

U.S. DEPARTMENT OF LABOR

EMPLOYMENT STANDARDS ADMINISTRATION

Office of Workers' Compensation Programs

Washington, D.C. 20211

August 12, 1974

No. 18



NOTICE TO INSURANCE CARRIERS, SELF-INSURED EMPLOYERS UNDER THE LONGSHOREMEN'S COMPENSATION ACT, AND OTHER INTERESTED PERSONS

Subject: Medical Care, Supervision Procedures, and Impartial Medical Examinations under the Longshoremen's and Harbor Workers' Compensation Act, As Amended

This notice is to advise interested parties that the Office of Workers' Compensation Programs (OWCP) will begin implementing the procedures described herein, concerning medical care under the amended Longshore Act, effective the date of this notice, August 12, 1974. This notice should be read in conjunction with prior related notices (No. 2 - November 15, 1972, No. 6 - January 25, 1973, and No. 16 - May 20, 1974).

In the November 15, 1972, notice, insurance carriers and self-insured employers were advised of the basic responsibility of employers to authorize medical care for injuries covered by the amended Longshore Act by physicians selected by injured workers. This was followed by a notice on January 25, 1973, providing instructions for the use of the two-part Form LS-1, "Request for Examination And/Or Treatment and Attending Physician's Report of Injury and Treatment." Instructions provide that Form LS-1 be furnished by the employer to an injured employee who gives notice of an on-the-job injury, and be addressed to the physician the employee designates as his/her choice. The form will be presented by the employee to the physician selected.

The law provides that a report of injury and treatment is to be completed by the examining physician on a form prescribed by the Secretary of Labor within ten days of the initial examination and forwarded to the Deputy Commissioner, and to the insurance carrier or self-insurer. The back of Form LS-1 provides a form for this purpose. (It has been noted that Form LS-1 is not being used extensively, and we urge that information be disseminated to the proper persons that this form is to be used, rather than State workers' compensation forms or other substitutes.)

*Include your address, ZIP code, and file number on all correspondence*

The procedures being implemented provide that district offices of OWCP are to see that medical reports after the first one are submitted to them by treating physicians at 30 day intervals on Form BEC-204 (until revision) or by narrative reports. In long term disability cases, progress reports may be extended to 90 day intervals or as determined by the Deputy Commissioner. To insure that adequate medical reports are received with respect to any case, the Deputy Commissioner may take administrative action within his authority when a physician fails to report as described, or when requested to do so.

#### Impartial Medical Examinations

Deputy Commissioners have been advised to make liberal use of impartial medical examinations under the authority granted by Section 7(e) of the Act, as amended. Impartial medical examinations are to be utilized where medical questions arise, regarding, for instance, the necessity of medical treatment, indications for or against medical procedures, or the duration of required treatment and the effectiveness of such treatment as may have been provided. In addition, when there is a question as to the degree of physical impairment, this procedure may be utilized. However, the medical examiner will not be asked to evaluate the employee's disability, since this is an economic question. (Refer to Notice No. 16, May 20, 1974)

The procedures advise the Deputy Commissioners to utilize Section 7(i) of the Act, as amended, in appropriate situations, by having the respective parties agree to the selection of an impartial examiner by the Deputy Commissioner. The parties may be asked to agree to an appropriate specialist from a list of three or more physicians selected by the Deputy Commissioner.

Board-certified specialists will be used for impartial medical examinations insofar as practicable. However, it is recognized that there will be times when a non-certified specialist will have to be used due to his/her special qualifications or when it is virtually impossible to find an individual in a community who, during the period of two years prior to such employment has been employed by, or accepted or participated in any fee related to a workers' compensation claim from any insurance carrier or self-insured employer.

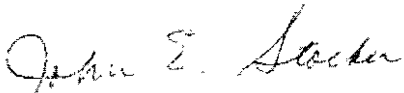
In order to insure the impartiality of the medical examiner, he/she will not have the benefit of prior opinions, or the use of reports and conclusions regarding the case, unless the Deputy Commissioner determines in a particular case that for good cause they should be made available. In such cases where reports are furnished the medical examiner, the names of the physicians involved will be withheld. The Deputy Commissioner will furnish the impartial medical examiner with a memorandum of such undisputed facts as the Deputy Commissioner feels necessary to form the basis for the examiner's opinions. It will not be necessary for the parties to formally agree on these facts through informal conference proceedings prior to an impartial medical examination, unless in the Deputy Commissioner's opinion such proceedings are necessary to prepare a memorandum of undisputed facts.

A right of review or of reexamination will be granted to any party who is dissatisfied with the report of the impartial examiner, unless such review is determined by the Deputy Commissioner to be completely unwarranted. The review will be completed within two weeks if it is possible. If the parties cannot reach agreement on a medical question after a review or reexamination, the adjudicator shall nevertheless make a recommendation on the medical question.

Unreasonable refusal by an employee to submit to a recommended examination may result in a suspension of compensation benefits during the period of refusal. The place selected for an examination must be located so as to be reasonably convenient to the claimant.

The cost of impartial medical examinations will be charged to the employer if self-insured, to the insurance carrier, or to the special fund established by Section 44 of the Act, as amended. The Deputy Commissioner, in his discretion, shall determine who will pay the cost of the examination.

Your workers' compensation departments, field representatives who service workers' compensation claims under the Act, as extended, and the employers whom you service should be advised through your information channels of these procedures, which become effective August 12, 1974.



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