# Workers Compensation Reform Update – Senate Bill 863

CAS Spring Meeting
May 2013
Vancouver

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# Background

- Negotiated between labor and employers
- Two guiding principles
  - Permanent disability benefits were too low, needed to be increased
  - Need to stem rising medical treatment, benefit and claims administration costs
- Reforms sought to deal with cost drivers
  - Permanent disability rating add-ons
  - Liens for medical treatment
  - Speed up claim resolution to lower litigation and other frictional costs
- Development of cost estimates was collaborative effort from industry, government, academic community

# Estimated Cost Impact – 1/1/2013

| Proposed Change | Impact on Loss | Impact on LAE | Total Impact on Loss and LAE |
|---|---|---|---|
| PD Benefits* | 2.7% | 1.1% | 2.4% |
| Liens | -1.2% | -7.8% | -2.5% |
| Ogilvie | -0.8% | -2.4% | -1.1% |
| MPN Strengthening | -1.2% | -0.3% | -1.0% |
| Surgical Implant | -0.7% | 0.0% | -0.6% |
| IMR | -1.5% | -4.3% | -2.1% |
| Eliminate PD Tiers | -0.6% | -0.3% | -0.5% |
| ASC Fees | -0.5% | 0.0% | -0.4% |
| Total for 1/1/2013 Changes | -3.9% | -14.1% | -5.8% |

Cost and savings estimates from WCIRB Evaluation of the Cost Impact of Senate Bill 863 Updated October 12, 2012
*Includes changes to weekly benefit min/max, supplemental job displacement benefit, burial allowance, elimination of FEC, and elimination of rating add-ons for psyche, sleep and sexual dysfunction

# Total Estimated Cost Impact

| Proposed Change | Impact on Loss | Impact on LAE | Total Impact on Loss and LAE |
|---|---|---|---|
| 1/1/2013 Changes | -3.9% | -14.1% | -5.8% |
| | | | |
| 1/1/2014 PD Changes (min/max) | +3.5% | +1.4% | +3.1% |
| | | | |
| Impact of All Changes | -0.3% | -12.7% | -2.7% |

Cost and savings estimates from WCIRB Evaluation of the Cost Impact of Senate Bill 863 Updated October 12, 2012

# Changes Not Quantified

- Revisions to Medical Fee Schedule
  - Four year phase-in beginning in 2014
  - To be based on the Resource-Based Relative Value Schedule (RBRVS) for physician services with max fees to not exceed 120% of Medicare
  - Under development, not yet quantified
- Adopt fee schedule for home health services (7/1/2013) and copy services (12/31/2013)
  - Under development, not yet quantified
- New Return-to-Work Program
- Independent Medical Bill Review
- Changes to self-insurance requirements

# Statutory Benefit Changes

- Effective for injuries on or after 1/1/2013
  - Changes to Benefits and PD Ratings (+2.4%)
    - Increase in minimum and maximum weekly PD benefits
    - Increase in burial allowance from $5,000 to $10,000
    - Change in supplemental job displacement benefit to maximum of $6,000
    - Changes to PD Ratings
      - Elimination of FEC factors, replaced with 1.4 multiplier
      - Elimination of add-ons to rating for psyche, sleep and sexual dysfunction
        - Exception for psychiatric injuries that are catastrophic or victim/witness to violent act
  - Elimination of multi-tiered weekly PD benefits (-0.5%)
  - Change to PD advances
    - Not quantified, expected to be minimal
- Effective for injuries on or after 1/1/2014
  - Increase in maximum weekly PD benefits (+3.1%)

Cost and savings estimates from WCIRB Evaluation of the Cost Impact of Senate Bill 863 Updated October 12, 2012

# Liens for Medical Treatment

- Liens filed after 1/1/2013 - Must file lien with WCAB using approved form and pay $150 filing fee to DWC
- Liens filed before 1/1/2013 – Must pay $100 activation fee prior to lien conference
- Must be filed no more than 3 years after date of service for liens filed before July 1, 2013 and 18 months after date of service for liens filed on or after July 1, 2013
- Liens not activated or filing fee paid after 1/1/2014 will be dismissed
- Limitation on assignment of lien claims, payable only to person entitled to payment for expenses at time expenses were incurred

# Liens for Medical Treatment

- Estimated savings of 2.5%
  - Impact of imposition of filing fee (-0.6%):
    - 30% of liens will be eliminated
    - Average cost of $150 per lien, with $400 administrative cost (LAE)
  - Impact of statute of limitations (-1.9%):
    - 11% of liens will be eliminated
    - Average cost of $2,250 per lien, with $3,000 LAE
- Courts have upheld filing/activation fee
  - Needs to be paid prior to lien conference
- “Petition for cost” challenge to lien fees
  - Copy services and interpreters

Cost and savings estimates from WCIRB Evaluation of the Cost Impact of Senate Bill 863 Updated October 12, 2012

- Replacement of FEC factor with flat factor of 1.4 results in ratings not subject to amendment based on Ogilvie decision
- Estimated savings of 1.1% based on WCIRB's prior estimates of combined impact of Almaraz/Guzman and Ogilvie
  - Combined impact was 20% increase to PD benefits and 9% increase in ALAE
  - Judgmentally estimate Ogilvie to be 1/5 of increase in PD and 1/3 of increase in ALAE
  - Includes assumption of reduced frequency due to reduced benefits

Cost and savings estimates from WCIRB Evaluation of the Cost Impact of Senate Bill 863 Updated October 12, 2012

- Removed requirement that 25% of doctors in MPN practice in areas other than occupational medicine
- Providers required to affirmatively elect to be a member of an MPN
- Increased monitoring of MPNs through random reviews
- Employer not liable for treatment or consequences of treatment outside of MPN
- Reports prepared by consulting or attending physician chosen by injury worker and outside MPN shall not be sole basis of compensation
- Estimated savings of 1.0%
  - Assumes that 20% of litigated in network claims currently obtain treatment outside of MPN
  - Savings comes from treatment moving back into MPN at a lower cost

Cost and savings estimates from WCIRB Evaluation of the Cost Impact of Senate Bill 863 Updated October 12, 2012

# Surgical Implant Hardware

- Repealed Labor Code Section 5318, which provides for the separate reimbursement for implantable medical devices
- Estimated savings of -0.6% based on CWCI study

Cost and savings estimates from WCIRB Evaluation of the Cost Impact of Senate Bill 863 Updated October 12, 2012

# Independent Medical Review

- Newly created process of independent medical review
  - Applies to injuries after 1/1/2013 immediately and injuries prior to 1/1/2013 as of July 1, 2013
- Impact on losses will be dependent on regulatory structure, regulations, judicial interpretations, etc.
- WCIRB Estimated savings of 2.1%
  - Loss savings from replacement of QME reports for medical treatment issues with IMR process, reduction in temporary disability duration (-1.1%)
  - LAE Savings from elimination of medical lien disputes for medical treatment issues and elimination of expedited hearings for medical treatment issues (-1.0%)
- In pure premium rate decision, CA DOI estimated additional medical treatment cost savings of 1.1%

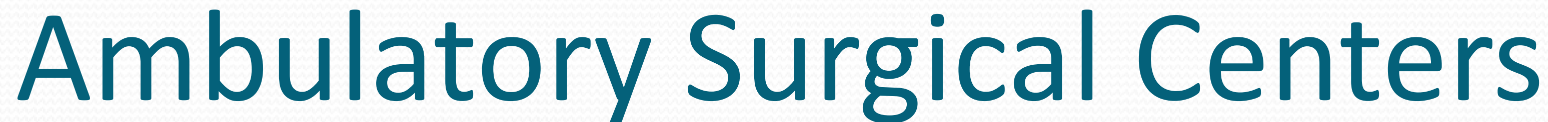
Cost and savings estimates from WCIRB Evaluation of the Cost Impact of Senate Bill 863 Updated October 12, 2012

# IMR– Current Status

- Emergency regulations in place through June 30, rulemaking hearing on permanent regulations held in April
- Injured worker, attorney, or provider may request IMR, paid for by claims administrator
  - Regular review - $560
  - Expedited review - $685
- If eligible for IMR, decision required 30 days after receipt of all necessary documentation
- Applicants' bar seeking higher penalties for interfering with or prolonging IMR process
- SB626 introduced, but recently placed on hold. Would allow WCAB to overturn IMR decisions and eliminate other key components of SB 863

# IMR– Current Status

- Vendor selected (Maximus Federal Services, Inc.)
- Through end of April
  - Approximately 200 requests for IMR, not all of which have been reviewed. Of those reviewed, 50 requests deemed eligible
  - Decisions made in 10 cases
  - Redacted versions posted on DWC website
  - Of 6 cases posted so far, two procedures were authorized



# Ambulatory Surgical Centers

- 80% of Medicare fee for same service in a hospital outpatient department
- Current reimbursement is 120% of Medicare, but many ASC fees are reimbursed at amounts well below current fee schedule
- Estimated savings of 0.4%
  - Assumes reduction of 25% in ASC payments
    - Approximate average of full impact (120% to 80% = 33% reduction) and 20% savings, which reflects reimbursement of lesser of fee schedule and current reimbursement rate

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# Independent Bill Review

- Emergency regulations in place through June 30, rulemaking hearing on permanent regulations held in April
- Same vendor selected as IMR
- Provider must request second bill review before proceeding to IBR
- If still disputing amount of payment, request IBR for fee of $335
    - Can consolidate bills for same worker if less than $4,000 in total and same billing code
- If any additional payment is found through IBR, payor must reimburse the amount of the fee

# Self-Insurance

- Emergency regs in place through July 2, draft permanent regulations scheduled for hearing on June 13
- Minimum required security deposit for private self insurers now equal to losses at undiscounted expected level, including IBNR, ALAE and ULAE, net of specific excess
- Estimates must be from study done by qualified actuary, due May 1 evaluated as of December 31 of prior year.
  - Qualified actuary = FCAS or MAAA or member of SOA qualified to sign SOP on loss reserves
  - Actuary must maintain $1M coverage for professional liability and E&O
- Actuarial study not required if 10 or fewer open claims or less than $1M estimated future liabilities
- No self-insurance allowed for professional employer organizations, leasing employers, temporary services employers, or any employer determined to be providing employees to other employers

# Return-to-Work Fund

- $120 million derived from Workers Compensation Administration Revolving Fund (funded through employer assessments)
- Make supplemental payments to workers whose permanent disability benefits are disproportionately low in comparison to their earnings loss
- Eligibility and amounts to be determined by regulations based on findings from studies conducted in consultation with Commission on Health and Safety and Workers Compensation
- Workers may appeal to Workers Compensation Appeals Board
- Regulations currently being drafted

Questions?