



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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