



ANALYSIS OF VERMONT SENATE BILL 129 *As Amended on March 14, 2013*

NCCI has estimated that the provision of Vermont Senate Bill 129 to increase the amount of time that benefits are paid after a notice of discontinuance has been received by the Commissioner of the Department of Labor (Commissioner) and the employee could result in an increase in Vermont's workers compensation (WC) system costs of 0.4% (\$0.6M)¹ to 1.1% (\$1.7M), if enacted. However, to the extent that proposed discontinuations of benefits are challenged and indemnity benefits continue for longer periods of time than considered in the scenarios below, the ultimate impact on system costs may be more significant. Any additional impact beyond that considered in the above estimate will flow through experience and be reflected in future NCCI loss cost filings.

The other proposed changes not explicitly quantified are anticipated to have only a minimal² impact, if any, on system costs. Altogether, an impact resulting from the enactment of the provisions not explicitly quantified would emerge over time and be reflected in the experience of subsequent filings in Vermont.

Summary of Senate Bill 129

The following provision of Senate Bill 129 is expected to result in an increase to overall Vermont WC system costs:

- Requires an employer to notify the Commissioner and claimant of discontinuance of Temporary Total disability (TTD) or Temporary Partial disability (TPD) benefits at least 21 days before discontinuing payments.

The following provisions of Senate Bill 129 cannot be quantified or are expected to result in a negligible impact on overall system costs:

- If the injured employee's financial recovery is diminished by an inability to collect full value of a claim from a 3rd party, the employer's and/or insurer's lien or

¹ Overall system costs are based on NAIC Annual Statement data as provided by A.M. Best. The estimated dollar impact is the percentage impact(s) displayed multiplied by A.M. Best 2011 written premium of \$152M for Vermont. This figure does not include self-insurance, the policyholder retained portion of deductible policies, or adjustments for subsequent changes in premium levels. The use of premium as the basis for the dollar impact assumes that expenses and other premium adjustments will be affected proportionally to the change in benefit costs. The dollar impact on overall system costs inclusive of self-insurance is estimated to be between \$0.7M and \$1.9M, where data on self-insurance is approximated using the National Academy of Social Insurance's August 2012 publication "Workers' Compensation: Benefits, Coverages, and Costs, 2010"

² Minimal is defined in this context to be an impact on overall system costs of 0.2% or less.

CONTACT: LAURA BACKUS HALL
Telephone: (802) 454-1800
E-mail: Laura_Backus_Hall@ncci.com

Date Prepared: 3/22/2013



ANALYSIS OF VERMONT SENATE BILL 129

As Amended on March 14, 2013

subrogation on the claim shall be diminished in the same proportion as the injured employee's recovery is diminished.

- Deposition expenses, subpoena fees, and expert witness fees are included in the necessary costs of proceedings to be assessed against the employer or WC insurer when the claimant prevails.

Actuarial Analysis

Below is a description of the provision of Senate Bill 129 which is expected to result in an increase to overall Vermont WC system costs:

- **Requires an employer to notify the Commissioner and claimant of discontinuance of TTD or TPD benefits at least 21 days before discontinuing payments.**

Currently in Vermont, except when an injured employee has successfully returned to work, employers must notify both the Commissioner and the claimant when they seek to terminate TTD or TPD benefits. Liability for the TTD or TPD payments continues for seven days after the notice is received. Senate Bill 129 proposes to increase the duration of these payments to at least twenty-one days after the notice is received by the Commissioner and the claimant, resulting in an additional 14 days of indemnity benefits. NCCI expects that this provision would only increase the indemnity benefits for those claims that do not ultimately receive a permanent award, since the law allows for any additional payments made to be deducted from future payments.

NCCI estimates that approximately 30% to 50% of TTD claims (e.g., claims that do not receive a permanent award) per year may be affected by this proposed provision, with each receiving at least 14 additional days of indemnity benefits. The resulting estimated impact is an increase of approximately 3.9% to 7.1% on TTD benefits based on an additional 14 days of benefits.

The employee may subsequently file an objection to the discontinuance with an explanation. Senate Bill 129 allows for the injured employee to request an extension of up to 21 additional days to gather evidence in support of the continuation of benefits. It is unclear if the liability of payments to the employee would continue during the extension.

CONTACT: LAURA BACKUS HALL
Telephone: (802) 454-1800
E-mail: Laura_Backus_Hall@ncci.com

Date Prepared: 3/22/2013



ANALYSIS OF VERMONT SENATE BILL 129 *As Amended on March 14, 2013*

Currently, the Commissioner, after reviewing all evidence in the file and finding that a preponderance of the evidence does not support a proposed discontinuance, may order the continuation of payments until a hearing. While the amount of time that additional benefits may be paid is uncertain, the following scenarios may help illustrate the range of possible cost impacts associated with an increase in the duration of benefit payments. For the following scenarios, NCCI has assumed that one-third of the affected TTD claims assumed above may receive additional benefits while waiting for the Commissioner to determine the outcome of a dispute:

- If benefits continue for an additional 7 days until a decision is made, it would result in an impact of +0.7% to +1.2% on TTD benefits. Combined with the additional 14 days due to the longer notice period, the resulting impact is +4.6% to +8.2% on TTD benefits.
- If benefits continue for an additional 14 days until a decision is made, it would result in an impact of +1.3% to +2.4% on TTD benefits. Combined with the additional 14 days due to the longer notice period, the resulting impact is +5.2% to +9.4% on TTD benefits.
- If benefits continue for an additional 21 days until a decision is made, it would result in an impact of +2.0% to +3.5% on TTD benefits. Combined with the additional 14 days due to the longer notice period, the resulting impact is +5.9% to +10.6% on TTD benefits.

Based on NCCI's Workers Compensation Statistical Plan data for policies with inception dates between July 2007 and June 2009, indemnity benefits for TTD claims comprise 22.9% of total indemnity benefits in Vermont. As a result, the analysis listed above corresponds to an increase in indemnity benefits of between 0.9% (3.9% x 22.9%), if benefits are terminated 21 days after the discontinuance notice, and 2.4% (10.6% x 22.9%), if benefits continue for an additional 21 days, totaling 42 days of benefits after notice. Indemnity benefits are estimated to comprise 45.4% of total benefit costs in Vermont³, so the overall impact on the Vermont WC system would be an increase of 0.4% (0.9% x 45.4%) to 1.1% (2.4% x 45.4%) under the above scenarios.

However, to the extent that proposed discontinuations of benefits are challenged and indemnity benefits continue for longer periods of time than considered in the above scenarios, the ultimate impact on system costs may be more significant. To the extent that there are additional medical visits and treatments during this

³ Based on NCCI Financial Call data for policy years 2008, 2009 and 2010, trended to 07/01/2013.

CONTACT: LAURA BACKUS HALL
Telephone: (802) 454-1800
E-mail: Laura_Backus_Hall@ncci.com

Date Prepared: 3/22/2013



ANALYSIS OF VERMONT SENATE BILL 129 *As Amended on March 14, 2013*

lengthened time period for which an employee is receiving indemnity benefits, there may also be an increase in medical costs. Similarly, if there is increased attorney involvement related to challenges of any proposed discontinuances, there may be an increase in loss adjustment expenses as well.

In our analysis, NCCI has not included any estimate of potential cost impacts to claims involving permanent partial disability (PPD) benefits. Since this proposal would allow for additional days of TTD benefits after the discontinuance notice has been received, it is uncertain if more carriers will exercise the option to offset the those payments against PPD benefits. In the estimate above, NCCI has assumed that any additional TTD benefits received as a result of this provision would be deducted from the PPD benefit. Any additional cost impacts to the Vermont WC system would flow through experience and be reflected in future loss cost filings.

Below is a description of the provisions of Senate Bill 129 which cannot be quantified or are expected to result in a negligible impact on overall system costs. Any system costs resulting from these changes would be reflected in subsequent experience and reflected in future loss cost filings.

- **If the injured employee's financial recovery is diminished by an inability to collect full value of a claim from a 3rd party, the employer's and/or insurer's lien or subrogation on the claim shall be diminished in the same proportion as the injured employee's recovery is diminished.**

In this provision, when 3rd parties are liable for a WC claim, and the full value of the claim is not covered by the 3rd party (low policy limits, etc.), the employer or employer's insurer may be responsible for a larger portion of the WC claim if the amount of their recovery is diminished. This provision is open to interpretation of the full value of the claim and cannot be quantified, but is expected to have a minimal WC cost impact, because claims that involve subrogation represent approximately 2% of lost-time claims in Vermont⁴.

- **Deposition expenses, subpoena fees, and expert witness fees are included in the necessary costs of proceedings to be assessed against the employer or WC insurer when the claimant prevails.**

This section appears to codify current practice. According to stakeholders, prevailing claimants are currently awarded these fees. There are no associated workers compensation cost impacts anticipated from this provision.

⁴ Based on NCCI Workers Compensation Statistical Plan data for policy year 2006.

CONTACT: LAURA BACKUS HALL
Telephone: (802) 454-1800
E-mail: Laura_Backus_Hall@ncci.com

Date Prepared: 3/22/2013