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1. Citation for the state's workers' compensation statute

Maryland Code Ann., Lab & Empl. §9-101 (2014) et seq.; Code of Maryland Regulations (COMAR) Title 14, §09.01.01 et seq.

### SCOPE OF COMPENSABILITY

2. Who are covered "employees" for purposes of workers' compensation?

Any regular payroll employee is a covered employee while in the service of an employer. Md. Code Ann. Lab. & Empl. §9-202. Individuals over whom an employer has sufficient control are covered employees. *Elms v. Renewal by Andersen*, 439 Md. 381, 388, 96 A.3d 175. In addition, covered employees of a subcontractor are potential "statutory employees" of the principal contractor. Md. Code Ann., Lab. & Empl. §9-508.

3. Identify and describe any "statutory employer" provision.

A principal contractor is liable to pay benefits to a covered employee of a subcontractor if the subcontractor does not have sufficient workers' compensation coverage. Md Code Ann., Lab. & Empl. §9-508.

4. What types of injuries are covered and what is the standard of proof for each:

A. Traumatic or "single occurrence" claims.

An "accidental personal injury" must arise from a specific traumatic event. Lab. & Empl. §9-101 (b); *Schemmel v. T.B. Gatch & Sons Contracting & Building Co.*, 164 Md. 671, 166 A. 39 (1933). The "accidental injury" requirement can be satisfied by either a traditional trauma (slip, fall, etc.) or by a sufficiently unusual condition of the work at the time of injury. Benefits are available if a new accidental injury simply aggravates a pre-existing condition, but apportionment is available for permanency.

B. Occupational disease (including respiratory and repetitive use).

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Maryland specifically recognizes occupational diseases of a gradual and insidious nature. The occupational disease must be caused by, not simply aggravated by, the employment. The occupational disease must be a risk inherent in the nature of the Claimant's employment. *King v. Bd. of Educ. of Prince George's Cty.*, 354 Md. 369, 731 A.2d 460. The employer/insurer of last injurious exposure is responsible for the entire claim. Md. Code Ann., Lab. & Empl. §9-502.

### 5. What, if any, injuries or claims are excluded?

Injuries that do not arise from a specific injury, causing sudden mechanical change. Injuries must arise out of "and" in the course of "employment".

### 6. What psychiatric claims or treatments are compensable?

An employee may recover benefits and medical expenses for harm resulting from an accidental personal injury. Md. Code Ann., Lab. & Empl. §9-660(a)(1). The Maryland Court of Appeals has held that purely emotional or psychological harm, unaccompanied by physical injury, may be compensable if caused by an accidental injury. *Belcher v. T. Rowe Price*, 329 Md. 709, 621 A.2d 872 (1993).

In *Davis v. Dynacorp*, 336 Md. 226, 647 A.2d 446 (1994), an employee filed a claim for an alleged occupational disease of a mental disorder resulting from harassment by management and co-workers. The Court of Appeals rejected the compensability of the claim because the alleged mental disorder was not due to the nature of an employment in which hazards of the alleged occupational disease exist. See answer 4B. The Court, however, expressly refused to rule out the possibility that some gradually resulting, purely mental diseases (without physical harm) could be compensable occupational diseases or that there may be circumstances where work induced stress may result in a compensable occupational disease.

More recently, the Maryland Court of Appeals handed down a decision March 4, 1997 in *Means v. Baltimore County*, 344 Md. 661, 689 A.2d 1238 (1997) finding that a post traumatic stress disorder may be compensable as an occupational disease if the employee presents sufficient evidence to meet the statutory requirements. See answer 4B. The case was remanded to the Circuit Court for further determination as to whether the employee had contracted post traumatic stress disorder, whether it arose out of and in the course of her employment, and whether the nature of her employment as a paramedic regularly exposed to grisly accident scenes entails the hazard of developing post traumatic stress disorder.

### 7. What are the applicable statutes of limitations?

The period of limitations for filing a claim is generally two years from the date of accidental injury, Md. Code Ann., Lab. & Empl. §9-709 (b) (3); 18 months from the date of death from an accidental injury, Md. Code Ann., Lab. & Empl. 9-710(b); or, in the case of occupational disease, two years from disablement or death, or from the date the employee first knew the disability was caused by the employment, Md. Code Ann. Lab. & Empl. §9-711. In accidental injury claims, the limitation period is tolled by failure to file an Employers' First Report of accident if the injury resulted in compensable lost time of more than three days. Md. Code Ann., Lab. & Empl. §§9-707, 9-708. The employer/insurer may be "estopped" from raising limitations as a defense if they mislead the employee about the filing requirements.

**8. What are the reporting and notice requirements for those alleging an injury?**

An employee has 10 days from the date of injury (or thirty days after death) within which to notify the employer. Md. Code Ann., Lab. & Empl. §9-704. The employee must notify the employer within one year after he or she knows or has reason to believe that he or she has an occupational disease. Md. Code Ann., Lab. & Empl. Code §9-705.

**9. Describe available defenses based on employee conduct:**

**A. Self-inflicted injury.**

Self-inflicted injuries are not compensable. Md. Code Ann., Lab. & Empl. §9-506(a)(1). However, the law presumes injuries are not as a result of the employee's deliberate act and the burden is on the employer/insurer to prove the employee's intent to inflict the injury. Md. Code Ann., Lab. & Empl. §9-506(g).

**B. Willful misconduct, "horseplay," etc.**

Injuries arising from willful misconduct or "horseplay" in which the employee actively participated are not compensable. Md. Code Ann., Lab. & Empl. §9-506(d).

**C. Injuries or occupational diseases involving drugs and/or alcohol.**

Injuries or occupational diseases caused solely by intoxication or the effects of drugs not prescribed by a physician are not compensable. Md. Code Ann., Lab. & Empl. §§9-506(b), 9-

506(c).

If the primary cause of an injury or occupational disease is due to intoxication from drugs not prescribed by a physician, then only medical benefits can be recovered. Md. Code Ann., Lab. & Empl. §9-506(d).

**10. What, if any, penalties or remedies are available in claims involving fraud?**

A person may not knowingly affect or attempt to affect the payment of compensation, fees, or expenses in a workers' compensation claim by means of a fraudulent representation. Md. Code. Ann., Lab. & Empl. §9-1106. Upon conviction, a violator is subject to criminal penalties (misdemeanor or felony, depending on the value of benefits involved) and may not receive compensation, fees or expenses. The provision applies not only to the employee, but also to any and all persons in the workers' compensation system, including attorneys, employers, insurers, etc., who affect payment by means of a fraudulent representation.

Furthermore, "if it is established by a preponderance of the evidence that a person has knowingly obtained benefits. . . to which the person is not entitled," the Commission must order the person to reimburse the provider of the benefits for the full value of the benefits, plus interest "at a rate of 1.5% per month from the date the Commission notifies the person of the amount to be reimbursed." Md. Code. Ann., Lab. & Empl. §9-310.1.

**11. Is there any defense for falsification of employment records regarding medical history?**

Compensation for an occupational disease is prohibited if the covered employee falsely represented in writing that he or she had not previously been disabled, laid off, or compensated due to the occupational disease. Md. Code Ann., Lab. & Empl. §9-502 (e). The Americans with Disabilities Act may, as a practical matter, eliminate this statutory defense.

**12. Are injuries during recreational and other non-work activities paid for or supported by the employer compensable?**

Injuries sustained during recreational or non-work activities may be compensable if the employer derived a benefit from the activity or sufficiently controlled or directed the employee's participation in it. *Sica v. Retail Credit Co.*, 245 Md. 606, 227 A.2d 33 (1967); *Turner v. State of Maryland*, 61 Md. App. 393, 486 A.2d 804 (1985).

**13. Are injuries by co-employees compensable?**

Yes, provided the injury “arose out of and in the course of employment.” *Rice v. Revere Copper & Bravo, Inc.*, 186 Md. 561, 48 A.2d 166 (1996).

14. Are acts by third parties unrelated to work but committed on the premises, compensable (e.g. "irate paramour" claims)?

Yes. When an employee is attacked by a third party, it is only necessary to show that the incident arose “in the course” of the employment; i.e., while the employee was on the job. Md. Code Ann., Lab. & Empl. §9-101(b); *Giant Food, Inc. v. Gooch*, 245 Md. 160, 225 A.2d 431 (1967). An injury that arises out of but does not occur “in the course of” is not compensable. *Doe v. Buccini Pollin Group, Inc.*, 201 Md.App. 409 (2011).

## BENEFITS

15. What criterion is used for calculating the average weekly wage?

The average weekly wage (AWW) is generally the gross average wage earned by the employee, including tips and overtime, during the 14 weeks before the accidental personal injury or last injurious exposure to the hazards of an occupational disease. Md. Code Ann., Lab. & Empl. §9-602; COMAR 14.09.01.07. Periods of involuntary layoff or involuntary authorized absences are not included in the 14 weeks. COMAR 14.09.01.07. Only the wages from the responsible employer, and not other simultaneously held jobs, are considered. *Crowner v. Baltimore United Butchers Ass'n*, 226 Md. 606, 175 A.2d 7 (1961). For sole proprietors, the AWW is calculated using the sole proprietors net profit and not gross receipts. *Long v. Injured Workers' Insurance Fund*, 448 Md. 253 (2016).

16. How is the rate for temporary/lost time benefits calculated, including minimum and maximum rates?

Temporary total disability benefits are paid at two-thirds of an employee's average weekly wage, not to exceed the state average weekly wage (SAWW). The minimum compensation rate for temporary total disability is \$50.00 unless the Claimant's average weekly wage is less than \$50.00 then the average weekly wage is the compensation rate. Md. Code Ann., Lab. & Empl. §9-621. For the year 2018, the maximum compensation rate for temporary total disability is \$1,094.00.

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17. How long does the employer/insurer have to begin temporary benefits from the date disability begins?

If the Commission finds that an employer/insurer has failed, without good cause, to begin paying an Award within 15 days, it shall assess a fine of up to 20% of the amount of the payment due. The maximum fine rises to 40% if payments are 30 days late. Md. Code Ann., Lab. & Empl. §9-728.

18. What is the "waiting" or "retroactive" period for temporary benefits (e.g. must be out      days before recovering benefits for the first      days)?

An employee must be out 14 days before recovering benefits for the first 3 days. Md. Code Ann., Lab. & Empl. §9-620.

19. What is the standard/procedure for terminating temporary benefits?

The employer/insurer are entitled to unilaterally terminate temporary benefits when the employee achieves maximum medical improvement, based upon a medical exam or other good faith reason (e.g. surveillance), or when the employee is awarded permanency. *Jackson v. Bethlehem-Fairchild Shipyard*, 185 Md. 335, 44 A.2d 811 (1945). The employer/insurer must notify the Commission and the employee of the termination by means of a form (WCC Form C-06), supplied by the Commission, attached to the last benefit check. The employer/insurer may also terminate benefits when the employee returns to work, and may do so without filing the form otherwise required.

20. Is the amount of temporary total disability paid credited toward the amount entitled for permanent partial disability?

No. Compensation for permanent partial disability is paid in addition to, and consecutively with, temporary total benefits. Md. Code Ann., Lab. & Empl. §9-631.

21. What disfigurement benefits are available and how are they calculated?

Mutilations and disfigurements resulting from a compensable injury, or resulting from treatment for the injury, are compensable in the discretion of the Commission. The maximum award for disfigurement is 156 weeks. Md. Code Ann., Lab. & Empl. §9-627(i); *Bethlehem-Sparrows Point*

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*Shipyard, Inc. v. Damasiewicz*, 187 Md. 474, 50 A.2d 799 (1947). A Claimant may not simultaneously receive both disfigurement and permanent disability benefits for the same body part.

### 22. How are permanent partial disability benefits calculated, including the minimum and maximum rates?

For injuries occurring on or after January 1, 1988, Maryland has adopted a three tier system for permanent partial disability benefits. In general, for permanency awards of less than 75 weeks, the compensation rate equals one-third of the employee's average weekly wage, up to a maximum set yearly. (2018 maximum is \$183.00). Md. Code Ann., Lab. & Empl. §9-628. This "minor disability" rate does not apply to public safety employees or to injuries to fingers or the great toe. Md. Code Ann., Lab. & Empl. §9-628.

For awards of 75 up to 249 weeks, the rate is two-thirds of the employee's average weekly wage, not to exceed a maximum set annually. (2018 maximum is \$365.00). Md. Code Ann., Lab. & Empl. §9-629. The "serious disability" provision applies if the employee is entitled to 250 weeks or more of permanency benefits. For serious disability awards, the number of weeks of benefits is increased by one-third, and the compensation rate is two-thirds of the employee's average weekly wage, not to exceed 75% of the state average weekly wage. (2018 maximum is \$821.00). Md. Code Ann., Lab. & Empl. §9-630.

#### A. How many weeks are available for scheduled members/parts, and the standard for recovery?

The weeks awarded for loss of a scheduled member are as follows:

Bodily Part	Maximum Weeks
Thumb	100
Index finger	40
Middle finger	35
Ring finger	30
Little finger	25
Great toe	40
Other toes	10

Bodily Part	Maximum Weeks
Hand	250
Arm	300
Foot	250
Leg	300
Eye	250
Loss of hearing:	
One ear	125
Both ears	250

Md. Code Ann., Lab. & Empl. §9-627.

**B. Number of weeks for "whole person" and standard for recovery.**

In all cases of permanent partial disability other than those listed as scheduled members ("Other Cases"), the Commission determines the industrial loss of use sustained by the employee. The award expresses the industrial loss of use as a percentage of loss of use of the whole body, which is 500 weeks. In determining industrial loss of use, the Commission considers evidence of anatomical disability, loss of wage-earning capacity, and the age, experience, occupation and training of the employee. Md. Code Ann., Lab. & Empl. §9-627(k).

**23. Are there any requirements/benefits for vocational rehabilitation, and what is the standard for recovery?**

Yes. When an employee is physically disabled by compensable injuries from performing work for which he or she was qualified at the time of the injury, the employee is entitled to vocational rehabilitation. Md. Code Ann., Lab. & Empl. §9-672. The employer/insurer pays the cost of the vocational rehabilitation assistance plus benefits as if the employee were temporarily totally disabled. Md. Code Ann., Lab. & Empl. §9-674.

**24. How are permanent total disability benefits calculated, including the minimum and maximum rates?**



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Permanent total disability payments are two-thirds of the employee's average weekly wage, not to exceed the state average weekly wage (\$1,1,094.00 in 2018). Md. Code Ann., Lab. & Empl. §9-637. Payments are made at least until they reach a total of \$45,000.00, but continue beyond that amount for so long as the employee remains totally disabled. Id.

### 25. How are death benefits calculated, including the minimum and maximum rates?

#### A. Funeral expenses.

Reasonable Funeral Expenses are payable up to \$7,500.00. Md. Code Ann., Lab & Empl. §9-689.

#### B. Death benefits calculation.

Under the new law, for claims arising as of 10/1/11, the death benefits will be calculated by determining the total family income (the combined income of the decedent and all of the decedent's dependents) and then dividing the decedent's average weekly wage by the family income.

The percent of the family income earned by the decedent is then multiplied by the "death benefit" rate (2/3 of the average weekly wage), to determine the amount payable to the dependents.

For example, if the decedent's average weekly wage was \$600 and the other dependents earned an additional collective \$600, the family income is \$1200. The decedent's income is 50% of the family income. The death benefit (just like the temporary total disability rate) is 2/3 of the average weekly wage, or \$400. Therefore, since the decedent earned 50% of the family income, the dependents' benefits will be paid at 50% of the death benefit or at \$200 per week.

A cost of living adjustment (COLA) will apply to the death benefits.

#### C. Dependency benefits duration.

The dependents' benefits will be paid for 144 months (12 years), with certain exceptions.

In all cases, benefits are payable for at least five years after the decedent's death.

If the surviving dependent is incapable of self-support due to a mental or physical disability that pre-exists the decedent's injury, benefits will be paid for the duration of that dependent's disability.

Benefits will terminate two years after a dependent spouse remarries.

If a dependent is a minor child, benefits will continue until 18, or for an additional 5 years if the dependent child remains in school.

No benefits are payable after what would have been the decedent's 70th birthday.

Again, all of these exceptions are subject to the rule that in all cases, a minimum of 5 years of benefits are payable.

#### **D. Death benefit savings.**

This new bill creates numerous savings for the defense, as all benefits will take into account the percentage of family income that the decedent contributed and all benefits will stop as of the 70th birthday of the decedent, rather than continuing into the "retirement" years until the survivors' date of death.

No dependent will receive lifetime benefits, as benefits stop after 12 years, unless that dependent is already unable to support him- or herself, or is a minor child or a child in school.

#### **E. Conclusion.**

The new Death Benefits bill is effective for claims arising as of 10/1/11. It eliminated partial dependency but also eliminated a significant amount of total dependency claims.

### **26. What are the criteria for establishing a "second injury" fund recovery?**

The Subsequent Injury Fund is responsible for paying the pre-existing portion of a permanency award only when 1) the previous impairment and subsequent impairment results in a permanent

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or partial impairment that is substantially greater due to the combined effects, than would have been from the subsequent impairment; 2) the combined effects of the previous and subsequent impairment result in a permanent disability of more than 50% to the whole body; and 3) the employee is entitled to a minimum of 125 weeks of benefits from the subsequent injury and 125 weeks from the pre-existing impairment (work-related or not). If all conditions are not met, the employee does not recover for the pre-existing disability, only for the new injury. Md. Code Ann., Lab. & Empl. §9-802.

**27. What are the provisions for re-opening a claim for worsening of condition, including applicable limitations periods?**

The Commission retains power and jurisdiction to readjust compensation for aggravation, diminution or termination of disability. This power can only be exercised if an application for re-opening is made within five years after the date the last compensation payment is received by the Claimant. Md. Code Ann., Lab. & Empl. §9-736. Payment of medical benefits does not constitute "compensation" for purposes of the five year limitations period. *Holy Cross Hosp. v. Nichols*, 290 Md. 149, 428 A.2d 447 (1981).

**28. What situation would place responsibility on the employer to pay an employee's attorney fees?**

The Commission sets the fees for employees' attorneys at a percentage of the award. Payment of the attorney's fees is deducted from the last weeks of the award. Md. Code Ann., Lab. & Empl. §9-731; COMAR 14.09.01.24. The Commission has discretion to award an attorney's fee in addition to the employee's award if the lawyer's time was necessitated by frivolous issues. Md. Code Ann., Lab. & Empl. §9-734.

## EXCLUSIVITY/TORT IMMUNITY

**29. Is the compensation remedy exclusive?**

**A. Scope of immunity.**

The liability of an employer/insurer under workers' compensation law is generally exclusive. Md. Code Ann., Lab. & Empl. §9-509.

**B. Exceptions (intentional acts, contractual waiver, "dual capacity," etc.).**

The exceptions to the exclusivity of the workers' compensation remedy are: (1) a deliberate intentional act by the employer, *Johnson v. Mountaire Farms of Delmarva, Inc.*, 305 Md. 246, 503 A.2d 708 (1986); (2) an uninsured employer, *Cox v. Sandler's Inc.*, 209 Md. 193, 120 A.2d 674 (1956); or (3) an employer who expressly waives immunity, *American Radiator v. Mark Engineering Co.*, 230 Md. 584, 187 A.2d 864 (1963). Md. Code Ann., Lab. & Empl. §9-509.

**30. Are there any penalties against the employer for unsafe working conditions?**

If a covered employee is injured or killed as a result of the deliberate intent of the employer, the employee may choose to proceed in tort rather than under workers' compensation. Md. Code Ann., Lab. & Empl. §9-509(d). However, deliberately placing an employee in a dangerous position, and willfully violating government regulations, does not constitute such a deliberate intent. *Johnson v. Mountaire Farms of Delmarva, Inc.*, 305 Md. 246, 503 A.2d 708 (1986). Once one remedy is chosen and pursued, the employee may not thereafter pursue the other remedy. *Wagner v. Allied Chem. Corp.*, 623 F.Supp. 1412 (D. Md. 1985).

**31. What is the penalty, if any, for an injured minor?**

A minor (under 18) who is employed without a work permit may, in the Commission's discretion, be awarded double compensation. The employer alone, not the insurer, must pay such additional benefits. Md. Code Ann., Lab. & Empl. §9-606.

**32. What is the potential exposure for "bad faith" claims handling?**

An employer/insurer may be liable in tort for emotional distress claims if its conduct is intentional, reckless, extreme and outrageous. *Gallagher v. Bituminous Fire & Marine Ins. Co.*, 303 Md. 201, 492 A.2d 1280 (1985); *Young v Hartford Accident and Indem. Co.*, 303 Md. 182, 492 A.2d 1270 (1985).

In addition, in 1994 the Maryland Legislature amended the statutory provision relating to fraudulent representations, so that all persons in the workers' compensation system are subject to the same rule that had previously extended only to the employee: "[a] person may not knowingly affect or knowingly attempt to affect the payment of compensation, fees or expenses. . . by means of a fraudulent representation." Md. Code Ann., Lab. & Empl. §9-1106.

**33. What is the exposure for terminating an employee who has been injured?**

An employer may not discharge a covered employee solely because the employee has filed a claim. Md. Code Ann., Lab. & Empl §9-1105; *Ewing v. Koppers Co.*, 312 Md. 45, 537 A.2d 1173 (1988). It is a misdemeanor to wrongfully discharge an employee. Upon conviction, the terminating party is subject to a fine not to exceed \$500.00 or imprisonment not exceeding 1 year or both (An. Code 1957, Art. 101, §39A; 1991, Ch. 8, §2). However, an employer may fill a position based on economic necessity when an employee has not returned to work. *Kern v. South Baltimore General Hosp.*, 66 Md. App. 441, 504 A.2d 1154 (1986).

## THIRD PARTY ACTIONS

### 34. Can third parties be sued by the employee?

Yes. Md. Code Ann., Lab. & Empl. §9-902.

### 35. Can co-employees be sued for work-related injuries?

Yes, co-employees are generally amenable to suit individually. *Hutzell v. Boyer*, 252 Md. 227, 249 A.2d 449 (1969). In addition, under certain limited circumstances the co-employee may "stand in the shoes" of the employer, making the employer vicariously liable, if the co-employee was the "alter ego" of the employer at the time of the occurrence. *Schatz v. York Steak House Sys.*, 51 Md. App. 494, 444 A.2d 1045 (1982). But see, *Federated Dep't Stores, Inc. v. Le*, 324 Md. 71, 595 A.2d 1067 (1991). Note, however, a supervisory co-employee who performs the nondelegable duty of the employer does not thereby assume a personal duty toward his or her fellow employee with respect to negligence actions. *Athas v. Hill*, 300 Md. 133, 476 A.2d 710 (1984).

### 36. Is subrogation available?

Yes. The employer/insurer has the exclusive right to bring suit against a third party within two months after the Commission makes an award. Md. Code Ann., §9-902. Once the two month period has elapsed, the employee and the employer/insurer each have the right to sue the third party. The employer/insurer have a lien against any third party recovery in the amount of benefits paid. The lien must be repaid "off the top" of any third party recovery, less a prorated share of costs and attorneys' fees. In addition, the employer/insurer are entitled to a credit, for any excess above the lien recovered by the employee, against further compensation paid to the employee. *Id.*

## MEDICALS

**37. Is there a time limit for medical bills to be paid, and are penalties available for late payment?**

Generally, medical bills must be paid "promptly." Md. Code Ann., Lab. & Empl. §9-660. Unless the employer can show good cause, the Employer must pay within 45 days after the Commission issues its Order approving the fee, or treatment. The Commission may assess a fine, payable to the Commission, not to exceed 20% of any medical fee not paid promptly. Md. Code Ann., Lab & Empl. §9-664. COMAR 14.09.01.22.

**38. What, if any, mechanisms are available to compel the production of medical information (reports and/or an authorization) at the administrative level?**

The parties and their agents and attorneys are required to promptly provide to each other copies of all relevant medical information, including reports, evaluations, bills, etc., throughout the pendency of the claim. COMAR 14.09.01.10(A). In addition, upon request by the Commission or any party, a health care provider is required to provide copies of routine medical reports, records or bills in order to justify payment of medical bills. COMAR 14.09.01.10(B). "[U]nless the Commission orders otherwise for good cause shown, a party shall provide to any party, on written request, a medical authorization." COMAR 14.09.01.10(C). Counsel for the parties are authorized to issue subpoenas, under the authority of the Commission, to medical care providers. However, the opposing party must be given 30 days advance notice before a subpoena can be issued. If no objection is noted, subpoena can be issued after 30 day notice period. If objection is noted, a hearing will be held on validity of subpoena.

The fees for preparation and copying of such documents are limited to 50 cents per page for copying and mailing, plus a maximum fee of \$15.00 for preparation and retrieval, and actual costs for postage and handling. Md. Code Ann., Health-General §4-304 I. Additionally, if a health care provider knowingly refuses to disclose a medical record within a reasonable time after a person in interest requests the disclosure, the health care provider is liable for actual damages. Md. Code Ann., Health-General I §4-309.

There are also certain procedures which relate to medical records at the permanent disability stage of the claim: not later than ten (10) days after the date of the Commission's Notice of Hearing relative to permanent disability, copies of evaluations and reports must be provided to other parties. In addition, the "Commission need not consider as evidence of permanent disability any medical information not completed or provided to other parties," unless the

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parties consent to the admission and the document is submitted not later than the date of the hearing. COMAR 14.09.01.12 (B).

**39. What is the rule on (a) Claimant's choice of physician; (b) Employer's right to second opinion and/or Independent Medical Evaluations?**

In general, the employee selects treating physicians. The employer cannot control selection of treating physician. The employer may choose any physician to perform an independent medical examination.

**40. What is the standard for covered treatment (e.g. chiropractic care, physical therapy, etc.)?**

Medical benefits are payable so long as they are reasonable, necessary, and causally related to the accidental injury or occupational disease. The Commission has discretion to determine whether the employer is liable for treatment. Md. Code Ann., Lab. & Empl. §9-660; *Queen v. Agger*, 287 Md. 342, 412 A.2d 733 (1980).

**41. Which prosthetic devices are covered, and for how long?**

If a compensable injury causes the need for a prosthetic device, or eyeglasses, the expense is reimbursable so long as it is required by the nature of the injury. Md. Code Ann., Lab. & Empl. §9-660. An employer/insurer must also repair or replace a prosthetic device damaged by accident during the course of employment. Md. Code Ann., Lab. & Empl. §9-661.

**42. Are vehicle and/or home modifications covered as medical expenses?**

The Commission may order modifications to an employee's home (not vehicles) for medical necessity, but not simply for quality of life. *R. & T. Construction Co. v. Judge*, 323 Md. 514, 594 A.2d 99 (1991).

**43. Is there a medical fee guide or schedule, or other provisions for cost containment?**

Yes. The "Guide of Medical and Surgical Fees", issued by the Workers' Compensation Commission, regulates medical and surgical fees. The "fee guide" also applies to fees charged by

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out-of-state providers on a Maryland claim. Providers may not seek further reimbursement directly from the employee. Md. Code Ann., Lab. & Empl. §9-663; COMAR 14.09.03.01. The fee guide has been held to be constitutional. *Falik v. Prince George's Hosp. & Medical Center*, 322 Md. 409, 588 A.2d 324 (1991).

On February 24, 2020, a new regulation went into effect in the state of Maryland that states “in the case of a discrepancy between a rate for a hospital service set by the Health Services Cost Review Commission and that set by the Workers’ Compensation Commission, the rate set by the Health Services Cost Review Commission shall prevail. This new regulation is COMAR 14.09.08.02.

### 44. What, if any, provisions or requirements are there for "managed care"?

None in Maryland.

## PRACTICE/PROCEDURE

### 45. What is the procedure for contesting all or part of a claim?

When a claim is filed, the Commission notifies the employer/insurer by a copy of the claim form and a "C-40" form. The employer/insurer may contest any and all parts of the claim by filing "issues" prior to the "consideration date" established by the Commission and indicated on the C-40. Md. Code Ann., Lab & Empl. §9-713.

### 46. What is the method of claim adjudication?

#### A. Administrative level.

Any disputed issues in claims are initially heard before the Maryland Workers' Compensation Commission. The hearings are relatively informal, and there is no discovery. Live testimony is taken from the employee and lay witnesses, but expert evidence is introduced through written reports unless special provision is made (rarely done) for live expert testimony.

#### B. Trial court.



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A party aggrieved by a decision of the Workers' Compensation Commission may appeal, as a matter of right, to the circuit court in the venue where the appellant resides, where the injury occurred or where the employer has their principal place of business. Md. Code Ann., Lab. & Empl. §§9-737 through 9-740. Such an appeal must be filed within 30 days of the Commission's decision. Trial in the circuit court is essentially de novo, with full discovery and the right to a jury trial, although there is a presumption in favor of the Commission's decision. Md. Code Ann., Lab. & Empl. §9-745.

As a general rule, an appeal does not "stay" an award, and the compensation ordered must be paid while an appeal is pursued by an employer/insurer. Md. Code Ann., Lab. & Empl. §9-741. However, an appeal does operate as a "stay" with respect to medical bills incurred prior to the date of an appealed order. *University of Md. Medical Sys. Corp. v. Erie Ins. Exch.*, 89 Md. App. 204, 597 A.2d 1036 (1991). In addition, any attorneys fees that are ordered by the Commission may be held in escrow during the pendency of the appeal. COMAR 14.09.01.24(A)(4). If an award is reversed on appeal, the employer/insurer cannot recover from the employee amounts already paid, absent fraud by the employee. *St. Paul & Marine Ins. Co. v. Treadwell*, 263 Md. 430, 283 A.2d 601 (1971).

### C. Appellate.

A party aggrieved by the decision of a circuit court may appeal as a matter of right to the Maryland Court of Special Appeals, with the same scope of review as in common law actions. Md. Code Ann., Lab. & Empl. § 9-750. A party aggrieved by a decision of the Court of Special Appeals must seek a writ of certiorari to the Court of Appeals of Maryland, the state's highest court.

#### 47. What are the requirements for stipulations or settlements?

The Commission must approve any settlement of a workers' compensation claim. Md. Code Ann., Lab. & Empl. §9-722. The Commission will not approve a settlement agreement without a hearing, unless the agreement is accompanied by the employee's notarized affidavit, on the Commission form, waiving such a hearing. COMAR 14.09.01.19. In practice, such affidavits are generally provided and hearings are only held when the Commission initially disapproves the proposed settlement. Generally, the Commission requires the Agreement to account for Medicare's interests and that future medicals be addressed, when appropriate.

A stipulated award for permanent disability must also be approved by the Commission. The proposed stipulation must be submitted on the form provided by the Commission, and must include specified information. Additional documentation is required if the employee is not

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represented by an attorney. COMAR 14.09.01.12(c).

**48. Are full and final settlements with closed medicals available?**

Yes.

**49. Must stipulations and/or settlements be approved by the state administrative body?**

Yes.

## RISK FINANCE FOR WORKERS' COMPENSATION

**50. What insurance is required, and what is available (e.g. private carriers, state fund, assigned risk pool, etc.)?**

The employer must be insured for workers' compensation or qualify as a self-insurer. Md. Code Ann., Lab. & Empl. Code §9-402. The insurers available are acceptable private insurers or the state Injured Workers' Insurance Fund. There is no assigned risk pool in Maryland.

**51. What are the provisions/requirements for self-insurance?**

**A. For individual entities.**

Individual employers may self-insure with Commission approval. Md. Code Ann., Lab. & Empl. §9-403. The applicant must: (1) establish financial ability to pay claims as they become due; (2) post a required security (can be a letter of credit); (3) purchase excess insurance; (4) maintain an office in Maryland to handle claims; and (5) provide periodic reports to the Commission. Md. Code Ann., Lab. & Empl. §9-405; COMAR 14.09.01.16.

**B. For groups or "pools" of private entities.**

Group self-insurance is permitted. Md. Code Ann., Lab. & Empl. §9-402. The members of such a group must be engaged in the same or a similar type of business or be members of a bona fide trade or professional association which has been in existence for at least five years. COMAR

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09.30.73.03. Such a group must obtain a certificate of authority from the insurance commissioner. Md. Code Ann., Lab. & Empl §9-404(d); COMAR 09.30.73.07.

The requirements are similar to those for individual self-insurance. The minimum annual collective premium is \$250,000.00, and excess insurance must be purchased. Members of the group must agree to be jointly and severally liable for claims. COMAR 09.30.73.07.

52. **Are “illegal aliens” entitled to benefits of workers’ compensation in light of The Immigration Reform and Control Act of 1986, which indicates that they cannot lawfully enter into an employment contract in the United States, although most state acts include them within definition of “employee”?**

Yes, they are entitled to benefits.

53. **Are terrorist acts or injuries covered or excluded under workers’ compensation law?**

Although there are no specific statutes or case law addressing coverage for such injuries, it is presumed that they would be compensable if they were found to constitute “accidental injuries arising out of and in the course of employment.”

54. **Are there any state specific requirements which must be satisfied in light of the obligation of the parties to satisfy Medicare’s interests pursuant to the Medicare Secondary Payer Act?**

No. But, Maryland does recommend parties to address whether a party requires future medical care and to obtain a medical cost allocation for any settlement that contemplates closure of medicals.

55. **How are subrogation liens of Medicaid and health insurers treated under workers’ compensation law?**

It is presumed that federal statutes addressing this issue would be dispositive. Maryland does require settlement agreements to address employers’ obligation to reimburse Medicare for any provisional payment made on the Claimant’s behalf. Medical payments are controlled by a fee guide, and health insurers would only be entitled to enforce a lien to the extent coverage was required under the guide.

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56. **What are the requirements for confidentiality and privacy of medical records under workers' compensation law and how are they affected by the state and federal law (HIPPA)?**

At present, there are no Maryland statutes or case law addressing the applicability of HIPPA. In general, claimants sign releases to allow their employers to obtain copies of their medical reports and bills. Claimants are required to provide copies of all records and bills to the employer and/or insurer. Claimants are also required to sign a HIPAA compliant release with their claim forms.

57. **What are the provisions for "Independent Contractors"?**

Independent Contractors are not considered employees for purposes of coverage under the Act. The Commission will closely examine the degree of supervision and control exercised over the Claimant when making a determination of employee-employer relationship. *Marine v. Service Trucking Co.*, 225 Md. 315, 318, 170 A.2d a88 (1961).

58. **Are there any specific provisions for "Independent Contractors" pertaining to professional employment organizations/temporary service companies/leasing companies?**

No.

59. **Are there any specific provisions for "Independent Contractors" pertaining to owner/operators of trucks or other vehicles for driving or delivery of people or property?**

Yes. Md. Code Ann., Lab. & Empl. §9-218(b). An individual who is an owner-operator is not a covered employee if (1) the individual and motor carrier make a written agreement for permanent or trip leasing; and (2) under the agreement: (i) there is no intent to create an employer-employee relationship; (ii) the individual is paid rental compensation; and (3) for federal tax purposes as an independent contractor.

60. **What are the "Best Practices" for defending workers' compensation claims and controlling workers' compensation benefits costs and losses?**

Financial exposure to workers' compensation is an expensive and complex challenge for every business. The best means for reducing and eliminating that exposure is a strong and individualized "Best Practices" plan.

Every business must deal with the expense of workers' compensation in its risk management and in dealing with the inevitable claim. The best approach to ameliorating a business exposure is a strong and individualized "Best Practices" plan.

- 61. Are there any state specific requirements which must be satisfied in light of the obligation of the parties to protect Medicare's interests when settling the right to medical treatment benefits under a claim?**

If a settlement exceeds \$250,000 or the Claimant is a Medicare beneficiary, or anticipates becoming a Medicare beneficiary, a Medicare Set-Aside (MSA) must be included as part of the settlement and approved by the Centers for Medicare and Medicaid Services ("CMS"). The Commission is vested with the sole power of the approval of any settlement. Md. Code Ann., Lab. & Empl. §9-722.

- 62. Are there any state specific requirements which must be satisfied in light of the obligation of the parties to protect Medicare's interests when settling the right to medical treatment benefits under a claim?**

Maryland has allowed for medical marijuana since 2014. The Maryland Medical Marijuana statute permits marijuana to be prescribed for: PTSD, a chronic or debilitating disease or medical condition that results in a patient being admitted into hospice or receiving palliative care; or a chronic or debilitating disease or medical condition or the treatment of a chronic or debilitating disease or medical condition that produces: cachexia, anorexia, or wasting syndrome, severe or chronic pain, severe nausea, seizures, or severe or persistent muscle spasms. A physician may also prescribe marijuana to treat patients with a condition that is: (1) severe; (2) for which other medical treatments have been ineffective; and (3) if the symptoms reasonably can be expected to be relieved by the medical use of cannabis.

However, at this time there is no authority in Maryland indicating if medical marijuana is a treatment that can be provided under Workers' Compensation, although some Commissioners are now ordered reimbursement of medical marijuana.

- 63. Does your state permit the recreational use of marijuana and what are the restrictions for use and for work activity in your state Workers' Compensation law?**

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Recreational marijuana remains illegal in Maryland.

The ALFA affiliated counsel who compiled this State compendium offers an expert, experienced and business-friendly resource for review of an existing plan or to help write a "Best Practices" plan to guide your workers' compensation preparation and response. No one can predict when the need will arise, so ALFA counsels that you make it a priority to review your plan with the ALFA Workers' Compensation attorney for your state, listed below:

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