

**20030617-03**

**THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA**

**RESOLUTION OF THE BOARD OF DIRECTORS**

**Re: Amendments to Chapter 1, Volumes I and II,  
*Rehabilitation Services & Claims Manual***

**WHEREAS:**

Pursuant to section 82 of the *Workers Compensation Act*, RSBC 1996, Chapter 492 and amendments thereto ("*Act*"), the Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;

**AND WHEREAS:**

Effective June 30, 2002, the *Workers Compensation Amendment Act, 2002* ("Bill 49") significantly amended the *Workers Compensation Act* ("*Act*") in relation to benefits for injured workers;

**AND WHEREAS:**

To facilitate the implementation of policies in regard to Bill 49, it became necessary to restructure the *Rehabilitation Services & Claims Manual* ("*RS&CM*") into Volume I and Volume II;

**AND WHEREAS:**

Policy amendments are required to Chapter 1 of Volume I and Volume II of the *RS&CM* to further clarify the distinction between the two volumes and to explain why subsequent policy changes have been made to Volume I;

**AND WHEREAS:**

Policy amendments are also required to Chapter 1 of Volume I to incorporate into Volume I the "recurrence" policy previously approved for Chapter 1 of Volume II;

**THE BOARD OF DIRECTORS RESOLVES THAT:**

1. In relation to Chapter 1 of Volume I of the *RS&CM*:
  - (a) The policy amendments attached as Appendix "A" to this resolution are approved.
  - (b) The policy amendments are not intended to change substantive decision-making.
  - (c) The amendments to transitional rule 4 in policy item 1.03(b) reflect the status quo by inserting the policy on the meaning of "recurrence" in section 35.1 of the *Act* that was previously approved effective October 16, 2002, and only inserted into Volume II.
  - (d) The remaining amendments to policy items #1.00, #1.01, #1.02 and #1.03 are for purposes of clarification only and do not change the substance of the policies approved effective June 30, 2002.
2. In relation to Chapter 1 of Volume II of the *RS&CM*:
  - (a) The policy amendments attached as Appendix "B" to this resolution are approved.
  - (b) The policy amendments to policy items #1.00, #1.01, #1.02 and #1.03 are for purposes of clarification only and do not change the substance of the policies approved effective June 30, 2002 and October 16, 2002.
3. This resolution is effective June 17, 2003.

DATED at Richmond, British Columbia, on June 17, 2003.

**By the Workers' Compensation Board**

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**DOUGLAS J. ENNS, CHAIR  
BOARD OF DIRECTORS**

## Appendix “A”

Additions in Bold; Deletions Strikethrough

### CHAPTER 1 SCOPE OF VOLUME I OF THIS *MANUAL*

#### #1.00 INTRODUCTION

In 2002, the *Workers Compensation Act* underwent significant legislative amendment. This resulted in the restructuring of the *Rehabilitation Services & Claims Manual* into two volumes - Volume I and Volume II. This policy sets out an overview of the legislative changes and explains how readers of this *Manual* can determine which volume is applicable to their particular circumstances.

#### #1.01 *Legislative Amendments*

- (a) *Workers Compensation Amendment Act, 2002 (“Amendment Act, 2002”)*

The *Amendment Act, 2002* is also referred to as “Bill 49”. It primarily amended the *Workers Compensation Act*:

- effective June 30, 2002 in relation to benefits for injured workers (including the calculation of average net earnings, duration of temporary benefits, integration of CPP disability benefits, indexing of compensation benefits, worker obligations to provide information, mental stress and permanent disability awards); and
- effective January 2, 2003 in relation to the establishment of a new Board of Directors as the governing body of the Workers’ Compensation Board.

- (b) *Workers Compensation Amendment Act (No. 2), 2002 (“Amendment Act (No. 2), 2002”)*

The *Amendment Act (No. 2), 2002* is also referred to as “Bill 63”. It primarily amended the *Workers Compensation Act* effective March 3, 2003 in relation to a new review/appeal structure and to the Board’s authority to reopen matters previously decided or to reconsider previous decisions.

## **#1.02     *Scope of Volume I and Volume II of this Manual***

The *Rehabilitation Services & Claims Manual* was restructured into two volumes to facilitate the implementation of the new benefits policies resulting from the *Amendment Act, 2002*. The new policies were incorporated into Volume II, and the policies in place immediately prior to June 30, 2002 became Volume I. (For policies in effect prior to the Volume I policies, readers are referred to the Board's archives.)

Volume I and Volume II apply to different groups of injured workers. Whether the benefits for an injured worker are to be determined under Volume I or Volume II depends upon the transitional rules set out in policy item #1.03 below. It is the responsibility of decision-makers to determine whether Volume I or Volume II applies to each case before them.

Due to the fact that Volume I covers a finite group of injured workers, its relevance to the workers' compensation system will gradually decrease over time. It is anticipated that there will be very few future amendments to the policies in Volume I. Any major amendments will be listed, for convenience, in the Addendum to this chapter.

Volume II includes injuries occurring on or after June 30, 2002. Its relevance to the workers' compensation system will therefore continue over time. Volume II policies will be subject to amendment from time to time, in the same manner as policies in other policy manuals. Amendments to policies in Volume II will be archived in the Board's records and documented publicly.

## **#1.03     *Scope of Volumes I and II in Relation to Benefits for Injured Workers***

### **(a)     General**

Subject to subsequent amendments, Volume I sets out the law and policies that were in effect immediately prior to June 30, 2002 in relation to compensation for injured workers. For convenience, the law and policies in effect immediately prior to that date, as amended, will be called the "former provisions".

Volume II sets out the law and policies in effect on or after June 30, 2002, as they may be amended from time to time, in relation to worker benefits. For convenience, the law and policy on or after that date, including any subsequent amendments, will be called the "current provisions".

~~Effective June 30, 2002, the *Workers Compensation Act* was amended by the *Workers Compensation Amendment Act, 2002* (“*Amendment Act, 2002*”). The amendments changed the law in relation to compensation benefits for injured workers. For convenience, the law and policy as they were immediately before being changed will be called the former provisions and the law and policy after the changes will be called the current provisions. Volume I of this *Manual* sets out the former provisions. Volume II of this *Manual* sets out the current provisions.~~

~~Unless~~ **Except as otherwise stated and except in relation to matters covered by the *Amendment Act (No. 2), 2002*, “*Act*” in Volume I of this *Manual* “*Act*”** refers to the *Workers Compensation Act*, as it read immediately before June 30, 2002. The *Interpretation Act*, RSBC 1996, Chapter 238, applies to the *Act*, unless a contrary intention appears in either the *Interpretation Act* or the *Act*.

### **(b) *Amendment Act, 2002* (Bill 49) Transitional Provisions**

**The following rules apply to determining whether the former provisions (Volume I) or the current provisions (Volume II) apply in a particular case. These rules are based upon the transitional rules in section 35.1 of the *Workers Compensation Act*, as amended by the *Amendment Act, 2002*.**

~~Section 35.1 of the *Act*, as amended by the *Amendment Act, 2002*, contains the following transitional rules:~~

1. ~~Except as noted in items~~ **rules 3, 4, and 5**, the former provisions apply to an injury that occurred before June 30, 2002.
2. The current provisions apply to an injury that occurs on or after June 30, 2002.
3. ~~Subject to the transition rule 4~~ **Subject to the transition rule 4** respecting recurrences (~~item 4~~), if an injury occurred before June 30, 2002, but the first indication that it is permanently disabling occurs on or after June 30, 2002, the current provisions apply to the permanent disability award with two modifications:
  - (i) 75% of average earnings (former provisions) is used for calculating the award rather than 90% of average net earnings (current provisions); and
  - (ii) no deduction is made for disability benefits under the Canada Pension Plan (former provisions).

~~Under this transitional rule~~, for an injury that occurred before June 30, 2002, where the first indication of permanent disability also occurs before June 30, 2002, the permanent disability award

will be adjudicated under the former provisions. Where the first indication of permanent disability is on or after June 30, 2002, the award will be adjudicated under the current provisions, using the modified formula described in ~~items~~ (i) and (ii) above. The determination of when permanent disability first occurs will be based on available medical evidence.

An example of when this ~~transitional~~ rule applies is where a worker, injured before June 30, 2002, shows no signs of permanent disability before that date. However, on or after June 30, 2002, the worker has surgery, which first causes permanent disability. The permanent disability award will be adjudicated under the current provisions, using the modified formula.

4. If an injury occurred before June 30, 2002, and the disability recurs on or after June 30, 2002, the current provisions apply to the recurrence.

~~This transitional rule only applies to a recurrence. A recurrence is to be distinguished from a deterioration. An example of a recurrence is where there has been total recovery from a disability and wage-loss payments have been terminated. Subsequently, there is a recurrence of the disability and the claim is reopened. An example of a deterioration is where a disability award has been assessed and the disability subsequently worsens.~~

**For the purposes of this policy, a recurrence includes any claim that is re-opened for:**

- **any additional period of temporary disability where no permanent disability award was previously provided in respect of the compensable injury or disease;**
- **any additional period of temporary disability where a permanent disability award was previously provided in respect of the compensable injury or disease; and,**
- **any permanent changes in the nature and degree of a worker's permanent disability.**

**The following are examples of a recurrence:**

- **A worker totally recovers from a temporary disability resulting in the termination of wage-loss payments. Subsequently, there is a recurrence of the disability and the claim is re-opened for compensation.**

- **A worker is in receipt of a permanent disability award and the disability subsequently worsens. The claim is re-opened to provide compensation for a new period of temporary disability and/or an increase in entitlement for the permanent disability award.**
5. Regardless of the date of injury or death, the current provisions on indexing apply to compensation paid on or after June 30, 2002. ~~In the case of fatalities, the current provisions are the same as the former provisions.~~ Indexing of retroactive awards payable before June 30, 2002, will be based on the former provisions.

~~Volume I of this *Manual* covers the major issues discussed below.~~

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**EFFECTIVE DATE:** June 17, 2003

**APPLICATION:** The policy amendments made effective June 17, 2003 are not intended to change substantive decision-making.

The amendments to transitional rule 4 in policy item #1.03(b) reflect the status quo by inserting the policy on the meaning of “recurrence” in section 35.1 of the *Act* that was previously approved effective October 16, 2002, and only inserted into Volume II.

The remaining amendments to policy items #1.00, #1.01, #1.02 and #1.03 are for purposes of clarification only and do not change the substance of the policies approved effective June 30, 2002.

## ADDENDUM

### AMENDMENTS TO VOLUME I ON OR AFTER JUNE 30, 2002

This Addendum lists the major amendments to the policies in Volume I of the *Rehabilitation Services & Claims Manual* on or after June 30, 2002. It has been inserted for convenience only and will be updated by the Director General of the Policy and Regulation Development Bureau as necessary. In some cases, the reader may be referred to the appropriate passages in Volume II.

The “resolutions” referenced in this Addendum are the “resolutions” of the former Panel of Administrators or Board of Directors, as the case may be.

Subject	Policy or Item #	Comments
CPI Adjustments	Various	The dollar amounts in Volume I are not updated to reflect CPI adjustments. Where a policy item in Volume I contains a dollar amount, readers should consult the corresponding policy item in Volume II for the current amount.
Criteria for Commutations	#45.00 - #45.60	<p>Policies amended effective October 1, 2002. Amendments apply to new claims received, all active claims awaiting an initial permanent disability award adjudication, and all active claims awaiting initial adjudication of periodic payments of compensation to a dependant of a deceased worker, on or after the effective date.</p> <p>See resolution 2002/08/27-04 if more information is required.</p>
Chronic Pain (or Subjective Complaints)	#22.33, #22.35, #39.01, #97.40	<p>Policies amended effective January 1, 2003. Amendments apply to all new claims received and all active claims awaiting an initial adjudication on or after the effective date.</p> <p>See resolution 2002/11/19-04 if more information is required.</p>

Subject	Policy or Item #	Comments
<b>Governance</b>	<b>Various consequential changes</b>	<p><b>Policies amended effective February 11, 2003 to reflect January 2, 2003 changes to the WCB's governing structure. (None of the amendments affect worker benefits.)</b></p> <p><b>See resolution 2003/02/11-05 if more information is required. These amendments resulted from the <i>Amendment Act, 2002</i> (Bill 49).</b></p>
<b>New Review/ Appeal Structure</b>	<b>New Chapter 13 Various consequential changes</b>	<p><b>Chapter 13 (Appeals) deleted and new Chapter 13 (Reviews and Appeals) adopted effective March 3, 2003. Certain policies continued for transitional purposes. Various consequential changes made throughout Volume I, as identified by March 3, 2003 effective date and the matters to which the effective date applies.</b></p> <p><b>See resolution 2003/01/21-01 if more information is required. These amendments resulted from the <i>Amendment Act (No. 2), 2002</i> (Bill 63).</b></p>
<b>Policy on Changing WCB Decisions</b>	<b>New Chapter 14 Various consequential changes</b>	<p><b>Chapter 14 (Reopenings and Reconsiderations) deleted and new Chapter 13 (Changing Previous Decisions) adopted effective March 3, 2003. Chapter applies to all decisions on and after the effective date.</b></p> <p><b>Various consequential changes also made throughout Volume I, as identified by a March 3, 2003 effective date and the matters with respect to which the effective date applies.</b></p> <p><b>See resolution 2002/12/17-02 if more information is required. These amendments resulted from the <i>Amendment Act (No. 2), 2002</i> (Bill 63).</b></p>
<b>Binding Nature of Policy</b>	<b>#2.20, #96.10</b>	<b>New policy item #2.20 adopted effective March 3, 2003. Amendments apply to all adjudication decisions made on or after</b>

Subject	Policy or Item #	Comments
		<p>the effective date.</p> <p>Material also deleted from policy item #96.10 to reflect the amendments.</p> <p>See resolutions 2002/12/17-02 and 2003/01/21-01 if more information is required. These amendments resulted from the <i>Amendment Act (No. 2), 2002 (Bill 63)</i>.</p>
<p><b>Other Amendments Resulting from the <i>Amendment Act (No.2), 2002 (Bill 63)</i></b></p> <p><b>Pension Reviews</b></p> <p><b>Provisional Rates</b></p> <p><b>Penalties for Failure to Report</b></p> <p><b>Preliminary Determination (Formerly Interim Adjudication)</b></p> <p><b>Miscellaneous</b></p>	<p><b>#40.30</b></p> <p><b>#66.12</b></p> <p><b>#94.15</b></p> <p><b>#96.21</b></p> <p><b>Various</b></p>	<p><b>Policies deleted effective March 3, 2003.</b></p> <p><b>Policies amended effective March 3, 2003. Policy applies to provisional rates set on or after the effective date.</b></p> <p><b>Policies amended effective March 3, 2003.</b></p> <p><b>Policies amended effective March 3, 2003. Amendments apply to all preliminary determinations made under the policy on or after the effective date.</b></p> <p><b>Other amendments, effective March 3, 2003, include:</b></p> <ul style="list-style-type: none"> <li>• <b>removal of references to former Part 3 administrative penalty process;</b></li> <li>• <b>amendments to reflect new wording of</b></li> </ul>

Subject	Policy or Item #	Comments
		<p><b>section 99;</b></p> <ul style="list-style-type: none"> <li>• <b>changes to disclosure provisions;</b></li> <li>• <b>acknowledgement of WCAT authority to order the Board to pay expenses;</b></li> <li>• <b>acknowledgement of WCAT authority to award costs; and</b></li> <li>• <b>changes to reflect the payment of interest provisions under section 258.</b></li> </ul> <p><b>See resolutions 2002/12/17-02 and 2003/01/21-01 if more information is required. These amendments resulted from the <i>Amendment Act (No. 2), 2002 (Bill 63)</i>.</b></p>
<p><b>Calculation of Lump-sum Payment or Commutation</b></p>	<p><b>#45.61</b></p>	<p><b>Direction in policy on calculation of lump-sum payments or commutations after a review or appeal reinserted effective April 8, 2003, with appropriate changes to reflect new review/appeal structure.</b></p> <p><b>See resolution 2003/04/08-01 if more information is required.</b></p>

## Appendix “B”

Additions in Bold; Deletions Strikethrough

### CHAPTER 1 SCOPE OF VOLUME II OF THIS *MANUAL*

#### #1.00 INTRODUCTION

In 2002, the *Workers Compensation Act* underwent significant legislative amendment. This resulted in the restructuring of the *Rehabilitation Services & Claims Manual* into two volumes - Volume I and Volume II. This policy sets out an overview of the legislative changes and explains how readers of this *Manual* can determine which volume is applicable to their particular circumstances.

##### #1.01 *Legislative Amendments*

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- effective January 2, 2003 in relation to the establishment of a new Board of Directors as the governing body of the Workers’ Compensation Board.

- (b) *Workers Compensation Amendment Act (No. 2), 2002 (“Amendment Act (No. 2), 2002”)*

The *Amendment Act (No. 2), 2002* is also referred to as “Bill 63”. It primarily amended the *Workers Compensation Act* effective March 3, 2003 in relation to a new review/appeal structure and to the Board’s authority to reopen matters previously decided or to reconsider previous decisions.

## **#1.02     *Scope of Volume I and Volume II of this Manual***

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Volume I and Volume II apply to different categories of injured workers. Whether the benefits for an injured worker are to be determined under Volume 1 or Volume II depends upon the transitional rules set out in policy item #1.03 below. It is the responsibility of decision-makers to determine whether Volume I or Volume II applies to each case before them.

Due to the fact that Volume I covers a finite group of injured workers, its relevance to the workers' compensation system will gradually decrease over time. It is anticipated that there will be very few future amendments to the policies in Volume I. Any major amendments will be listed, for convenience, in the Addendum to Chapter 1 in Volume I.

Volume II includes injuries occurring on or after June 30, 2002. Its relevance to the workers' compensation system will therefore continue over time. Volume II policies will be subject to amendment from time to time, in the same manner as policies in other policy manuals. Amendments to policies in Volume II will be archived in the Board's records and documented publicly.

## **#1.03     *Scope of Volumes I and II in Relation to Benefits for Injured Workers***

### **(a)     General**

Subject to subsequent amendments, Volume I sets out the law and policies that were in effect immediately prior to June 30, 2002 in relation to compensation for injured workers. For convenience, the law and policies in effect immediately prior to that date, as amended, will be called the "former provisions".

Volume II sets out the law and policies in effect on or after June 30, 2002, as they may be amended from time to time, in relation to worker benefits. For convenience, the law and policy on or after that date, including any subsequent amendments, will be called the "current provisions".

~~Effective June 30, 2002, the *Workers Compensation Act* was amended by the *Workers Compensation Amendment Act, 2002* (“*Amendment Act, 2002*”). The amendments changed the law in relation to compensation benefits for injured workers. For convenience, the law and policy as they were immediately before being changed will be called the former provisions and the law and policy after the changes will be called the current provisions. Volume I of this *Manual* sets out the former provisions. Volume II of this *Manual* sets out the current provisions.~~

Unless otherwise stated, in Volume II of this *Manual*, the “*Act*” refers to the *Workers Compensation Act*, as amended by the *Amendment Act, 2002* **on or after June 30, 2002**. The *Interpretation Act*, RSBC 1996, Chapter 238, applies to the *Act*, unless a contrary intention appears in either the *Interpretation Act* or the *Act*.

### **(b) *Amendment Act, 2002* (Bill 49) Transitional Provisions**

**The following rules apply to determining whether the former provisions (Volume I) or the current provisions (Volume II) apply in a particular case. These rules are based upon the transitional rules in section 35.1 of the *Workers Compensation Act*, as amended by the *Amendment Act, 2002*.**

~~Section 35.1 of the *Act* contains the following transitional rules:~~

1. The current provisions apply to an injury that occurs on or after June 30, 2002.
2. Except as noted in ~~items~~ **rules 3, 4, and 5**, the former provisions apply to an injury ~~occurring~~ **that occurred** before June 30, 2002.
3. Subject to ~~the transition rule 4~~ respecting recurrences (~~item 4~~), if ~~the~~ **an** injury occurred before June 30, 2002, but the first indication that it is permanently disabling occurs on or after June 30, 2002, the current provisions apply to the permanent disability award with two modifications:
  - (i) 75% of average earnings (former provisions) is used for calculating the award rather than 90% of average net earnings (current provisions); and
  - (ii) no deduction is made for disability benefits under the Canada Pension Plan (former provisions).

Under this ~~transitional~~ rule, for an injury that occurred before June 30, 2002, where the first indication of permanent disability also occurs before June 30, 2002, the permanent disability award will be adjudicated under the former provisions. Where the first

indication of permanent disability is on or after June 30, 2002, the award will be adjudicated under the current provisions, using the modified formula described in items (i) and (ii) above. The determination of when permanent disability first occurs will be based on available medical evidence.

An example of when this transitional rule applies is where a worker, injured before June 30, 2002, shows no signs of permanent disability before that date. However, on or after June 30, 2002, the worker has surgery, which first causes permanent disability. The permanent disability award will be adjudicated under the current provisions, using the modified formula.

4. If ~~the~~ an injury occurred before June 30, 2002, and the disability recurs on or after June 30, 2002, the current provisions apply to the recurrence.

For the purposes of this policy, a recurrence includes any claim that is re-opened for:

- any additional period of temporary disability where no permanent disability award was previously provided in respect of the compensable injury or disease;
- any additional period of temporary disability where a permanent disability award was previously provided in respect of the compensable injury or disease; and,
- any permanent changes in the nature and degree of a worker's permanent disability.

The following are examples of a recurrence:

- A worker totally recovers from a temporary disability resulting in the termination of wage-loss payments. Subsequently, there is a recurrence of the disability and the claim is re-opened for compensation.
- A worker is in receipt of a permanent disability award and the disability subsequently worsens. The claim is re-opened to provide compensation for a new period of temporary disability and/or an increase in entitlement for the permanent disability award.

5. Regardless of the date of injury or death, the current provisions on indexing apply to compensation paid on or after June 30, 2002. ~~In the case of fatalities, the current provisions are the same effect as~~

~~the former provisions.~~ Indexing of retroactive awards payable before June 30, 2002, will be based on the former provisions.

~~The former provisions are found in Volume I of this *Manual*.~~

~~Volume II of this *Manual* covers the major issues discussed below.~~

**EFFECTIVE DATE:**           ~~October 16, 2002~~**June 17, 2003**

**APPLICATION:**           ~~To all adjudication decisions made on or after the effective date.~~ **The policy amendments made effective June 17, 2003 are not intended to change substantive decision-making.**

**The amendments to policy items #1.00, #1.01, #1.02 and #1.03 are for purposes of clarification only and do not change the substance of the policies approved effective June 30, 2002 and October 16, 2002.**