

2010 Legislation Targets Workers Compensation Increases Costs and Potential Litigation

The Workers' Compensation Act was hit particularly hard during the 2010 legislative session due to the summer 2009 interim legislative committee investigation of the business practices of Pinnacol Assurance (formerly the State Fund). Unhappy with the practices of Pinnacol, the interim committee introduced ten bills, most of which change how workers' compensation (WC) claims are handled. Since WC claim handling is statutorily directed, these bills do not target only the practices of Pinnacol, but affect every county, public entity, private employer, WC claims adjuster, WC insurer, and self-insured including your own County Workers' Compensation Pool (CWCP) and the CTSI staff who adjust WC claims on your behalf. In addition to the ten interim committee bills, a number of other WC bills were introduced from other sources.

The language of the bills contain highly technical claim handling issues, therefore, this summary wording has been simplified. The complete bill language can be accessed at www.leg.state.co.us. The Division of Workers Compensation (DOWC) will develop the rules the WC adjuster must follow to fulfill the new statutory language.

HB 10-1009-Pinnacol Board

This Pinnacol- only bill has no impact on CWCP members.

HB 10-1038- WC Claims Process Brochure

Requires that injured workers receive a brochure advising them of their WC rights, WC benefits and the various penalties that they can try to obtain against their employer or the WC claims adjuster. This additional step in claims handling increases CTSI WC claim adjuster time, stationery, production and mailing costs.

HB 10-1109- Federal Prison Industry Enhancement Certification Program

No CWCP counties are involved in this program.

SB 10-11- Reducing Conflicts of Interest in WC Cases
(NOTE: County staff, as well as others, can no longer communicate with the treating physician unless certain conditions are met!)

Section 1) Requires physicians to provide financial information prior to performing Independent Medical Examinations (IME) which slows the IME process de-

laying claim closure; Section 2) Affect on CWCP: None. We do not engage in activities designed or intended to encourage a violation of the Workers' Compensation Act; Section 3) Imposes additional costs to communicate with a treating doctor since the injured worker must be present (additional appointment) or a written record be produced (physician billable hours) and sent to all parties. This delays returning employees to modified duty assignments. Section 4) Affect on CWCP: None. Settlement contracts do not contain reversionary provisions.

SB 10-012-Doubles the Penalties from \$500 per day to \$1,000 per day

Likely to increase claims litigation as it provides additional incentives for injured workers and their attorneys to pursue penalties against the employer or WC claims adjuster. This is because the bill increased the penalty amounts while reducing the proof requirements for medical benefit penalties by changing the mental state of the WC adjuster from "willful" to "knowingly". Penalty dollars can be apportioned among the injured worker, the aggrieved party, the medical service provider and the State.

SB 10-013 Injured Worker Survey, Pinnacol Annual Report, Complaint Mechanism

1) Requires the WC claims adjuster to survey injured workers at the close of DOWC-reportable claims and to report the results to the DOWC who will then post the survey results on their website. This additional step in claims handling increases CTSI administrative staff and WC claim adjuster time, stationery, production and mailing costs. 2) This is a Pinnacol-only issue that requires Pinnacol to submit an annual report to the Governor. 3) Mandates that the DOWC website contain a complaint mechanism for an injured worker to file a complaint regarding any issue that could conceivably result in a penalty situation. This will likely increase litigation as it provides another avenue for injured workers and their attorneys to pursue penalties against employers and WC claims adjusters.

SB 10-076 Unreasonable Claims Practices

This does not affect CTSI or CWCP because we do not engage in deceptive or unfair practices or base compensation of claims staff on the number of poli-



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2010 Legislation Targets Workers Compensation-Increases Costs (Continued from page 1)

cies canceled, the number of times coverage is denied, or the use of quotas.

SB 10-112 Rate Setting

This does not affect CWCP because we use our own loss factor and rate formula.

SB 10-163 Workers' Compensation Procedures

The CWCP may see increased costs and delay in claim closure since this bill complicates simple procedures and may produce litigation. Communication: Prevents communication between an IME physician and the injured worker's treating physician. This complication will likely delay the IME process and claim closure. Overpayments: Makes reimbursement for overpayments more complicated in collecting. Change in Admitting or Denying Liability: The timelines for WC claims adjusters to admit or deny liability on a WC claim are short and often need to be completed with limited information. Now, if there is a desire to alter any admission or denial, it will be the WC claim adjuster's burden of proof to show why the determination is being changed rather than simply making the change, as was the case. Transmittal of Documentation: All documents required to be exchanged shall be transmitted in the same manner to all required recipients. For example, if a WC claims adjuster wants to send the treating physician the modified duty restrictions form, the document must also be sent to the injured worker, attorneys and other required recipients in the same manner of transmittal. If by fax, it must be faxed to all parties, if by email, it must be emailed to all parties and so on. When an injured worker does not have access to email or fax and requires regular mail service, the delay is costly and impractical. In the case of certain documents, transmittal by regular mail increases temporary disability payments and delays returning the injured worker to a productive work status.

SB 10-178 Fair Workers' Compensation Provider Reviews

Requires the WC claims adjusting company (CTSI) to develop clear performance program criteria for physicians treating injured workers based on objective data and including injured worker input as to quality of care.

The results must be reported to each healthcare provider reviewed in the program and must include a comparison of the provider's results and the results of other providers. If a particular provider does not agree with the

results in any performance program, that provider is given the right to challenge the results. Increases WC claim adjuster time, stationery, production, mailing costs and potential litigation costs.

SB 10-187 Workers' Compensation Substantive Bill

This bill, from the Workers Compensation Education Association (WCEA), also known as the trial lawyers, was reluctantly agreed to by WC self-insureds and insurers. The bill resulted in eight major technical changes to the Workers' Compensation Act, none of which appears favorable to our CWCP member employers. In general, these changes increase claim costs and potential litigation. The details are too lengthy for the purposes of this Technical Update.

HB 10-1012-The Surveillance Bill

This bill did not pass, but would have limited investigation unless several conditions were met by the WC adjuster, the surveillance investigator and others.

HB 10-1168 Limits Insurer's Ability To Seek Recovery

This bill was amended to exclude WC recovery. It originally included WC and would have eliminated recovery through subrogation; thereby increasing claim costs.

What this means for counties:

Each WC statutory change and resultant DOWC claim handling rules adds to the process, paperwork and expense of WC claims. For CWCP and other public entity self-insureds, the costs of increased staff time, litigation, stationery, production and mailing is a direct cost to Colorado taxpayers. During this time of county staff reductions and severe budget cuts, it is regrettable that this legislation redirects resources that could otherwise be focused on assisting injured workers in their treatment, recovery and return to a productive work status.

When insurance-related proposed legislation comes forth, we encourage commissioners to call on CTSI for an in-depth analysis of the impact of the bill. When bills adversely affect your constituents, contact legislators and let them know how the bill affects the limited financial resources of public entities.

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