Workers’ Compensation Medical Records Disclosure Act

Summary

Current legislative proposals to protect the privacy of individually identifiable financial and medical information severely restrict, or do not sufficiently address, the rights of employers in workers’ compensation, and other employee entitlement, claim cases. While the cognizant of the overwhelming public demand for medical and financial record protection, there is an inherent need for employers to have access to all relevant information, including medical information, regarding these claims in order to: (1) ensure prompt, and accurate, claims processing procedures; (2) provide safety programs to mitigate recurring injuries that are similar in nature; (3) alleviate the possibility of fraudulent claims; and (4) ensure that they have the ability to prepare an adequate claims defense. Without employer oversight of carriers, and the ability to defend themselves against claims, it is likely that the premium pricing structure will result in increases in the cost of workers’ compensation insurance and other employee entitlements. This bill would allow employer access to all relevant information pertaining only to injuries sustained on the job and would not allow employer access to other non-claims related information.

Both employers who purchase their workers’ compensation insurance from carriers and those who are self-insured need information for auditing or claims-review purposes. Some proposed regulations and legislation prevent this basic information from the medical provider to the carrier, 3rd party administrator, and subsequently to the employer, from occurring. This legislation would also aid in the prevention of claimant fraud, especially “malingering fraud” which occurs when the claimant receives a legitimate injury but continues to collect monies by either falsely reporting the occurrence of another injury, or claiming that the payment for the initial injury has not occurred. Currently, workers’ compensation fraud is the highest in the property/casualty insurance sector, with some studies estimating the fraud level in claims may be as high as twenty-five percent, at an annual cost of over $5 billion dollars.

Model Legislation

Section 1. {Title.} This Act shall be known and may be cited as the Workers’ Compensation Medical Records Disclosure Act.

Section 2. {Definitions} For purposes of this Act, “Relevant medical information” to be disclosed to the employer in a workers’ compensation or employee entitlement claim cases shall be defined as information:

(1) regarding the nature of injury for which a benefit is claimed;

(2) pertaining to diagnosis, costs, and the nature of treatment of the injury which benefits are claimed;

(3) regarding the injury for which a benefit is claimed that is necessary for the employer to have in order to modify the employee’s work duties, to make other reasonable accommodations for the employee’s return to work, to institute hazard prevention programs, and to evaluate the employee’s eligibility for other employee benefits.

(4) that is necessary for the employer to defend itself in adjudicated cases.

Section 3. Employers shall be allowed access to all relevant medical information, without the express authorization or consent, of the employee in all cases in which an employee files a claim under employer provided workers’ compensation insurance or any other employer provided entitlement. The insurance carriers or administrator shall provide and discuss relevant documents of the claim file that shall affect the employer’s premium with the employer, and shall supply copies of the documents that affect the premium.

Section 4. The right of employers provided in this Act shall not extend to medical information that is not directly related to employee workers’ compensation or other employee entitlement claim cases.

Section 5. Nothing in this act shall allow employers to disclose to any other persons or entities any of the relevant information that has been disclosed to the employer under the provision of Section 3, without the consent of the injured employee who has filed the workers’ compensation or other employee benefit claim.
Center for Media and Democracy's quick summary

This bill extends the "rights of employers" in worker's compensation cases. In particular, it allows employers access to the employee's personal medical records, even without the consent of the employee, raising concerns for medical privacy.