

Assembly Bill No. 1687

Passed the Assembly August 30, 2012

Chief Clerk of the Assembly

Passed the Senate August 29, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 138.4 of, and to add Section 4610.2 to, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1687, Fong. Workers' compensation.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law requires every employer to establish a utilization review process, either directly or through its insurer or an entity with which an employer contracts for these services, for the purpose of reviewing and approving, modifying, delaying, or denying treatment recommendations made by physicians with respect to injured workers. Existing law requires that the administrative director, in consultation with the Commission on Health and Safety and Workers' Compensation, prescribe rules and regulations for serving notices that contain specified information on employees.

This bill would add information regarding objections to decisions based on utilization reviews to those prescribed notices.

Under existing law, when a party to a proceeding institutes proceedings to terminate an award made by the Workers' Compensation Appeals Board for continuing medical treatment and is unsuccessful in these proceedings, the appeals board is authorized to award reasonable attorney's fees to an applicant resisting these proceedings.

This bill would authorize the appeals board to award attorney's fees reasonably incurred by an applicant who prevails in a proceeding in connection with the enforcement of a final award of permanent disability following a medical dispute that arises in the course of the utilization review process.

The people of the State of California do enact as follows:

SECTION 1. Section 138.4 of the Labor Code is amended to read:

138.4. (a) For the purpose of this section, “claims administrator” means a self-administered workers’ compensation insurer; or a self-administered self-insured employer; or a self-administered legally uninsured employer; or a self-administered joint powers authority; or a third-party claims administrator for an insurer, a self-insured employer, a legally uninsured employer, or a joint powers authority.

(b) With respect to injuries resulting in lost time beyond the employee’s work shift at the time of injury or medical treatment beyond first aid:

(1) If the claims administrator obtains knowledge that the employer has not provided a claim form or a notice of potential eligibility for benefits to the employee, it shall provide the form and notice to the employee within three working days of its knowledge that the form or notice was not provided.

(2) If the claims administrator cannot determine if the employer has provided a claim form and notice of potential eligibility for benefits to the employee, the claims administrator shall provide the form and notice to the employee within 30 days of the administrator’s date of knowledge of the claim.

(c) The administrative director, in consultation with the Commission on Health and Safety and Workers’ Compensation, shall prescribe reasonable rules and regulations, including notice of the right to consult with an attorney, where appropriate, for serving on the employee (or employee’s dependents, in the case of death), the following:

(1) Notices dealing with the payment, nonpayment, or delay in payment of temporary disability, permanent disability, supplemental job displacement, and death benefits.

(2) Notices of any change in the amount or type of benefits being provided, the termination of benefits, the rejection of any liability for compensation, and an accounting of benefits paid.

(3) Notices of rights to select the primary treating physician, written continuity of care policies, requests for a comprehensive medical evaluation, explanations of the options available to object to a decision made pursuant to the utilization review process, as described in Section 4610, to modify, delay, or deny medical treatment, and offers of regular, modified, or alternative work.

(d) The administrative director, in consultation with the Commission on Health and Safety and Workers’ Compensation,

shall develop, make fully accessible on the department's Internet Web site, and make available at district offices informational material written in plain language that describes the overall workers' compensation claims process, including the rights and obligations of employees and employers at every stage of a claim when a notice is required.

(e) Each notice prescribed by the administrative director shall be written in plain language, shall reference the informational material described in subdivision (d) to enable employees to understand the context of the notices, and shall clearly state the Internet Web site address and contact information that an employee may use to access the informational material.

SEC. 2. Section 4610.2 is added to the Labor Code, to read:

4610.2. If a final award of permanent disability made by the appeals board specifies the provision of future medical treatment and a medical dispute arises in the course of a utilization review conducted pursuant to Section 4610 in connection with the enforcement of this award, and the applicant employs an attorney for purposes of enforcing the award and prevails, the appeals board may award attorney's fees reasonably incurred by the applicant in connection with enforcement of the award.

Approved _____, 2012

Governor