



News

Summary of Workers' Compensation Reform (HB1698)

June 8, 2011

The intended effect of HB1698 is to reduce employer medical costs, limit indemnity payouts on certain claims including loss of trade cases, strengthen rules on fraud, and provide more equity in Commission decisions and awards.

Some of the changes apply to accidents that occur on or after September 1, 2011; others apply to existing cases where benefits accrue after September 1, 2011.

This is being touted as a major piece of business-friendly legislation. The governor is expected to sign HB1698 into law very soon.

Medical Treatment and Costs

- On or after September 1, 2011, employers can establish Preferred Provider Programs (PPP) to treat work-related injuries to their employees. Employees can refuse PPP at any time and elect one choice of physician (and referrals) outside the employer's program. On expedited petition, Commission can grant employee choice of physician outside PPP where second PPP physician treatment is improper or inadequate.
- Medical fee schedule (established and kept by Commission) is expected to reduce treatment costs by nearly 30 percent, fix implant costs, and limit prescription medication.
- Uniform and standard billing and payment practices including electronic claims. Bills must be paid (or disputes provided in writing) within 30 days or interest begins to accrue.
- For treatment provided or recommended on or after September 1, 2011, Utilization Review (UR) procedures to assess excessive and unnecessary treatment are more specific. If providers do not cooperate with UR, then they do not get paid. Employer must provide report to employee and medical provider. UR must be available for testifying at employer's cost. Employee carries burden to show proposed treatment is accepted variance to standard of care relied upon by UR. Excessive and unnecessary treatment for work-related injuries is not payable under the Act or collectible by the provider.

Permanent Disability and Wage Loss Claims

- For accidents after September 1, 2011, repetitive or cumulative carpal tunnel injuries not to exceed 15 percent of 190 weeks, unless causation established by "clear and convincing evidence" then no more than 30

Attorneys

Robert J. Finley

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percent loss use. (This does not appear however to proscribe wage loss/perm total claims premised on repetitive trauma carpal tunnel.)

- For accidents after September 1, 2011, wage differential (loss of trade) claims for accidents are limited to age 67, or five years from final award, whichever is later.
- For accidents that occur after September 1, 2011, PPD assessments are based on AMA guidelines level of impairment as reported by a physician, petitioner's age, occupation, future earning capacity, and disability information in treating medical records. Commission must provide written explanation where PPD assessment is other than that reported by a physician under AMA guidelines.

Intoxicated Employees

For accidents that occur after September 1, 2011, claims are not compensable where intoxication is proximate cause of injuries or constitutes a departure from scope of employment. 0.08 percent is presumed intoxicated and presumed proximate cause of accident. Employees can overcome rebuttable presumption of intoxication by showing intoxication is not proximate cause or sole proximate cause of injuries.

Temporary Partial Disability Benefits

Where an employee is working light duty and earning less, then benefit paid is equal to two-thirds of the difference between the average amount that the employee would be able to earn in the full performance of his/her duties in the occupation in which he/she was engaged at the time of the accident and the gross amount which he/she is earning in the modified job provided to him/her by the employer or in any other job that the employee is working.

"Carve Outs"

Pilot program through Department of Labor for construction companies and designated labor organizations to establish ADR agreements

Insurance Reporting Compliance

- Employee leasing companies must provide new information pertaining its policies.
- Insurance compliance investigators can issue citations to employers without insurance.

Fraud and Abuse

- State has subpoena power for medical records.
- Increased and varied criminal and civil penalties.
- Anonymity for "whistleblowers" reporting fraud or abuse.
- Annual report on "State of Workers Compensation in Illinois" (its costs and national ranks), as well as fraud and abuse.
- Premium rate recalculations reported by September 1, 2011.

Arbitrators and IWCC Procedures

- Standards similar to Canons of the Code of Judicial Conduct established for commissioners and arbitrators. New arbitrators must be licensed attorneys (incumbent reappoints are excused). Term reduced from six years to three years. Scope of training expanded. Ban on gifts.
- Current arbitrators and members of Workers Compensation Advisory Board are all terminated as of July 1, 2011, but serve until successors are appointed or current arbitrators are reappointed.
- Commission employee cases are assigned to certified independent arbitrator not employed by Commission.
- Three arbitrators per hearing site. Random case assignments. Outside Cook County, arbitrators do not hear cases in any county for more than two years during each three-year term.