

**Department of Legislative Services**  
 Maryland General Assembly  
 2004 Session

**FISCAL AND POLICY NOTE**

House Bill 1423 (Delegate Wood)  
 Economic Matters

**Workers' Compensation – Standards of Care – Accessibility and Schedule of Treatment**

This bill requires the Workers' Compensation Commission (WCC) to evaluate injured workers' access to care. WCC is also required to create, by July 1, 2005, a schedule of medical treatment utilization standards for use by health care providers and employers or their insurers in negotiating for payment of health care services. Finally, the bill authorizes health care providers to negotiate directly with an employer or its insurer for payment of workers' compensation health care services and provides a legal standard for resolution of disputes resulting from such negotiations.

The bill is effective June 1, 2004.

**Fiscal Summary**

**State Effect:** Special fund expenditures could increase by \$850,700 in FY 2005 to implement the medical treatment utilization standards and review access to care. State workers' compensation claims costs (all funds) could increase significantly and would depend on the date of implementation of the standards and claims volume. Future year estimates reflect annualization and inflation.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	850,700	994,700	1,025,100	1,057,300	1,091,400
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	(\$850,700)	(\$994,700)	(\$1,025,100)	(\$1,057,300)	(\$1,091,400)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** Potential significant increase in workers' compensation claims costs or premiums.

**Small Business Effect:** Potential significant increase in workers' compensation premiums.

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## Analysis

**Bill Summary/Current Law:** The major provisions of the bill, along with current law summaries and a discussion of relevant background material, are as follows:

### *Access to Care*

WCC is required to annually evaluate injured workers' access to care. WCC must include the evaluation in its annual report to the Governor, including (1) its findings as to whether there is adequate access to quality health care and products for injured workers; (2) a review of the information considered by WCC to arrive at its findings; and (3) any recommendations for legislative action to remove any identified barriers to access to health care for injured workers.

There is no such current requirement.

### *Medical Treatment Utilization Standards*

The standards adopted by WCC establish treatment guidelines on the frequency, duration, intensity, and appropriateness of treatment procedures commonly performed in workers' compensation cases. The bill does not specify if employers or insurers are required to use the standards. The bill provides that the standards adopted by WCC are presumptively correct and that the presumption is rebuttable by a preponderance of the evidence that variation from the schedule of treatment is reasonably required to cure and relieve a covered employee from the effects of an injury.

As soon after the beginning of fiscal 2005 as practicable, and at least every three years, WCC, with the assistance of the Medical and Chirurgical Faculty of Maryland and the Maryland Orthopedic Association, is required to conduct a review and evaluation of evidence-based, peer-reviewed, nationally recognized standards of care. The review must include an evaluation of medical review standards in other states, at the federal level, and in a variety of medical benefit systems. Based on each review and evaluation, WCC is further required to make appropriate revisions to the schedule of medical treatment utilization standards.

There is no such current requirement.

### *Negotiation of Payment of Health Care Services*

The bill provides that health care providers may negotiate rates and treatment other than that provided in the medical treatment utilization standards developed by WCC. If a negotiated treatment varies from the standards, it would result in additional items that WCC would be required to adjudicate. An employer/insurer may, with a preponderance of evidence, rebut the presumption that the standards developed by the commission are correct as to the extent and scope of medical treatment. The employer/insurer would be required to show that the variance from the standards would “cure and relieve” the employee from the effects of an injury. If an employee rebuts the presumption that the standards provide care to “cure and relieve” the employee from the effects of an injury, the employer/insurer would be required to provide a level of care that would “cure and relieve” the employee from the effects of an injury.

WCC is currently authorized to regulate fees and other charges for medical services or treatment. Each fee or other charge for medical service or treatment is limited to the amount that prevails in the same community for similar treatment of an injured individual with a standard of living that is comparable to the covered employee. WCC is required to review its fee structure at least every two years and make appropriate revisions to the guide of medical and surgical fees.

Employers or their insurers are required to provide medical services and treatment for the period required by the nature of the accidental personal injury, compensable hernia, or occupational disease.

The National Council on Compensation Insurance (NCCI) advises the “cure and relieve” standard is currently in place in California and has generally been thought to increase claim costs in California’s workers’ compensation system. California law requires that injured workers be given any treatment needed to cure and relieve work-related ailments. A NCCI comparison of recent claims information shows an average medical cost per case of \$5,309 in California and \$3,378 in Maryland. A similar comparison of the indemnity average cost per case shows \$19,489 in California and \$14,946 in Maryland. NCCI advises that some of the difference in medical cost and indemnity cost could result from differences in medical prices and benefit provisions. NCCI notes that some of the cost difference is likely attributable to the different standards of medical care in each state and their impact on both medical and indemnity costs.

## **State Fiscal Effect:**

### *Workers' Compensation System Effects*

NCCI estimates that overall system costs could increase significantly from the provision that would allow medical treatment to “cure and relieve” a covered employee from the effects of an injury. Applying the “cure and relieve” standard instead of current law would likely result in increased medical costs, increased litigation, extended durations of disability, and increased indemnity benefits.

The Injured Workers' Insurance Fund (IWIF) estimates that authorizing individual negotiation of medical treatment would increase total medical costs by 10%. For illustrative purposes, that increase would result in increased IWIF claims payments of \$5.2 million. The State is self-insured for workers' compensation, and has claims administered by IWIF. IWIF estimates the State could pay increased claims of \$1.9 million due to the provision of the bill authorizing individual negotiations outside of existing managed care contracts. IWIF also indicates that the increased medical expenditures may be offset by the medical treatment standards that WCC develops. NCCI, however, advises that such standards are not generally effective in controlling medical costs in workers' compensation systems.

### *Workers' Compensation Commission Administration Effects*

The bill requires WCC to take on three distinct additional responsibilities. First, the bill requires WCC to review and evaluate access to care issues for claimants in the workers' compensation system. This requirement would require additional personnel support for WCC to evaluate a baseline of access to care, develop comparative measures for annual review, and report on the level of access to care.

Second, WCC is required to review, evaluate, and develop a schedule of medical treatment utilization standards for use in negotiating for payment of health care services. This requirement would require WCC to hire additional personnel to develop, evaluate, and update standards of care. While revisions are only required on a triennial basis, the Department of Legislative Services advises that the review and evaluation of standards would be a significant ongoing responsibility for WCC.

Finally, WCC would be required to review any claims in which the employer or insurer negotiated a medical treatment schedule that varied from the schedule set by WCC. While health care providers and employers/insurers are able to negotiate rates, the bill specifies that any deviation from the medical treatment utilization standards is rebuttable

by the employee. If the rebuttal is successful, the employee would be entitled to a course of medical treatment that would “cure and relieve” the employee from the effects of an injury.

Special fund expenditures could increase by an estimated \$850,720 in fiscal 2005, which accounts for the bill’s June 1, 2004 effective date for consulting services and a January 1, 2005 date for hiring additional personnel. This estimate reflects the cost of hiring one administrative officer and six nurse practitioners to review access to care issues and report annually; develop, review, and revise schedules of medical treatment; and review any claims in which negotiated agreements between employers/insurers and health care providers that deviate from the schedule of medical treatment. It includes salaries, fringe benefits, one-time start-up costs for development of a request for proposals for consulting services related to development and review of medical treatment standards and review of claims, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- \$325,000 in initial outside contracts to assist WCC in defining the review of access to care and developing the request for proposals for the claims review; and
- \$270,000 in outside contract expenses for: (1) review of approximately 130,000 claims to determine if there is variance from the medical treatment schedules; (2) reporting of access to care issues; and (3) assistance with the triennial review of medical treatment schedules. The primary outside contract will be for initial reviews of claims to determine if the health care services provided meet the utilization standards developed by WCC.

Salaries and Fringe Benefits	\$210,620
Contractual Services	595,000
Operating Expenses	<u>45,100</u>
<b>Total FY 2005 State Expenditures</b>	<b>\$850,720</b>

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; (2) 1% annual increases in ongoing operating expenses; (3) removal of start-up contracts; and (4) annualization of claims review contract.

**Local Expenditures:** To the extent that medical care costs for workers’ compensation cases increase, local jurisdiction would pay increased workers’ compensation awards or increased workers’ compensation insurance premiums.

**Small Business Effect:** To the extent that medical care costs for workers' compensation cases increase, small businesses would pay increased workers' compensation insurance premiums.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** National Council on Compensation Insurance, Uninsured Employers' Fund, Workers' Compensation Commission, Injured Workers' Insurance Fund, Subsequent Injury Fund, Department of Legislative Services

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mam/mdr

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