

## OVERVIEW OF 2011 ILLINOIS WORKERS' COMPENSATION CHANGES - HB 1698

On May 31, 2011, the Illinois General Assembly passed a bill, HB 1698 with Senate amendments 3 and 5, comprehensively amending the Illinois Workers' Compensation Act. *As of June 7, 2011, the governor has not addressed this bill, so it has not yet become law.*

The following is a brief summary of the changes to the Illinois Workers' Compensation Act that will occur if the bill is signed into law as currently written. The provisions below will become effective upon the bill becoming law unless indicated otherwise:

- **COMPENSABILITY STANDARD** – An employee bears the burden of showing by a preponderance of evidence that an accidental injury arose out of and during the course of employment.
- **INTOXICATION** – For accidents occurring on or after September 1, 2011, if intoxication is the proximate cause of the injury and if the employee is so intoxicated that the intoxication constitutes a departure from employment, compensation is denied. If an employee refuses to submit to blood, breath or urine tests, there is a rebuttable presumption the employee was intoxicated.

- **PREFERRED PROVIDER NETWORKS** – The employer may utilize a preferred provider program. An employee utilizing a preferred provider program shall only be allowed to select from the participating network and the employer is responsible for payment of all medical expenses from referrals within the network. After the report of injury, the employee may choose to decline the preferred provider network in writing, which constitutes one of the employee's two choices of doctors. Before the report of injury, if the employee chooses a provider not within the preferred program, it is considered as a choice of physician.
- **MEDICAL FEE SCHEDULE** – For procedures, treatments, services or supplies rendered or to be rendered on or after September 1, 2011, the reimbursement shall be 70% of the fee schedule (30% reduction). Prescriptions are subject to the fee schedule. The timeframe for payment of medical bills is reduced to 30 days from 60 days and interest applies to non-payment of bills. Out-of-state providers are paid at the lesser of the fee schedule for the state in which they are located or at the fee schedule rate for the location of the employee's residence.

This issue of *You Should Know* is one in a series of brief articles designed to keep our clients abreast of significant breaking news in the claim and loss control areas that could affect their operations or exposures. Additional information about this and other topics can be obtained from your Regional Strategic Outcomes Practice Associate.

- **UTILIZATION REVIEW (UR)** – A medical provider shall submit to UR once given proper notice. If services are denied by UR, the employee has the burden of showing by a preponderance of evidence that the variance of the standard of care is necessary. An admissible UR shall be considered by the Illinois Industrial Commission along with all other evidence and in the same manner, and must be addressed with all other evidence. This is applicable to all health care services provided or proposed on or after September 1, 2011.
- **STANDARDS FOR DETERMINING PERMANENT PARTIAL DISABILITY (PPD)** – For accidents occurring on or after September 1, 2011, a licensed physician shall report the level of impairment in writing using American Medical Association guidelines. The Commission shall base its PPD determination on the following factors: reported level of impairment, occupation, age, future earning capacity and evidence contained within the medical records. No single factor shall be the sole determination of disability.
- **CARPAL TUNNEL CASES** – The schedule for loss of a hand is reduced from 205 weeks to 190 weeks for carpal tunnel syndrome caused by repetitive trauma. The PPD award for such injuries shall not exceed 15% loss of use of the hand, except for cause shown by clear and convincing evidence, in which case the award may not exceed 30%.
- **CAPS ON WAGE LOSS** – For accidents occurring on or after September 1, 2011, a wage differential under 8(d)1 is payable until the employee reaches the age of 67 or five years from the date the award becomes final, whichever is later.
- **ARBITRATORS' TERMS ABOLISHED** – All arbitrators' terms are terminated effective July 1, 2011; they shall continue to serve until appointed by the governor or until their successor is chosen. The initial appointment of all arbitrators is by the governor with the

advice and consent of the Senate. The full Commission will make subsequent reappointments. Every arbitrator who has not previously served as an arbitrator shall be a licensed attorney. For cases outside of Cook County, there shall be no fewer than three arbitrators assigned to a hearing site and cases will be randomly assigned. No arbitrator shall be assigned to one hearing location for more than two years.

- **COLLECTIVE BARGAINING PILOT PROGRAM** – The Department of Labor shall designate two labor organizations to implement Alternative Dispute Resolution with binding arbitration for the construction industry.
- **FRAUD PROVISIONS** – The Department of Insurance shall investigate fraud and report to the governor and leaders on an annual basis. Penalties for fraud committed by medical providers are increased. This requires the Department of Insurance to improve the current investigation and prosecution system and to increase penalties for uninsured employers.

## CONTACT

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