Memorandum in support of the Legislature's rejection of proposals to amend the Workers' Compensation Law

S. 4014/A5977
S. 4554/A6218
S. 4520
S. 4345

March 27, 2017
Injured Workers' Bar Association

The New York Injured Workers' Bar Association OPPOSES the inclusion in the 2017 state budget of the above proposals to reform the Workers' Compensation Law, and SUPPORTS THE LEGISLATURE'S REJECTION of these proposals.

S. 4014/A5977

This proposal would statutorily require the Workers' Compensation Board to adopt impairment guidelines for schedule loss of use awards "substantially similar to those developed and completed by the board on or about January eighth, two thousand sixteen." First, such a legislative mandate is inappropriate as a general matter of law. More important, the argument that the current guidelines lead to improperly high figures because they are tied to antiquated medical concepts is simply false; the vast majority of the impairment guidelines are based upon residual functional capacity and are not dictated by any particular pathology or medical procedure. Improvements in medical technology therefore lead to lower schedule loss numbers based on the very logic and structure of the current guidelines. Finally, this regulation is premised upon new guidelines that few if any interested stakeholders have even seen. Any adoption or publication of new guidelines should be undertaken with the earnest participation of all interested parties.

S. 4554/A6218

This proposal purports to limit lump sum schedule loss of use awards to cases involving an 85 percent or higher impairment rating. However, the language of the bill is open to varying interpretations and given its lack of clarity, it would merely invite a wave of litigation in the compensation forum. Additionally, its central purpose is to further limit the amount of compensation for a permanently disabled worker, which by the nature of New York's system already excludes many forms of recovery that other systems provide (e.g. compensation for pain and suffering, loss of life enjoyment, loss of spousal relations). To leave a permanently disabled worker with neither adequate compensation nor recourse is directly contrary to the humanitarian purpose and legislative intent of the law. In the grand reform bargain of 2007, the central

exchange between labor and industry was an increase in weekly benefit rates and a limit on permanent disability benefits that had previously been payable for life. To now suggest a further limitation on the benefits payable to permanently disabled workers amounts to little more than a bad faith rescission of the 2007 agreement.

S. 4520

This proposal would further limit the benefits payable to permanently disabled workers by beginning the cap on permanent disability benefits on the very date a person is injured, irrespective of how long the medical recovery period may turn out to be. Put another way, this bill gives the carrier a credit against permanent disability benefits for all temporary disability benefits it has previously paid. This would be severely detrimental to injured workers. The impairment guidelines generally suggest a permanent disability rating be implemented between one to two years after an accident, perhaps later if surgery or other corrective care is needed. As such, by the time an injured worker realizes that his or her working life/career has been permanently destroyed due to a work injury, they would have far less time remaining – under this proposal – to retrain and attempt to put their lives back in order. As noted above, the 2007 reforms have already substantially curtailed the amount of benefits available to permanently disabled workers. New York's injured veterans of industry should not now be forced to undergo any additional hardship.

S. 4345

This proposal would require injured workers to remain within preferred medical provider organizations for 120 days, rather than the 30 days previously set forth. This bill is directly contrary to an injured worker's right to choose the medical providers and treatment best suited to them, a fundamental humanitarian aspect of the compensation law. For one, the stark reality is that many physicians do not desire to step into a case four months into a course of treatment, which by operation of this proposal would severely limit if not foreclose any other option a worker may have. Additionally, if a disabled worker is comfortable with their chosen medical providers, as is any patient's right in New York State, the process of recovery will most certainly be hastened, and insurance carriers will save money in the long run.

For the foregoing reasons, the Injured Workers' Bar Association strongly opposes the above proposals and urges the Legislature not to adopt the same in the 2017 state budget.

Respectfully submitted,

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President
Injured Workers' Bar Association