

September 2, 2014

To: Workers' Compensation Advisory Council

Re: Survey of Prompt Payment Laws

From: James Marsh, DLR Division of Labor and Management Director

At the July, 2014 Council meeting, Lt. Governor Michels asked me to put together information about South Dakota's laws requiring prompt payment of medical bills compared to other states. In 2007, The Council recommended legislation requiring benefit payers to pay, deny, or request additional information on a "properly submitted" medical bill within 30 days after receipt. A \$500 fine would be imposed on payers who did not meet the requirement. These proposals became law on July 1, 2008 as SDCL §§62-4-1.1 and -1.2, and DLR was permitted to create a rule establishing the definition of a properly submitted bill (ARSD 47:03:09:01).

As it happened, the Workers' Compensation Research Institute (WCRI), which collects survey data on many topics, had prepared a report called "Workers' Compensation Medical Cost Containment: a National Inventory, 2013." The information below can be found on Table 20 of the WCRI report. Compared to other states, South Dakota's laws fell in the middle of the pack for time allowed for a payer to act, and the punishment imposed for noncompliance. Two states have shorter timeframes, 21 states use a 30-day limit, 10 states use a 45-day limit, 10 use a 60-day limit, and eight have no time limit.

For our surrounding states, Minnesota and Nebraska use 30 days, Montana and Wyoming use 60 days, and Iowa and North Dakota do not have a time limit.

For punishments, the plurality (21) use a percentage of some type. Four states besides South Dakota exclusively use a dollar fine of some kind. Five states either deny the payer the opportunity to contest the amount of the bill through the hearing process, or require the payer to pay the bill without fee schedule reductions (South Dakota's Supreme Court has interpreted SDCL §62-1-1.3 to state a payer cannot apply the fee schedule when it has disputed the general compensability of the claim.) Six states use a combination of two or more of the previous three approaches, and 13 states have no direct penalty at all.

For our surrounding states, Montana fines between \$1,000 and \$2,000, Minnesota uses a combination of interest and a flat penalty of undefined amount, Nebraska denies a hearing on the amount of reimbursement, and Iowa, North Dakota, and Wyoming have no penalty.

Respectfully Submitted,

James Marsh