

February 5, 2004

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Tricia Knight
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to workers' compensation (File No. SA2003RF0080).

Key Provisions

The workers' compensation system compensates individuals for work-related injuries. Workers' compensation covers medical bills for treatment and pays a portion of lost wages from time off work through temporary and permanent disability benefits. Businesses, as well as the state and local governments, must purchase workers' compensation insurance or self-insure to pay these expenses.

This measure limits the ability of employees submitting workers' compensation claims to receive particular types of compensation.

Injury Claims. Under the measure, an employee (1) must prove that work is the major cause of injury and (2) cannot submit nonpsychiatric claims after resigning from a job. Under current law, an employee must only show that work is a contributing factor to an injury (except for psychiatric claims) and can submit nonpsychiatric claims after resignation.

Medical Treatment. The proposal establishes a time limit on the employer requirement to pay for ongoing medical care that only relieves symptoms, rather than curing an injured worker's condition. The employer would not be responsible for non-curative treatment more than one year after the injured employee reaches maximum expected recovery or five years after the injury, whichever is later. Such treatment within the specified timeframe would follow utilization guidelines but exclude non-medical care items such as vehicles, home improvements, gym memberships, and

swimming pools or spas. Under current law, an employer is liable for all treatment and nonmedical care items indefinitely, subject to treatment guidelines effective in 2004.

Permanent Disability Determinations. The proposal disallows permanent disability ratings based solely on subjective complaints (typically pain) not verified by discernable medical findings. These types of ratings are currently allowed.

Apportionment. Under the measure, permanent disability determinations must be reduced (or “apportioned”) to account for (1) previous awards for injury to the same body part or affecting the same kind of work and (2) preexisting injury or illness (regardless of work-related nature). In addition, when considering apportionment issues, the workers’ compensation court system could not rely on medical reports that lack an explanation as to how previous injuries or illness resulted in no permanent loss of ability to work. Under implementation of current apportionment provisions, permanent disability awards are not always reduced to account for previous injuries. In addition, current law prohibits attributing the cause of injury to preexisting conditions, even if those conditions may have contributed to the injury.

Fiscal Effect

Interpretation of Provisions Could Significantly Affect Savings. Court interpretations of the measure’s provisions would likely determine how they are implemented and the subsequent impact on workers’ compensation costs. Such litigation might include (1) how to demonstrate sufficiently that work is the major cause of injury; (2) what medical treatment is curative (allowed) versus relieving (limited); (3) what constitutes “objective medical findings” for determining permanent disability; and (4) whether apportionment reductions apply to the percentage rating, dollars paid, and/or weeks of benefits for the disability.

Impact on System Costs. Workers’ compensation costs for private and public sector employers have risen dramatically in recent years and are expected to be roughly \$25 billion in 2004. The limitations and exclusions in the proposal would likely reduce the cost of workers’ compensation claims and/or the number of claims. The magnitude of savings is unknown but could be major. For instance, a 5 percent reduction would mean \$1.3 billion of savings for the system.

State and Local Governments Costs for Workers’ Compensation. The state and local governments currently spend approximately \$4 billion annually in workers’ compensation costs for their own employees. While state and local governments claim savings are likely from the measure, the magnitude of any savings is subject to some uncertainty, as noted above. Again, as an example, reduction in the system’s costs of 5 percent would result in annual state and local savings of \$200 million.

State Administrative Costs. There would likely be some level of additional state administrative costs to implement the measure—as much as a few million dollars annually (if the current rate of claims movement through the state system is maintained). Specifically, the proposal would require revisions to the state disability rating schedule, as well as additional time for state evaluators and/or judges to review injury claims for work-relatedness, payment of medical treatment, use of subjective disability rating factors, and apportionment. Under current law, the state assesses insurance companies and self-insured businesses on a proportional basis to pay for the administrative costs of the system. As a result, any increased state administrative costs from the measure would result in somewhat higher assessments.

Impact on Revenues. The impact on governmental revenues would also depend on how the measure affected system costs. Workers' compensation savings would improve business profitability, thereby increasing income tax revenues. Partially offsetting this gain would be a reduction in the gross premiums tax paid by insurance companies. The net effect of these impacts is not possible to estimate.

Potential Shift of Costs. It is also possible that claims denied or reduced under the measure's provisions would result in a shift of costs to private health insurance and/or state health and disability insurance programs (like Medi-Cal). To what extent this would occur is not known, but such a shift would result in additional state and local costs for various programs.

Fiscal Summary. This measure would have the following major fiscal impact:

- Unknown, but potentially major annual savings in state and local governments workers' compensation expenses.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Donna Arduin
Director of Finance