Dynamic Chiropractic

NEWS / PROFESSION

New Calif. Workers' Comp Law: A Mixed Bag for Chiropractic

Editorial Staff

LONG BEACH - On a normal workday, the Boeing company's cavernous Hangar 54 is usually filled with the sounds of pneumatic drills, hammers and other tools used to build and repair airplanes. On Monday, April 19, it was filled with a different sound: Applause from the more than 2,800 attendees who watched Gov. Arnold Schwarzenegger sign into law SB 899, a bill that dramatically reshapes the workers' compensation system in California.

"Today, I am delivering my promise," an exuberant Schwarzenegger told the crowd of workers, business leaders and government officials. "This workers' compensation reform will reduce the high costs that have driven jobs out of California. No longer will workers' compensation be the poison of our economy. California is open for business."

"We are cleaning up the system," Schwarzenegger continued. "We will terminate the fraud and abuse that was going on in the system. Those who were gaming the system, we're saying, 'Hasta la vista,' because the game is over."

Passed by the Assembly 77-3 and the Senate 33-3, SB 899 amends more than 40 sections of the California Labor Code, and includes some small victories for the chiropractic profession. For example, Sections 139.2 and 3209.3 of the Labor Code will remain intact, which allows chiropractors to continue to serve as qualified medical evaluators and includes them as "physicians" within the workers' compensation system.

Language originally proposed in the legislation would have stripped chiropractors of the ability to diagnose and determine disability as primary physicians to injured workers, but that language was removed, largely due to lobbying efforts by the California Chiropractic Association (CCA).

"That language, we believe, would have kicked us out of the system," commented Dr. Wayne Whalen, a former CCA president.

But not all of the amendments and additions in SB 899 represent good news for chiropractic. For instance, while the profession lobbied to remove a cap on injured workers, its efforts proved unsuccessful. As a result, workers injured on or after Jan. 1, 2004, will still be limited to a maximum of 24 chiropractic visits per industrial injury.

In addition to retaining physician status, chiropractors will be part of the system's new "medical provider networks" panel. The networks, a new provision in the legislation, may be established on or after Jan. 1, 2005, by insurers or employers with the goal of providing medical treatment to injured workers. According to SB 899, "The number of physicians in the medical provider network shall be sufficient to enable treatment for injuries or conditions to be provided in a timely manner," and the network "shall include an adequate number and type of physicians ... to treat common injuries experienced by injured workers." However, the bill does not require chiropractors to be included as part of a medical provider network, which has caused concern among the chiropractic profession.

"If the panel approach goes through and chiropractors are included in the system, we hope that we are not just theoretically there," said Dr. Whalen. "One of the problems we've had in some systems is that chiropractors are in the panel, but you just can't get them."

"The new reforms dramatically limit an injured worker's treatment options by making employers and insurers the gatekeepers for care," added CCA President Douglas Wilson, DC. "The new provider networks outlined in the proposal must include access to all qualified providers, including doctors of chiropractic."

One of the most problematic aspects of the new legislation involves a process known as independent medical review (IMR), which would examine disputed diagnoses or treatments after an injured worker has been examined by three separate physicians.

As with the medical provider networks, medical professionals selected to review treatment decisions shall include "physicians," which theoretically would include chiropractors. However, the legislation appears to be worded in such a way that only medical doctors would be allowed to perform IMR, which could lead to the uncomfortable situation of health care providers from one profession reviewing the work of members of a different profession.

"Allowing an MD to review chiropractic care is like asking a plumber about the need for electrical work on your house," noted Dr. Whalen.

"It looks like this IMR will be done by medical doctors, which means that medical doctors will be the ones to decide when chiropractic treatment is necessary," added Dr. John Beuler, a chiropractor with a practice in Crestline. "We've fought this before and been successful in other types of health care, because we don't feel one specialty should be allowed to judge another."

Although the passage of SB 899 represents a positive step forward for meaningful reform in the workers' compensation system, much of the language in the bill remains ambiguous. As a result, many observers, including the CCA and other organizations, believe future legislation will be needed to clean up unforeseen problems created by the new regulations.

Resources

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4. Doctors of chiropractic fear injured workers' access to care will be limited under new workers' compensation reform legislation. California Chiropractic Association (CCA) press release, Apr. 16, 2004.
5. The "final" workers compensation reform bill. CCA press release, Apr. 14, 2004.
6. Text of Senate Bill 899. Available at www.leginfo.ca.gov.

MAY 2004

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