

**Submission to the Statutory Review –
Workplace NL on behalf of Western Health, Central Health, Eastern Health and
Labrador Grenfell Health
Date: January 20th, 2021**

Workplace NL Statutory Review 2020

Question 1: Are any adjustments required to the workers' compensation system's Internal Review and External Review processes? If so, what changes would be beneficial.

Internal Review

- There have been difficulties in obtaining/receiving a case file in a timely manner in order to be able to respond/appeal appropriately to the internal review process. Once an employer has made the Commission aware that they will be proceeding with a submission to internal review process, a case file should be sent to the representative similar to the External review process. It is essential that the representative receive the case file quickly in order to prepare a response within the 30 day deadline.

External Review

- Workplace NL should participate in External appeal hearings.
- The process for External Review is lengthy (COVID aside). **There appears to be a significant lag time reflected in getting hearings scheduled and heard without being rescheduled.** This may warrant further examination with respect to analysis of key performance metrics including length of time it has taken, the number of times hearings have been postponed and/or rescheduled, and an analysis of the reasons. Recommendations could be made on changes required to proceed with hearings in a timely fashion.
- Delays in the WHSCRD practice can significantly impact a worker's recovery and decision made by an employer on how to best plan their day-to-day business.

Question 2: Are processes and requirements surrounding both Internal Review and External Review clearly communicated to interested parties? If not, how can this be improved upon?

- The processes and requirements are not communicated clearly too all parties. Workers often feel lost and do not know what to do following submitting the form. They do not know what to do with the large file they are provided and how to prepare. A detailed handbook should be created and links to the Worker Advisor shared with workers in order to support workers with navigating these processes.
- Consideration should be given to increased use of electronic communication i.e. e-mail where possible. Often these letters are sent via regular postal mail, this can often be a slower process, especially given the timelines for parties to respond to participation in the processes.
- Needs to clearly outline the process to both the employer and the employee.

Question 3: Are worker benefits being provided in a fair and efficient manner? If not, what are possible areas of improvement?

- Employees whose earnings exceed the maximum earning cap, believe that they are unfairly compensated. This feedback is provided to the employers on a regular basis especially RNUN, NAPE and Management.
- The adjudication of claims needs to happen in a more expedient and transparent manner. RHAs pay WPNL benefits to employees pending approval of their claim. Frequently RHAs must recover monies from employees because of the time lag between filing a claim and the adjudication process. As a result, workers have often already received significant amounts of money in advance based on the estimated WPNL rate prior to their

claim being accepted or denied. If their claim is denied, RHA's must recover the monies which have been paid in advance to the worker. This often places hardship on the employee. While we acknowledge that providing salary in advance is greatly beneficial to the worker following a workplace injury, the worker is unfairly disadvantaged if a claim is denied following an adjudication period.

- Adjudication timelines may be shortened if they were assigned/legislated parameters similar to internal/external review.
- Additionally, we believe improvements can be made in the overall duration of claims. Often the ability to "stay on" WPNL benefits seems to be accessible. There should be greater accountabilities placed on medical documentation required to enable people to continue to be away from the workplace. Consideration should be given to enhance the documentation required that enables a medical provider to indicate that a person has "no" functional capabilities or "0" hours of work.
- Information pertaining to "expected" durations for various categories of injuries should be readily available to all providers and on the WPNL webpage for both injured workers and employers. When an injured worker needs to be off longer than expected a greater justification needs to be made by the medical providers.
 - Best practice guidelines (e.g. the REDDS guidelines are available) and accepted/used within other jurisdictions (e.g. Nova Scotia, Alberta).

Question 4: How well is the balance between provision of benefits and employer assessment rates being achieved?

- Although improvements have been noted in the past 5-6 years, we offer the following observations:
- With respect to provisions of benefits, including health care and rehabilitative services, the separation and exemption of costs related to underlying medical conditions requires clearer delineation. The duty should not be on the employer to object or appeal for an exemption of underlying medical conditions. Despite no fault insurance, there have been numerous cases where counter evidence to the employee's claim is not accepted, resulting in cases acceptance.
- Health providers are paid despite incomplete documentation and at times are unresponsive to the employee, WPNL or the employer to support efforts to get the employee back to work. This is contrary to all efforts to reduce claim costs.
- While the concept of a PRIME Rebate is admirable employers have little ability and/or success when appealing the validity of any particular claim. Based on experience the great majority of employee claims are accepted resulting in increased Experiencing Rating as a result of the delays in managing claims this creates and potential risk for loss of rebates.

Question 5: With regards to maintaining financial sustainability, are there priority areas that need attention?

- Ability to better manage/control escalating Healthcare costs should be considered priority. Treatments should be evidence-based and offer long term benefits. If there are no clear long-term benefits, it should not be utilized, as worker often plateau with no improvements. Greater scrutiny of treatment is needed as they are often very expensive and offer little benefits in the long term. Treatments that have a trend of failing should not be paid for by the employer.
- A stronger focus on controlling and monitoring medical costs such as chiropractic care, physiotherapy, and

Clinic Based Occupational Rehab. Medical management is suggested. This is the role of the Commission however, we see opportunity for improved management of these services.

- There has been an increase in the participation in clinic-based rehab programs and work-site occupational rehab programs by external providers. These programs are costly to the employer. Employees are often participating in these programs 2-3 times a week for multiple hours each session. In several instances the program extends longer than originally planned and often without marked improvements. Improved monitoring and measuring of outcomes to ensure values based approach is suggested.
- The quality and standardization of medical documentation being provided is suggested as an area for improvement (there should be limited circumstances where a person is totally removed from work). Sufficient information should be provided for an employer to determine if, and how, they can accommodate the injured worker in the workplace.
- Greater emphasis on durations of injury as compared to medical guidelines (i.e. REED Guidelines, MDA Guidelines, DSM Criteria).
- Greater emphasis (or limits) on the number of sessions rehabilitative treatment sessions and have mechanisms to ensure the same is in keeping with medical guidelines/best practice.
- A review of rehabilitative treatment provided to similar non-occupational injuries and occupational injuries could be considered to help inform decisions. Durations of private treatment for non-work-related injuries vs. work-related injuries and/or hospital-based treatment vs. private clinics.
- If a provider refers to another treatment modality within their own clinic (or another clinic within their umbrella) there should be a third-party review for the need.
- More accountability and enforcement of medical provider documentation requirements including clear functional information.
- Stronger actions by Early & Safe Return to Work Facilitators to respond quickly when employers are unable to obtain necessary information from health provider.
- Non compensable illness resulting in workplace absence when unrelated to the WPNL claim should be suspended in a timely fashion.
- Priority access to specialty and diagnostic testing.
- Reasonable timelines for Payments of Extended Earnings loss need to be determined. Labour market re-entry option needs to be considered more frequently.
- Healthcare costs should be considered priority. Treatments should be **evidence-based** and offer long term benefits. If there are no clear long-term benefits, it should not be utilized, as workers often plateau with no improvements. Greater scrutiny of treatment is needed as they are often very expensive and offer little benefits in the long term. Treatments that have a trend of failing should not be paid for by WPNL.

Question 6: What role can stakeholders play in reducing the cost of the system?

- Workers need to ensure they are complying with the recommendations from their Health care providers and are an active part of the ESRTW process.
- Healthcare providers need to provide accurate objective information in a timely manner and always have an

ESRTW focus.

- For various reasons, the RHAs recognize that we do not engage in appeals and objections as often as we likely should. As stakeholders, if we challenged the decisions made by WPNL more often in a formal manner, WPNL would give due consideration to the evidence provided and be held accountable for the decisions that they make.
- If the system is overfunded, maybe some of those funds can be put back into the hands of employers to help with project work for injured workers.
- Health providers must provide timely comprehensive information.
- Health providers must give employer greater detail on function and leave it to employer to find duties that can be safely worked. "No clearance", 0 hours of work is not useful to ESRTW planning.
- Post-secondary institutions better educate students on injury prevention.
- Post-secondary health professional training should better educate physicians and rehabilitation learners on disability and workplace recovery.
- WPNL case managers must contact employer regularly, attend meetings with employer/employee as requested by employer, and must update the employer and provide reports to employer immediately when received.
- Partnership with innovation industry to seek safer workplace equipment, specifically with health care workplace challenges in unpredictable work demands.
- Adjudicators should properly examine the Workers claims in greater details.
- Stakeholders need more clarity on how claims can be contested.
- Health care providers should offer evidence-based treatments that offer long term benefits.
- Physician education should be one on one with WPNL physician.
 - An on-line learning module should be developed for physicians/health care providers that provides information about how to complete MD/PR reports and work successfully with the ESRTW process. This should be completed each year by physicians/health care providers and be mandatory to treat WPNL patients.

Question 7: What recommendations would you make that could improve the overall workers' compensation system?

- Manage the medical more efficiently.
- Stronger adjudication process, Workplace NL has such a high approval rate.
- Improve investigation process.
- Greater emphasis on ensuring the medical documentation is adequate.

- Consideration should be given to using Independent Medical Exams more when injuries extended beyond expected durations, as based medical best practice guidelines.
- Option to deny payment of the health care provider report should exist. WPNL should be consistently denying payment when **no function** is provided.
- Suggesting that WPNL refer employee for Functional Assessment when function is not provided. This is a benefit to employee as well to reduce generalized deconditioning and resume work faster if possible. Generic notes are being accepted for “off work” occur too often.
- The employer requires objective functional information to support an employee to RTW in any capacity. WPNL could look at removing the decision to RTW from the MD, rather ask MD to determine if RTW is medically contraindicated only.
- Consideration for a 3rd party assessment team (i.e., EMPOWER) for claims that exceed 8 weeks duration. This will provide objective medical data and functional /cognitive assessments.
- Direct Physiotherapy referral for all physical injuries. This will provide detailed, objective function immediately to allow the employer to accommodate the employee in the workplace in some capacity.
- When employee is off waiting for specialist apt. (this can be up to 1- 2 years), there should be an end date as to when employer is held responsible for payment. We cannot influence this, so perhaps employee is paid from a separate pool of funds that is non-PRIME related (i.e. system delays should not be the onus of the employer).
- Access to multiple priority specialty clinic appointments with WPNL could be improved. Lengthy delays in MD not providing any clearance to RTW until assessed by Specialist.
- More rigorous multi-disciplinary team examination of the file after an 8 week claims where minimal progress is seen could be mandatory.
- Workplace NL should provide more training to physicians on the proper filling out of the forms. There should be greater objectivity in assessing worker function by all specialists.
- There is no option on the check boxes on the physician form to indicate the nature of the injury when it is a mental cognitive health work related injury or illness. Now that mental health claims are accepted, this option is critical to help case manage the file.
- There should be an integrated approach to case management. For example, we have seen two different case managers for 2 claims related to mental health and physical health with 2 different claim #'s. This could these be managed by same Case Manager in 1 claim, i.e., physical attack resulting in PTSD. If these could be added to the initial claim it would allow for more efficient/effective case management, with additional benefits to the employee as well.

Question 8: What recommendations should Workplace NL and /or the WHSCRD commence to improve the workers’ compensation system?

- External audits should be engaged to ensure a randomly selected and/or claims meeting outlined criteria (i.e., > average durations, > then expected duration, etc.) are adhering to legislation and/or policies and procedures.
- Emphasize that policies regarding continuation of extended earnings need to be reviewed.
- Strict guidelines regarding claim duration, healthcare durations and lost time durations should be applied

consistently by Workplace NL. These guidelines should also be agreeable to the employers.

Upon review of duration of claims across other jurisdictions it is noted that NL has the longest duration in days of claims at **152.24** days **Table 1** (<https://awcbc.org/en/statistics/canadian-workers-compensation-system-year-at-a-glance/>). In addition to points made throughout document by all RHA's, Table 2 outlines legislation in other jurisdictions that can potentially help reduce durations of claims in NL.

Table 1

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Canadian Workers' Compensation System – 2019 Year at a Glance

Claim Measures

Claim Measures	NL	PE	NS	NB	QC	MB	SK	AB	BC	NT/NU	YT
Lost Time Injury Frequency (per 100 workers)	1.68	1.43	1.72	1.63	2.06	2.52	1.98	1.52	2.20	2.13	1.79
Lost Time Claims	3,700	1,092	5,844	5,314	82,821	12,871	8,754	29,142	55,232	919	453
Fatalities	26	0	21	18	190	19	36	165	141	4	0
Workforce Covered (%)	97.42	97.61	72.90	91.45	92.70	78.19	76.10	81.64	98.02	96.86	99.84
Duration (Average - Days)	152.24	65.55	146.65	51.57	N/A	32.57	62.28	89.66	82.80	73.85	29.16

Table 2

	WPNL	Alberta	Nova Scotia
1. First point of contact for employees	<p>Physiotherapy, Chiropractic or Occupational therapy Services <i>preferred</i> providers exist in NL.</p> <p>Injured workers can access immediately but clearance to return to work needed from physician/chiropractor.</p>	<p>Assigned preferred providers (Occupational Injury Services -OIS Clinics) clinics that employees can access for quick assessments for clearance to return to work (not waiting to see their doctors or ER visits).</p> <p>https://www.wcb.ab.ca/insurance-and-premiums/lower-your-premiums/occupational-injury-service-(ois).html</p>	<p>Direct Access to Early Assessment of Sprains and Strains at Work</p> <p>https://www.wcb.ns.ca/Portals/wcb/Physio_employee4.pdf</p>
2. Access to services	No private access, is it possible WPNL consider travel to another province for assessments	Access for private MRI's, CT scans etc., specialists	
3. Cost relief for delay in surgery due to no fault of employer	Not aware this exists or is applied.	<p>Cost relief is applied when a claim duration is impacted by delays. Example, if an employee is waiting more than 90 days for a compensable surgery, the lost time is not applied to the employer. The lost time would restart at day 91 when the employee underwent treatment.</p> <p>https://www.wcb.ab.ca/assets/pdfs/public/policy/manual/printable_pdfs/0502_2_app1.pdf</p>	
4. Third party Assessment center	A standard 3 rd party assessment or treatment program nonexistent now (previously The EMPOWER) Currently employees attend a clinic-based program of their choice for 1-2 hours per day for up to or more than 12 weeks. Less consistency seen. Consider re-visiting the need for this type of service.	3 rd Party Assessment and Treatment program (Millard Rehabilitation Centre) utilized for cases with little or no progress. Employees enter a full-time program for 4-6 weeks.	
5. Use of disability	Not aware of use of these guidelines at	Clinical guidelines for expected duration of disability are applied (MDA guidelines and DSM Criteria)	The NS Workers Compensation Policy Manual has a specific policy

duration guidelines to	Workplace NL to manage claims.		that address “normal recovery times”; it identifies the Presley Reed Guidelines as the benchmark that will be used to measure duration against
6. Cost relief for back injury	Not aware of this policy at Workplace NL	Back Injury: WCB does not provide cost relief to claims resulting from a direct injury to an otherwise healthy spine unless medical evidence indicates the injury has aggravated a preexisting condition leading to prolonged recovery. https://www.wcb.ab.ca/about-wcb/policy-manual/claimant-and-health-care-services-policies/cost-entitlement-adjust.html -	
7. Access to on-line reports for employers that would allow RHA's to expedite the review of current information and return to work planning	Not available in NL	The employer has access to online reports i.e., physio and physician reports by entering the employee's claim number (assigned as soon as the Employer's Report is submitted). Allows employer to understand Employees status regarding return to work.	