back to article

GoUpstate.com

Printed on page A11

Workers' comp: Insurance industry, not law, dupes our workers, employers

PATRICK KNIE
For the Herald-Journal

Published: Sunday, April 1, 2007 at 3:15 a.m.

A bill is currently before the S.C. Legislature that would significantly change South Carolina's workers' compensation law. The bill proposes to strip injured workers of privacy relating to their medical records. It also proposes to restrict awards of compensation to "medical impairment" ratings provided by physicians.

Another aspect of the bill is that it attacks and erodes the rule that provides that a worker who suffers a 50 percent or more loss of use of his back is permanently disabled. Finally, the bill attempts to eliminate the second-injury fund that protects employers and military veterans as well as older and previously injured workers.

The insurance industry has claimed that the cost of providing insurance for South Carolina's workers has increased dramatically. These insurance companies claim that attorneys are responsible for the increases and that premium increases cost jobs in South Carolina.

The insurance industry has been unable to explain how lawyers are responsible for such increases when fewer than 8 percent of claims filed involve attorneys. Attorneys only get involved when insurance companies ignore claims, deny medical treatment and/or refuse to pay weekly compensation benefits.

Insurance companies control which doctors treat injured workers and how much treatment to which the workers are entitled. More and more insurance companies are hiring out-of-state adjusters who are unfamiliar with South Carolina workers' compensation law. Since insurance companies control more than 92 percent of claims, they have no one to blame but themselves for rising costs.

Much of the rising cost is dictated by something called the "loss cost multiplier." It is the formula used by the insurance industry to justify rate increases. It is made

up of administrative costs, assessments and profits.

In the year 2000, the average loss cost multiplier in South Carolina was 28 percent. By 2004, the average loss cost multiplier in South Carolina was 67 percent, an increase of 139 percent. The insurance industry has been unable to explain this dramatic cost increase, however, it is clear that their profits have significantly increased.

When changes in the current workers' compensation laws were first proposed, many employers joined ranks with the insurance companies in support of the changes. Most of these employers have now learned about the loss cost multiplier and realize it is the insurance companies that have been duping the employers, workers and citizens of this state.

Among the many proposed changes is one that would allow insurance adjusters to obtain private medical records of a worker and discuss a worker's private medical records without permission from the patient. By statute, insurance companies have always had a right to obtain medical records relating to an on-the-job injury. All they have to do is to ask or obtain them by subpoena. This method prevents insurance companies from obtaining irrelevant and personal medical information about a patient. Injured workers deserve the same rights to privacy as any other patient. These rights are protected under the Federal HIPAA law.

These same insurance companies do not determine the extent of a person's physical disability. The loss of a finger may cause little, if any, disability to a banker or truck driver, but it may be disabling to a typist, musician or surgeon. As a matter of fact, the American Medical Association's impairment guide says in bold letters: "It must be emphasized and clearly understood that impairment percentages derived according to these guides to the guide's criteria should not be used to make direct awards or estimates of disabilities." The proposed bill attempts to use the AMA guides in a manner not intended and expressly prohibited by the AMA.

Workers' compensation benefits are already capped by statute. An injured worker only receives two-thirds of his paycheck as a weekly benefit. No compensation is paid for pain and suffering. A minimum wage worker who loses a leg is only entitled to 195 weeks of compensation, or about $26,000, even though he can never work again. Insurance companies want to further limit awards to a medical impairment rating that is not intended to and does not measure disability.

The insurance industry wants to eliminate or severely limit the operation of the second-injury fund. It protects employers so that employers will be encouraged to hire older workers and workers with pre-existing medical conditions.

The fund reimburses insurance companies for the increased costs in these claims. This reduces premiums for employers who hire and retain older and previously injured workers. Employers benefit by being able to hire these experienced and

valuable workers who remain productive and taxpaying citizens.

Even the best and safest employer, especially a small business, can experience a serious claim that will dramatically increase its premiums. For example, a worker with diabetes who suffers a serious leg injury is more likely to lose his leg. The second-injury fund spreads the risk of these claims and thereby reduces the risk of increased premiums for a single employer. More than 23,000 veterans have returned from Iraq with injuries. This fund makes these veterans much more employable, and they deserve our help.

South Carolina's workers' compensation laws are far from perfect. In truth, workers need a greater entitlement to benefits than is currently provided. The benefits they receive are marginal at best, and the legislature should not erode what benefits exist.

The S.C. Workers' Compensation Commission, while understaffed and under-budgeted, does a remarkable job in handling claims. Years ago, it would take a year or more to obtain a hearing on a claim. Currently, the average time it takes to get a hearing from the date requested is fewer than four months, and the average time it takes to get a review hearing of a decision is fewer than three months.

In 2004, there were 262 appeals from the commission to the Circuit Court. This means that out of all the claims filed, only .002 percent of the injured workers, employers and insurance carriers were dissatisfied with the commission's review process. This statistic alone clearly points out that the insurance industry is not dissatisfied with the current law, however, because of greed, it wants even greater profits.

The legislature needs to stand up to these insurance companies on behalf of South Carolina's employees and employers.

Pat Knie, a Spartanburg

attorney, serves on the board

of governors for the

S.C. Trial Lawyers Association.

This story appeared in print on page A11