

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 968
Economic Matters

(Delegate Barkley)

Workers' Compensation - Appeals - Evidence

This bill authorizes an appellee, when responding to specified appeals of rulings 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.

This evidence must have been introduced in the proceeding that is the subject of 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.

The bill applies prospectively to any appeals filed on or after October 1, 2010.

Fiscal Summary

State Effect: Potential minimal State expenditure increase (all funds) beginning in FY 2011 due to appealed cases involving State employees. Revenues are not affected.

Injured Workers' Insurance Fund (IWIF) Effect: IWIF advises that its litigation costs increase by about \$76,300 in FY 2011 and by about \$101,800 in subsequent years due to the bill. The increase results from a rise in expenses related to the deposition of health care providers in 50 cases where IWIF appeals a WCC decision. The effect on IWIF is minimal, but costs are passed on to Maryland 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: 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 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 15.4% of the State average weekly wage 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.

The Subsequent Injury Fund (SIF) advises that the bill has no impact on SIF since the bill affects workers' compensation awards for disabilities lasting less than 250 weeks. SIF is only involved with serious disability claims that last 250 or more weeks.

Injured Workers Insurance Fund Effect: IWIF advises that 300 of its cases were appealed in 2009. Of these, approximately two-thirds were appealed by the claimant (who must pay the associated costs), and one-third were 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 50 cases per year, roughly half of IWIF's appeals, are affected by the shift in evidence procedures under the bill. The average cost of video deposition, including witness fees and transcription expenses, is approximately \$2,035. Therefore, IWIF expenditures increase by \$76,313 fiscal 2011 due to additional litigation expenses and the bill's October 1, 2010 effective date. In future years, IWIF expenditures increase by an annualized amount of about \$101,750. IWIF advises that the fiscal impact of this cost on the agency is relatively minor, but it will be passed on to Maryland employers, including the State itself.

Additional Information

Prior Introductions: HB 1253 received an unfavorable report from the House Economic Matters Committee. SB 550/HB 480 of 2007 received hearings in the Senate Finance Committee and the House Economic Matters Committee, respectively, but no further action was taken on either bill.

Cross File: None.

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

Fiscal Note History: First Reader - March 9, 2010
ncs/rhh

Analysis by: Michael T. Vorgetts

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