

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

House Bill 616  
Economic Matters

(Delegate Barnes)

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**Workers' Compensation - Approval of Legal Services Fee - Cases Involving  
Medical Expenses**

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This bill requires the Workers' Compensation Commission (WCC) to approve a fee for legal services in a workers' compensation case if (1) the employer or its insurer was required to pay compensation for the employee's total temporary disability or permanent partial disability; (2) five years have elapsed since the employer or its insurer last made a compensation payment in the case; (3) the employee is claiming medical services, supplies, or treatment that WCC may order the employer or its insurer to provide; and (4) WCC held a hearing on the claim for medical services, supplies, or treatment. A fee approved under the bill may not, however, exceed an amount equal to one week of temporary total disability benefits.

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**Fiscal Summary**

**State Effect:** State expenditures (all funds) increase minimally due to increased payments of legal services fees in workers' compensation cases. Revenues are not affected.

**Injured Workers' Insurance Fund (IWIF) Effect:** IWIF expenditures increase minimally due to increased payments of legal services fees in workers' compensation cases. Revenues are not affected.

**Local Effect:** Local government expenditures increase minimally due to increased payments of legal services fees in workers' compensation cases. Revenues are not affected.

**Small Business Effect:** Minimal.

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## **Analysis**

**Current Law/Background:** Unless approved by WCC, a person may not charge or collect a fee for legal services in connection with a workers' compensation claim. When WCC approves a fee, the fee is a lien on the compensation awarded but must be paid from an award of compensation only in the manner set by the commission. WCC is authorized to order that a fee for legal services be paid in a lump sum.

Attorney fees are set in regulation. An attorney in a workers' compensation case is awarded a fee of up to 20% on either a final award of permanent partial disability or a settlement amount but is not paid a fee if the claimant does not receive any monetary award.

If a covered employee is temporarily totally disabled due to an occupational disease, the employer or its insurer generally must pay the covered employee compensation equaling two-thirds of the average weekly wage of the covered employee, not to exceed the average weekly wage of the State. For calendar 2012, the State average weekly wage is \$965.

**State/IWIF/Local/Small Business Effect:** IWIF, which administers workers' compensation for the State, advises that approximately 1% of its cases meet the bill's requirements for mandatory approval of legal services fees. IWIF advises that, under the bill, the cost of legal fees for 2011 would have been approximately \$63,000 (of which approximately half was for State claims). However, IWIF further advises, and Legislative Services concurs, that costs may increase in future years as a result of potential increases in (1) the number of cases eligible for legal fees under the bill, given that the State recently ceased settling cases due to economic constraints; and (2) the number of claims that go to hearing on a medical treatment issue due to the bill's requirements for the approval of legal services fees.

The State, local governments, and small businesses are affected in a similar manner. Because legal services fees are capped at an amount equal to one week of temporary total disability benefits, and given that only about 1% of cases will likely be affected, Legislative Services advises that increased expenditures due to additional legal services paid are likely to be relatively minimal. However, expenditures may increase in future years for the reasons noted above.

Legislative Services advises that, if the number of claims that go to hearing on a medical treatment issue increases significantly, general fund expenditures may increase due to

additional hearings at WCC. However, the extent to which WCC might be affected operationally, if at all, cannot be reliably estimated at this time.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 20, 2012  
ncs/ljm

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Analysis by: Jennifer A. Ellick

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