

The Implications of California's Latest Attempt at Workers Comp Reform

by Michael J. Costello

The goal of California's latest attempt at workers compensation reform is improving the efficiency of the state's system. While much rides on how the provisions of State Senate Bill 863 are interpreted, understanding the law's purpose will help companies navigate the change.

There are three attention-grabbing elements of SB 863 that will affect the most people: medical treatment, indemnity, and medical liens or bills.

Although the law has other implications, these areas represent positive developments, and learning about them should be on every defendant's agenda in 2013.

Medical Treatment

Medical treatment has been one of the largest drivers of California's escalating workers compensation costs. Under SB 863, an effort has been made to control costs by promoting the use of medical provider networks and expedited hearings. This may work, but it will also likely lead to an increase in related disputes.

First, both the injured worker and the employer can no longer use a panel or agreed-upon medical examiner to dispute prescribed treatment. Medical treatment requests made by the treating physician instead become subject to utilization review. If the treatment request is not certified or modified, the injured worker can seek regress with a neutral, independent medical review board.

By adopting an independent medical review board, the legislators appear to be intent on expediting treatment requests and related disputes while hoping to eliminate legal arguments and delays.

Indemnity Benefits

While the new law has modified indemnity benefits to increase payments for permanent impairment, it also removes permanent disability add-ons for sexual

dysfunction, sleep disorders and psychiatric conditions. However, the provision does not eliminate medical treatment for these conditions altogether, and there are exceptions for "catastrophic injuries."

As a result, carefully reading what can be deemed a "catastrophic injury" (along with steps to ensure that treatment requests are handled in accordance with existing law) may actually help avoid disputes. In this regard, the reform may reduce litigation, control medical treatment and provide a more efficient flow of workers compensation benefits.

In addition, SB 863 amended job replacement vouchers and eliminated the 15% return-to-work modifier. It also discarded the existing tiered "diminished functional evaluation" rating adjustment in favor of a simple multiplier of 1.4, applicable to each body part.

Lien Filings

The number of lien filings in California has been an increasing concern among stakeholders, and SB 863 addresses this. The legislators have added a filing fee and an independent medical bill review to resolve disputes. They have also codified the use of interpreters.

In addition, the law changes the statute of limitations regarding the filing of a lien.

Whereas the old system allowed for a lien to be filed within five years of the date of injury, one year from date of service or six months from settlement (whichever comes last), the new system has reduced that time to 18 months from the date of the service in which the lien is predicated. This is operative for services provided on or after July 1, 2013.

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