

Commission on Health and Safety and Workers' Compensation
SB 899 TOPIC SUMMARY REPORT

FUNDING

User Funding: Labor Code sec.62.5

Restores 100% user funding for the Workers' compensation program with exception of LC 3702.5. (Administration of Self-Insured's Programs). In addition, funding is provided for the Return to work program under section 139.48.

VOCATIONAL REHABILITATION

Supplemental Job Displacement Benefit. Labor Code sec. 139.5.

Repeals the duplicate section for supplemental job displacement benefit. Re-enacts former Labor Code sec. 139.5 vocational rehabilitation benefit for injuries before January 1, 2004, and sunsets the law five years later.

INTEGRATED BENEFITS IN CARVE-OUTS

Integrated Benefits in Carve-Out. Labor Code sec. 3201.5, and 3201.7.

Provides that employer and union may negotiate any aspect of benefit delivery if employees are eligible for group health and non-occupational disability benefits. Labor Code sec. 3201.5 (Construction), 3201.7 (Non-construction)

LIBERAL CONSTRUCTION

Liberal Construction. Labor Code sec. 3202.5.

Provides that the burden of proof by preponderance of evidence applies equally to all parties and lien claimants.

RETURN TO WORK INCENTIVES

Return to work site reimbursements for worksite modification. Labor Code §139.48.

Provides for reimbursement to private employers with 50 or fewer full-time employees for worksite modifications to accommodate the employee's return to work.

Program will reimburse up to \$1,250 of expenses to accommodate a temporarily disabled worker or \$2,500 to accommodate permanently disabled worker.

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The program will be funded from Labor Code sec. 5814.6 (penalties for business practice of unreasonable delay or refusal of compensation) and from transfers by the AD from the WC Administration Revolving Fund.

Also see **PD Section:** Labor Code Section 4658

PROVISION OF MEDICAL BENEFITS

Repeal of Treating Physician's Presumption. Labor Code sec. 4062.9.

Repeals completely the presumption of correctness of the treating physician. Section 46 of the bill makes the repeal apply to all cases, regardless of the date of injury.

Medical Treatment Defined and Pre-designation of Physician. Labor Code sec. 4600.

Defines the treatment "reasonably require to cure or relieve" as the treatment that is in accordance with the utilization schedule or treatment guidelines adopted by the AD pursuant to Labor Code sec. 5307.27 or the ACOEM guidelines.

Unless the employer uses a medical treatment network, the basic rule remains that employer has medical control for first 30 days (or longer in an HCO), and then employee gets the right to select treating doctor.

An exception to the basic rule is that employee may be treated by a predesignated physician from the date of the injury if all of the requirements for predesignation are met. It is only available if

- The employer provides group health coverage, and
- The physician is the employee's primary care MD or DO who has previously directed the employee's treatment and who agrees to be predesignated.

If the employer establishes a medical treatment network, employees who did not predesignate must receive care only through the network.

Medical Billing. Labor Code sec. 4603.2.

Provides that all payments for medical treatment shall be at the fee schedule amount except under written contracts. The time limit to make payment runs from date of properly itemized billing.

Treatment Guidelines. Labor Code sec. 4604.5.

Provides that guidelines can be rebutted only by scientific medical evidence. States that guidelines are to be evidence-based, nationally recognized and peer reviewed.

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For injuries occurring on or after January 1, 2004, imposes limit of 24 visits on occupational therapy, along with 24 chiropractic and 24 physical therapy visits, unless the employer authorizes additional visits.

Medical Networks. Labor Code sec. 4616.

- Beginning January 1, 2005, employers may establish networks composed of both primarily occupational and primarily nonoccupational treating doctors, with goal of at least 25% primarily nonoccupational.
- Network shall include sufficient number of physicians to provide timely treatment.
- Employer or insurer has exclusive right to decide which providers are in network.
- Physician compensation shall not be structured to achieve goal of reducing, delaying or denying treatment.
- Treatment shall be in accordance with the guidelines per ACOEM (American College of Occupational and Environmental Medicine) or Section 5307.27.
- Only a licensed physician in the appropriate scope of practice may modify, delay or deny a request for authorization for treatment. (This governs any internal utilization review process the network may adopt.)
- AD shall approve plan if it meets requirements of section. Default approval if AD can't act in 60 days.
- AD shall adopt implementation regulations in consultation with the Department of Managed Health Care (DMHC).
- Section 4616.1 requires that economic profiling of providers must be disclosed.
- Section 4616.2 requires that continuity of care be provided for up to 12 months after provider leaves the network, depending on defined circumstances.

Patient Rights in Networks. Labor Code sec. 4616.3.

Provides that after the first visit the injured worker has the right to choose a doctor within the medical network.

Authorizes the injured worker to obtain a second and third medical opinions in appropriate specialty within the network if he/she disputes diagnosis or treatment prescribed by the treating physician.

Authorizes out-of-network specialist treatment if approved by the employer or the insurer.

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IMR to Resolve Dispute with Network Labor Code secs. 4616.4 and 4616.6

- AD to contract with individual physicians or review organizations to conduct Independent Medical Review to be performed by a doctor, with current certification of appropriate specialty board, and no disciplinary history. The statute contains conflicting provisions about whether the doctor must be California-licensed or may be licensed in any state.
- Employee may request this IMR if treatment is still in dispute after 3rd opinion in network.
- Employer sends specified records to IMR doctor.
- IMR doctor performs exam, reviews documents, issues report using the appropriate guidelines for medical necessity, based on ACOEM and Section 5307.27. Report due in 30 days or less if the reviewer says it is urgent.
- AD shall adopt the report of the reviewer and issue a decision to the parties.
- If IMR finds the disputed care is consistent with guidelines, the employee may seek the disputed services from any physician, not limited to network (§4616.4(i))
- No additional exams or reports shall be ordered or admitted by the WCAB on issues of medical treatment under networks. (§4616.6)
- Note: The bill does not specify who will pay for the cost of the Independent Medical Review.

Organizations Deemed Approved as Networks. Labor Code sec. 4616.7.

- These organizations are deemed to meet all or specified parts of the eligibility requirements to be networks:
 - Health Care Organization licensed under Labor Code Section 4600.5
 - Health Care Service Plan licensed pursuant to the Knox-Keene Act.
 - Group disability policy for medical expenses under Insurance Code Section 106(b).
 - Taft-Harley health and welfare fund
- These organizations will be approved if they have a reasonable numbers of occupational and non-occupational physicians, as determined by the AD.

Early Medical Treatment Labor Code sec. 5402

Requires that the employer provide medical treatment to a worker after a workers' compensation claim form is filed and until the claim is accepted or rejected.

Establishes a \$10,000 limit on liability before a claim has been accepted or rejected.

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AME/QME

QME System and Report Writing Labor Code sec. 139.2

Provides for assignment of a three-member QME panel upon request of employee or employer per Labor Code Section 4062.1.

Provides for Administrative Director to give notice of panel issued pursuant to Labor Code section 4062.1 or 4062.2.

Provides that the PD report writing criteria be consistent with Labor Code section 4660 (American Medical Association Guides).

Provides that the medical treatment criteria refer to section 5307.27

AME/QME and Medical Dispute Resolution.

- The dispute resolution process through an AME or a single QME applies to all disputes including compensability of claim (§4060), permanent disability evaluation (§4061), and all other disputes (§4062).
- There is an exception for medical treatment issues that are subject to utilization review under Section 4610, but if the employee objects to the outcome of utilization review the employee may still request an exam through the AME or single QME process (§4062(a)).
- Existing law is retained regarding 2nd opinion upon employer's objection to spinal surgery. (§4062(b)).
- Unrepresented employee gets a QME exam by requesting a panel to be assigned, then selecting one from the panel. (§4062.1)
- Represented employee gets an AME if parties agree, but if they do not agree on AME, then either side requests a panel, each side strikes one name, and the remaining physician is the QME who will conduct the exam. (§4062.2) The new procedure for represented cases applies to dates of injury on or after January 1, 2005. (§4062.2(a)) (NOTE: The bill leaves a gap in the represented QME process until January 1, 2005.)
- Existing provisions of law regarding communication with AME or QME and the duty of the QME to render a report are recast in Sections 4062.3 and 4062.5.

PAYMENT OF BENEFITS

Timing of Payments. Labor Code sec. 4650.

Requires PD advances to commence upon cessation of TD payments, including termination when statutory TD limit is reached.

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TD Limit to Two Years. Labor Code sec. 4656.

- TD benefits are limited to 2 years from date of commencement of payment in most cases.
- TD may extend to 240 weeks aggregate within first 5 years after date of injury for the following injuries: (§4656(c)(2))
 - Acute and chronic hepatitis B.
 - Acute and chronic hepatitis C.
 - Amputations.
 - Severe burns.
 - Human immunodeficiency virus (HIV).
 - High-velocity eye injuries.
 - Chemical burns to the eyes.
 - Pulmonary fibrosis.
 - Chronic lung disease.

PERMANENT DISABILITY

PD Indemnity Chart, including Tiered PD Benefit Labor Code sec. 4658

- Return-to-Work adjustment:
 - Tiered PD benefit system provides for 15% decrease or increase in the weekly rate of the payments of the PD award depending on whether or not the employer offers return to work.
 - If terminated before PD is all paid, the remaining weeks of the PD benefit from the time of termination are increased 15% above the base rate.
 - The 15% adjustment does not apply to employers with less than 50 employees.
 - The increase or decrease does not apply to employers with less than 50 employees.
- PD indemnity:
 - Weeks of indemnity for each percentage point of rating are reduced for each percentage point under 15%.
 - Weeks of indemnity for each percentage point of rating are increased for each percentage point of 70% or more.
- Amendments apply to injuries occurring on or after the date of the revised schedule (§4658(d)(1)), which is due by January 1, 2005, per Section 4660.
- In another paragraph, the section provides that it does not apply to claims arising before April 30, 2004 if
 - There has already been a medical-legal report, or
 - The treating physician has found permanent disability, or
 - The employer has been required to issue a notice under Section 4061 upon the cessation of TD payments. (§4658(d)(4))

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Definition of Modified and Alternate Work Labor Code sec 4658.1

Definitions of Modified and Alternate work require at least 85% of time-of-injury earnings and location at a reasonable commute distance from residence.

PD Rating Schedule: Labor Code sec. 4660

Revises the process for determining the percentage of permanent disability.

Replaces ratable factor of “diminished ability to compete” with “diminished future earning capacity.”

Defines “nature of the physical injury or disfigurement” to incorporate the AMA Guides for both descriptions and percentage impairments.

Provides that schedule shall adjust from impairment to diminished earning capacity by a formula based on empirical data of average long term loss of earnings from each type of injury for similarly situated employees, including age and occupation.

The new PD schedule is to be adopted by January 1, 2005 (Section 4660(e)) and is also applicable to injuries before January 1, 2005 if there has been no comprehensive report, no treater’s P&S report, and no obligation for employer to issue Labor Code Section 4061 notice (i.e., TD has not ended).

APPORTIONMENT

Apportionment Labor Code sec. 4663

Provides that apportionment “shall be based on causation.”

Provides that reports addressing PD must address causation and must determine percentage of PD caused by injury and by other factors, or refer to another doctor to evaluate apportionment.

Specifies that injured employee must disclose previous disabilities or impairments upon request.

Apportionment Labor Code sec. 4664

Specifies that employer is liable for the percentage of PD directly caused by the injury.

Provides that any prior awarded disability is conclusively presumed to continue.

Accumulation of all PD awards not to exceed 100% for any one region of the body.

Apportionment Labor Code sec. 4750, 4750.5 are repealed

All apportionment provisions are now in Labor Code Secs 4663 and 4664.

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Lien filing fee Labor Code sec. 4903.05

Specifies that the filing fee is assessed on liens filed on behalf of providers as well as liens filed by providers.

Admissible Evidence Labor Code sec. 5703

The list of admissible evidence to the appeals board will also include the medical treatment utilization schedule in effect pursuant to Section 5307.27 or the guidelines in effect pursuant to Section 4604.5.

PENALTIES

Private Attorneys General Exception Labor Code sec. 2699

Provides that the right of employees to prosecute for civil penalties for Labor Code violations that could be prosecuted by the state does not extend to civil penalties under workers' compensation under Division 4, Audit Penalties, under Labor Code Section 129.5, or discrimination under Labor Code Section 132a.

Penalty for Unreasonable Delay Labor Code sec. 5814

Provides that penalties for unreasonable delay or denial of compensation may be applied at the discretion of the WCAB, up to 25% of the amount of payment delayed or denied, or up to \$10,000, whichever is less.

Provides that the employer can avoid the 25% penalty by paying a self-imposed 10% penalty of the delayed payment along with the delayed payment within 90 days of discovery, if delay is discovered by the employer before the employee makes a claim for penalty.

Provides that potential penalties are deemed resolved by Compromise and Release or Stipulations and Award or by trial of the underlying benefit unless expressly reserved.

Provides that any Labor Code section 4650(d) no-fault penalty is credited against the 25% penalty.

Provides that no unreasonable delay in the provision of medical treatment shall be found when the treatment has been authorized by the employer in a timely manner and the only dispute concerns payment of a billing submitted by a physician or medical provider as provided in Section 4603.2.

Provides a two-year statute of limitations from the date the payment of compensation was due on recovering penalties awarded under Labor Code Section 5814.

These provisions shall become operative June 1, 2004 and shall apply to all injuries, without regard to whether the injury occurs before, on, or after June 1, 2004.

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Penalty for General Business Practice of Delays Labor Code sec. 5814.6

Provides that any employer who knowingly violates Labor Code Section 5814 for a general business practice of unreasonable delays or refusals is liable for a civil penalty of up to \$400,000.

Penalty amounts are to be deposited into RTW Fund pursuant to Labor Code Section 130.48.

This section shall become operative June 1, 2004.

IIPP

Injury and Illness Prevention Program Labor Code sec. 6401.7

Provides that the requirement for insurers to review their insureds' industrial injury prevention plan (IIPP) only applies to those insured employers with Ex-Mod of 2.0 or greater.

Provides that the review be conducted within six months of the commencement of the initial insurance policy term.

Provides that the reviewer need not be "independent."

FRAUD

Fraud Reporting Labor Code sec. 3823

Grants civil immunity to the people who are required to report fraud when such person acts in good faith, without malice, and reasonably believes that the action taken was warranted by the known facts, obtained by reasonable efforts.

STUDY OF EFFECTS OF REFORM

Study of Effects of Reform Labor Code sec. 138.65

Provides that the DWC AD contract for a study of effects on workers' compensation insurance rates as a result of the 2003-2004 reforms.

The study is to be completed by January 1, 2006.

SB 899 Effective date:

SB 899 provisions apply

☒ Prospectively from April 19, 2004 (date of enactment)

☒ Regardless of date-of-injury, unless otherwise specified.