**Background:** In the closing days of the Spring Session, the General Assembly hastily passed SB 904. This legislation makes numerous changes to provisions regarding payment of worker's compensation medical bills. Gov. Rauner agreed with our assessment of SB 904 that Illinois' workers' compensation law needs revision to reduce the friction between employers and medical providers. But, SB 904 would further increase employer costs in a system where Illinois has the second highest medical fee schedule in the country for overall professional services and the highest in the country for major surgery. Illinois’ workers’ compensation fee schedule on average reimburses major surgeries nearly 300% above Medicare. The Governor's amendatory veto provides a balance between employer and medical provider interests.

**Why OPPOSE an Override of the Governor’s AV of SB 904?**

**A health care provider may bring legal action in circuit court against an employer or insurer to enforce the interest penalty provisions**… a provider could have an employer in Circuit Court before the claim is adjudicated before the Illinois Workers’ Compensation Commission (IWCC). Procedurally, how will a circuit judge determine if interest is owed without an IWCC determination that the injury is work-related and the services being billed are “reasonable and necessary”. The IWCC has always held jurisdiction over all WC matters. This will increase civil litigation in a system that was set up and designed to be adjudicated through the IWCC. No other state allows a medical provider to take a bill dispute to a court of law without first going thru an administrative review process.

A key part of the “Grand Bargain” between employers and injured workers is employer insulation from civil lawsuits in exchange for strict liability for injured workers. SB 904 undermines the very fundamental nature of workers’ compensation by allowing a forum outside of the administrative system.

*(Workers’ Compensation Research Institute, WC Medical Cost Containment, A National Inventory, 1/1/18)*

Prior to 2012, California law created a bifurcated process allowing medical providers to seek a lien on an employer over a disputed medical bill. The CA process was costly with employers spending about $200M per year in loss adjustment. It produced a huge volume of lien claim litigation, the filing of a large volume of frivolous liens, and created a cottage industry of pursuing claims on assigned rights on liens. The CA General Assembly recognized these problems and reformed their system. While the CA lien process was different than what is proposed in SB 904, we believe the bifurcated approach of SB 904 will lead to similar results experienced in California. *(CA Commission on Health & Safety & WC, Liens Report, 1/5/11)*

In a 2016 report from the CA Industrial Relations Division, the impact on the CA workers’ comp process concluded that injured workers have become a commodity used by medical providers and have been harmed and have even lost their lives due to incorrect and inappropriate treatment. The report also found that millions of dollars are spent every year on the oversight and regulation of medical treatment because of the high prevalence of fraud in the system. *(CA Dept. of Industrial Relations, Issue Brief, 8.19.16)*

The AV proposes a mechanism for medical providers to collect interest penalties. It authorizes the Workers’ Compensation Commission to award the medical provider interest where it determines interest is owed to the medical provider. The Commission would be required to determine whether interest is owed in 180 days from receipt of a petition from the medical provider.

**SB 904 could apply to all medical bills, not just “authorized” bills**…proponents of SB 904 argue that the 1% per month interest penalty will only apply to “authorized” medical bills not paid within 30 days. However, nowhere does SB 904 limit the 1% per month penalty to “authorized” medical bills. Also, a medical service may be authorized but may later disputed because the injury may not be work-related, the bill has miscoded CPTs, service charges were unbundled or the actual services are different from those authorized. An employer should not be subject to penalties for legitimate disputes of medical services.

**SB 904 could limit access to medical records needed for an employer to adjudicate the bill** by requiring the Department of Insurance to adopt rules to " ensure that health care providers are responsible for supplying only those medical records pertaining to the provider's own claims that are minimally necessary under the federal Health Insurance Portability and Accountability Act of 1996". Employers rely on the ability to access appropriate medical records from treating medical providers to determine causation and whether the injury is work-related. This change allows a medical provider to only provide medical records minimally necessary to pay for the services being billed. First, federal law exempts workers’ compensation from HIPAA. Second, instead of being provided medical information to allow a more prompt assessment of the proposed medical care, the medical charges and whether the injury is work-related, the employer will need to subpoena the provider for the medical information increasing legal costs for the employer and for injured workers delaying medical services and adjudication of their injury claim.

During the negotiations of the medical bill payment provisions in 2005, the employer community was very careful in choosing the word “claim” versus “bill” regarding the requirement for the providing of “substantially all the required data elements necessary to adjudicate the bills” to trigger the 30-day clock. SB 904 in two, critical places changes “claim” to “bill”. These changes will limit records provided by a medical provider to only those needed to adjudicate the bill, (rather than the claim). This change to the 1% per month interest penalty trigger will require payment before an employer has additional information to determine the cause of the injury, whether it’s a work-related injury, and if the services were necessary.

**Additional changes to the law are needed to reduce the friction in the medical billing process…** the Governor’s AV offers additional changes to expedite and balance the process:

* Upon receipt of notice of injury, the employer must provide the employee or the injured employee’s medical provider mailing and electronic addresses to send medical bills to. Adding this step will help prevent medical bills from being sent to improper addresses which results in unnecessary delay of bill payment;
* Requires a medical provider to submit its bill to the employer within 90 days of providing its service to the injured worker. This change allows an employer to timely process medical bills when the bills are submitted in a timely fashion; and
* The 1% per month interest penalty does not apply to the services disputed by an employer based upon a compliant utilization review report. This will incentivize a medical provider to cooperate with the employer in what is authorized and will reduce the friction caused when payment is sought for disputed services.

**OPPONENTS**

American Insurance Association

American International Group

Associated Builders & Contractors

Automotive Parts & Service Assn.

Chemical Industry Council of IL

IL Assn. Of Aggregate Producers

Illinois Association of Defense Trial Counsel

Illinois Chamber of Commerce

Illinois Insurance Association

Illinois Manufacturers Association

Illinois Municipal League

Illinois Self Insurers Association

Illinois Trucking Association

National Federation of Independent Business (NFIB)

Property Casualty Insurers Assn. of America

Southwestern IL Employers Assn.

Statewide School Management Alliance

Technology & Manufacturing Assn.

United Parcel Service (UPS)