

PROPOSED SWEEPING CHANGES TO THE CALIFORNIA WORKERS' COMPENSATION SYSTEM

Since early August, various news outlets have reported that an organized labor group, the California Labor Federation, as well as several large self-insured employers, have reached a tentative deal on a sweeping set of changes to the California workers' compensation system. The details of these proposed changes have been released in draft form, and have not yet been introduced in the legislature. However, if passed, they could constitute the biggest change to the workers' compensation system since SB 899 was passed in 2004.

The draft legislation is almost 300 pages long, and proposes changes to everything from the fee schedule for copying services to the Permanent Disability Rating Schedule (PDRS). Following is an overview of the major proposed changes.

- **Qualified Medical Evaluators (QMEs)** – The bill would reduce the scope of evaluations that QMEs perform by establishing an Independent Medical Review (IMR) system. QMEs would no longer weigh in on disputes relating to utilization review (UR) or the diagnosis and treatment recommendations made by the medical provider network's treating physician. It would also streamline the Agreed Medical Evaluator (AME) and QME process.
- **Independent Medical Review (IMR) System** – The bill would establish a new system for adjudicating certain medical treatment disputes. Those disputes directed to the IMR process would no longer be adjudicated by the Workers' Compensation Appeal Board (WCAB), and the results of the IMR process would be binding on all parties, absent clear and convincing evidence of fraud or discrimination.
- **Independent Bill Review (IBR)** – In addition to the IMR system, the proposal would establish an IBR process to take mere billing disputes out of the jurisdiction of the WCAB.
- **Utilization Review (UR)** – The proposal would specify that a UR decision to modify, delay or deny a treatment recommendation would remain in effect for 12 months from the date of the decision without further action by the employer unless there is a documented change in the facts material to the basis of the UR decision. It also would provide that UR of a treatment recommendation shall not be required while the employer is disputing liability for treatment of the condition.
- **Permanent Disability (PD)** – This proposal would increase aggregate PD benefits by approximately \$720 million per year, and adjust the formula for calculating the number of weeks and weekly benefit amount to more accurately reflect future earnings. It would also modify these new PD rules to ensure that no class of injured worker "loses" as a result of the new formula. It would eliminate the future earning capacity and age modifier factors in the disability formula for injuries occurring after January 1, 2013 and also eliminate sleep disorder, sexual dysfunction and psychological add-ons to primary injuries.

- **Medical Provider Networks (MPNs)** – The bill would make several changes to the statutes governing MPNs. It would eliminate the requirement that 25% of the physicians in a MPN be non-occupational medicine specialists. It would require all MPNs to have a medical assistance staff person to aid injured workers in obtaining appointments or referrals within the MPN. It would streamline the approval process for MPNs while requiring periodic administrative audits and authorizing discretionary administrative audits by the Administrative Director (AD) of the Division of Workers' Compensation (DWC).
- **Supplemental Job Displacement Benefits (SJDB)** – The proposal would modify the SJDB rules to change the point in time the benefit is triggered; prohibit cashing out the voucher settlements; establish which schools are qualified to be paid by retaining the voucher; limit the period of time during which the voucher is valid to two (2) years; and specify that an injury that occurs during training does not constitute a compensable injury.
- **Liens** – The proposal would establish a \$150 filing fee for new liens and \$100 activation fee for liens filed prior to January 1, 2013. It would establish a time limit for filing liens of three (3) years after the date of injury or 18 months after the date services are provided. Furthermore, it would prohibit the filing of a lien against an award for matters that are subject to IMR and IBR.
- **Self-insured Employers** – The bill proposes several changes for self-insured employers. It would require public self-insured employers and groups to report detailed information that the Department of Industrial Relations (DIR) determines necessary to evaluate the costs of administration, benefit expenditures and solvency and performance of those programs. The scope of the information to be reported is not specified in the proposed bill. For private self-insured employers, the bill would set up a Self-Insurer's Security Fund.
- **Explanation of Review** – The proposal would require employers to provide an Explanation of Review upon payment, adjustment or denial of a complete or incomplete itemization of medical services.
- **Fee Schedules** – The proposal would remove all references to the American College of Occupational and Environmental Medicine's Occupational Medical Practice Guidelines and would require the AD to adopt a fee schedule methodology based on Medicare's Resource-Based Relative Value Scale (RBRVS) system. It would also adopt a fee schedule for ambulatory surgery centers, authorize the AD to adopt a home care services utilization and fee schedule, and authorize the AD to adopt a fee schedule for copying services.
- **Financial Interest in Referrals** – This bill would enact a very broad prohibition on referrals for service if the party making the referral has a financial interest in the service provider. While there is an exception in the bill for claims administrators, the bill may still prohibit health care providers from referring injured employees within their own health system or to affiliated providers.
- **Private Self-Insured Employer Security Deposit** – This bill would change the calculation of the security deposit the DIR requires of private self-insured employers and groups.

This bill is being introduced late in the legislative session with little time for analysis of how it will affect employers. It is anticipated that the bill would increase the cost for PD payments by \$720 million annually. While savings estimates have not fully been determined, the DIR and others have estimated savings of anywhere from \$1.3 billion to \$2.7 billion annually to offset the increase in PD costs. Keenan anticipates there will be more discussion of the savings estimates in the coming days, as proponents do their best to get this bill before the legislature and passed before August 31st.

To date, the bill has the support of several large self-funded employers as well as some labor groups and is opposed by the California Applicants' Attorneys Association and some medical provider groups. The bill is also strongly supported by the Governor and the DIR.

It looks to be a very busy end to the legislative session for the workers' compensation community. Keenan has been actively involved in the analysis of the impact of this bill on employers, and we will continue to inform you as this debate continues.

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