Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Commerce & Labor Committee

HB 1503

Brief Description: Regarding injured worker medical rights.

Sponsors: Representatives Conway, McCoy, Wood, Campbell, Williams, Green, Kenney, Moeller, Ormsby and Chase.

Brief Summary of Bill

- Establishes requirements related to contact with medical providers after an appeal is filed with the Board of Industrial Insurance Appeals.
- Requires employers to create written reports detailing contact with medical providers.
- Establishes procedures for the Department of Labor and Industries (Department) and self-insured employers to use when ordering a medical examination of an injured worker.
- Specifies criteria for Department rules governing the qualifications of medical examiners and their eligibility for the approved list of medical examiners.

Hearing Date: 2/1/07

Staff: Sarah Beznoska (786-7109).

Background:

Availability of Medical Information

Under the Industrial Insurance Act (Act), providers examining or attending injured workers must make reports requested by the Department of Labor and Industries (Department) or self-insured employer about the condition or treatment of an injured worker or about any other matters concerning an injured worker in their care. All medical information in the possession or control of any person relevant to a particular injury, in the opinion of the Department, and pertaining to any worker whose injury or occupational disease is the basis of an industrial insurance claim, must be made available at any stage of proceedings, upon request, to the employer, the worker's

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representative, and to the Department. The Act states that no person shall incur any legal liability for releasing this medical information.

The Act also provides that in all hearings, actions or proceedings before the Department, the Board of Industrial Insurance Appeals (Board), or before any court on appeal from the Board, providers may be required to testify regarding examination or treatment and are not exempt from testifying based on the doctor-patient relationship.

Medical examinations of injured workers

Injured workers claiming industrial insurance benefits are required to submit to medical examinations when requested by the Department or self-insured employer. These examinations are sometimes referred to as independent medical examinations or "IMEs." These examinations must be conducted at a place reasonably convenient for the worker. A worker who unreasonably refuses to submit to a medical examination may have his or her benefits suspended.

The Department or a self-insurer may order a medical examination for a number of reasons, including to:

- establish a diagnosis;
- establish medical data for determining whether a work-connected causal relationship exists for the worker's condition;
- outline a treatment program;
- determine whether the worker's condition has reached maximum benefit from treatment;
- rate a permanent disability; or
- determine whether the worker's condition has worsened after closure of the claim.

These examinations must be conducted by a physician selected by the director of the Department. The Department maintains a list of examiners who have applied and qualified to conduct examinations. By rule, qualified examiners must be medical or osteopathic physicians, podiatrists, dentists, or chiropractors. After an examination is completed, the examiner must provide a report to the person ordering the examination.

Under Department rules, workers may be accompanied at a medical examination by an uncompensated person. The worker is not permitted, however, to record the examination.

The Department is required to develop standards for conducting examinations to rate permanent disabilities. These standards relate to qualifications of persons conducting examinations, criteria for conducting the examinations, including guidelines for appropriate treatment of injured workers, and the content of examination reports.

Under court decisions, the Department or self-insurer is required to give special consideration to the opinion of the worker's attending physician when making medical decisions.

Studies discussing industrial insurance medical examinations

1998 JLARC Audit. The 1998 Workers' Compensation System Performance Audit by the Joint Legislative Audit and Review Committee (JLARC) noted that all parties raised concerns about IMEs. The JLARC Audit report made several recommendations that were expected to reduce the need for IMEs by, among other things, improving claims manager communication with the

worker, employer, and doctor, and by reducing the formality of claims closure which frequently involves IMEs.

1998 Long-Term Disability Prevention Pilot Project. The Long-Term Disability Prevention Pilot Project generally encouraged the use of attending physician examinations, or consultations obtained by the attending physician, to resolve medical issues or rate disabilities. The Department's review of the pilot project found that encouraging examinations by attending physicians reduced the need for IMEs, reduced the time it took to receive the physician report, and improved worker satisfaction. However, the pilot projects generally did not reduce time loss or medical costs.

2002 IME Improvement Project. In 2000 the Department began an IME Improvement Project. The project identified concerns regarding the appropriate use of IMEs, the quality of IMEs and the providers conducting the examinations, and the incentives for providers to conduct examinations. The Department began a re-application process that was completed and resulted in a new list of approved IME examiners in July 2001. That year the Department also contracted with Med-Fx, LLC, to conduct a best practices review and make recommendations for improving the IME process. The Med-Fx report in 2002 made recommendations in the areas of contracting for administrative services to recruit and train examiners, making IME requests, working with attending physicians, and improving the quality of examiners and the treatment of injured workers.

Summary of Bill:

Contact with Medical Providers

After an appeal is filed with the Board of Industrial Insurance Appeals (Board), the Department of Labor and Industries (Department) and the employer are prohibited from having *ex parte* contact to discuss facts or issues involved in the appeal with any provider who provided treatment to the worker unless written authorization for the contact is given by the worker or the worker's representative. This prohibition on contact also applies to providers who examined the worker for "consultative purposes" at the request of the worker or a treating provider. It does not apply to an examination for "consultative purposes" that was initiated by the Department. In all cases, the prohibition applies only with respect to providers that the worker named when confirming witnesses for the hearing.

Similarly, after an appeal is filed with the Board, a worker and a representative of the worker are prohibited from having *ex parte* contact to discuss facts or issues involved in the appeal with a provider who examined the worker for an IME at the request of the Department or self-insured employer unless written authorization for the contact is given by the Department or self-insured employer. In all cases, the prohibition applies only with respect to providers that the Department or self-insured employer named when confirming witnesses for the hearing.

Medical Reports

Any time that an examining or attending provider is contacted by an employer or a representative of the employer, the employer or the person initiating contact on behalf of the employer must create a written report. The written report must fully disclose all subjects discussed and responses given. The written report must be completed within five days of the meeting and a copy must be mailed to the worker. Failure to comply is subject to a $500 penalty payable to the worker.

In addition, when an attorney, vocational counselor, nurse case manager, or other representative of the employer seeks to meet with an examining or attending provider to discuss the worker's physical capacities, medical treatment, permanent partial disability, ability to work, or other issues pertaining to the claim, the person seeking to meet with the provider must give at least seven days prior written notice to the worker or the worker's designated representative. The worker and the designated representative have the right to attend and participate in the conference and the party scheduling the meeting must make reasonable efforts to coordinate the scheduling. Within five days of the meeting, the employer must create a complete report of the meeting, including all questions asked and information provided. The report must be mailed to the worker.

Ordering Medical Examinations

General statutory authority is created for a worker to be accompanied by a person to observe any medical examination conducted under the Act.

A new process is established when the Department or self-insured employer orders a medical examination to resolve a medical issue. When ordering a medical examination, the Department or self-insured employer must first request, in writing, that the worker's attending provider conduct an examination and make a report on the medical issue in question.

If the medical issue is not resolved by the requested examination and report, the Department or self-insured employer must request the attending provider to make a consultation referral to a provider approved by the director of the Department and licensed to practice in the same field or specialty as the worker's attending provider. This consulting provider must conduct an examination and make a report.

If the worker's attending provider is unwilling or unable to conduct the examination or to make a referral, the Department or self-insured employer may order a medical examination conducted by a provider who is listed next on a rotating list of providers that the Department is required to establish and maintain.

Providers conducting an examination ordered by the Department or self-insured employer must submit reports to the Department or self-insured employer and to the worker, the worker's representative, and the worker's attending provider. If the Department or self-insured employer relies on the report to deny, limit, or terminate benefits, the Department or self-insured employer must give the worker's attending provider no less than 30 days to provide a written response to the report.

Rules Governing Medical Examinations

The current requirement that the Department adopt rules governing "special medical examinations for determining permanent disabilities" is made applicable to all medical examinations. The Department's rules regarding provider qualifications for ordered medical examinations must require a provider to be licensed at the time of the examination in the same field as the worker's attending provider and to have an active practice involving direct patient care at least weekly in that field.

The types of providers that are permitted under the rules must include licensed psychologists.

The criteria for removing providers from the list of approved providers must include certain elements, including misconduct, incompetency, making materially false statements regarding qualifications or in medical reports, failing to transmit medical reports, and refusing to testify or produce material documents in a workers' compensation proceeding.

Rules on examination reports must include a requirement for a signed statement certifying that the report is a full and truthful representation of the provider's professional opinion.

The Department's rules must ensure that examinations are performed only by qualified providers meeting Department standards.

Application

The bill applies to all workers' compensation medical examinations ordered on or after the bill's effective date.

Rules Authority: The bill requires the Department to adopt additional rules applicable to all medical examinations.

Appropriation: None.

Fiscal Note: Requested on January 24, 2007.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.