

MAJ - WC Att. Fees. - sb433.hb501 -2022.pdf

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Position: FAV



HB 501/ SB 433 Workers' Compensation Claims – Fees for Legal Services

SUPPORT

The Problem:

Under current law, attorneys who represent workers' compensation claimants can only be paid for their time and their expenses reimbursed, if the client is awarded compensation (money). If the only issue for a hearing is approval of medical treatment or the payment of medical bills, attorneys who spend time and money preparing for and attending these medical-only hearings cannot be paid and their expenses cannot be reimbursed.

Why does the current law deny injured workers' access to health care?

- Employers and their insurance companies send lawyers to all medical-only hearings, where Commissioners are forced to deny the requested care simply because the unrepresented injured workers do not know how to prove the care is due to the work injury.
- Workers' Compensation insurance companies have an incentive to deny health care requested by the unrepresented, because most of these claimants, rather than go to a hearing without counsel, simply put the bills that should have been paid by the workers' compensation insurer through health insurance, Medical Assistance or Medicare.

HB 501/ SB 433 – A RESONABLE FIX THAT LEVELS THE PLAYING FIELD

Injured workers will have lawyers at medical-only hearings, to:

- Ensure these victims of workplace injuries receive the accident-related care the General Assembly intends they receive;
- Help to ensure that the proper responsible entity is required to pay for the injured workers' medical care;
- The medical bills for this case will be paid by the workers' compensation insurer who collected a premium in exchange for a promise to pay them.

Fees are limited – there is a \$2,000.00 cap.

Commissioner has the Final "Say"

- The Bill uses the term "may," which gives the Commissioner discretionary oversight to award a fee and expenses, or no fee and expenses, as the Commissioner believes is reasonable-
- The Bill gives a Commissioner the flexibility to allow an attorney to enter into an agreement with his or her client to pay the fee, or to require that the insurance company whose denial of medical care generated the need for the hearing, to pay it.

MAJ respectfully urges a FAVORABLE Report

SB 433_UNF_MML.pdf

Uploaded by: Angelica Bailey

Position: UNF



Maryland Municipal League

The Association of Maryland's Cities and Towns

TESTIMONY

March 8, 2022

Committee: Senate Finance

Bill: _____ SB 433 – Labor and Employment – Workers' Compensation Claims – Fees for Legal Services

Position: Oppose

Reason for Position:

The Maryland Municipal League opposes Senate Bill 433, which allows for the Workers' Compensation Commission (WCC) to order a payment of attorney's fees of up to \$2,000 by an employer or its insurer to a claimant in certain workers compensation claims.

Historically, MML has opposed shifting attorney's fees onto government defendants in actions taken against them, and this is no exception. One main concern specifically with this bill is the lack of criteria on which the WCC uses to determine who will pay the legal fees. Prior year's fiscal note reflects our objection that this cost will likely fall on the employer or its insurance company. The incentive of possibly recouping legal costs, to be paid by a separate entity, may result in more claimants bringing claims before the WCC. Any increase in costs directly to a local government or its insurer may result in the need for increased property taxes or reduced services.

For these reasons we therefore respectfully request that the committee issue Senate Bill 433 an unfavorable report.

FOR MORE INFORMATION CONTACT:

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SB433 Chesapeake-IWIF Bill.pdf

Uploaded by: Carmine D'Alessandro

Position: UNF



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.

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SB 433_MDCC_Workers' Comp Claims_Fees for Legal Se

Uploaded by: Maddy Voytek

Position: UNF



LEGISLATIVE POSITION:

Unfavorable

Senate Bill 433

Labor and Employment – Worker’s Compensation Claims – Fees for Legal Services

Senate Finance Committee

Tuesday, March 8, 2022

Dear Chairwoman Kelley and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 5,500 members and federated partners working to develop and promote strong public policy that ensures sustained economic recovery and growth for Maryland businesses, employees, and families.

Workers Compensation is designed to provide balance between the interests of injured workers and the interests of employers by regulating all aspects of the claims such as the types of benefits available, the rates at which benefits are paid, and the payment of injured workers’ attorney’s fees.

Employers are responsible for the payment of the fees associated with their defense of the claims and injured workers are responsible for the fees associated with their pursuit of their claims. Employers pay their fees directly through a third-party administrator, if they are self-insured or through insurance premiums, which are priced based on various claim statistics. Injured workers pay their fees through percentages taken from indemnity benefits awarded by the MDWCC and established by regulations in COMAR, which were recently updated by the MDWCC last summer and effective October 2021.

If indemnity benefits are not awarded, for whatever reason, then fees are not paid by the injured worker. This is true regardless of when the issue arises in the claim – beginning, middle or years down the road. The statute and regulations already provide a penalty, when appropriate, for one party to pay the other’s fees, in the case of objectionable behavior on the part of one against the other. Therefore, this legislation including responsibility for payment of the injured workers’ fees by *(a)(2)(II) the employer or its insurer; and (a)(2)(III) a self-insured employer* is unnecessary and may unfairly prejudice Maryland’s employers by burdening them with not only their own cost of defense but by some unknown variable representing the injured workers’ cost to pursue their own claims.

The fiscal note shows no need for this legislation. The cap and percentage for attorneys' fees were raised and the issue of punitive fees was clarified in recent COMAR updates. The Maryland Workers' Compensation Commission is best suited to regulate the award of attorney's fees in these matters.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on **SB 433**.



SB 433 Workers Comp Fee APCIA Oppose 030832022_FI

Uploaded by: Nancy Egan

Position: UNF



Testimony of

American Property Casualty Insurance Association (APCIA)

Senate Finance Committee

Senate Bill 433 - Labor and Employment - Workers' Compensation Claims - Fees for Legal Services

March 8, 2022

Letter of Opposition

The American Property Casualty Insurance Association (APCIA) is a national trade organization representing nearly 60 percent of the U.S. property casualty insurance market. Our members write approximately 85.9 percent of all workers compensation sold in Maryland. APCIA appreciates the opportunity to provide written comments in opposition to SB 433.

SB 433 would permit the Workers' Compensation Commission (WCC) to order the payment of legal fees of up to \$2,000 for legal services rendered on behalf of a covered employee where no compensation other than a medical benefit is payable. The fees would be payable by the employee, employer, insurer, self-insured employer, or Uninsured Employers' Fund – though, as indicated in the Fiscal and Policy Note for a virtually identical bill during the 2020 session, the Commission has acknowledged that it would most likely require entities other than the employee to pay the fee.

This change would represent a significant and unjustified departure from the current system, in which attorney fee arrangements have historically been governed by the Commission's rules and attorneys charge employees directly for their fees. Those rules, while generally prohibiting attorney's fees in cases (as with medical care and treatment) where the employee does not receive any monetary award, already give the Commission discretion in COMAR 14.09.04.03(C) to authorize the payment of fees in such cases where exceptional circumstances exist. As a result, there is no need for statutory amendments in this area.

For all these reasons, the APCIA urges the Committee to provide an unfavorable report on SB 433.

Nancy J. Egan,

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