California Workers' Compensation Institute

1333 Broadway Suite 510, Oakland CA 94612
(510) 251-9470
www.cwci.org

BULLETIN

No. 21-07 May 6, 2021

A CWCI analysis of SB 335, which would reduce the amount of time claims administrators have to investigate workers' comp claims from 90 days to 45 days and increase employers' liability for medical benefits during the investigation period from $10,000 to $17,000, finds that currently about 6 out of every 7 (86 percent) of all claims filed are accepted, with compensability on those claims decided within 45 days approximately 92% of the time and within 90 days almost 98% of the time. In contrast, of the 1 out of 7 (14 percent) claims that are ultimately denied, 63% remain under investigation at 45 days.

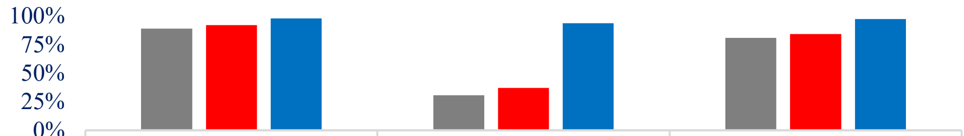
In addition to shortening investigative periods, SB 335 also revamps penalties for unreasonable delays in payment of compensation. Current law limits such penalties to 25% of the amount of the payment delayed with a cap at $10,000. For a subset of eligible penalties, SB 335 reverts to prior law by imposing a penalty of 10% of the full amount of the order applicable to the entire specie of benefit for which payment was unreasonably delayed (*e.g.,* all TD, or all PD, or all medical treatment) without limitation. Under these rules, which were in effect prior to the 2004 reforms, the value of compounded and uncapped penalties resulted in windfalls to employees that were out of proportion to the employer's conduct. The intent of the 2004 reform was to rein in the abuses of penalty claims that had plagued the system. The alteration of penalties under SB 355, even for a subset of claims as proposed, would compromise the legislative intent underlying the current penalty structure, and return the workers' compensation system to a situation that was once deemed to be so out of control as to warrant urgency legislation to correct.

Regarding the investigation periods, the amount of time it takes to investigate a claim for liability determination varies depending on the type of injury reported, the circumstances causing the injurious event, whether witnesses were present when the injury occurred, the cooperation and availability of the parties involved, the number of issues and medical conditions asserted, and the availability of documentation.

To estimate the potential impact of SB 335's shortening of the investigation period, CWCI researchers used the Institute's Industry Research Information System database to compile a large dataset of claims with dates of injury between January 2015 and December 2019 with transactional detail through June 2020. Data from those claims was then used to analyze:

1. The average number of days from the date of injury to employer notification, and the percentage of reported claims with an acceptance or denial decision within 30, 45, and 90 days of the employer's notification of injury.
2. Medical payments made during the 45- and 90-day investigation periods, and the proportion of claims that meet or exceed the $10,000 and $17,000 medical treatment limits.

Claims adjusters can only begin an investigation upon notification of a claimed injury from a worker, their employer, or attorney, so notification is key to triggering the investigation and the provision of benefits. Using the study sample to examine the distribution of days to employer notification shows a highly skewed distribution, with half of all claims reported to the employer on the day of the injury, while the overall average for all claims is 12.4 days. The distribution is skewed by a relatively small proportion of claims with protracted delays in employer notification. Examples of such claims include cumulative trauma claims, where the average employer notification is 215 days after the alleged injury date. The bar chart below shows the proportion of claims that are accepted or denied within 30 days, 45 days, and 90 days of the employer’s notice of injury.



	Accepted (86.1%)	Denied (13.9%)	Total
<=30	88.9%	30.6%	80.8%
<=45	92.0%	37.0%	84.4%
<=90	97.9%	93.8%	97.3%

At the 90-day mark, 97.3% of all reported claims have a compensability decision. Reducing the investigation period from 90 days to 45 days reduces the percentage of claims with decisions to 84.4%, a 13% relative decline. The data also shows that more time is spent in the investigation period for claims that are ultimately denied, 63% of which were still being investigated at 45 days.

The report also shows that 54% of reported injuries under investigation (yet ultimately denied) received medical treatment within the 90-day investigation timeframe, while more than one in four received treatment within the 45-day timeframe. Medical payments for reported injuries that received medical treatment averaged $1,372 within the current 90-day timeframe with 1.4% of the claims meeting or exceeding the $10,000 limit. At 45 days following employer notification, the average medical treatment payment was $735, and 0.6% of the claims reached or exceeded the $10,000 limit. There were 0.8% and 0.4% of claims exceeding $17,000 within the 90- and 45-day periods, respectively. At the 99th percentile, only 1.0% of denied claims had medical treatment costs greater than $6,500.

It is unlikely that claims adjusters would be able to unilaterally expedite much of the investigation process. Reducing the investigation period by half and increasing employers’ liability for medical treatment benefits during the investigation period by 70% is likely to generate unintended consequences. Decreasing the investigation period to 45 days would actually reduce access to medical treatment and would likely increase the number of provisional denials. Provisional denials due to lack of cooperation or available documentation, the inability to schedule a panel qualified medical evaluator, and other issues will likely trigger more litigation as well as increases in allocated and unallocated loss adjustment expenses related to the investigation process. Recent improvements in the overall health of the California workers’ compensation system in reducing litigation, flattening medical inflation, and reducing expenses could easily be compromised.

CWCI has released its Impact Analysis Report “The Impact of SB 335,” which is available to the public under the Research tab at www.cwci.org.

BY/