

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4669-01
Bill No.: SB 601
Subject: Workers' Compensation
Type: Original
Date: February 19, 2018

Bill Summary: This proposal modifies provisions relating to maximum medical fees under workers' compensation laws.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Workers' Compensation Administrative Fund	(\$1,813,071)	(\$1,643,861)	(\$1,669,971)
Total Estimated Net Effect on <u>Other</u> State Funds	(\$1,813,071)	(\$1,643,861)	(\$1,669,971)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Workers' Compensation Administration Fund	19.5 FTE	19.5 FTE	19.5 FTE
Total Estimated Net Effect on FTE	19.5 FTE	19.5 FTE	19.5 FTE

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Labor and Industrial Relations (DOLIR)** state:

Division of Workers' Compensation (DWC)

Section 287.142.1 requires the DWC to promulgate rules for the purposes of establishing a medical fee schedule that specifies the maximum reimbursable amounts for treatment and care that is provided to an injured employee who sustains an injury or occupational disease in the course and scope of employment with an employer.

The National Council on Compensation Insurance has recognized that, "...[p]romulgating a WC medical fee schedule represents a major commitment for the administrative body of a state WC system." To implement and operate their medical fee schedules, other states have also established medical advisory boards comprised of members representing the interests of health care providers, insurers, employers, and labor, to meet regularly and make recommendations about implementing and then continuously operating the medical fee schedule.

DWC researched similar programs in several states to prepare this estimate. Among the findings were:

- Illinois uses external vendors for the Illinois Workers' Compensation Medical Fee Schedule and responds to about 100-150 email inquiries per month about the fee schedule.
- Idaho is currently in the process of coordinating with vendors on the proposed costs associated with developing the medical fee schedules.
- Virginia law provides that, "The Commission shall retain a firm with nationwide experience and actuarial expertise in the development of workers' compensation fee schedules to assist the Commission in establishing the initial Virginia fee schedules. The Commission shall consult with the regulatory advisory panel established pursuant to subdivision F 2 prior to retaining such firm...[The Commission shall] utilize a 10-member regulatory advisory panel to assist in the development of regulations adopting initial Virginia fee schedules pursuant to subsection C, in adjusting initial Virginia fee schedules pursuant to subsection D, and on all matters involving or related to the fee schedule as deemed necessary by the Commission." Va. Code. Ann. Section 65.2-605 C & F (2016).
- Kansas law establishes an 11 member advisory panel to assist the director in establishing a schedule of maximum fees in workers' compensation cases. K.S.A. Section 44-510i (d).
- Some states have different fee schedules for different localities in the state, reflecting the

ASSUMPTION (continued)

- fact that a usual and customary charge may vary from place to place.
- A few states permit the fee to be set at the lesser of the providers' usual and customary charge or the amount allowed by the fee schedule.

In setting the fee schedule, "...[i]f rates are set too high, savings will be negligible and the fee schedule will not achieve its cost containment goal. Conversely, setting rates too low makes treating injured workers uneconomical for providers and jeopardizes workers' access to quality care." Designing Workers' Compensation Medical Fee Schedules, 2016, p. 8, WCRI (Olesya Fomenko and Te-Chun Liu).

Given the tension between cost containment and access to care, the most common approach is to base the fee schedule on the Medicare Resource Based Relative Value Scale ("RBRVS"), set at some percentage above or below the actual Medicare rates, ranging from about 2 percent below Medicare (MA and FL) to 189% above Medicare (AK). *Id.* at page 9. This range may vary depending on the type of procedure or specialty involved in delivering the medical service.

Without providing specific guidelines relating to the establishment of the medical fee schedules, the division anticipates it will need additional staff. This is based upon the complexity of the system to be developed and maintained by the division and the expertise that is required to establish, develop, respond to and oversee the medical fee schedule requirements. The division would likely release a Request for Proposal (RFP) to engage the services of a vendor to establish a medical fee schedule. Thereafter, the vendor would need to assist in both the initial adoption and implementation of the medical fee schedule as well as the day-to-day operation and updating of the schedule.

DOLIR anticipates a new system would be required to maintain a Maximum Medical Fee Schedule (MMFS) for DWC. The cost for FY 2019 would be **\$112,499**, FY2020 **\$34,800**, and FY2021 **\$41,760**.

DWC would need to schedule initial meetings with the medical advisory boards to ascertain the reimbursement rates to be set for the various healthcare providers. There would be costs associated with medical advisory board meetings, both in adopting a medical fee schedule initially, and in updating it from time to time.

Personal Services

DWC estimates it would need 17.50 FTE in order to develop, implement, and maintain the Maximum Medical Fee Schedule (MMFS).

ASSUMPTION (continued)

1. Legal Counsel (3.00 FTE, \$52,000 annually) to assist with the rule drafting; research; creation of brochures, forms, and website updates; provide outreach with other states and organizations; work on the RFP; attend meetings with the Advisory Board; and coordinate the with the Labor and Industrial Relations Commission.
2. Medical Consultant (.50 FTE, \$105,012 annually) to provide expertise and guidance relating to reimbursement rates, billing codes and procedures, development of the fee structure and coordination with the Medical Advisory Board.
3. Research Analyst IV (1.00 FTE, \$46,056 annually) to assist with the medical terminology, creation of the medical fee coding and billing, and perform research and studies relating to provider participation and access.
4. Planner III (1.00 FTE, \$46,056) to supervise and provide oversight of the work of the Planners I/II, AOSAs, and SOSAs; assist in resolving issues; and coordinate the drafting and revision of rules annually.
5. Planner I/II (5.00 FTE, \$41,184) assist with the establishment of the medical fee schedules, billing codes, and coordination of the procedures with healthcare providers.
6. Administrative Office Support Assistant (AOSA) (3.00 FTE, \$28,688) to serve as Information Services Specialists providing assistance to medical providers, claimants, and insurers regarding the MMFS.
7. Senior Office Support Assistants (4.00 FTE, \$26,340) to provide clerical support services for the unit.

DWC is uncertain where litigation regarding the MMFS would occur. If it falls within the division's Administrative Law Judges (ALJs), there would be additional personal services costs for Court Reporters and Docket Clerks. If those costs were significant, the department would pursue additional resources via the appropriations process.

Expense & Equipment

In addition to standard per FTE expense and equipment, the division would also incur additional printing and mailing costs to create and distribute brochures, forms, and educational materials, estimated at \$15,000 and \$2,500 respectively.

Travel costs for the Medical Advisory Board are estimated at \$4,500 in the first year (4 meetings X 15 members X \$75 (meals and mileage) per meeting = \$4,500) and \$2,250 in subsequent years (2 meetings X 15 members X \$75 = \$2,250)

Labor and Industrial Relations Commission (LIRC)

The LIRC oversees and approves all regulations for the DOLIR, including those of the DWC.

ASSUMPTION (continued)

The LIRC would be required to review the initial rule promulgation as well as any adjustments made to the fee schedule annually. LIRC estimates it would need 2.00 Legal Counsel FTE (\$52,000 annually) with significant experience in the relevant subject matter to review proposed rules and conduct independent research. Should any objections be raised to the proposed rules, LIRC assumes those objections would be heard in a formal hearing. The LIRC also assumes it would require five independent consultants with subject matter expertise to guide the Commission in approving/disapproving regulations and provide expert testimony during objection hearings.

Standard per FTE expenses would be required, as well as those relating to consultant services, estimated at \$200,000 (\$250/hour X 160 hours X 5 consultants), would be required.

DOLIR assumes since the MMFS is effective January 1, 2019, work would begin July 1, 2018, requiring a full fiscal year of expenses for all of the agencies in FY 2019.

Officials from the **Office of Administration (OA)** assume this legislation (287.140.3) has the potential to decrease workers' compensation medical costs to the state, if the medical fee schedule is less than current costs paid by the state. However, the amount of such savings, if any, cannot be estimated as it would depend on the fees set forth in the schedule. This legislation also has the potential to increase costs to the state, if the number of available medical providers willing to provide treatment in workers' compensation cases is decreased because of the fee schedule. If the number of local providers is limited, Office of Administration might have to send employees further away for treatment, which would increase costs.

Oversight notes that OA's concerns are dependant upon the outcome of the medical fee schedule.

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

ASSUMPTION (continued)

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Officials from the **Joint Committee on Administrative Rules** assume the proposal is not anticipated to cause a fiscal impact beyond the current appropriation.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** assume the proposal will have no fiscal impact on their respective organization.

Officials from the **St. Louis County Board of Election Commissioners, Jackson County Election Board, Platte County Board of Elections, and Boone County** each assume the proposal will have no fiscal impact on their respective organizations.

Officials from the following **cities**: Ashland, Belton, Bernie, Bonne Terre, Boonville, California, Cape Girardeau, Clayton, Columbia, Dardenne Prairie, Excelsior Springs, Florissant, Frontenac, Fulton, Grandview, Harrisonville, Independence, Jefferson City, Joplin, Kansas City, Kearney, Knob Noster, Ladue, Lake Ozark City, Lee Summit, Liberty, Louisiana, Maryland Heights, Maryville, Mexico, Monett, Neosho, O'Fallon, Peculiar, Pineville, Popular Bluff, Raytown, Republic, Richmond, Rolla, Sedalia, Springfield, St. Charles City Administrator, St. Louis City Budget Division, St. Robert, Sugar Creek, Sullivan, Warrensburg, Warrenton, Webb City, Weldon Spring and West Plains did not respond to **Oversight's** request for fiscal impact.

Officials from the following **counties**: Andrew, Atchison, Audrain, Barry, Benton, Bollinger, Buchanan, Callaway, Camden, Cape Girardeau, Carroll, Cass, Christian, Clay, Clinton, Cole, Cooper, Davies, Dekalb, Dent, Franklin, Greene, Holt, Jefferson, Johnson, Knox, Laclède, Lawrence, Lincoln, Maries, Marion, McDonald, Miller, Moniteau, Monroe, Montgomery, New Madrid, Nodaway, Ozark, Perry, Pettis, Pulaski, Scott, St. Charles, St. Francois, Taney, Warren, Wayne, and Worth did not respond to **Oversight's** request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
WORKERS COMPENSATION ADMINISTRATION FUND			
Cost - DOLIR - Salaries	(\$801,962)	(\$809,982)	(\$818,081)
Fringe Benefits	(\$413,488)	(\$450,931)	(\$453,336)
IT services	(\$112,499)	(\$34,800)	(\$41,760)
LIRC consultants	(\$200,000)	(\$205,000)	(\$210,125)
Equipment and Expense	(\$285,122)	(\$143,148)	(\$146,669)
<u>Total Cost - DOLIR</u>	<u>(\$1,813,071)</u>	<u>(\$1,643,861)</u>	<u>(\$1,669,971)</u>
FTE Change - DOLIR	19.5 FTE	19.5 FTE	19.5 FTE
ESTIMATED NET EFFECT ON WORKERS COMPENSATION ADMINISTRATION FUND	<u>(\$1,813,071)</u>	<u>(\$1,643,861)</u>	<u>(\$1,669,971)</u>
Estimated Net FTE Change on the Workers' Compensation Administration Fund	19.5 FTE	19.5 FTE	19.5 FTE
 <u>FISCAL IMPACT - Local Government</u>	 FY 2019 (10 Mo.)	 FY 2020	 FY 2021
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

The proposed legislation may affect any small business that provides medical benefits for injured workers.

FISCAL DESCRIPTION

Under current law, health care providers are prohibited from charging a fee for treatment and care under workers' compensation laws that is greater than the usual and customary fee the provider receives from private individuals or private health insurance carriers. This act repeals that provision and instead requires the Division of Workers' Compensation to establish a medical fee schedule setting forth the maximum fee that a health-care provider may charge for such treatment and care.

FISCAL DESCRIPTION (continued)

All fees established by the schedule shall promote health care cost containment and efficiency, and shall be sufficient to ensure availability of such reasonably necessary treatment, care, and attendance to each injured employee to cure and relieve the employee from the effects of the injury.

The Division is required to increase or decrease the fee schedule based on the change in the Consumer Price Index.


The initial medical fee schedule shall be produced no later than December 1, 2018, and shall take effect on January 1, 2019.

This legislation is not federally mandated and would not duplicate any other program. It would, however, require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Labor and Industrial Relations
Office of Administration
Office of the Secretary of State
Joint Committee on Administrative Rules
Department of Insurance, Financial Institutions and Professional Registration
St. Louis County Board of Election Commissioners
Jackson County Election Board
Platte County Board of Elections
Boone County

Ross Strope



Acting Director
February 19, 2018