
Commerce & Labor Committee

HB 1402

Brief Description: Restricting contact with medical providers after appeals have been filed under industrial insurance.

Sponsors: Representatives Williams, Campbell, Conway, Moeller and Green.

Brief Summary of Bill

- Restricts contact by employers, workers, and the Department of Labor and Industries with medical providers at specified stages after an appeal has been filed.

Hearing Date: 1/28/09

Staff: Joan Elgee (786-7106)

Background:

Under the Industrial Insurance Act (Act), medical 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 must be made available at any stage of proceedings to the employer, the worker's representative, and to the Department. The Act states that no person incurs any legal liability for releasing this medical information.

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

When the Director of the Department (Director) or a self-insured employer deems it necessary to resolve a medical issue, an injured worker must submit to an independent medical examination (IME) by a physician selected by the Director.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Parties aggrieved by an order of the Department may appeal to the Board.

Summary of Bill:

It is stated that the Workers' Compensation Act is impressed with a trust with workers as beneficiaries of the accident and medical aid funds. The Department of Labor and Industries (Department), as trustee of the funds, has a duty towards those beneficiaries. A trustee relationship does not exist between employers and workers. The Legislature recognizes that different rules, obligations, and standards are applied to employers than those applied to the Department.

Restrictions are placed on contact by employers and the Department with attending and treating medical providers and on contact by workers with independent medical examination (IME) providers.

Employer contact. After an appeal is filed, an employer may not have contact to discuss the issues in question in the appeal with any medical provider who examined or treated the claimant, unless the claimant provides written authorization for the contact.

Without written authorization, communication must be:

- in writing, sent contemporaneously to all parties with a notice to the provider in bold type that any response must be in writing;
- in person, by telephone, or by video conference, at a mutually agreed to time and date, with the claimant given the opportunity to fully participate; or
- by deposition.

Contact is permitted for the ongoing management of the claim, including communication regarding the worker's treatment needs and the provider's treatment plan, vocational and return-to-work issues and assistance, and certification of the worker's inability to work, unless these issues are in question in the appeal.

Claimant contact with employer IME provider. After an appeal is filed, the claimant may not have contact to discuss the issues in question in the appeal with any IME provider who has examined the claimant at the request of the employer unless the employer provides written authorization.

Without written authorization, communication must be:

- in writing, sent contemporaneously to all parties with a notice to the provider in bold type that any response must be in writing;
- in person, by telephone, or by video conference, at a mutually agreed to time and date, with the Department and employer given the opportunity to fully participate; or
- by deposition.

Department contact. After an appeal is filed, a conference has been held to schedule hearings, and the claimant has named witnesses, the Department shall not have contact to discuss the issues in question in the appeal with any medical provider who has examined or treated the claimant and been named as a witness unless the claimant provides written authorization.

Without written authorization, communication must be:

- in writing, sent contemporaneously to all parties with a notice to the provider in bold type that any response must be in writing;
- in person, by telephone, or by video conference, at a mutually agreed to time and date, with the claimant given the opportunity to fully participate; or
- by deposition.

Contact is permitted for the ongoing management of the claim, including communication regarding the worker's treatment needs and the provider's treatment plan, vocational and return-to-work issues and assistance, and certification of the worker's inability to work, unless these issues are in question in the appeal.

Claimant contact with Department IME provider. After an appeal is filed, a conference has been held to schedule hearings, and the claimant has named his or her witnesses, the claimant may not have contact to discuss the issues in question in the appeal with any medical provider who examined the claimant at the request of the Department unless the Department provides written authorization.

Without written authorization, communication must be:

- in writing, sent contemporaneously to all parties with a notice to the provider in bold type that any response must be in writing;
- in person, by telephone, or by video conference, at a mutually agreed to time and date, with the Department given the opportunity to fully participate; or
- by deposition.

Provisions applicable to all contacts. Written authorization for contact is valid only if given after the appeal is filed and expires in 90 days. Written authorization is not required if the claimant, employer, or the Department, as the case may be, fails to identify the provider as a witness. The provisions also apply to representatives of the employer, claimant, and the Department.

The Board of Industrial Insurance Appeals may determine whether the parties have made themselves reasonably available to participate in telephone or video conference communications.

The Department may adopt rules to implement the provisions, which apply to orders entered on or after the effective date.

Rules Authority: The bill contains provisions addressing the rule-making authority of the Department of Labor and Industries.

Appropriation: None.

Fiscal Note: Requested on 1/21/09.

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