

## PROVISIONAL RATE

### Background

On February 19, 2002 the Panel of Administrators approved amendments to *Rehabilitation Services and Claims Manual* (the "RSCM") Policy item #66.12, *Provisional Rate*. **The Resolution of the Panel of Administrators is effective February 19, 2002** and applies to all adjudicative and appellate decisions made on or after that date.

### Policy

RSCM Policy item #48.41, *When Does an Overpayment of Compensation Occur?* provides that the Board can only recover monies where an overpayment has resulted from an administrative error, fraud or misrepresentation on behalf of a worker, or where the Board has made a decision that was outside of its statutory authority.

RSCM Policy item #66.12, *Provisional Rate*, has been amended and now states, in part, as follows:

*Where payments have been commenced on an interim basis, and the final wage loss rate is lower than the provisional rate previously set, no recovery of the payments will be made in the absence of an administrative error, fraud or misrepresentation by the worker, or where the decision under review was one not within the statutory authority of the Board. For a definition of administrative error, refer to policy item #48.41.*

### Highlights and Adjudicative Guidelines

1. In the past, where a provisional rate was set, the worker would be advised in writing that in the event of a decrease in the wage rate and an overstatement of previously paid benefits, an overpayment would be declared.
2. RSCM Policy item #66.12 now provides that where wage loss payments have commenced on an interim basis under a provisional wage rate, and the final wage rate is lower than the provisional rate, no overpayment can be declared.
3. An overpayment can only be declared where there was an administrative error, fraud/misrepresentation or the decision was not within the Board's statutory authority. Please see RSCM Policy item #48.41.
4. The new policy applies to all adjudicative decisions made by Board Officers on or after February 19, 2002. This means that the new policy applies to all cases where

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a Board Officer decided, on or after February 19, 2002, to lower the previously set provisional wage rate.

5. The new policy also applies to appellate decisions made on or after February 19, 2002. This means that an appeal decision-maker must now apply the new policy to its finding/decision, regardless whether the Board Officer made the original decision prior to February 19, 2002.
6. Other than as noted in point number 5 above, the policy has no retrospective application.
7. Board Officers are reminded that all provisional wage rate decision letters to workers and employers must reflect the new policy provisions.
8. The *Claims Overpayment Transfer Advice* ("COTA") will be shortly amended to remove the reference to overpayment code 08.