Senate Bill 863

A Basic Primer

Presented by:

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Senate Bill 863
A Basic Primer

Presented For:

CALIFORNIA INSURANCE GUARANTEE ASSOCIATION

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Panel

- 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 & Wenzel Fresno, CA
What We Will Cover

- An overall strategy for implementing SB 863
- Purpose of reform.
- Select provisions of SB 863.
- General questions and answers pending clean-up legislation.
Overall Strategy

The best approach to learning the sweeping and voluminous changes in the law in my opinion is to implement this process:
Overall Strategy

1. Begin with an overview of selected provisions contained in this power point and lecture;

2. Become familiar with the new areas of change, “acronyms” and procedures;

3. Read the legal “matrix” sheet provided by me and Broadspire;

4. Read the actual statutes themselves.
Overall Summary (DWC)

- Increases permanent disability values
- Simplifies the permanent disability rating method
- Resolves medical treatment disagreements through independent medical review
- Resolves bill payment disputes through independent bill review
Overall Summary (DWC)

- Simplifies the supplemental job displacement voucher system
- Requires payment of a filing or activation fee for liens
- Improves medical provider networks
Overall Summary (DWC)

- Updates the Official Medical Fee Schedule
- Establishes fee schedules for copy services, interpreters, vocational experts, and in-home health care
- Provides additional payments for workers with disproportionate wage loss.
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
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


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
   a. employer offers position paying 85% of wages and compensation at the time of injury or
   b. employee returns to any work paying 100% of pre-injury wages and compensation
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

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.
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

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

Labor Code 4903.5

(a) A lien claim for expenses as provided in subdivision (b) of Section 4903 shall not be filed after

1. three years from the date the services were provided, nor

2. 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

In short:

No more than 3 years for services provided before 7/1/2013,

No more than 18 months for services provided after 7/1/2013.
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.
6. Lien DORs must be filed under penalty of perjury with file documentation stating and supporting services were actually provided
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.
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
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.
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, the 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.
Overall Timeline Summary (DWC)

- What are the implementation dates for each set of regulations?
Overall Timeline Summary (DWC)

- Ambulatory Surgery Center (ASC) Fee Schedule Jan. 1, 2013
- Copy Services Fee Schedule Dec. 31, 2013
- Home Health Care Fee Schedule July, 1, 2013
Overall Timeline Summary (DWC)

- **Independent Bill Review (IBR)**
  - For dates of service on or after Jan. 1, 2013

- **Independent Medical Review (IMR), Utilization Review (UR) (including Request for Authorization form) and Qualified Medical Evaluators (QME)**
  - For injuries on or after Jan. 1, 2013;
  - For decisions communicated on or after July 1, 2013
Interpreter Testing and Fee Schedule Jan. 1, 2013

Lien Filing Fee Regulations Jan. 1, 2013

Medical Provider Network (MPN) Jan. 1, 2014

Physician Fee Schedule (RBRVS)

– The fee schedule provided by SB 863 will commence on Jan. 1, 2014 and continue until a physician fee schedule is adopted
Overall Timeline Summary (DWC)

- Pre-designation/Chiropractor Primary Treating Physician Regulations
  July, 1, 2013

- Spinal Implant (Inpatient Fee Schedule)
  Jan. 1, 2013

- Supplemental Job Displacement Benefit (SJDB) Voucher
  Jan. 1, 2013

- Vocational Expert Fee Schedule
  Jan. 1, 2013
Please note detailed “matrix” sheet with Labor Code citations and summaries available at
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