



Legislative and Industry Updates – October 2021

With the end of the Legislative session for 2021, many bills have been moved to 2022 for the 2nd of the 2-year session. Few bills have made their way through the system, with only a small number regarding workers' compensation heading to the Governor's desk.

LEGISLATIVE ACTIVITY

SB 284 PTSD Presumption Extended (Stern)

SB 284 will extend the PTSD presumption to an increased number of employees by including Sections "830.1, 830.2, 830.3, 830.32, 830.37, and 830.38, subdivision (b) of Section 830.4, and Sections 830.5 and 830.55 of the Penal Code". This includes public safety dispatcher and tele communicators who are primarily engaged in active law enforcement activities.

This includes *"an individual employed by a public safety agency whose primary responsibility is to receive, process, transmit, or dispatch emergency and nonemergency calls for law enforcement, fire, emergency medical, and other public safety services by telephone, radio, or other communication device, and includes an individual who supervises other individuals who perform these functions."*

Opposition is noted from the California Association of Joint Powers Authorities (CAJPA) as "there continues to be a total lack of objective basis upon which to justify a policy that functionally forces public agencies to finance all PTSD claims, whether or not claims are related to work...Fundamentally, we do not believe the SB 284 is necessary to provide California employees with fair access to the workers' compensation system for psychiatric injuries."

With the amendments of August 30, 2021, CAJPA remains with other entities in opposition.

STATUS – Inactive File

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AB 1465 Statewide MPN (Reyes/Gonzalez)

This bill was introduced to create a statewide MPN on or before January 1, 2022 – *“California Medical Provider Network (CAMPN)*. The bill would establish that an employee may choose to treat within their employer’s network or the CAMPN. For those employers who have not established an MPN, their injured workers will be able to choose to treat with a physician of THEIR choice or a physician in CAMPN after 30 days as outlined in LC 4600.

As amended April 26, 2021, the bill now requests the Commission on Health and Safety and Workers’ Compensation (CHSWC) to conduct a study on MPN access to care issues.

STATUS - This is now a Two-Year bill and may proceed in the next session.

AB 415 Extension of Cancer Presumption (Rivas)

This bill would extend the cancer presumption currently applicable to Safety Officers to certain employees of a city, county, city and county, district in addition to employees directly involved in police or firefighter activities, specifically those who clean firefighting equipment/vehicles.

STATUS – This is now a Two-Year bill and may proceed in the next session

AB 1400 Guaranteed Healthcare for All (Kalra, Lee, Santiago)

The California Guaranteed Health Care for All Act (CalCare) creates a *“single-payer health care coverage and a health care cost control system for the benefit of all residents of the state”*.

The bill, among other things, would provide that CalCare *“cover a wide range of medical benefits and other services and would require a development of a proposal for CalCare coverage of health care items and services currently covered under the workers’ compensation system, including whether and how to continue funding for those items and services under that system and how to incorporate experience rating”*.

STATUS – This is now a Two-Year bill and may proceed in the next session.

SB 335 Compensability Timeline/Claim Acceptance (Cortese)

Workers’ Compensation benefits are provided to injured workers based upon information provided indicating the injuries/illnesses arise from employment and occurred as the result of employment. To determine if benefits are payable requires time and cooperation from injured workers as well as the availability of medical evaluations. Currently, an employer is allowed up to 90 days to gather this valuable information for most claims, except for those related to COVID-19 presumptive

injuries.

SB 335 will reduce the current 90-day period to gather information to 30 or 45 days. Unfortunately, this reduction in the time allowed to gather information supporting benefits will result in an increase in claims initially denied pending receipt of information. The bill also proposes to increase the amount payable during the delay period to \$17,000 (from \$10,000).

In addition to decreasing the period to determine compensability and increasing the amount payable during the delay period, SB 335 also imposes significant penalties for the delay of any benefits relating to the COVID-19 presumptive claims of Awards increased by 10% for unreasonable delay of any benefits (not just the award) in addition to any other penalties. The California Association of Joint Powers Authorities (CAJPA) indicates “SB 355 would also mandate an unprecedented and unwarranted expansion of penalties on employers that would result in massive and repeated benefit expansions for workers covered by certain legal presumptions. This provision would be applied retroactively.”

STATUS – This is now a Two-Year bill and may proceed in the next session.

SB 788 Permanent Disability Apportionment (Bradford)

Senator Bradford again presented a bill to remove the ability to apportion PD to race, religious creed, color, national origin, age, gender, marital status, sex, sexual identity, sexual orientation, or genetic characteristics, similar to those proposed in the two prior sessions, SB 899 and SB 731 from last session.

SB 899 was vetoed by then Governor Brown with the statement “Consistent with current law, this measure seeks to preclude a physician from using race, gender, or national origin as a basis for apportionment. I am vetoing this bill for many of the same reasons that I returned a similar measure in 2011 – AB 1155. This bill is unnecessary as it would not change existing law and may disturb settled court decisions, which already provide protection from the inappropriate application of the apportionment statutes. Additionally, the proposed wording of the amended statute may create ambiguities in the law, resulting in increased litigation, costs for employers and confusion for injured workers and their representatives.”

The bill proposed during this legislative session provides no additional information to support the proposal. Following discussions, amendment was reached removing Genetics as an exclusion from apportionment, with many opponents removing their objections. Recent information received indicates Senator Bradford is reviewing proposed amendments from the Division of Workers’

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Compensation (DWC) and Labor Workforce Development Agency.

STATUS – Vetoed by Governor with this statement, in part: “While I support efforts to combat bias within the medical profession, this bill creates confusion with well-settled law, which is likely to result in increased litigation and subsequent delays to much-needed benefits to workers. Ongoing efforts by the Division of Workers' Compensation to implement mandatory continuing education of medical-legal evaluators related to current anti-bias laws and apportionment training is better suited to achieve the intent of this bill.”