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SB 839 Chesapeake-IWIF Testimony.pdf

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Senate Finance Committee
February 21, 2023

Testimony of Chesapeake Employers' Insurance Company and Injured Workers' Insurance Fund in Opposition to Senate Bill 839

Senate Bill 839 proposes to amend Labor and Employment, § 9-504 by way of adding the athletic pubalgia hernia as a compensable hernia to the statute.

From 2018 – 2022, the Injured Workers' Insurance Fund and Chesapeake Employers' Insurance had 130 filed claims arising from a hernia with an average cost per claim of \$15,807.45.

Of concern with this bill is that it creates a conflict with the purpose and legislative intent of the current hernia statute. The hernia statute was created with the intention “to restrict compensation for hernia to accidents noticed and reported at or about the time of their occurrence”. (See *Lloyd v. Webster*, 165 Md. 574 (1933)). The Supreme Court of Maryland further identified the requirements for a hernia in *Bethlehem Steel Company v. Ziegenfuss*, 187 Md. 283 (1946): “the requirements for compensation for hernia...:First, that there was an accidental injury causing hernia, arising out of and in the course of employment; second, that the hernia did not exist prior to the injury for which compensation is claimed, with a proviso if a pre-existing hernia became strangulated, requiring immediate operation, this requirement would not apply; and, third, that the injury must be reported to the employer within 10 days next following its occurrence.” Of note, the 10 day notice has been amended to a 45 day notice in the statute.

An athletic pubalgia hernia diagnosis comes from chronic groin pain, where diagnosis often goes unrecognized for several months or even years, and patients will often be unable to recall the exact onset of pain. (See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3582984/>) Given the possibility of delayed diagnosis, the athletic pubalgia hernia is in direct controversion to the legislative intent of the Act. It would most certainly increase our claims to those with undiagnosed pre-existing and long-standing hernias. Additionally, Employers and Insurers would not be aware of whom is the responsible party given the lack of a specific incident. This has potential to create chaos in litigation with an undue burden on the injured workers' last employer. The increased costs (and thereby increasing premium/reserves) would affect the State of Maryland, local government (counties and municipalities), and small businesses.

Therefore, the Injured Workers' Insurance Fund and Chesapeake Employers' Insurance must respectfully oppose Senate Bill 839.

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SB 839 Hernia 022123 OPPOSE APCIA FINAL .pdf

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Testimony of

American Property Casualty Insurance Association (APCIA)

Senate Finance Committee

Senate Bill-839- Labor and Employment - Workers' Compensation – Hernia

February 21, 2023

Letter of Opposition

The American Property Casualty Insurance Association (APCIA) is a national trade organization whose members write nearly 65 percent of the U.S. property-casualty insurance market, including 90% percent of Maryland's workers' compensation market. APCIA appreciates the opportunity to provide written comments in opposition to Senate Bill 839.

Senate Bill 839 proposes to exempt individuals suffering an athletic pubalgia hernia from the requirement in §9-504 of the Labor & Employment article that accidental personal injuries or strains be reported to the employer *within 45 days after their occurrence*, which is already a generous time frame. The reporting deadline for individuals suffering this injury would be drastically extended, to *45 days after diagnosis*.

There is no valid clinical reason for this exemption. According to the Cleveland Clinic, widely regarded as one of the best hospitals in America, athletic pubalgia hernias are caused by "Forceful and repetitive hip movements, like twisting, kicking, jumping and cutting/slicing, and result in "Sudden and intense pain at the time of the injury" which is "ongoing (chronic) and feels dull or burning...radiates downward...[and causes] pain when you're exerting yourself ...[or] when you cough or sneeze."

In general, the only justification for delaying the requirement to report an injury until after diagnosis is when an individual is unlikely to be aware that he or she has suffered the injury, as with exposure to a harmful substance which may not result in identifiable symptoms until months or years later. Based on the information from the Cleveland Clinic, workers suffering from an athletic pubalgia hernia should be immediately aware of both the injury at the time it occurs and the constant resulting pain. And even where this is not the case, Senate Bill 839 would still be contrary to the fundamental purpose of §9-504, which is to ensure the work-relatedness of hernias by requiring claimants to provide definite proof that the hernia was not pre-existing, or that it was pre-existing and was aggravated by a work-related cause to the point of requiring an immediate operation. Allowing the delay in reporting contemplated by Senate Bill 839 will make it far more likely that athletic pubalgia hernias will be found compensable without sufficient proof of work-relatedness, or at the very least will at least result in extensive litigation over that issue which does not occur today.

For these reasons, APCIA urges the Committee to provide an unfavorable report on Senate Bill 839.

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