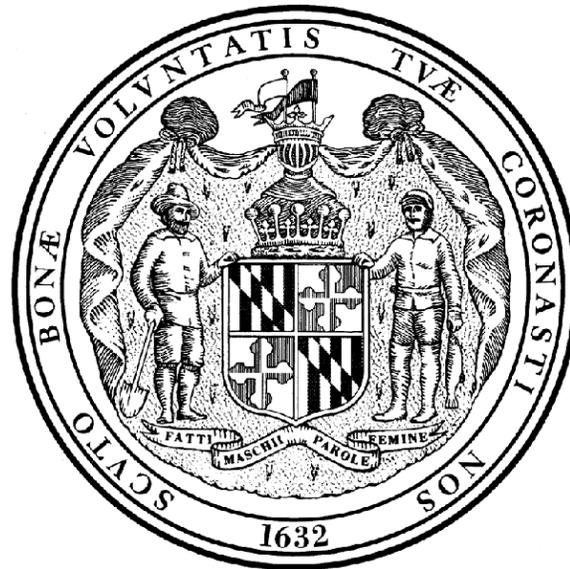


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CHAIRMAN

## **MARYLAND WORKERS' COMPENSATION COMMISSION**



### **REPORT OF THE WORKGROUP TO STUDY DEATH BENEFIT PROVISIONS IN §§ 9-678 THROUGH 9-686 OF THE LABOR AND EMPLOYMENT ARTICLE**

Submitted December 9, 2009

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**REPORT OF THE WORKGROUP TO STUDY  
DEATH BENEFIT PROVISIONS IN §§ 9-678 THROUGH 9-686  
OF THE LABOR AND EMPLOYMENT ARTICLE**

**INTRODUCTION**

The Maryland Workers' Compensation Commission ("WCC") established a workgroup in accordance with House Bill 899 to study the death benefit provisions in §§ 9-678 through 9-686 of the Labor And Employment Article, that the Commission consider alternative measures for providing fair and equitable benefits to wholly dependent individuals and partially dependent individuals.

**WORKGROUP MEMBERS**

The Committee members are:

R. Karl Aumann, Chairman  
Dennis Carroll, Esq. (IWIF)  
Michael Dailey, Esq. (Schmidt, Dailey & O'Neill, LLC)  
Paula Etting, Esq. (Harford County)  
Mark Hackman, Esq. (Constellation Energy)  
Andrew Kahn, Esq. (Kahn, Smith & Collins)  
Heather Kraus, Esq. (Semmes, Bowen & Semmes)  
James Lanier, Esq. (Law Office of Peter T. Nichol)  
Michele McDonald, Assistant Attorney General, WCC  
Maureen Quinn, Commissioner  
Gene Ryan (Fraternal Order of Police)  
Clifford Sobin, Esq., (Berman, Sobin, Gross, Feldman & Darby)  
Barbara Windsor (Hahn Transportation)

Members of the workgroup, comprised of individuals representing the various sectors of the Workers' Compensation community identified in House Bill 899, met throughout the Fall of 2009. Meetings were held at the WCC's offices in Baltimore on September 29, October 14 and 30, November 16 and December 2. The discussions and analysis at these sessions were intense, thoughtful and collegial, all the while focused on the directive given by the General Assembly.

With a strong spirit of compromise, the workgroup extensively reviewed the existing statutes involving dependency issues and agreed to a set of basic principles on which to propose revisions to our current law. These principles help explain the approach and intent of the recommended legislative changes. They also provide a guide to the different components of specific statutory language in the suggested death benefit modifications.

## **BASIC PRINCIPLES**

### **A. In General**

1. One death benefit is paid collectively to all dependents, with the WCC determining the proper apportionment. Collective amount would be highest of the death benefits to be paid (regular or enhanced benefits).

2. Benefits would be based on degree of dependency (% deceased's income was of total income).

3. Dependency fixed at (a) the time of the occurrence of the compensable accidental injury that caused the death or (b) on the date of disablement from the compensable occupational disease that caused the death.

4. After the death, changes in economic circumstances do not affect benefits levels, positively or negatively. The WCC's power to apportion benefits among the dependents would apply to address relative changes in dependent income.

### **B. Spouses**

1. Must have been married to, and dependent upon, deceased covered employee at the time of the injury or disablement.

2. Entitled to enhanced benefits--- 80% of Average Weekly Wage ("AWW"), not to exceed State Average Weekly Wage ("SAWW")---for first 24 months.

3. Entitled to regular benefits ---2/3 of AWW not to exceed SAWW--- for 25<sup>th</sup> month through the 144<sup>th</sup> month, for a total of 12 years of benefits.

4. Benefits are terminated at the earlier of (a) the end of 12 years or (b) what would have been the 70<sup>th</sup> birthday of the deceased, with a 5 year minimum.

5. If a spouse was totally disabled at the time of the covered employee's accident (or disablement) benefits continue beyond 12 years and for the duration of the disability. Lifetime benefits are possible. 70<sup>th</sup> birthday limitation does not apply.

6. Benefits terminate 2 years after remarriage.

7. Spouse entitled to educational benefits of up to \$20,000. These benefits must be used within 12 years and only cover programs approved by the Department of Education and the WCC.

**C. Children**

1. Child must have been dependent upon deceased covered employee at the time of the accident (or disablement). Posthumous children and those born after the disablement are considered dependent.

2. Entitled to enhanced benefits--- 80% or AWW, not to exceed SAWW--- for first 24 months.

3. Entitled to regular benefits--- 2/3 of AWW not to exceed SAWW---until the child is 18 or 22 and enrolled in college, as under current law.

4. If child is totally disabled benefits continue beyond the 18<sup>th</sup> birthday and for the duration of the disability. 70<sup>th</sup> birthday limit does not apply.

**D. Other Dependents**

1. Entitled to regular benefits --- 2/3 of AWW not to exceed SAWW.

2. Not entitled to enhanced benefits.

3. Benefits to dependents who are not spouses or children are collectively subject to the cap (initially \$65,000 but later increased with the SAWW). Once the cap has been collectively paid to the non-spouse, non-child dependents, those dependents do not receive additional benefits. Commission cannot apportion benefits in a way that would circumvent the cap.

## **DEPENDENCY STATUTE REVISIONS**

### **§ 9-679 Determination of Dependency**

Except as otherwise provided in this subtitle, the Commission shall determine all questions of dependency in accordance with the facts of each case that existed:

- (a) At the time of the occurrence of the compensable accidental injury that caused the death of the covered employee;
- (b) On the date of disablement from the compensable occupational disease that caused the death of the covered employee.
- (c) Notwithstanding subsections (a) and (b), a child born after the date of the accidental injury, date of disablement, or death may be considered dependent.

### **§ 9-680 Compensation Prohibited**

The surviving spouse of the deceased covered employee is not entitled to death benefits designated for a spouse if the surviving spouse and the deceased covered employee were not married on the date of the compensable accidental injury or the date of disablement of the compensable occupational disease.

### **§ 9-681 Dependents' Benefits**

- (a) If there are individuals who were dependent on the deceased covered employee at the time of death resulting from a compensable accidental injury or occupational disease, the employer or its insurer shall pay death benefits in accordance with this section.
- (b) (1) Beginning on the date of the covered employee's death and continuing for twenty-four months thereafter, the employer or its insurer shall pay to the dependent spouse, or any dependent child of the deceased covered employee, death benefits equal to eighty percent of the deceased covered employee's average weekly wage at the time of the compensable accidental injury or occupational disease, not to exceed the State average weekly wage. Thereafter, for the remainder of any period of benefit entitlement, the dependent spouse and dependent children shall be paid benefits as otherwise provided in this section.
- (b) (2) Other dependents of the deceased covered employee shall be paid benefits from the date of death in the manner set forth in subsection (c) hereinafter.
- (c) Except as otherwise provided, the employer or its insurer shall pay death benefits to dependents for a period of 144 months in the following manner.

- (1) Death benefits shall be paid at the rate of two-thirds of the employee's average weekly wage, at the time of the compensable accidental injury or occupational disease, not to exceed the State average weekly wage and as further modified by this section.
  - (2) The average weekly wages of all dependents and the deceased covered employee's average weekly wage shall be combined to determine the family income.
  - (3) The deceased covered employee's income shall be divided by the family income to determine the percentage of the family income earned by the deceased covered employee.
  - (4) The percentage of the family income earned by the deceased covered employee shall be multiplied by the death benefit to determine the amount payable, collectively, to all dependents.
  - (5) If the average weekly wage of the deceased covered employee was less than \$100.00 at the time of the compensable accidental injury or date of disablement from a compensable occupational disease, the weekly death benefit paid under this section shall equal the average weekly wage of the deceased covered employee up to \$100.00 per week.
- (d) Death benefits shall be paid for a minimum of five years after the covered employee's death. Death benefits shall terminate on the date that would have been the deceased covered employee's seventieth birthday, provided a minimum of five years of death benefits have been paid, subject to subsections (e), (f), (g), and (h).
  - (e) If a dependent spouse or dependent child is incapable of self-support because of a mental or physical disability that pre-existed the covered employee's death, then the death benefits shall continue, beyond the time limitations set forth in subsections (c) and (d), for the duration of the dependent's disability.
  - (f) If a surviving spouse who is dependent remarries, the employer or its insurer shall make payments to the surviving spouse for no longer than two years after the date of the remarriage.
  - (g) The employer or its insurer shall continue to make payments to, or for the benefit of, a surviving child until the child reaches eighteen years of age.
  - (h) The employer or its insurer shall continue to make payments to, or for the benefit of, a child who is eighteen years old or older for up to five years after reaching the age of eighteen if the child is attending school on a full-time basis and the school offers an educational program or a vocational training program that is accredited or approved by the State Department of Education.

- (i) The Commission has continuing jurisdiction to:
  - (1) Suspend, reallocate, or terminate payments of compensation in accordance with this section;
  - (2) Reinstate payments of compensation that have been suspended or terminated.
  
- (j) All dependents who are neither a dependent spouse or dependent child, shall be entitled to no more than \$65,000 collectively as their portion of the aggregate death benefit payments as defined in subsection (c) hereof. Commencing on January 1, 2011, the aforementioned \$65,000 benefit limit shall be adjusted annually by the same percentage applicable to the adjustment of the State average weekly wage.

§ 9-682 (reserved)

### **§ 9-683 Death Benefits - Apportionment and Payment**

- (a) If there are multiple dependents entitled to death benefits, the Commission may apportion an award of death benefits among the dependents in the manner that the Commission considers just and equitable.
  
- (b)
  - (1) Death benefits shall be paid to any one or more of the dependents of a covered employee who are entitled to death benefits, as determined by the Commission, for the benefit of all of the dependents who are entitled to death benefits.
  
  - (2) A dependent to whom death benefits are paid shall apply the death benefits to the use of all of the dependents who are entitled to death benefits:
    - (i) According to the respective claims of the dependents on the deceased covered employee for support; and
    - (ii) In compliance with the findings and direction of the Commission.

§ 9-684, § 9-685, § 9-686 (Retain with No Amendments)

§ 9-687 (reserved)

§ 9-688 (reserved)

### **§ 9-689 Funeral benefits**

- (a) The employer or its insurer shall pay reasonable funeral expenses of the deceased covered employee, not exceeding \$7,000, if the covered employee died as a result of a compensable accidental injury, within seven years of the compensable accidental injury, or died of a compensable occupational disease.
- (b) Unless approved by the Commission, a bill for funeral expenses of more than \$7,000 is void and uncollectable out of:
  - (1) Workers' compensation benefits paid with respect to the deceased covered employee; or
  - (2) Personal assets of any person to whom workers' compensation benefits are paid with respect to the deceased covered employee.
- (c) If there are no dependents, the employer or its insurer shall pay the expenses of the last sickness and funeral benefits of the covered employee.

### **§ 9-690 Payment of Educational Tuition and Fees**

- (a) The employer or its insurer shall pay the reasonable tuition and fees for the education of the dependent spouse of the deceased covered employee, not to exceed a cumulative total of \$20,000. The Commission must approve any expenditure for tuition and fees under this section prior to payment. The Commission shall continue to supervise the approval of any additional expenditure of tuition and fees after the initial request for payment is approved.
- (b) The school must offer an educational program or a vocational training program that is accredited or approved by the State Department of Education.
- (c) A request for payment of educational tuition and fees must be made within twelve years of the date of death of the deceased covered employee.

The principles and legislative modifications contained in this report were reached through a great deal of hard work and compromise. It is important to note that several members of the workgroup believed two particular segments of the recommendations were beyond the legislative mandate. These two parts are the education benefits provided to a widowed spouse and the enhanced (80% AWW) benefits for the first 24 months for the surviving spouse and/or children.

In accordance with § 2-1246 of the State Government Article, the Maryland Workers' Compensation Commission hereby submits its recommendations and proposed legislation. In doing so, the Commission would like to express its immense gratitude to the members of the workgroup for their countless hours and diligence in producing a balanced, thoughtful proposal.