Adjudicative Advice

Employers' Initial Accident Reporting Obligations — Clarification

In March of 2000, the WSIB revised its policy entitled "Employers' Initial Accident Reporting Obligations," which is document 15-01-02 in the Operational Policy Manual (OPM). One of the principal changes to the policy was to distinguish between the terms "first aid" and "health care." Because employers are not required to report accidents in which the worker simply requires first aid, the policy defined these terms to assist employers in determining when to report.

The policy defined first aid to mean: "…the one-time treatment or care and any follow-up visit(s) for observation purposes only." It then provided several examples of what should be considered first aid. The policy used the definition of health care provided in the legislation to include: "…services requiring the professional skills of a health care practitioner; services provided at hospitals and health facilities; and prescription drugs."

The policy further provided that: "…the employer should consider the type of care provided, rather than the professional qualifications of the provider giving the care, or where the care was provided."

Care provided by a health care practitioner

The difficulty being experienced by some employers and decision-makers revolves around "care" provided by a health care practitioner. Because first aid is care that can be provided by a layperson, and that need not involve a health care practitioner, the question arises as to whether employers should always complete an accident report form if the worker is cared for by a health care practitioner.

The policy assumes that workers who require first aid will generally seek care from a "first-aider." Consequently, the worker's decision to seek care from a health care practitioner, as opposed to a first-aider, should generally be seen as a need for "health care." Having said this, the policy does allow for the possibility of health care practitioners providing "first aid" only.

This possibility is more likely to occur:

- at hospitals or health facilities that are "workplaces." That is, health care practitioners who work at hospitals or health facilities may be called upon to provide first aid only to co-workers,
- with employers who have on-site health care practitioners, and
- at health care facilities who have contracts with specific employers to provide first aid and health care to their workers.

Generally speaking, the WSIB's service delivery teams, who are trained to understand the nature and practices of our customers' workplaces, will be familiar with these situations. For example, the service delivery teams in the Health Care Sector know that after regular

Notice: This document is intended to assist WSIB decision-makers in reaching consistent decisions in similar fact situations and to supplement applicable WSIB policies and guidelines as set out in the Operational Policy Manual (OPM). This document is **not a policy** and in the event of a conflict between this document and an OPM policy or guideline, the decision-maker will rely on the latter.

business hours, some hospitals provide first aid to their injured workers in the emergency room only.

Therefore, apart from these exceptions, where the provision of first aid by a health care practitioner is specifically contemplated, employers can presume that if a health care practitioner provides care to a worker, that worker received "health care" unless it is clear that the worker only received "first aid."

In practical terms, this should mean that following a work-related injury in which the worker receives care from a health care practitioner, the employer will want to learn if the "professional skills" of the health care practitioner were required in caring for the worker. For instance, a clinical assessment conducted by a doctor would be considered health care under this policy. It would not matter, if, following the assessment, no actual treatment was required, or a simple bandage was applied. The fact that a clinical assessment took place would render this "health care," and, therefore, trigger the employer's obligation to report.

On the other hand, the facts could suggest that the health care practitioner simply applied a dressing, and did not provide a clinical assessment. In this situation, the professional skills of the health care practitioner would not have been utilized, and the care could have been administered by a first-aider. As a result, the level of care here should be considered "first aid" and, therefore, need not be reported to the WSIB.

Therefore, regardless of whether the care was provided:

- on the employer's premises,
- at the health care practitioner's office, or
- at a hospital or health facility,

the issue of whether "professional skills" were required must be answered. If customers remain unclear as to whether a reporting obligation exists in particular cases, they should contact the WSIB for assistance.

Claims initiated via the Health Professional's Report (Form 8)

In some cases, employers may not submit an accident report form because of their view that "health care" was not provided. If, however, the WSIB receives a Form 8, and there is no Form 7 on file, the WSIB would automatically send the employer a Form 7 to complete.

The employer may then contact the WSIB to question why the accident should be reported. At this point, it is incumbent on the decision-maker to confirm that "health care" was in fact provided to the worker, and explain to the employer why a Form 7 is being requested.

Once the decision-maker has concluded that health care was provided, and that a reporting obligation exists, the employer must fulfil that obligation. This obligation does not preclude the employer from objecting to the claim.

If the decision-maker concludes that the worker, in fact, only received first aid, the decision-maker should inform the employer that:

- a Form 7 need not be completed,
- the claim will be abandoned, and
- the costs associated with the completed Form 8 will be removed from the employer's accident cost statement.

Current Procedures

For information about current procedures, staff should refer to the two T.I.P.S. articles

("New Reporting Obligations" – February, 2000, and "Late Filing Procedures and Penalties"– February, 2001*) as well as Policy Report, Volume 14, Number 4, November 2001.

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