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Regulation of legal costs for work capacity decision reviews - Feedback

Following reading and consideration of the discussion paper titled *Regulation of legal costs for work capacity decision reviews* I provide the following feedback:

Focus Question 1:

No. I do not believe any regulation is required for payment of legal costs with any work capacity decision review types. The review processes currently available for workers is sufficient ie internal review, merit review and WIRO. A solicitor's input is unnecessary and could add further complication.

There should not be a legal focus on work capacity decisions.

Focus Question 2:

No. Refer to answer of Q1.

Focus Question 3:

No.

Focus Question 4:

There should not be any cost involved.

Focus Question 5:

It would be difficult and unbalanced to create a cost structure to influence behaviour from anyone's point of view. Ongoing feedback from Merit Review has been positive in regards to the caliber of the decisions being made by insurers. I am unaware of any feedback to support the requirement of a complex cost structure to somehow directly influence behaviour, such as sound primary decision making. A legal cost structure is not the most appropriate method to punish a poor decision.

I believe most insurers are making sound work capacity decisions based on solid medical and factual evidence.

Focus Question 6:

Each party should bear their own costs, particularly in relation to legal costs associated with reviews. In cases of vexatious or frivolous action only should another party bear the other party's costs.



Focus Question 7:

Any payment system will be taken advantage of. This requirement would add much complexity and further administrative burden on all parties. It is unlikely to be fair and equitable in all matters.

Focus Question 8:

I cannot provide an answer to this question as I do not believe legal costs should be billed, paid and claimed at all for WCD's. In any event, it should not be paid by ILARS.

Focus Question 9:

- I do not believe the implementation of a legal costs structure within the WCD arena is beneficial to the process or to anyone except lawyers.
- WCD's have been conceptually and administratively difficult, despite best intentions and efforts of insurers. This would add another layer of complexity, cost and administrative burden to an already overburdened system.
- More effective assistance in the WCD area would be some sort of facility within Merit Review where an insurer can seek feedback regarding a potential decision before it is made to try to reduce adverse decisions and the damage these cause between the worker and the insurer.
- A cost structure will not provide more positive regulatory outcomes.
- Insurers are looking for simplification of the workers compensation system, not added complexity.
- This is not an area that requires further regulation.
- The opportunity would be for insurers and merit review to work together in the first instance rather than adding a legal layer.

Focus Question 10:

No

Focus Question 11:

The overall requirement is for simplification, not the addition of new and unnecessary regulation, particularly in the legal costs area.

Please do not hesitate to contact me directly on [REDACTED] if required.

Yours faithfully

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Linda Wright
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