

October 14, 2003

To: Workers' compensation insurers, self-insured employers, third-party claims administrators, private claim-closure contractors and vendors, claims examiners, attorneys, and other interested parties.

Subject: Computing reduction of subsequent PPD awards for claims with dates of injury and first closure between January 1, 2000, and July 30, 2001.

On September 27, 2001, after Senate Bill 485 (SB 485) was signed on July 30, 2001, the Workers' Compensation Division (WCD) issued an industry notice explaining the bill's effect on unscheduled permanent partial disability (PPD) rates. The notice provided guidance about applying the new statutory provisions to claims of workers injured between January 1, 2000 and July 30, 2001 and closed in that same time frame. Specifically, Sections 6 and 6(a) contain prohibitions about using the corrected rate schedule for claims already closed as a means of reducing PPD where the prior transposition error resulted in awards larger than intended. To read the September 27, 2001 industry notice, please go to WCD's Web site,

http://www.cbs.state.or.us/external/wcd/communications/industry_notices/industry_7.pdf

Initially, WCD identified the primary impact as occurring in cases of unscheduled PPD awards between 40 percent and 50 percent. We determined which claims were directly and immediately affected by the error and reimbursed workers whose awards were lower than they should have been. However, an issue *not* covered in the September 27, 2001 industry notice is how to calculate subsequent award reductions in claims whose first closure occurred before the effective date of SB 485. Because SB 485 was crafted to avoid harming workers who received benefits inconsistent with the original intent of the rate schedules, that remains the long-term focus of appropriate computation methods for subsequent PPD awards in those claims.

On the other side of this notice are examples of an award, properly and improperly computed, based on the intent of SB 485. The examples that incorrectly compute the total award reveal a sizable reduction in the worker's most recent PPD award that is harmful to the worker. In such cases, WCD staff would send an 873 form to the insurer requesting a Correcting Notice of Closure (NOC).

Correct computation

<p><u>DOI:</u> 8/1/2000</p> <p><u>First closure:</u> 1/15/2001, 30% = 96°</p> <p>First 64° @ \$267.44.....\$ 17,116.16</p> <p>Add'l 32° @ \$153 <u>4,896.00</u></p> <p>Original award TOTAL....\$ 22,012.16</p>	<p><u>Second closure:</u> 3/26/03</p> <p>Reduced to 24% = 76.8°</p> <p>Original award TOTAL....\$ 22,012.16</p> <p>Minus current award:</p> <p>-6% (-19.2 °) @ \$153.00</p> <p>(rate for 2nd tier as granted).....</p> <p>..... <u>\$ 2,937.60</u></p> <p>Net dollars awarded \$ 19,074.56</p>
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Incorrect computations

<p><u>Example 1</u></p> <p><u>All re-computed at current rate</u></p> <ul style="list-style-type: none"> • <u>First closure:</u> 30% = 96° = \$22,012.16 • <u>Second closure:</u> <ul style="list-style-type: none"> 1st 64° @ \$153.00 = \$ 9,792.00 Add'l 12.8° @ 267.44 = <u>3,423.23</u> Current award..... \$13,215.23 	<p><u>Example 2</u></p> <p><u>Reduction figured at current rate</u></p> <ul style="list-style-type: none"> • <u>First closure:</u> 30% = 96° = \$22,012.16 • <u>Second closure:</u> <ul style="list-style-type: none"> -6% (-19.2°) @ 267.44 (current rate for 2nd tier) Minus current award....<u>\$ 5,134.85</u> Net dollars awarded.....\$16,877.31
<p>Summary of Harm to the Worker</p>	
<p>Correct value of new award.....\$19,074.56</p> <p>Incorrect value of new award....\$13,215.23</p> <p>Resulting harm.....\$ 5,859.33</p>	<p>Correct value of new award.....\$19,074.56</p> <p>Incorrect value of new award....\$16,877.31</p> <p>Resulting harm.....\$ 2,197.25</p>

To summarize the fundamental principle, if PPD was granted at one rate and a later award reduces the PPD amount, the reduction is taken at the rate at which it was granted.

If you have questions about this issue, please contact Carol Helton, technical issues coordinator, (503) 947-7526, or send e-mail to carol.e.helton@state.or.us.

John L. Shilts, Administrator
Workers' Compensation Division

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