



Metropolitan
Transportation
Authority

One Gateway Plaza
Los Angeles, CA
90012-2952

**FINANCE AND BUDGET COMMITTEE
OCTOBER 16, 2003**

SUBJECT: WORKERS' COMPENSATION REFORM LEGISLATION

ACTION: RECEIVE AND FILE

RECOMMENDATION

Receive and file per Board direction impact analysis on MTA of Legislature approved Workers' Compensation reform bills

DISCUSSION

At the request of Director Villaraigosa, the Risk Management Division has prepared an analysis of the cost impact on MTA of approved Workers' Compensation Reform Legislation.

The California Legislature approved eight Workers' Compensation related reform bills on September 12, 2003. The two primary bills, AB 227 (Vargas) and SB 228 (Alarcon) were adopted on a party-line vote (AB 227:22-12) and (SB 228:25-10). The other bills passed were AB 1262, AB 1099, AB 149, SB 1007, SB 107 and AB 968. The Governor signed the package of Workers' Compensation reform bills on September 30, 2003.

A brief summary of bill components and their projected MTA financial/operations impact is provided below via Attachment A: Potential Cost Savings, Attachment B: Impact Unknown, Attachment C: Potential Cost Increases and Attachment D: Items with No Anticipated Impact.

In summary, the annual potential savings of \$1,616,695 is offset by cost increases projected at \$596,300 for a net cost savings of \$1,020,395.

NEXT STEPS

The Risk Management Department, with the support of County Counsel, will partner with other governmental entities, as well as insurance and Workers' Compensation related associations to prepare, sponsor and support additional cost reduction related Workers' Compensation Reform Legislation.

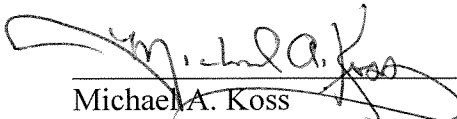
Reform Legislative proposals are to address, at minimum, the following:

- Mandate objective medical findings to assess permanent disability ratings.
- Suspend the COLA growth included in Temporary Disability.
- Suspend the major temporary disability benefit increases.
- Require apportionment when the injury is to the same part of body as previous claims.
- Address litigation costs in the system.
- Provide entitlement of an employer to select the medical provider from the present 30-day statute to 180 days.
- Mandate physician certification courses for those treating Workers' Compensation injuries and require them to submit timely, detailed medical documentation.
- Provide reform of Labor Code Section 5814 penalties for delay or denial of benefits to ensure that penalties and interest are fair and reasonable.
- Modify Section 132a. to be consistent with findings of the Supreme Court Lauher decision.
- Amend Section 4061 stipulating that the appeals Board shall not rely upon any medical report to determine permanent disability which fails to address whether there exists disability which may be subject to apportionment.
- Amend Labor Code 3208.3 and 3600 to address voluntary withdrawal from the work force.
- Add a Labor Code that encourages employers to develop return to work programs and discourages permanent disability awards as a supplement to continuing wages.
- Amend Section 4553 to delete medical treatment expenses from the premium payable for serious and willful misconduct.

ATTACHMENT(S)

- A. Potential Cost Savings
- B. Impact Unknown
- C. Potential Cost Increases
- D. Items With No Anticipated Impact

Prepared by: Michael A. Koss
Executive Officer of Risk Management



Michael A. Koss
Executive Officer of Risk Management



Roger Snoble
Chief Executive Officer

ATTACHMENT A

POTENTIAL COST SAVINGS		ESTIMATED SAVINGS TO MTA
Outpatient Facility Fee Schedule	Creates a new outpatient facility fee schedule based on Medicare rates with a 120% conversion factor.	FY03 Outpatient facility costs were approximately \$2.6 million utilizing a preferred provide network. Projected savings at 5% are \$130,000.
Cap on Chiropractic Treatments	Limits chiropractic treatment to 24 visits for the life of the claim for injuries occurring on/after January 1, 2004.	FY03 chiropractic costs were approximately \$1,300,00. Projected savings at 5% are \$65,000.
Cap on Physical Therapy Treatments	Limits physical therapy treatments to 24 visits for the life of the claim for injuries occurring on/after January 1, 2004.	FY03 Physical therapy costs were approximately \$3,020,000. Projected savings at 5% are \$151,000.
Pharmaceutical Fee Schedule	Creates a pharmaceutical fee schedule at 100% of Medicare rates and expands to all medical providers the requirement to use generic medications where possible. Prior provisions only applied to pharmacies. The requirements will now include physicians and hospitals.	FY03 prescription drug costs \$1,856,950. The Workers' Compensation Division currently utilizes a pharmacy-preferred provider with negotiated reduced costs. Additional cost reduction is estimated at 10% per annum. Projected savings: \$185,695.
Treating Physician Fee Schedule	Repeals the Official Medical Fee Schedule (OMFS) language and provides a 5% reduction to current OMFS rates.	FY03 physician costs were approximately \$5.8 million. Projected cost savings at 5% are \$290,000.
Repeal of Vocational Rehabilitation	Repeals Labor Code 139.5 and LC 4635 (vocational rehabilitation) for injuries on/after January 1, 2004 and replaces it with a voucher program for obtaining vocational rehabilitation on a sliding scale basis depending upon permanent disability rating.	Repeal of mandatory rehabilitation will reduce a maximum claim from \$16,000 to \$10,000 with many cases receiving much less than the maximum. Overall cost reduction is estimated at 40% of current costs. Rehabilitation costs for FY03 were \$1.3 million. Projected savings: \$520,000
Utilization Review	Requires the Division of Workers' Compensation to create medical treatment utilization guidelines, which attaches a presumption of correctness. The guidelines/schedule is to be based on evidence-based peer reviewed, nationally recognized standards for medical care. The guidelines are to address frequency of treatment, duration of disability, and appropriateness of treatment procedures. Until created/adopted the guidelines published by the American College of Occupation and Environmental Medicine are presumed correct.	The establishment of utilization review criteria with a presumption of correctness may result in cost avoidance of 5–7% of the remaining physician costs after the impact of other reform elements. Potential savings: \$275,000

ATTACHMENT B

IMPACT UNKNOWN		ESTIMATED SAVINGS TO MTA
Spinal Surgery Second Opinion	Provides for a second opinion procedure where there is an objection to the recommendation for spinal surgery through use of an AME (in represented cases) or a randomly selected physician appointed by Division of Workers' Compensation if the applicant is un-represented. This provision sunsets in 2007.	Unknown
Alternative Dispute Resolution (ADR)	Establishes a new "carve out" program as an alternative to utilization of the Workers' Compensation Appeals Board hearing process for any industry, but only with a one- year window. The ADR can only be initiated by a contract group via petitioning the Division of Workers' Compensation. Provides that carve-out agreements between an employer and contract group cannot preclude an employee from a right to a lawyer.	Unknown
Treating Physician Presumption	Repeals the treating physician's presumption of correctness for medical treatment on all cases, regardless of the date of injury, except in cases where the employee has pre-designated a medical provider.	Unknown
Diagnostic Facilities and Medical Imaging Centers	Provides for negotiated rates outside the medical fee schedule for diagnostic facility and medical imaging center services.	The Workers' Compensation Division currently utilizes the services of preferred provider diagnostic and medical imaging centers with set negotiated reduced fees. It is not expected that this item will change costs significantly.

ATTACHMENT C

POTENTIAL COST INCREASES		ESTIMATED COST TO MTA
Lien Filing Fee	Requires medical providers to pay a \$100 fee when they file a lien with the Workers' Compensation Appeals Board. Requires the employer to reimburse the medical provider the \$100 fee if a ruling favors the medical provider.	It has been an administrative practice to timely and accurately process invoices. The numbers of invoices that result in a lien are minor.
User Fees	Increases employer user fees from 20% to 100% of the State costs for administering the Workers' Compensation Program.	The MTA user fee based upon the State's formula for charging employers 20% of the State's cost in 2002 was \$119,260.14. The MTA projected obligation for the State 2003 invoice cycle is \$596,300.00.
Workers' Compensation State Personnel and Program Expansion	Specifies that State funded Workers' Compensation positions are exempt from hiring freezes or staff cut backs. Further, it provides for funding to reach adequate staffing levels.	The cost associated with reaching undetermined staffing level additions will be a component of the user fee formula.
Medical Invoice Processing	Mandates employers to accept electronic billing by January 1, 2006 and establishes a 15-day time limit for payment if the invoice is submitted with proper documentation.	Future costs will be related to information system program development and staffing requirements.
Workers' Compensation Claim Adjusters	Requires the Insurance Commissioner to adopt minimum standards of training, experience, and skill for Workers' Compensation claim adjusters and certification standards for claim operations.	Ultimately, this may cause an increase in the cost of claims administration by requiring employers to provide on-going internal/external specialized training but should be offset by the value of a higher quality of service.
California Insurance Guarantee Association (CIGA)	Provides authority to the CIGA to issue \$1.5 billion in bonding capacity to meet its under-funded and future obligations.	Projected cost to be allocated to system users on a pro-rated formula yet to be developed.

ATTACHMENT D

ITEMS WITH NO ANTICIPATED IMPACT		
Asbestos Related	Applies the current statute of limitations covering asbestos workers who die of asbestosis to fire fighters.	Not applicable to MTA
Insurance Rate Website	Requires the Workers' Compensation Division to create a website for posting insurance rates to encourage competitive shopping on/or before July 1, 2004.	Not applicable to MTA
Insurance Rates	Requires a feasibility study on the reinstating minimum insurance rates for Workers' Compensation policies.	Not applicable to MTA
Employment Development Department	Adds the Employment Development Department to the list of agencies that have access to Workers' Compensation information for purposes of detecting fraud.	Not applicable to MTA
Injury Prevention Programs	Mandates that every employer shall perform a review of their injury prevention program within 4 months of initiation of the policy and the requirement to issue a written report to the State.	The MTA has an industry best standard practice Safety Prevention Program that can produce the required State mandated report.
Vaccinations	Requires that any reaction to a vaccination administered at the request of the employer that results in an injury, disability or death shall be covered as an industrial injury.	The MTA does not mandate specific vaccinations.
Fraud Notice	Mandates a self-insured employer to provide a specified notice relating to fraud on each check issued for temporary disability.	This mandate was implemented by the MTA in FY02.
Fraud	The fine for Workers' Compensation fraud is increased from \$50,000 to \$150,000.	This mandate does not impact the MTA.