



SMT Webinar Series

The Integration of Workers' Compensation and Heart & Lung Benefits

January 19, 2022

BENECON



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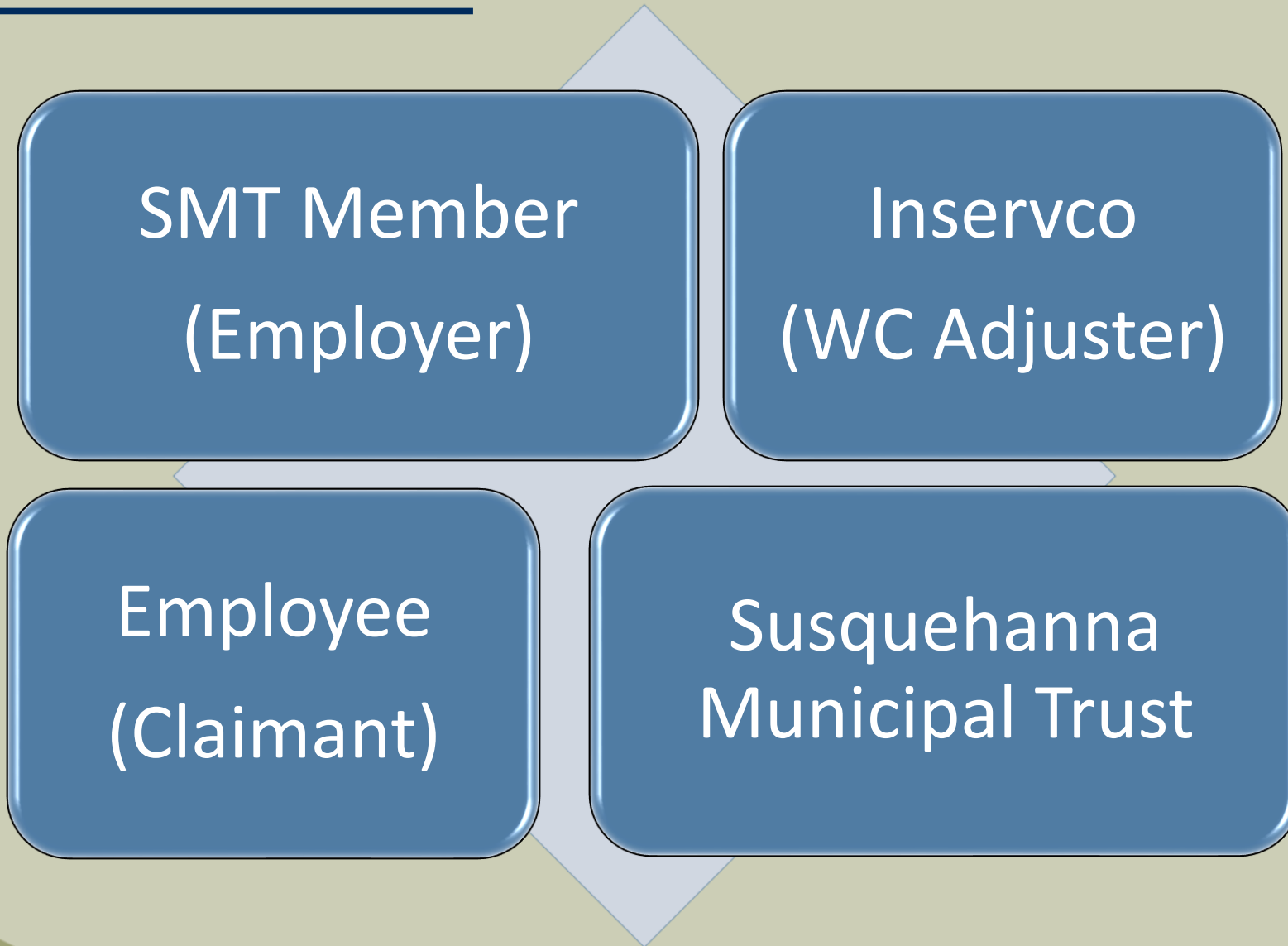


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Integration of Workers' Compensation and Heart & Lung Benefits

- ❖ PA Workers' Compensation Act
 - SMT Policy - Police & Paid Firefighters
- ❖ PA Heart & Lung Act
- ❖ Coordinating an Employee's Benefits
 - Workplace Injury

Communication!!



Employer's Preparation

- ❖ Updated Personnel Policies
 - ❖ Adopted forms & procedures
- ❖ Consult with Labor Counsel
- ❖ Financial auditors



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The Integration of Workers' Compensation Claims and Heart & Lung Benefits

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Workers' Compensation

Workers' Compensation

- Pennsylvania Workers' Compensation Act
 - Created in 1915
 - Quid pro quo- in exchange for no fault system of weekly wage replacement and medical benefits, employer receives immunity from civil suits

Workers' Compensation (cont'd)

- Eligibility: must be an employee
- Employee is defined as “all natural persons performing services for another for valuable consideration.”
- Excluded from Coverage:
 - Independent contractors
 - “Pure” volunteers (but not volunteer municipal workers such as firefighters)

Time Limitations

- Petition for benefits must be filed within 3 years of date of injury
- Notice of work related injury must be given to employer within 120 days of injury

Benefits Payable

- Wage loss/indemnity benefits- based on employee's average weekly wage (AWW) at time of injury
- Average weekly wage (AWW) determined typically by “looking back” 52 weeks before the injury and averaging 3 highest out of four quarters of earnings
- Total disability benefits are determined based on AWW
- Partial disability benefits are payable when injured worker is back to work and making less than AWW. Temporary Partial Disability (TPD) benefit is based on $\frac{2}{3}$ difference between AWW and post injury earnings.

Benefits Payable (cont'd)

- Medical benefits payable which are related and reasonable and necessary
- Paid at 113% of Medicare rates
- Once injury is accepted, employer must file for utilization review to challenge reasonableness and necessity
- Employer is allowed to challenge causal relationship of treatment to injury and deny treatment and force Claimant to file petition to adjudicate causal relationship

Compensability

- Compensability decision must be made within 21 days of notice of injury
 - Denial
 - Acceptance by way of Notice of Compensation Payable (NCP)
 - Temporary acceptance by way of Temporary Notice of Compensation Payable (TNCP) for 90 days

Panel Providers

- Employee must treat with listed panel providers for first 90 days.
- If Employee fails to treat with panel for first 90 days, any treatment with non panel within first 90 days can be denied.
- To enforce this provision, must have time of hire panel sign-off by employee and time of injury sign-off.
- Must provide or post list of panel providers for employee.

Accident Reporting

- Important - Emphasize to employees to report work injuries, no matter how slight, ASAP to employer.
- First report of injury (FROI) submitted by employer to claims handler at Inservco.
- Internal accident reports are also important to document date, time, mechanism of injury, body parts injured.
- Any inconsistencies in accident reporting and later testimony by employee can be used effectively in litigation but to also aid in investigation of claim as to compensability, prior medical history, current treating doctors, past medical history, etc.

Litigation

Claimant initiated litigation can include:

- Claim petition for indemnity and/or medical bills for an original injury which has been denied
- Reinstatement from originally accepted injury which has been closed due to return to work, etc.

Employer initiated litigation can include:

- Petition to terminate- seeking cessation of liability to pay both medical and indemnity benefits
- Petition to suspend/modify- cessation or reduction in wage loss benefits
- Multiple other petitions to address a variety of issues

Litigation (cont'd)

- Referral to defense counsel
 - Answer to petition is filed or
 - Trust files petition to initiate litigation or
 - Both can occur simultaneously
- Defense counsel
 - Analyzes issues
 - Represents SMT Member and Trust in proceedings before the WC judge
 - Reports on outcome of hearings and depositions to Inservco claims adjuster, SMT, and when appropriate to employer contact

Heart and Lung Act

Heart and Lung Act Basics

The Pennsylvania Heart & Lung Act provides for wage and medical benefits for police officers and paid firefighters who are temporarily disabled due to an injury in the line of duty.

It is a system that runs in parallel with workers compensation, but can in certain situations stand on its own.

Heart and Lung Act

53 P.S section 637 states:

- “any policeman, fireman or park guard of any county, city, borough, town or township who is injured in the performance of his duties, and by reason thereof is temporarily incapacitated from performing his duties, shall be paid his full rate of salary, as fixed by ordinance or resolution until the disability arising therefrom has ceased. All medical bills incurred in connection with such injury shall be paid by the employer. During the time salary for temporary incapacity shall be paid, any workmen’s compensation, received or collected by any such employee for such period, shall be turned over to the county, city, borough, town or township and paid into the treasury thereof, and if such payment shall not be made by the employee the amount so due the county, city, borough, town or township shall be deducted from any salary then or thereafter becoming due and owing”.

Heart and Lung Act

NEW closed-end COVID Provision: Maximum Duration 60 days

“A person covered under Section 1(a) of the Act of June 28, 1935 (P.L. No.193), referred to as the Enforcement Officer Disability Benefits Law, who contracts or is diagnosed with coronavirus disease 2019 (Covid-19), as identified in the proclamation of disaster emergency issued by the Governor on March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), or is subject to quarantine resulting from exposure to Covid-19, and by reason thereof is temporarily incapacitated from performing his duties, shall be compensated in accordance with section 1(a) of the [Heart and Lung Act].”.

There is a presumption under Act 17 that COVID occurred “in the line of duty.” Not the same as COVID through workers’ compensation.

Heart and Lung Act

For an injured qualified person to qualify for Heart and Lung benefits, the following requirements must be met:

1. The injury occurred while the employee performed an official duty.
2. The injury is a temporary one.
3. The injury prevents that employee from carrying out the essential functions of their job.
4. Their employer cannot find a temporary assignment within the organization that accommodates their injury.

Heart and Lung Act

***Injuries suffered by any of the civic workers or first responders covered by the Pennsylvania Heart and Lung Act do not have to involve the heart or the lungs.

- Other states actually require an injury to the heart and / or lungs.

Official Duties

Workers' Compensation Law

- An employee who suffers an injury “arising in the course of employment” qualifies for benefits.

Heart and Lung Act

- States that an injured worker must have been performing an official duty to qualify for these additional benefits.

Official Duties (cont'd)

Examples:

- If during the chase of a suspect, a police officer jumps a fence and breaks an ankle when they land, they would be covered under the Heart and Lung Act.
- However, if the same officer slipped on an icy patch in the department's parking lot after their shift ended and broke their ankle, they would not qualify for Heart and Lung Act benefits. They would be eligible for workers' compensation.

Official Duties (cont'd)

Examples:

- If a correctional officer suffered a leg injury trying to stop a fight between two inmates, they would qualify for Heart and Lung Act benefits.
- If that same correctional officer was involved in a car crash while running an errand for their supervisor and injured their leg, they would not be eligible for Heart and Lung Act Benefits but would potentially qualify for workers' compensation.

Official Duties (cont'd)

Examples

- If a police officer is injured during training for their job, it would likely be compensable for Heart and Lung Act Benefits.
- If a police officer contracts COVID, ACT 17 of the Heart & Lung Act presumes that they did so in the line of duty and up to 60 days of Heart & Lung benefits are payable. The same presumption is not true for workers' compensation claims.

Benefits

- Unlike workers' compensation, the Pennsylvania Heart and Lung Act offers benefits totaling the full amount of a regular salary, not including overtime or other jobs.
- Benefits from the Pennsylvania Heart and Lung Act are tax-free.
- The Pennsylvania Heart and Lung Act aims to ensure civic workers such as police officers and firefighters can do their jobs without having to worry about on-the-job injuries.

Duration

- Heart and Lung Act benefits will continue until the temporary injury heals and the injured employee can return to work.
- Benefits will also end if the employee's injury becomes permanent. In this case, the injured employee is still eligible for workers' compensation benefits.

Duration (cont'd)

- The standard used to determine whether an injury is temporary or permanent is not as well defined as the Workers' Compensation Act.
- If the employer can show that the injured worker's injury is of "indefinite duration," that may be enough to terminate Heart & Lung benefits.

Duration (cont'd)

- If the covered employee recovers and returns to duty, the Heart & Lung benefits will cease.
- However, if the disability becomes indeterminate in duration and the municipality wishes to end the benefits, it will require a local agency hearing.
- The Heart and Lung Act gives an injured worker a constitutional property right, which means due process rights and a due process hearing.

Application

Employee Files Injury Report

If a covered employee suffers an injury which they believe would make them eligible for Heart & Lung Act benefits, they must file an injury report.

Employer

Must ask for a written statement explaining how the accident occurred, why the employee believes their injury is only temporary, and how it would prevent them from performing the essential duties of their job.

Must then commence an investigation on how the injury occurred. Sometimes, an impartial investigator may be appropriate.

Application

1) Employer determines that the covered employee is eligible to receive H&L benefits

- Compensation begins on the first workday that follows the date the covered employee was injured.

2) Report concludes that the covered employee is not eligible to receive H&L Benefits

- Report must contain details on why the employer believes this to be the case.
- A denial can be appealed at a due process hearing. The covered employee must then file an appeal within the timeframe indicated in the employer's letter, usually 20 days. If they do not file it in a timely fashion, they may lose the right to a due process hearing.

Application

Employers need for the application process:

1. Form application
2. Policy provisions for Heart & Lung Act
3. Ensure compliance with a union contract
4. Details about Heart & Lung appeal process

Adjudication

- If the municipality wants to deny or end a Heart & Lung claim
 - Schedule a local agency hearing (under the requirements of the local agency law).
 - Hearing must be held before the local agency board.
- The covered employee must be notified of:
 - the time and place of the hearing
 - given the right to legal representation
 - the right to present evidence and witnesses.
- A hearing officer will conduct the proceedings.

Adjudication

- The decision of the local agency board must be reduced to writing and served on the covered employee.
- The covered employee has the right to appeal the board's decision.
 - Appeal heard by the Common Pleas Court of the county where the municipality is located.
- Contact your local labor counsel or solicitor on how this process works in your jurisdiction.

Using Sick or Vacation time in lieu...

- The Heart and Lung Act specifically states that an employer **may not** use any sick leave or vacation time to account for missed days if an injured worker is receiving Heart and Lung Act benefits.

Intersection of Workers' Compensation And Heart & Lung

Intersection of WC and H&L

Heart & Lung and the Pennsylvania Workers' Compensation system in some ways act together (indemnity benefits), but in other areas are very different (the adjudication process).

- Heart & Lung pays 100% of wages as set by ordinance or resolution
- Workers' compensation pays 66 2/3 percent of the injured workers Average Weekly Wage up to the statewide maximum rate, currently \$1,205 weekly.
- The basic idea is that workers' comp will pay the calculated indemnity benefit and the municipality will pay the difference up to the 100% of the base rate of pay.
- If the injured employee receives a workers' compensation indemnity benefit, per the Heart & Lung Act, they are obligated to turn it over to the municipal employer.

Intersection of WC and H&L

Important distinction:

The workers' compensation system has no jurisdiction over the Heart & Lung process. Similarly, a decision by a local agency board has no control over the workers compensation adjudication process.

However....

Intersection of WC and H&L

- One glaring exception however has to do with the wording of a local agency board decision.
 - The local board's decision declared a police officer "permanently" disabled.
 - Some months later, in a WC adjudication process, the carrier attempted to show that the claimant had recovered from his injuries. When presented with the "permanently disabled" declaration by the local agency board, the worker's comp judge decided that his hands were tied, and the officer could never be declared "recovered". That decision was ultimately appealed to the Commonwealth Court, who agreed with the comp judge.
- Takeaway from this is that for purposes of local agency hearings to end Heart & Lung benefits, the word "permanent" should never be used.
- Instead, substitute "disabled for an indeterminate period".

Intersection of WC and H&L

- The determination of compensability by the workers' comp carrier involves an investigation and the receipt of medical records. The process can take a few days, plus if information is uncovered that creates doubt as to the connection of the mechanism of injury reported and the actual physical injury, it could lead to a denial.
- If the municipality immediately picks up the Heart & Lung coverage without any thought to its compensability and the workers' comp insurer denies the claim, the local government could find itself responsible for 100% of the indemnity benefits as well as the cost of all the medical treatment until it can end them through the local agency hearing process.

Intersection of WC and H&L

Always check with the WC carrier and labor counsel or solicitor regarding whether there is an intention to accept the claim for WC before the injury is accepted for H&L purposes.

Coordinating Workers' Comp and H&L Benefits

- Timely submission of WC claim
- Report claim to SMT via Inservco as soon as you are aware of work related allegation- employee will not always use “magic language” to trigger need to report
- SMT and Inservco adjuster will let you know if WC claim is being accepted or denied so that you can make a determination on whether to accept or deny H&L.
- SMT and Inservco adjuster will advise you in the event of acceptance of claim whether claimant is treating with panel provider and keep you updated.

Coordinating WC and H&L Benefits (cont'd)

- Important for SMT Member to advise Inservco and SMT as to whether employee has filed a H&L application and how the Member intends to deal with the H&L claim.
 - In general, if the WC claim is denied, so too should the H&L claim be denied.
- Establish written policy on H&L
 - Timing of response
 - Acceptance or denial.
 - WC decision time is 21 days from Date Of Injury (DOI).
- Coordinate payment of WC and H&L.
 - Employee signs over WC check to employer
- If a Member has H&L insurance through another policy report this to WC

Coordinating WC and H&L Benefits (cont'd)

Coordination of light duty.

- Light duty helps contain WC exposure and financial impact of claim for Member
- Light duty helps provide leverage for settlement and eliminates or reduces H&L exposure.
- Employer (Member) and SMT must balance respective interests in terms of providing light duty and duration of same.
- WC will help draft job offers in coordination with WC and labor counsel

Coordinating WC and H&L Benefits (cont'd)

Communication with claimant, insurance adjuster, employer

Inservco and SMT will keep Member advised as requested of any updates in WC claim and we ask that Member do the same in terms of direct communications with employee and H&L claim.

COVID and WC and H&L considerations

Act 17 creates presumption that police officers and other first responders who are entitled to H&L receive up to 60 days of H&L without inquiry into work relatedness. However, generally speaking WC will deny those claims as work related is difficult to prove and there is no presumption currently under WC Act for COVID.

Coordinating WC and H&L Benefits (cont'd)

WC claim questions should be posed to WC insurance (SMT)

H&L questions should be posed to employer's (Member) labor counsel

- If needed, can loop in WC and WC counsel to devise a coordinated strategy.

? Questions
And
Answers ?

Future Comments & Questions



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Thank you!



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