



IMPACT ANALYSIS REPORT

The Impact of Senate Bill 335

A Preliminary Analysis

California Workers' Compensation Institute

MAY 2021



INTRODUCTION

Senate Bill 335 seeks to compress the time for investigating a reported occupational injury or illness from 90 days to 45 days while increasing the employer's liability for medical treatment benefits during the investigation period from \$10,000 to \$17,000. Claims investigation is a complex process requiring documentation from multiple sources, few of which are within the control of the claims adjuster. To estimate SB 335's potential impact, the authors compiled a large dataset of claims with dates of injury between January 2015 and December 2019 with transactional data through June 2020.

The analysis of the data shows that at 90 days following employer notification, more than 97 percent of all reported claims have a compensability decision, but at 45 days, only 85.2 percent of all claims have been accepted or rejected, a relative difference of 13 percent. The analysis also shows that at 45 days, 63 percent of claims that are ultimately denied remain under investigation.

Among the claims that are ultimately denied, 54 percent receive medical treatment within the 90-day investigation period, while 28 percent receive medical treatment within the first 45 days of the investigation. Following the employer's notification of an injury, the average cost of medical treatment reached \$735 at 45 days and \$1,372 at 90 days. In 1.4 percent of these claims the \$10,000 limit is met or exceeded during the 90-day investigation period, while in 0.6 percent of the claims the \$10,000 limit is met or exceeded within 45 days. For claims that are ultimately denied, medical treatment during the 90-day investigation period averaged \$734, with only 1.0 percent of the denied claims involving medical treatment costs greater than \$6,500, and 0.5 percent of the denied claims reaching or exceeding the \$10,000 limit. Decreasing the investigation period to 45 days would actually reduce access to medical treatment and would likely increase the number of provisional denials.

The findings in this report suggest it is unlikely that claims adjusters can unilaterally expedite the investigation process without unintended consequences.

California Workers' Compensation Institute
May 2021



BACKGROUND

Senate Bill 335, introduced by Senator Dave Cortese, seeks to shorten the time for investigating the compensability of all reported occupational injury or illness from 90 days to 45 days, in addition to a reduction from 90 days to 30 days for a subset of presumptive illnesses reported by specified members of law enforcement or specified first responders, and from 45 days to 30 days for COVID-19 outbreak claims. The bill also would increase employers' liability for medical treatment during the investigative period from \$10,000 to \$17,000.

Existing law establishes the timeframes within which an occupational injury must be reported to an employer,¹ as well as the timeframes within which a claims administrator must determine whether to accept or deny liability for a claimed industrial injury.² Existing law further requires that within one day of the filing of a claim form, the employer shall authorize the provision of medical treatment for the alleged injury.³ Existing law further requires that within one day of the filing of the claim form, the employer shall authorize the provision of up to \$10,000 of medical treatment for the alleged injury until such time as liability for the claim is accepted or rejected.

In addition to the timeframes associated with liability determination and medical treatment limits during the investigative period, existing law also sets forth penalties for unreasonable delays or refusals to pay compensation.⁴ Created as urgency legislation in 2004,⁵ current law limits such penalties to 25 percent of the amount of payment delayed with a cap at \$10,000.⁶ SB 335 reverts back to prior law by imposing a penalty of 10 percent of the full amount of the order, decision, or award for a subset of presumptive illnesses reported by specified members of law enforcement or specified first responders,⁷ applicable to the entire specie of benefit for which payment was unreasonably delayed (*e.g.*, all TD, or all PD, or all medical treatment) without limitation.

Claim Investigation

Approximately 86 percent of all reported claims are accepted within the 90-day decision period and benefits are commenced.⁸ Claims that raise issues for which the employer would be entitled to statutory defenses⁹ require the claims administrator to “conduct a reasonable and timely investigation.”¹⁰ Moreover, the claims administrator may not “restrict its investigation to preparing objections or defenses to a claim, but must fully and fairly gather all pertinent information, whether that information requires or excuses benefit payment.”¹¹

¹ Labor Code §5400.

² Labor Code §5402(b).

³ Labor Code §5402(c).

⁴ Labor Code §§5814(a), (b).

⁵ The current version of §5814 was part of the SB 899 reform legislation.

⁶ Labor Code §5814. The section also includes a two-year limitations period, and a “safe harbor” provision for delays discovered and rectified prior to a claim of penalty.

⁷ New Labor Code §5814.3 would apply to injuries or illnesses covered under §§3212 to 3213.2.

⁸ CWCI March 2021 Annual Meeting Research Presentation; see Exhibit 2 of this report.

⁹ Labor Code §3600.

¹⁰ 8 CCR §10109(a).

¹¹ 8 CCR §10109(b).



The investigation must be undertaken in good faith¹² and include the gathering of all information necessary to make an informed decision as to the compensability of the claim. Failure to conduct such an investigation or making hasty, unsubstantiated denials of claims will subject the employer or claims administrator to substantial penalties.¹³

The time it takes to investigate a claim for liability determination varies significantly depending on the type of injury reported, the circumstances causing the injurious event, whether witnesses were present when the injury occurred, and the availability of documentation.

Reporting the Injury and Initiating the 90-Day Decision

There are several distinct components to the investigation process. The following outline itemizes several, but not all, of the required forms and the documentation required to complete a compensability decision.

- A. Filing of claim form (DWC 1) with the employer¹⁴
 - Employee or agent has 30 days from injury to notify employer¹⁵
 - Employer must provide claim form to the employee within one working day of receiving notice or knowledge of injury¹⁶

- B. Investigation activities
 - Initiate three-point contact
 - Interview employee
 - Interview employer and witnesses
 - Contact initial treatment provider for history and work status
 - Gather and compile documents
 - Personnel records
 - Witness statements
 - Medical records and a completed Doctor's First Report of Injury (DWC 5021) report
 - Review Index report¹⁷ to search for relevant prior injuries
 - Panel Qualified Medical Evaluation (PQME) – if a decision delay is related to a medical issue, a comprehensive evaluation will be requested
 - An unrepresented employee has 10 days to request a panel from the DWC
 - Employee deposition may be required (if the injured worker is represented by an attorney)

¹² 8 CCR §10109(e).

¹³ Penalties can be assessed by the DWC Audit and Enforcement Unit (8 CCR §10111.2, et al.), civil penalties (Labor Code §129.5(e)), and Department of Insurance violations (Ins. Code §790.03).

¹⁴ Although Labor Code §§5401(d) and 5402(b) clearly define the filing of the claim form with the employer as beginning the 90-day period in which to deny a claim, the DWC Audit and Enforcement Unit uses the employer's date of knowledge as defined under 8 CCR §9811(b) when assessing audit penalties pursuant to 8 CCR §9812(g) and (i), and 8 CCR §10111.2(b)(20).

¹⁵ Labor Code §5400 establishes a 30-day time limit for notice of injury, but exceptions are made based on when an employee may have reasonably known their injury or disease was occupational in nature. This is particularly relevant for cumulative trauma (CT) claims.

¹⁶ §5401(a).

¹⁷ Most insurers, self-insured employers, and claims administrators subscribe to the Central Index Bureau, a division of the Insurance Services Office (ISO), operative since 1971. Referred to as a CIB, ISO, or Index report, the Central Index Bureau is a repository for all insurer reported claims, including but not limited to bodily and personal injury, motor vehicle accident (MVA), and workers' compensation. Once accessed on an individual workers' compensation claim, an index report will be generated that will provide information pertinent to the injured worker on prior injuries for the purpose of obtaining relevant medical records.



Data and Analysis

To estimate the potential impact of reducing the investigation period as proposed under SB 335 the authors compiled a large dataset of claims¹⁸ with dates of injury between January 2015 and December 2019 and transactional detail through June 2020.¹⁹ There was insufficient detail within the data to separately identify presumptive illnesses reported by first responders.

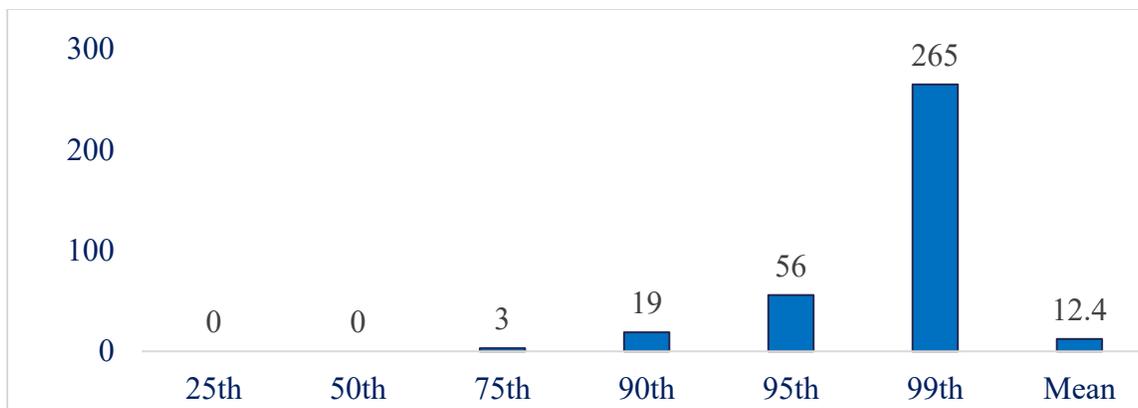
The authors analyzed:

1. The average number of days from the date of injury to employer notification, and the percentage of reported claims with an acceptance or denial decision within 30, 45, and 90 days of the employer’s notification of injury.
2. Medical payments made during the first 45 and 90 days from employer notice and the proportion of claims that meet or exceed the current \$10,000 and the proposed \$17,000 medical treatment limits.

Employer Notification

Claims adjusters can only begin an investigation upon notification of a claimed injury from an injured worker, their employer, or attorney. As stated above, the number of days between the date of injury and the employer’s notification can be influenced by several factors, including the type of injury or illness, employee’s occupation, when and where the injury occurred, and whether or not there were witnesses. One of the more significant confounding factors that can delay timely reporting is California’s relatively unique high rate of cumulative trauma (CT) claims, which are estimated to account for up to one out of every six indemnity claims.²⁰ Exhibit 1 shows the number of days between the reported injury date and the employer’s notification date for all claims by select percentiles.

Exhibit 1. Days from Date of Injury to Employer Notification by Percentile



¹⁸ Claims data was compiled from CWCI’s Industry Research Information System (IRIS v2020Q2) database. The sample contained both insured and self-insured employers.

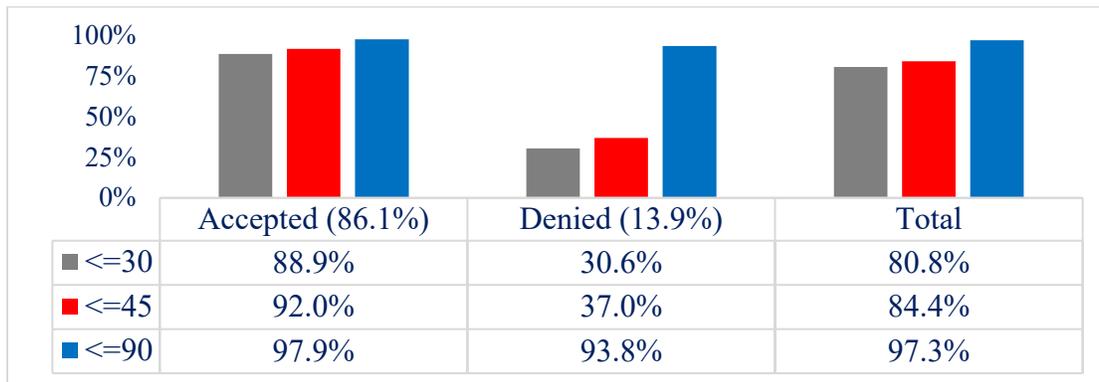
¹⁹ The authors limited the analysis to claims with dates of injury prior to 2020 to avoid including claims during the COVID-19 pandemic.

²⁰ Workers’ Compensation Insurance Rating Bureau of California. *The World of Cumulative Trauma Claims*. October 20, 2018.

The distribution of days to employer notification shows highly skewed values. Half of all claims are reported to the employer on the day of the injury, while the overall average for all claims is 12.4 days. The distribution is highly skewed by a relatively small proportion of claims with protracted delays in employer notification. Examples of such claims that extend the notification values include cumulative trauma injuries, where the average delay in employer notification is 215 days.²¹

Exhibit 2 shows the proportion of claims that are accepted or denied within 30 days, 45 days, and 90 days of the employer’s notice of injury.

Exhibit 2. Percentage of Accepted or Denied Claims by Days from Employer Notice to Decision²²



Overall, about six out of every seven reported claims (86.1 percent) are accepted, while about 1 in 7 (13.9 percent) are denied. At the 90-day mark, 97.3 percent of all reported claims have a compensability decision, but at 45 days – the proposed investigation period under SB 335 – that percentage falls to 84.4 percent, a 13 percent relative decline. The data also shows that more time is spent investigating the 1 in 7 claims that are ultimately denied. While in 93.8 percent of those claims the compensability decision was reached within 90 days, at 45 days, only 37 percent had a compensability determination, so 63 percent were still being investigated and the claimant was still eligible to receive up to \$10,000 in medical treatment benefits.

Medical Treatment Prior to the Determination of Compensability

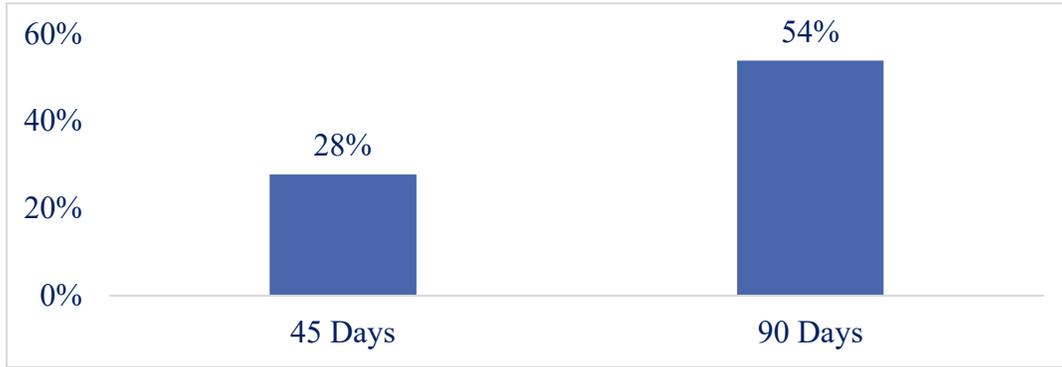
The authors next measured medical benefits paid on reported claims at 45 and 90 days following employer notification, as well as the percentage of claims with \$10,000 or more in payments during those periods. Exhibit 3 shows the proportion of injured workers who received medical treatment within the 45- and 90-day investigation periods.

²¹ Cumulative Trauma in California Workers’ Compensation. CWCI Dec. 2016. (<https://www.cwci.org/document.php?file=3127.pdf>)

²² For denied claims, the date of denial was compared to the employer notice date for all claims with benefit payments. For accepted claims, the first date of payment of TD benefits was used as a proxy for the acceptance date and compared to the employer notice date for all claims with TD benefits. This method was compared with a limited subset of reported claims with acceptance date data and was shown to be comparable. The overall acceptance vs denial rate was based on the denial status as of June 2020 for all claims with benefit payments. The total is a weighted average based on denial status.



Exhibit 3. Percentage of Reported Claims Under Investigation and Ultimately Denied with Medical Treatment



The data show that a material proportion of reported injuries under investigation (yet ultimately denied) received medical treatment. More than half of the reported claims investigated received medical treatment within the 90-day investigation timeframe, while more than one in four received treatment within the 45-day timeframe.

Exhibit 4 provides a detailed look at the amounts paid for medical treatment within 45 days and within 90 days of the employer’s notification of injury.

Exhibit 4. Medical Payments Following Employer Notification

| Percentile | Medical Paid at 45 Days | | | Medical Paid at 90 Days | | |
|--------------------------|-------------------------|---------|---------|-------------------------|---------|----------|
| | Accepted | Denied | Total | Accepted | Denied | Total |
| 25 th | \$222 | \$133 | \$214 | \$318 | \$151 | \$303 |
| 50 th | \$399 | \$223 | \$388 | \$604 | \$324 | \$584 |
| 75 th | \$715 | \$432 | \$702 | \$1,276 | \$774 | \$1,244 |
| 90 th | \$1,251 | \$853 | \$1,234 | \$2,255 | \$1,576 | \$2,215 |
| 95 th | \$1,688 | \$1,232 | \$1,669 | \$3,244 | \$2,353 | \$3,185 |
| 99 th | \$5,581 | \$2,793 | \$5,384 | \$13,954 | \$6,500 | \$13,210 |
| Mean | \$753 | \$434 | \$735 | \$1,420 | \$734 | \$1,372 |
| Pcnt of Claims w >=\$10k | 0.6% | 0.2% | 0.6% | 1.5% | 0.5% | 1.4% |
| Pcnt of Claims w >=\$17k | 0.4% | 0.1% | 0.4% | 0.8% | 0.1% | 0.8% |

Medical payments for reported injuries that received medical treatment averaged \$1,372 within the current 90-day timeframe, with 1.4 percent of the claims meeting or exceeding the \$10,000 limit. At 45 days following employer notification, the average medical treatment payment was \$735, and 0.6 percent of the claims reached or exceeded the \$10,000 limit. There were 0.8 percent and 0.4 percent of the claims that exceeded the proposed \$17,000 within the 90- and 45-day periods, respectively. For claims that were ultimately denied, medical treatment during the 90-day investigation period averaged \$734 with 0.5 percent of the sample reaching or exceeding the \$10,000 limit. At the 99th percentile, only 1 percent of denied claims had medical treatment costs greater than \$6,500.



DISCUSSION

Investigating compensability, required by statute and regulation, depends on a timely and coordinated effort by distinct stakeholders. Benefits can only begin after the claim is reported, investigated, and validated. As noted above, the claim reporting process can be complex. For complicated claims such as injuries with temporary and/or permanent disability, cumulative trauma, or injuries initially reported by an applicant attorney, the claims adjuster's investigation process is dependent on the availability and cooperation of key individuals and access to required documents. It is unlikely that claims adjusters would be able to unilaterally expedite much of the investigation process.

Regarding penalties, SB 335 proposes a return to pre-reform rules that allowed non-discretionary, uncapped, and compounded penalties. Under these rules, penalty amounts were tied to the entire amount of a particular benefit that had been paid out. In mature cases with large medical treatment and/or indemnity costs, 10 percent of the specie of benefit could reach tens of thousands of dollars for a single penalty. In many cases, rather than simply incentivizing prompt payment of benefits by making delays costly, the value of compounded and uncapped penalties resulted in windfalls to employees that were out of proportion to the employer's conduct.²³ SB 899, the 2004 workers' compensation reform act, was intended to rein in the abuses of penalty claims that had plagued the system. The alteration of penalties under SB 335, even for a subset of claims as proposed, would compromise the legislative intent underlying the current penalty structure and return the workers' compensation system to a situation that was once deemed so out of control as to warrant urgency legislation to correct.

SB 335 seeks to expedite investigations by compressing the period used by claims administrators to collect and analyze required documentation from 90 to 45 days, and to 30 days for presumptive injuries for first responders or COVID-19 outbreak claims. The data show that 92 percent of accepted claims are resolved by the 45th day, but these are not the source of friction and significant expense in the California system. Gathering information on the 13.9 percent of claims that are ultimately denied requires the attention, cooperation, and participation of the claimants' employers, physicians, attorneys, and others. Reducing the investigation period to 45 days would significantly shorten the decision-making time for the 63 percent of the claims that are ultimately denied but remain under investigation beyond 45 days.

At 90 days, over half of reported injuries receive medical treatment. SB 335 also seeks to increase maximum medical payments during the investigation period by 70 percent, from \$10,000 to \$17,000. This analysis found that the average payment is \$1,372, well below the \$10,000 threshold, and that only 1.4 percent of reported claims meet or exceed the \$10,000 limit, while 0.8 percent meet or exceed \$17,000 in treatment costs. Claims that were ultimately denied averaged \$734 in treatment costs during the 90-day investigation period, and 0.5 percent of the sample reached or exceeded the \$10,000 limit. At the 99th percentile, 1 percent of denied claims had treatment costs greater than \$6,500.

Reducing the investigation period by half and increasing employers' liability for medical treatment benefits during the investigation period by 70 percent is likely to generate unintended consequences. Decreasing the investigation period to 45 days would actually reduce access to medical treatment and would likely increase the number of provisional denials. Provisional denials due to lack of cooperation or available documentation, the inability to schedule a panel qualified medical evaluator, and other issues will likely trigger more litigation as well as increases in allocated and unallocated loss adjustment

²³ See, e.g., *County of San Luis Obispo v. WCAB (Barnes)* (2001) 92 Cal. App. 4th 869, 878-879, 112 Cal. Rptr. 2d 246, 66 Cal. Comp. Cases 1261 (imposition of penalty "would upset the balance of fairness and result in a windfall to the applicant out of proportion to the employer's conduct").



expenses related to the investigation process. Recent improvements in the overall health of the California workers' compensation system, including declining litigation, flattening medical inflation, and reduced expenses, could be jeopardized.

California Workers' Compensation Institute

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