



JOHNS EASTERN COMPANY, INC.

Claim Adjusters & Third Party Administrators

SPEED AND ACCURACY

Legislative Changes to Section 112.18

On June 1, 2010, Governor Crist approved senate bill No. 2176, which was codified as Chapter Law 2010-175. The law contains significant changes to the availability of the section 112.18 presumption to law enforcement, correctional, and correctional probation officers.

The legislature amended section 112.18 to limit the availability of the presumption in cases where a law enforcement officer, correctional officer, or correctional probation officer materially departed from a prescribed course of treatment. The changes apply to accidents occurring after July 1, 2010. Note the changes only affect the aforementioned employees, and do not impact firefighters. A summary of the specific provisions are as follows:



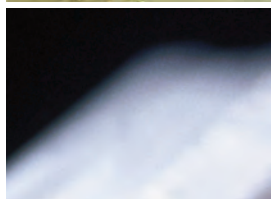
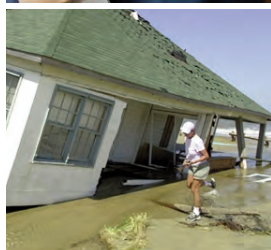
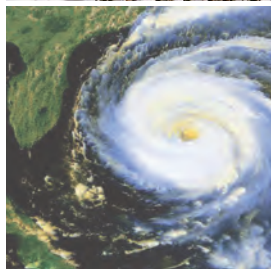
- Correctional probation officer is added to section 112.18(1)(a). Arguably, this does not change the class of employees covered by section 112.18 as section 112.18 was amended in 2002 to provide that a correctional officer as defined in section 943.10(1), (2), or (3) is covered. Section 943.10(3) provides the definition of "correctional probation officer."
- If an employee suffers from hypertension, heart disease, or tuberculosis, and the employee departs in a "material fashion" from a prescribed course of treatment, it may be presumed the condition did not arise in the line of duty.
- The departure rule will apply to those seeking compensability of a new condition if the employee fails to follow the prescribed course of treatment from his personal care physical.
- The departure rule will only apply if the departure resulted in a "significant aggravation" of tuberculosis, heart disease, or hypertension.
- If there is a dispute as to the appropriateness of the course of treatment prescribed by a physician, the law enforcement officer, correctional officer, or correctional probation officer is entitled to an IME pursuant to 440.13.
- A law enforcement officer, correctional officer, or correctional probation officer is not entitled to the current presumption (the presumption of compensability) unless a claim for benefits is made within 180 days after leaving his or her employment.

It appears the intent of the legislature in passing senate bill 2176 was to limit the availability of section 112.18. The law will take effect on January 1, 2011 and will apply to dates of accident on or after July 1, 2010.

The statutory changes created by the law will have far-reaching effects. Most notably, the statute contains many vague and ambiguous provisions. The law will potentially create disputes over the definition of a "material fashion" and the definition of a "significant aggravation." The law also refers to a "prescribing physician" without defining that term. Additionally, the changes may create significant disputes over entitlement to an independent medical examiner (IME). For example, if a Claimant utilizes an IME under the new law, will the current limitations regarding the use of an IME still apply?

Ultimately, the judges of compensation claims and the First DCA will be called upon to clarify the multitude of questions created by the new law. In the meantime, you should keep these new rules in mind when evaluating your claims.

Contributor: Karen Cullen, Broussard & Cullen, P.A.



Medicare Secondary Payer Act, Settlement *Medicare Case, 9/29/10: Bradley v. Sebelius*

The facts of this claim against a Florida nursing home for neglect and abuse are simple and not in dispute. However, the question of law as to the interplay between the Florida Wrongful Death Act (FWDA) and the federal Medicare Secondary Payer statute (MSP) is an issue of first impression in this court.

The deceased has been placed in a FL nursing home, and during the deceased's approximate three (3) month hospital stay, the Secretary of the Department of Health and Human Services (Secretary or HHS), on behalf of Medicare, paid \$38,875.08 for Burke's medical care.

The Administrator settled the wrongful death tort claims for \$52,500, the full amount of the nursing home's liability insurance policy limits. Settlement was made without filing suit. The nursing home tendered the settlement amount and the party executed a release of all claims of the estate and the surviving children against the nursing home and its liability insurance carrier.

The total, undifferentiated amount of the settlement was \$52,500.00. The issue of first impression in this case is therefore: "Whose property is the settlement?" The settlement involved the medical expenses and costs recovered by the estate (and subject to the MSP statute), along with the non-medical, tort property claims of the surviving children for lost parental companionship, etc., under state law, (and not subject to the MSP statute).

Under Florida law, any claim of the estate is separate and distinct from the claim of a survivor. All loss of consortium or companionship recoveries are the property of the person who incurred the loss. Not the Secretary of HHS. A child's loss of parental companionship claim is a property right belonging to the child, not the Secretary of HHS. The children's loss of parental companionship claims do not include the decedent's medical expenses, as a claim for medical expenses belongs only to the estate. Only the estate's allocated share of the proceeds is subject to the province of the Secretary.

The Court wrote, "There is a particularly troubling sub-issue contained in this appeal..."

"The Secretary declined to take any part in the litigation although at all times her position was adverse to the interests of the surviving children. The probate court made the allocation, finding that the Secretary should recover the sum of \$78750. Yet, still, the Secretary, citing no statutory authority, no regulatory authority, and no case law authority, merely relied upon the language contained in one of its many field manuals and declined to respect the decision of the probate court."

The Court went on to write: "The Secretary's position would have a chilling effect on settlement. The Secretary's position compels plaintiffs to force their tort claims to trial, burdening the court system. It is a financial disincentive to accept otherwise reasonable settlement offers. It would allow tortfeasors to escape responsibility."



Contributor: Jim Boelter

Source: <http://ageorgialawyer.blogspot.com/2010/10/medicare-case-92910-bradley-v-sebelius.html>

CMS ALERT - November 9, 2010

I. Revised Implementation Timeline for TPOC Liability Insurance (Including Self-Insurance) Settlements, Judgments, Awards or Other Payments

The required submission of liability insurance (including self-insurance) initial claim reports has been changed from the first calendar quarter of 2011 to the first calendar quarter of 2012, for liability TPOC amounts with no ORM involvement.

- Liability insurance (including self-insurance) TPOCs must be reported if the TPOC Date is on or after 10/1/2011.
- The current rule requiring reporting of NGHP TPOC Dates of 10/1/2010 has been changed to 10/1/2011 but **only** for liability insurance (including self-insurance) TPOCs.
- The reporting date requirements for TPOC Dates of 10/1/2010 and subsequent associated with no-fault insurance or workers' compensation claims remain unchanged.
- The reporting date requirements as documented in the User Guide for all NGHP ORM remain unchanged.
- Initial Claim Input Files for reportable claims are still due during the RRE's assigned file submission timeframe for the first calendar quarter of 2011. RRE's that have reportable claims must commence production reporting in first calendar quarter 2011 and then include liability insurance (including self-insurance) TPOC reporting in the first calendar quarter of 2012 for TPOC Dates of 10/1/2011 and subsequent.

II. Extension of Current Dollar Thresholds for Liability Insurance (Including Self-Insurance) and Workers' Compensation

Medicare has also extended the Interim Dollar Thresholds for Liability, Workers' Compensation, and No Fault. Thresholds and extension dates are listed below:

- Claim reports where the last (most recent) TPOC date is prior to January 1, 2013 with TPOC amounts totaling \$0 - \$5,000.00 are exempt from reporting.
- Claim reports where the last (most recent) TPOC date is January 1, 2013 - December 31, 2013 with TPOC amounts totaling \$0 - \$2,000.00 are exempt from reporting.
- Claim reports where the last (most recent) TPOC date is January 1, 2014 - December 31, 2014 with TPOC amounts totaling \$0 - \$600.00 are exempt from reporting.
- No threshold applies to claims where the last (most recent) TPOC date is January 1, 2015 and subsequent.

Any questions regarding these changes can be directed to Nancy Riley (nriley@johnseastern.com) or Jim Boelter (jboelter@johnseastern.com).

Lopez v. Allied Aerofoam - Florida 1st DCA Case No 1D10-1444 October 18, 2010

The Judge of Compensation Claims denied the claimant's request for an advance payment of compensation in the amount of \$2,000.00. The reason for the Judge's decision is that the case was denied in its entirety. The 1st DCA reversed the Judge's order and awarded the advance. Their basis for the reversal is that the legislature failed to change the wording in law following the 1st DCA decision in Workers' of Florida v. Williams (a 1999 case). In the Williams case, the employer appealed a JCC order awarding an advance when there was no evidence that Williams would be entitled to any further benefits from which to recoup the advance. The 1st DCA in Williams disagreed with the employer as "The only conditions pertinent to the inquiry of the appropriateness of such advances are those stated in section 440.20(12)(c), and they do not mention the potential of employer prejudice." Section 440.20(12)(c), provides the following: An advance may be awarded, not to exceed \$2,000.00 and it is found to be for the best interest of the person entitled thereto. In the Lopez case, the 1st DCA outlined the criteria for providing an advance as one of the following:

- 1) Failure to return to employment at no substantial wage reduction;
- 2) A substantial loss of earning capacity; or
- 3) An actual or apparent physical impairment.

Based on this decision, it will be very difficult to deny any request for an advance, even if we have denied a claim in its entirety.

Contributor: Nancy Riley

Florida DFS Withdraws Proposed Adjuster Ethics Rule Revision!

On September 15, 2010 the Florida Department of Financial Services, Division of Agent & Agency Services, provided Notice of Withdrawal of its proposed amendments to Rules 69B-220.051 and 69B-220.201, Florida Administrative Code, relating to adjuster conduct and ethical requirements.

Claims adjusters (company, independent and public), their employers, and numerous local and national insurance industry trade groups came together in July and voiced their strenuous objections to the Department's attempt to correct a number of service-related issues that still remain from the 2004-2005 hurricane seasons.

After two formal rule workshops, an administrative challenge filed by the Florida Association of Public Insurance Adjusters (FAPIA), and additional feedback and discussion between the WCCP and PCCP Associations, the Property & Casualty Insurers Association of America; the Florida Insurance Council, and the National Association of Mutual Insurance Companies, the Department of Financial Services has decided to leave the Ethics Rule(s) intact.

In a statement made in the July 30th workshop, Team Leader Eric Purvis admitted that the Department was surprised at the "passion" that these proposed changes evoked across the claims community.

Contributor: James Greer, CPCU, Executive Director, WCCP

Johns Eastern SIU Program



October 21, 2010

Dear Valued Client,

Johns Eastern Company recently reviewed our SIU program due to the sale of RSight to Litigation Solutions. We looked at various options to select a provider that would support our anti-fraud efforts state-wide.

Johns Eastern Company is pleased to announce that effective November 1, 2010 GlobalOptions Inc. is our SIU provider of investigative services.

Florida headquartered GlobalOptions Inc. (www.globaloptions.com) initiated the transition process by preparing customized case management automation that provides Johns Eastern users with web based tools to order investigative services and retrieve stored assignment results.

Kevin Lewis, Director of Major Accounts for GlobalOptions was named as the Dedicated Program Account Manager. Kevin has over 9 years of investigative industry experience.

Daryl Chalk, SIU Investigator for GlobalOptions was named as the Dedicated SIU Specialist. Daryl has over 15 years of investigative industry experience and was recently awarded The Investigator of the Year by the State of Florida Department of Insurance Fraud. Daryl will perform in-office SIU file reviews to develop investigative course of actions.

Johns Eastern is looking forward to utilizing GlobalOptions' in-person and automated resources to support our on-going anti-fraud efforts.

Sincerely,

JOHNS EASTERN COMPANY, INC.

Beverly Adkins, AIC, AIM
Executive Vice President
Special Account Services

PMSI PharmaComplete Bill Review Services for Johns Eastern Company

Johns Eastern Company utilizes PMSI as our Pharmacy Benefit Management Company (PBM). As such, PMSI provides Bill Review services for Johns Eastern's out-of-network pharmacy bills. For bills within the state of Florida, PMSI is able to reduce these out-of-network bills to the Johns Eastern "contracted rate," pursuant to Florida Statute 440.13(12)(c).

This service is provided to Johns Eastern and their clients at no additional cost—and enables Johns Eastern to deliver a larger percentage of savings to their clients. By using PMSI's PharmaComplete™ Bill Review, Johns Eastern was able to capture \$96,473 in total savings on out-of-network pharmacy bills during the second quarter of 2010.

Florida Statute 4401.13(12)(c)

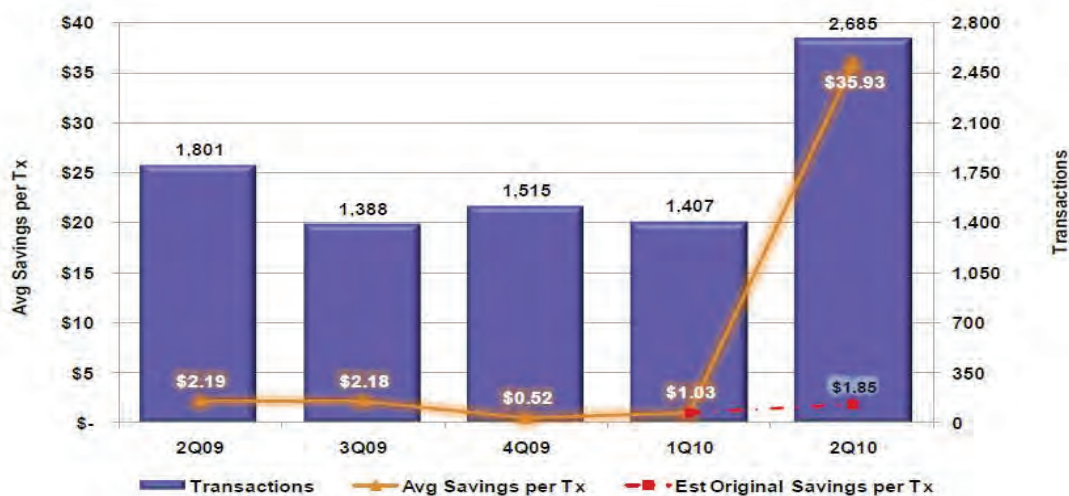
As to reimbursement for a prescription medication, the reimbursement amount for a prescription shall be the average wholesale price plus \$4.18 for the dispensing fee, except where the carrier has contracted for a lower amount. Fees for pharmaceuticals and pharmaceutical services shall be reimbursable at the applicable fee schedule amount. Where the employer or carrier has contracted for such services and the employee elects to obtain them through a provider not a party to the contract, the carrier shall reimburse at the schedule, negotiated, or contract price, whichever is lower. No such contract shall rely on a provider that is not reasonably accessible to the employee.

Contributor: 

Johns Eastern Out of Network Activity Savings ending 2Q 2010

Our new process to capture Out of Network and doctor dispensing pharmacy savings implemented in April 2010 has resulted in:

- \$96,473 in savings from 4/1/10-6/30/10
- \$35.93 of savings per transaction
- An increase in savings for Johns Eastern clients of 22% from Quarter 1 to Quarter 2 of 2010



Contributor: 



JOHNS EASTERN COMPANY, INC.

www.johnseastern.com

PO Box 110259
Lakewood Ranch, FL 34211-0004

Phone: 941-907-3100
Toll Free: 877-326-JECO
Fax: 941-527-4031

SPEED AND ACCURACY

JOHNS EASTERN COMPANY
Experience. Integrity. Results

Publisher Beverly Adkins
Editor-In-Chief Laura Lowe
Graphic Designer Suzy Ricci
Contributors
Nancy Riley
Jim Boelter
James W. Greer - WCCP
Tmesys/PMSI
Broussard & Cullen, P.A.

CEU SEMINARS

CEU Law Classes

"Indemnity Issues & Defenses" plus "Average Weekly Wage"
December 2, 2010 - 12pm-3pm
Comfort Suites Meeting Room

Florida Department of Financial Services Division of Workers' Compensation Compliance Bureau

Workers' Compensation Topics

Review of Key Statutory Definitions
Insurance Coverage Requirements
Exemptions
Contractor Responsibilities
Enforcement Provisions

Workplace Safety Topics

Direct and Indirect Costs
Inspections
Florida Fatalities

Dates and Locations - 9AM to Noon

December 9, 2010 - Tallahassee
December 9, 2010 - Largo
December 17, 2010 - West Palm Beach

*****Advanced Registration is Required*****

Registration Form is available at www.myfloridacfo.com/WC

GO GREEN!

GET YOUR NEWSLETTER VIA EMAIL!

If you are interested in an *electronic* version of the newsletter, please email Suzy Ricci at sricci@johnseastern.com to confirm you would like to **GO GREEN!** You will not receive a paper version of the newsletter from that point forward. Should you change your mind and want a paper version, simply send an email with this request.

GO GREEN when you can!