

COMPENSATION PRACTICE AND QUALITY DEPARTMENT

PRACTICE DIRECTIVE # C4-1

TOPIC: Adjudication of Contagious Occupational Diseases
ISSUE DATE: August 9, 2005, Amended August 18, 2009 & October 27, 2009

Objective

This practice directive provides guidance to Board officers regarding the adjudication of certain contagious occupational diseases where limited medical evidence is available at the time of adjudication.

Law & Policy

The adjudication of contagious disease claims is specifically addressed in *Rehabilitation Services & Claims Manual* ("RSCM"), Vol. II, Policy item #28.00, *Contagious Diseases*. The policy provides that in order for a contagious disease to be compensable the nature of the employment must have created a risk of contracting a kind of disease to which the public at large is not normally exposed or a risk of contracting a disease significantly greater than the ordinary exposure risk of the public at large.

For compensation to be paid, some basic evidence must be submitted to demonstrate there is a proper claim, but the extent of evidence necessary, and the weight to be attached to it, is determined by the Board officer adjudicating the claim (RSCM Vol. II, Policy item #97.00, *Evidence*). Although wage loss benefits are normally paid on the basis of medical reports, exceptions can be made where there is satisfactory evidence of disability clearly documented (RSCM Vol. II, Policy item #95.31, *Payment of Wage Loss Without Medical Reports*).

Adjudicative Guidelines

Generally, when a contagious disease claim is accepted, it will be on the basis of a known medical diagnosis provided in a medical report. However, formal medical evidence is not always available at the time a claim is being adjudicated. In the case of a highly infectious disease where the symptoms are acute, short-lived and do not require medical intervention, a claim may be accepted in the absence of formal medical evidence where other evidence establishes the existence of a compensable contagious disease.

Workers suffering symptoms of highly contagious diseases are sometimes advised by their employers and/or healthcare providers not to seek medical

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treatment because of the potential public health risk of spreading the infectious disease to others in the community. This may occur, for example, with a disease such as the Norwalk virus, which has symptoms that are typically acute and short-lived (3-5 days) and that do not require medical intervention in order to resolve.

As a result, there may be little or no medical documentation available when deciding whether the worker has an acceptable claim and whether a disability exists. However, the non-medical factual evidence may indicate the existence of a disability caused by an occupational exposure that meets the evidentiary criteria for an acceptable contagious disease claim.

Evidence from the worker or other sources may be sufficient to establish a worker's entitlement to wage loss compensation in cases where no medical report is available (RSCM Vol. II, Policy item #95.31). Similarly, the lack of a medical report does not preclude the acceptance of a worker's occupational disease claim where other evidence establishes the compensable nature of the worker's claim.

In investigating an occupational disease claim where there is no medical report, a Board officer may wish to consider:

- the nature of the employment and occupational setting and whether there was likely exposure to the infectious disease,
- whether there is a generalized outbreak of the disease in the worker's community,
- whether there has been a confirmed diagnosis of the disease at the employer's location and whether the worker's reported symptoms are consistent with that diagnosis,
- the time period between exposure and the onset of symptoms,
- whether the employer is protesting acceptance of the claim or has reason to believe workplace exposure was not the cause of the worker's reported illness,
- whether the worker reported symptoms of the contagious disease to the employer, the employer's first aid department, family physician or a medical clinic, and/or
- whether the worker was advised not to seek medical treatment due to the infection risk.

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H1N1 Flu Virus

A worldwide outbreak of H1N1 flu virus in 2009 caused the World Health Organization to declare the disease a “pandemic”. For information regarding adjudication of claims for H1N1 see Appendix “A”, *H1N1 Flu Claims*.

CROSS REFERENCES:

N/A

HISTORY:

N/A

APPLICATION:

This Practice Directive was developed to provide guidance on adjudicating contagious occupational diseases. Appendix “A” was added in August and October 2009 to provide guidance on adjudicating claims for H1N1.

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Appendix “A”

H1N1 Flu Claims

1. Background Information on H1N1

H1N1 is a respiratory disease caused by type A influenza virus. The virus does not normally infect humans but it regularly infects pigs. Due to increasing genetic changes, some of the influenza viruses not previously known to infect humans, are now crossing the species barrier. This was previously the case with H5N1, otherwise known as SARS, which was responsible for considerable morbidity and some mortality. The H1N1 virus has made a similar leap and in 2009 a significant number of human infections occurred. On June 11, 2009, the World Health Organization raised its alert level for the H1N1 flu to the “pandemic phase” (phase 6).

Symptoms of H1N1 in people can be similar to regular seasonal influenza infection and typically include: fever, cough, headache, general aches and fatigue, lack of appetite, and sore throat. Some people have also reported vomiting and diarrhea.

The H1N1 flu virus can be transmitted from person to person. H1N1 is spread in the same way as the seasonal flu. When an infected person coughs or sneezes near someone, they release germs into the air where they can be breathed in by others. Germs also rest on hard surfaces like counters and doorknobs where they can be picked up on hands and transmitted to the respiratory system when someone touches their mouth or nose.

2. Adjudication of H1N1 Flu Claims

Policy item #28.00, *Contagious Diseases*, in the *Rehabilitation Services & Claims Manual* (“RSCM”) provides guidance on adjudicating the compensability of contagious diseases such as H1N1.

The policy requires that the nature of the worker’s employment either:

- created for the worker a risk of contracting a disease to which the public at large is not normally exposed, or
- created for the worker a risk of contracting the disease significantly greater than the ordinary exposure risk of the public at large.

The policy requirements are aimed at establishing a causative link between the worker’s employment and the contagious disease. The policy explains that contracting a contagious disease while at work is not sufficient to establish

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compensability. There must be something in the nature of the employment which had causative significance in the worker contracting the disease.

These considerations are particularly relevant in the case of a contagious disease that has reached the pandemic phase and where cases are being contracted in the community at large, as is the case with the H1N1 flu virus. In order to be compensable, the worker's evidence has to establish first, that they have the H1N1 flu virus, and second that, it was caused by something in the nature of the worker's employment. Because it is possible to catch H1N1 simply by being out in the community, the claim evidence needs to clearly demonstrate a causative link between the H1N1 flu and the worker's employment. In addition to establishing a clear causative link between the worker's employment and illness, the evidence must also establish that the employment was such that the worker was at significantly greater risk of contracting the virus than the public at large.

Policy item #28.00 includes helpful examples that illustrate the policy requirements. Examples 1 and 4 are particularly relevant in adjudicating claims of workers with H1N1 flu who work with the general public. H1N1 is easily passed from person to person and based on the disease's behaviour in the first half of 2009 is considered a public health concern.

***“Example 1** — Suppose an outbreak of meningitis is affecting the community at large. The disease may be spreading at places of work, in the home, at schools, at churches, at social events, at sporting events, and every place where people meet. The Board would not, with regard to each worker suffering from the disease, seek evidence to decide whether that worker contracted the disease at work or elsewhere. The disease would be viewed as a public health problem, not a disease due to the nature of any particular employment, and compensation for the workers involved must be found under general systems relating to sickness benefits, not under workers' compensation.*

*...**Example 4** — Suppose a courier develops mononucleosis and claims compensation on the ground that in the job he or she meets more people than workers in most occupations and therefore has a greater risk of exposure to contagious diseases. Such a claim would not be allowed. The disease is one that spreads in the population at large, and claims of this nature cannot be allowed or denied by estimating the extent to which each employment involves mixing with the public.”*

3. Preventative Measures

In order to have a compensable claim, a worker must have a personal injury or an occupational disease. Benefits cannot be paid in H1N1 cases unless the worker has actually contracted the disease. As a result, benefits are not payable

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where a worker stays home from work as a preventative measure or is quarantined at home to avoid possible exposure to H1N1.¹

¹ See RSCM Volume II, Policy item #13.40, *Infectious Agent or Disease Exposures*