



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Risk Management



Phillip A. Lattimore, III
Chief Risk Officer

ADMINISTRATIVE ISSUANCE SYSTEM

Administrative Order No. 15-02

Dated: February 9, 2015

SUBJECT: Late Notice of Determinations

DISTRIBUTION: ORM Employees, Third Party Administrator Staff; Agency Risk Management Representatives, Workers' Compensation Claimants, Public Sector Workers' Compensation Program.

EXPIRATION DATE: Until Superseded or Rescinded.

I. Purpose

The purpose for this administrative issuance is to set forth the District of Columbia's policy and procedures for initiating the error and omission (E&O) process for when the Third Party Administrator (TPA) has failed to issue timely Notice of Determinations (NOD) and/or controversion decisions in initial determinations.

II. Applicability

Until further modified or rescinded, this Order applies to all ORM employees, TPA staff and recipients of workers' compensation.

III. Authority

a. Statutes and Regulations

The District of Columbia Code, the statute that sets forth the legislative laws for the District of Columbia, states that the government shall render decisions within thirty (30) days of the filing of claims by employees who seek benefits for injuries sustained in the workplace. D.C. Code § 1-623.24(a) states:

The Mayor or his or her designee (the TPA) shall determine and make a finding of facts and an award for or against payment of compensation . . . within 30 days after the claim was filed. . . .

In addition, the Public Sector Workers' Compensation Program (PSWCP) promulgated regulations to implement this law. 7 DCMR § 111.1 states:

The Program shall make an initial determination on a newly filed claim within thirty (30) days of the date the claim was first reported to the Program.

7 DCMR § 112.4 also states that:

The Program shall issue the notice of controversion before the thirtieth (30th) day following the date the claim was reported, shall explain the reasons a determination cannot be made, and shall describe the information or actions needed to make a determination.

See also D.C. Code § 1-623.24 (a-3)(1) and 7 DCMR §112.6 (second notice of controversion must be sent).

The District's laws are clear that decisions regarding controversion and requests for workers' compensation benefits must be made within 30 days of the filing of a claim.

b. Contract

The District of Columbia has hired a TPA to carry out the daily operations of the PSWCP. In Section C.5.5.3 of the District of Columbia –TPA contract, the TPA is contractually and legally bound to issue decisions for benefits within thirty (30) days of the filing of the claim unless the claim has been controverted (placed on hold and/or stayed) within the thirty day time period for issuing a NOD. The contract states:

The contractor shall issue an NOD compensability or controversion decision to each claimant and respective agency contact within twenty-one (21) days after a claim is filed, and shall provide in detail the reasons for such denial or deferrals, and appeal rights, or shall approve compensation pay to the claimant.

The contract further states that:

The contractor shall process all wage benefits and issue payments within five (5) calendar days of benefits due after Continuation of Pay (COP).

See Section C.5.5.3 of District of Columbia-TPA Contract.

IV. Policy

As a result of the law and the contract that sets forth the time requirements for issuing decisions for initial requests for workers' compensation benefits, the failure of the TPA to either render a NOD within thirty days or controvert the claim within the thirty (30) day time period shall constitute a *presumptive* error and omission.

The Compliance Officer shall document each claim where the TPA has failed to issue a NOD or controversion decision within the thirty day time-frame. Once payments in these claims commence, the Compliance Officer shall track the payments. The payments made in each E & O claim shall serve as the presumptive value of the error and omission that the TPA owes to the District for its failure to issue timely decisions "*on the merits.*"

Controversion decisions: The issuance of a controversion decision within thirty (30) days of the filing of the claim will not always absolve the TPA of an error and omission. The TPA will be charged with an error and omission when the claimant has submitted all of the necessary documents for the TPA adjuster to render a timely claims decision on the merits, but the TPA fails to render a decision on the merits and unnecessarily controverts the claim in order to meet the 30 day deadline in order to avoid an E & O designation.

TPA Process for Challenging the Error and Omission: Within fifteen (15) calendar days of receiving notice from the District of Columbia that a claim has been presumptively determined to be an E & O because of the TPA's failure to issue a timely decision, the TPA may rebut the presumption by requesting in writing that the Chief Risk Officer (CRO) and/or the CRO designee remove the specific claim from the E & O list. A copy of the written request shall also be served on the PSWCP Manager and the Compliance Officer. The TPA shall set forth its reason for requesting the removal of the claim from the E & O list, and it may submit evidence to support its request. In determining whether to remove the claim from the E & O list, the following factors may be taken into consideration:

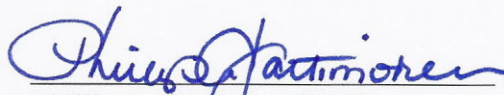
1. If the TPA's failure to issue a timely decision in the claim at issue constitutes excusable neglect;
2. Whether there exists a pattern or practice by the TPA of missing deadlines in claims that request benefits, or controverting claims when all information is in the file to render a decision on the merits;

3. Whether safeguards have been put in place, and staff training implemented, to prevent the missing of deadlines. The TPA shall identify the safeguards and training. The CRO will consider whether the safeguards or training have brought about any improvement in deciding claims within the thirty (30) day time period.

After receiving a request from the TPA to remove a claim from the E&O list, the Program Manager and Compliance Officer shall recommend to the CRO whether to grant the TPA's request. The CRO shall review the recommendation, and after considering the evidence, shall independently render a final decision on whether to remove the claim from the E & O list. The TPA will receive written notice about the final disposition of its request to remove a claim from the E & O list.

If the CRO decides to keep the claim on the E & O list, the Compliance Officer shall continue to track all payments made in claims with untimely NOD and controversion decisions until the claim is closed and shall place the payment amounts on these claims on the final E & O list that the Government will submit to the TPA for payment, offset and/or reimbursement. This information will be shared with the District's contracting officer for proper handling, enforcement and/or resolution with the TPA.

Effective Date: This Order shall be implemented immediately.


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