

...Comp fee changes worry labor officials

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governor-appointed representatives from labor and five from management who advise WCD on issues involving workers' compensation.

"We have a no-fault insurance program that, for the most part, has been working pretty well," Shiprack said. "I don't see how this benefits anyone but insurance companies and national PPOs."

Shiprack has contacted Gov. Ted Kulongoski to protest the emergency rule.

"One of the top three complaints I hear from injured workers is that doctors won't take them if they are in the workers' comp system," said Ernie Delmazzo, co-founder of Injured Workers Alliance, a support group for people who have been hurt on the job.

The problem is amplified east of the Cascade Mountains. "Sometimes injured workers have to drive to Portland for treatment," Delmazzo said.

"It is absolutely a sweeping change to the system," said State Rep. Brad Witt (D-Clatskanie).

Witt and Shiprack were outraged that the emergency order came with little or no input from the two main

players in the system — labor and management.

"This entire system is based on a compromise agreement between labor and management to get an injured worker's injury addressed as soon as possible and to get that person back to work as soon as possible," said Witt, a union rep with United Food and Commercial Workers Local 555 and a former MLAC member.

"This ruling is not in anyone's interest — not the state's, not the employer's, and certainly not the injured worker's," he said.

Witt is drafting legislation that would rescind the emergency order and return the system to the prior reimbursement rate schedule. "(Medical provider) reimbursements should be regulated by the reimbursement fee schedule," he said.

Lon Holston, a union rep for Laborers Municipal Employees Local 483 and another MLAC member, said he wasn't made aware of the need for an emergency ruling until about a week before it was issued. He believes the order came too quickly and without enough discussion.

"Somewhere in corporate America

they came up with this plan and ran with it," he said.

Union officials argue that the PPO structure is designed for private-sector health care and that it doesn't belong in the workers' comp system.

"We ask a lot more of our doctors who handle workers' comp cases than we do those in general medicine," Shiprack explained. "To combine the two — I believe a mistake has been made."

WCD Administrator Shilts told the NW Labor Press that medical providers should have the freedom to enter into a PPO contract if they so choose. He said providers have participated in networks with discounted rates for years — for workers' compensation as well as other types of health insurance.

"The discounted fees have helped keep medical costs under control in workers' compensation and throughout the health care industry," he said.

Shilts told the Labor Press the emergency order simply "clarifies" how providers are paid. "We wanted to respond quickly to the uncertainties about PPO contracts."

Those uncertainties surfaced after Godwin, the attorney representing physical therapists, began disputing the amounts some insurance companies were reimbursing physical therapists for treating injured workers.

Fee dispute resolution requests start at WCD, but can go all the way to the Oregon Supreme Court.

Godwin said the explanation of benefits that routinely accompanies each insurance payment check would include a note "to the effect that a discount was being applied to the billing pursuant to a contract owned or accessed by a named PPO."

In some instances, the discount was more than half the medical bill.

Godwin prevailed on most of her appeals. In turn, WCD ordered the insurers to pay the difference between the PPO discount and the state-mandated fee schedule.

In almost all cases, the insurers appealed.

Shortly after that, Shilts said he was contacted by insurer Liberty Northwest informing him that Coventry Health Care was threatening to leave the Oregon market unless there was a

resolution to all the fee disputes. Coventry is a Fortune 500 company based in Bethesda, Md.

"They asked how we decided the disputes. We told them that rules are rules. We obey our own rules," Shilts told the NW Labor Press.

Following their conversation, Shilts said his department took a closer look at the statute. In light of the agency's own rules, WCD determined that state law allowed for the PPO discounts.

"The statute says the fee schedule is the ceiling; that a medical provider can't be paid above that," Shilts said, emphasizing that Oregon's medical fee schedule overall is the highest in the country.

Upon further review, the agency also realized there was no time limit on how far back a provider could challenge a reimbursement. "It could be 4-5-6 years or longer," Shilts said. "Going back that long, and ordering a resolution of the lower of the fee schedule or the providers normal rate (over the PPO discount) ... well, that could add up to a lot of money."

Godwin said she had 163 fee disputes pending and more to be filed when the emergency order was handed down. "It was in the hundreds of thousands, if not millions of dollars," she said.

That much potential cost added to the workers' comp system likely would impact insurance premiums, Shilts said. "In my experience, if rates are pushed up, the typical response is that benefits (to injured workers) are reduced or taken away."

The emergency order was made retroactive, effectively wiping out all of the disputed fees that had not been resolved by a final order.

Godwin has filed a legal challenge with the Oregon Court of Appeals and is advising her clients not to accept new injured workers if the insurer is applying a PPO discount.

Shilts pointed out that the temporary rule puts several protections in place for providers with PPO contracts. For instance, if a provider's fee is covered by multiple PPO contracts, only one contract discount will apply. Additionally, the department must be given a copy of any PPO contract that is the basis for a fee reduction to determine whether it actually covers work-

- Oregon has about 1.72 million workers covered under the state workers' comp system. This does not include employees working for self-insured employers, the federal government, maritime, police and fire departments, and others.

- Approximately 45 percent of workers in the comp system are covered by SAIF Corp., a quasi-public insurer. SAIF contracts with state-certified managed care organizations.

- Nearly 104,000 workers' comp claims were filed in 2006 (the most recent complete data available). Of those, 89,700 were accepted as compensable under Oregon's workers' comp system.

- Of those accepted claims, 23,000 were recorded as "disabling." A disabling claim is an injury that results in time-loss from work, permanent disability, or death. A non-disabling claim is one that does not result in time-loss or permanent disability, but requires only medical treatment.

- In 2006, workers' compensation medical payments accounted for \$313,742,500, or 54.5 percent of total workers' compensation claim costs, an increase of 9.1 percent from 2005.

- In 1990, massive reforms were made to Oregon's workers' comp system, primarily because insurance premiums were some of the most expensive in the nation. Between 1990 and 2006, however, the pure premium employers pay for workers' compensation coverage has dropped 57.4 percent, representing an estimated \$11.5 billion in savings to employers.

ers' compensation.

Before an emergency rule can be made permanent, it must go through a public rulemaking process. WCD is putting together an advisory committee of all interested parties to discuss the matter. Meetings are set for Friday, Aug. 22, from 9 a.m. to noon, and Wednesday, Aug. 27, from 5:30 p.m. to 8 p.m., both at the WCD office at 350 Winter St. NE, Salem. The meetings are open to the public.

Shilts would like to have a permanent rule to present to MLAC when it meets Sept. 11.



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111 SW Fifth Avenue, Suite 1650
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(503) 227-4600
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