

FROM THE FLOOR

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Nurses and Workers' Comp Reform

Understanding the implications of SB 863

Nurses are no strangers to work-related injury. It has often been reported that nurses face a greater risk of on-the-job injury than workers in many other professions simply because of the nature of the work. Nurses, of course also play an important role in the treatment of work-related injuries.

Both of those reasons make it imperative for California nurses to stay abreast of changes in our state's wonderfully Byzantine worker's compensation system — including recent efforts to reform that system

The Birth of the Program

As most of us know, worker's compen-

sation is an insurance program funded by workers and their employers that provides medical care, rehabilitation and financial compensation to those who are hurt as a result of their work.

Worker's compensation dates back

to the early 20th century, an era when workplace injuries were frequent. To help ensure that employees received fair reparations for their on-the-job injuries and shield employers from

expensive lawsuits, various states instituted worker's compensation laws.

California's Approach

California was the first state in the nation to adopt such a system, begin-

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ning with the passage of the Compensation Act of 1911, also called the Roseberry Act. The Roseberry Act was voluntary, but the Workers' Compensation, Insurance and Safety Act of 1913 (also known as the Boynton Act) made worker's compensation insurance compulsory in California. The Boynton Act also called for the establishment of a competitive state insurance fund, which remains the foundation for workers' compensation in California today.

Issues like inflation, medical cost increases and fraudulent claims have often led to cries for worker's compensation reform. In the 100 years since worker's compensation was born, the Legislature has made numerous attempts to reform the system, many of them unsuccessful.

Schwarzenegger and SB899

One of the few successful (or unsuccessful, depending on your point of view) reform attempts was the enactment in April 2004 of SB 899. That bill, which had been championed by Governor Schwarzenegger, required injured workers to obtain medical



treatment from a list of employer-approved doctors, limited temporary disability payments to two years and increased the eligibility requirements for permanent disability. The new legislation was roundly criticized by labor and attorney groups for not regulating insurance rates (something Schwarzenegger had opposed) and limiting injured workers' right to choose their own doctors.

Jerry Brown and SB863

Another controversial reform attempt, SB 863, passed both houses of the Legislature at the end of August and was signed into law by Governor Brown on September 19. Even its development was controversial: First introduced in the Assembly in February 2011, SB 863 was heavily revised earlier this year through a process known as "gut and amend," where a bill that has already passed numerous committee reviews is stripped of its existing language and rewritten, much like the way a virus inserts its own DNA and RNA into a host cell.

The gut-and-amend process allows a bill to sidestep the normal legislative vetting process, often denying the public the opportunity to weigh in on the changes. In this case, the revised bill went from a private committee meeting to the floor of both houses in a matter of days and passed at the 11th hour, thanks to the enthusiastic lobbying efforts of the governor and his dog, Sutter.

Pros and Cons of the New Law

SB 863 makes numerous changes to the state's existing worker's compensation laws. On one hand, injured and disabled workers' benefits will be increased up to 30 percent, while workers on permanent disability will receive benefit payments more quickly. Dispute

resolution will also be expedited.

On the other hand, opponents of the bill charge that the new dispute resolution program does not allow fair appeals to denial of treatment. Critics

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are also unhappy about the new law's elimination of the Diminished Future Earning Capacity standard for determining disability ratings and removal of consideration of factors like stress and sleep disorders. Opponents also believe that SB 863 does not reflect recent court rulings on worker's compensation, such as *Wanda Ogilvie vs. City and County of San Francisco*.

Like SB 899, SB 863 will probably spend many years winding its way through the courts, where judges will determine the legality of many of its key provisions.

How You May Be Impacted

So, why in the world should nurses be concerned about this latest salvo in the worker's compensation reform battle?

1. Medical Provider Network

This legislation may have a significant effect on the practice of healthcare providers in the worker's compensa-

tion field. For one, SB 863 explicitly states that employers are not liable for the costs of any treatment an employee receives outside the employer-specified medical provider network (MPN). Therefore, if the provider you work for doesn't follow the new rules, the doctor or facility may end up eating the costs of such treatments, which is sure to have a big impact on the bottom line.

2. Physician Referrals

The new legislation also prohibits anyone but a doctor from recommending home health-care, which means some nurses may find their duties curtailed.

3. Medical Access Assistants

SB 863 also imposes new requirements for worker's compensation providers who are part of a medical provider network. Starting Jan. 1, 2014, every MPN will have to provide one or more medical access assistants, who must be available through a toll-free phone number from 7 a.m. to 8 p.m. Monday through Saturday to help workers select an employer-approved provider, schedule appointments and contact doctors. The added costs of those requirements may push some doctors out of MPNs, leaving an ever-shrinking pool of providers available to treat injured workers.

Even if you are not involved directly with workers' compensation, at one time or another you will encounter a patient or fellow nurse who has sustained a workplace injury, so it is important to stay informed. **WN**



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