

Analysis of Proposed Revisions to California's 2-Year Temporary Disability Payment Cap

by Alex Swedlow, MHA & John Ireland, MHA

Executive Summary

In 2004, California lawmakers enacted SB 899, a comprehensive workers' compensation reform bill that included amendments to Labor Code Section 4656. Those amendments limited temporary disability (TD) payments for a single injury occurring on or after April 19, 2004 to no more than 104 compensable weeks within two years from the date of the first TD payment.¹

The legislature is now considering a proposal (Assembly Bill 338, Coto) that would redefine the limits

on temporary disability payments by allowing TD benefits for single injuries occurring on or after January 1, 2008 to continue for up to 156 compensable weeks within five years of the injury date.

Using historical data on 155,463 temporary disability claims with 2000-2001 dates of injury, and holding TD benefit rates constant at 2000-2001 levels, this study estimates the cumulative effect of the changes proposed by AB 338. The study shows that:

1. Expanding the TD cap to 156 compensable weeks, extending the potential TD payout period from two to five years, and changing the TD trigger point to the "date of injury" would increase aggregate TD costs by an estimated 11.0 percent.
2. The increase in TD benefits resulting from the changes proposed by AB338 would eliminate nearly half of the savings generated by the 2-year TD cap introduced by SB 899, though total TD benefits would still be 9.2 percent lower than pre-reform levels.

Background

California workers' compensation law provides that injured workers who are unable to return to work for more than three days shall be entitled to temporary disability payments to help replace lost wages.²

The TD rate is generally two-thirds (66 percent) of the worker's gross earnings, subject to minimum and maximum amounts set by law. In 2002, state lawmakers passed AB 749, which increased the weekly TD rates over several years, so the amount an injured worker is entitled to depends on their date of injury. For example, the maximum weekly TD payment on claims for injuries that occurred between July 1996 through December 2002 was \$490, with a minimum of \$126 per week or actual wages if less. Beginning with claims for 2003 injuries, the minimum TD payment was \$126 per week, while the weekly maximum rose to \$602. The maximum then increased to \$728 for 2004 injuries, and to \$840 for 2005 injuries. Boosting the TD maximums significantly increased the proportion of injured workers receiving the full two-thirds

of their wage replacement. A prior CWCI study³ found that the percentage of injured workers who received TD benefits greater than the minimum and less than the maximum TD payment rose from 74.1 percent in 2002 to 92.4 percent in 2005, a relative increase of 24.7 percent.

The 2004 reform bill (SB 899) tied the minimum and maximum weekly TD payments on claims for injuries occurring in 2006 and each year thereafter to increases in the State Average Weekly Wage. As a result, for 2008 injuries, the maximum weekly TD rate will rise to \$916.31, while the minimum will rise to \$137.45.

State law requires claims administrators to issue the first TD check within two weeks of knowledge of the injury and disability, and to continue to issue TD checks every two weeks thereafter until:

- 1) the primary treating physician says the injured worker can return to work;
- 2) the primary treating physician says the injured worker's medical condition is permanent and stationary; or

1 Exceptions are allowed for a few long-term injuries such as severe burns or chronic lung disease. In these cases, TD payments may continue for up to 240 weeks within five years from the date of injury.
2 TD is not paid for the first three days an injured worker is unable to work unless they are hospitalized as an inpatient or unable to work for more than 14 days -- in these cases, the worker is entitled to TD for the three-day waiting period.
3 Swedlow, A. Effect of AB 749 TD Increases on Two-Thirds Wage Replacement, ICIS Says, CWCI January 2006.

3) the maximum number or compensable weeks set by the state legislature is reached.

For injuries that occurred prior to the implementation of SB 899, Labor Code section 4656 only limited temporary partial disability payments to a maximum of 240 compensable weeks within five years of the date of injury, but temporary total disability payments had not been capped since 1979. Effective for injuries occurring on or after April 19, 2004, however, SB 899 limited temporary partial and temporary total disability payments to a maximum of 104 weeks (2 years) of paid temporary disability within 2 years of the first TD payment date, though the exceptions remain for the 9 categories of injuries that usually require extended medical treatment and recuperation. In those cases, the injured worker may be eligible for up to 240 weeks of TD payments within 5 years of the date of injury.

Since the implementation of SB 899, there have been anecdotal reports in the press and in public forums suggesting that in a significant number of cases, the TD caps have cut off benefits to injured workers' before they were able to return to work – most notably in post-surgical cases where the worker has collected TD for an extended period prior to surgery, causing the 2-year TD clock to run out before they fully recovered. As a result, state lawmakers are now considering Assembly Bill 338, which would revise the limits on temporary disability payments for injuries on or after January 1, 2008. The bill proposes increasing the limits on TD benefits to a maximum of 156 compensable weeks (three years), and extending the period in which the injured worker could receive the benefit up to five years from the injury date. The bill further extends the potential period that an injured worker could receive TD by defining exception periods where payments would not count towards the TD cap. These exceptions include:

- the period claims are delayed beyond 14 days from the date of injury
- periods of delay due to employer objections to medical treatment under Labor Code Section 4062, where the dispute is ultimately decided in favor of providing the disputed treatment
- periods of delay caused by an untimely utilization review process
- time associated with utilization review disputes where the employee prevails
- periods when an employee receives leave of absence pay in lieu of temporary disability benefits

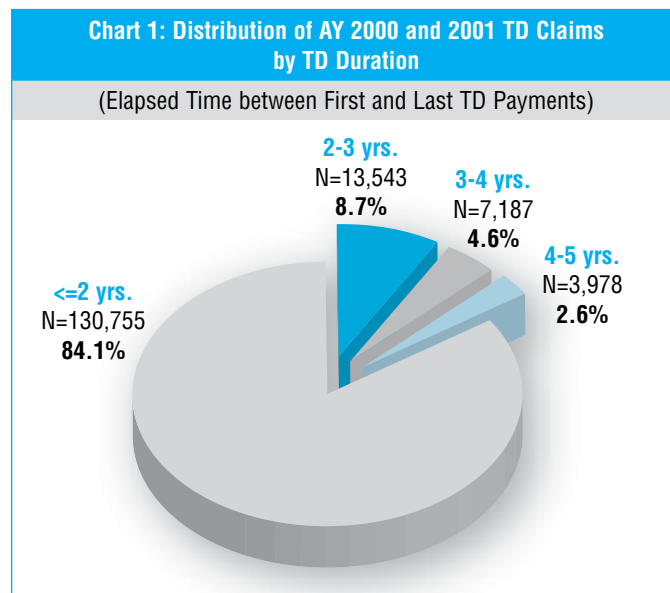
AB 338 also retains the exceptions for the nine long-term injury categories already specified by current law.

The Study

The goal of this analysis was to estimate what total TD benefits would have been had the TD cap proposed by AB 338 been in effect for accident year 2000 and 2001 injury claims. CWCI used its Industry Claim Information System (ICIS) database to compile the claim sample used in the analysis. To ensure that all claims included up to five years of TD payments, the Institute limited the sample to claims with dates of injury between January 2000 and December 2001, and measured total TD payments on these claims through December 2006. The resulting sample included 155,463 claims that involved more than \$1.3 billion in temporary disability benefits.

TD Duration and Timing of Payments

To add historical context to the analysis, the authors grouped the claim sample by temporary disability duration. Chart 1 shows the resulting distribution for the study sample.



To measure TD duration the Institute calculated the amount of time between the first and last temporary disability payments for each claim in the sample. In 84.1 percent of the claims, all of the TD payments were made within two years of the first payment. In another 8.7 percent of the cases, 2 to 3 years elapsed between the first TD payment and the final TD payment; in 4.6 percent of the claims TD payments continued for 3 to 4 years; and in 2.6 percent of the cases the TD payout period lasted between 4 and 5 years from the first payment.

Table 1: Estimated Distribution of AY 2000 – 2001 TD Payments From 1st Payment Date

SB 899 Trigger (Current)				
Valuation Point	AY 2000 Claims	AY 2001 Claims	AY 2000 – 2001 Total	% of Total TD Payments
Estimated TD Paid @ 2yrs from 1st Payment Date	\$431,918,871	\$644,057,978	\$1,075,976,849	81.7%
Estimated TD Paid @ 3yrs from 1st Payment Date	\$478,855,569	\$711,103,628	\$1,189,959,197	90.4%
Estimated TD Paid @ 4yrs from 1st Payment Date	\$506,048,221	\$751,050,051	\$1,257,098,272	95.5%
Estimated TD Paid @ 5yrs from 1st Payment Date	\$523,615,884	\$773,262,551	\$1,296,878,435	98.6%
Total TD Paid (Actual, Through 12/06)	\$536,348,888	\$779,458,588	\$1,315,807,476	100.0%

How quickly would the TD have been paid out if the current trigger point for the TD duration cap (first payment date) had been in place? The authors calculated the proportion of the \$1.3 billion in total TD payments from the sample that would have been paid at 2, 3, 4 and 5 years after the first TD payment. Table 1 shows the results for the 155,463 claims broken out by accident year.

Injured workers would have received almost 82 percent (\$1.076 billion) of the nearly \$1.316 billion in aggregate TD payments from the claim sample within two years of the initial TD payment date. An additional 8.7 percent (\$114 million) would have been paid between the second and third years; 5.1 percent (\$67 million) would have been paid between the third and fourth years; 3.1 percent (\$40 million) would have been paid between the fourth and fifth years; and 1.4 percent (\$19 million) would have been paid more than five years after the first TD payment.

The Effect of Changing the TD Cap Trigger Point

AB 338 proposes changing the trigger point for calculating the TD benefit cap from the first TD benefit payment date to the date of injury. To estimate the effect of that change, the Institute recalculated the distribution of the \$1.3 billion in TD payments from the claim sample at 2 through 5 years after the date of injury, rather than after the date of first TD payment. Table 2 shows how much of the TD from the claim sample would have been paid out

at each of the four valuation points if the trigger point had been the date of injury.

Changing the trigger date to the date of injury would start the TD clock earlier, so the TD payment cap would have been reached sooner. In many of the claims in the sample, no TD was paid for the first three days of lost time following the injury – either because the worker was not hospitalized as an inpatient or was not off work for more than 14 days. Therefore, triggering the TD clock on the injury date rather than on the date of first payment would have reduced aggregate TD in the first two years after the clock started from \$1.076 billion to \$956 million, a reduction of \$120 million, or 11.1 percent. Just under 73 percent of total TD payments would have been made within the first two years from the date of injury -- well below the 82 percent that is currently paid within 2 years using the date of first payment as the trigger. Conversely, a larger share of the TD payments would have been made more than two years after the TD clock was triggered. An additional 12.1 percent of the TD payments (\$159 million) would have been made between the second and third years after injury; 7.6 percent (\$100 million) would have been paid between the third and the fourth year; 4.8 percent (\$64 million) would have been paid between the fourth and the fifth years; and 2.8 percent (\$36 million) of the payments would have come more than five years after the date of injury.

Table 2: Estimated Distribution of AY 2000 – 2001 TD Payments from Date of Injury

AB 338 Trigger (Proposed)				
Valuation Point	AY 2000 Claims	AY 2001 Claims	AY 2000 – 2001 Total	% of Total TD Payments
Estimated TD Paid @ 2yrs from Injury Date	\$382,243,172	\$574,028,201	\$ 956,271,373	72.7%
Estimated TD Paid @ 3yrs from Injury Date	\$449,085,438	\$666,407,983	\$1,115,493,421	84.8%
Estimated TD Paid @ 4yrs from Injury Date	\$486,244,390	\$729,731,107	\$1,215,975,497	92.4%
Estimated TD Paid @ 5yrs from Injury Date	\$512,969,766	\$766,645,384	\$1,279,615,150	97.2%
Total TD Paid (Actual, Through 12/06)	\$536,348,888	\$779,458,588	\$1,315,807,476	100.0%

To model the effect that the proposed TD cap would have had on the aggregate amount of TD paid on the pre-reform claims, the authors then performed the following calculations:

1. The date of injury and the initial temporary disability benefit payment date were identified.
2. The value of 2- and 3-year caps⁴ were calculated keeping the TD rates constant at accident year 2000 and 2001 levels.
3. The estimated amount of TD that would have been paid out under the broader cap proposed by AB 338 (3 years of TD paid within 5 years of the injury date) was compared to the actual dollars paid out under the more restrictive cap imposed by SB 899 (2 years of TD paid within 2 years of the initial payment date).
4. The actual amount of paid TD from the sample was compared to the estimated amount of TD that would have been paid under the 2-year adjusted cap rate, and the lower value was designated as the final SB 899 value. Similarly, the actual amount of paid TD from the claim sample was compared to the estimated amount of TD that would have been paid under the 3-year adjusted cap rate, and the lower value was designated as the final AB 338 value.
5. The two adjusted values from SB 899 and AB 338 were compared against the actual, pre-reform total TD benefit from the sample. Tables 3 and 4 summarize the results of the model:

Table 3: Estimated Total TD Payments SB 899 (Current 2-Year Cap) vs. AB 338 (Proposed 3-Year Cap)			
	AY 2000 Claims	AY 2001 Claims	Total
SB 899 Cap	\$431,918,871	\$644,057,978	\$1,075,976,849
AB 338 Cap	\$479,124,490	\$715,047,435	\$1,194,171,925
% Difference	10.9%	11.0%	11.0%

The Institute estimates that the 3-year TD cap proposed by AB 338 would have increased the total amount of TD paid for the study sample of AY 2001 and 2002 claims by approximately 11 percent, from \$1.076 billion to \$1.194 billion.

Table 4: Estimated Savings From Pre-SB 899 Levels: SB 899 2-Year Cap vs. AB 338 3-Year Cap			
	AY 2000 Claims	AY 2001 Claims	Total
SB 899 Cap	-19.5%	-17.4%	-18.2%
AB 338 Cap	-10.7%	-8.3%	-9.2%

Table 4 shows that if the AY 2000 and 2001 TD claims had been subject to SB 899’s 2-year TD cap, overall TD benefit payments on those claims would have been reduced by an estimated 18.2 percent from the pre-reform levels. In contrast, the 3-year TD cap proposed under AB 338 would have reduced total AY 2000 and 2001 TD payments by an estimated 9.2 percent from the pre-reform levels – about half the savings achieved under the SB 899 cap.

Conclusion

The Institute estimates that AB 338’s proposed modifications to the temporary disability cap and duration of benefit payments set forth by SB 899 would increase aggregate TD benefit payments in the California workers’ compensation system by 11 percent over the current level, yet still deliver savings from pre-reform levels. As proposed, the revised cap would reduce aggregate TD payments by an estimated 9.2 percent from pre-reform levels -- approximately half of the temporary disability savings produced by the SB 899 cap.

The workers’ compensation reforms of 2002-2004 made fundamental changes to the California system on multiple dimensions beyond temporary disability payments. Significant changes in TD maximum payment rates, medical treatment fees and utilization rules, as well as the move to the impairment-based AMA Permanent Disability Rating Schedule all interact with each other in ways that are still being analyzed and researched.

Parts 1 and 2 of the recent CWCI Analysis of Reform Series have shown significant associations between reforms and reductions in medical utilization, as well as temporary disability payments and lost time days. Future research will attempt to separate the individual effects, as well as the total outcome of these and other reform variables. For now, we can only speculate how these modeled changes proposed by AB 338 would ultimately interact with prior reforms, so the authors urge caution in considering the results within the public policy debate.

⁴ The formula for the 2-year cap calculation is the weekly TD rate x 104; the 3-year rate is the weekly TD rate x 156.

About CWCI

The California Workers’ Compensation Institute, incorporated in 1964, is a private, nonprofit organization of insurers and self-insured employers conducting and communicating research and analyses to improve the California workers’ compensation system. Most CWCI research is unique, as it is based on operating data collected from member companies specifically for the Institute.