

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE

House Bill 1253
 Economic Matters

(Delegates Manno and Schuler)

Workers' Compensation - Appeals - Evidence

This bill authorizes an appellee, when responding to an appeal of a ruling of the Workers' Compensation Commission (WCC), to introduce certain writings or records of a health care provider without supporting testimony. These records may be used as evidence of the existence of a health condition, a health care provider's opinion, the health care provided, or the necessity of care.

The bill applies prospectively to any appeals filed on or after October 1, 2009.

Fiscal Summary

State Effect: Potential minimal State expenditure increase (all funds) beginning in FY 2010 due to appealed cases involving State employees. Special fund expenditures increase by approximately \$56,300 in FY 2010 for the Subsequent Injury Fund (SIF) due to additional costs associated with conducting video depositions of witnesses in cases appealed by SIF. Future year expenditures reflect annualization and 1% inflation. No effect on revenues.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	56,300	75,800	76,500	77,300	78,000
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	(\$56,300)	(\$75,800)	(\$76,500)	(\$77,300)	(\$78,000)

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

Injured Workers' Insurance Fund Effect: The Injured Workers' Insurance Fund (IWIF) advises that its litigation costs increase by approximately \$100,700 in FY 2010 and more than \$134,300 in subsequent years as a result of the bill. The increase is due to a rise in expenses related to the deposition of health care providers in roughly 66 cases where the agency appeals a WCC decision. The effect on IWIF is minimal, but is passed on to employers, including the State.

Local Effect: Any increase in local government expenditures as a result of the bill is expected to be minimal.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: This evidence must have been introduced in the proceeding prior to the appeal, be otherwise admissible, and notice and copies of the evidence must be filed with the clerk of the court within a specified time period. The bill specifies that a judgment or verdict for an appeal cannot equal or exceed an award for a serious disability that lasts 250 weeks or longer resulting from an accidental personal injury or occupational disease.

If a jury returns a verdict for a percentage of a disability that is equivalent to an award for a serious disability that lasts 250 weeks or longer, the court must reduce the award to the amount of compensation awarded for a disability that lasts 249 weeks or less. A reduction of a permanent partial disability verdict, award, or order does not limit the right of the claimant to request an award for additional weeks of compensation in the future.

The bill specifies that it cannot be construed to limit the right of a party to introduce new or additional health care evidence at trial, present a witness at trial, take a deposition from a health care provider, or introduce deposition testimony to contradict testimony provided by a health care provider.

The bill does not apply to an appeal if the subject of the appeal is an initial determination of compensability of a claim for workers' compensation benefits; an award or order for a serious disability lasting 250 weeks or longer; an award for permanent total disability; or a claim for death benefits.

Current Law: A decision of the Workers' Compensation Commission may be appealed to a circuit court within 30 days of issuance of the order. In the event of an appeal, a circuit court must consider whether the commission considered all relevant facts, exceeded its statutory authority, or misconstrued applicable laws. The decision of a circuit court may be appealed to the Court of Special Appeals as provided for other civil cases.

Written medical records and bills for health care expenses are admissible in certain District Court and circuit court cases that involve personal injury damages or certain insurance benefits. The record may be admitted without the oral testimony of the health

care provider to substantiate the condition of the claimant or the necessity of providing health care. These provisions do not currently apply to workers' compensation proceedings.

A health care provider is broadly defined as a physician, an osteopath, an optometrist, a chiropractor, a registered or licensed practical nurse, a dentist, a podiatrist, a psychologist, a licensed certified social worker-clinical, and a physical therapist licensed or authorized to provide one or more health care services in Maryland.

For a serious disability lasting 250 weeks or longer, a covered employee may be awarded weekly compensation equal to two-thirds of the employee's average weekly wage or up to 75% of the State's average weekly wage – whichever is lower. For a disability that is determined to last between 75 and 249 weeks, a covered employee may receive weekly compensation equal to two-thirds of the employee's average weekly wage, but not more than one-third of the State average weekly wage. Otherwise with certain exceptions, a covered employee may receive weekly compensation that equals one-third of the average weekly wage of the employee or a maximum of \$114 per week for a disability lasting less than 75 weeks.

State Fiscal Effect: State expenditures increase (all funds) to the extent that appealed cases administered by IWIF (see IWIF effect below) involve State employees and associated costs are passed on to the State. It is unclear how many appeals each year involve State employees; however, the impact is not expected to be significant.

SIF advises that the bill restricts its ability to cross-examine medical experts. As a result, SIF special fund expenditures increase by approximately \$56,250 in fiscal 2010, which reflects the bill's October 1, 2009 effective date, due to the need to record depositions of medical experts in cases appealed by SIF. SIF is funded by a 6.5% assessment imposed on each WCC award against an employer or insurer; thus, any expenditure increase may result in additional assessments against workers' compensation claims.

Injured Workers Insurance Fund Effect: IWIF advises that 400 of its cases are appealed each year. Of these, two-thirds are appealed by the claimant (who must pay the associated costs), and one-third are appealed by an employer or its insurer (IWIF in this case). IWIF advises that it must pay deposition costs in cases it appeals where medical evidence was previously introduced during the hearing. A medical report alone is allowed to serve as testimony; however, in cases it appeals IWIF advises that, to fully present its case, it requires a video deposition of the physician, including cross examination.

IWIF estimates that 66 cases per year, roughly half of IWIF's appeals, are affected by the shift in the evidence procedures under the bill. The average cost of video deposition, including witness fees and transcript, is approximately \$2,035. Therefore, IWIF litigation costs increase by \$134,310 annually. IWIF advises that the fiscal impact of this cost on the agency is relatively minor, but it will be passed on to employers in the State, including the State itself. In fiscal 2010, the expenditure increase is only \$100,733 due to the bill's October 1, 2009 effective date.

Additional Information

Prior Introductions: Similar bills, SB 550 and HB 480 of 2007, received a hearing in the Senate Finance Committee and the House Economic Matters Committee, respectively, but no further action was taken.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Maryland Insurance Administration, Injured Workers' Insurance Fund, Judiciary (Administrative Office of the Courts), National Council on Compensation Insurance, Subsequent Injury Fund, Uninsured Employers' Fund, Workers' Compensation Commission, Department of Legislative Services

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Analysis by: Michael T. Vorgetts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510