



Legislative Update

CCWC Leads Successful Lobbying Effort: Employers Fare Well in 2011 Legislative Session

The California Coalition on Workers' Compensation (CCWC), the voice of employers in the workers' compensation arena, again led the charge on the issue of workers' compensation in 2011. During the 2011 legislative session the CCWC lobbying team took active positions on fourteen important pieces of workers' compensation legislation.

THE RESULTS:

- **TWO**- The number of cost-saving CCWC-sponsored bills that were signed into law by Governor Brown.
- **FOUR**- The number of cost-increasing bills that CCWC asked Governor Brown to veto. He vetoed all four.
- **FOUR**- The number of bills that we successfully amended in order to remove our opposition.
- **ONE**- The number of bills we worked with coalition partners to defeat in the legislature.

This was another very successful year for the CCWC advocacy team. Below is a description of each bill, an analysis of the impact, the CCWC position, and the actions we took on the bill during the legislative session.

AB 211 (Cedillo) - Supplemental Job Displacement Voucher Reform

For dates of injury 1/1/2012 or after, this bill would have triggered eligibility for the SJDV benefit 60 days after the termination of temporary disability where modified or alternative duty was not provided. The bill also changed the SJDV benefit to a single amount (\$6,000) and created a new list of approved uses for the benefit.

Analysis: Although CCWC is not opposed to the general outline of the bill - earlier delivery of the SJDV and a single benefit level of \$6,000 - the bill was very poorly drafted. Passage of the bill would have resulted in confusion in the administration of the benefit.

Position: Support if Amended / Oppose Unless Amended

Action: CCWC worked with coalition partners to draft detailed amendments to AB 211. We had several meetings with the authors and sponsors of AB 211 in an attempt to convince them that the amendments should be incorporated into the bill. Unfortunately the author and sponsor would not agree to the amendments and the bill was passed.

CCWC submitted a detailed veto request letter and actively lobbied the Brown Administration to veto the bill.

Status: **VETOED BY GOVERNOR BROWN**

AB 335 (Solorio) - Benefit Notices

The bill requires the DWC to coordinate with CHSWC on the development of new benefit notices for injured workers, that the notices be written in plain language, and that information be available on the internet. The bill also deletes statutory language requiring notice of an injured workers' right to consult with an attorney.

Analysis: CHSWC convened a broad group of stakeholders and reviewed the current benefit notices. It was determined that the notices were confusing to injured workers and were a likely cause of friction between employers and injured workers. CHSWC issued a report that contained recommendations and draft bill language to resolve the problem.

Position: Sponsor and Support

Action: CCWC verified that CHSWC was comfortable with their proposed legislation and then acted as the sponsor. CCWC built a broad coalition of support that included both labor and management. The legislation was unopposed, but we did end up taking one last-minute amendment to resolve stakeholder concerns.

CCWC submitted a signature request letter and actively lobbied the Brown Administration to sign the bill.

Status: **SIGNED BY GOVERNOR BROWN**

AB 375 (Skinner) - Hospital Employee Presumption

This bill created a new presumption for both public and private health care workers at acute care hospitals. The bill applied only to employees that had "direct patient contact". The bill created a presumption for MRSA and blood borne pathogens that extended for a specified time following employment, but previous versions of the bill included a presumption for neck and back injuries.

Analysis: The sponsors of the bill were unable to provide any specific justification for this bill. The bill would have been the first presumption applicable to private sector employers and set a troubling precedent.

Position: Oppose

Action: CCWC was active in lobbying this legislation with coalition partners. We participated in meetings with staff and legislators that resulted in the bill being narrowed. CCWC also worked with coalition partners to defeat the bill in the Senate.

Status: **FAILED PASSAGE IN THE SENATE**

AB 378 (Solorio) - Pharmacy Products: Compound Drugs

This bill ties reimbursements for durable medical equipment, legacy drugs, medical foods, and other pharmacy products to the Medi Cal reimbursement schedule. The bill also ties pharmacy reimbursement for compound drugs to the Medi Cal reimbursement schedule, but creates a separate rate for physician dispensing that is based on documented costs. The bill also eliminates the ability of physicians to "self-refer" pharmacy products.

Analysis: AB 378 is intended to cut back on well-documented abuses related to compound drugs, co-packs, and medical foods. The bill was a joint effort by employers, insurers, and labor groups. The bill was an answer to clear and unquestionable abuse in the system.

Position: Co-sponsor and Support

Action: CCWC served as the sponsor from the employer community and led the effort to get this bill introduced and passed. At the end of the session when it appeared that the opposition had the bill defeated, CCWC helped negotiate a compromise amendment that both improved the bill and removed our most politically powerful opposition.

CCWC submitted a signature request letter and actively lobbied the Brown Administration to sign the bill.

Status: **SIGNED BY GOVERNOR BROWN**

AB 584 (Fong) - Utilization Review

This bill would require all utilization review physicians that delay or deny a treatment request to be licensed in California. The bill also makes changes to the term "physician" for purposes of state disability insurance.

Analysis: Employers have been concerned with this bill on two levels. First, it could infringe on the effective use of utilization review by shrinking the world of physicians available to review medical treatment. Second, it would prevent employers from sending injured workers to centers of excellence that are out of state.

Position: Oppose

Action: CCWC provided in-depth testimony in opposition to this legislation and worked with coalition partners to oppose the bill.

CCWC submitted a detailed veto request letter and actively lobbied the Brown Administration to veto the bill.

Status: **VETOED BY GOVERNOR BROWN**

AB 947 (Solorio) - Temporary Disability Benefits

This bill would have created a new exception to the 104 week cap on temporary disability benefits paid to injured workers. The exception would have been for any injured worker that needed to have surgery, or needed to recover from surgery, after they had already received 104 weeks of temporary disability. The bill would have applied to dates of injury 1/1/2012 and after.

Analysis: This bill was sponsored by the California Applicant Attorneys Association and would have created substantial new costs for employers. The costs would not just have been related to increased duration of TD, but would have acted as an amplifier for other system costs.

Position: Oppose

Action: CCWC provided leadership for the opposition on this bill. We coordinated a meeting between the opposition and the sponsors of the bill in order to negotiate a resolution - unfortunately no deal was reached.

CCWC submitted a detailed veto request letter and actively lobbied the Brown Administration to veto the bill.

Status: **VETOED BY GOVERNOR BROWN**

AB 1155 (Alejo) - Apportionment

This bill would have precluded apportionment based on factors such as age, gender, race, and ethnicity. The bill amends current apportionment statutes to reflect anti-discrimination language found in the Government Code.

Analysis: Apportionment law in California is settled because of rulings by the CA Supreme Court and modifying the statute as proposed by AB 1155 creates a pathway to new litigation that could endanger the fair application of apportionment.

Position: Oppose

Action: CCWC worked with a group of employers and insurers and proposed an amendment that was rejected by the author. This process did yield other improvements in the bill, but it ended up being sent to the Governor without the approved changes.

CCWC submitted a detailed veto request letter and actively lobbied the Brown Administration to veto the bill.

Status: **VETOED BY GOVERNOR BROWN**

AB 1168 (Pan) - Vocational Expert Fee Schedule

This bill requires the Administrative Director to establish a fee schedule for services provided by vocational experts. The fee schedule has to include maximum hourly fees for evaluations and expert testimony.

Analysis: The lack of a fee schedule for vocational experts makes it nearly impossible to effectively dispute outrageous bills. With recent developments in the Almarez/Guzman and Ogilvie cases, this bill will actually provide a great deal of relief because vocational experts appear to be a permanent aspect of the PD determination process in CA workers' compensation.

Position: Support

Action: CCWC was actively involved in every aspect of drafting, negotiating, and advocating for this legislation.

CCWC submitted a signature request letter and actively lobbied the Brown Administration to sign the bill.

Status: **SIGNED BY GOVERNOR BROWN**

SB 127 (Emmerson) - Official Medical Fee Schedule

This bill requires the DWC to annually update CPT codes, descriptors, and modifiers published by the American Medical Association.

Analysis: The bill should reduce friction in the current billing system if the CPT codes are more regularly updated.

Position: Neutral

Action: CCWC was initially opposed to this bill, but worked to amend the bill in the first policy committee. The bill previously allowed for CPT codes to be updated "by report", which would have allowed for potential mischief. We worked to get that language removed and then removed our opposition.

Status: **VETOED BY GOVERNOR BROWN**

SB 457 (Calderon) - Liens

This bill allows employee funded health care benefit trusts to make a recovery via lien in an amount that is higher than fee schedule.

Analysis: There are situations where some lien claimants should be able to recover their costs above fee schedule, specifically where employees are funding a health care trust that pays bills that should have been covered under workers' compensation and that trust pays an amount above fee schedule.

Position: Neutral

Action: CCWC was initially opposed to this measure but worked closely with committee staff on amendments to this bill so that we could remove opposition.

Status: **SIGNED BY GOVERNOR BROWN**

SB 826 (Leno) - WCIS Reporting Penalties

This bill imposes minor penalties on claims administrators that do not submit the appropriate reports to the WCIS. The penalties are limited to no more than \$5000 per year and the goal is to penalize non-reporting, not audit the actual reports for accuracy.

Analysis: The bill was pushed by DIR and CHSWC because they claim that the information is needed in order to analyze the system and get better information about claims costs.

Position: Neutral

Action: CCWC initially opposed the bill. However, we worked with a legislative and CHSWC staff to limit the scope and applicability of the penalties and removed opposition based on those amendments.

Status: **SIGNED BY GOVERNOR BROWN**

SB 863 (Lieu) - Liens

This bill would have created a statute of limitations for the filing of lien claims, eliminated implied liens for medical treatment or medical-legal services, and imposed a process for the automatic dismissal of stale liens.

Analysis: This was an important first step in resolving the problems related to liens. However, this bill only contained the "low hanging fruit" from the CHSWC report on liens.

Position: Support

Action: CCWC was supportive of the bill and worked with the sponsor to get the bill passed. Unfortunately, the bill was moved to the inactive file in the Senate for political reasons.

Status: **HELD IN SENATE**

SB 896 (De Leon) - Spinal Surgery Device Reimbursement

This bill would have increased the reimbursement for hardware for spinal surgeries in response to regulation that helped avoid double billing for the same hardware.

Analysis: This was a blatant attempt by specialized medical interests to preserve their piece of the workers' compensation pie. There was broad agreement that this bill should be defeated.

Position: Oppose

Action: CCWC worked with the CA Labor Federation to oppose the bill. It was ultimately held in the Senate Labor Committee.

Status: **TWO YEAR BILL**

SB 923 (De Leon) - RBRVS Implementation

This bill would have required the DWC to complete regulations to implement a cost-neutral transition to RBRVS by 1/1/2013.

Analysis: The bill was pushed by some medical interests, but was generally seen as positive because the mandate to complete the transition to RBRVS would have given the DWC more latitude in implementing regulations.

Position: Support

Action: CCWC initially opposed this bill because it had conversion factors that would have resulted in a substantial cost increase for employers. However, we worked with labor to get amendments requiring cost neutrality and then moved to a position of support. Unfortunately, the bill was defeated in the Assembly.

Status: **DEFEATED IN ASSEMBLY**