



SB 863: Compliance with the Changes

SB 863

Comprehensive workers' compensation legislation which:

- Amends 2 sections of the Government Code
- Amends 62 sections of the Labor Code
- Adds 16 sections to the Labor Code
- Adds and repeals 1 section of the Labor Code
- Repeals 2 sections of the Labor Code

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SB 863 Implementation

- Overseen by the Department of Industrial Relations and the:
 - Division of Workers' Compensation,
 - Office of Self-Insurance Plans
 - Workers Compensation Appeals Board
- Unless specifically noted within a statute, the legislation will be effective January 1, 2013
- Regulations will be developed for implementation of the legislation

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SB 863 and the DWC Audit Unit

- Audit Unit has limited oversight for benefit provision as affected by this legislation
- Audit scrutiny for provision of permanent disability indemnity (PD) and payment of medical and medical-legal expense will be changing as of January 1, 2013
- Long term implementation will involve updating the Audit Unit and Benefit Notice Regulations

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Labor Code §4650

Audit Unit enforcement at PAR level and beyond Permanent Disability Indemnity

- (b)(1) Commence payment of PD within 14 days after the termination of TD and to pay a reasonable estimate or the determined amount of PD
- (b)(2) Payment not required prior to an award of PD
 - If the employer has offered a position paying 85% or more of wages and compensation at time of injury
 - If the employee is working in a position paying 100% of wages and compensation at time of injury

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Labor Code §4650

Audit Unit enforcement at PAR level and beyond

Timely first PD payment is a factor for a claims administrator's audit performance rating

- Monitor for P&S status
- Determine if the injured worker cannot return to work because of his/her injury commence PD pursuant to Labor Code §4650(b)(1)
- Determine if the injured worker has returned to work under Labor Code §4650(b)(2)

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Labor Code §4650

Audit Unit enforcement at PAR level and beyond

It is critical to document whether PD is payable

- Document the offer of work with same employer paying 85% or more of wages and compensation at time of injury
- Document if working for a different employer paying 100% of wages and compensation at time of injury
- Documentation should be provided to the administrator by the employer confirming, or not, the RTW and earnings of an employee

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Labor Code §4658

Audit Unit enforcement at PAR level and beyond

Permanent Disability Indemnity

- (d)(2)&(3) 15% increase/decrease shall apply to claims subject to the 2005 PD rating schedule occurring on or before December 31, 2012
- (e) Injuries occurring on or after January 1, 2013
 - The rated PD will be paid within the minimum / maximum range
 - Permanent total disability will be paid in accordance with Labor Code §4659

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Labor Code §4603.2

Audit Unit enforcement FCA- Stage 2 and/or Target Audits

Medical treatment expense (DOS on/after 01/01/2013)

- Time frames to pay or object changed from “working days” to calendar days
 - Objections within 30 days of receipt
 - Payment within 45 days (60 days for public agency)
- Explanation of review must be issued in compliance with Labor Code §4603.3

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Labor Code §4622

Audit Unit enforcement FCA- Stage 2 and/or Target Audits

Medical-legal expense (DOS on/after 01/01/2013)

- Time frame to pay or object 60 calendar days
- Explanation of review must be issued in compliance with Labor Code §4603.3
- If amount paid is disputed provider may request a second review within 90 days of receipt of explanation of review

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Labor Code §4603.3

Audit Unit enforcement FCA- Stage 2 and/or Target Audits

Explanation of review for medical treatment expense

- In the manner prescribed by the Administrative Director
- Compliance with the *California Division of Workers' Compensation Medical Billing and Payment Guide*
 - For hard copy bills on/after October 15, 2011
 - For electronic bills on/after October 18, 2012

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Labor Code §4603.4

Audit Unit enforcement FCA- Stage 2 and/or Target Audits

Electronic claims for medical treatment expense

- Payment and/or objection to be made within 15 working days of electronic receipt of itemized billing
- If amount paid is disputed provider may request a second review within 90 days of receipt of explanation of review

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Labor Code §4603.6

Disputing the amount paid for medical or medical legal bills

- For both hard copy and electronic bills
- If the issue is not resolved when the provider has requested a second review within 90 days of receipt of the explanation of review
- Provider must request an independent bill review (IBR) within 30 days of service of the second review
- DWC has posted forms to request Second Bill Review and IBR

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SB 863: Compliance with the Changes ***Added Rulemaking in 2013***

The DWC plans to amend Benefit Notice and Audit Unit regulations in 2013

- Notice of any rulemaking will be provided by the division in a DWC Newslines
- The success of any rulemaking is dependent upon the response of the workers' compensation industry
- If rulemaking can be accomplished in a timely manner, regulations would be in effect and subject to enforcement as of January 1, 2014

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Added Rulemaking in 2013

Issues to consider for updating the Audit Unit regulations:

- Amending performance factors
 - Factor #3: exposure for 1st payment of PD will be reduced by SB 863
 - Factor #4: limited to late subsequent payments, may consider oversight for failure to adhere to the payment schedule
 - Factor #5: provision of SJDB advice negated by AB335; provision of QME/AME advice may be reduced with amended Benefit Notice Regulations

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Added Rulemaking in 2013

Issues to consider for updating the Audit Unit regulations (*continued*):

- Identifying regulations needing clarification and/or amendment to be consistent with the current law
 - Clarify species of benefits for counting of claims for ARI
 - Delete regulations referencing vocational rehabilitation
 - Enforcement of amended Benefit Notice regulations
 - Penalty amount for late-paid medical treatment for and modification if treatment pre-authorized by UR

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Added Rulemaking in 2013

BENEFIT NOTICE REGULATIONS

- What is wrong with them?
- How can they be fixed?

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Added Rulemaking in 2013

BENEFIT NOTICE REGULATIONS

Amended regulations are being drafted with the following issues taken into consideration:

- Simplification of content
- Deletion of enclosure of fact sheets
- Deletion of the “warning”
- Reducing requirement for provision of QME request form and attachment
- Option to provide electronic notice(s)

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