

HB1012 - Senate_FAV_MedChi_Workers' Comp. - Fees f

Uploaded by: Danna Kauffman

Position: FAV

MedChi

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TO: The Honorable Melony Griffith, Chair
Members, Senate Finance Committee
The Honorable Kriselda Valderrama

FROM: Danna L. Kauffman
Pamela Metz Kasemeyer
J. Steven Wise
Andrew G. Vetter
Christine K. Krone
410-244-7000

DATE: March 22, 2023

RE: **SUPPORT** – House Bill 1012 – *Workers' Compensation – Fees for Legal Services*

The Maryland State Medical Society (MedChi), the largest physician organization in Maryland, **supports** House Bill 1012. House Bill 1012 states that if no compensation is payable to a covered employee and the covered employee is awarded a medical benefit at a hearing, the Commission shall order the employer or its insurer, a self-insured employer, or the uninsured employers' fund to pay a fee of not more than \$2,000 for legal services rendered on behalf of the covered employee.

While, on its face, House Bill 1012, could be read to only be a benefit to attorneys, we believe that it is a necessary change to assist injured workers. At present, attorneys representing injured workers only receive a legal fee when there is an award on permanency benefits not when there is an award only for medical care. If an injured worker needs future care related to the initial injury, it is often difficult to retain counsel, causing the injured worker to go without care or the cost of care is shifted to other payors. MedChi believes that House Bill 1012 is an appropriate balance to protect injured workers. We urge a favorable vote.

MAJ HB1012 Favorable.pdf

Uploaded by: Tyler Bennett

Position: FAV



2023 POSITION PAPER

MARYLAND ASSOCIATION FOR JUSTICE

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HBI012

Workers' Compensation – Fees for Legal Services

FAVORABLE

Maryland workers' compensation claimants are routinely and wrongfully denied necessary medical care by insurance companies. This bill remedies that problem.

MAJ Supports This Bill for Multiple Reasons

Unfortunately, workers' compensation insurance carriers often arbitrarily deny medical benefits to injured workers. Under current law, attorneys who represent workers' compensation claimants can only be paid if the client is awarded compensation (money). When the only issue for a hearing is approval of medical treatment or payment of medical bills, attorneys representing the injured worker cannot be paid and their expenses cannot be reimbursed. On the opposing side, insurance company lawyers are paid and reimbursed in full. This imbalance leads to denial of medical care, often causing the injured worker to go without care or to have their health insurance improperly pay for their care. This includes both private health insurance and public payers such as Medicare and Medicaid.

This bill will:

- Help ensure victims of workplace injuries receive the medical care the General Assembly intends they receive;
- Help to ensure that the proper responsible entity is required to pay for the injured worker's medical care;
- Ensure the medical bills for a case are paid by the workers' compensation insurer who collected a premium in exchange for a promise to pay them;
- Limit the amount of attorney fee, if any, to the discretion of a Commissioner, not to exceed \$2,000.00 only if the attorney is successful in obtaining the wrongfully denied care.

MAJ Urges a Favorable Report

Maryland Association of Justice (MAJ) is dedicated to improving and protecting the civil justice system through legislative advocacy and the professional development of trial lawyers. Learn more at mdforjustice.com

MDCWrittenTestimonyHB1012.pdf

Uploaded by: Julie Murray

Position: UNF



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HB 1012 Chesapeake-IWIF Testimony_Senate Finance .

Uploaded by: Lyndsey Meninger

Position: UNF



Testimony of Chesapeake Employers' Insurance Company and Injured Workers' Insurance Fund in Opposition to House Bill 1012

House Bill 1012 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 House Bill 1012.

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, three significant changes have been made in the past years to benefit the attorney fees' structure:

- 1) The Workers' Compensation Commission updated their COMAR regulations in 2021, including COMAR 14.09.04.03 (Schedule of Attorney's Fees.). The modifications to COMAR added a section wherein attorney's 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 exceptional circumstances. The Commission has imposed Orders based upon the new COMAR language.
- 2) The average weekly wage was significantly increased in 2021 (by about 35%). Attorney's fees are calculated from the average weekly wage, and therefore, attorneys' saw an increase in fees based upon the increase.

- 3) **The Commission just passed updated COMAR regulations on March 9, 2023 wherein the attorneys' fee structure has been significantly increased** (for example, for permanent partial disability, the maximum fee went from not exceeding 20 times the State average weekly wage to not exceeding 60 times the state average weekly wage).

Over the last five years, Chesapeake Employers' Insurance and the Injured Workers' Insurance Fund had an average of under 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 House Bill 1012 would impact and, as such, seems an unnecessary departure from current practice. (However, the amendment does not indicate if "no compensation...payable" is for the life of the claim or for that particular hearing. Should it be interpreted for a particular hearing, the fiscal impact would be far greater.)

Given these positive changes to the current fee structure in 2021 as well as the recent increase in the attorney fee structure, and the well settled law and practice of the attorney fee structure governed by COMAR, Chesapeake Employers' and Injured Workers' Insurance Fund must respectfully oppose House Bill 1012.

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HB 1012 Workers Comp Fee APCIA Oppose 03232023.p

Uploaded by: Nancy Egan

Position: UNF



Testimony of

American Property Casualty Insurance Association (APCIA)

Senate Finance Committee

House Bill 1012 - Labor and Employment - Workers' Compensation Claims - Fees for Legal Services

March 23, 2023

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 90% percent of all workers compensation sold in Maryland. APCIA appreciates the opportunity to provide written comments in opposition to HB 1012.

HB1012 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.

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. The problem is the failure to specify that employers and insurers are not responsible for paying for attorney's fees in these exceptional circumstances. Claimants are responsible for their own attorney's fees and would incentivize the filing of many new fee requests against employers and insurers that obviously would have a significant economic impact.

For all these reasons, the APCIA urges the Committee to provide an unfavorable report on HB 1012.

Nancy J. Egan,

State Government Relations Counsel, DC, DE, MD, VA, WV

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HB 1012 Legal Fees Bill _ Position Statement_Lette

Uploaded by: Jordan BaucumColbert

Position: INFO



LETTER OF INFORMATION

Bill: HB 1012 - Labor and Employment – Workers’ Compensation Claims – Fees for Legal Services

Contact: Debra Borden, General Counsel
Jordan Baucum Colbert, Government Affairs Liaison

Date: March 22, 2023

Dear Chair Melony Griffith and Vice Chair Katherine Klausmeier,

The Maryland-National Capital Park and Planning Commission (the “Commission”) takes no position on this bill. However, the Commission respectfully requests the Finance Committee to consider this information and include it in the record.

What the Bill Does: This bill requires the Workers’ Compensation Commission (WCC) to order a fee of up to \$2,000 be paid for legal services rendered on behalf of a covered employee if no compensation is payable to the covered employee, but the covered employee is awarded a medical benefit at a hearing. WCC must order the fee to be paid by (1) the employer or its insurer; (2) a self-insured employer; or (3) the Uninsured Employers’ Fund (UEF).

Background Information: The Commission was established in 1927 to provide regional long-range planning and park acquisition and development. Since its formation, the Commission has strived to attract and retain the best employees. The Commission designs, develops and administers quality, cost-effective benefits programs. There are significant benefits to workers compensation for both the employee and employer, and the Commission complies with the current law, and practices fair and reasonable policies to ensure employees are fully compensated for workplace injuries. The Commission is committed to timely and effective treatment so that employees can fully recover.

Under current Maryland law, if an employee covered under workers’ compensation insurance has suffered an accidental personal injury, compensable hernia, or occupational disease, the employee is entitled to compensation benefits (i.e. money paid directly to the employee) paid by the employer or its insurer. However, any fee owed to an attorney representing the employee is paid by the employee themselves, via a reduction in benefits payable to them (i.e. the attorneys fee becomes a lien on the compensation benefits payable to the employee). There is already a provision in the regulations for an attorney’s fee in the absence of compensation awarded in exceptional circumstances. Presently, the need for such an attorney’s fee is just that, an exceptional circumstance. The purpose of this bill is to turn the extraordinary circumstance into an every-day occurrence by providing for attorney’s fees where **no** compensation benefits are awarded, from which the attorney is typically paid; effectively requiring the employer to pay for the employee’s lawyer. If enacted, the \$2,000 fee will apply in situations where a claimant is no longer entitled to compensation benefits, either via the running of the

statute of limitations or via settlement, but is still entitled to ongoing medical treatment. This incentivizes attorneys to continually request payment directly from the employer, which will increase costs without necessarily improving outcomes for employees. As a public agency we are extremely concerned about ballooning costs associated with this bill.

Potential Increase in Workers Compensation Costs: Requiring employers to pay a fee up to \$2,000 for legal services rendered on behalf of the covered employee will have the effect of increasing costs in workers' compensation claims. As a public employer who pays claims from tax dollars of the citizens of Montgomery and Prince George's counties, we are especially sensitive to this, particularly in light of the lack of guidelines for calculating the fee. There is no provision for how the fee will be calculated or whether it is limited to the number of times the \$2000 fee can be awarded in a claim. The effect of this bill will be to incentivize multiple hearings to secure an attorney's fee rather than protecting the interests of the employees and maintaining the balance between the interests of employers and employees.