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BULLETIN

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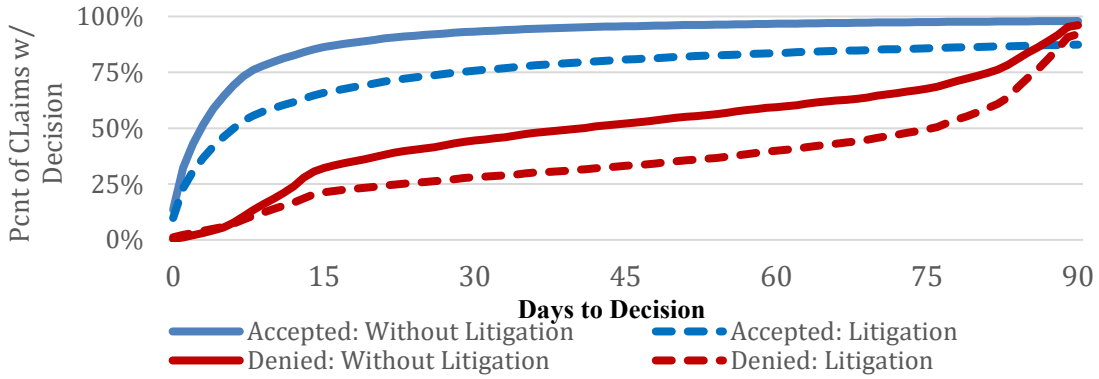
Efforts to reduce California workers' compensation investigation timelines as proposed in past (SB 335 in 2021) and pending legislation (SB 1127 in 2022) would create compensability determination periods that are unrealistic given existing statutory and regulatory time frames for the various steps within the process, many of which claims organizations do not control, according to a new Institute report.

For the second time in two years, state lawmakers are debating the need to reduce the amount of time allowed for workers' comp claims administrators to investigate the compensability of occupational injury or illness claims. Existing law establishes the time frames within which an occupational injury or illness must be reported to an employer, as well as the time frames within which a claims administrator must accept or deny liability for the claim. This year, SB 1127 seeks to reduce the investigation period for presumption claims to 75 days, while the investigation period for all other claims would not change. A further complication is AB 1751, currently moving through the Legislature, which would extend the SB 1159 COVID-19 presumptions that are set to expire in January 2023, for an additional two years. If, as expected, AB 1751 is enacted, then the investigation periods for COVID-19 claims in Labor Code sections 3212.87 (30 days) and 3212.88 (45 days) would be in direct conflict with the amended language in Labor Code section 5402(b)(2) (75 days) currently included in SB 1127.

Claims investigation is a complex process requiring information from multiple sources. To estimate the potential impact of reducing claim investigation time frames, the authors of the CWCI study built a model using data from a large sample of pre-COVID-19 claims with dates of injury between January 2015 and December 2019 with transactional data through June 2020, and a related sample of COVID-19 claims reported from March 2020 through December 2021.

Cumulative Percentage of Accepted & Denied Non-COVID-19 Claims by Days from Employer Notice to Decision: Litigated vs. Non-Litigated Claims



Accepted non-COVID claims without litigation are the most frequent, least complex claims in the system. As noted in the chart above, in 98.0 percent of these claims a compensability determination is made within 90 days, while in 96.7 and 93.2 percent of these claims the decision is made within 60 and 30 days respectively. Furthermore, when non-litigated and litigated non-COVID-19 claims are combined, more than 90 percent have a decision within 75 days. Thus, decreasing the investigation period for such claims to 75 days would do little to expedite the compensability decision process.

Other key findings from the analysis:

- Investigation periods are longer for litigated and denied claims, as they require significantly more time to gather reports and documentation from outside sources. For example, at 75 days, only 49.2 percent of litigated claims that are eventually denied have a compensability decision, strongly suggesting that under current rules and regulations, 75 days is an insufficient amount of time for claims administrators to obtain the medical and factual evidence required to make a compensability determination.

- Determining compensability is particularly challenging and time consuming for COVID-19 claims, especially those that are litigated. For example, at the 45-day mark, 91.4 percent of accepted, non-litigated COVID-19 claims have a compensability decision, compared to 68.9 percent of the accepted COVID-19 claims that are litigated, a 22.5 percentage point difference. At 30 days, determinations have been reached on 85.5 percent of accepted, non-litigated COVID-19 claims, compared to 61.1 percent of the litigated COVID-19 claims that were accepted, a 24.4 percentage point differential.

- Claims administrators also spend more time investigating COVID-19 claims that are denied than those that are accepted due to the challenges in identifying the source of the infection and in obtaining virus test results.

- A timeline analysis of the claims administration process for litigated and non-litigated claims shows that shortening the compensability investigation period would be especially problematic in litigated cases, which tend to involve more complex injuries that often require the use of qualified medical evaluators (QMEs) to address medical compensability issues. The timeline analysis shows the use of QMEs extends the compensability determination timeline well past the current 90-day window, and given that the time frames for the various steps within the QME process are set by statute and regulation, without significant, equivalent reductions in the turnaround time for QME assignment, reporting and other related litigation discovery requirements, it is unrealistic to expect that claims administrators can unilaterally expedite the investigation process without the unintended consequences of additional provisional denials and increased litigation expenses.

- Under current law employers are liable for up to $10,000 of medical treatment for a claimed injury during the investigation period, regardless of the ultimate compensability decision, so reducing the compensability determination time frame would also reduce the amount of time that workers whose claims are eventually denied could receive that $10,000 worth of medical care.

CWCI has released its analysis of the impact of reducing compensability determinations in an Impact Analysis report, Underlying Issues and Outcomes in Reducing the Compensability Determination Timeline. The report is available for free to the public and can be found under the Research tab at www.cwci.org.

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