



Senate Finance Committee  
March 8, 2022

## Testimony of Chesapeake Employers' Insurance Company and Injured Workers' Insurance Fund in Opposition to Senate Bill 433

Senate Bill 433 proposes to amend the attorney fee structure via statute (Labor and Employment, § 9-731) for workers' compensation claimants' attorneys to be ordered a fee of not more than \$2,000 for legal services rendered on behalf of a covered employee, if no compensation other than a medical benefit is payable; by the covered employee, the employer or its insurer, a self-insured employer, or the Uninsured Employers' Fund.

Given this departure from well settled law and practice, Chesapeake Employers' and Injured Workers' Insurance Fund respectfully oppose Senate Bill 433.

Under current law, the attorneys' fee structure is governed by regulation found in COMAR 14.09.04.03. The claimants' attorneys are paid contingent fees at the indemnity stages of claims. Depending on the circumstances of the claim, indemnity could be paid in a lump sum for a serious disability or fatality case, or by contrast, other claims may award temporary total or permanent partial disability, thereby paying the attorneys' fees over time. However, all fees paid to claimants' attorneys are paid on a contingent basis and are paid for the attorneys' services over the life of the claim.

Of note, the Workers' Compensation Commission updated its COMAR regulations in 2021, including COMAR 14.09.04.03 (Schedule of Attorney's Fees.). The modifications to COMAR included an increase of claimants' attorneys' fees in settlement agreements. The Commission also added a section wherein attorneys' fees are allowed in exceptional circumstances: "(1)...the Commission may approve an attorney's fee in a case in which it is determined that the claimant is not entitled to any compensation or benefits...(2)...the Commission may approve an attorney's fee in a case involving issues such as medical care and treatment, or vocational rehabilitation, in which the claimant does not receive any monetary award..." This update allows the Commission to award attorneys' fees in frivolous proceedings. The Commission did not amend or alter attorney fees' outside of the above two changes with the updates in 2021.

Over the last four years, Chesapeake Employers' Insurance and the Injured Workers' Insurance Fund had an average of 6 claims per year go to hearing with an unrepresented claimant seeking medical treatment or payment of medical bills. Some of these unrepresented claimants may have done so by choice, whereas others may no longer have counsel for various reasons (for instance, retirement offsets, retired attorneys, statute of limitations concerns, and permanent total cases where their attorney has stopped representing claimants). Therefore, this bill would have a minimal fiscal impact as our figures stand now (with that said,

as with other bills, we can foresee additional hearings for this category of claimants, thereby increasing the fiscal impact to state, local governments, and small businesses).

As can be seen by the above figures, there are relatively few claims Senate Bill 433 would impact and, as such, seems an unnecessary departure from current practice. Moreover, and most importantly, the Workers' Compensation Commission has already made amendments to its fee schedule, to the benefit of the Claimant's trial bar and, the state's average weekly wage has increased approximately 27% in 2022, further increasing the amount of potential attorney fees.

Given these positive changes to the current fee structure, and the limited impact of Senate Bill 433, Chesapeake Employers' and Injured Workers' Insurance Fund respectfully request an unfavorable report on Senate Bill 433.

*Contact: Carmine G. D'Alessandro  
Chief Legal Officer  
Chesapeake Employers Insurance Company/IWIF  
(410)-494-2305  
[cdalessandro@ceiwc.com](mailto:cdalessandro@ceiwc.com)*