



2017 Workers' Compensation Reform

Ken Pokalsky
Vice President

Lev Ginsburg, Esq.
Director of Government Affairs



Bill Introduction

- **S.4014 (DeFrancisco)/A.5977 (Woerner)** - Called for the immediate release/adoption of Impairment Guidelines for SLUs.
- **S.4554 (Amedore)/A.6218 (McDonald)** - Limits SLUs to 85% impairment and above while the remainder of claimants would receive PPDs for time lost from work. The current SLU system costs over **\$1.2 billion annually, \$934 million of which is for no-lost-time awards.**
- **S.4520 (Akshar)/A.6602 (Woerner)** - Applies start date to existing durational caps as "date of injury." The average time from the date of injury to the date of disability rating in New York had skyrocketed to almost 7 years after the 2007 reforms. This is due to system manipulation meant to extend the total time of benefits far beyond the 10-year cap. This bill would have corrected the flaw in drafting in the 2007 reforms and begin the 10-year duration "clock" at the date of injury.



Coalition Building

Workers' Compensation Reform Coalition Members

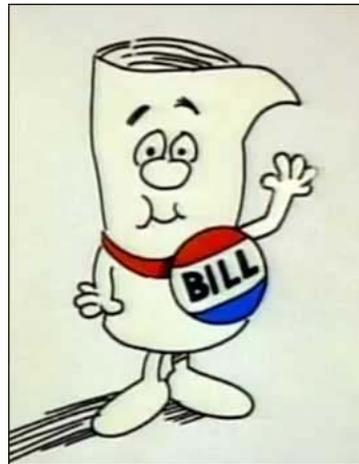




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2017/18 Budget

Part NNN of Chapter 59, Laws of 2017
Effective April 10, 2017





Cost Saving Provisions

- Non-Schedule PPD - Credit for Temporary Disability benefits beyond 2.5 years
- Permanent Impairment Guidelines to be adopted by the WCB by January 1, 2018
- Adoption of a comprehensive pharmacy prescription drug formulary by December 31, 2017



PPD Credit

- Creates a credit for TD benefits paid beyond 2.5 years (130 weeks) for dates of injury on or after April 10, 2017 from the date of injury to be applied against the LWEC Cap. (Current average time to classification is 4.5 years – average claim is approximately \$30,000/year).
- Safety Valve: extends the period of TD benefits beyond 2.5 years when the Workers' Compensation Board ("WCB") makes a determination that a claimant hasn't actually reached Maximum Medical Improvement ("MMI") on that date. (guidance forthcoming)



Permanent Impairment Guidelines for SLUs

- Requires the WCB to adopt Permanent Impairment Guidelines by January 1, 2018.
- The new guidelines must incorporate advances in medicine that result in better healing and outcomes for injured workers to use in evaluations and determinations for SLUs.
- The process will involve consultation with labor, business, medical providers, insurance carriers and self-insured employers and be published for public comment on or before September 1, 2017.
- In the event the WCB does not adopt guidelines by January 1, 2018, the WCB to adopt interim regulations as current guidelines become void on the same date.



Drug Formulary

- Requires the WCB to adopt a comprehensive pharmacy prescription drug formulary by December 31, 2017.
- Drugs found in the formulary may be prescribed for a causally-related condition
- Non-preferred drugs may only be prescribed when a variance has been granted
- Methodology to review requests to add pharmaceuticals to the preferred list, handled through the Medical Director's Office, effective on December 31, 2017.



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Potential New Costs

- Post-PPD Labor Market Attachment
- Extreme Hardship Determination Safety Net Threshold 80% to 75%
- First Responder Stress Claims



Post-PPD Labor Market Attachment

- Claimants who have received a determination of PPD **AND are entitled to benefits at the time of such classification** will no longer be required to demonstrate an ongoing attachment to the labor market.
- **This does not impact the question of attachment during periods of temporary disability prior to classification.**
- NYCIRB has priced this as too negligible to count toward a loss cost increase.



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Extreme Hardship Determination

- Lowering the safety net threshold from greater than 80% to greater than 75% for determining when a claimant with a PPD may apply to the WCB for a redetermination due to extreme financial hardship.
- The change applies retroactively.
- In the event that a WCB Appeal Panel reduces a LWEC finding that is above the safety net threshold by a Workers' Compensation Law Judge to a LWEC finding that is below the safety net threshold, any request for Full WCB Board Review will receive a mandatory full Board review.
- Safety net cases will be cases of first impression – the WCB will be issuing guidelines regarding applications and hearings for extreme financial hardship determinations.



First Responder Stress Claims

- First responders who encounter extraordinary stress in a work-related emergency who file a claim for mental injury will no longer be barred from a claim because the stress they encountered in dealing with an extraordinary work-related emergency is “no greater-than” the stress encountered by other similarly situated first responders.



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Other Provisions

- **IME Study** - Requires the WCB to conduct a study on IMEs in 2018. An IME Advisory Committee will convene in 2019 to review the WCB's findings and make recommendations to improve the overall IME system.
- **Mandatory 45-Day Hearing** - where there is medical evidence of a work-related disability, the Claimant is not working and is not receiving benefits, and the claim is not controverted, the Claimant may request a hearing within a 45-day period.
- **Penalties** – The \$300 penalties issued pursuant to WCL 25(2)(a) may now be imposed without a hearing against a carrier who has failed to pay or controvert a claim within 18 days.
- **Performance Standards** – The WCB will establish performance standards, by regulation, and issue aggregate penalties against carriers or self-insured employers to more effectively regulate carrier behavior with respect to timely filing, payment, and controversy.



Other Provisions

- **WCB Assessments and Assumption of Liability Policies** - WCB may execute assumption of workers' compensation Liability Policies for any claims the Board is responsible to administer, including WCL §§ 15(8), 25-a, and Uninsured Employer Fund claims and may use bonding authority to aid solvent, inactive, group self-insured trusts in executing ALPs by borrowing from the self-insurance bond funds with a pledge to repay, prior to actually becoming insolvent.
- Extends the Compensation Insurance Rating Board (NYCIRB) position as a rate service organization until 2028.
- Requires that Workers' Compensation rate filings with 5% or greater increase over prior year's loss costs have a public hearing.
- Requires a NYCIRB public actuary to release an annual report on the savings to the industry related to the 2017 Reforms in each of the next 10 years.
- Requires carriers to refund current year savings due to the caps on injuries no later than
- December 31, 2018.
- Reduces the WCB's assessment fund balance allowance is reduced from
- up to 10% to no more than 5%.



Guidance

- The WCB has issued and will continue to issue Subject Numbers and Guidelines on the various provisions of the reform statute.
- The Business Council's Workers' Compensation Committee will host the WCB in late June to review the new guidances concurrent with their release.



Questions

Please Contact

Lev Ginsburg, Esq.
Director of Government Affairs
(518) 465-7511
Lev.ginsburg@bcnys.org