

UPDATE ON WORKERS' COMPENSATION LEGISLATION INTRODUCED FOR 2016

September 30, 2016 was the deadline for Governor Brown to sign the legislation sent to him in the waning days of the 2016 legislative session. He signed into law SB 1160, as well as a few others. In a welcome development, many of the bills signed address fraud in the system. He also vetoed a number of bills, citing their potential to increase costs in the workers' compensation system.

SB 1160

This is probably the most significant workers' compensation legislation that we have seen since SB 863, and it is intended to address what its authors saw as some flaws that have become apparent in the workers' compensation system in the last four years. SB 1160 makes changes in two main areas: utilization review (UR) and liens. With regard to UR, the law will require the following changes for injuries occurring on or after January 1, 2018.

- With respect to medical treatment provided through a Medical Provider Network (MPN), a Health Care Organization (HCO), other employer-directed provider or a predesignated physician, no prospective UR may be undertaken for an injury to an accepted body part for the first 30 days of treatment. Exceptions to this rule will include surgery, medications not covered by the formulary, psychological treatment, imaging (other than x-rays), durable medical equipment exceeding \$250 in cost, and home health services.
- Any treatment provided within the first 30 days must be reported to the employer or claims administrator. A failure by the provider to do so may lead to a revocation of the "no UR" rule as to that provider.
- Employers may still conduct retrospective UR to ensure that the provider is complying with evidence-based medicine standards. A provider's pattern or practice of failing to do so can also lead to a revocation of the "no UR" rule, or removal from the MPN.

With respect to liens, the following changes go into effect on January 1, 2017.

- For liens filed on or after January 1, 2017, a lien filer must specify in the lien the basis upon which the lien is authorized. Filers of liens filed before January 1, 2017 have until July 1, 2017 to amend their filings to specify the same information. Failure to comply with this requirement will result in a dismissal of the lien with prejudice.
- If a lien filer is charged with workers' compensation fraud, or Medicare fraud or Medi-Cal fraud, all liens are stayed pending resolution of the charges.
- SB 1160 prohibits assignment of liens unless the person has ceased doing business and has assigned all right, title and interest in the remaining accounts receivable to the assignee.

OTHER BILLS SIGNED

Governor Brown also signed a handful of other bills aimed at clarifying the law and curbing abuses in the workers' compensation system.

- **AB 1244** - This bill requires the Administrative Director (AD) of the Division of Workers' Compensation to suspend a physician, practitioner, or provider from providing care or services in the workers' compensation system if he or she is convicted of fraud. This bill also provides a process for the dismissal of the convicted physician, practitioner, or provider's liens. Effective January 1, 2017, the AD will be required to suspend a physician, practitioner or provider who is convicted of a felony or misdemeanor involving fraud or abuse or a financial crime related to Medi-Cal, Medicare or the workers' compensation system, or the fraud or abuse of any patient. The AD will also be required to suspend providers that are suspended from Medicare or Medicaid due to fraud or abuse, as well as those that have lost or surrendered a license, certificate or approval to provide health care.
- **AB 2503** - Effective January 1, 2017, this bill requires that all physician requests for medical treatment authorization (RFAs) be sent directly to the claims administrator for the employer or insurer. According to supporters of the bill, this will clarify where a RFA should be submitted so that a request for medical treatment can be timely assessed, avoiding unnecessary delays.
- **SB 482** - This bill requires prescribers to consult the Controlled Substances Utilization Review and Evaluation System (CURES) prior to prescribing a Schedule II, III or IV controlled substance to a patient for the first time and at least every four months thereafter if the substance remains a part of the patient's treatment. The bill delays implementation of this requirement until six months after the Department of Justice (DOJ) certifies that the CURES database is ready for statewide use and the department has adequate staff for user support and education. The bill is intended to curb opioid abuse and drug overdoses.
- **SB 1175** - This bill requires providers of medical and medical-legal services in the workers' compensation system to submit bills within 12 months of providing the services. The time limit imposed by the bill, with good-cause exceptions, intends to address the issue of excessive delay.

VETOES

The Governor vetoed four bills which had the potential to drive up costs. In each case, the bill vetoed was substantially similar to one Governor Brown had vetoed in 2015.

- **AB 1643** - This bill would have prohibited apportionment of permanent disability from being based on pregnancy, menopause, osteoporosis or carpal tunnel syndrome, and would have linked the impairment rating for breast cancer to that for prostate cancer. In his veto message, the Governor wrote, "I am vetoing this bill for many of the same reasons that I returned similar measure, AB 305, last year. This bill is poorly drafted and reflects a seriously flawed understanding of both the workers' compensation system and the nature of physical disability that may result from a work-related injury."

- **AB 2086** - This bill would have provided a statutory authorization for neuropsychologists to perform QME services for the workers' compensation system. The Governor wrote, "If enacted, the bill would create a unique lower standard for a select group of providers with a direct financial interest in being appointed as QMEs in California's workers' compensation system."
- **AB 2493** - This bill would have authorized enhanced temporary disability benefits (commonly referred to as "4850 time") for rank and file and supervisory firefighters employed by the California Department of Forestry and Fire Protection (CalFIRE). In vetoing this bill, the Governor wrote, "Costs go up significantly when this benefit is extended to new classes of employees." The Governor expressed reluctance to extend this disability benefit in light of the state's pension and health liabilities.
- **SB 897** - This bill would have granted an additional year of injury leave for police officers, firefighters, or sheriffs if they suffer a "catastrophic injury at the hands of another" during active duty or through active firefighting operations. Again, the Governor cited the cost of the benefit in his veto message. He stated, "I believe the decision on how to handle cases such as this is best left to the local jurisdiction."

If you have any questions regarding the information contained in this *Briefing*, please contact your Keenan Account Manager.

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