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Employers Tentatively Supportive of Cuomo's Reform Ideas: Top [2013-01-15]

By [Greg Jones](#), Western Bureau Chief

Employers say they support New York Gov. Andrew Cuomo's plans for reforming the state's workers' compensation system, but until the governor provides actual details they can't say whether the ideas will reverse a trend that has made the state one of the most expensive in the country for workers' compensation insurance.

Cuomo last week said in his State of the State address that he wants to sell bonds to pay down liabilities on claims from group self-insured trusts that defaulted, streamline the employer assessment process and close unnecessary accounts. Cuomo said the reforms are part of a package that includes changes to the unemployment system and would ultimately save businesses \$1.3 billion.

The only workers' compensation savings the governor mentioned is \$300 million from closing the fund for reopened cases.

The effectiveness and immediacy of the savings from the governor's ideas is impossible to predict until the details are fleshed either by the governor's office or in actual legislation, system observers said on Monday.

Robert Lillpopp, director of communications for the Business Council of the State of New York's research arm, the Public Policy Institute, said he was "encouraged" by the governor's proposal, but also noted that "he wasn't extremely specific in his speech, so we're looking for more details."

Lillpopp said he hopes to continue discussions with the governor's office about reform proposals that the institute published in October, such as updating the guides used for rating scheduled loss-of-use injuries, creating a presumption that injured workers have reached maximum medical improvement two years after the date of an accident and creating an oversight board to review cases in which doctors' services are "outside the normal range of treatment."

The institute also said the rate of assessments levied by the State Workers' Compensation Board to pay system costs are too high. The state imposes an 18.8% assessment on premiums to pay for system costs, an amount that is five times the national average.

Lillpopp said he needs to see more details before he can comment on what the governor's proposal will actually accomplish. More details could be included when the governor introduces a budget later this month, he said.

The governor's office did not respond to repeated calls on Monday asking for more information about his plans for the workers' compensation system. The governor may include reform components in his budget proposal for the 2013-2014 fiscal year, which he is expected to release next week. The executive budget is the only bill the governor is allowed to introduce; all other measures must be introduced by members of the

Legislature or by standing legislative committees.

Paul Jahn, executive director of the Workers' Compensation Policy Institute, said the governor's proposal to "curb the growth of assessments" is a good step toward reducing costs for employers.

Cuomo's State of the State report says he will seek legislation to "combine all of the workers' compensation assessments into one assessment and create a single process for calculating assessments irrespective of how an employer maintains workers' compensation coverage." The report also says "the assessment will be calculated based on the overall anticipated yearly expenses of the workers' compensation system" using an "equitable and transparent formula."

Jahn said the current method of calculating assessments separately for self-insured employers, insured employers and the New York State Insurance Fund is "arcane."

"Introducing uniformity in the process should simplify it and hopefully trim down some administrative costs," he said.

Additionally, the governor's proposal to close the Special Fund for Reopened Cases, should also reduce employer assessments, Jahn said.

The fund was created in 1933 when the Legislature also eliminated the time limit for reclassifying an injury as being worse than originally reported. A 1940 memo prepared for Gov. Herbert Lehman, said eliminating the deadline for reclassifying an injury made it difficult for carriers to establish adequate reserves.

"For that reason, the fund for reopened cases was established," the memo says. "Any person who had his case reclassified after seven years from the original injury would look to the fund instead of the insurer for his compensation."

Jahn said assessment for the reopened case fund is the second-highest of the state's workers' compensation levies on employers. The reopened fund assessment was 4.9% for 2012, second only to the assessment for the Special Disability Fund, which was 9.6% and accounted for more than half of all assessment charges last year, according to an [analysis](#) by the Workers' Compensation Policy Institute.

"So closing down that fund, depending on how it's done, should produce either an immediate or long-term reduction in assessments," he said.

If the reopened case fund is closed in the same way as the Second Injury Fund, it could take years to see savings, Jahn said, but "they will come eventually." The state closed the Second Injury Fund on July 1, 2007, and closed the fund to all new reimbursement claims as of July 1, 2010.

Steve Scotti, special counsel for the New York Self-Insurers Association, said closing the "stale claims fund" shouldn't affect injured workers or providers, because liabilities will shift back to the employer or carrier.

"It's just a question of who should be responsible," he said. "Does it make sense to transfer liability to a special fund that is financed by assessments?"

Scotti said he didn't know there were plans to close the fund and that it is a proposal he needs to scrutinize more carefully before answering whether the move could reduce costs for employers.

He said he is supportive of plans to review and revise the methodology for calculating assessments, which he said is "fundamentally inequitable."

Assessments charged to self-insured employers are based on indemnity expenditures regardless of when they incurred liability, Scotti said. The governor should review the “antiquated” assessment methodology, which hasn’t been changed in decades, and see if it can be made more equitable for all employers, he said.

Scotti said he can’t discuss the governor’s proposal concerning self-insured group trusts until he sees actual legislation.

Cuomo’s State of the State report says selling bonds and using the proceeds to purchase liability policies for claims associated with group trusts that defaulted will enable 10,000 businesses to “reasonably settle” their existing claim liabilities. The state can offer more flexible repayment plans and allow insolvent members of group trusts to settle and release their liability, the governor said.

The proposal “will provide immediate savings to these employers, capping employers’ outstanding liabilities and giving employers an opportunity to resolve their respective obligations,” the governor’s report says.

A June 29, 2012, [report](#) prepared by the State of New York Workers’ Compensation Board says liabilities total \$856.5 million for the 23 group trusts that have become insolvent since 2006.

Scotti said he would like to see some finality brought to the group trust issue and it’s a good thing the governor is exploring ways to do that.

“At this moment, it seems positive in the general sense,” he said. “We have to look at the details. It’s always premature to really give any definitive assessment until you see the language on the page.”