

AB 227 and SB 228
Workers' Compensation Benefits
Effective 1/1/04

AB227

Increased Penalties for Fraud

Existing law specifies the penalties for submitting fraudulent workers' compensation claims at an amount up to \$50,000 or twice the amount of the fraud, whichever is greater. This bill would increase this maximum fine to \$150,000 or twice the amount of the fraud, whichever is greater.

Permanent Partial Disability Benefit

This bill would provide, with specified exceptions, that if an injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability indemnity payments, the injured employee shall be eligible for a supplemental job displacement benefit in the form of a nontransferable voucher for education-related retraining or skill enhancement, or both, at state approved or accredited schools.

The voucher may be used for payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement. No more than 10 percent of the voucher moneys may be used for vocational or return to work counseling. Within 10 days of the last payment of temporary disability the employer shall provide to the employee in the form and manner prescribed by the administrative director information that provides notice of rights under this section. This notice shall be sent by certified mail. The bill would specify that these provisions shall apply to injuries occurring on and after January 1, 2004.

The employer will not be liable for the supplemental job displacement benefit if the employer meets either of the following conditions:

- (1) Within 30 days of the termination of temporary disability indemnity payments, the employer offers, and the employee rejects, or fails to accept, in the form and manner prescribed by the administrative director, modified work, accommodating the employee's work restrictions, lasting at least 12 months.
- (2) Within 30 days of the termination of temporary disability indemnity payments, the employer offers, and the employee rejects, or fails to accept, in the form and manner prescribed by the administrative director, alternative work meeting all of the following conditions:
 - (a) The employee has the ability to perform the essential functions of the job provided.
 - (b) The job provided is in a regular position lasting at least 12 months.
 - (c) The job provided offers wages and compensation that are within 15 percent of those paid to the employee at the time of injury.
 - (d) The job is located within reasonable commuting distance of the employee's residence at the time of injury.

SB228

Medical Care Guidelines

This bill would require the commission, on or before July 1, 2004, to conduct a survey and evaluation of nationally recognized standards of care, including existing medical treatment utilization standards, including independent medical review, as used in other states, at the national level, and in other medical benefit systems, and to issue a report of its findings and recommendations to the Administrative Director of the Division of Workers' Compensation, on or before October 1, 2004, for purposes of the adoption of a medical treatment utilization schedule.

Medical Care Disputes

Existing law establishes procedures for disputes between employers and employees regarding the compensability of an injury and the extent and scope of medical treatment for that injury. Existing law creates a presumption in certain circumstances that the treating physician of an employee, who has been pre-designated by the employee, is correct. This bill, until January 1, 2007, would establish procedures to be followed when an employer objects to a treating physician's recommendation for spinal surgery, and would revise the above presumption for treating physicians, as specified. It would also require the Commission on Health and Safety and Workers' Compensation to conduct a study of the spinal surgery second opinion procedure by June 30, 2006, and to issue a report on its findings.

If either the employee or employer objects to a medical determination made by the treating physician concerning the permanent and stationary status of the employee's medical condition, the employee's preclusion or likely preclusion to engage in his or her usual occupation, the extent and scope of medical treatment, the existence of new and further disability, or any other medical issues, the objecting party shall notify the other party in writing of the objection within 20 days of receipt of the report if the employee is represented by an attorney or within 30 days of receipt of the report if the employee is not represented by an attorney. These time limits may be extended for good cause or by mutual agreement. If the employee is represented by an attorney, the parties shall seek agreement with the other party on a physician, who need not be a qualified medical evaluator, to prepare a report resolving the disputed issue. If no agreement is reached within 10 days, or any additional time not to exceed 20 days agreed upon by the parties, the parties may not later select an agreed medical evaluator. Evaluations obtained prior to the period to reach agreement shall not be admissible in any proceeding before the appeals board. After the period to reach agreement has expired, the objecting party may select a qualified medical evaluator to conduct the comprehensive medical evaluation. Neither party may obtain more than one comprehensive medical-legal report, provided, however, that any party may obtain additional reports at their own expense. The non-objecting party may continue to rely on the treating physician's report or may select a qualified medical evaluator to conduct an additional evaluation.

The employer may object to a report of the treating physician recommending that spinal surgery be performed within 10 days of the receipt of the report. If the employee is represented by an attorney, the parties shall seek agreement with the other party on a

California licensed board-certified or board-eligible orthopedic surgeon or neurosurgeon to prepare a second opinion report resolving the disputed surgical recommendation. If no agreement is reached within 10 days, or if the employee is not represented by an attorney, an orthopedic surgeon or neurosurgeon shall be randomly selected by the administrative director to prepare a second opinion report resolving the disputed surgical recommendation. Examinations shall be scheduled on an expedited basis. The second opinion report shall be served on the parties within 45 days of receipt of the treating physician's report. If the second opinion report recommends surgery, the employer shall authorize the surgery. If the second opinion report does not recommend surgery, the employer shall file a declaration of readiness to proceed. The employer shall not be liable for medical treatment costs for the disputed surgical procedure, whether through a lien filed with the appeals board or as a self-procured medical expense, or for periods of temporary disability resulting from the surgery, if the disputed surgical procedure is performed prior to the completion of the second opinion process required by this subdivision of the law.

The second opinion physician shall not have any material professional, familial, or financial affiliation, as determined by the administrative director, with any of the following:

- (1) The employer, his or her workers' compensation insurer, third-party claims administrator, or other entity contracted to provide utilization review services.
- (2) Any officer, director, or employee of the employer's health care provider, workers' compensation insurer, or third-party claims administrator.
- (3) A physician, the physician's medical group, or the independent practice association involved in the health care service in dispute.
- (4) The facility or institution at which either the proposed health care service, or the alternative service, if any, recommended by the employer's health care provider, workers' compensation insurer, or third-party claims administrator, would be provided.
- (5) The development or manufacture of the principal drug, device, procedure, or other therapy proposed by the employee or his or her treating physician whose treatment is under review, or the alternative therapy, if any, recommended by the employer or other entity.
- (6) The employee or the employee's immediate family.

If the employee is not represented by an attorney, the employer shall not seek agreement with the employee on a physician to prepare the comprehensive medical evaluation. Except in cases where the treating physician's recommendation that spinal surgery be performed pursuant to subdivision (b) of this law, the employer shall immediately provide the employee with a form prescribed by the medical director with which to request assignment of a panel of three qualified medical evaluators. The employee shall select a physician from the panel to prepare a comprehensive medical evaluation. For injuries occurring on or after January 1, 2003, the evaluation of the qualified medical evaluator selected from a panel of three and the reports of the treating physician or physicians shall be the only admissible reports and shall be the only reports obtained by the employee or employer on issues subject to this section in a case involving an un-represented employee.

This section of the law shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

Medical Fee Schedule

Existing law requires the administrative director to adopt an official medical fee schedule, establishes reasonable maximum fees paid for medical services provided under the workers' compensation laws. Existing law required that a pharmaceutical fee schedule be adopted (by July 1 2003) and revised no less frequently than biennially. This bill would require the adoption and periodic revision of a medical fee schedule for various services, drugs, fees, and goods, as specified, other than physician services. This bill would require that, within the limits established by the bill, the rates or fees established by the medical fee schedule be adequate to ensure a reasonable standard of services and care for injured employees, and would make conforming changes.

Chiropractic/Physical Therapy Care

The bill would limit the number of chiropractic and physical therapy visits by an employee per industrial injury, to a total of 24 for injuries that occur after January 1, 2004.

Employer Utilization Review Program

This bill would require every employer to establish a utilization review process, either directly or through its insurer or entity with which an employer or insurer contracts for these services, in accordance with specified criteria, and would authorize the administrative director to assess administrative penalties for failure to meet certain requirements. The policies and procedures must be in writing. The program must be evaluated at least annually and updated as necessary.

The written program must be available to the public upon request. An employer shall only be required to disclose the criteria or guidelines for the specific procedures or conditions requested. An employer may charge members of the public reasonable copying and postage expenses related to disclosing criteria or guidelines. Criteria or guidelines may also be made available through electronic means. No charge shall be required for an employee whose physician's request for medical treatment services is under review.

IIPP Review Requirements by Insurance Carrier

Existing law requires every employer to establish, implement, and maintain an effective injury prevention program. Existing law also authorizes an employer to adopt the Model Injury and Illness Prevention Program for Non-High-Hazard Employment and the Model Injury and Illness Prevention Program for Employers in Industries with Intermittent Employment, developed by the Division of Occupational Safety and Health. This bill would require every workers' compensation insurer to conduct a review of these injury and illness prevention programs of each of its insureds within 4 months of the commencement of the initial insurance policy term.

The review shall determine whether the insured has implemented all of the required components of the IIPP, and evaluate their effectiveness. The training component of the IIPP shall be evaluated to determine whether training is provided to line employees, supervisors, and upper level management, and effectively imparts the information and skills each of these groups needs to ensure that all of the insured's specific health and safety issues are fully addressed by the insured. The reviewer shall prepare a detailed

written report specifying the findings of the review and all recommended changes deemed necessary to make the IIPP effective. The reviewer shall be an independent licensed California professional engineer, certified safety professional, or a certified industrial hygienist.