to receive information and correspond with the WCRA on behalf of a member. The authorization also provides indemnification for the WCRA by a member for any legal action that may arise out of or in connection with any violation of the Agreement by the TPA or its employees. The form is available online.

Initial Claims Reporting

Which Claims Should Be Reported to the WCRA?

All serious claims of WCRA members involving a loss that occurred on or after October 1, 1979, and subsequent to membership in the Association, may be appropriate for reporting to the WCRA. Members should report claims involving serious injury or significant anticipated costs as described below.

Catastrophic Injury. Claims involving the following injuries should be promptly reported to the WCRA within 15 business days of notification of the injury to the member.

1. Central nervous system injury.
Spinal cord injury resulting in paraplegia or quadriplegia.
Brain damage affecting cognition and/or resulting in conditions such as permanent disorientation, behavior disorder, personality change, seizure disorder, motor-sensory deficits, aphasia, or coma.
2. Fatality, except for a no-dependent exposure.
3. Third-degree burns covering 10 percent of the body, or second-degree burns covering 30 percent of the body, or if significant medical costs can be anticipated.
4. Amputation of a significant portion of one extremity or multiple amputations. Impairment of total vision by 50 percent or more.

Serious Injury. Claims involving the following injuries should be promptly reported to the WCRA after taking into consideration the member's selected retention limit:

1. Impairment of total vision by 50 percent or more.
2. Peripheral nerve damage causing major muscle dysfunction or paralysis in an extremity.
3. Serious internal injuries resulting from blunt, penetrating, or crushing injuries to the chest or abdomen.
4. Multiple fractures or significant degloving injuries, involving more than one arm, hand, or leg, malunion, or significant shortening of the limbs.
5. Fracture of both heel bones (bilateral os calcis).
6. Occupational disease allegedly caused by working conditions or other job-related factors, including asbestosis, chronic pulmonary disease, or other occupational disease that results in a disability expected to last two years or more. In cases of occupational disease, each person who has been exposed is considered a separate claim.

Significant Anticipated Costs. A claim should be reported promptly to the Association when the total incurred cost of a claim exceeds 50 percent of the retention limit that was in effect when the loss was incurred.

The total incurred cost of a claim equals payments made to the claimant(s) involved in the loss, plus the undiscounted reserves (including the aggregate reserve in a multi-claimant loss) established by the member for future claim costs. For example, in an industrial explosion where three people suffer burns, the total incurred cost of the claim will be the payments made to date plus the estimated outstanding claim reserves for each of the three people involved.

Please note that there are some exceptions to these criteria. A claim need not be reported to the WCRA if it has been settled on a full, final, and complete basis with limited medical exposure, and the total payments are not expected to exceed the retention limit. Nor is it necessary to report a perfected Second Injury Fund claim, a claim not under Minnesota jurisdiction, or a claim where a recovery is being made and total payments will not exceed the applicable retention limit.

When to Report a Loss

Early reporting is as important as detailed reporting. Members are encouraged to report claims as soon as possible after the criteria noted above are met, even if all the information requested on the Loss Reporting Form is not yet available.

How to Report a Loss

Claims are reported on the Loss Reporting Form, which must be submitted electronically via the Association's secure eMember service. This form is designed to provide the WCRA with sufficient data to determine if the claim may involve liability to the WCRA. Initially, the WCRA needs the basic claimant information, a complete description of the occurrence and injury, payment information, and the current status of the claim, including recovery potential.

If the information submitted by the Member on the Loss Reporting Form is inadequate for the Association to evaluate and determine its liability, the Association may request additional or explanatory information from the Member. Please contact the claims services staff with any questions about the Loss Reporting Form.

To be able to report using the eMember tool, a personal account with a username and password needs to be set up for you. If you are not already an eMember, please to go the WCRA website at www.wcra.biz to access the application form and additional information about this service.

Interim Claims Reporting

Routine Updates

Once an initial report has been submitted, the WCRA claims services staff will request periodic updates on the status of the claim by mailing (via eMember or the postal service) a letter to the member or TPA. Generally, an interim report will be requested every 6 to 12 months, but the frequency depends on the severity and stability of the claim. Some stable permanent total, temporary partial, and dependency benefit claims are placed on a two-year reporting schedule. eMembers may receive these update requests electronically.

The Loss Reporting Form, which must be submitted electronically via the Association's secure eMember service, should answer in detail any specific questions raised by the WCRA's staff in the letter. It is always necessary to provide the current weekly indemnity rate, medical status, payment information, and any applicable comments on vocational, litigation, settlement, or recovery developments.

If you are not already an eMember, please to go the WCRA website at www.wcra.biz to access the application form and additional information about this service.

Significant Developments

Interim reports should also be submitted under any of these conditions.

1. A claimant's medical condition undergoes any material change that affects the degree of permanent impairment and/or need for extensive medical treatment.
2. The WCRA member experiences any material change in liability, rights to reimbursement, social security offsets, or other recovery on a claim.
3. A claim file is closed.
4. A claim file is reopened after a final report had been submitted previously.

If the information contained in a Loss Reporting Form is not adequate for the WCRA to evaluate its potential liability, the WCRA claims services staff may request additional explanatory material from the member. Please contact the claims services staff with any questions about the Loss Reporting Form.

Rehabilitation Services

Rehabilitation services to members are provided through individual case consultation, guidebooks relating to management of catastrophic injury claims, an Internet links page identifying key medical and rehabilitation resources, and educational/training seminars.

Individual Case Consultation

We want to partner with our members to help them achieve the optimum resolution of each case. New catastrophic or serious injury claims submitted to the WCRA are first reviewed by the claims staff. Once the initial injury information is gathered, the claims staff determines if the case should be referred to the WCRA catastrophic nurse consultant for either a limited assessment or ongoing involvement. As a part of our services to members, the WCRA catastrophic nurse consultant assists by:

- Reviewing claims and making recommendations for case management, including potential treatment options and case outcomes.
- Participating in roundtable discussions with claims and rehabilitation professionals to strategize on case direction.
- Providing average medical costs in similar injuries, including initial medical cost projections and short- and long-term medical cost drivers.
- Identifying potential short- and long-term rehabilitation needs.
- Providing resource information.

Catastrophic Injury Guidebooks

The WCRA has developed information packets for brain injuries, spinal cord injuries, burns, amputations, and chronic pain management. These packets contain valuable information to assist the member in directing the medical and vocational aspects of these injuries, including cost projections for reserving purposes. Additionally, information is provided regarding home remodeling and handicap-accessible vehicle purchases. A guidebook specifically addressing home health care issues is also available. The guidebooks are available to eMembers on the WCRA website at www.wcra.biz.

Medical and Rehabilitation Links

WCRA Medical and Rehabilitation Links are provided as a resource for members to access professional information about severe injuries. The sites contain information relating to the multiple aspects of medical diagnosis and treatment. Each site also includes links that will expand the available information coverage.

Educational Seminars

Periodically the WCRA hosts educational seminars for claims and rehabilitation professionals on medical and rehabilitation aspects related to catastrophic/serious injury claims. If you would like to be on a mailing list for upcoming seminars, please contact the claims services department.

Settlement of Claims

The WCRA policy on settlement of workers' compensation claims by our members is based on several related provisions in the WCRA Enabling Act and Plan of Operation (Plan).

Member Settlement Authority

Under the WCRA Plan, members have the general authority and responsibility to adjust claims. As part of that general authority, the Plan specifically provides that members have authority to settle claims. The WCRA generally does not attend or participate in settlement or pretrial conferences, nor should the WCRA be included as a signatory on a stipulation for settlement.

WCRA Settlement Guidelines

Members are required to notify the WCRA prior to entering into claim settlements that may involve present or future WCRA reimbursements. Members must notify the WCRA of a proposed settlement in a timely manner so that the WCRA claims staff has sufficient time to adequately review the proposed settlement and discuss with the member the accuracy and reasonableness of the settlement and its potential impact on the WCRA. If a settlement involving WCRA funds is executed without such notification to the WCRA, and the WCRA has no disagreement with the terms of the settlement as described below, the WCRA will reimburse the Member for the settlement amount. If the WCRA disagrees with the terms of a settlement entered into by a Member because of errors in applying the provisions of Minn. Stat. Ch. 176 in determining the settlement amount; because the member failed to take into consideration the WCRA's discount rate; or because it believes the settlement is excessive and materially and adversely affects the WCRA's interests, the WCRA will only reimburse any undisputed settlement amounts. Settlements will be reimbursed in accordance with these settlement guidelines, subject to the Plan of Operation and the WCRA Enabling Act. The Member may request a review of the denial of any portion of the settlement reimbursement as provided in Article VI.G.1. of the Plan.

Discounting Settlements

The WCRA uses a discount rate of 7 percent, as we expect to earn an investment return of 7 percent on the premiums we collect from our members. This allows the Association to earn sufficient funds over the life of the claim to reimburse the member. Members must take into consideration the WCRA discount rate in evaluating a settlement that involves or may involve future WCRA funds. However, since full present value assumes that the claimant will be eligible for benefits for the maximum period of time, most claims tend to settle at 50-75 percent of the present value. If significant savings cannot be realized, the WCRA believes that the claim should not be settled, and benefits should simply be paid out over time. WCRA PresentValueCalc may be used to evaluate whether a claim should or should not be settled.

Settlements Below the Retention Limit

Under the Enabling Act, the WCRA is statutorily responsible for reimbursing its members for all losses incurred above the retention limit selected by each member. Conversely, the WCRA has no authority to reimburse members for losses below the retention limit. This policy applies whether the loss is paid pursuant to statutory benefit provisions, in a lump-sum settlement, or in other forms of

settlement, such as through the purchase of an annuity to fund a structured settlement. In any case, the WCRA reimbursement will be calculated based on the amount paid out by the member on the loss in excess of the member's retention limit.

Per-Occurrence Coverage

Statutory Provision

The law which established the WCRA specifically states that the Association customarily provides reimbursement to members on a per-occurrence basis, with one retention limit applying to each separate occurrence. In cases of occupational disease, each person suffering from the disease is treated as a separate loss occurrence.

Minnesota Statute 79.34, subd. 2 reads as follows:

The reinsurance association shall provide and each member shall accept indemnification for 100 percent of ultimate loss sustained in each loss occurrence relating to one or more claims arising out of a single compensable event, including aggregate losses related to a single event or occurrence which constitutes a single loss occurrence, under chapter 176 on or after October 1, 1979.

Potential for Apportionment

The issue of per-occurrence coverage often arises when a member settles a claim or a portion thereof, and includes any and all claims that a claimant may allege. The WCRA recognizes that this is prudent claims practice. However, because the WCRA coverage is on a per-occurrence basis, it may be necessary to apportion the benefits paid on the respective losses, or to provide documentation to support the contention that the other losses noted in the settlement were minor in nature and do not require apportionment. Typically, a reasonable apportionment can be derived by looking at lost time, permanent partial disability, and the extent of medical costs associated with each occurrence.

The WCRA recommends that members be aware of this issue and consult in advance with the WCRA when entering into a lump-sum settlement or establishment of permanent and total disability when multiple occurrences are involved.

Subrogation Waivers and Recoveries

Subrogation Requirement

The WCRA's Plan requires members to pursue subrogation claims unless the WCRA agrees otherwise.

The Plan, in Article VI, H states:

Each member shall, to the extent permitted by law, prosecute or intervene in any and all claims the Member or an employer, employee, beneficiary or other person may have against any third party arising out of any Loss Occurrence, unless otherwise agreed to in advance by the Association.

This section outlines the procedures and standards governing the WCRA's approval of a waiver of subrogation, and sets forth the remedies for member failure to obtain approval of these waivers.

Waiver Procedures and Standards for Approval

Members may waive their subrogation rights in advance of any loss occurrence without notice to the WCRA. Once a claim has occurred, however, members must follow these procedures, including obtaining the written approval of the WCRA. In all claims which have been reported to the WCRA, or which are required to be reported according to the criteria listed in the "Initial Claims" section of this WCRA Guide, the member must notify the WCRA of its desire to obtain the WCRA's approval to waive subrogation as soon as it may reasonably do so. All requests asking the WCRA to agree to a waiver of subrogation must be submitted in a timely manner so that the WCRA staff may adequately review and respond to the request. If a reply is needed from the WCRA by a specific date, the request should so specify.

The WCRA will determine whether a member's request to waive subrogation would be reasonable from the perspective of the Association. The value of a possible WCRA recovery in each case, and the probability of such recovery, will be evaluated. However, the Association's decision also takes into account other interests beside potential financial recovery from a subrogation action, such as its duties to and relationships with its members.

The WCRA will consider all factors involved in the request to waive a subrogation claim. When requesting consideration of a subrogation waiver, please provide the claims services staff with the following information.

1. All available facts about the accident.
2. The monetary effect of the proposal on the member's exposure below the WCRA retention limit, in comparison with the effect on the exposure above the limit.
3. The probability of the claim ultimately exceeding the WCRA retention limit.
4. The costs of recovery.
5. Potential Coverage B liability and coverage limits.
6. The member's stated reasons for its request.
7. The member's realistic and legal evaluation of the case and the likely range of recovery.
8. Whether refusal to waive subrogation would be detrimental to the member or its insured.

Failure to Obtain WCRA Approval

If a member waives subrogation without obtaining prior WCRA approval, the WCRA will review the waiver after the fact to determine whether it would have been approved. If the Association determines that the waiver was not in its best interests, it may refuse to indemnify the member for that claim to the extent of amounts which the Association determines could have been recoverable through subrogation. The WCRA may withhold reimbursements to the member for other claims so as to recover reimbursements already made on the claim where subrogation was waived.

Subrogation Recoveries

If a member recovers from a third party an amount for which it has already been reimbursed by the Association, the member shall promptly return such net proceeds to the WCRA to the extent of any reimbursement already received from the WCRA. If a member obtains a successful subrogation, contribution, or other third-party cash recovery, its attorney fees and costs incurred as a result of pursuing this action may be deducted from the recovery.

Reimbursement Request Procedures

Background

Recognizing the importance of timely reimbursement, the WCRA has a policy that we will reconcile and pay all approved and complete reimbursement requests within five business days of their receipt, barring unusual circumstances. Lack of appropriate or adequate documentation may delay the processing of a request. See the section “Components of a Reimbursement Request” below for details on the information required with each reimbursement request.

All WCRA reimbursement requests must be submitted to the Association electronically via the secure WCRA eMember Service.

The WCRA is required by statute to obtain the documentation necessary to properly substantiate reimbursement payments to members, and to ensure that all members are upholding their fiduciary responsibility to protect the interests of the WCRA. Member claims files are periodically audited at the member’s office to verify previously reported information and to ensure data integrity.

Initial Reimbursement Requests

A member should submit an initial reimbursement request to the WCRA after payments to the claimant or claimants involved in the same loss exceed the retention limit that was in effect at the time of the loss. Only one reimbursement request is submitted per loss occurrence, since all claims involved are aggregated.

Reimbursement Schedule

Reimbursement requests are to be submitted to the WCRA during the anniversary and half-year anniversary months of the date of loss for each separate loss. An initial or interim reimbursement request may be submitted at any time during the eligible months of the applicable cycle.

Exceptions to the Six-Month Schedule

Members may also submit a reimbursement request under the following three circumstances:

1. If a claim is settled on a full, final, and complete basis, whether or not medical benefits remain open, a reimbursement request may be filed at any time after the payments have been made in accordance with the Award on Stipulation.
2. If payments for which reimbursement is due exceed \$30,000 within three months, beginning with the month a reimbursement request may be filed, a request may be filed at the quarter month. For example, a member on a January/July reimbursement schedule may request reimbursement in April if payments made subsequent to the January request exceed \$30,000 by the end of March.
3. If a member is closing its claim file, a reimbursement request may be filed at any time instead of waiting for the scheduled six-month request.

Components of a Reimbursement Request

The following information should be provided to the WCRA with each initial or interim reimbursement request.

1. *Reimbursement Request Form.* The Reimbursement Request Form must be submitted electronically via the Association's secure eMember service. A form should be completed for each separate occurrence. If an occurrence includes multiple claimants, all claimants should be included in one request. The form should provide the WCRA with a current status of the claim and with the information necessary for the WCRA to evaluate its exposure and establish the correct reserve.
2. *Medical and Rehabilitation Reports.* If the medical and rehabilitation status of the claim is active, submission of narrative reports is necessary to better evaluate the claim. Documents explaining past medical treatment and rehabilitation activities are also necessary to support an initial reimbursement request if not previously submitted. Specifically, copies of independent medical examinations, operative reports, or general claim summaries are helpful. It is not necessary to submit physical therapy notes, chart notes, or job search logs.
3. *Legal Documents.* The WCRA requires fully executed copies of Stipulations and Awards on Stipulation that settle a claim full, final and complete, establish permanent total disability, or resolve a permanency dispute. Copies of court decisions that determine compensability, contribution, apportionment, or other benefits are also required.
4. *Indemnity Documentation.* This documentation can be provided in a variety of formats.
 - The preferred documentation is a payment ledger that identifies the amount, time frame, and nature of benefits paid (TTD, TPD, etc.).
 - In the absence of payment ledgers, the WCRA will accept any indemnity worksheet (member worksheet, DOLI forms, etc.) that includes specific dates of benefits paid, offsets applied, and total paid for each period, **providing that aggregate payment documentation is provided to confirm the total amount paid.**
 - It is also necessary to document lump-sum payments such as permanency benefits, settlements, or awards.
 - The WCRA may reimburse any overpayment created by a retroactive finding of permanent total disability and offset, provided that a 20 percent credit is being taken on further benefits. Other overpayments may also be reimbursed if they were made in good faith and a credit is being taken.
5. *Medical and Rehabilitation Payment Documentation.* This documentation also may take a variety of forms, but the essential information is a listing of each medical and rehabilitation payment. The list should provide the payee, date, and amount of the payment. If the nature of the service rendered by the payee is not readily identifiable, a description of the service is necessary. Additionally, the nature of all reimbursements to the claimant must be identified, such as mileage, prescriptions, job-search costs, etc.

Initial reimbursement requests should contain documentation for all benefit payments made since the loss was incurred. If portions of a claim file are not available and no documentation exists for specific benefit payments, the WCRA will not reimburse the undocumented payments. **Interim reimbursement requests need only contain documentation for benefit payments made since the previous reimbursement request.**

Insufficient Documentation

Members are contacted when the claims processor determines that a reimbursement request contains errors or inadequate supporting information. It is in the member's best interest to provide the needed information as quickly as possible, since processing the request cannot be completed until such information is received.

Often a phone call to the claims services staff can clarify a question or concern. If additional documentation is required, members are encouraged to promptly mail, fax, or email the necessary information, referencing the WCRA claim number.

If the WCRA has not received the information within ten business days of its request, the claims services staff will send the member a written reminder detailing the information that must be received before the reimbursement can be processed. If the documentation still has not been received within 20 business days, the claims services staff will send the reimbursement request back to the member with a letter explaining why the request is being returned.

A member may resubmit a reimbursement request at any time after it has been returned, as long as the necessary information is provided or other concerns have been resolved.

Reimbursement Payments

Payments by the WCRA for properly documented reimbursement requests will be made within five business days barring unusual circumstances. Any apparent discrepancies or unreimbursed expense payments are itemized in a remittance advice letter accompanying the payment. Members are encouraged to contact the claims processor to discuss any questions or concerns.

Reimbursable and Nonreimbursable Benefits and Expenses

Benefits Eligible for Reimbursement

The WCRA reimburses its members for 100 percent of benefits paid in accordance with the Minnesota workers' compensation law in excess of the applicable retention limit. It may choose also to reimburse other reasonable, nonstatutory benefits that are paid to assist the injured worker and mitigate the cost of the claim. The following benefits are eligible for reimbursement:

1. Indemnity benefits, including temporary total disability, temporary partial disability, permanent total disability, retraining benefits, dependency benefits, impairment compensation, economic recovery compensation, and permanent partial benefits.
2. Medical benefits, including services by physicians, chiropractors, and hospitals; diagnostic procedures; prescriptions; durable medical equipment; medical mileage, etc. subject to the applicable fee schedule and treatment parameters.
3. Rehabilitation benefits incurred in accordance with a rehabilitation plan authorized by the Department of Labor and Industry, including utilizing qualified rehabilitation consultants and job placement vendors, job search mileage and related expenses, and all costs delineated in a training plan.
4. Home remodeling expenses that are paid for in accordance with Minn. Stat. § 176.137 and Minn. Stat. § 256.481 subd. 5, (7). All home remodeling must meet the following three criteria: a) documented medical necessity resulting from the injury; b) certification by a licensed architect; and c) approval by the Minnesota Council on Disability.
5. Automobile modifications that are necessary to cure and relieve the injury and are documented as medically necessary.
6. Plaintiff attorney fees, including Heaton fees, Roraff fees, appellate court fees, taxable costs and disbursements, and Minnesota Statute 176.081, subd. 7 fees.
7. Nonstatutory discretionary payments. The WCRA will consider for reimbursement other benefits and expenses that are paid to mitigate the cost of the claim on a case-by-case basis. However, these benefits must be documented as reasonable and necessary. Such discretionary payments should be discussed in advance with the WCRA claims services staff. Examples of this type of benefit may include preapproved catastrophic case management services, nurse case management (if there is a documented medical need), pharmacy reviews, secondary medical bill reviews, health club fees, home exercise equipment, orthopedic mattresses, ergonomic chairs, uniforms, and tools. This list is not inclusive nor exclusive.

Payments Not Eligible for Reimbursement

The WCRA is prohibited from reimbursing some claims expenses, according to statute or the WCRA Plan of Operation and the Operating Rule for Clarification of the Definition of Claims Expenses. Following is a list of nonreimbursable claims expenses:

1. Penalties, interest, and civil damages, including penalties associated with failure to pay or deny benefits in a timely manner, civil damages associated with an obstruction of an employee seeking benefits, improper discontinuances, failure to provide rehabilitation or vocational benefits, failure to pay pursuant to an order, interest on late benefits, and interest payable pursuant to an Award.

2. Claims administration expenses, including fees for services of investigators, claims adjusters, defense attorneys and related costs, independent medical examinations, medical records retrieval and photocopying fees, surveillance expenses, and other reports in connection with the determination of facts or the disposition of a legal proceeding.
3. Housekeeping services and yard care, as the courts have generally denied payments.
4. Supplemental benefits and Special Compensation Fund special assessments.
5. Employer's liability payments under Coverage B of the workers' compensation policy.
6. Rehabilitation services provided by a consultant or vendor that are rendered in the absence of, in a manner inconsistent with, or outside the scope of a rehabilitation plan.

Intervention in Legal Proceedings or Member Claims Management

Background

The primary objective of the WCRA's claims services department is to promote expert administration of serious workers' compensation claims and to ensure that proper and cost-effective medical and rehabilitation services are provided to injured workers while protecting the Association's financial integrity. The Minnesota Legislature recognized that achieving these goals might, at times, require the WCRA's involvement in members' claims.

Interventions in Legal Proceedings

The Association may intervene in legal proceedings resulting from a workers' compensation injury after consultation with the member if it determines that intervention is in the best interests of the Association; if the amount sought by any party exposes the Association to potential financial liability; or the matter involves a legal issue which may affect the liability of the Association in pending or future claims. In determining whether to intervene in such legal proceedings, the Association may consider whether intervention would likely promote standardization and promptness in the administration of serious claims; whether intervention would likely contribute to minimizing the costs of workers' compensation insurance; whether intervention would be likely to promote the availability of effective and economical rehabilitation programs for seriously injured employees, and whether intervention would protect the Association's interests.

Interventions in Member Claims Management

Normally, the responsibility for managing claims belongs to the members and the WCRA assumes only an advisory and monitoring role regarding the management of claims that might expose the Association to financial liability. However, pursuant to the Plan of Operation, Article VI.F if the WCRA determines that a member's claims procedures or practices are inadequate to properly limit the Association's liability or that they may in any way jeopardize the interests of the Association, one or more of the following four actions may be taken.

1. The Association may withhold reimbursements from the member until it deems that the deficiencies in the member's claims procedures have been resolved.
2. With Board approval, the Association may impose a premium surcharge on the member.
3. The Association may undertake the adjustment of a claim that creates a potential liability to the Association, either directly or through a third-party administrator at the member's expense. Before taking this action, the Association shall provide the member and the WCRA Board with written notice of its intentions and shall allow a thirty day period for the member to correct its claims handling procedures and practices to the satisfaction of the Association.
4. With Board approval, the Association may recommend that the Commissioner of the Minnesota Department of Commerce revoke an insurer member's license to write workers' compensation insurance or a self-insurer member's authorization to self-insure workers' compensation liability.

The member may seek review of any of these actions by the Association as provided in Article VIII. of the Plan of Operation.

Examples of Inadequate Procedures

Following are examples of claims procedures that could be deemed inadequate to properly service a claim or to limit the WCRA's liabilities.

1. Failure to employ prompt and cost-effective medical management and rehabilitation procedures.
2. Failure to properly and timely pursue a finding of permanent total disability and assist eligible employees in applying for social security or other governmental benefits which might offset workers' compensation benefits.
3. Failure to pursue subrogation or other potential recovery claims against third parties as outlined in the "Waiver of Subrogation" section of this *WCRA Claims Reference Guide*.
4. Failure or refusal to diligently defend a claim.
5. Failure to provide a loss run of open claims or cooperate with the WCRA's loss detection activities.
6. Failure of the member, its counsel, or a third-party administrator to protect the interests of the WCRA.

This list is neither inclusive nor exclusive. In determining whether intervention serves the Association's best interest, the WCRA will consider past and anticipated frequency of the questionable practice, as well as the total financial exposure it may cause.

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