IMPACT ANALYSIS REPORT

The Impact of Assembly Bill 1213

A Preliminary Analysis

California Workers' Compensation Institute

JUNE 2023

INTRODUCTION

On May 25 of this year, the California Assembly approved Assembly Bill 1213,[1] a proposal by Assemblymember Liz Ortega which, if approved by the State Senate and signed into law by Governor Newsom, would add new language to Labor Code §4656.[2]

The new provision would mandate that when a workers' compensation utilization review (UR) treatment denial is overturned by an Independent Medical Review (IMR) physician, or by the Workers' Compensation Appeals Board (WCAB), any temporary disability (TD) benefits that were paid or due during the period from the UR denial date to the date of the treatment authorization shall be excluded from the 104-week TD cap.[3]

This report examines the proposal and estimates the number of claims that would be impacted by this legislation, providing important data and context for public policymakers to consider as they weigh the value and scope of the proposed change against the additional systems development and tracking capabilities that would be required to implement the change.

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[1] https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB1213.

[2] LC 4656 (e)(1) If a denial of treatment requested by a treating physician is subsequently overturned by independent medical review or by the Workers' Compensation Appeals Board, any temporary disability paid or owing from the date of the denial until the treatment is authorized shall not be included in the calculation of the aggregate disability payments under this section.

[3] Enacted in 2004, SB 899 established the 104-week TD cap with explicit exceptions for certain serious injuries. CA Labor Code §4656(c) states: "(1) Aggregate disability payments for a single injury occurring on or after April 19, 2004, causing temporary disability shall not extend for more than 104 compensable weeks within a period of two years from the date of commencement of temporary disability payment." In 2007, state lawmakers enacted AB 338, which modified the TD cap. The revised cap, effective for most single injuries occurring on or after January 1, 2008, allows up to 104 weeks of TD payments to be paid within 5 years of the injury date.

BACKGROUND

With the passage of the Boynton Act[4] in 1913, California created a mandatory, no-fault workers' compensation insurance system. This system compensates employees for injuries and illnesses that arise out of and in the course of employment and requires employers to pay medical and lost-time benefits in exchange for eliminating employer tort liability. Over the last 100 years, the process for delivering workers' compensation benefits has been reformed and expanded.

In 1993, California lawmakers enacted major reforms that attached a rebuttable presumption of correctness to the primary treating physician's (PTP) opinion on all medical issues necessary to determine eligibility for compensation. Subsequent case law (*Minniear*[5]) handed down by the WCAB in 1996, expanded the PTP presumption to give the injured worker's physician a presumption of correctness on all treatment issues, including the appropriateness of any given medical service, limiting the payers' ability to question or object to medical services, even when it was clear that a given treatment would not cure or relieve the effects of the injury or that it could potentially cause harm.

The initial adoption of the PTP presumption, and its subsequent expansion under *Minniear*, were associated with a rapid escalation in workers' compensation treatment costs, with the average medical cost per claim more than tripling between accident years 1993 and 2003 – a period that also saw the financial insolvencies of 28 workers' compensation insurance companies within the state.[6]

Reforms enacted between 2002 and 2004,[7] and in 2012,[8] addressed this adverse medical benefit development through the implementation of evidence-based medicine guidelines[9] and a more objective medical dispute resolution process.[10] These reforms are largely credited with stabilizing the California workers' compensation system, which has now had relatively predictable claim costs for more than a decade.[11, 12]

Although the change proposed by AB 1213 would result in additional oversight expenses, the potential impact on the workers' compensation system – including claims handling processes and the percentage of claims with medical disputes that would be subject to the terms of the legislation – has not been fully assessed and remains unknown.

[4] Boynton Act-Workmen's Compensation Insurance and Safety Act, 1913.

[5] *Minniear v. Mt. San Antonio Community College District*, 1996, 61 CCC 1055 (en banc).

[6] Gardner, L., Swedlow, A. The Effect of 1996 Legislative Reform Activity of Medical Cost, Litigation, and Claim Duration in the California Workers' Compensation System. *CWCI Research Note*, May 2002.

[7] AB 749 was enacted in 2002; SB 228 was enacted in 2003; and SB 899 was enacted in 2004.

[8] SB 863, the last major overhaul of the California workers' compensation system, was negotiated by the Brown Administration along with employer and labor representatives and was enacted in 2012.

[9] CCR §9792.21.1.

[10] The Administrative Director of the California Division of Workers' Compensation contracted with Maximus Federal Services to provide all IMR services to resolve workers' compensation medical necessity disputes.

[11] *WCIRB State of the System*, 2022.

[12] David, R., Young, B. Patterns in the Provision of Professional Medical Services in California Workers' Compensation. *CWCI Research Update*, April 2023.

OBJECTIVE

The primary objective of this Legislative Impact Report is to provide context to lawmakers, system administrators, payers, and other stakeholders on the likely impact of the proposed legislation.

If enacted, beginning January 1, 2024, AB 1213 would require that any TD paid or owed from the UR treatment denial date through the date of the subsequent authorization of that treatment following an IMR overturn determination or a successful WCAB appeal, be excluded from the calculation of aggregate TD payments when determining the TD cap. Such a change would require claims administrators to develop new systems to track the dates of UR denials, IMR determinations, and subsequent treatment authorizations to calculate the number of days to exclude from the TD cap.

This report estimates the share of claims that would be impacted by AB 1213, providing helpful data and insights on the number of injured workers who would be affected by the proposed change so state lawmakers can better assess the costs versus the benefits of the legislation.

DATA

To estimate the potential impact of the proposal to toll the TD cap when a treatment denial is overturned, the Institute compiled special datasets that merged claims data from CWCI's Industry Research Information System (IRIS) database[13] with IMR decision data from Maximus Federal Services, the Independent Medical Review Organization that is under contract with the state to manage the IMR process.

The overall study sample began with 178,956 claims with 2015 to 2017 injury dates. Those claims were segregated into those that did and those that did not have a record of a TD payment, with the total number of TD days on the TD claims recorded through December 2022.[14] Using claims from this 3-year span allowed the authors to analyze recent claims that could have been subject to the existing 104-week cap on paid TD benefits within five years of the date of injury.[15]

[13] IRIS is CWCI's proprietary transactional database of insured and self-insured policies and their associated claims. Version 2022Q4, used for this study, contains detailed data on employee and employer characteristics, medical service data, benefits, and administrative costs on more than 7.6 million California workers' compensation claims.

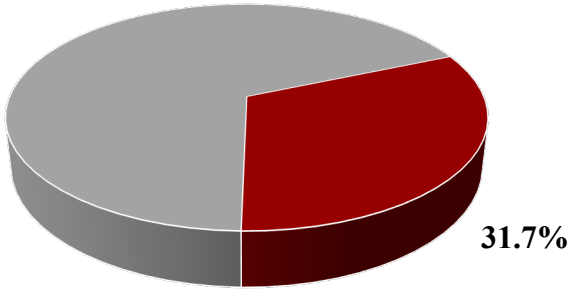
[14] The subsample of TD claims consisted of insured claims for which an accurate match could be made between the IRIS and Maximus data sets.

[15] SB 899 included exemptions to the 104-week TD cap for a select list of severe injuries and illnesses, including amputations, hepatitis, heart disease, and chronic lung disease.

RESULTS

The initial step in assessing the potential scope and impact of AB 1213 was to determine the percentage of claims with TD payments. Exhibit 1 shows that almost one-third of all claims from the study sample (56,766 claims) had paid TD days. This represents the percentage of claims for which claims administrators would need to develop new tracking systems and protocols in order to identify and monitor lost-time claims that could be covered by AB 1213 when a medical dispute on the claim is submitted to IMR.

Exhibit 1. Percentage of California WC Claims w/Paid TD



Of the 31.7 percent of claims that had TD payments, only those in which a UR denial of treatment was submitted to IMR could have potentially been eligible for the tolling of the TD cap as proposed by AB 1213. Thus, the next step in estimating the percentage of claims that could be impacted by the proposal was to use the Maximus data to identify the proportion of the TD claims in the sample that had a medical dispute submitted for IMR.

Exhibit 2. Percentage of TD Claims w/IMR

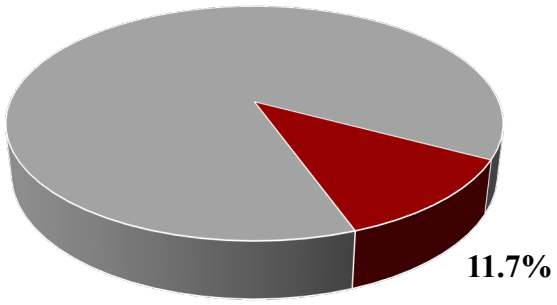
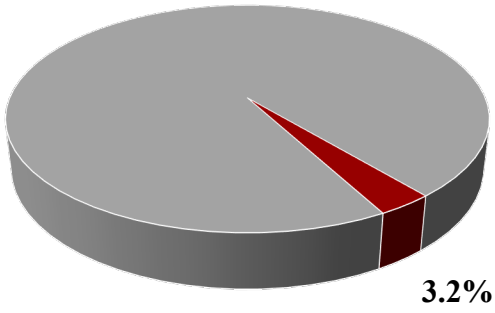


Exhibit 2 shows that 11.7 percent of the TD claims in the study sample also had at least one medical dispute resolved via IMR. However, only a small proportion of that subset of claims would be affected by AB 1213, as recent CWCI research found that 91.1 percent of all IMR determinations from 2015 through 2022 concurred with the UR physician's decision and did not overturn the denial of the treatment request.[16]

[16] Jones, S., Bullis, R., Swedlow, A. Resolving Medical Disputes: Factors that Drive Volume and Outcomes in the California Workers' Compensation System. *CWCI Report to the Industry*, May 2023.

The following two exhibits further isolate the share of claims that would most likely be affected by AB 1213's call to toll the 104-week TD cap. Exhibit 3 shows the percentage of the TD claims from the study sample that had a UR denial overturned by IMR.

Exhibit 3. Percentage of TD Claims w/an IMR Overturn



As noted above, only 3.2 percent of the TD claims in the study sample had a UR denial of treatment that was overturned by IMR, but again, not all of those claims would be impacted by AB 1213, as the new provision would only come into play for claims that reach the 104-week TD cap.

To estimate the percentage of TD claims that might approach the 104-week TD cap, the Institute determined the total number of weeks of TD that had been paid for each claim in the study sample, then calculated the percentage that had reached at least 98 percent of the 104-week maximum and were not designated as claims that had an exception to the cap.

Exhibit 4. Percent of TD Claims w/an IMR Overturn That Are w/in 14 Days of the 104-Week Cap

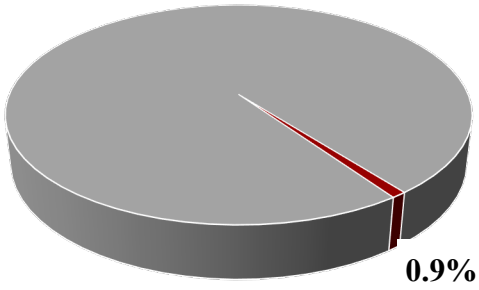


Exhibit 4 shows that only 0.9 percent of the TD claims in the sample were approaching the 104-week TD cap at the 5-year post-injury benchmark. Furthermore, those claims represent less than 0.3 percent of the 178,956 medical-only and indemnity claims that were included in the original IRIS study sample, underscoring the very small proportion of the total injured worker population that would likely receive a nominal increase in their total TD benefits. Meanwhile, claims administrators would incur significant additional administrative expense to develop and maintain changes to their systems in order to accommodate the change.

DISCUSSION

With almost one-third of all California workers' compensation claims having TD payments, AB 1213's current language would create costly new requirements for oversight and compliance for claims administrators. This would further increase California's average loss adjustment expense, which has historically been the most expensive in the country, and as of 2022, exceeded the average amount paid by the median state by 73 percent.[17]

One study limitation is estimating the administrative and systems development expenses required to address AB 1213's requirements. Chief among these would be the automation and programming costs required to update claims systems and the ongoing administrative costs for manual processes to identify and track claims with TD payments and UR and IMR activity.

These system costs would be substantial and highly variable for payers (insurance companies, public and private self-insured employers, and third-party administrators). The amount of additional expense for claims administrators would depend on the sophistication and readiness of their existing systems and the degree to which their claims adjudication practices are automated rather than manual. Among the insurance companies alone, there are currently 79 insurer groups representing 234 individual companies, all of which would be required to implement changes to their systems. While this would likely be less of a task for large insurers, the burden would be substantial for smaller insurers, of which there are many, as the latest National Association of Insurance Commissioners' Market Share Report[18] shows that 52 of the 79 insurer groups that wrote workers' compensation policies in California last year had less than 1 percent of the overall market.

Given the 0.3 percent of all claims that would ultimately be subject to AB 1213, not only would the programming costs outweigh the potential benefits, but each year going forward manual implementation costs would also outweigh the potential benefits of AB 1213. With the significant additional expense to track such a small subpopulation of claims, the concern that the proposed legislation purports to "correct" would provide de minimis, if not negative, returns.

[17] *NCCI Annual Statistical Bulletin* 2022.
[18] https://www.insurance.ca.gov/01-consumers/120-company/04-mrktshare/2022/index.cfm

California Workers' Compensation Institute

The California Workers' Compensation Institute (CWCI), incorporated in 1964, is a private, nonprofit membership organization of insurers and self-insured employers. CWCI conducts and communicates research and analyses to improve California's workers' compensation system. CWCI members include insurers that collectively write 76 percent of California's workers' compensation direct written premium, as well as many of the largest public and private self-insured employers in the state. Additional information about CWCI research and activities is available on the Institute's website, www.cwci.org.