



West Virginia Workers' Compensation Law Notes

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LEGISLATIVE UPDATE

The West Virginia Senate has introduced two new bills to amend the Workers' Compensation Law.

Senate Bill 522 modifies Section 23-4-3 of the West Virginia Code which relates to delivery of medical benefits to injured workers. This section currently requires that the insurance commission, private carriers, and self-insured employers pay to injured employees who are eligible for workers' compensation benefits, all sums for health care services, rehabilitation services, and medical goods and supplies that are reasonably required, pursuant to the guidelines developed by the health care advisory panel in accordance with Section 23-4-3b (discussed below). This section provides that the panel may implement guidelines in addition to those set forth in Section 23-4-3b.

Senate Bill 522 expands the ability of a claimant to obtain medical care and goods by providing that all sums be paid for health care, rehabilitation, and medical goods and services that are reasonably and causally related to the occupational injury, but not necessarily reasonably required for treatment. The amendment also provides that if any diagnostic testing is requested that is causally related to the injury, it must be approved and any new diagnoses based upon such testing will be automatically granted provided a physician determines that the new diagnosis is causally related to the work injury. Moreover, a diagnosis updated after one year would require a diagnostic test and any physician may determine that the diagnosis is causally related to the injury and the treatment is medically reasonable and necessary. Under the new bill, a claims administrator could be required to pay treble damages to the claimant if the request for testing is denied and delays medical treatment to claimant, and the denial is reversed on appeal. The bill also adds that the treating physician's opinion regarding treatment of a compensable occupational injury or disease will not be superseded by

any guidelines that are approved. Senate Bill 522 was introduced in the Senate on February 2, 2014 and was referred to the Senate Judiciary Committee that same day. The bill is currently pending with the Senate Judiciary Committee and has not been enacted into law.

Senate Bill 516 applies to Section 23-4-3b of the West Virginia Code which relates to the health care advisory panel mentioned above. This section creates a healthcare advisory panel consisting of at least 5 representatives of the various branches and specialties among health care providers in West Virginia. Currently, this section charges the panel with creating various guidelines including guidelines for health care which is reasonably required for the treatment of the various types of injuries and occupational diseases recognized under the Workers' Compensation Law. It also charges the panel with establishing guidelines and parameters for appropriate treatment, expected period of time to reach MMI, and range of PPD awards for common injuries. The new bill adds that the panel should create guidelines for health care that is both medically necessary and reasonably required, giving deference to the opinion of the claimant's health care provider. The bill also eliminates the panel's ability to establish a rule establishing guidelines for appropriate treatment and expected time to reach MMI. The bill proposes the modifications in an effort to provide quick and efficient treatment to the injured worker so as to allow a quick return to work. This bill was introduced on February 10, 2014 and is currently pending with the Senate Labor Committee but has not yet been enacted into law.

In January 2014, the House also introduced a bill to amend Section 23-4-23 to provide an annual cost of living increase for claimants eligible for and receiving permanent total disability benefits. This bill has not yet been enacted into law, and is currently pending with the House Industry and Labor Committee.

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ATTENTION READERS, the editors of Thomson, Rhodes & Cowie West Virginia Workers' Compensation Law Notes invite you to submit questions you may have dealing with workers' compensation issues. The editors will compile questions received and periodically provide answers to recurrent issues. Submission of a question is no guarantee that an answer will be provided, but we will make every effort to answer as many questions as possible. Of course, for specific legal advice the reader should seek counsel from a qualified workers' compensation attorney.

Send questions to: Margaret M. Hock, Esquire, Thomson, Rhodes & Cowie, P.C., 1010 Two Chatham Center, Pittsburgh, PA 15219.

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