

Workers' Compensation Reforms

Causation

Workers' compensation is a no-fault system. To recover on a workers' compensation claim, the employee bears the burden of showing s/he has sustained accidental injuries *arising out of and in the course of employment*. Currently, if the employment is related at all to the injury, no matter how minor, the employee's injury is compensable. If a work injury aggravates or accelerates a pre-existing condition even slightly, the employer is 100% liable for the workers' compensation claim.

Original Proposal

The causation standard should be raised from an "any cause" standard to a "major contributing cause" standard. The accident at work must be more than 50% responsible for the injury compared to all other causes. This reform would bring Illinois in line with 29 other states that have higher causation standards and would reduce workers' compensation premiums by eliminating compensation for non-work injuries.

- *Compromise Proposal:* To address work-related injuries that can develop during an entire career spanning multiple employers, repetitive or cumulative injuries would be compensable so long as more than 50% of a worker's condition is attributable to employment-related causes. For example, a trade worker sustaining an injury after years of using a jack hammer on different work sites would be compensated so long as the injury manifested because of and in the course of employment. Workers who develop repetitive or cumulative trauma within 3 months of working for a new employer would be compensated by the previous employer. In addition, employers will receive credits for previously compensated injuries under certain circumstances (such as back and shoulder injuries).

Traveling Employee

The Illinois Appellate Court has greatly expanded the scope of what constitutes a "traveling employee" for purposes of workers' compensation.

Original Proposal

Narrow what constitutes a traveling employee for the purposes of workers' compensation.

- *Compromise Proposal:* The legislation codifies the factors laid out by the Illinois Supreme Court in Venture-Newberg that an employee would only be able to recover workers' compensation while traveling if the travel was necessary for the performance of job duties. The employee must receive reimbursement for the travel or use a company car and the travel must be required by the employer.
- Appellate court decisions are also addressed and clarified that for traveling employees, arising in and out of the course of employment does not include travel to or from work or travel where the employee is exposed to the same risk as the public. This is consistent with how regular employees are treated.

AMA Guidelines

The 2011 reforms added the use of AMA Guidelines as one of five factors in determining permanent partial disability (PPD) awards. The AMA Guidelines are more conservative in determining awards, and it was hoped that allowing the Commission to use these guidelines would reduce awards. Indiana requires mandatory use of the AMA Guidelines when determining permanent partial impairment which results in lower permanency awards.

Original Proposal

The language that limits the Commission from using only one of the five factors to determine PPD should be eliminated. This will allow (though not mandate) the Commission to solely base an award on the AMA guidelines. The language that only allows the Commission to consider a treating physician's medical records should also be eliminated.

- *Compromise Proposal:* Language regarding medical records was clarified. The Commission can review both a treating physician's and an independent medical examiner's records and have a more balanced view of the medical condition.

Fee Schedule Reduction

Even with the 2011 reforms, workers' compensation medical fees in Illinois are significantly larger than the median of other states. Surgery costs are most egregious fee schedule abuses, with rates 300-400% above Medicare rates and 100%-200% above group health. Illinois costs are 40%-60% higher than other states for radiology and emergency services and 90%-100% for pain management injections and surgery costs. Research has shown that 30% reduction in the fee schedule will result in 15-20% reduction in medical claim costs.

Original Proposal

Reduce the fee schedule from 30 percent of its current amount.

- *Compromise Proposal:* Reductions will include fee schedules that cover Ambulatory Surgical Treatment Centers, Anesthesia Services, Hospital Inpatient Services: Standard and Trauma, Hospital Outpatient Services and Professional Services.
- No reductions would occur in services covered under Section 3: Dental Services, Section 4: Emergency Room Services, and Section 5: Healthcare Common Procedure Coding System (HCPCS) or to evaluation and management codes or physical medicine codes under Section 8.
- It is estimated this will result in \$101 million savings in workers' compensation costs.

Illinois Workers' Compensation Commission Reforms

Additional reforms were included based on working group feedback. Those proposals include:

- Provide more flexibility in workers' compensation arbitrator regional assignments. This will result in greater consistency and faster resolution of downstate cases.

- Overturn the Illinois Supreme Court ruling that the Treasurer, as custodian of the Injured Workers' Benefit Fund, is required to file an appeal bond pursuant to Section 19(f)(2) of the Act in order to obtain judicial review of a Commission decision.
- Clarify that the Commission, not the Department of Insurance, should promulgate rules for the administration of electronic claims so that administration can begin.