

Injured Worker Attorney Fees

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Presentation to:

Labor Management Advisory Council on
Workers' Compensation

August 20, 2009

Why It's on LMAC's Work Plan?

- SB 285 – Senator Jent
- “An act requiring that an insurer pay costs and attorney fees for denial or termination of medical benefits that are later determined compensable by the workers’ compensation court”

What's the Issue with Attorney Fees?

- Advocates for SB 285 Say:
 - Insurers routinely deny medical benefits
 - Injured workers hire attorneys to get the medical benefits
 - Insurers then pay for medical treatment on Court house steps or after court judgment
 - Attorney fees are paid out of medical payments to medical providers
 - Medical providers shouldn't have to pay attorney fees
 - Attorney fees should be paid by insurer in these cases

What's the Issue with Attorney Fees?

- Critics of SB285 Say:
 - There are reasonable and valid reasons for denial of medical benefits
 - The law already provides a mechanism for insurer payment of medical benefits if denied unreasonably
 - Would increase petitions in the Court
 - Would add increased costs to the system

Why Are Attorney Fees Paid Out of Medical Benefits?

- Supreme Court Decision in Doug Lockhart Case, 1999 - <http://wcc.dli.mt.gov/SCCASES/Lockhart.htm>
- Medical benefits are not the property of the medical providers or simply an obligation of the insurer
- Medical Benefits are the property of the injured worker
- Injured worker should be able to pay attorney fees out of medical benefits
- Since purpose of compensation is replacement of lost earnings, unfair for injured worker to pay a disproportionate share of attorney fees out of personal resources

Medical Denials – ERD Database as of February, 2009

- FY06 – FY08 – Average of 31,798 Claims
- Average denials for No Objective Medical to support injury of 4,733 or 15%
- Average denials later paid or settled of 202 or 4.2%
- No. of petitions filed in WC Court was 6 in FY06 and 4 in FY07

Medical Disputes in Mediation and Workers' Comp Court – ERD Database as of February, 2009

- FY06 – FY08 Average medical benefit disputes filed in Mediation was 558 or 1.8% of average claims for same period
- FY06 – FY08 Average medical benefit disputes filed in WC Court was 134 or .4% of average claims for same period

Who Pays Injured Worker's Attorney Fees in Other States?

Workers' Compensation Laws, 2nd Edition – Joint Publication of
IAIABC and WCRI – June 2009

- 25 States – Paid out of worker's benefits
- 13 States – Paid out of worker's benefits with exceptions – Includes MT & DC –
 - unreasonable denial
 - ordered by Court or Administrative process
- 5 States – Paid by insurer/employer in addition to benefits
 - AK, MA, ND, RI, and WY
- 5 States – Paid by insurer if employee prevails
 - KS, NH, OR, NV (Attorney for Injured Workers), VA
- 2 States – ½ Paid by insurer – ½ Paid by employee
 - AR, NM

NEXT STEPS?

- Invite advocates and critics to LMAC meeting
- Research statutory language in KS, NH, OR, VA and NV – may be similar to SB285
- Update statistics
- Other