

WORKERS' COMPENSATION: LEGISLATIVE UPDATE 2017

Keenan continues to monitor pending workers' compensation legislation, as well as the regulatory process of legislation pending implementation.

Below is a summary of legislation that has the potential to impact the workers' compensation system. September 15, 2017 is the deadline to pass a bill and send it to Governor Jerry Brown for his signature.

UTILIZATION REVIEW:

- SB 1160 was signed by Governor Brown on September 30, 2016. One of the main components of this bill applies to injuries on or after January 1, 2018 and prohibits prospective utilization review the first 30 days following the date of injury. The medical treatment must be for an accepted injury and provided by a treating physician that is part of a Medical Provider. For many years, Keenan customers and injured employees have benefited from Quick Treat Protocols, which allow for expedited medical treatment bypassing the utilization review process and costs.

UTILIZATION REVIEW/HOSPITAL AND EMERGENCY ROOM BILLING:

- SB 489, amended on March 27, 2017, extends the timeframe for hospitals and emergency room physicians to bill for emergency medical treatment for injured employees from 30 days to 180 days. With the effective date of SB 1160, along with easing the requirement of utilization review within the first 30 days of an accepted injury, SB 489 also requires a 30 day billing timeframe for providers. The California Hospital Association (CHA) noted that a 30 day billing timeline for emergency medical services can be problematic as they do not always know immediately that the injury is work related; this can make meeting the 30 day deadline nearly impossible. This bill would ease the billing timeframe for hospitals and emergency room physicians to ensure providers are appropriately paid for their services and that injured employees receive emergency room care. On April 24, 2017 this bill passed the Senate and moved on to the Assembly.

CALIFORNIA DRUG FORMULARY:

- AB 1124, signed by Governor Brown on October 6, 2016, authorized the development of a workers' compensation drug formulary to control rising prescription costs and limit the over prescribing of highly addictive opioids. The formulary is required by July 1, 2017; however, industry stakeholders are urging implementation be pushed back to January 1, 2018 to allow time to educate providers, update systems and ensure a smooth transition for injured employees. This formulary, once implemented, will be a positive addition to Keenan's STOP program (Save the Opiate Patient program).

RETURN TO WORK SUPPLEMENTARY PROGRAM:

- AB 553, amended April 24, 2017, would potentially increase the supplemental benefits available to injured employees who receive a Supplemental Job Displacement Benefit voucher. A \$120 million annual fund was created by 2012 reforms providing an additional \$5,000 per eligible employee. Each year the fund has carried over a balance. This bill would require any remaining balance to be prorated amongst eligible employees not to exceed \$25,000 per employee. If this bill passes, there is concern that it could increase annual self-insured and insured employer assessments.

TEMPORARY DISABILITY:

- AB 1295, introduced February 17, 2017, would amend the Labor Code to state that if a denial of treatment by the treating physician was overturned through the Independent Medical Review (IMR) process or the Workers' Compensation Appeals Board (WCAB), the temporary disability paid, or owed, from the date of the denial until the date of the authorization would not be included in the 104 aggregate week limit. The upcoming hearing was canceled at the request of the bill's author; therefore, this bill may not advance.

DOMESTIC TERRORISM:

- AB 44, amended April 20, 2017, would require employers, insurance carriers, or third party administrators to provide "immediately accessible advocacy services" when the Governor declares a state of emergency related to a terrorist act. It is the intent of this bill to expedite the authorization of medical treatment, counseling, and medications. Language in prior versions of the bill related to prohibiting utilization review and expanding temporary disability from 104 to 240 weeks was removed.

FRAUD:

- AB 1697, introduced April 6, 2017, would establish a new fraud analytic unit within the Department of Workers' Compensation (DWC). Currently there is a Fraud Division within the Department of Insurance (DOI) made up of peace officers and support staff. This new analytic unit would be responsible for data monitoring to facilitate the detection of fraud.

FRAUD/LIENS:

- AB 1422, amended April 20, 2017, would expand the stay on liens filed by a provider charged with fraud. Existing law requires a lien, and any accrual of interest, to be automatically stayed until disposition of the criminal proceedings. This bill would expand the stay, when there is a conviction, until the adjudication has been completed.

CUMULATIVE TRAUMA INJURIES:

- AB 221, introduced January 25, 2017, would apply to injuries on or after January 1, 2018. This bill would eliminate any liability for payment of medical treatment unless: the treatment was authorized by the employer; the injury to the body part(s) for which treatment was provided has been accepted by the employer; the appeals board finds injury or an AME or QME determines an injury is compensable. This

bill would also eliminate liability for the payment of liens for medical treatment unless the cited criteria were met or the parties agree to settle by compromise and release for \$25,000 or more.

PRESUMPTIONS FOR SCHOOL PEACE OFFICERS:

- AB 1028, amended March 28, 2017, would add peace officers employed by K-12 school districts to the list of public safety employees with presumption of injury for the following conditions: hernia, pneumonia, heart disease, cancer, tuberculosis, biochemical injuries, meningitis, and certain low back injuries. This bill could also expand temporary disability to full salary for one year under Labor Code 4850.

APPORTIONMENT RESTRICTIONS:

- AB 570, introduced February 14, 2017, would prohibit apportionment in the case of physical injury to pregnancy, childbirth, or other medical conditions related to pregnancy or childbirth. This would apply to injuries on or after January 1, 2018. Similar legislation was vetoed in 2008 (SB 1118) and 2015 (AB 1643).

INJURY AND ILLNESS PREVENTION PROGRAM (IIPP):

- AB 978, introduced February 16, 2017, would require an employer who receives a written request from a current employee for a paper or electronic copy of the IIPP, to provide it as soon as possible, but not more than five (5) business days after receipt of request and at no cost. Keenan customers can provide electronic copies of their IIPP by assigning it as a policy course in Keenan SafeSchools or Keenan SafeColleges.

Should you have any questions regarding workers' compensation legislation, please contact your Keenan Claims Analyst for assistance.

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