



Illinois Workers' Compensation Commission

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Pat Quinn, Governor

Mitch Weisz, Chairman

Summary of Workers' Compensation Legislation

The General Assembly recently passed significant Workers' Compensation reform legislation (HB1698), which the Governor signed to enact PA 97-0018. Below is a summary of the major provisions of the legislation. The Act became effective immediately upon the signature of the Governor however some provisions become effective on later dates. There is also a single reference to SB1147 which also passed the General Assembly and awaits the Governor's approval.

Operation of the Commission

- Codifies the current administrative rule specifying that Arbitrators and Commissioners of the IWCC are subject to the Code of Judicial Conduct.
- Provides that terms of all Arbitrators are terminated as of the end of business on July 1, 2011. Current Arbitrators continue to serve until they or their successors are appointed.
- Provides that the Governor shall appoint all Arbitrators, subject to advice and consent of the Senate, for the initial terms immediately after the effective date of the Act. The Governor shall request recommendations from Workers' Compensation Advisory Board regarding appointing these Arbitrators, which the Board may provide. These appointments shall be staggered between 1, 2, and 3 year terms. Thereafter, Arbitrators are appointed for 3-year terms by the full Commission. The Governor's appointing authority supersedes provisions of the Personnel Code.
- Requires that all new Arbitrators, not currently serving on the effective date of the Act, must be licensed to practice law in Illinois and must keep that status current throughout their term(s) of service.

- Provides that the Chairman shall evaluate the performance of all Arbitrators annually and make recommendations about reappointment of Arbitrators by the full Commission.
- Deletes the provision that Arbitrators are reappointed unless the Chairman recommends that an Arbitrator's term shall not be renewed and 8 Commissioners vote not to renew the Arbitrator's term.
- Requires Arbitrators and Commissioners to take at least 20 hours of training every 2 years while in office regarding professional and ethical standards, detection of fraud, evidence-based medical treatment, and Coal Workers' Pneumoconiosis.
- Requires that at least 3 Arbitrators be assigned to each hearing site and cases must be randomly assigned to them. Arbitrators may not serve more than 2 years of any 3-year term in any single county, other than in Cook.
- Provides that all claims of current or former employees of the IWCC be adjudicated by certified independent Arbitrators not employed by the IWCC. Arbitrators shall be selected by the Chairman from a list generated by the Commission Review Board. Decisions of the independent Arbitrator shall become a decision of the Commission but are subject to judicial review.
- Provides that the terms of members of the Workers' Compensation Advisory Board are terminated immediately and the Governor shall make new appointments within 30 days.

Substantive Amendments

- Codifies that the Petitioner has the burden of proving by a preponderance of evidence that the injuries arose out of and in the course of employment.
- Provides that for accidents on or after 9/1/11, wage differential awards shall be effective only until the petitioner reaches the age of 67 or 5 years after the date of the award becomes final, whichever occurs later.
- Reduces Temporary Partial Disability benefits by using the "gross" rather than "net" amount of income earned from the light duty position.

- Allows employers to establish preferred provider programs (PPP) of medical providers approved by the Department of Insurance. The PPP only applies to cases in which the PPP was already approved and in place at the time of the injury. The employee must be notified of the program on a form promulgated by the IWCC. Employees have 2 choices of treating providers from within the employer's network. If the Commission finds that the second choice of physician within the network has not provided adequate treatment, the employee may choose a physician from outside the network. Employees may opt out of the PPP in writing at any time, but such action constitutes a choice of physicians. If an employee chooses non-emergency treatment prior to the report of an injury, that constitutes a choice of physicians.
- Rolls back the maximum award for the loss of the use of a hand to pre-2006 levels (190 weeks) rather than the current 205 weeks.
- Caps repetitive Carpal Tunnel Syndrome awards to 15% of the loss of the use of a hand unless the petitioner proves greater disability by clear and convincing evidence, at which time the award is capped at 30% loss of the use of the hand.
- Provides that to determine PPD regarding accidents on or after 9/1/11 a physician submitting an impairment report shall use the most recent AMA guidelines on impairment including objective criteria. The level of disability shall be based on that impairment report, the occupation of the petitioner, the age of the petitioner, the future earning capacity of the petitioner, and evidence of disability in the treating providers' medical records. The relevance and weight of factors in addition to the impairment report shall be included in all decisions relating to PPD.
- For accidents on or after 9/1/11, precludes compensation if the employee's intoxication was the proximate cause of his injury or if the employee's level of intoxication was sufficient to constitute a departure from employment. Establishes criteria for testing and sets a presumption of causation because of intoxication at a BAC level of .08, evidence of impairment due to ingestion of cannabis or a controlled substances, or refusal to submit to a test. An employee may rebut the presumption by proving intoxication was

not the proximate or sole cause of the injury by a “preponderance of admissible evidence.”

- SB1147, previously sent to the Governor, precludes compensation to an employee whose injury was caused by actions resulting in a conviction for a forcible felony, aggravated driving under the influence, or reckless homicide if the crime caused the death or serious injury of another. Specifies that attorney fees and penalties shall not be awarded if an employer fails to make timely payments or terminates benefits pending conclusion of a prosecution if the employee has been charged with an offense specified above.

Medical Fee Schedule

- Reduces all current fee schedules by 30% for all treatment performed after 9/1/11, and reduces the current 76% percent of charge default to 53.2%.
- Effective 1/1/12, collapses the current 29 geo zips to 14 zones for hospitals and 4 for physicians and other providers. These zones are based on the boundaries of specified counties.
- Effective 1/1/12 allows the IWCC to update CPT codes and crosswalks based on most recent AMA criteria and to incorporate associated rule changes.
- Effective 1/1/12 allows the IWCC to annually include new procedures in the fee schedule based on non-Medicare relative values and conversion factors.
- Provides that medical implants shall be reimbursed at 25% over invoice price plus actual and customary shipping minus any rebates.
- Specifies that accredited Ambulatory Surgical Care facilities are reimbursed under the schedule as well as licensed Ambulatory Surgical Care Centers.
- Includes physician-dispensed medication to the fee schedule at the average wholesale price plus a dispensing fee of \$4.18.
- Adds dental services to the medical fee schedule.

- Requires payers to inform providers of insufficient information in billing within 30 days and imposes the 1% monthly interest fee after 30 days rather than 60 days.
- Specifies that bills for treatment deemed to be unnecessary or excessive are subject to the prohibition against billing to the injured employees.
- Requires the Department of Insurance to establish rules for electronic billing for all medical bills by 1/1/12 which must be accepted by all employers/insurers by 6/30/12.
- Provides that out-of-state services be paid at the lesser rate of that state's medical fee schedule or the fee schedule in effect for employee's residence.

Utilization Review (applies to treatment provided on or after 9/1/11)

- Requires providers to submit to reasonable written UR requests, and to make reasonable efforts to submit timely and complete reports to support a request for certification of requested treatment. If such reasonable efforts are not made, the charges may not be compensable or collectable.
- Requires that written notices of certification and non-certification of requested treatment, including evidence-based guidelines, shall be furnished to the provider and employee.
- Provides that an employer or its agent can only deny requested medical treatment because that the treatment is excessive or unnecessary based on a valid UR report.
- Provides that if an employer or its agent refuses to pay for services based on a legitimate UR review, the petitioner has the burden of establishing that variance with the guidelines are warranted in the particular situation.
- Requires a physician performing UR to be available for deposition in this state either in person or through telephonic communication. The cost of such depositions shall be borne by the employer/insurer.
- Requires UR reports be addressed in any written decision.

Insurance Compliance

- Provides that all Employee Leasing Companies provide the IWCC names of all clients that are named under their WC insurance and copies of the certificates of insurance naming such clients.
- Allows an investigator with the insurance compliance division of the IWCC to issue citations between \$500 and \$2,500 against employers who are in noncompliance. The employer must pay the fine and provide proof of insurance within 10 days of the citation. Failure to comply with this provision would be a basis for instituting an official non-compliance action with the Commission at which time a minimum \$10,000 fine may be imposed.

Fraud

- Provides that the Department of Insurance has authority to subpoena medical records pursuant to an investigation of fraud and amends the Code of Civil Procedure to specify that physicians may disclose medical records pursuant to such a subpoena.
- Eliminates the requirement that a report of fraud shall be forwarded to the alleged wrongdoer with the verified name and address of the complainant.
- Provides that all reports of fraud not forwarded for prosecution shall be destroyed after the statute of limitations has run on the reported actions.
- Specifies that intentional submission of medical bills for services not rendered constitutes WC fraud.
- Requires the fraud unit to refer any violation to the Special Prosecution Bureau of the Office of the Attorney General.
- Sets penalties for WC fraud based on the amount of money involved in the attempted fraud, from a Class A misdemeanor (less than \$300) to a Class 1 felony (more than \$100,000). Requires restitution be ordered in WC fraud cases.

- The fraud unit shall procure software to identify waste and fraud, and shall make annual reports on instances of fraud and prosecution to the General Assembly, Governor, Director of Insurance, and Chairman of the IWCC.

Miscellaneous

- Allows the Director of Central Management Services (“CMS”) to implement a system including purchasing workers’ compensation insurance and/or hiring a third party administrator to administer claims of state employees.
- Establishes the State Workers’ Compensation Program Advisory Board within CMS to review, assess, the workers’ compensation program involving state employees, and to advise CMS regarding improvements to the system. The board shall consist of 5 voting members, one appointed by the Governor who serves as Chairman, and one each by the four legislative leaders. The board also includes non-voting *ex officio* members consisting of the Chairman/Director/Secretary, or their designees, of CMS, the Attorney General, Department of Insurance, Department of Transportation, Department of Corrections, Department of Human Services, Department of Revenue, and the IWCC. They shall meet at least thrice annually and submit an annual written report to the Governor, General Assembly, and CMS with recommendations for improving the system.
- Establishes a pilot program for collectively bargained workers’ compensation alternative dispute resolution involving 2 unions designated by the Department of Labor and employers in the construction industry. Certain elements must be in the agreements which must be approved by the Chairman of IWCC. An approved plan shall be recognized as legally binding by the Commission and the Courts. A rejection of an agreement by the Chairman is subject to judicial review. Plan administrators must report all relevant information about claims and awards annually.
- Provides that employers shall pay the full negotiated rate for medical services even if the provider has sold his/her interest for a lesser amount.
- Prohibits commissions or gifts from attorneys practicing before the Commission and clients for referrals. The prohibition does not include splitting fees among attorneys or food or refreshment consumed on the premises or catered not exceeding \$75 per day. Violation is a Class A misdemeanor.

- Provides that the Director of Insurance shall direct entities recommending WC premium rates (NCCI) to recalculate their proposed rates based on the reform legislation by 9/1/11.
- Requires the Director of Insurance to submit extensive annual reports to the General Assembly, Governor, and the Chairman of the IWCC about work accidents, all aspects of the WC insurance market in Illinois, and numerous other matters relating to claims, awards, and medical expenditures. The legislation specifies 34 specific areas the report must address.