

LEGISLATIVE UPDATE

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There have been a large number of bills submitted that would impact the workers' compensation system. Here are a few new ones to follow as we go through the 2011-12 legislative session:

- **OFFICIAL MEDICAL FEE SCHEDULE – RBRVS**

SB 923 (DeLeon) would require the Administrative Director (AD) of the Division of Workers' Compensation (DWC) to adopt an Official Medical Fee Schedule based on a resource-based relative value scale (RBRVS) for physician services by January 2, 2013. The RBRVS was created by and is currently used by the Centers for Medicare and Medicaid Services. Further, the new RBRVS would be required to be revenue neutral and to be phased in over three years. The bill faces significant opposition from specialists, who believe that increases in treating physician reimbursement levels would necessarily require reductions to specialists. *Did not pass. DWC may consider doing this under their regulatory authority. Bill is listed as Assembly Unfinished Business – Reconsideration.*

- **Liens**

SB 863 (Lieu) would, in part, restrict lien claimants from filing a lien after 3 years from the date the services were provided, or more than 18 months after the date the services were provided on or after July 1, 2012. *Ordered to the inactive file on 9/9/2011.*

- **Workers' Compensation Information System Data Reporting Enforcement**

SB 826 (Leno) would require the administrative director to assess administrative penalties for failing to comply with the Workers' Compensation Information System (WCIS) reporting requirements. Total penalty assessments would be limited to \$5000 in a calendar year but would be doubled for consecutive years. The legislature's stated intent in this bill is to enforce compliance with existing law in order to improve the quality of the information. Data submission to the WCIS has been problematic and there are significant errors in reporting from those who do submit information. *This bill passed both houses and is on the governor's desk for signature.*

- **Vocational Expert Fee Schedule**

AB 1168 (Pan) would require the administrative director to adopt a maximum fee schedule on or before January 2, 2013 for the services provided by a vocational experts. The bill also prohibits a vocational expert from being paid in excess of "those that are reasonable, actual and necessary", and will prohibit the appeals board from ordering payment that would exceed that standard. *The bill has passed both houses and is sent for enrolling, then will be on the governor's desk for signature.*

- **Pharmacy Fee Schedule Dealing with Compounded Drugs; Prohibition Against Referrals where Physician has Financial Interest**

AB 378 (Solario) was originally designed to remove financial incentives for prescribing compounded drugs, medical foods, and other items not listed in the OMFS. In its current reading, this bill adds a prohibition for physicians from referring a patient for pharmacy goods where that physician has a financial interest in that entity, and requires any compounded drug to be billed at the ingredient level. The legislature has relied on the recent report developed by the Commission on Health & Safety & Workers' Compensation which exposed a loophole for compounding pharmacists since compounded drugs are individualized for a specific patient and not on the Medi-Cal Fee Schedule on which the DWC schedule is based. Thus, pharmacists could charge outside of the schedule. This bill will eliminate that practice. Its passage is likely as it has a great deal of employer support and is also supported by the California Labor Federation. *Passed both houses, to enrollment.*

- **Extension of TTD Past 104 Weeks**

AB 947 (Solario) amends Labor Code §4656 to add to the list of injuries exempted from the 104-week TTD aggregate limit to include those for which surgery or recovery from surgery that cannot be medically completed within 104 weeks, beginning with injuries on or after 1/1/2012. In these cases, TTD is limited to 240 compensable weeks within 5 years. *This bill has passed both houses and will be on the governor's desk for signature.*

- **Prohibition of Using Specific "Other Factors" When Determining Contributing Causes to PD**

AB 1155 (Alejo) prohibits the use of factors and other "immutable characteristics", such as gender, genetic characteristics, religion, marital status, race, and age, etc. when determining "other causes" of disability not directly arising out of the industrial injury. Various versions of this bill have been introduced in past years based on the decision in *Vaira*. *Sponsored by the California Applicants' Attorneys Association, this bill is enrolled and on its way to the governor's desk.*

- **Utilization Review Physicians to be Licensed in California**

AB 584 (Fong) would require physicians who perform UR services be licensed in California. *This bill has passed both houses and is on its way to the governor's desk.*

- **Supplemental Job Displacement Voucher**

AB 211 (Cedillo) would change the timing on the delivery of the Supplemental Job Displacement Benefit for workers injured on or after 1/1/2012. This bill also will also make all vouchers \$6000 rather than the range from \$4000 - \$10,000, thus untying it from the percentage of PD awarded, and expands qualifying uses of the benefit. Employers who make an offer of re-employment no later than 60 days after the report by a PTP, QME or AME that indicates the worker is P & S and that there will be permanent disability are exempt from providing the voucher. Should no offer be made, the voucher is to be sent within 20 days after the time has elapsed for the offer of reemployment. Further, the voucher will "expire" after two years. The current system of SJBD will remain in place for injuries occurring from 1/1/2004 through 12/31/2004. *This bill passed both houses and is awaiting the governor's signature.*

- **Hospital Employee Presumption for Blood Borne Infectious Diseases, MRSA**

AB 375 (Skinner) would create a disputable presumption of industrial causation for hospital employees who provide direct care in acute care hospitals who come down with MRSA or a blood-borne infectious disease. To be eligible for the presumption, the disease must manifest during a period of the person's employment with the hospital, and also extended to a hospital employee following termination of service based on the last day actually worked:

- 180 days for bloodborne infection disease
- 90 days for MRSA

This bill was last amended 8/31, passage uncertain.

- **DWC Informational Materials**

AB 335 (Solario) would require the administrative director, in consultation with the CHSWC, to develop and make fully accessible on the department's Internet Web site and at district offices informational materials that describes the claims process so that employees can better understand the context of the benefit notices that they receive. *This bill has passed both houses and is on its way to the governor's desk.*

- **Contractors Required to Re-Certify Exemption from WC Insurance Upon License Renewal**

AB 397 (Monning) would require that licensed contractors who have claimed an exemption from having to purchase workers' compensation insurance to re-certify their exemption request when renewing their license (required every two years) with the Contractor's Licensing Board. While renewal of the license is required every two years, under current law they contractor must only file the exemption once. *This bill passed both houses, is enrolled and is on its way to the governor's desk.*

- **Firefighter Cancer Presumption Extended**

AB 585 (Fong) would extend the disputable presumption of cancer as an occupational injury to active firefighting members of a fire department that serve a National Aeronautics and Space Administration (NASA) installation and who adhere to the same training standards as other firefighters. *This bill was re-referred to Assembly Rules Committee, passage uncertain.*

- **Hotel/Lodging Safety Standards**

SB 432 (De Leon) would require the Occupational Safety and Health Standards Board to adopt safety standards to protect lodging housekeeping employees from what was determined was a higher rate of injury due to extensive stooping, kneeling or squatting position while cleaning rooms. The OSH Standards Board will adopt regulations no later than 12/1/2012 to include the use of fitted bed sheets (as opposed to flat sheets) and the use of long-handled tools. The board will have some flexibility to allow variances but adds these regulations to those that must be enforced in the ordinary course of its duties. *The last hearing on 8/25/11 was postponed, bill is in Assembly Appropriates at this writing.*

- **Court Administrator Eliminated**

AB 1426 (Solario) amends existing law that created the position of court administrator with respect to the workers' compensation adjudicatory process at the trial level. Removes the position of court administrator and distributes the duties to the Workers' Compensation Appeals Board and the Administrative Director of the Division of Workers' Compensation. *Passed both houses. To enrollment.*

- **Workers' Compensation Fatal Accidents**

SB 351 (LaMalfa) amends the Workers' Compensation Law that states when benefits are due to a deceased employee and the employee has no one surviving to whom the benefit should be paid, the compensation is required to be paid to the Department of Industrial Relations for reimbursement of other injury claims. Prohibits the department from seeking payment of an amount owed pursuant to this provision by obtaining a lien on writ of execution relating to a judgment obtained by a member of the immediate family. *Still in the Senate Labor & Industrial Relations Committee.*

- **Liens**

SB 457 (Calderon) requires the Workers' Compensation Appeals Board to determine, on the basis of liens filed, reimbursement for benefits paid or services provided by a self-insured employee welfare benefit plan notwithstanding the official medical fee schedule when an award is made for reimbursement for self-procured medical costs for the effects of an injury or illness arising out of and in the course of employment. *Passed both houses, enrolled, to Governor.*