

The Chief

Civil Service LEADER

THE CIVIL EMPLOYEES' WEEKLY

\$1.00

FRIDAY,
JUNE 6, 2014

125th YEAR - Vol. CXXV, No. 23

TheChiefLeader.com

NEW YORK, NY

Could Limit Doctors' Discretion Warn Workers' Compensation 'Fix' May Have Unintended Consequences

By SARAH DORSEY

Employee health advocates are opposing a Workers' Compensation bill sponsored by State Sen. Diane Savino and other legislators typically seen as labor-friendly because they say it could delay or block treatments for sick employees and worsen what's already become an administrative nightmare.

The bill, which was sponsored by Democrat Harry Bronson in the Assembly, would expand the types of injuries for which doctors treating hurt workers must follow set treatment guidelines.

No Longer Just a Few

Currently, such protocols exist only for the most common and costly injuries: back, knee, neck and shoulder injuries and carpal tunnel syndrome. The bill would apply similar rules to all conditions, and national guidelines would be used until a state medical committee issues its own.

Ms. Savino, a former union vice president who chairs the Senate Labor Committee, has been considered a defender of injured workers' rights. She has allied with groups like the New York Committee for Occupational Safety & Health in calling for changes to a 2007 Workers' Compensation reform bill that both see as deeply flawed.

"The [current] system does not work," she said in a phone interview last week.

But NYCOSH recently submitted a letter to lawmakers opposing the Savino-sponsored bill, S. 6997 in the Senate and A. 9068 in the Assembly.

"While the intention behind this legislation may be to help injured workers, the actual implementation would



DIANE SAVINO: 'Current system does not work.'



ROBERT GREY: Let doctors exercise judgment.

serve to do just the opposite," NYCOSH Executive Director Charlene Obernauer wrote.

At issue for some is doctor autonomy in making health-care decisions.

'Pre-Deny Other Treatment'

While the guidelines were meant to pre-authorize some common, accepted health-care treatments to speed up care, "they have actually served to pre-deny other treatment," Ms. Obernauer wrote.

"Health-care providers should be able to provide treatment that is unique to each patient, but the guidelines instead require physicians to provide [the] exact treatment" they outline, she continued. "The needs of each patient are effectively ignored, and patients are provided with inferior medical care."

The protocols date back to the 2007 reforms, which aimed to curb rising costs, slash treatment delays, reduce litigation costs and discourage unnecessary treatment.

If an employee injured his back, he might automatically be granted four weeks of physical therapy, then another four if he was responding to treatment. The next step

might be an MRI to diagnose the problem, followed by arthroscopic surgery. As long as the cost remained under \$1,000, the employer's insurance carrier couldn't require that another doctor, known as an independent medical examiner, review the decision and approve it.

In 2010, the state Workers' Compensation Board released its first list of pre-approved procedures, for the back, knees, shoulders and neck. Hundreds of pages detail the acceptable courses of treatment in various scenarios.

Outside-Guidelines Catch

The problem, according to Workers' Compensation attorney Robert Grey, is that the board also required prior approval for any treatment outside the guidelines. So if a doctor felt that the man with the back injury could benefit from a third month of therapy before starting more costly interventions, she'd have to ask for special permission to order it. Before 2010, any treatment under \$1,000 was presumed covered.

"The burden of proof is on

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Workers' Compensation 'Fix' Worry

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the doctor [now]," said Mr. Grey, who chairs the Workers' Compensation Alliance, a group of attorneys representing injured workers that opposes the bill. "So the presumption is that the request will be denied."

"Medical treatment guidelines are not all bad," he later added. "They do expedite some treatment that in the past could suffer from delays. But on balance they are not a positive for injured workers or employers—or, I would argue, the carriers. The cost to the carriers of processing all [the challenges] is probably more than the cost of the treatment they're not paying for."

Mr. Grey noted that providers now submit about 20,000 requests a month to deviate from the guidelines. That's almost 250,000 a year.

"It is an administrative tidal wave," he said.

In Conflict With Law?

He filed suit in 2011 on behalf of a claimant who was injured in a work-related automobile accident. She was denied ongoing acupuncture treatments for continuing pain and her doctor's appeal was denied. Mr. Grey argued that "pre-denying" treatments under \$1,000 that aren't listed in the guidelines conflicts with the 2007 law. An appellate division panel in 2013 ruled against him but the Court of Appeals has agreed to hear the case.

Like NYCOSH officials, Mr. Grey refrained from including the bill's sponsors in his criticism.

"They're usually people who can be counted on to do the right thing by injured workers," he said. "It looks as though the sponsors were misled by someone into thinking this would be a good idea."

Senator Savino said in a May 29 phone interview that she understood why the advocates would be concerned about "legitimizing" the guidelines by expanding them.

"And I hear that," she said. "But what we have here, unfortunately, is that the [Medical] Advisory Committee [of the Workers' Compensation Board] is dragging their feet on creating guidelines for [other] body parts and conditions, and because of that, workers aren't getting access to treatment."

'Scrap the Whole Thing'

She said that until there are protocols telling doctors what they can prescribe for, say, a foot injury, patients who could benefit from the standard treatment likely to be approved are left having to ask special permission for each new step toward their recovery. It delays their care, and with it, their recovery.



MARIO CILENTO: Need to kick-start process.

"I would like to scrap the whole thing, and if they want to have that discussion, let's do that," Ms. Savino said of the 2007 reforms, which have been "counterproductive in almost every area."

But among her fellow lawmakers, "No one else wants to tackle that."

"I understand the objections of the Workers' Compensation Alliance and the trial lawyers," she added. "But give me an alternative that we can pursue."

Not all labor groups are opposed to the treatment guidelines. New York State AFL-CIO President Mario Cilento called for their quick roll-out, though he was concerned about how they'd be decided. Ms. Savino's bill would allow national guidelines put in practice by at least five states to be implemented for a two-year period until the state board rules.

'Negotiate At Board'

"The best method for the development of treatment guidelines that ensure timely and appropriate care for injured workers is through labor-management negotiation at the Board," Mr. Cilento said in a statement. "Our focus is kick-starting that process, which has already led to agreements on body parts and conditions accounting for 80 percent of costs, and working expeditiously until the job is done."

Mr. Grey echoed the concern that decisions about treatments not be left at the national level, arguing that if Arkansas, Alabama, Mississippi, Kansas and Wyoming adopted a guideline, it might not be right for New York. But his issues with the system run deeper.

"Medicine is not one-size-fits-all," he said. "The reason [doctors] are professionals is so they can exercise their judgment about what's good for an individual patient, and the whole guidelines approach takes that away from them."

He added that the approved treatments are often geared toward getting employees back to work, not making them healthy and relieving pain.

"[Returning to work] is an important component of medical treatment in a Workers' Compensation system, but by no means should be the exclusive goal," he said.

"There are lots of people who can't be rehabilitated to go back to their job [but] medical treatment helps them get by. The medical guidelines treat people like widgets... Can you plug them back into the machine?"

Officer Arrested Over Stolen-Identity Ruse; Betrayed Colleague

By MARK TOOR

A city police officer was arrested May 27 on charges of providing a cooperating witness with stolen identities, including that of a colleague who worked in the same precinct.

John L. Montanez, 28, of The Bronx, was charged with access-device fraud (which includes benefitting from stolen credit cards), mail fraud and aggravated identity theft. If convicted, he faces anywhere from two to 32 years in prison.

'Serious Criminal Conduct'

"These charges evidence not only a significant breach of trust and abuse of authority but also serious criminal conduct on the part of a public servant," said Police Commissioner William J. Bratton. "Corruption undermines the public's confidence in law enforcement, particularly so when a police officer, out of greed, allegedly uses his position of authority not to stop crime, but to help commit more crime," said U.S. Attorney Preet Bharara, whose office filed the criminal complaint against Mr. Montanez.

Prosecutors said a witness who agreed to cooperate after being arrested on another charge told Mr. Montanez in 2011 that he had a suspended and/or revoked driver's license. In response, the prosecutors said, Mr. Montanez offered to provide the witness with the name and driver's license number of a real person, so that if the witness

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PREET BHARARA: 'Undermines public confidence.'