

# Senator Charles Poochigian



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## **Implementation of Workers` Compensation Reform In the Works Savings Resulting from Just-Signed Overhaul to Materialize Over Time**

*For Immediate Release*

*"The workers' compensation overhaul of 2004 was a victory for employers and employees across California, and should expedite savings generated from the reforms by months compared to an uncertain ballot initiative campaign. It will take time for the new law to be implemented, as regulations are drawn and put into practice, but I am confident that the administration is committed to ensuring that our efforts produce substantial cost savings." - Senator Chuck Poochigian*

Senate Bill 899 (Poochigian) was signed into law on Monday, April 19, 2004. Since SB 899 represents a fundamental change to many aspects of the existing workers' compensation system, it will take time to implement, but the process of drafting new regulations is underway. The savings associated with these reforms will take some time to realize. However, as reforms are implemented, the savings from SB 899 are expected to grow substantially over time.

### **Projected Rate Relief Timeline**

#### **Insurance Commissioner to Set Advisory Pure Premium Rates**

As authorized by law, the Insurance Commissioner will recommend insurance rates for workers' compensation insurers effective July 1, 2004. Referred to as the advisory pure premium rate, it is generally set twice a year. This rate setting process is advisory only but sets the standard for insurers throughout the system. July's rate setting is expected to reflect the early impacts of Senate Bill 899 as well as the reforms of 2003 contained in Assembly Bill 227 and Senate Bill 228.

On Thursday, April 29, 2004, the California Department of Insurance held its first pure premium advisory hearing for the July rate setting. At that hearing, the Workers' Compensation Insurance Rating Bureau (WCIRB) stated that it needed more time to assess the reform impacts. The Commissioner continued the public hearing to May 13, 2004 to consider the WCIRB's anticipated recommendations. The hearing will be held at 2:00 PM in the Department of Insurance Public Hearing Room, 45 Fremont Street, 22nd Floor, San Francisco, California.

## **When will Savings Be Realized?**

After the Insurance Commissioner issues a pure premium rate, insurers will then file their rates to reflect the anticipated savings. Individual insurers will adjust their rates to reflect their loss ratios and the statutory need to maintain adequate reserves. For insurers such as the State Compensation Insurance Fund which may be under-reserved, rate reductions may be tempered to meet their financial requirements. Assembly Bill 227, which became effective on January 1, 2004, requires the Insurance Commissioner to establish an on-line rate comparison for the top 50 workers' compensation insurers. That information can be accessed at:

<http://www.insurance.ca.gov/docs/FS-WC227.htm>

The impact of rate reductions on individual policyholders will depend on when they last renewed their policies and their own experience rates. For policyholders renewing before July 1, their rate will include the July 2003 rate increase of approximately 10.6% and the January 1, 2004 rate reduction of approximately 2.9%, adjusted for their own experience ratings. For employers renewing after July 1, their rates should reflect both this year's January 1 rate reduction and the July 1 reduction adjusted for their own experience rating.

## **Projected SB 899 Reform Timeline**

The following details the various implementation timelines for the reforms outlined in the bill. This timeline is a projected guideline only and any specific implementation questions should be referred to the Division of Workers' Compensation.

### **REFORMS THAT TAKE EFFECT IMMEDIATELY:**

**Immediate Medical Treatment** - In the past, an employer had 90 days to accept or deny a claim from a worker that he or she was injured on the job, and employees often sought medical care on a lien basis. This sometimes resulted in the worker waiting 90 days for medical treatment. The new law requires employers to provide immediate medical care for any declared work-related injury until the injury is accepted or denied, and places a \$10,000 cap on such medical treatment. (Labor Code 5402 (c))

**Existing Predesignated Personal Physician** - Amendments to the Labor Code eliminate the ability of employees to pre-designate a physician. Employees with pre-designated physicians will be required to see the employer's physician for the first 30 days (90 or 180 days if employer contracts with a health care organization - HCO). Employees will be able to pre-designate a personal physician under the new system after the Department adopts regulations establishing the new system. (Labor Code 4600 (c))

**Standard of Care/Cure or Relieve** - The new law defines the treatment standard of care as the standard adopted by the Administrative Director that incorporates the evidence-based, peer-reviewed, nationally recognized standards of care. Until those standards are developed, the American College of Occupation and Environmental Medicine (ACOEM) guide shall be used. (Labor Code 4600 (b))

**24-Hour Care** - Allows qualifying carve-out programs serving organized labor in construction and other industries to establish a seamless health and disability system. (Labor Code Section 3201.5 and 3201.7)

**Limits the Ability of Workers to Receive More Than 100% Benefit** - Brings rationality to the disability award system so that a worker is less likely to receive multiple disability payments totaling more than 100%. This reform is done by requiring determinations to account for prior illnesses and injuries. (Labor Code 4664)

**Streamlines Dispute Resolution System** - Establishes timelines to ensure that disputes are handled in a more timely manner. Also limits the number of reports that can be presented, to avoid the doctor-shopping aspect that is prevalent in the system today. (Labor Code Section 4060, 4061, 4062.1, 4062.2, 4062.3)

**Ensures That Employers Only Pay For Work-Related Permanent Disability** - Limits employer Permanent Disability (PD) liability to that portion of the injury that is work-related. All prior injuries, illnesses or conditions would have to be apportioned. (Labor Code Section 4663)

**Creates A Two-Tier Permanent Disability Schedule** - Permanent Disability awards will be adjusted to reflect the ability of an employee to return to work and return-to-work offers by their employers. Employees who are not able to work or not offered employment will have their payment increased by 15%. Employees with return-to-work offers will have their payment reduced by 15%. Small employers are exempt from this provision in recognition of their limited flexibility.

**Effective Date:** Applies immediately to all injuries except those that have a comprehensive medical-legal report or a report by a treating physician indicating the existence of PD, or when the employer notifies the employee of the amount of permanent disability indemnity determined by the employer to be payable pursuant to Labor Code Section 4061. (Labor Code Section 4658 (d) (2) (3))

**Temporary Disability Reform** - Limits costly temporary disability payments to two years, with some exceptions, at which time the employee would start receiving permanent disability payments.

**Effective Date:** For injuries on or after April 19, 2004. (Labor Code Section 4656)

**Private Attorney General Cause of Action Clarification** - Last year, former Governor Davis signed into law Senate Bill 796 (Dunn) which created a new cause of action with attendant attorneys' fees. The final proposal clarifies that SB 796 is not applicable to workers' compensation actions. (Labor Code Section 2699 (k))

**REFORMS REQUIRING REGULATIONS OR IMPLEMENTATION DATES IN THE FUTURE:**

**Creation of Employer Doctor Pools** - Creates a program which provides employee doctor choice from a qualified pool of doctors under contract with the employer or insurer. The employee would be allowed to choose the treating physician from a network of doctors. The network must meet certain requirements to ensure adequate and appropriate care (i.e. extensive list, geographic coverage, range of doctors, etc.). Provides flexibility for rural, medically under-served areas to participate. Employers that do not form approved doctor pools are still subject to the same doctor control provisions in existing law. Existing HCOs and Group Health Provider Groups are deemed approved pools as of January 1, 2005.

**Effective Date:** January 1, 2005. Regulations must be drafted by Nov 1, 2004. (Labor Code Section 4616)

**Pre-designated Personal Physician** - If the employer offers group health, SB 899 allows employees to pre-designate their personal physician within the group health network as their workers' compensation doctor. The employee's treatment would be subject to the pre-established group health protocols. Sunsets April 30, 2007. Eliminates the ability for the pre-designation of physicians outside the group health setting. (Labor Code Section 4600 (d))

**Effective Date:** Regulations need to be drafted.

**Second and third opinions** - Within the doctor pools, if the employee is unsatisfied with treatment, the employee may seek a second opinion from another doctor within the employer pool for a given treatment and a third opinion, all of which are subject to ACOEM (treatment protocols). If the employee is still unsatisfied, he or she is eligible for Independent Medical Review (IMR).

**Effective Date:** January 1, 2005. (Labor Code Section 4616.3 (c ))

**Use of AMA Guidelines** - The bill uses nationally recognized American Medical Association guidelines to assure reasonableness and improve consistency of awards. Medical reports will have to use the new guidelines to be considered in the process.

**Effective Date:** Applies to all injuries after April 30, 2004. For claims arising before April 30, 2004, these provisions shall not apply to the determination of permanent disabilities when there has been either a comprehensive medical-legal report or a report by a treating physician indicating the existence of permanent disability, or when the employer notifies the employee of the amount of permanent disability indemnity determined by the employer to be payable pursuant to Labor Code 4061. (Labor Code Section 4660 (4))

**PD Formula Change** - A workers' impairment rating will be modified by a new formula with the aim of promoting uniformity, consistency and objectivity.

**Effective Date:** Regulations to be drafted on or before January 1, 2005 (Labor Code Section 4660 (e)).

**Provides for Additional Funding for the Most Severely Injured** - This proposal will adjust the PD schedule to increase benefits to the most severely injured workers (those with 70% or more PD) by reducing the PD benefits to the least injured (those with 15% or less PD).

**Effective Date:** Applies to injuries occurring on or after the new schedule is adopted by the Administrative Director. (Labor Code Section 4658 (d))

**Funds A Workplace Modification Program For Small Employers** - Targets an existing return-to-work program to employers of 50 or less. This employer-funded program will provide workplace modification grants to aid small employers in getting injured workers back on the job.

**Effective Date:** Needs regulations. (Labor Code Section 139.48)

**5814 Penalty Reform** - Limits 5814 penalties to the late payment itself rather than the entire type of payment. Caps the penalty at \$10,000; currently there is no cap. Provides "right to repair" if the violation was discovered by the employer or insurer (90 day limit) and provides a two-year statute of limitation.

**Effective Date:** June 1, 2004. (Labor Code Section 5814)

**Insurance Rate Study** - California has seen a record number of insurers leave the state or declare bankruptcy. This has limited competition and employer choice. In addition, critics have charged that the insurers may not pass on savings from recent reforms quickly enough. This provision will commission a study of industry rates and the impact of the savings on the market.

**Effective Date:** Report due to the Legislature by January 1, 2006.  
(Labor Code Section 138.65)