

## Legislative Change Post-Gubernatorial Illinois Election in 2018: Medical Providers are Granted the Option to Enforce the 1% Monthly Interest Payments in Circuit Court

Background on Senate Bill 0904

Just a few weeks after the November 2018 gubernatorial Illinois election, one of Governor Rauner's vetoes came under review by the 100th General Assembly. Specifically, Governor Rauner had vetoed Senate Bill 0904 on August 28, 2018,<sup>1</sup> whereby medical providers would be given a private cause of action to enforce payment of interest charges on unpaid medical bills in workers' compensation claims.

When Governor Rauner vetoed and sent back Senate Bill 0904, he had some suggestions to improve the bill including: "permitting a medical provider to file a petition with the Commission to determine if interest is owed on an undisputed medical bill (rather than permitting a medical provider to file suit against an employer or insurer for interest payments)."<sup>2</sup>

However, by November 27, 2018, both the House and the Senate had overridden Governor Rauner's veto and passed Senate Bill 0904, signing it into law as Public Act 100-1117. The change noted above and suggested by Governor Rauner was not incorporated into the new law.

Here is a look at the 1% monthly interest provision of new Section 8.2(d) and how it might affect employers and their workers' compensation insurers.

### The Effect on Employers and Insurers of the Amended 1% Interest Provision of Section 8.2(d) of the Illinois Workers' Compensation Statute

#### A. Payment of medical bill will go directly to the provider or the provider's designated third-party billing entity.

Section 8.2(d) (emphasis added):

"When a patient notifies a provider that the treatment, procedure, or service being sought is for a work-related illness or injury and furnishes the provider the name and address of the responsible employer, the provider shall bill the employer or its designee directly. The employer or its designee shall make payment for treatment in accordance with the provisions of this Section **directly to the provider**, except that, if a provider has designated a third-party billing entity to bill on its behalf, payment **shall be made directly to the billing entity**. Providers shall submit bills and records in accordance with the provisions of this Section."<sup>3</sup>

#### B. Payment shall be made within 30 days of receipt of the medical bills.

820 ILCS 305/8.2 (d)(1)<sup>4</sup> (Emphasis added)

All payments to providers for treatment provided pursuant to this Act shall be made within 30 days of receipt of the bills as long as the bill claim contains substantially all the required data elements necessary to adjudicate the bill.

#### C. Explanation of Benefits (EOB): The Employer must provide a written EOB:

820 ILCS 305/8.2 (d)(2)<sup>5</sup> (Emphasis added)

"If the bill does not contain substantially all the required data elements necessary to adjudicate the bill, **or the claim is denied for any other reason**, in whole or in part, the employer or insurer shall provide written notification to the provider in the form of an **explanation of benefits** explaining the basis for the denial and describing any additional necessary data elements within 30 days of receipt of the bill."

1 <http://www.ilga.gov/legislation/billstatus.asp?DocNum=0904&GAID=14&GA=100&DocTypeID=SB&LegID=103034&SessionID=91&SpecSess>

2 *Id.*

3 <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=100-1117>

4 *Id.*

5 *Id.*

**D. 1% Monthly Interest Fees will accrue in 3 scenarios:**

820 ILCS 305/8.2 (d)(3)

“In the case

- (i) of nonpayment to a provider within 30 days of receipt of the bill which contained substantially all of the required data elements necessary to adjudicate the bill,
- (ii) of nonpayment to a provider of a portion of such a bill, or
- (iii) where the provider has not been issued an explanation of benefits for a bill,

the [medical] bill, or portion of the bill up to the lesser of the actual charge or the payment level set by the Commission in the fee schedule established in this Section, shall incur interest at a rate of 1% per month payable by the employer to the provider.”<sup>6</sup>

**Note:** Please note the language in (d)(3) is very different than (d)(2) above. The language in (d)(3) makes it clear, that even if the employer has provided an explanation of benefits for a bill (for example, disputed bill on a non-compensable claim) 1% monthly interest may still accrue under section (i) or section (ii) above. Therefore, the section below in (d)(4) may still result in circuit court litigation for interest asserted against disputed medical bills. The employer may still prevail at the circuit level, but the result will be to potentially drive up litigation costs on these disputed bills.

**Note:** It may be up to the courts to make sense of the rather inconsistent language contained between 8.2 (d)(3) and 8.2(d)(4) of the Act.

**E. Due date for Payment of Interest? 30 days after the medical bills is paid.**

820 ILCS 305/8.2 (d)(3)

“Any required interest payments shall be made by the employer or its insurer to the provider not later than 30 days after payment of the bill.”<sup>7</sup>

**F. The Medical Provider can go straight to Circuit Court to enforce payment of the interest, without having to file a petition with the Workers’ Compensation Commission first.**

820 ILCS 305/8.2 (d)(4)

“If the employer or its insurer fails to pay interest required pursuant to this subsection (d), the provider may bring an action in circuit court to enforce the provisions of this subsection (d) against the employer or its insurer responsible for insuring the employer’s liability pursuant to item (3) of subsection (a) of Section 4. [...] The right to interest under this subsection (d) shall not delay, diminish, restrict, or alter in any way the benefits to which the employee or his or her dependents are entitled under this Act.”<sup>8</sup>

**Note:** Please note that there is no procedure in this amended subsection (d) that allows the employer time to litigate disputed bills at the Workers’ Compensation Commission level, before having to defend against the cause of action at the Circuit Court level.

**G. When do these changes go into effect?**

These changes “apply to procedures, treatments, and services rendered on and after” November 27, 2018.<sup>9</sup>

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

**H. Practices to Consider for Employers/Insurers:**

1. Provide a written explanation of benefits (EOB) to the medical provider within 30 days of receipt of any bill.
2. If the claim is accepted/non-disputed, and the provider has given a proper bill with medical records attached and “all the required data elements necessary to adjudicate the bill” then pay the bill promptly or within 30 days.
3. If the bill is disputed, then provide an explanation of benefits within 30 days of receipt of the bill with enough detail to explain your denial, (for example a dated IME, utilization review, etc.). This might keep the medical provider from hiring counsel and incurring litigation costs in circuit court, on a claim the provider might very well lose.
4. In the upcoming days and months, the Illinois Workers’ Compensation Commission is supposed to “adopt rules detailing the requirements for the explanation of benefits required under this subsection.”<sup>10</sup> In the meantime, employers and insurers may consult defense counsel on the language to use on these explanation of benefits, even on non-litigated claims.

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10. *Id.*

Nothing in this update should be construed as legal advice. Please contact our Illinois [Workers’ Compensation](#) department for further discussion and how this will apply to future claims.