

SENATE BILL REPORT

SB 5784

As of January 26, 2022

Title: An act relating to adding psychologists for mental health only claims to the list of those who can act as an attending provider.

Brief Description: Adding psychologists for mental health only claims to the list of those who can act as an attending provider.

Sponsors: Senators Lovelett, Conway, Dhingra, Hasegawa, Nobles, Saldaña, Stanford and Wilson, C.; by request of Department of Labor & Industries.

Brief History:

Committee Activity: Labor, Commerce & Tribal Affairs: 1/26/22.

Brief Summary of Bill

- Provides for workers' compensation claims that health service providers, rather than only physicians or licensed advanced registered nurse practitioners, may be required to testify regarding exams or treatment before the Board of Industrial Insurance Appeals or a court on appeal.
- Adds the definition of "attending provider" to replace the phrase "physicians or licensed advanced registered nurse practitioners" in certain workers' compensation laws.
- Adds to the list of treating health care providers requiring reporting to the Department of Labor and Industries and requiring certificates from those attending providers with the application for workers' compensation benefits.
- Allows a workers' compensation application to be made electronically.
- Adds the following list of health care providers to provide care for an injured worker: osteopathic physician, chiropractor, naturopath, podiatric physician, optometrist, dentist, physician assistant, or psychologist in claims solely for mental health conditions.

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

- Modifies the term "catastrophically disabled" to "individuals with catastrophic disabilities."

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Staff: Susan Jones (786-7404)

Background: Worker's Compensation—General. Workers who, in the course of employment, are injured or disabled from an occupational disease are entitled to workers' compensation benefits, which may include medical, temporary time-loss, vocational rehabilitation benefits, and permanent disabilities benefits. "Occupational disease" means a disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provisions of this title. The Department of Labor and Industries (L&I) administers the state's workers' compensation system.

Health Care Provider Testimony. In all proceedings before L&I or the Board of Industrial Insurance Appeals (BIIA), or before any court on appeal from the board, any physician or licensed advanced registered nurse practitioner having examined or treated the claimant may be required to testify fully regarding such examination or treatment, and is not exempt from testifying because of the relationship to the patient.

Notice of Accident. Whenever any workplace accident occurs to a worker, the worker or someone on the worker's behalf must report the accident to the employer or supervisor in charge of the work, and the employer must at once report the accident and the resulting injury to L&I where the worker has received treatment from a physician or a licensed advanced registered nurse practitioner, has been hospitalized, disabled from work, or has died as the apparent result of such accident and injury.

Upon receipt of such notice of accident, L&I must immediately forward to the worker or the worker's beneficiaries or dependents notification, in nontechnical language, of their rights under the workers' compensation laws. The notice must specify the worker's right to receive health services from a physician or a licensed advanced registered nurse practitioner of the worker's choice, including chiropractic services, and must list the types of providers authorized to provide these services. Employers shall not engage in claim suppression.

Workers' Compensation Application. Where a worker is entitled to workers' compensation, the worker must file an application with L&I or the self-insured employer, together with the certificate of the attending physician or licensed advanced registered nurse practitioner. An L&I application form must include a notice specifying the worker's right to receive health services from a physician or licensed advanced registered nurse practitioner of the worker's choice, including chiropractic services, and listing the types of providers authorized to provide these services.

The attending physician or licensed advanced registered nurse practitioner must inform the injured worker of their compensation rights and lend all necessary assistance in making the application and such proof of other matters as required by L&I rules without charge to the worker. L&I must provide physicians with a manual outlining the procedures to be followed in applications.

If the application is filed on a worker's behalf by the attending physician, the physician may transmit the application to L&I electronically using facsimile mail.

When the injury results in the worker's death, the applicant must provide proof of death, the relationship to the decedent, and certificates of the attending physician or licensed advanced registered nurse practitioner, if any.

Fixed and Stable Condition. If a physician or licensed advanced registered nurse practitioner submits a report to the self-insurer that the worker's condition is fixed and stable and supports payment of a permanent partial disability award, and if within 14 days from the date the self-insurer mailed the report to the attending or treating physician or licensed advanced registered nurse practitioner, the worker's attending or treating physician or licensed advanced registered nurse practitioner disagrees in writing that the worker's condition is fixed and stable, the self-insurer must get a supplemental medical opinion from a L&I approved provider before closing the claim. Alternatively, the self-insurer may forward the claim to L&I, which must review the claim and enter a final order.

Return to Available Work. The Legislature has found that long-term disability and the cost of injuries is significantly reduced when injured workers remain at work following their injury. To encourage employers at the time of injury to provide light duty or transitional work for their workers, wage subsidies and other incentives are made available to employers insured with L&I.

Whenever the employer of injury requests that a worker, who is entitled to temporary total disability, be certified by a physician or licensed advanced registered nurse practitioner as able to perform available work other than the worker's usual work, the employer must furnish to the physician or licensed advanced registered nurse practitioner, with a copy to the worker, a statement describing the work available with the employer in terms that will enable the physician or licensed advanced registered nurse practitioner to relate the physical activities of the job to the worker's disability. The physician or licensed advanced registered nurse practitioner must then determine whether the worker is physically able to perform the work described. The worker's payments must continue until the worker is released by the physician or licensed advanced registered nurse practitioner for the work, and begins the work with the employer of injury. If that work ends before the worker's recovery is sufficient in the judgment of the worker's physician or licensed advanced registered nurse practitioner to permit the worker to return to the worker's usual job, or to perform other available work offered by the employer, the worker's temporary total

disability payments must resume. If the available work described impede the worker's recovery to the extent that, in the judgment of the worker's physician or licensed advanced registered nurse practitioner, the worker should not continue to work, the worker's temporary total disability payments must resume when the worker ceases that work.

An employer may not receive wage subsidy payments or reimbursements of any expenses unless the worker's physician or licensed advanced registered nurse practitioner has restricted the worker from performing the work and the worker's physician or licensed advanced registered nurse practitioner has released the worker to perform the work offered.

Once the worker returns to work, the worker must not be assigned by the employer to work other than the available work described without the worker's written consent, or without prior review and approval by the worker's physician or licensed advanced registered nurse practitioner. An employer who directs a claimant to perform work other than that approved by the attending physician and without the approval of the worker's physician or licensed advanced registered nurse practitioner may not receive any wage subsidy or other reimbursements for such work.

Vocational Rehabilitation Services. In certain situations, vocational rehabilitation benefits may be available to an injured worker, including certain expenses of the worker. In addition to those vocational rehabilitation expenditures, \$5,000 may, upon authorization of the supervisor or the supervisor's designee, be expended for accommodations for an injured worker that are medically necessary for the worker to participate in an approved retraining plan; and accommodations necessary to perform the essential functions of an occupation in which an injured worker is seeking employment, consistent with the retraining plan or the recommendations of a vocational evaluation. The injured worker's attending physician or licensed advanced registered nurse practitioner must verify the necessity of the modifications or accommodations.

Medical Care. Upon the occurrence of any injury to a worker entitled to compensation under the provisions of this title, the worker must receive proper and necessary medical and surgical services from a physician or licensed advanced registered nurse practitioner of the worker's choice, if conveniently located and proper and necessary hospital care and services during the period of the worker's disability from such injury. Once the provider network is established in the worker's geographic area, an injured worker may receive care from a nonnetwork provider only for an initial office or emergency room visit. L&I or a self-insurer may limit reimbursement to L&I's standard fee for the services. The provider must comply with all applicable billing policies and must accept L&I's fee schedule as payment in full.

Medical Information. Physicians or licensed advanced registered nurse practitioners examining or attending injured workers for workers' compensation must comply with L&I rules and make any reports requested by L&I or a self-insurer upon the condition or treatment of any such worker, or upon any other matters concerning such workers in their

care.

Required Exams. Whenever L&I or a self-insurer deems it necessary to make a decision regarding claim allowance or reopening; resolve a new medical issue, an appeal, or case progress; or evaluate the worker's permanent disability or work restriction, a worker must submit to an exam by a physician or physicians selected by L&I, with a report to the person ordering the examination, the attending physician, and the injured worker.

Definition. "Health services provider" means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of services related to the treatment of an industrially injured worker.

Summary of Bill: For workers' compensation claims, health service providers, rather than only physicians or licensed advanced registered nurse practitioners, may be required to testify regarding exams or treatment before the Board of Industrial Insurance Appeals or a court on appeal.

"Attending provider" replaces the phrase "physicians or licensed advanced registered nurse practitioners" in certain workers' compensation laws described above. "Attending provider" means a person who is a member of the health care provider network, is treating injured workers within the person's scope of practice, and is licensed in one of the following professions:

- physicians;
- osteopathy;
- chiropractic;
- naturopathy;
- podiatric medicine and surgery;
- dentistry;
- optometry;
- psychology, in the case of claims solely for mental health conditions; and
- licensed advanced registered nurse practitioners.

When an accident results in injury to a worker, reporting is required when a treatment has been received from these providers listed in the definition of attending provider, rather than just a physician or a licensed advanced registered nurse practitioners. These providers must inform injured workers of the worker's rights regarding workers' compensation.

A workers' compensation application may be made electronically.

The following health care providers may provide care to an injured worker's care: osteopathic physician, chiropractor, naturopath, podiatric physician, optometrist, dentist, physician assistant, or psychologist in claims solely for mental health conditions.

The term "catastrophically disabled" is modified to "individuals with catastrophic

disabilities."

Appropriation: None.

Fiscal Note: Requested on January 11, 2022.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on July 1, 2024.

Staff Summary of Public Testimony: PRO: First responders make mental health only claims after traumatic incidents. We don't have enough attending providers. This allows people with mental health claims to get services. Allowing psychologist as attending providers is a small but meaningful benefit to injured workers by improving their timely access to mental health treatment. The longer it takes to get treatment, the longer the recovery period will be. This avoids the wait time to get referral and redundant hurdle.

While the bill makes a series of technical, housekeeping changes, the real change is to add psychologists to the role of being attending providers for workers' compensation claims. Generally mental health claims are not covered by workers' compensation, with two main exceptions for PTSD for first responders and related to an individual event. These are rare claims, fewer than 80 per year.

CON: There is a concern about psychologists acting as the attending provider because psychiatrists have four years of medical school and training. Some circumstances require more treatment. An attending physician should collaborate with a mental health professional to provide efficient and effective treatment for mental and physical issues. This is a broad based solution to a narrow problem. We worry about unintended consequences.

OTHER: There has been only one other time for a change to who can act as an attending provider. There are questions about psychologists acting as attending providers and directing care. Physician's assistants are absent from the list and they have extensive training and education and work under the supervision of a physician.

We would like to see further expansion. There is a significant gap in the treatment of injured workers in this state. The bill doesn't do enough to solve the gap. A psychologist shouldn't be limited to mental health only claims, which are very small in number. Mental health treatment has shifted from psychiatrists to psychologists and mental health counselors.

Persons Testifying: PRO: Senator Liz Lovelett, Prime Sponsor; Beth Murphy; Ed Hill; Tammy Fellin, Labor & Industries; AJ Johnson, WSCFF.

CON: Breck Lebegue, MD MPH, Washington State Psychiatric Association (WSPA);
Richard Clyne, Washington Farm Bureau.

OTHER: Sean Graham, WA State Medical Association (WSMA); Brian Wright,
Washington State Association for Justice.

Persons Signed In To Testify But Not Testifying: No one.