



## ANALYSIS OF PART G OF S.6405/A.9005

**The NYCIRB estimates that Section 6 of Part G of S. 6405/A. 9005, if enacted in its current form, would result in an increase of between 0.2% and 0.8% on system costs. Other sections of part G, however, such as Sections 11 and 24, which cannot be explicitly quantified, may result in long term cost decreases in the workers compensation system that would potentially more than offset the increase mentioned above.**

**The NYCIRB has examined several sections of the Part G of the proposed Budget Bill. Listed below are brief summaries of the analyzed sections, followed by the NYCIRB analysis.**

### **Sections 1-5: Expanding the List of Eligible Providers**

Sections 1-5 of this bill propose to revise the manner by which medical providers are authorized to participate in the workers compensation system. Currently, medical providers are required to go through their respective medical societies in order to apply to be authorized providers in the workers compensation system. Under the proposal, medical providers would be defined to include acupuncturists, chiropractors, independent medical examiners, nurse practitioners, physical therapists, physicians, physicians' assistants, podiatrists, psychologists, and social workers. Such providers would be able to apply directly to the Workers' Compensation Board to be authorized to treat injured workers. The proposed bill would allow certain authorized providers to treat an injured employee with a referral. The bill would also broaden the authority of the chair to remove providers from the authorized provider list.

### **NYCIRB Analysis**

Removing barriers of entry into the workers compensation system may encourage more providers to enter the workers compensation system. This, in turn, may improve access to care, shorten wait time for treatments, and improve outcomes which may, in the long run, lower costs. However, it is unclear that the proposed direct application process may result in more providers in the system, and more access to care. Defined reimbursement rates, as well as administrative work associated with treating injured workers, may still discourage providers from entering the system. In addition, the broader authority of the chair to remove providers may serve as another mitigating factor to the potential increased number of providers in the system and any associated cost savings. Any cost impact that would result from these provisions would be therefore reflected in future loss experience.

### **Section 6: Changing the Basis for Weekly Wages**

Currently, the average weekly wage for purposes of determining the indemnity benefits of an injured employee is generally based on the most recent year of wages earned by the worker. Under Section 6 of the proposed bill, the average weekly wage would be based on the wages that were earned by the employee in the weeks preceding the injury, up to a maximum of 13 weeks.



## **NYCIRB Analysis**

This change will impact the indemnity benefits of workers that (a) have received wage increases within the 12 months prior to the injury, and (b) are not subject to the maximum or minimum benefit levels. For example, suppose that a worker's weekly wage was increased from \$1,000 to \$1,040. 13 weeks after the effective date of the increase, the worker suffers an injury that results in lost time. Under the current system, the average weekly wage for determining the indemnity payment would be based on the worker having earned \$1,000 per week for 75% of the year and \$1,040 per week for the remaining 25% of the year. The average weekly wage would therefore equal  $\$1,000 \times .75 + \$1,040 \times .25$ , or \$1,010. Under the proposed law, the average weekly wage would be equal to \$1,040. For this particular worker, the indemnity benefits would increase by 2.97%.

To calculate the estimated overall average impact on indemnity benefits, the following base assumptions would be made:

1. All injured workers have received a pay raise in the past 12 months.
2. The average of these pay raises is 2.2%.
3. Both pay raises and injuries are evenly distributed during the year.
4. The impact of employee bonuses was not taken into account. This type of employee compensation can potentially offset some of the estimated impact of this bill, if employees are injured more than three months after the bonus payment.
5. Based on a wage distribution table, about 11% of workers would not be impacted by this change, since they would be receiving either the minimum or maximum benefit level. An additional 1% of workers would receive a partial impact from this change, since their pay raises would bring them above the threshold for receiving minimum or maximum benefits.

The following alternative assumptions were also examined:

1. 25-50% of injured workers have not received a raise in the past 12 months.
2. Average pay raises are 3.5%.

Using the base set of assumptions, we estimated that there would be a 0.8% increase in indemnity costs, and a 0.5% increase in total loss costs. Alternative assumptions would result in a 0.4-1.2% increase in indemnity costs, and a 0.2-0.8% increase in total costs.

## **Section 11: Aggregate Trust Fund**

The Aggregate Trust Fund (ATF) was created in order to provide financial protection to severely injured workers and survivors of workers who were killed on the job from insurance company insolvencies. This was done by ordering carriers to make the full actuarial present value of fatal and permanent total claims into the Fund. The 2007 reform expanded the mandatory ATF provision to include non-scheduled permanent partial disability claims as well. Section 11 of the proposed budget bill would effectively close the Fund by prohibiting the WCB from directing mandatory deposits into it. The bill emphasizes that orders of payment made prior to the enactment of the bill must be complied with and that non-



compliance may be subject to a penalty of 20% of the ATF deposit amount to injured workers and \$50 to the state. In addition, the bill proposes that, to the extent that the funds in the ATF are insufficient to cover benefits in the future, any additional costs of the Fund would be covered by assessments.

### **NYCIRB Analysis**

When evaluating this bill, several things need to be considered. First, financial protection for injured workers and survivors from carrier insolvencies is provided by the Workers Compensation Security Fund. (It should be noted, though, that it may take some time until recoveries from the Security Fund may be obtained.) In addition, solvency regulation of property/casualty insurance companies has grown significantly stronger since the ATF was established, making the likelihood of insolvency very low.

Although the ATF mandatory deposit provision was expanded in 2007 to include non-scheduled permanent partial claims, actual payment orders into the fund for these claims are believed to have been kept at relatively low levels, which may be due to increased settlement rates. However, the 2007 change may have put upward pressure on costs that partially contributed to worsening experience and the need for loss cost increases. In the pricing of the 2007 reform, no explicit impact was included to reflect the expansion of the Fund. We propose, therefore, that with the closing of the Fund, no explicit cost impact should be included in the derivation of loss costs. We note, though, that the elimination of the ATF is likely to result in overall net savings in employers' costs. However, due to the minimal information to support quantification of this change, any such savings will flow through future experience and be reflected in future loss cost filings. Note that the State Insurance Fund (SIF), representing approximately 46% of the insured market, is not subject to this provision of the Workers' Compensation Law. Any savings that may be generated by this section, will therefore not apply to the 46% of the market insured by the SIF.

### **Section 19: Published list of Employers with High Experience Mods**

Section 19 of the bill proposes that the Department of Labor (DOL) publish a list of employers with a payroll of more than \$800,000 and an experience mod greater than 1.2, which were notified of their required participation in the Mandatory Safety and Loss Prevention Program. Insurers would be required to review such a list prior to insuring any risk. The bill would also require that any surcharge, if applicable, would apply from the date of original notification.

### **NYCIRB Analysis**

Currently, the Rating Board notifies employers that meet the criteria for participation in the program, as well the DOL and the insurer of record. It is possible, therefore, that under the current system, an employer that is cited for the Program would switch carriers, and the new carrier is unaware that this employer is required to participate in the program, and does not follow up accordingly. This provision of the bill would prevent this from happening by requiring the new carrier to examine the list of employers in the program prior to taking on the new risk. Although this section of the bill might serve as an incentive for some employers to provide a safer workplace, any cost impact from this provision would be negligible.

## **Section 22: Board Expenditures and Money Reallocation**

Section 22 of the bill authorizes money to be spent for Board infrastructure and other programs. This section also authorizes the transfer of \$375 million to the State Insurance Fund over a period of 4 years to cover some of their obligations.

### **NYCIRB Analysis**

The impact is mainly on the New York State Assessment. These are authorizations for expenditures by the WCB, which is funded by the assessment on employers. To the extent that these expenditures are above historical WCB expenses, this may put an upward pressure on the assessment rate, which is determined by the WCB.

The section that discusses transfers to the SIF specifies that this expenditure is specifically for section 88-C of the WC Law, which has to do with the SIF's role in insuring state employees. This may be interpreted as an assessment on private employers to fund insurance of state employees.

Starting in 2014, as a result to changes in Section 151 of the law in the 2013 Budget, the assessment process was converted to effectively be a "pass-through," so that the assessments are no longer a part of premiums, and the carriers effectively act in a capacity of collecting the assessments and remitting them to WCB. So, from the perspective of the private insurers and injured workers, this section of the bill should have no cost impact.

## **Section 24: PPO Time Extensions**

Section 24 of the bill would extend the time an employee must choose a medical provider within a Preferred Provider Organization (PPO) from 30 days to 120 days. The time extension would only apply to employees that are not subject to a collective bargaining agreement as of the effective date of the bill.

### **NYCIRB Analysis**

Currently, an employee in New York may select a medical provider who is authorized by the WCB, unless the insurer has contracted with, and the employer has selected to participate in, a PPO. In such cases, the employer/insurer may direct treatment within the PPO network for 30 days, after which the injured employees may choose their own physician.

Based on discussions with several carriers, it appears that PPO participation rates in the state are currently relatively low, despite the potential premium credit that may be obtained if the carrier has made an independent filing for such a discount. The proposal to increase the number of days of care within the PPO network to 120 may provide an additional incentive for employers to participate in the PPO, if the carrier has one.

An increased length of time of employer/insurer-directed care may provide some savings. This is well documented in studies by the Workers Compensation Research Institute (WCRI) that suggest that the



choice of physician by the employer may result in significant savings when compared to the choice of physician by the employee. In New York, however, the proposed change would only apply to employers that are participating in the PPO, and is not a strict change from employee choice to employer choice. Therefore, any savings that may result are expected to be relatively minor, and would flow through future experience.

### **Other Provisions**

The following provisions are also proposed as part of the Budget Bill, but were not specifically analyzed and are not expected to impact loss costs:

1. Imposes penalties on employers and carriers for filing appeals to claims on frivolous grounds.
2. Extends the bonding mechanism for the reopened case fund.
3. Authorizes the WCB to establish a performance standard for insurers or self-insured employers regarding the payment of penalties and assessments.
4. Extends bonding authority to aid solvent group trusts.
5. Establishes a fund for self-insured employers to pool their liabilities.
6. Reduces the number of WCB members from 13 to 7, and authorizes a single board member or employee to conduct appeals.
7. Authorizes the uninsured employers' fund to pay medical expenses for volunteer workers from the World Trade Center clean-up operations that were denied by the U.S. Department of Labor.
8. Allows self-insured municipalities to form group trusts.
9. Establishes financing agreements for the special disability fund and fund for reopened cases.

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