

January 27, 2006

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 constitutional and statutory initiative regarding workers' compensation (File No. SA2005RF0144).

Key Provisions

The workers' compensation system compensates individuals for work-related injuries. Workers' compensation covers medical bills for treatment and provides temporary disability benefits to replace some wages lost as a result of injury. In some cases, workers' compensation pays permanent disability benefits based on the nature of an injury and an injured worker's reduced ability to earn wages in the future. Under state law, businesses, as well as state and local governments, must purchase workers' compensation insurance or self-insure to pay these expenses.

This measure changes a number of provisions of California's workers' compensation laws. The changes concern benefits paid to persons with permanent disabilities, medical care, pharmacy services, and benefits resulting from work-related deaths.

Permanent Disability and Death Benefits

Increased Permanent Disability Benefits. Under existing law, a person with a work-related permanent disability may receive benefits for a specified period of time—payable at two-thirds of his or her weekly wages, subject to a minimum and maximum weekly benefit rate set in law.

This proposal increases the maximum weekly benefit rate for nearly all permanent disability recipients with injuries that occur in 2007 or later. The proposal also requires the minimum weekly benefit rate for permanent disability benefits to be no less than the minimum rate for temporary disability benefits. For future years, the measure further increases minimum and maximum weekly benefit rates by the annual rate of growth of the average weekly wage for California workers.

Increased Death Benefits. In the event of a work-related death, a worker's dependents or a worker's estate receives certain workers' compensation benefits. Under current law, the maximum death benefits range from \$250,000 (for deceased workers with no dependents, for example) to \$320,000 (for deceased workers with three or more dependents). This proposal would increase the maximum death benefits each year beginning in 2007 by the rate of growth of the average weekly wage for California workers.

Medical Care and Pharmacy Services

Expanded Ability for Workers to Choose a Physician. This measure expands the ability of employees to choose their own doctor for work-related injuries. Existing law allows an employer or insurer to establish a network of medical providers to treat injured workers. This proposal provides that if a person works for an employer with a medical network, he or she can choose his or her own physician or treatment facility after 30 days from when an injury is reported. The employer or insurer must pay for this treatment.

Currently, injured workers can be required to seek treatment—as well as second and third medical opinions—within an employer or insurer's medical network. Disputes remaining after the third opinion go to an independent medical review process.

Physician Findings Presumed to Be Correct. This proposal provides that when a worker for an employer with a medical network chooses a physician (after 30 days from when an injury is reported), the findings of that physician are presumed to be correct in the workers' compensation system. The physician's findings would be accepted by the system unless a preponderance of medical opinion disagrees.

Elimination of Pharmacy Networks. This measure eliminates the sections of current law that allow employers or insurers to enter into contracts with a pharmacy network to serve their injured workers. Under existing law, these contracts can require injured workers to obtain medicines and medical supplies only from that network. Under the measure, therefore, workers would have more ability to choose their own pharmacies.

Other Provisions

Retroactivity. The measure's provisions would apply to all future workers' compensation claims. In addition, the provisions would apply to any claims and cases resulting from any work-related injury before the measure's passage.

Constitutional Amendment. This measure amends the State Constitution to provide that workers' compensation laws may be amended through the initiative process by voters. Currently, the Constitution does not include a direct reference to voters having this power.

Fiscal Effect

Interpretation of the Measure and Choices of Workers Would Affect Costs. Interpretations of this measure's provisions by the courts and the state Division of Workers' Compensation would affect employers' costs for work-related injuries. Costs also would depend significantly on the choices made by workers with regard to choosing physicians.

Private and Public Costs for Workers' Compensation. In 2003 and 2004, several laws were passed to reduce costs of the workers' compensation system. Consequently, costs for workers' compensation have decreased significantly since 2004 and are expected to total around \$20 billion in 2006 for all employers in California. Several provisions of this proposal—including sections concerning medical and pharmacy networks, and the legal weight given to physician findings—modify parts of the recent laws that have contributed to lower workers' compensation costs. In addition, the increases in benefits would raise the costs of most future permanent disability and death claims. The magnitude of all of these increased costs would be major—potentially in the billions of dollars annually for private and public employers.

State and Local Government Costs for Workers' Compensation. The state and local governments are expected to spend roughly \$2.5 billion for workers' compensation for their own employees in 2006. The state and local governments could experience cost increases similar to those of other employers. Cost increases potentially could be in the mid to high hundreds of millions of dollars each year.

Other Effects on Governmental Finances. The impact on governmental revenues would depend on how the measure affected workers' compensation costs and other costs of work-related injuries. Increased costs may reduce business profitability, thereby decreasing income tax revenues. Partially offsetting this decrease could be a gain in the gross premiums tax paid by insurance companies. The net effect of these impacts is not possible to estimate.

There is a possibility that increased benefits under this measure would reduce the number of persons seeking assistance from state health and social service programs. Such a reduction could result in state and local savings for various programs. To what extent such a reduction would occur is not known.

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

- Annual costs—potentially in the mid to high hundreds of millions of dollars—for the state and local government workers' compensation.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Michael C. Genest
Director of Finance