

To: Jerry Keck, Administrator

1/28/2011

From: Ann Clayton, Sr. Consultant

Re: Comparison of Medical Closing Provision and PPD Limitations in HB 334 to Those In Other States

I have reviewed the proposed changes in HB 334 and provide my opinion of two provisions contained in such proposed legislation and how they compare to the laws in other states.

Medical Closing Provision: HB 334 proposes to eliminate an injured worker's entitlement to medical benefits under the Montana workers' compensation law to 5 years after the date of injury except for cases where the employee is permanently and totally disabled (PTD) or in cases where prostheses need replacing or repairing. In addition, the reopening provision only allows reopening if surgery is needed to allow an employee to continue to work. *In my opinion, based on a review of and my knowledge of other states workers' compensation statutes, this is the most restrictive provision in any of the US workers' compensation laws. (see the medical closing and reopening provisions for states which I have attached)* Most states limit medical closings to a timeframe after the last medical or indemnity payment (often one or two years); and no state that I am aware of allows reopening only in cases of surgery necessary to keep an employee working.

PPD Limitation Provision: HB 334 proposes to eliminate any impairment or PPD benefit to injured workers who have a rating less than that of a class 2 rating under the 6th Edition of the AMA Guides. Although comparisons of PPD benefits is a bit more difficult, *based on a review of multiple resources on state PPD structures and my knowledge and experience with them, this would make Montana's PPD system the second most restrictive (after North Dakota) and probably one of the most inadequate benefit systems in the country.* This results from the elimination of approximately 80+ percent of workers who suffer a permanent injury that results in current and/or future wage losses that will not be compensated in any manner under the Montana system.

Both of these provisions would eventually yield lower premiums but would also produce some of the lowest benefits for workers in the nation.

Table 1: Summary of Medical Benefit Closing; Settlements and Basis of Reopenings

| STATE | Medical Benefits Considered "Closed" | # of Years | Allow Medical Benefits To Be Settled | Basis Of Reopening |
|-------------|---|------------|--------------------------------------|--|
| ALABAMA | 2 years from date of last compensation paid | 2 | Yes | Settlements may be set aside for fraud, undue influence, or coercion. If employee cannot continue job, claim may be reopened for reconsideration of permanent impairment |
| ALASKA | 2 years from date of last compensation paid | 2 | Yes | Change of condition, or because of a mistake of fact |
| ARIZONA | Apparently None | None | Only when disputed | Medical evidence which establishes to a reasonable medical probability that the industrial injury caused or contributed to a new, additional or previously undiscovered condition |
| ARKANSAS | 1 year from last payment of compensation | 1 | Yes | A change of physical condition or proof of an assignment of an erroneous wage rate. |
| CALIFORNIA | 1 year from last payment of indemnity or 1 year from the date of last furnishing of any medical benefit | 1 | Yes | Must establish good cause for reopening |
| COLORADO | 2 years after the payment of the last temporary or permanent disability benefit | 2 | Yes | On the grounds of fraud, overpayment, error, mistake, or change in condition, unless the employee has entered into a settlement in which he or she has waived the right to re-open and even then, that can be re-opened for fraud or mutual mistake of material fact |
| CONNECTICUT | Only when the commissioner has approved a "final" stipulation | | Yes | Whenever it appears "that the incapacity of an injured employee has increased, decreased or ceased, or that the measure of the dependency on account of which the compensation is paid has changed, or that changed conditions of fact have arisen which necessitate a change of such agreement or award |
| DELAWARE | 5 years from last payment of compensation | 5 | Rarely | |
| FLORIDA | 1 year from payment of any indemnity or medical benefit | 1 | Yes | A claim for modification can only be made if there is a change in the employee's condition or when there is a mistake in the Judge's determination of the facts |
| GEORGIA | 1 year of last remedial treatment of or 2 years from last payment of weekly benefits | 1 or 2 | Only when disputed | For a change in condition |
| STATE | Medical Benefits Considered "Closed" | # of Years | Allow Medical Benefits To Be Settled | Basis Of Reopening |

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| HAWAII | 8 years after the date of the last payment of compensation | 8 | Yes | On the ground of a change in or mistake in a determination of fact related to the physical condition of the injured employee |
| IDAHO | 1 year from date of last payment of income benefits but this does not affect the right to medical benefits | none | Yes | If there is a change in condition or disablement |
| ILLINOIS | 2 years after the date of payment of compensation | 2 | Yes | Any claim that is settled by a lump sum settlement contract cannot be re-opened for fraud. Otherwise, may be re-opened within 18 months of award if disability recurred, increased, diminished or ended |
| INDIANA | 2 years from the last day compensation was paid except that for PPI it is 1 year from the last day compensation was paid | 2 | Yes | |
| IOWA | 3 years from last payment | 3 | Yes | |
| KANSAS | 2 years from last payment of compensation | 2 | Yes | |
| KENTUCKY | 2 years from last payment of compensation | 2 | Yes | Change of disability, mistake, fraud or new evidence |
| LOUISIANA | 1 year from last payment | 1 | Yes | Basis is a change in condition |
| MAINE | 6 years after most recent payment of benefits | 6 | Yes | For recurring or worsened condition |
| MARYLAND | 5 years from last indemnity payment | 5 | Yes | For aggravation, diminution or termination of disability. |
| MASSACHUSETTS | Within 1 year of the time the employee becomes aware of the worsening condition | 1 | Only when disputed | If employee has "suffered a substantial deterioration of his medical condition which (i) could not reasonably have been foreseen at the time said agreement was entered into, and (ii) is the result of an injury for which the insurer would have been liable" |
| MICHIGAN | 1 or 2 years | 1 or 2 | Yes | Reopening if not barred by res judicata |
| MINNESOTA | Apparently None | none | Yes | Can be re-opened for: (1) a mutual mistake of fact; (2) newly discovered evidence; (3) fraud; or (4) a substantial change in medical condition since the time of the award that was clearly not anticipated and could not reasonably have been anticipated at the time of the award. |
| MISSISSIPPI | 1 year after last payment of indemnity | 1 | Yes | If a change in condition |
| STATE | Medical Benefits Considered "Closed" | # of Years | Allow Medical Benefits To Be Settled | Basis Of Reopening |

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|----------------|---|------------|--------------------------------------|---|
| MISSOURI | 2 years from last payment of medical or TTD | 2 | Yes | A medical claim can be reactivated if the claimant can show good cause and the claim is for payment of medical procedures involving life-threatening surgery or replacement of a prosthetic device. |
| MONTANA | Medical benefits close if not used within 60 consecutive months | 5 | Only when disputed | Upon a showing of mutual mistake of material fact in entering into the settlement agreement, a worker or an insurer may petition the Workers' Compensation Court for a change in disability status if medical conditions underlying the disability have changed. |
| NEBRASKA | 2 years of last payment | 2 | Yes | Change of condition |
| NEVADA | Apparently None | none | No | If an application to reopen is filed more than 1 year after the date on which the claim was closed, the insurer shall reopen the claim if: (a) a change of circumstances warrants an increase or rearrangement of compensation during the life of the claimant; (b) the primary cause of the change is the injury for which the claim was originally made; and (c) the application is accompanied by the certificate of a physician or chiropractor showing a change of circumstances |
| NEW HAMPSHIRE | 4 years from cessation of indemnity benefits; related medical is lifetime | 4 | No | Only medical bills can be re-opened. Causally related medical bills are compensable for life. |
| NEW JERSEY | 2 years after the last payment of compensation or date of medical treatment | 2 | Yes | Settlement agreements bar reopenings |
| NEW MEXICO | None on medical claims | None | No | The employee must show an increased disability, and the employee can move to re-open only every six months. A case can be reopened even if there was a settlement if there has been a worsening of the condition. |
| NEW YORK | 7 years from date of accident or death | 7 | Yes | A worsening of a condition that is not anticipated at the time of final determination |
| NORTH CAROLINA | 2 years after the last payment of compensation or medical expenses | 2 | Yes | Due to change in condition |
| NORTH DAKOTA | Totally at the discretion of the State Fund | n/a | Yes | There is no appeal from the State Fund's determination not to reopen a claim |
| OHIO | 5 years after the date of injury | 5 | Yes | |
| OKLAHOMA | 2 years from last payment of compensation or payment of last authorized medical treatment | 2 | Yes | Based on a change of condition |
| OREGON | 5 years after the date of injury or notice of closure | 5 | No | For worsened conditions resulting from the original injury |
| PENNSYLVANIA | 3 years after the last payment of compensation | 3 | Yes | When there is: (1) recurrence of disability after full recovery; (2) recurrence of disability after return to pre-injury job with residual disability; (3) recurrence of disability after return to modified work with residual disability; or (4) recurrence of disability after commutation. A compromise and release agreement can be set aside upon a clear showing of fraud, deception, duress or mutual mistake. |
| STATE | Medical Benefits Considered "Closed" | # of Years | Allow Medical Benefits To Be Settled | Basis Of Reopening |

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| RHODE ISLAND | 10 years after the date of final payment | 10 | Yes | |
| SOUTH CAROLINA | 1 year from date of last payment of compensation | 1 | Yes | For a change of condition based on "proof by a preponderance of the evidence that there has been a change of condition caused by the original injury, after the last payment of compensation." |
| SOUTH DAKOTA | 3 years from last payment of benefits | 3 | Only when disputed | Review based on a change in condition; the "change of condition" must be physical; an economic change is insufficient. The change of condition must be causally connected to the original complaint of injury and must have been unforeseeable at the time of settlement. |
| TENNESSEE | 1 year from date of last compensation payment of last authorized medical treatment | 1 | Yes with some limitations | |
| TEXAS | Apparently None | none | No | A substantial change of condition based on certain specified circumstances. |
| UTAH | Medical ceases after 3 consecutive years without medical treatment | 3 | Yes | |
| VERMONT | 6 years after an "award" | 6 | Yes | |
| VIRGINIA | Medical benefits are for life | none | Yes | For worsening condition |
| WASHINGTON | 7 years from date of first closing order (10 years for eye injuries) | 7 | No | The employee must show, by a comparison of objective medical findings, that his or her causally-related condition worsened between the time of last closure and the application. |
| WEST VIRGINIA | 5 years from closure | 5 | Yes with some limitations | Claimant must demonstrate that there has been an aggravation or progression of his or her condition or the existence of a previously unconsidered material fact. |
| WISCONSIN | 12 years of last payment of indemnity benefits | 12 | Yes | All claims are open, unless specifically closed by compromise, for the length of the applicable limitation period. |
| WYOMING | 4 years from last payment of benefits | 4 | Yes | Must be based on an increase or decrease of incapacity due solely to the injury, or for mistake or fraud. |

Sources: 2009 Edition of Workers' Compensation Law by ALFA International (Questions 7,27 and 48)