

Date of Hearing: April 26, 2023

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
AB 1213 (Ortega) – As Amended April 10, 2023

SUBJECT: Workers' compensation: aggregate disability payments

SUMMARY: Extends the duration of temporary disability (TD) payments in the event an injured worker prevails at independent medical review (IMR). Specifically, **this bill:**

- 1) Provides that if a utilization review (UR) denial of treatment recommended by a treating physician for an injured worker is overturned by IMR, any TD benefits paid or owing to the injured worker from the date of the UR denial until the date of the IMR decision shall not be used in calculating aggregate TD for which the injured worker is eligible.
- 2) Sunsets this provision on January 1, 2027.

EXISTING LAW:

- 1) Establishes a workers' compensation system that provides benefits to an employee who suffers from an injury or illness that arises out of, and in the course of, employment, irrespective of fault. This system requires all employers to secure payment of benefits by either securing the consent of the Department of Industrial Relations (DIR) to self-insure or by securing insurance against liability from an insurance company duly authorized by the state. (California Constitution Article XIV, Section 4)
- 2) Provides that an employer (or the employer's insurer) can challenge the appropriateness of medical treatment recommended by a treating physician through UR, a system whereby physicians with comparable expertise to the treating provider apply nationally recognized, peer-reviewed, evidence-based medical guidelines to determine whether the recommended treatment is appropriate. (Labor Code Sections 4600 – 4615)
- 3) Establishes the IMR system that operates as the employee's appeal of a UR denial. The IMR system is operated by a vendor selected and regulated by the Division of Workers' Compensation (DWC), and its review is conducted by qualified medical professionals. (Labor Code Sections 139.5 and 4610.5)
- 4) Provides for limited circumstances where an IMR decision may be appealed to the Workers' Compensation Appeals Board (WCAB), including but not limited to, where there was a conflict of interest, fraud, or bias. (Labor Code Section 4610.6(h))
- 5) Provides workers' compensation TD payments at a level of two-thirds of the average weekly earnings of the injured worker during the period of such disability (Labor Code Sections 4653 - 4655)
- 6) Prohibits aggregate disability payments for a single injury occurring on or after January 1, 2008, causing TD from extending for more than 104 compensable weeks within a period of 5 years from the date of injury, except if an employee suffers from certain injuries or conditions. (Labor Code Section 4656)

FISCAL EFFECT: Unknown

COMMENTS:

1) *Purpose.* According to the author:

Injured workers are many times part of minority communities such as people of color, individuals with disabilities, low-income families, and other historically disadvantaged groups. When workers within these groups are injured and no longer able to work while receiving temporary disability (TD) payments, they are struggling to support their families who are reliant on their income for basic necessities such as food, housing costs, and utilities. Some injured workers have their recommended medical treatment erroneously denied under utilization review (UR) while they are on TD and then have the denial overturned. In this situation, the delay in their treatment, although no fault of their own, is still included in the 104 week TD coverage limit.

Injured workers who experience unfair delays should not be stripped of their ability to pay for their housing, utilities and food as they wait for treatment and recovery. AB 1213 would require that when a UR denial is overturned by Independent Medical Review on medical necessity grounds, or by the Workers' Compensation Appeals Board because it was untimely and unreasonable, that temporary disability payments be extended beyond the 104 week limit by the same amount of time the denial delayed the worker's treatment. This bill allows injured workers to receive the treatment they need to truly heal from their job-related injury or illness.

2) *Background and Discussion.* UR is the mechanism by which employers or their claims administrators can modify or deny treatment requests from injured workers. The timeline for this process is regulated and fairly quick, about five to 14 days. IMR is the process through which the injured worker or their attorney can appeal the UR decision. This process generally takes longer. In the event that IMR overturns a UR decision on medical necessity grounds, this bill allows for the period of time between the UR denial and the IMR decision overturning that denial to not count against the 104 week TD coverage limit.

Data shows that IMR upholds more than 90% of UR decisions. According to data from the Division of Workers' Compensation (DWC) in 2021, which is the most recent year for which IMR data is available, there was a total of 264,196 requests for IMR.¹ Of this amount, only 19,023 (7.2%) reviews overturned the UR decision. Therefore, the number of cases where IMR overturns the UR decision are relatively few. Additionally, in only a small percentage of these reversals is the injured worker likely to exhaust the full 104 weeks of TD. This makes the population of injured workers who would benefit from the bill fairly small.

The bill's underlying premise is that a UR denial that is reversed by IMR necessarily establishes that the injured worker's recovery and ultimate return to work has been delayed.

¹ "2022 Independent Medical Review (IMR) Report: Analysis of 2021 Data," Department of Industrial Relations, Division of Workers' Compensation. <https://www.dir.ca.gov/dwc/IMR/reports/IMR-Annual-Report.pdf>

However, opponents argue that delays are caused by an overutilization of IMR and that this bill could encourage additional overuse, thereby actually causing more delays.

The sunset provision in this bill should help to address this concern, and others expressed by opponents, because it will provide an opportunity to see whether IMR filings increase and any other challenges that arise before the provisions are made permanent. Additionally, the sunset provides an opportunity to ascertain how many injured workers actually benefit from the provisions of this bill.

- 3) *Arguments in Support.* The California Applicants' Attorneys Association, the sponsor of this bill, writes in support arguing "It is wrong for TD benefits for so many injured workers to end when necessary treatment was erroneously or unreasonably denied, and the denial delayed the injured worker's recovery and return to work."
- 4) *Arguments in Opposition.* In opposition, California Coalition on Workers' Comp and other employer organizations, argue the bill is not needed because "The actual delay in the system related to care comes from the overuse of IMR by a small number of attorneys and physicians trying to push care that is conflicting with the state-established guidelines for determining medical necessity."

REGISTERED SUPPORT / OPPOSITION:

Support

Afscme

California Applicants' Attorneys Association

California Labor Federation, Afl-cio

California Nurses Association

California Professional Firefighters

Los Angeles County Professional Peace Officers Association

Los Angeles Police Protective League

Peace Officers Research Association of California (PORAC)

Opposition

Acclamation Insurance Management Services

Allied Managed Care

American Property Casualty Insurance Association

Association of California Healthcare Districts (ACHD)

Association of Claims Professionals

California Association for Health Services At Home

California Association of Joint Powers Authorities (CAJPA)

California Chamber of Commerce

California Coalition on Workers Compensation

California Hotel & Lodging Association

California League of Food Producers

California Special Districts Association

California State Association of Counties (CSAC)

Coalition of Small & Disabled Veteran Business

Flasher Barricade Association

Independent Lodging Industry Association.
League of California Cities
Public Risk Innovation, Solutions, and Management (PRISM)
Western Electrical Contractors Association

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