

# Senate Bill 863

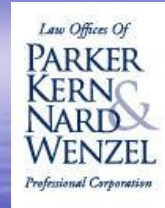
## A Basic Primer

Presented by:



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# Panel

- Facilitator: Bijan Bijarchi, ARM  
Vice President Client Services Operations  
Broadspire Services
- Panelist: Rod Bramasco, WCCP  
CA Technical Operations Manager  
Broadspire Services
- Panelist: Brian Esparza, ARM WCCP  
Service Center Manager  
Broadspire Services
- Presenter: David H. Parker, J.D.  
Shareholder, Attorney at Law – Parker, Kern, Nard &  
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# What We Will Cover

- Purpose of reform.
- Select provisions of SB 863 focusing on amendments of interest to employers.
- General questions and answers pending clean-up legislation.



# Purpose

That the current system of determining permanent disability has become excessively litigious, time consuming, procedurally burdensome and unpredictable, and that the provisions of this act will produce the necessary uniformity, consistency, and objectivity of outcomes, in accordance with the constitutional mandate to accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character, and that in enacting subdivision (c) of Section 4660.1 of the Labor Code, the Legislature intends to eliminate questionable claims of disability when alleged to be caused by a disabling physical injury arising out of and in the course of employment while guaranteeing medical treatment as required by Division 4 (commencing with Section 3200) of the Labor Code.

-Senate Bill 863 Section 1 (b)

# Purpose

According to the Workers' Compensation Action Network, the California Coalition on Workers' Compensation and the California Chamber of Commerce the costs per claim, frequency of filings and five year workers' compensation trends are increasing unsustainably.

-Senate Bill 863: Unpacking the Workers' Compensation Reform Bill  
October 3, 2012

# Purpose

The insurance industry average charge for payroll has increased from \$2.10 per \$100.00 of payroll in 2009 to a proposed rate of \$2.68 in 2013 pre-reform.

-Senate Bill 863: Unpacking the Workers' Compensation Reform Bill  
October 3, 2012



# Purpose

The overriding goal of the legislation is to control costs, quickly and efficiently deliver workers' compensation benefits to California injured workers and reduce litigation costs and delays while doing so.

-David H. Parker, Attorney at Law



# Brief Editorial Comment

I am cautiously optimistic.

David H. Parker, Attorney at Law

# Select Provisions Summarized

## Permanent Disability

It is my opinion that the overall effect of SB 863 is to increase permanent disability indemnity awards.

# Select Provisions Summarized

## Permanent Disability

The California Applicant's Attorneys Association estimates 26.1% permanent disability increases for disability ratings up to 70% under the new legislation.

-SB 863 Summary of Amendments

Prepared by California Applicant's Attorneys Association  
September 2012 at pg. 2



# Select Provisions Summarized

## Permanent Disability

1. Labor Code 4453: Increases rates for permanent disability indemnity;
2. Labor Code 4660.1: Adjusts all WPI ratings by a 1.4 modifier (eliminating varying formulas)
3. Labor Code 4658: 15% increases/decreases eliminated

# Select Provisions Summarized

## Permanent Disability

4. Labor Code 139.48: creates \$120 million supplemental fund for supplemental payments to workers whose benefits are “disproportionately low” in comparison to earnings loss
5. Labor Code 4660: eliminates increases in PD for sleep or sexual dysfunction arising out of a physical injury.

# Select Provisions Summarized

## Permanent Disability

6. Labor Code 4660.1: no impairment increases for psychiatric disorders arising out of injury except violent acts or catastrophic injuries
7. Labor Code 4660.1 specifically leaves Guzman holding intact (allowing use of any chapter, table or page in the AMA Guides Fifth Edition to assess PD).



# Select Provisions Summarized

## Permanent Disability

7. Labor Code 4650: No PD advances if employer offers position paying 85% of wages and compensation at the time of injury or employee returns to any work paying 100% of pre-injury wages and compensation

# Select Provisions Summarized Utilization Review

It is my opinion that Utilization Review has been strengthened by the new legislation as decisions remain in effect for 12 months, but cost-savings are subject to implementation of the Independent Medical Review (“IMR”) process which will be discussed in later slides.

# Select Provisions Summarized Utilization Review

1. Labor Code 4610: UR decisions in effect for 12 months unless further recommendation supported by material documented changes in facts relating to basis UR determination
2. UR is not required while compensability is disputed
3. Once liability determined UR timelines begin on date of treatment request following determination date



# Select Provisions Summarized

## Independent Medical Review

My opinions: the intended purpose of “IMR” is review quick resolution of medical disputes.

Success is entirely dependent on pending clean-up legislation, implementation and results of the process.

In plain language, how and how often the process successfully overturns UR decisions is yet to be determined.

# Select Provisions Summarized Independent Medical Review

The Workers' Compensation  
Action Network, California Coalition on  
Workers' Compensation and the California  
Chamber of Commerce termed this "a huge get" at  
a conference I attended on October 3, 2012.

If administered as intended I believe significant cost  
savings as well as timely, effective medical care for  
injured workers will be realized.

# Brief Editorial Comment Reminder

I am cautiously optimistic.

-David H. Parker, Attorney at Law



# Select Provisions Summarized

## Independent Medical Review

1. Labor Code 4610: Creates a mandatory process for resolving Utilization Review disputes
2. Labor Code 4062, 4064 and 4610.5 preclude AMEs and QMEs from commenting on treatment recommendations or objections to UR determinations
3. MPN treatment request disputes are resolved in this order:

# Select Provisions Summarized Independent Medical Review

- a. First MPN opinion
- b. Second MPN opinion
- c. Third MPN opinion
- d. IMR review if not resolved by  
MPN physician reporting

# Select Provisions Summarized

## Independent Medical Review

There are strict timelines to request IMR and the employer is required to include a one-page application form with every UR denial, modification or delay of medical care.

IMR certified care must be authorized within 5 working days of determination receipt.



# Select Provisions Summarized

## Medical Treatment

Chiropractors may not be the treating physician after 24 visits, home health care services appear to be more strictly regulated and any employee with health care coverage may pre-designate if the employee has non-occupational health care coverage.

# Select Provisions Summarized

## Medical Treatment

1. Labor Code 4600: prescription and receipt thereof required before employer liability for home health care
2. Chiropractor may no longer be treating physician after maximum number of visits pursuant to Labor Code section 4604.5 (24)
  - a. Language appears to apply to primary or secondary treatment.

# Select Provisions Summarized

## Medical Treatment

3. Labor Code 4604.5: any payment for chiropractic care, physical therapy or occupational above the statutory limits of 24 is not a waiver of the limits
4. An employer may voluntarily authorize care in excess of these caps without waiving the right to assert them.\*\*

\*\*Sometimes it makes economic and common sense to authorize care in excess of these caps. The new legislation protects the exercise of discretion.



# Select Provisions Summarized

## Medical Treatment

4. Labor Code 5402: within one (1) working day of the filing of a claim form the employer shall authorize all care outlined in the Medical Treatment Utilization Schedule (“MTUS”) until the claim is accepted or rejected up to \$10,000

# Select Provisions Summarized Medical-Legal Evaluations

My opinion is that the medical-legal process has been streamlined but I expect specialty selection and procedural maneuvering will continue amongst some practitioners.

# Select Provisions Summarized

## Medical-Legal Evaluations

1. Labor Code 139.2: limits QME evaluators to no more than 10 locations
2. Labor Code 4062.2-3: requirement to attempt Agreed Upon Medical Evaluation eliminated; ex parte communication standard relaxed.
3. Labor Code 4061: precludes DOR absent medical evaluations from a treater and an AME or QME.



# Select Provisions Summarized

## Medical-Legal Evaluations

4. Labor Code 4066: repeals attorney fee provision when an employer files an application contesting an AME
5. Labor Code 4605: a consulting physician's opinion can no longer be the basis of an award if not addressed by an AME or QME

# Select Provisions Summarized Liens

My assessment is that SB 863 lien and Independent Bill Review (“IBR”) provisions may potentially contain the greatest cost reduction drivers in the new legislation.

# Select Provisions Summarized

## Liens

Labor Code 4903.5

(a) A lien claim for expenses as provided in subdivision (b) of Section 4903 shall not be filed after three years from the date the services were provided, nor more than 18 months after the date the services were provided, if the services were provided on or after July 1, 2013



# Select Provisions Summarized

## Liens

1. Labor Code 4903-4903.08:
  - a. Requires electronic filing
  - b. Requires a \$150.00 filing fee on or after 1/1/2013
  - c. Requires a \$100.00 filing fee for liens on file before 1/1/2013 unless previously paid
  - d. Requires AD to adopt collection regulations

# Select Provisions Summarized

## Liens

2. Proof of payment is required with the Declaration of Readiness to Proceed (“DOR”)
3. Liens lacking payment of the filing or activation fees are subject to dismissal by operation of law.
  - a. Any lien or cost filed prior to 1/1/2013, for which the fee is owed by January 1, 2014, is dismissed by operation of law

# Select Provisions Summarized

## Liens

4. Fee may be reimbursed if
  - a. Lien claimant made a pre-filing demand
  - b. Defendant did not accept demand
  - c. A final award is equal to or higher than the demand
  - d. Note: parties can voluntarily agree to reimbursement
5. Payment for certain fees are barred



# Select Provisions Summarized

## Liens

- a. If provider “knew or in the exercise of reasonable diligence should have known” the need for services was industrial unless
  - i. Services were authorized
  - ii. Services were provided during a failure by the employer to provide treatment under LC 5402(c)
  - iii. Services were provided for emergency.

# Select Provisions Summarized

## Liens

6. Lien DORs must be filed under penalty of perjury with file documentation stating and supporting services were actually provided

# Independent Bill Review Plain Language

In my opinion best described as analogous to utilization review or appeal of an employer's, insurance company's or third party administrator's bill payment decisions.

Review organizations will be those contracted by the Administrative Director.

# Select Provisions Summarized Independent Bill Review (“IBR”)

1. Labor Code 4603.2-4603.3: Creates “IBR” system
2. Increases the amount of billing documentation required of providers including but not limited to:
  - a. Itemization with all reports, billings, procedures
  - b. Provision of the PTP referral or prescription for the procedures
  - c. Evidence of pre-authorization.



# Select Provisions Summarized Independent Bill Review (“IBR”)

3. Timelines to pay or object (noting they are sped up a great deal)
  - a. To object: 30 calendar not business days
  - b. To Pay: 45 calendar not business days from receipt of required documentation

# Select Provisions Summarized Independent Bill Review (“IBR”)

## NOTE:

Explanation(s) of Review (“EOR”) are required on every payment. This includes but is not necessarily limited to the amount paid, the basis for adjustment if any, the reason for the adjustment and who may be contacted to file for or raise a dispute.

# Select Provisions Summarized Independent Bill Review (“IBR”)

Disputes may get a “secondary review.”  
Secondary review must be requested within  
90 days of service of the explanation of  
review. If that does not resolve the dispute  
Independent Bill Review (“IBR”) process  
must be timely commenced.

# Select Provisions Summarized Independent Bill Review (“IBR”)

The IBR process:

1. Must be commenced by the provider within 30 days of the second “EOR” or there is no further recourse
2. If the 30 day deadline is missed there is no recourse
3. The provider must pay an "IBR" fee that is still to be determined as of this presentation



# Select Provisions Summarized Independent Bill Review (“IBR”)

The IBR process:

4. If the employer loses IBR employer must pay disputed amounts, fees and possibly penalties and interest. The Workers’ Compensation Action Network commented “there is an incentive for everyone to get it right.”
5. IBR contractor has 90 days to issue written decision
6. Limited grounds for appeal

# Select Provisions Summarized Independent Bill Review (“IBR”)

The IBR process:

7. If there is an appeal it goes back to the IBR contractor, the WCAB does not retain any jurisdiction over these issues.

# Select Provisions Summarized Independent Bill Review (“IBR”)

## Simple Timelines

### From Receipt of Bill

- 30 days: Objection with “EOB” and notices
- 45 days: Pay amount determined owed
- 90 days: Request “second review”
- 30 days: Request IBR

# Select Provisions Summarized Vouchers (“SJDB”)

Supplemental Job Displacement Vouchers  
Labor Code 4658.5

1. New timing passed
2. A single \$6,000 amount is established
3. The voucher cannot be settled
4. It sunsets or expires 2 years after issuance
5. No injury in retraining is compensable.



# Questions, Answers, Discussion

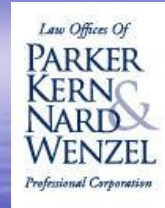


Please note detailed errata sheet with Labor Code citations and summaries available at

<http://davidhparker.org/blog.php>

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# Thank You!



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