Coston Penalty Rule: Frequently Asked Questions

April 14, 2015

Background

In the 2012 Significant Decision "Coston", the Board of Industrial Insurance Appeals (BIIA) overruled their prior "Meyer" significant decision with a finding that payment for medically necessary and proper treatment should be considered a "benefit" under RCW 51.48.017 and subject to a penalty if either the payment of the treatment bill or the authorization for treatment is unreasonably delayed. Prior to this decision, "benefit" had been interpreted to mean only compensation directly paid to the worker.

Purpose of the Rule

The Self-insurance Section within the Department of Labor and Industries adopted amendments to Section 296-15-266 WAC effective 01-23-15. The rule defines the circumstances under which the department will consider assessing a penalty for an unreasonable delay of benefits, and the process of this penalty request.

The rule establishes general guidance and procedures as well as necessary clarifications on requesting and assessing penalties against Self-Insured Employers (SIEs) for unreasonable delay of industrial insurance benefits.

The newly adopted rule does not intend to create any new requirements beyond what has already been in place under the law and the Coston decision; instead, the rule intends to clarify the circumstances for when the delay of benefits is subject to penalty.

While the rule changes do not represent new requirements, they may affect self-insurers that do fail to pay benefits on time according to the clarifications within the rule.

Problem it Solves

The rule:

- Clarifies requirements for all employers and discourages non-compliant behavior.
- Benefits injured workers in that more timely benefit payments can be ensured for those who are entitled.
- Eliminates ambiguity when the department or the BIIA evaluate future penalty questions.

Frequently Asked Questions

1. **Q:** Under WAC 296-15-266, what are the required time frames for responding to bills?
   A: Within 60 days of receiving a proper billing, or 60 days after the claim is allowed.

2. **Q:** What are the required time frames for responding to treatment requests?
   A: For emergent care, within 14 days after receiving written notice of the request for treatment. Non-emergent care is not addressed in WAC 296-15-266. Requests for penalty for alleged delay in authorization of non-emergent care will be evaluated by the department in accordance with WAC 296-15-330.

3. **Q:** What if the SIE receives a billing for an unrelated condition?
   A: If the SIE believes it should not pay the billing, then the SIE must within 60 days deny the bill.

4. **Q:** Under WAC 296-15-266(1)(a)(iii), what constitutes written notice of a new condition?
   A: The factors the department will consider in determining whether written notice of a newly contended condition has been given to a SIE, are:
   - Written correspondence from a medical provider or injured worker,
   - Statement of a diagnosis of a condition not previously indicated in treating the injured worker,
   - Causal relationship of the condition to the industrial injury or disease, and
   - Recommended treatment for the condition.

5. **Q:** Are employers now required to send denial notices to providers and workers?
   A: Yes, the new rule requires notice to both the provider and the worker.

6. **Q:** What if the provider or worker disputes the denial?
   A: The employer must notify the department of the dispute within 30 days. The department will intervene to adjudicate the dispute and issue an order.

7. **Q:** Are employers expected to send an Explanation of Benefits (EOB) on every bill or treatment that is denied?
   A: Yes, the SIE must clearly state in writing why the payment is denied.

8. **Q:** If it's not a proper billing, are employers required to send an EOB to the worker? Or, just the provider in the case of an improper billing?
   A: If the SIE did not receive a proper billing and is not denying payment, but instead is just requesting a corrected billing, a copy to the worker is not required. However, it may be helpful to notify the worker of these transactions. Note: A proper billing must be submitted on self-insurer forms which have been approved by the department or self-insurer, and specify the date and type of service, the appropriate procedure code, the condition treated, and the charges for each service - see WAC 296-20-125 for a complete and detailed list of the requirements of a proper billing.

9. **Q:** If it's just an adjustment to a billing, are employers required to send a copy of the EOB to the worker? Or, just the provider?
   A: So long as the SIE is not denying the billing, the SIE may send the adjustment just to the provider, unless the worker requests a copy per WAC 296-15-330(2).

10. **Q:** If the bill is for a number of services, and some of the services are allowed, and some are denied, does the employer need to send an EOB on those allowed? On those denied?
    A: Only the services denied require sending notice; however, when you have both allowed and denied services within a billing, it may be helpful to delineate what is allowed and what is denied on the EOB.

11. **Q:** Does the type of denial make a difference as to whether an EOB is required? For example, improper billing, unrelated condition, etc.?
    A: Any time there is a denial, it must be communicated in writing to the provider and the worker.

12. **Q:** If it's a duplicate billing, are employers required to send a copy of the EOB to the worker?
    A: The SIE is not required to process a duplicate billing, and any inaction in response to a duplicate billing would not be considered a denial or delay so long as the original bill was allowed and paid. If the SIE chooses to process a duplicate billing to inform the provider of the duplicate billing, this process would not require sending a copy to the worker as a denial has not occurred.

13. **Q:** What is the amount of the penalty payable to the worker if a SIE unreasonably delays payment or treatment?
    A: Under RCW 51.48.017, the amount of the penalty the SIE must pay for an unreasonable delay of benefits is $500 or 25% of the amount due determined by the fee schedule for the services provided.

14. **Q:** If a worker doesn't request a penalty, can the department issue a penalty on its own initiative?
    A: Yes, under RCW 51.48.017, the first sentence of the statute authorizes the director to order a penalty if a SIE unreasonably delays benefits. The second sentence of the statute prioritizes penalties requested by a worker, and requires the director to determine whether there was an unreasonable delay of benefits within 30 days of a request by a worker. However, WAC 296-15-266 is intended to clarify the procedures for a worker's request for a penalty for unreasonable delay of benefits. And, concerning penalties assessed by the department on its own initiative, we intend to develop a separate rule. This will be done in conjunction with the Self-Insurance ongoing Audit Reform project (a collaborative effort of business, labor, and department).

15. **Q:** Is there a penalty payable to the provider?
    A: No, however, interest accrues on bills paid after 60 days.

16. **Q:** Does WAC 296-15-266(g) refer to a singly statutory due date?
    A: No, payment within 3 days of any statutory due date will not be considered unreasonably delayed. For example, RCW 51.36.080 requires payment within 60 days; day 62 is not unreasonably delayed.