

REIMBURSING MEDICAL COSTS OF PERSONS INJURED IN PESTICIDE INCIDENTS

January 2005

New rules require violators to pay certain medical costs

Beginning in 2005, if a pesticide use violation causes illness or injury, violators will be legally responsible to pay certain medical costs of victims.

The new requirement was passed and signed into law in 2004 (Senate Bill 391, Florez). The new law squarely places the financial burden to pay for acute medical costs on those businesses that are responsible for the harm. It also increases penalties the Department of Pesticide Regulation (DPR) and the County Agricultural Commissioners (CACs) can impose for pesticide violations.

The law was prompted by several incidents in which large numbers of persons living near agricultural fields were made ill by pesticide drift. Many were without medical insurance, and did not have the means to pay for medical treatment themselves.

WILL THE NEW LAW CHANGE THE ROLE OF PESTICIDE ENFORCEMENT?

No. The CACs enforce pesticide laws locally and are responsible for investigating pesticide illnesses and incidents in their jurisdictions.

After determining whether pesticide laws were violated, a CAC has a variety of enforcement options including administrative civil penalties. The law also increases the level of civil penalty authority for CACs.

The major emphasis of the law involves the responsibility of the violator to pay for medical costs.

Under the new law, if a pesticide use violation causes illness or injury, the penalty action a CAC issues will also include a statement notifying the violator of his or her responsibility to pay the uncompensated medical costs of those who suffered acute illness or injury and sought immediate medical treatment (Section 12997.5[a] [b], Food and Agricultural Code [FAC]).

There is no obligation, expectation or authority for the CAC to oversee the reimbursement process.

The new law places the financial burden to pay for acute medical costs on those that are responsible for the harm when they violate pesticide rules.

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› *After the CAC issues a final enforcement order that includes the statement of a violator’s responsibility for reimbursing victims, what happens next?*

After the final enforcement order is issued, the violator has 30 days to submit a written plan to DPR, detailing how unreimbursed medical costs will be paid (FAC 12997.5[c]).

› *Does the CAC determine what the medical costs are, or who qualifies for reimbursement?*

No. Although the county will probably identify most individuals who were made ill, neither the CAC nor DPR are obligated to determine the amount of uncompensated medical costs, or who qualifies for reimbursement.

The violator is ultimately responsible for covering the costs of those affected.

› *Who gets the reimbursement?*

The violator must compensate the injured individuals or their medical providers, such as ambulance companies, doctors, and hospitals.

› *What if the CAC doesn’t know the names of everyone who was injured? Can people who come forward later have their medical costs reimbursed?*

Determining the scope of the incident and interviewing victims is

part of an investigation. By the time an investigation is complete and an enforcement order issued, the CAC usually has the names of those made ill by the illegal application. The CAC can provide a list to the responsible party as soon as possible.

However, under the law, it is not the responsibility of the CAC to identify all persons entitled to medical reimbursement. If additional individuals who suffered acute illness and sought immediate medical care are identified later, they can contact the violator to claim medical reimbursement.

› *What happens if a violator refuses to reimburse medical costs as required by law?*

Violators who refuse to comply with their legal responsibility are subject to enforcement actions by DPR as needed. Additionally, the violator may be subject to lawsuits by private individuals.

› *Investigations usually take several weeks. What happens to victims in the meantime?*

The new law strongly encourages the CACs to complete investigations of and take appropriate action on these incidents within 45 days, and DPR will assist the counties in this effort (FAC 12997.5 [g]). Violators would not be responsible under the law to pay for medical costs until they have exhausted due process appeal rights.

The law defines *acute* illness or injury as “a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that required prompt medical attention and that has a limited duration.”

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However, the law provides an incentive for persons responsible for the application to pay medical costs **before** an investigation is complete. If the responsible party pays medical costs immediately, the law gives CACs the option of reducing penalties by as much as 50 percent. (FAC 12997.5[g])

However, the amount of a fine reduction does not affect the costs a responsible party must pay in medical expenses.

› *Can victims file a civil suit for damages if they have accepted payment for medical costs?*

Yes. The law says that accepting payment of emergency medical costs does not affect a victim’s right to file suit. However, any damages awarded by a court must be reduced by the amount the victim received in medical reimbursement from the violator. (FAC 12997.5[e])

› *Does the new requirement for medical reimbursement apply in all pesticide incidents in which persons are injured?*

No, it applies only to incidents in which pesticides were used in **production of an agricultural commodity**. Furthermore, the medical payment provisions are limited to persons who at the time of exposure were **not** performing work as an employee.

› *What about employees who suffer injuries or illnesses?*

Under pre-existing law, medical costs of employees are already covered by the workers’ compensation system. These provisions are unaffected by the new law. Workers who are injured follow the same procedure as before: employers are required to see that they get medical treatment immediately, and costs are covered by the workers’ compensation system.

› *The law also increased the maximum penalties. How?*

These provisions of the law are broader than the medical reimbursement requirements. SB 391 authorizes DPR and the CACs to levy a **separate** penalty for **each** person who is injured or made ill by a pesticide violation.

DPR and the CACs had previously been allowed to levy separate penalties only for multiple violations of worker safety regulations—the number of workers injured did not increase the penalty, only the number of code sections violated.

Now, a one person/one violation provision applies to violations involving workers as well as victims in non-occupational settings. DPR and CACs have the authority to multiply the amount of the penalty by the number of victims.

What this means is that DPR and the CACs could levy a penalty of up

Uncompensated medical costs are defined in the law as the cost of care not covered by any other program, such as (but not limited to) medical insurance, the Healthy Families Program, or Medi-Cal. The law specifies that medical expense payments shall not be more than 125% of Medi-Cal reimbursement rates.

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to \$5,000 for each person injured or made ill as a result of a violation of any pesticide law or regulation, significantly increasing the potential penalties. (FAC 12996.5[b])

› *What about people injured in past incidents?*

The new requirements went into effect on January 1, 2005. There are no provisions in the law to apply it retroactively. This means the law was not written to apply to people injured before January 2005.

The new law only applies to incidents that occur *after* January 1, 2005, in which violations occur and there are non-occupational injuries.

› *The law also requires development of better response mechanisms for emergency agencies. How will this work?*

The California Environmental Protection Agency (Cal/EPA) is taking the lead on this element of the law. Over the next year, Cal/EPA will work with the County Agricultural Commissioners, local health officers, other local government agencies, and affected community members on standard protocols”–

standardized operating procedures – for pesticide incidents. The goal will be to improve procedures used to:

- Request and provide access to pesticide-specific information to help emergency responders identify pesticides involved in a drift incident, as well as appropriate treatments.
- Define specific agency responsibilities and the process for responding to calls, notifying residents, and coordinating evacuation, if needed.
- Establish emergency shelters, if needed.
- Access services in languages known to be spoken in the affected area.
- Ensure access to health care within 24 hours of the exposure and up to a week afterwards.
- Notify medical providers regarding their eligibility for reimbursement under the new law.

› *If I have more questions, whom do I ask?*

Contact DPR’s chief legal counsel, Polly Frenkel, 916-324-2666, or via email to pfrenkel@cdpr.ca.gov.

The new requirements went into effect in January 2005. They do not cover persons injured in earlier incidents.

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ABOUT THE DEPARTMENT OF PESTICIDE REGULATION

The California Department of Pesticide Regulation (DPR) protects human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. DPR’s strict oversight includes product evaluation and registration, environmental monitoring, residue testing of fresh produce, and local use enforcement through the county agricultural commissioners. DPR is one of six boards and departments within the California Environmental Protection Agency.

