



### PROPOSED LEGISLATION TO RESTORE THE WORKERS' COMPENSATION SYSTEM TO CONFORM WITH THE CONSTITUTIONAL MANDATE

By **SCOTT O'MARA**

The Workers' Compensation system in California was specifically created to compensate employees for injuries sustained in the course of their employment. The primary goal of this compensation is for injured workers to be cured or relieved from the effects of their work-related injuries. Existing law establishes that the Workers' Compensation system is administered by the Administrative Director of the Division of Workers' Compensation.

The California Constitution states specifically in Article XIV, Section 4, that the Workers' Compensation system is to be a "complete system" which will "create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party . . . [with] full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury . . .". However, current laws and regulations establish many limitations regarding the ability of injured workers to be cured or relieved from the effects of their work-related injuries.

Assembly Bill 1170, introduced by Assemblyperson Luis Aleto identifies problems for agricultural workers with

job injuries and insurance coverage issues and seeks to remedy many ongoing problems which impact this labor group, but the thought also is that this bill would provide injured agricultural workers more access to medical care at a quicker rate and thereby allow them time to heal and return to work sooner and hopefully with less residual impairment.

The overall scheme of Workers' Compensation, as many injured workers are aware, needs additional expansions to comport with the California Constitution, Article XIV, Section 4, so that indeed it is a "complete system . . . [with] full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve [California injured workers] from the effects of such injury . . .".

An additional bill is necessary to protect all California workers by making changes to Labor Code §§4616, 4610.5(a), 4610.6(a), 4610.6(f), 4610.6(g), 4610.6(h), 4610.6(i) and 4610.6(m), as well as deletion of §§4616.1(a). Specifically, the additional proposed bill — which has yet to be drafted — should contain the following amendments to the Labor Code:

■ Labor Code §4616 would be amended to add:

*4616. (a) (6) Injured workers have the right to predesignate a treating physician prior to sustaining a work injury. Upon sustaining an industrial injury, workers then have the right to treat either with their predesignated doctor or a doctor on the employer's*

*Medical Provider Network list (if the employer has created an MPN). If the latter option is selected, the worker is entitled to treat with the MPN doctor without having to go through either Utilization Review and/or Independent Medical Review.*

*(7) Injured workers also have the right subsequent to sustaining a work injury to select a treating physician who is on the health plan in which they are enrolled.*

■ Labor Code §4616.1(a) (which allows economic profiling of doctors) would be deleted.

■ Labor Code §4610.5(a) would be amended to add:

*4610.5. (a) (3) Any dispute subject to Utilization Review does not encompass doctors selected from the Medical Provider Network list. Any care recommended by a doctor participating in an MPN will be deemed approved.*

■ Labor Code §4610.6(a) would be amended to read as follows:

*4610.6. (a) The parties have the right to use an Agreed Medical Evaluator or Panel Qualified Medical Evaluator to resolve issues regarding Labor Code §4610.5. If that right is not exercised, the parties then have the right to engage in the Independent Medical Review process. If the IMR process is chosen, the Independent Medical Review organization shall conduct the review in accordance with this article and any regulations or orders of the Administrative Director, and the organization's review shall be limited to an examination of the medical necessity*

of the disputed medical treatment, based upon need care to cure or relieve from the effects of the injury.

■ Labor Code §4610.6(f) would be amended to read as follows:

4610.6. (f) *The Independent Medical Review organization shall provide all interested parties with the analyses and determinations of the medical professionals reviewing the case, along with the names, academic credentials and professional achievements of those reviewers.*

■ Labor Code §4610.6(g) would be amended to read as follows:

4610.6. (g) *Determinations of the Independent Medical Review organization shall be deemed to be determinations of the Administrative Director and shall be binding on all parties if the parties so stipulate. Without that stipulation, any and all determinations made by the IMR process are subject to judicial review to ensure the determinations are fair and meaningful relative to the parties of interest.*

*The concept of a 'complete system of Workers' Compensation' as set forth in the California Constitution, Article XIV, §4, must be reflected by Independent Medical Reviewers:*

*A complete system of workers' compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving from the consequences of any injury . . . [with] full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury . . .*

■ Labor Code §4610.6(h) (which states that the determinations of IMR are binding, and workers have no right to appeal IMR determinations through the WCAB) would be deleted.

■ Labor Code §4610.6(i) would be amended to read as follows:

4610.6. (i) *If a determination of the Administrative Director is reversed, the disputed issues shall be resolved by the judicial process, and the parties will follow the determinations made by the judge regarding said issues.*

■ Labor Code §4610.6(m) would be deleted and replaced by the following:

4610.6. (m) *All Independent Medical Review doctors shall have a current medical license for the State of California.*

On 3/9/15, the First District Court of Appeal received additional briefings regarding the constitutionality of the Independent Medical Review (IMR) process established by Senate Bill 863. This is a second prong to reverse the failure of the current laws to comply with the California Constitution. In this case, the petitioner, Frances Stephens, attempted to appeal the denial of medical care via the IMR process and the judge found that Labor Code §4610.6 limits the right of appeal of the IMR process to situations involving fraud by the doctor or a conflict of interest. Stevens, as has been true in numerous other cases, correctly stated that she had no way of proving fraud or conflict of interest because the identity of the IMR doctor is never made known.

The current Workers' Compensation system continues to fail and not conform to the California Constitutional mandate for the system to cure or relieve injured workers from the effects of their job-related injuries. Changes are urgently needed to restore accountability to the Work Comp system and ensure all California injured workers receive timely the care they need to be cured or relieved from the effects of their work injuries.



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### NOTICE

*Making a false or fraudulent Workers' Compensation claim is a felony subject to up to 5 years in prison or a fine of up to \$50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.*

