



Preliminary Cost Impact Analysis

Montana Proposed Statute Section 39-71-125

As Requested on 11/7/2016

NCCI has completed a preliminary cost impact analysis of Montana Proposed Statute Section 39-71-125. This analysis includes a description of the change, an indication as to the possible direction of its cost impact, and identifies potential unintended consequences or other notable items.

The analysis was completed in an expedited manner and is considered preliminary. NCCI may supplement this document with a complete and final analysis of the proposal at a later date. It is possible that the estimated impact of the final analysis will differ materially from what is provided in this document. Note that the absence of an update to the preliminary analysis does not signify that this is NCCI's final assessment of the cost impact of the proposal.

Preliminary Directional Impact

NCCI estimates that Montana Proposed Statute Section 39-71-125, if enacted in its current form, has the ability to lower workers compensation (WC) benefit costs; however, any system costs savings may be mitigated to some extent by an increase in litigation. The magnitude of any potential savings is uncertain as the data needed to estimate the impact of such a change is not available. **Any impact would be expected to be realized in future experience and be reflected in subsequent NCCI loss cost filings in Montana.**

Summary and Comments

Section 39-71-125 is proposed to be added to the Montana WC statutes. The new statute proposes to bar an injured worker from collecting WC benefits if all of the following three events occur:

- The injured worker gave a purposeful false representation of their physical condition prior to employment in an employment application or a questionnaire
- The employer's reliance on the false representation was "a contributing factor in the hiring of the employee"
- There is a "causal connection between the false representation and the injury for which benefits are claimed"

Montana Proposed Statute Section 39-71-125, if enacted in its current form, could result in a certain percentage of injuries being deemed non-compensable under the WC Act and thereby lead to a reduction in WC benefit costs. However, NCCI is unable to estimate the number of claims that may be affected by such a change and the associated cost savings.

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While this proposal has the potential to lower WC benefit costs, any overall system cost savings could be mitigated to some extent by an increase in litigation. Litigation costs would likely increase if employers seek to investigate and dispute potential false representation situations. It is unclear if this potential increase in investigation by employers would be reserved for relatively high cost claims or if it may be more broadly pursued. In addition, litigation costs for defending legal action against employers and insurers for claim denials could increase.

There is no explicit effective date included in the proposal. Per Montana Code Annotated 2015 § 1-2-201, NCCI has assumed an effective date of October 1, 2017 for this analysis.

Other Considerations

- The false statement made by the employee can be either “in an employment application or a questionnaire.” Both of these seem to be written documents; therefore, any false statements made verbally would appear to not preclude the injured worker from collecting benefits in the absence of false statements in either of the mentioned written documents.
- The proposed statute requires that the false representation is regarding “his or her physical condition.” It is unclear if this proposed requirement would also apply to omissions and commissions related to mental conditions.
- The employer must rely upon the false representation and reliance must be “a contributing factor” in the hiring of the employee. It is unclear how “a contributing factor” would be interpreted if a dispute related to this statute were brought before a judge.
- If enacted as currently written, it is unclear if this statute would apply to accidents occurring prior to its effective date.

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