JBWCP Legislative Updates – February 21, 2023

The 1st-year of the 2-Year-Session began with a slow start with no bills directly involving Workers' Compensation introduced, until last week as we approached the final day for new bills. This review will provide a brief update as of today.

LEGISLATIVE ACTIVITY

AB 1213 Temporary Disability Extension/IMR Decision

Introduced 02/16/23 AB 1213 proposes to EXCLUDE any Temporary Disability (TD) payments made during a dispute regarding medical treatment that is ultimately overturned by the Independent Medical Review (IMR) process.

For the majority of Workers' Compensation claims, there exists a cap of 104 weeks of TD benefits payable. AB 1213 will exclude any TD paid from this cap if they occur during a medical dispute resolved by IMR in overturning a Utilization Review (UR) denial.

In 2012, SB 863 implemented the Independent Medical Review (IMR) process for disputes regarding medical care. Information obtained from the Department of Industrial Relations (DIR) regarding the 2021 IMR decisions shows 7.2% of UR decision were overturned by IMR, of 136,828 applicable reviews.

IMR requests for review can be made by the requesting doctor or the employee (or their representative). IMR decisions are in place for a period of one year unless there is a material change in the request.

AB 1278 MPN Notice

Introduced 02/16/23 AB 1278 regarding Medical Provider Networks (MPN)s would allow an employee to request that any notice provided to them regarding treatment in the MPN or change of the MPN also be provided electronically to their treating doctor or "other designee".

It is anticipated this bill will be amended to include additional changes to the MPN process or notifications.

SB 631 Gender Benefit Disparity Study

Introduced 02/16/23, SB 631 would require a study through UC Berkeley to evaluate the disparity in Workers' Compensation benefits between genders, the evaluation will include rates of denial of benefits and compensation paid by gender in different occupations.

The 2021-2022 session saw SB 1458 which proposed to increase the average weekly wage calculation for determining benefits based on the "percentage of disparity in earnings" between genders. This bill did not make it out of the Appropriations Committee and failed to proceed.

SB 697 Value of Care Review

Introduced 02/16/23, SB 697 requires a study on what would be required and accomplished by liking medical care reimbursement for Workers' Compensation to the "value of care" provided.

Worker' Compensation medical care is now paid on a fee-for-service basis utilizing the State of California approved fee schedule. "Value of Care" would pay providers based on the outcomes of the care provided "against the cost" of delivering the outcomes.

"Value of care" differs from a fee-for-service or capitated approach, in which providers are paid based on the amount of health care services they deliver. "Value" is derived from measuring health outcomes against the cost of delivering the outcomes.

This bill proposes the study focus on the "Accountable Care Organization" model which would establish quality metrics to evaluate outcomes.

Workers' Compensation Reform Discussions

The Division of Workers' Compensation (DWC) held a Stakeholders meeting December 6, 2022, inviting ideas to "improve the State's workers' compensation system". While there were not a lot of new ideas or requests made during this meeting, discussions continue regarding:

- Independent Medical Review (IMR) process and unsupported appeals from Applicant Attorneys resulting in unnecessary increases in claims administrative costs;
- Cumulative Trauma Claims associated with employee retirements;
- Treating Doctor Responsibility regarding accurate and timely reporting;
- Qualified/Agreed Medical Evaluator reports timely and complete without the need for supplemental reports.

Although a substantial Workers' Compensation Reform may be in development over the next two years, at this time industry insiders do not anticipate a reform to make it to the Governor's desk in 2023. The prior reforms occurring in 2012, 2003, 2002, 1999 and 1993 had a significant impact on not only the methodology for determining benefits, but the provision of medical care and determination of residual disability.

Legislative activity will continue to be monitored to follow any newly introduced bills or bills that are modified to impact or involve Workers' Compensation.