

California guts workers' compensation system

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On April 16, the Democrat Party-dominated California legislature voted overwhelmingly to revamp the state's workers' compensation system. Coming on the heels of anti-worker legislation last year, the changes further reduce the chance that injuries to workers will be recognized, treated or compensated.

Workers will no longer have the right to select their own doctor for treatment if the employer or its insurance carrier has established an HMO-style medical provider network. In that case, workers must use doctors in the network, retaining only a limited right to appeal treatment decisions to a medical review panel. Since physicians will be beholden to the employer or carrier, they will be under pressure to limit the scope and extent of treatment.

Treatment practices will no longer be compensated, even if they are generally accepted in the local health care community, unless they are considered to be "scientifically based," peer-reviewed and nationally recognized. This new restriction strikes at chiropractic treatment and alternative therapies, as well as newer and often more expensive cutting-edge approaches. Medical findings regarding treatment, disability and work restrictions must now follow strict guidelines promulgated by the American Medical Association.

Substantial additional restrictions have been placed on doctors who diagnose the existence of injury and its extent. Doctors issuing such "medical-legal" reports can no longer prescribe treatment; their function will be limited to assessing the cause of injury and extent of disability.

The new law requires doctors evaluating permanent disability to make a percentage allocation between present work-related injury and what was caused by other factors, including past work injuries. This approach tosses out the venerable legal concept that a

more susceptible victim should be compensated for aggravation of a prior condition or injury. Disability payments will now be limited so as to exclude such considerations.

"Subjective" complaints such as chronic pain will no longer be considered proof of injury. This will eliminate compensation, and treatment, for injuries such as back pain, which are often difficult to prove by objective testing. Very real injuries that are chronic or a result of repetitive motion often have that characteristic.

The policy in the prior law that favored extending benefits to injured workers has been eliminated. Disability payments for all but the most serious injuries will be reduced. The law eliminates meaningful penalties against employers or insurance carriers that unreasonably delay or deny benefits.

These are just a few highlights of the wholesale changes implemented by this complex new law.

The way the new law was enacted is as distressing as its anti-worker substance. Arnold Schwarzenegger made reform of California's workers' compensation system a key plank of his campaign during the 2003 gubernatorial recall election. A predictable media campaign ensued, promoting the message that the workers' compensation system was so costly and subject to abuse by employees, doctors and lawyers that employers were leaving the state in droves.

Once elected, Schwarzenegger and the Republican right threatened to place an even more extreme workers' compensation initiative on the November election ballot if the state legislature did not enact sweeping reform. Business and insurance interests heavily funded the initiative and claimed to have collected enough signatures to place it on the ballot. Schwarzenegger then imposed a deadline on the legislature for enacting a new law to forestall the ballot

initiative.

As a result, the new law was hastily put together in the corridors of power and rammed through the legislature, without public input. The only public hearing on the bill occurred in the pre-dawn hours the day before the bill was passed.

The process flew in the face of Schwarzenegger's recall election pledge that, "I will open up the windows and doors of government. It is time to let the sun shine in.... No more decisions in the dark." When reminded of his prior statement, Schwarzenegger conceded it was "a very good point," but the deal faced deadline pressure, ignoring that he himself had imposed that deadline. "In principle, I always want everyone to be participating, to have an open forum and to talk and to let the public look inside," he said. "But in this case, it was not possible to do that."

The Democrats in the Legislature completely knuckled under to Schwarzenegger; the new law passed by a vote of 77-3 in the State Assembly and 33-3 in the Senate. Democrats had proposed obligatory reductions in insurance rates to employers, but dropped this demand when the governor refused to regulate rates, saying increased competition was the answer. Schwarzenegger made this claim even though deregulation of rates that occurred in 1993 resulted in the opposite—only a handful of carriers continued to write workers' compensation insurance.

Whether or not the billions of dollars in savings projected by Schwarzenegger materialize from cutbacks in worker benefits, it is doubtful whether employers will see much of these savings. The winners are likely to be insurance companies, as well as the HMO-style networks that employers are encouraged to contract with to provide medical treatment, that will suck up billions through administrative and other charges.



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