



### **Legislative and Industry Updates – October 3, 2017**

The 2017 legislative session has come to an end and many bills have made their way to the Governor's desk for action by October 15, 2017. The following is an update on some of the key bills which may impact the Workers' Compensation program; staff will continue to monitor those bills that have made it to the Governor:

#### **LEGISLATIVE ACTIVITY**

#### **AB 44 (Reyes) Workers' Compensation benefits relating to "Terrorist Attacks" and Workplace Violence**

AB 44 appears to have been introduced in reaction to the San Bernardino terrorist attack and the perceived delay in provision of medical care to those impacted. The bill proposed to eliminate utilization review services to determine appropriate medical care and increase the period of time individuals may receive temporary disability or Labor Code 4850 benefits for those filing claims related to injury arising from an act of terrorism or violence in the workplace.

While well intentioned, applying this general definition of causation, so frequently misinterpreted or left to the perception of an individual or individuals, AB 44 would have led to increased litigation costs, at the same time delaying review and approval of appropriate medical care as outlined in the Medical Treatment Utilization Schedule (MTUS). Further AB 44 sought to impose increased periods of temporary disability based upon causation, rather than specific injury as currently outlined in Labor Code 4656.

The bill was amended to remove the additional period of temporary disability as well as the language regarding workplace violence and defined terrorist attack as that declared by the Governor, with a requirement for assignment of an employee advocate (nurse case manager) to accepted cases to help guide the injured worker through the system. In an interesting turn of events, the author, working with the Senate had most of the original language reinstated.

As the bill stands today, the language has again been removed. This bill has passed both houses and now awaits the Governor's veto or approval.

#### **AB 553 RTW Fund (Daly)**

SB 863 created a Return-to-Work (RTW) Fund administered by the State to provide injured workers with supplemental payments when their Permanent Disability (PD) benefits are disproportionately low in comparison to their earnings loss. This program is funded annually in the amount of \$120,000,000 from the Workers' Compensation Administration Revolving Fund which in turn is funded by the Department of Industrial Relations (DIR) assessments to employers. Employee may apply for payment from this fund to receive a one-time \$5,000 Return-to-Work supplement.

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The amount of this supplement may be adjusted by the director of DIR based on further studies conducted by the director in accordance with Labor Code section 139.48.

This bill proposes to require the fund be depleted each year and any remaining funds at year-end would be distributed pro-rata to eligible workers subject to a maximum of \$25,000. This “clearing out” of the fund will allow the injured worker to actually receive more from the fund at the end of the year, than the original supplement payment. There is no requirement for the injured worker to pursue employment, education or demonstrate any focus on RTW to receive the additional funds. Recent amendments state no one may receive attorney fees or consultant fees for helping the injured worker through the RTW Fund process.

The yearly depletion of the Fund and increased number of applications for payment, as has been demonstrated from implementation, will eventually lead to both a lack of funds for injured workers as well as increased requests for funding from employers in the form of DIR Assessments.

This is a “two-year” bill and will continue to be monitored in the next legislative session.

### **AB 570 PD Apportionment (Gonzalez Fletcher)**

With a 3<sup>rd</sup> attempt at pushing a bill aimed at gender discrimination through, Assemblymember Gonzalez Fletcher proposed AB 570, sponsored by the California Applicants’ Attorney Association (CAAA) which would prohibit apportionment of Permanent Disability (PD) based on pregnancy and related medical conditions.

The Governor has twice vetoed attempts by the same author regarding gender discrimination, with the most recent veto language noted in part in AB 1643: *“California’s workers’ compensation system strives to treat all injured workers fairly and to ensure that all workers, regardless of gender, are adequately compensated for any permanent disability directly caused by work-related injuries. Rather than promoting equality, the statutory changes proposed by this measure would create new gender-based classifications and spur additional and costly litigation, undermining the successful reforms enacted in 2012 and the sustainability of the system.”*

This bill passed both houses and is now before the Governor for his veto or approval.

### **AB 1295 Utilization Review and Temporary Disability (Chu)**

This bill proposes that if any medical care originally denied through the Utilization Review (UR) process is overturned in the Independent Medical Review (IMR) process, the resulting Temporary Disability (TD) relating to the delay in medical care WILL NOT be applied to the TD maximum of 104 weeks. This bill is opposed by a coalition of employer stakeholder as it would complicate the claims handling process, is not supported by the low number of medical requests which are overturned by the IMR process and may promote increased medical disputes focused on obtaining additional time loss benefits rather than appropriate medical care.

This is a “two-year” bill and will continue to be monitored in the next legislative session.

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### **SB 562 Universal Healthcare (Lara)**

This bill proposes a replacement of all healthcare systems with a universal, single-payer system for residents of California. The bill, known as The Healthy California Act, indicates that no later than two years after the effective date of this section, the board shall develop a proposal for consideration of including the workers' compensation system in this single payer system. The costs estimated for implementing the universal healthcare system are estimated to exceed the entire State of California budget while the benefits of the proposed system have yet to be determined.

This is a "two-year" bill and will continue to be monitored in the next legislative session.