

If you would like to receive Workers' Disability Compensation Agency updates directly, please sign up through [Gov Delivery Communications](#). Once the email is inputted, scroll to the Workers' Disability Compensation Agency heading to select the appropriate subject matter.



WORKERS' DISABILITY COMPENSATION AGENCY

MEMO

Date: May 25, 2021

From: Jack A. Nolish, WDCA Director & Luke McMurray, Chair, Board of Magistrates

To: All interested parties and counsel

Re: Hearing sites re-opening

"The only constant is change." Heraclitus of Ephesus 535 BC-475 BC

"For the times, they are a changing."

Bob Dylan of Minnesota, 1941-; Nobel Prize, literature 2016

Many of you have seen the May 18, 2021 Memo that announced the limited access to the hearing sites for in-person trials starting with the docket scheduled for July 12. That announcement was predicated on a mix of the available information and the regulatory situation at that time. As Governor Whitmer has recently announced, things have changed. If you liked the news in that memo, try this mx: one part Heraclitus and a generous portion of Dylan. When the doors open July 12, with the exceptions enumerated here and assuming there is no change in the expected public health situation, the re-opening will be "business as usual." In the meantime do not wait for that date to continue conferring with opposing counsel and advising the assigned magistrate about the readiness of your cases for trial.

Exceptions:

1. Magistrates and staff will be working behind plastic shields until further notice.
2. Any individuals with COVID-19 symptoms, should not enter hearing sites. As provided in MDHHS Emergency Order 5/24/21, "Principal symptoms of COVID-19" means at least 1 of fever, uncontrolled cough, or typical new onset of shortness of breath, or at least 2 of the following not explained by a known physical condition: loss of taste or smell, muscle aches, sore throat, severe headache, diarrhea, vomiting, or abdominal pain. Per section 1(j) of 2020 PA 339, this definition represents the latest medical guidance, and serves as the controlling definition.
3. If anyone visiting the hearing sites develops any of the above symptoms within 2 days after attendance at a site, the information should be reported to the magistrate.
4. Social distancing should be maintained wherever possible and frequent hand washing should be practiced.
5. Individuals that are fully vaccinated (persons for whom at least 2 weeks have passed after receiving the final dose of an FDA-approved or authorized COVID-19 vaccine) will not be required to wear face masks.
6. Individuals not fully vaccinated will be required to wear face masks in the hearing sites except when they are:

1. medically unable to tolerate a face mask;
 2. asked to temporarily remove a face mask for identification purposes; or
 3. communicating with someone who is deaf, deafblind, or hard of hearing and whose ability to see the mouth is essential to communication.
7. The magistrates may apply different protocols for each of their hearing rooms.
 8. The magistrates may adjourn any hearing at any point in the proceedings if there are any safety concerns.

Months ago, at various presentations to the bar and other groups, one of the slides quoted an old song about meeting again someday without knowing where or when. As of July 12, we can solve the dilemma. We will meet again July 12 at the hearing sites.



WORKERS' DISABILITY COMPENSATION AGENCY

Date: May 17, 2021

From: Jack A. Nolish, WDCA Director and Luke McMurray, Chair WDCA Board of Magistrates

To: All parties in Workers' Compensation cases pending litigation

Re: Resumption of in-person trials

We are pleased to announce that in-person trials of Workers' Compensation cases will resume beginning with docket dates starting Monday, July 12, 2021. Prior to that date, and continuing thereafter, virtual trials will remain an option. Barring some unforeseen adverse turn in the COVID-19 infection rate, and with the successful continuation of the vaccination program, there will be no additional roll-over of the full trial docket beyond the one already in place covering dates up to July 9, 2021.

Keep in mind, however, that this resumption of in-person trials will not be a resumption of the old norms in handling cases. Packed waiting rooms, crowded corridors, small conference rooms and huddled conferences will not be permitted. Non-trial matters such as conference, facilitations, mediations, control dates, motions, redemptions, and others, will continue to be handled virtually.

Specific orders about entry into the hearing sites, handling of exhibits, conduct of trials and general operation of each hearing site will be forthcoming. It is expected that each site will have special considerations addressing their unique circumstances. By way of example, hearings in temporary locations such as Baraga, will be different than those in state owned multi-use facilities such as Cadillac Place.

Safety of staff and all those attending the hearings will be the primary concern. We will operate in strict compliance with all federal, state and any applicable local rules for each location. Although masking rules are undergoing changes expected to be published soon, screening procedures will continue. We will expect and appreciate full voluntary cooperation from all parties. Failure of cooperation may result in delays of cases.

We will immediately begin a process to determine case priorities on each of the upcoming trial dates so parties can determine how to prepare. Using July 12 as a start date, should allow for ample time for cases to be made ready for trial. The magistrates will continue to control their dockets and determine case priority. If you have cases scheduled 7/12 and after, please contact opposing counsel and determine your need to proceed to trial and the readiness to do so. Contact the assigned magistrate and discuss the status of the matter. Telephone and virtual conferencing may be used for discussions. It is, however, understood that there may be issues regarding availability of counsel and parties as well as scheduling depositions. Medical proofs may have to be updated and witnesses made available. There are many moving pieces in getting the litigation train rolling again. Traditional cooperation between the bench and bar will be critical in this endeavor.

Thank you for your patience through this difficult time.



WORKERS' DISABILITY COMPENSATION AGENCY

Hearing Sites Re-Opening Update

To: Interested Parties
From: Jack A. Nolish, Director

The lyrics from the old song "We'll Meet Again" go on to say, "don't know how, don't know when...." That phrase describes the return to in-person hearings before the magistrates. What I do know is that the COVID-19 pandemic has caused a terrible problem for injured workers, employers, and counsel.

Daily COVID-19 impact maps published in the 4/19/21 *New York Times* show that Michigan is at an "extremely high" risk of exposure and we have the worst situation in the country. As of 4/19 MDHHS has reported a total of 793,881 confirmed cases in our state. Although the vaccination program continues and now includes those age 16 and over, it will take some time for the necessary "herd immunity" to develop. The mortality rate has declined but the infection rate is increasing in the very demographic that describes the workforce.

As a consequence of these factors, the Governor, and the Office of the State Employer (OSE) have determined that state employees will continue to work remotely until at least July 12. As we encountered with the previous date, they will advise in advance if there is change in that date.

Additionally, the [MIOSHA emergency rules](#) addressing employment of all kinds in Michigan, have been extended through October 14. Even if we get staff back into the offices, it will in compliance with those guidelines, those of the CDC, and the most [recent order from MDHHS](#). Masks, distancing, cleaning, limited access, and restricted access to common areas such as restrooms, will be part of the initial phases.

The virtual hearing process remains available and can be discussed with the assigned magistrate. Anecdotally, I have heard the difficulty of trying a case when the participants are masked, socially distanced, and the adjudicator is stationed behind a plastic shield. Hearing the words of a reluctant or soft spoken witness in that environment can be a challenge.

Although we have made the necessary modifications to the benches, we are updating the re-opening plans as the parameters change. The decisions to resume operations are made at the highest levels, data-driven, always with greatest concern for the health and safety of all concerned. The issue remains a high priority in all our department level meetings and is under constant review and discussion. Meetings are scheduled with MOAHR with whom we share several spaces. As soon as there is news on this issue, I will get the word out.

Thank you for your understanding during these incredibly difficult times.



**WORKERS' DISABILITY
COMPENSATION AGENCY**

Revised Board of Magistrates' Hearing Schedules-thru July 9, 2021

April 15, 2021

The Workers' Disability Compensation Board of Magistrates' [hearing schedule](#) has been updated for dates thru July 9, 2021.



**WORKERS' DISABILITY
COMPENSATION AGENCY**

Revised Board of Magistrates' Hearing Schedules-thru April 2021

March 1, 2021

The Workers' Disability Compensation Board of Magistrates' [hearing schedule](#) has been updated for dates thru April 2021.



WORKERS' DISABILITY COMPENSATION AGENCY

Board of Magistrates' Hearing Schedules

The Workers' Disability Compensation Board of Magistrates' [hearing schedule](#) has been updated for dates through February. The first page of the schedule explains docket assignment for the recently appointed magistrates and case reassignment for existing magistrates. Please note support staff contact changes for the upper peninsula, Traverse City and Gaylord docket as shown on the last page of the document.

The website has also been updated to show [current magistrate docket assignments](#).

Please contact the appropriate hearing site with any further questions on docket assignments.



WORKERS' DISABILITY COMPENSATION AGENCY

Electronic Filing Submission for Attorneys

The Michigan Workers' Disability Compensation Agency is now accepting filings from licensed Michigan attorneys via upload through Michigan File Transfer Service (FTS), a secure electronic file transfer portal. The service was formerly known as the Data Exchange Gateway (DEG). An application may be submitted for an individual user account or for a single account to be used for an entire firm. Existing account users should submit a new application for access to the additional mailboxes which will be accessed by your existing mailbox name and password. *Note:* if the account is established for a firm, any documents transmitted back to that firm mailbox address will be deemed served upon the individual attorney handling the claim.

Types of Documents accepted in each Mailbox –WC Claims (WCMICLMS)

- Application for Mediation or Hearing - Forms
 - WC-104A, Application for Mediation or Hearing
 - WC-104B, Health Care Services Application for Mediation or Hearing
 - WC-104C, Defendants' Application for Mediation or Hearing
 - Multiple single page documents may be submitted in a single upload as long as each individual document is identified by the form number at the beginning of each document name.
- Coverage Forms: WC-400, WC-401
- Report of Injury: WC-100
- Notice of Dispute: WC-107

- Notice of Compensation Payments: WC-701
 - Note – all forms must be single page documents, no attachments can be included.
 - Multiple single page documents may be submitted in a single upload as long as each individual document is identified by the form number at the beginning of each document name.

WC BOM Magistrates (WCMIBOM)

- Documents related to a pending case before the Board of Magistrates
- Documents in support of and approving Redemption of Liability, including:
 - WC-113 Redemption Order
 - WC119-Affidavit in Support of Redemption Agreement
 - WC-544 Workers' Settlement Statement
 - WC-566 Agreement to Redeem Liability
 - WC-556A Addendum to Agreement to Redeem Liability
 - Medical reports/records in support of the agreement
 - WC-113A Multiple Carrier Redemption Form
- Documents to be used as exhibits in contested cases and other types of hearings before a magistrate

WC Appeals (WCMIWDCAC)

- Claim for Review (WC-262)
- Pleadings relating to a pending case before the Appeals Commission, including transcripts, motions (and responses), briefs (and responses), responses to orders, and cross-appeals.

Note: *The original document must still be mailed or delivered*, but documents are considered filed upon acceptance by FTS.

WC Agency (WCMIAGENCY)

- Documents requesting a compliance hearing (WC-40) or related to a pending case before the Director
- Appeals to the Director

For more information on signing up for FTS, please visit the Workers' Disability Compensation Agency [website](#).



WORKERS' DISABILITY
COMPENSATION AGENCY

Workers' Disability Compensation Hearings Update

Date: July 1, 2020
To: Interested Parties
From: Jack Nolish, Director, WDCA

In 1943, during the dark days of WW2, Vera Lynn sang: "We'll meet again, don't know where, don't know when, but I know we'll meet again some sunny day." The song became an anthem for the war. If she sang it today, the line would end: "some Covid free day." It is the way I feel about our hearing sites. I do not have control over when we will get back there. Like Vera Lang, I "...don't know where, don't know when..."

Fact is that COVID-19 related infections continue to rage across the country and here in Michigan. Although the rates have somewhat leveled off, the illness rate rises along with the death toll. The daily infection rate has started to rise again. The most recent story of infections traced to Harper's Bar in E Lansing, extending almost 100 miles to Grosse Pointe, demonstrates the problem of rapid infection spread by individuals.

The decision to re-open state offices, particularly those that are "public facing" will be made at many different and higher levels of state government. When it is made, at least in the short term, we will return to a highly controlled environment. The return to "business as usual" with crowded corridors and close quarters negotiations, remains an important but distant goal.

As of now, the hearing sites are closed and will be through at least the end of July. I have no prediction for when that will change. I am acutely aware of the hardship this situation is causing to all parties and their counsel. Disputed benefits remain unpaid; open awards are not stopped; counsel struggle to keep their offices operating. It is no secret that I have suggested that, like all the other administrative hearings in the state, virtual hearings in contested cases can be a way to get cases tried while the hearing site doors remain closed. Governor Whitmer has recently extended the Executive Order authorizing this approach in all administrative hearings (EO 2020-132) through July 31.

Let me make something clear, even if somehow implemented, this idea is NOT the beginning of a plan to forever replace in-person WDCA trials with virtual hearings. But, in these uncertain and unprecedented times, we can "never say never." I am aware that such hearings have limitations and learning to practice within them involves climbing a learning curve. I am aware that there are technical issues that would need to be addressed and aware that we have many levels of computer literacy among all the participants in our system. Access to reliable video conferencing is not universal.

In this context, there remains the urgent need to do something in the interim to keep cases moving. Justice delayed is justice denied. As is being done in many other states, I have suggested that, AS A STOP-GAP ALTERNATIVE TO ENDLESS ADJOURNMENTS, we make use of video conferencing technology to conduct hearings. We are already doing redemptions virtually and that is generally only on the phone. Video would give the magistrate a better assessment than a voice only calls. There are few reasons why many routine matters such as first-pretrial dates; control dates and even facilitations could not be done utilizing virtual technology. Once mastered, the technology allows for conference rooms to be set-up for the parties to negotiate or meeting with clients and the magistrate and shuttle in between to facilitate negotiations. Documents can be shared on the screen for discussion.

Suggestions that we open just one hearing site to get things going, presents many challenges. Assuming we could get approval to open one right now, how do we decide who gets to hold a hearing there? Who will do the screening at the door? Who will handle continuing sanitation during the day? How do we regulate the flow of people in and out of the multiple magistrate venues? How do we handle someone that arrives at a site and indicates possible exposure? An injured worker in Escanaba cannot be expected to make their way hundreds of miles to Detroit for a hearing. Worse, what happens if they get there and find the door locked because someone at the UIA office on another floor reported positive? Do we surround the magistrates and the divide the counsel table with plastic “sneeze guards?” Just how do they handle the hearing when everyone in the room is wearing a mask? And so on....

WDCA, along with the other departments in LEO and all others in the state, is working daily on detailed plans on how to reopen the agency office and the hearing sites. Any plans must be reviewed by the various safety committees and be in full compliance with all guidelines. We are reviewing the needs of each of our unique facilities to determine any modifications that must be made as well as implement appropriate procedures. Supplies will have to be obtained and training conducted.

Above all, we are committed to safety. We cannot not open doors unless we can keep staff and visitor alike as safe as possible. No one should develop or spread a COVID-19 infection because they appeared at any WDCA hearing site. Although my office door may not actually be open, I invite you to call me at 517-284-0532 or send email to me nolishj2@michigan.gov . I welcome POSITIVE, PRACTICAL AND SAFE suggestions for moving through this interim period between our same old ways and the new normal, whatever that may be. We will meet again.



Governor Executive Order 2020-128

Executive Order 2020-125 that was recently forwarded has been rescinded and replaced by Executive Order [2020-128](#) which outlines workers' disability compensation benefits eligibility related to COVID-19 exposure.



Governor Whitmer Signs Executive Order Ensuring Workers' Compensation Eligibility for Frontline COVID-19-Response Workers

FOR IMMEDIATE RELEASE

June 17, 2020

Media Contact: press@michigan.gov

Governor Whitmer Signs Executive Order Ensuring Workers' Compensation Eligibility for Frontline COVID-19-Response Workers

LANSING, Mich. — Governor Whitmer today signed Executive Order 2020-125, which clarifies Workers' Disability Compensation Act (WDCA) eligibility during the COVID-19 emergency, replacing emergency rules issued by the Department of Labor and Economic Opportunity in March 2020. Under this executive order, individuals who work within the secured borders of a penal institution, including correctional officers, medical staff, and cafeteria staff who serve prisoners will be presumptively entitled to worker's compensation if they suffer a personal injury as a result of COVID-19.

"The men and women who work at correctional facilities across our state should be able to report for work knowing they will be covered under Michigan's Workers' Disability Compensation Act if they are injured or disabled as a result of COVID-19, and this executive order ensures they are eligible for that much-needed coverage," **Governor Whitmer** said. "The real heroes of this crisis are the medical workers, first responders, and other essential workers — like correctional officers — who are putting their lives on the line for us every day. We must all continue to do our part to protect them and their families."

The WDCA affords important protections to Michigan's workers and employers. Under normal circumstances, employees seeking entitlement to wage-loss benefits are required to demonstrate, in part, the existence of a work-related injury that prevents the employee from performing his or her job duties. Due to the possibility of asymptomatic transfer of COVID-19, requiring a worker on the frontlines of the COVID-19 pandemic to demonstrate they contracted COVID-19 in the course of their employment unfairly shifts risk to the worker and may hinder Michigan's emergency response by undermining confidence in the worker's compensation system among the most critical members of the workforce.

Under Executive Order 2020-125, a COVID-19-response worker who is confirmed as COVID-19 positive on or after March 18, 2020, either by physician or by test, shall be presumed to have suffered a "personal injury," as defined by the WDCA.

This order is effective immediately and shall remain in effect during the declared states of emergency and disaster.

Information around this outbreak is changing rapidly. The latest information is available at Michigan.gov/Coronavirus and CDC.gov/Coronavirus.

To view Executive Order 2020-125, click the link below:

- [2020-125.pdf](#)



WORKERS' DISABILITY COMPENSATION AGENCY

Job Search and Medical Examinations under MCL 418.301, 385 and 401

in the COVID-19 Era

MEMO: To all interested parties

FROM: Jack A. Nolish, Director

RE: Update to March 24, 2020 Memo

DATE: June 12, 2020

I. Job Search

The WDC Act requires an injured worker do “job search” in order to collect wage loss benefits (MCL 418.301 & 401). This requirement is similar to the requirement that an unemployed individual actively seek employment in order to be eligible for UIA benefits. In light of the Governor’s “Stay Safe, Stay Home” orders, such job seeking is impractical at least and probably violates the applicable **EOs 2020-20 & 21** subjecting the injured worker and potentially the potential employers to sanctions.

There was little likelihood of finding employment in the early stages of the shutdowns. Numerous employers were closed completely, while many others were laying-off workers rather than hiring. The previous memo dated 3/24/20 urged waiver of the “job search” issue in WDCA claims in order for the two benefit systems to have a common approach to the issue. As time has gone on, those orders have now been modified and loosened by many subsequent orders.

The job seeking issue in UIA was specifically handled by **2020-10**, replaced by **2020-24** which was rescinded and expanded by **2020-57** which reaffirmed **2020-24** and clarified and strengthened its expansion of eligibility for unemployment benefits and cost-sharing with employers.

This order continues the provisions of Executive Order 2020-24, and adds additional provisions to make it easier for employers and workers to implement and use shared-work plans, in order to avoid layoffs, and to allow certain retired state employees to return to service without losing access to pension payments. With this order, Executive Order 2020-24 is rescinded.

However, the issue of seeking employment waiver is continued by the specific provision in **2020-57** which provides:

(7)Strict compliance with subdivision (a) of subsection (1) of section 28 of the Employment Security Act, MCL 421.28(1)(a), is temporarily suspended to the extent necessary to allow an unemployed individual to be eligible to receive benefits without a finding by the Unemployment Insurance Agency that the individual is actively engaged in seeking work.

This same language appears in **2020-76(7)** which rescinded **2020-57** but continued the referenced paragraph. **2020-76** was extended by **2020-100** until the end of the State of Emergency which was specified in **2020-99** as 6/19/2020. The situation is dynamic, however, and **2020-110** was entered **6/1/20** which provides: “**Michiganders are no longer required to stay home.**” The order also includes a series of restrictions for various locations and types of businesses and includes the mandate: “Any work that is capable of being performed remotely must be performed remotely.”

Be mindful, however that even if the injured worker is offered a return to work at the same employer at lighter or accommodated duties, or finds work at another employer, any employment circumstance must comply with all applicable Executive Orders such as **2020-114** regarding employee safety. Jobs in violation of the orders could hardly be described as “reasonable” as provided in MCL 418.301(11) and 401(9).

II. Independent Medical Examinations

Requiring that an injured worker attend an “Independent Medical Examination” MCL 418.385 has been under significant restriction due to the operation of the executive orders. **2020-17** ordered the postponement of all “non-essential procedures” which it went on to define as: “...a medical or dental procedure that is not necessary to address a medical emergency or to preserve the health and safety of a patient, as determined by a licensed medical provider.” Certainly, medical evaluations for purposes of WDC claims fit in that category.

As indicated in the 3/24/20 Memo, the combination of **2020-20 and 21** placed injured workers in the position of being ordered to “Stay Home and Stay Safe” with some exceptions for life sustaining activities such as “...necessary medical treatment as determined by a licensed medical provider” just as described in the prior **2020-17**.

These combined executive orders place the injured worker under orders by the Governor not to travel to the type of evaluation described as “Independent Medical Examination” during the time facilities providing that service were ordered to postpone that type of service. Failure of an injured worker to attend an exam scheduled when they should not leave home to go to a location that should not be performing the service in question, certainly cannot be the basis of any adverse effect on the WDC claim.

It might be suggested that the IME’s are permitted as of **2020-96** which rescinded portions of **2020-17**. The rescission of the required medical care or procedure postponements **2020-96(19)**, did not change the travel restrictions which limit medical travel of individuals to “...seek medical or dental care for themselves...” **2020-96(8)(a)(6)**. As noted in the 3/24 Memo, “IMEs” are always described as not being for purposes of care or treatment and that no physician/patient relationship is established by the evaluation. The duration of **2020-96** was extended to 11:59 pm on 6/12/2020 by **2020-100(3)**. HOWEVER, **2020-96** was rescinded on 6/1/20 by **2020-110** which indicated: “**Michiganders are no longer required to stay home.**”

Like the point raised above regarding the reasonableness of a job offer, the request for an IME should only be made if the facility for the evaluation is in full compliance with all applicable executive orders for businesses, including health care facilities, to operate with utmost safety including, but not limited to, such requirements as frequent cleaning; readily available hand washing; observance of social distancing; appropriate wearing of face masks; occupancy and group size limitations and all other requirements specified in all executive orders such as **2020-14**. Refusal to participate in an examination at a facility that is not in compliance should not adversely impact a claim for benefits.



WORKERS' DISABILITY COMPENSATION AGENCY

Re-opening WDCA Hearings Offices for Face-to-Face Sessions

Date: June 2, 2020

To: All Interested Parties and Counsel

From: Jack A. Nolish, Director

Re: Hearing Sites June Docket

Yesterday, June 1, 2020, Governor Whitmer signed Executive Order 2020-110 rescinding several prior orders significantly altering the prior "Stay Home, Stay Safe" orders restricting travel and activities. As of this time, however, the WDCA, is still unable to return to full face-to-face operations at the hearing sites. The trial dockets set for June are being re-scheduled until at least July. The new dates will be posted on the WDCA website: www.michigan.gov/WDCA. (Click on "General Updates") All other matters such as redemptions, pre-trial and control dates will continue to be handled via phone and electronic conferencing. Since we are well aware of the hardships this situation is causing, we will provide information about re-opening as soon as possible.

I can assure you that plans are underway for full re-opening of the sites. As part of LEO (Labor and Economic Opportunity), we are working under the following guideline:

We are identifying critical services to open to the public as soon as appropriate safeguards are in place and can be maintained. Those include screenings, PPE and training for all employees. State and federal public health and other guidance will dictate the pace and scope of returning employees to the workplace.

We do consider the return to full face-to-face hearings a critical service. Since we have offices in spaces as diverse as a hotel in Baraga to our largest facility in Detroit, we are reviewing the unique features of each to determine how we protect those that come to the sites for their cases as well as our staff and others with whom we share some of the locations. You may not be aware that 90% of the WDCA staff are now working remotely.

EO 2020-110 provides several factors that we must consider:

2. Any work that is capable of being performed remotely (i.e., without the worker leaving his or her home or place of residence) must be performed remotely.

4. Any individual who leaves his or her home or place of residence must:

(a) Follow social distancing measures recommended by the Centers for Disease Control and Prevention ("CDC"), including remaining at least six feet from people from outside the individual's household to the extent feasible under the circumstances.

(b) Wear a face covering over his or her nose and mouth—such as a homemade mask, scarf, bandana, or handkerchief—when in any enclosed public space, unless the individual is unable medically to tolerate a face covering.

(1) An individual may be required to temporarily remove a face covering upon entering an enclosed public space for identification purposes. An individual may also remove a face covering to eat or drink when seated at a restaurant or bar.

(2) Businesses and building owners, and those authorized to act on their behalf, are permitted to deny entry or access to any individual who refuses to comply with the rule in this subsection (b). Businesses and building owners will not be subject to a claim that they have violated the covenant of quiet enjoyment, to a claim of frustration of purpose, or to similar claims for denying entry or access to a person who refuses to comply with this subsection (b).

(4) The protections against discrimination in the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq., and any other protections against discrimination in Michigan law, apply in full force to individuals who wear a face covering under this order.

5. Indoor social gatherings and events among persons not part of a single household are permitted, but may not exceed 10 people.

We are reviewing all of these issues and more such as sanitation, parking locations and others. We are taking the necessary steps to provide a safe environment for all concerned. We certainly appreciate your patience and, going forward, your cooperation in complying with all procedures that we put in place. In the meantime, please consider using video/tele conferencing for settlement and other discussions among counsel. Schedule a "Zoom" conference for a settlement discussion. You can even put documents such as a medical record on the screen for discussion. It is not the same as a face-to-face quick discussion in the corridor between hearings, but we have been able to run the state using this form of communication. I am sure many of you have participated in a "Zoom Birthday" party or other virtual gathering. It is not the same of course as a friendly handshake but it certainly is Covid-19 free communication.

Stay safe.

Announcement

Sent April 9, 2020

MICHIGAN DEPARTMENT OF
LABOR AND ECONOMIC OPPORTUNITY
Workers' Disability Compensation Agency

Workers' Compensation COVID-19 Claim Reporting

The Workers' Disability Compensation Agency has updated the WC-701 filing instructions to include the new COVID-19 injury code (083). Below is the hyperlink to the document:

[Need to Know How to Complete a Form 701?](#)

Announcement

Workers' Disability Compensation Appeals Commission Update

TO: To All Interested Parties

FROM: Daryl Royal, Chairperson

DATE: April 3, 2020

The Workers' Disability Compensation Appeals Commission ("WDCAC") continues to operate in these difficult times. The three commissioners are working remotely, while keeping in regular communication with each other and the secretary for the WDCAC, Michele Kamp, via Skype, e-mail, and telephone. We have important information for those with pending appeals or who may wish to file an appeal.

- The WDCAC remains open for the filing of documents necessary for the appellate process, and intends to issue opinions and orders as they are completed. Filings with the WDCAC may be made by mail or facsimile. While we have customarily allowed in-person delivery, that may be problematic at present. Our building is not easily accessible at this time. Overnight deliveries are still accepted, but parties should contact their carriers for updates before relying on their services.
- Parties and their attorneys should not assume that we are unavailable or closed, or that we will grant a blanket or automatic extension of time to accomplish any appellate duty. Attention must still be paid to filing deadlines. At the same time, we appreciate that even seemingly simple undertakings cannot be accomplished as quickly and efficiently these days as before.
- With regard to filings (claims for review and transcripts) in the appellate process from magistrate orders, the WDCAC is authorized by the Act to allow further time to file for "sufficient cause." We will take administrative notice of the fact that these are not normal times, but we must nonetheless require a case-specific showing of sufficient cause and, to make that determination, we will look to the factors set forth in *Laudenslager v Pendell Printing Inc*, 215 Mich App 167; 544 NW2d 721 (1996) -- the length of the delay, the reason for the delay, and the existence of any resulting prejudice to the parties and to the WDCAC. We encourage the parties and/or their attorneys to communicate with each other in hopes of minimizing prejudice.
- With regard to the filing of briefs, we have today issued an opinion and order in *Bryant v On Time Medical Transportation*, in response to a challenge to our authority to grant further time to file a brief. (That opinion and order should appear on our [opinion website](#) shortly.) We have concluded that the WDCAC may grant more time upon a showing of "sufficient cause." While a party may find comfort in this opinion and order, it may not be the last word on the subject. Parties should follow their own counsel and conscience.
- With regard to the filing of a cross-appeal, authority exists which suggests that a cross-appellant may not obtain further time beyond the statutory time limits to file either a cross-appeal or a brief in support of the cross-appeal. The WDCAC has not addressed this issue, and parties should proceed accordingly.
- With regard to filing appeals from our final orders, it is not our place to address the jurisdiction of an appellate court. The following comes from the Court of Appeals [website](#):

MCOA Response to novel coronavirus and COVID-19:

In response to concerns about the novel coronavirus and COVID-19, **the Court of Appeals and Court of Claims clerk's office public counters will be closed to visitors until further notice.** Filings to the **Court of Appeals** should be made either electronically through [MiFILE](#) or in hard copy through the U.S. Mail or private delivery service. Filings to the **Court of Claims** should be made in hard copy through the U.S. Mail or private delivery service. If you have a time-sensitive filing that requires immediate delivery in hard copy, each office will have a designated location at the office entrance where filings may be deposited for filing. If you have any questions about filing with either Court, please contact the clerk's office at 517-373-0786 for assistance.

The Supreme Court has also issued an [administrative order](#) regarding filings in the appellate courts. We take no position as to the applicability of this order to appeals from our decisions, but suggest that parties considering an appeal also consult *Wszola v Robert Carter Corp*, 187 Mich App 372; 468 NW2d 57; *lv den*, 439 Mich 868 (1991); *rec den*, 439 Mich 868 (1992).

We hope that these guidelines will aid parties and their attorneys in handling their appeals before the WDCAC as we all struggle with the effects of the current crisis.

Announcement

Sent April 2, 2020

Workers' Compensation COVID-19 Claims

The Workers' Disability Compensation Agency (Agency) has started tracking COVID-19 related claims. To ensure all COVID-19 claims are tracked properly, the Agency has created a new injury code. The Agency asks when filing a form WC-100 and/or WC-701, specific wording be used when the claim is related to COVID-19. See below for instructions regarding how to file a COVID-19 related claim:

Form WC-100:

All lines except Section III line 37, 38 and 39 should be filled out as usual. Section III. Injury/Medical Data: Line 37 should clearly state the cause of injury is related to a COVID-19 illness. Line 38, Nature of Injury, use code "083" or "COVID-19". Line 39, Body Part Affected, use code "850" or "Lungs."

Form WC-701:

All lines except Part B, line 25 and 26 should be filled out as usual. Part B: Line 25, Nature of Injury, use code "083" or "COVID-19". Line 26, Part of Body, use code "850" or "Lungs."

If you have any questions, please call 517-284-8921 or 517-284-8918.

Announcement

MICHIGAN DEPARTMENT OF
LABOR AND ECONOMIC OPPORTUNITY
Workers' Disability Compensation Agency

Medical Treatment During the COVID-19 Pandemic

MEMORANDUM

Date: 3/31/2020

To: All interested Parties

From: Jack A. Nolish, Director

Re: Medical treatment during the Covid-19 pandemic

The coronavirus pandemic demands that health care providers and payers reconsider how care is delivered to reduce the risk of further spreading infection. It is vitally important for injured workers in Michigan to be able to receive health care services without visiting their provider in person. The urgent need to contain the spread of this new virus means we must act quickly to increase the availability and use of telemedicine services.

- The Workers' Disability Compensation Agency (the Agency) expects carriers to provide **increased access to health care services through telemedicine delivery platforms** and to encourage patients to use telemedicine delivery options to limit the amount of in-person health care services they seek.
- Carriers are encouraged to work with providers to consider all options to provide an injured worker with appropriate and reasonable care, including telerehab options.
- When appropriate, the carrier is encouraged to modify its payment and coverage policies regarding telemedicine furnished by physical, occupational, and speech therapists in accord with their professional scope of practice, to ensure that patients continue to have access to the rehabilitative care they need amid the COVID-19 pandemic.
- If a carrier and provider determine telerehab is in the best interest of the injured worker, the Agency encourages reimbursement rates for telerehab services that mirror payment rates for an equivalent service provided in person or that providers and carriers quickly agree on reasonable reimbursement rates.
- The Agency notes that while the Health Care Services Rules prescribe a 3% late fee if a carrier does not reimburse the provider within 30 days of receipt of a properly submitted bill, it is advised that this penalty be waived during government imposed COVID-19 restrictions.

Since the restrictions on individual activity specified in Governor Whitmer's executive order (EO 2020-20) may impact on an injured worker's ability to attend scheduled medical appointments, including physical therapy or psychological services, during the effective period of the orders, and any future extensions, related additional orders or expansion:

- failure to attend such appointments should not adversely impact the injured workers entitlement to benefits.

- Simply stated, a claim should not be disputed for non-compliance with medical treatment.
- Other options to secure the appropriate level of reasonable treatment should be explored, **including telemedicine**.

On March 24, 2020, Agency Director Nolish sent a memo highlighting several points in Governor Whitmer's Executive Orders, including the directive that "Demands or threats made to injured workers relative to attending evaluations or conducting job searches may be considered a violation of the Executive Orders." The Agency's position is that this also encompasses medical and psychological services as outlined above.

You can access a copy of the current health care services rules by clicking the following link: (https://www.michigan.gov/documents/wca/HCS_Rules_643327_7.pdf). The rules provide billing and reimbursement directives for certain telemedicine procedure codes, including office visits, hospital visits, and psychotherapy visits with no restrictions on the originating site, which can be a private home:

- **R418.10901 (4) A health care professional billing for telemedicine services shall only utilize procedure codes listed in Appendix P of the CPT codebook, as adopted by reference in R 418.10107, to describe services provided, excluding CPT codes 99241-99245 and 99251-99255. The provider shall append modifier -95 to the procedure code to indicate synchronous telemedicine services rendered via a real-time interactive audio and video telecommunications system with place of service code -02. All other applicable modifiers shall be appended in addition to modifier -95.**
 - **R418.101004 (14) When modifier -95 is used with a procedure code listed in Appendix P of the CPT codebook, as adopted by reference in R 418.10107, excluding CPT codes 99241-99245 and 99251-99255, the telemedicine services shall be reimbursed according to all of the following: (a) The carrier shall reimburse the procedure code at the non-facility maximum allowable payment, or the billed charge, whichever is less. (b) Supplies and costs for the telemedicine data collection, storage, or transmission shall not be unbundled and reimbursed separately. (c) Originating site facility fees shall not be separately reimbursed.**
-

Announcement

MICHIGAN DEPARTMENT OF
LABOR AND ECONOMIC OPPORTUNITY
Workers' Disability Compensation Agency

Memo from Director Jack A. Nolish

MEMO: To all interested parties

FROM: Jack A. Nolish, Director

DATE: 3/24/2020

This certainly is a challenging time to start serving as the Director of the Michigan Workers' Disability Compensation Agency. I will be working hard to keep the agency functioning and serving the people of our state. Your cooperation during this difficult time will be greatly appreciated. As announced by the Governor's office on 3/23/20:

Today, Governor Gretchen Whitmer signed the "Stay Home, Stay Safe" Executive Order (**EO 2020-21**), directing all Michigan businesses and operations to temporarily suspend in-person operations that are not necessary to sustain or protect life. The order also directs Michiganders to stay in their homes unless they're a part of that critical infrastructure workforce, engaged in an outdoor activity, or performing tasks necessary to the health and safety of themselves or their family, like going to the hospital or grocery store.

Effective at 12:01 am on March 24, 2020, for at least the next three weeks, individuals may only leave their home or place of residence under very limited circumstances, and they must adhere to social distancing measures recommended by the Centers for Disease Control and Prevention when they do so, including remaining at least six feet from people from outside the individual's household to the extent feasible under the circumstances. (the orders may be found on the Governor's website: www.michigan.gov/gov)

EO 2020-21 comes after and must be read with prior **EO 2020-20** which imposes "Temporary Restrictions on the use of places of public accommodation" closing places of public accommodation that specifically indicates in the definitions used in the order, Section 3(a): "Non-essential personal care services" includes but is not limited to hair, nail, tanning, massage, traditional spa, tattoo, body art, and piercing services, and similar personal care services that require individuals to be within six feet of each other. This does not include services necessary for medical treatment as determined by a licensed medical provider. (emphasis added)

There have been many questions raised about the impact of the Executive Orders dealing with Covid-19 on the Worker's Disability Compensation Agency, the hearing operations and our various stakeholders including injured workers, employers and insurance carriers.

1. The Workers' Disability Compensation Agency is continuing in operation. Although staff is working remotely where possible, claims, insurance coverage, and other filings are being handled routinely. Time sensitive filings should be accomplished in the usual fashion and in accord with existing requirements. Requests for extensions or alternative means of compliance will be considered on a case-by-case basis.
2. The hearings offices will continue to operate but hearings, meetings, conferences or other matters shall be conducted by teleconference unless specifically arranged with the magistrate and only for the most severe of circumstances. Redemptions must be pre-scheduled with specific date and time. All such hearings shall be conducted by teleconference with all necessary documents provided to the magistrate in advance of

the call. Staff at the hearing site will handle incoming papers and send out the signed redemption orders by electronic means (email, fax, etc.)

3. The restrictions on individual activity specified in the orders will impact on an injured worker's ability to attend scheduled medical evaluations as well as continue to do job search activities. Since medical evaluations typically require the examiner to be in close proximity to the examinee (2020-19 paragraph 3a) and since "independent medical evaluations" are by definition not for purposes of treatment, facilities where such examinations take place are likely to be "closed to ingress, use and occupancy by members of the public" (2020-20 paragraph 1). Also, potential employment that might have been found by job search efforts, are shut down or severely restricted with unemployment rapidly increasing. During the effective period of the orders, and any extensions, related additional orders or expansion, failure to attend such evaluations or conduct job searches, should not adversely impact on the entitlement to benefits. It is recommended that any scheduled evaluations during this time be canceled or delayed in order to avoid "no show" fees/costs. Demands or threats made to injured workers relative to attending evaluations or conducting job searches may be considered a violation of the Executive Orders. In addition to sanctions that may apply under the Act, be aware of the provision in **2020-19, paragraph 7** and **2020-21 paragraph 14** "Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor." As reported in the Detroit Free Press, 3/23:

"Businesses who don't heed this order, I anticipate there will be fines," Whitmer said. "At this point in time, this is an order they must comply with for their own and their employees' health. Any businesses that don't comply, there will be ramifications."

It will be up to local law enforcement to investigate businesses that continue to operate when they should be closed, Rossman-McKinney said, and those complaints will be forward to the Attorney General's Office for prosecution.

Announcement

Sent March 23, 2020

Claim Forms Submissions-Clarification

This change applies to claims forms only: Forms WC-100, WC-701, and WC-107.

During the COVID-19 crisis, the Claims Department at the Workers' Disability Compensation Agency will accept claim forms submission via mail, fax and email at the following:

Fax number: 517-284-8920

Email: hazeld2@michigan.gov or fedewaj5@michigan.gov

Michigan Department of Labor and Economic Opportunity
Workers' Disability Compensation Agency
P.O. Box 30016
Lansing, MI 48909

Forms must be filled out with all required information and a copy provided to the injured worker.

Announcement

Sent March 16, 2020

Workers' Compensation Hearings Update Related to COVID-19

In accordance with Governor Gretchen Whitmer and the Michigan Department of Health and Human Services' recommendations, effective March 16, 2020 at 5:00 pm, the Workers' Disability Compensation Agency and the Workers' Compensation Board of Magistrates are suspending in-person hearings until April 20, 2020.

Magistrates will be available to conduct hearings remotely with in-person hearings only taking place with prior approval of the magistrate. We will be communicating additional guidance in the very near future.

The state is taking proactive steps to mitigate the spread of COVID-19 in Michigan. We appreciate your understanding and cooperation in reducing the risk coronavirus to Michigan residents.

For current and up-to-date information regarding the Coronavirus visit <https://www.Michigan.gov/Coronavirus> or <https://www.cdc.gov/coronavirus/2019-nCoV/index.html>