SB 228 (Chapter 639)

ADMINISTRATIVE REORGANIZATION

ELIMINATION OF THE INDUSTRIAL MEDICAL COUNCIL (IMC) AND TRANSFER OF FUNCTIONS TO DIVISION OF WORKERS' COMPENSATION: In order to accomplish these changes, two sections [L.C. sec. 139 and 139.1] are repealed and a number of other sections are amended to strike the IMC or to change references from the IMC to the Administrative Director (AD) or DWC. These include G.C. sec. 12813 and L.C. secs. 29, 110, 122, 124 127.6, 139.2, 139.31, 139.4, 139.45, 4061, 4062, 4062.5, 4062.9, 4068, 4628, and 5307.3. Note that some of these sections are also amended to accomplish other reform purposes. Uncodified provisions transfer assets of the IMC and the Industrial Medicine Fund to the WCARF. All IMC regulations, other than the treatment guidelines, which are repealed, continue in effect as AD regulations. All Qualified Medical Examiner (QME) appointments, terms, and disciplinary proceedings are unaffected by the elimination of the IMC.

2. FIVE-YEAR TERM FOR COURT ADMINISTRATOR L.C. sec. 138.1 gives the Court Administrator a five-year term.

FUNDING

3. PROVIDER LIEN FILING FEE: New L.C. sec. 4903.05 establishes a $100 filing fee for the initial lien filed by a medical provider, excluding Medi-Cal, VA, and public hospitals. Provides that the funds are to be collected by the Court Administrator and used to offset amount of assessments under Section 62.5. Court Administrator is to adopt regulations to implement this provision.

UTILIZATION

4. UTILIZATION SCHEDULE: New L.C. sec. 77.5. Requires CHSWC to conduct a survey and evaluation of existing medical treatment utilization standards by July 1, 2004, and to issue a report of its findings and recommendations by October 1, 2004, for adoption of a utilization schedule. The report shall be updated periodically.

5. TREATING PHYSICIAN'S PRESUMPTION OF CORRECTNESS: L.C. sec. 4062.9. Repeals the treater's presumption of correctness for all dates of injury, except in cases where the employee has "pre-designated" his or her personal physician or chiropractor, pursuant to section 4600. The retroactive repeal applies only to issues relating to the scope and extent of medical treatment. The repeal does not apply to petitions to reopen existing awards.

6. UTILIZATION SCHEDULE PRESUMPTION: New L.C. sec. 4604.5. Upon adoption by the AD of a utilization schedule pursuant to section 5307.27, it shall be presumptively correct on the issue of extent and scope of medical treatment. Effective three months after the publication date of the updated American College of Occupational and Environmental Medicine and Occupational Medical Practice Guidelines, the ACOEM guidelines will constitute the presumptively correct standard until adoption of a schedule by the AD. The section specifies the required characteristics and purposes of the recommended guidelines to be adopted by the AD. For injuries not covered by the ACOEM guidelines or the schedule, treatment shall be in accordance with other evidence-based medical treatment guidelines generally recognized by the medical community.

7. CAP ON CHIROPRACTIC AND PHYSICAL THERAPY TREATMENTS: New L.C. sec. 4604.5(d). For injuries occurring on and after 1/1/04, limits chiropractic and physical therapy treatment to 24 visits for the life of the claim. The caps shall not apply when an insurance carrier authorizes, in writing, additional visits.

8. UTILIZATION REVIEW: New L.C. sec. 4610. Requires all employers to adopt utilization review systems consistent with the utilization schedule/ACOEM. In cases involving spinal surgery, denials will go to expedited second-opinion process established in section 4062 (b). In all other cases, the existing QME/AME process under section 4062 will continue to apply. This is a complex provision with many time limits and the provision for assessment of unspecified administrative penalties by the AD for violations. These penalties are not an exclusive remedy.

9. AD UTILIZATION SCHEDULE ADOPTION REQUIREMENT: New L.C. sec. 5307.27. Requires the AD, in consultation with CHSWC, to adopt a medical treatment utilization schedule by December 1, 2004, based on CHSWC study recommendations pursuant to section 77.5.

10. SPINAL SURGERY SECOND OPINION: New L.C. sec. 4062 (b). Establishes procedure for employers to obtain a second opinion on recommendations for spinal surgery. If the employee is represented by an attorney, the parties shall seek agreement on a California-licensed board-certified or board-eligible orthopedic surgeon or neurosurgeon to prepare a second opinion resolving the disputed surgical recommendation. If no agreement is reached in 10 days or if the employee is not represented by an attorney, an orthopedic surgeon or neurosurgeon shall be randomly selected by the AD to prepare a second opinion resolving the disputed surgical recommendation. If the second opinion concurs in the treater's recommendation, the surgery is authorized. If the second opinion determines that the proposed surgery is not reasonably necessary, then parties proceed to expedited hearing. The employer is not liable for costs of surgery or associated TD when the surgery is performed prior to the completion of the second-opinion procedure. This provision sunsets on January 1, 2007. Effective January 1, 2007, the process reverts back to pre-January 1, 2004. [New L.C. 4062.01].

11. SPINAL SURGERY STUDY BY CHSWC: An uncodified provision requires CHSWC to conduct a study of the spinal surgery second-opinion process.

12. LC 5703 TREATMENT PROTOCOLS: Makes specified treatment protocols admissible before WCAB and provides procedures related to admission.

SELF-REFERRAL

13. SELF-REFERRAL PROHIBITION: L.C. sec. 139.3. Adds outpatient surgery clinics to list of prohibited self-referrals by physicians.

14. SELF-REFERRAL DISCLOSURE: L.C. sec. 139.31. Allows self-referral to outpatient surgery center where the provider discloses the financial relationship to the employer and the employer pre-authorizes the treatment at the center.

ALTERNATIVE DISPUTE RESOLUTION ("CARVE-OUTS")

15. REPEAL OF AB 749 CARVE-OUT: L.C. sec 3201.7. The aerospace and timber carve-out is repealed.

16. CARVE-OUT EXPANSION: New L.C. sec 3201.7. Establishes a new carve-out program, in any industry, except construction [already covered in 3201.5]. Only the union may initiate the process by petitioning the AD. The AD will review and issue a letter allowing a one-year window for negotiations. The parties may request a one-year extension. Minimum employer premium = $50,000. Minimum group premium = $500,000. Any agreement must include right of counsel throughout the alternative dispute resolution process.

FRAUD

17. MEDICAL BILLING FRAUD: New L.C. sec. 3823. Requires the AD to adopt a medical billing fraud referral protocol in coordination with the Bureau of Fraudulent Claims of the Department of Insurance, the Medi-Cal Fraud Task Force, and the Bureau of Medi-Cal Fraud and Elder Abuse of the Department of Justice. Requires any insurer, employer, TPA, WCJ, attorney, or other person who believes that a fraudulent medical treatment claim has been made to report the apparent fraudulent claim.

PHARMACEUTICALS

18. GENERIC DRUG REQUIREMENT: New L.C. sec. 4600.1. Requires greater use of generic drugs beyond pharmacies to other providers.

19. REPEAL OF EXISTING PHARMACEUTICAL LANGUAGE: L.C. sec. 5307.2. Repeals existing pharmaceutical schedule language.

PAYMENT REQUIREMENTS

20. PROMPT PAYMENT: L.C. sec. 4603.2. Changes time to pay medical bills from 60 calendar days to 45 working days from the date of complete billing, unless the employer is a governmental entity, in which case the time is 60 working days. Increases penalty for late payment from 10% to 15%. Provides for repayment by the defendant of the lien-filing fee if any contested amount is determined payable by the WCAB.

21. ELECTRONIC BILLING: New L.C. sec. 4603.4. Requires AD to adopt regulations on electronic payment by January 1, 2005. All employers must accept electronic billing by July 1, 2006. If bills are sent electronically and are within the fee schedule, payment must be made within 15 days of receipt.

MEDICAL FEE SCHEDULES

22. REPEAL OF EXISTING OMFS LANGUAGE: L.C. sec. 5307.1. Existing OMFS language repealed.

23. NEW FEE SCHEDULE: New L.C. sec. 5307.1. 100% of Medi-Cal for pharmaceuticals. Inpatient hospital at 120% of Medicare, 120% of the Medicare hospital outpatient department fee for hospital outpatient departments and ambulatory surgery centers; these provisions become effective 1/1/04. Until then the criteria for determining reasonable fees for outpatient facilities enunciated in the KUNZ en banc decision will apply.
Provides that the existing OMFS for physician services will remain in effect in 2004 and 2005, but fees will be reduced by 5%. As of 1/1/06, the AD will have the authority to adopt an OMFS for physician services, which need not be based on Medicare schedule.

24. ACCESS TO CARE STUDY/AD AUTHORIZATION: New L.C. sec. 5307.2. AD to conduct an annual access study. Authorizes adjustments to medical and facility fees where AD documents substantial access problems.

25. REPEALS EXISTING OUTPATIENT LANGUAGE: L.C. sec. 5307.21. Repeals existing outpatient schedule provision.

26. IMPLANTABLE MEDICAL DEVICES: New L.C. sec. 5318 Repeals AD "pass-through" regulations. Provides that instrumentation, implants, and hardware for specified DRGs will be paid at documented paid costs + 10% (up to $250), plus taxes, shipping, and handling. Expires when AD adopts new schedule provisions for these items.

IIPP

27. INSURER REVIEW OF EMPLOYER'S INJURY AND ILLNESS PREVENTION PLAN: New L.C. sec. 6401.7(l). Requires insurer review of insured's injury and illness prevention plan within four months of commencement of the initial policy term. The reviewer must be an independent licensed professional as specified.

INSURANCE MARKET REPORTING

28. INSURANCE COMMISSIONER REPORT TO THE LEGISLATURE: Uncodified Section 52.5 requires the Insurance Commissioner to report to the Legislature by July 1, 2004, and annually thereafter, on the financial condition of SCIF. The Commissioner is to review and analyze SCIF's underwriting practices and rate structure and report on the potential for reducing rates.

Last Updated October 20, 2003