

# HOUSE BILL REPORT

## HB 1197

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### As Passed House:

March 7, 2023

**Title:** An act relating to defining attending provider and clarifying other provider functions for workers' compensation claims, and adding psychologists as attending providers for mental health only claims.

**Brief Description:** Defining attending provider and clarifying other provider functions for workers' compensation claims, and adding psychologists as attending providers for mental health only claims.

**Sponsors:** Representatives Bronoske, Berry, Bateman, Simmons, Fosse, Davis and Pollet; by request of Department of Labor & Industries.

### Brief History:

#### Committee Activity:

Labor & Workplace Standards: 1/17/23, 1/27/23 [DP];

Appropriations: 2/8/23, 2/20/23 [DP].

#### Floor Activity:

Passed House: 3/7/23, 64-31.

### Brief Summary of Bill

- Creates a definition of "attending provider" applicable to the workers' compensation statutes.
- Adds state licensed psychologists as attending providers for claims that are solely for mental health conditions.
- Replaces the terms "attending physician or licensed advanced registered nurse practitioner," "physician who attended the worker," and similar terms with "attending provider."
- Provides that any health service provider who examined or treated an injured worker may be required to testify in hearings, actions, or

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proceedings.

- Makes other technical and clarifying changes.

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## HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** Do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby and Ortiz-Self.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Robertson, Ranking Minority Member; Schmidt, Assistant Ranking Minority Member; Connors.

**Staff:** Trudes Tango (786-7384).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Chopp, Davis, Fitzgibbon, Hansen, Lekanoff, Pollet, Riccelli, Ryu, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Stokesbary, Ranking Minority Member; Couture, Dye, Rude, Schmick and Steele.

**Minority Report:** Without recommendation. Signed by 5 members: Representatives Corry, Assistant Ranking Minority Member; Chandler, Connors, Harris and Sandlin.

**Staff:** Emily Stephens (786-7157).

### **Background:**

#### Workers' Compensation: General.

The Industrial Insurance Act (Act) provides that a worker who is injured in the course of employment or injured or disabled from an occupational disease is entitled to workers compensation benefits. Benefits may include medical, temporary time-loss, vocational rehabilitation benefits, and permanent disabilities benefits. The Department of Labor and Industries (Department) administers the workers' compensation system.

If a workplace accident occurs and the worker receives treatment from a physician or advanced registered nurse practitioner (ARNP), the worker must report the accident to the employer and the employer must report it to the Department. The Department must immediately notify the worker of the worker's rights to receive health services from a

physician or an ARNP, and must list the types of providers authorized to provide services.

A physician or ARNP who attends an injured worker must inform the worker of his or her rights under the Act and assist the worker in applying for benefits. A physician who attended the worker may file an application on behalf of a worker to the Department using facsimile mail.

#### Attending Providers.

The Act specifies that an injured worker is entitled to proper and necessary care from a physician or ARNP of the worker's choice and within the Department's medical provider network. Workers with open claims are required to have ongoing treatment from a provider in the network. That provider is typically referred to as the worker's "attending provider." The worker may receive care from a nonnetwork provider only for an initial office or emergency room visit.

The types of providers who may be attending providers and the duties of attending providers are established in various parts of the Act and Department rules. There is no definition of "attending provider" in the Act; however, the Department's rules define "attending provider" as a person licensed to independently practice one or more of the following professions: medicine and surgery, osteopathic medicine and surgery, chiropractic, naturopathic physician, podiatry, dentistry, optometry, and advanced registered nurse practitioner. Other provider types may provide treatment, but may not be attending providers.

Attending providers are the only providers who may sign accident forms, initial reports, and certify time-loss compensation. Only attending providers who are physicians or chiropractors can perform impairment ratings, which are exams conducted if a worker, after reaching maximum medical improvement, is left with permanent functional limitations.

The Act outlines other duties and obligations of a physician or ARNP who attends the injured worker. For example, the physician or ARNP may:

- be required to testify in any hearing, actions, or proceedings before the Department, the Board of Industrial Insurance Appeals, or the court;
- review medical reports regarding a worker's condition that provides for a permanent partial disability award;
- certify whether a worker is able to perform available work;
- verify whether medically necessary accommodations are needed for an injured worker to participate in retraining, in the context of vocational rehabilitation; and
- be required to make reports to the Department as requested.

#### Workers' Compensation: Mental Health Treatment.

Mental health treatment may be authorized for mental health conditions caused or aggravated by an accepted condition. In addition, for certain workers, there is a presumption that post-traumatic stress disorder is a compensable occupational disease.

### Licensed Psychologists.

To be a licensed psychologist in this state, a person must, among other things, have a doctorate degree, have two years of supervised experience, and successfully complete an examination.

### **Summary of Bill:**

#### Attending Providers.

A definition of "attending provider" is created in the Act, and state licensed psychologists are added as attending providers for those claims that are solely for mental health conditions. "Attending provider" means a person who is:

- a member of the health care provider network;
- treating injured workers within the person's scope of practice; and
- licensed under state law in one of the following professions:
  - physician;
  - osteopathy;
  - chiropractic;
  - naturopathy;
  - podiatric medicine and surgery;
  - dentistry;
  - optometry;
  - psychology, in claims solely for mental health conditions;
  - physician assistant; and
  - licensed advanced registered nurse practitioner.

Throughout various statutes in the Act, references to "attending physician or licensed advanced registered nurse practitioner," "physician who attended the worker," and "provider" are replaced with the term "attending provider." This includes provisions regarding attending providers reviewing medical reports, certifying the worker's ability to perform work, providing input regarding participation in vocational rehabilitation, receiving reports on independent medical examinations, and submitting reports to the Department.

#### Other Changes.

The provision specifying that any physician or ARNP who examined or treated the worker may be required to testify in a hearing is broadened to include any health service provider who examined or treated the worker.

The Department's form notifying the injured worker of the right to services is changed to reference the right to receive health services from a provider, rather than only from a physician or ARNP.

The provision allowing physicians to transmit applications to the Department electronically using facsimile is removed and instead, applications for benefits may be transmitted

electronically to the Department.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** This bill takes effect on July 1, 2025.

**Staff Summary of Public Testimony (Labor & Workplace Standards):**

(In support) The bill does not change any benefit eligibility for worker's compensation. It allows doctoral level psychologists to provide care for workers suffering from post-traumatic stress disorder. It increases access for workers who have mental health claims. The delayed effective date will allow the Department to make changes to the medical provider system so these psychologists can get paid as attending providers. This bill removes significant barriers and will prevent the delay of treatment.

(Opposed) Workers with severe injuries usually need both mental health treatment for coping skills and physical treatment. Psychologists do not have authority to prescribe medications. Collaborative care is needed in these cases and workers will already need to have two providers. This bill does not make those workers better off.

(Other) There is another bill in the system that is addressing the scope of care for psychologists, and the Legislature should act on that bill first. It would be better to wait and see what the scope of care is before allowing psychologists to be attending providers. The bill does not go far enough. Licensed social workers and mental health counselors should also be allowed to treat workers.

**Staff Summary of Public Testimony (Appropriations):**

(In support) The bill does not change eligibility requirements for mental health claims. The bill increases access to treatment for injured workers who are eligible for mental health claims. This eligibility was expanded in 2018 to first responders.

(Opposed) None.

**Persons Testifying (Labor & Workplace Standards):** (In support) Representative Dan Bronoske, prime sponsor; Tammy Fellin, Department of Labor and Industries; and Beth Murphy.

(Opposed) Breck Lebegue, Washington State Psychiatric Association.

(Other) Patrick Connor, National Federation of Independent Business; and Bob Cooper, National Association of Social Workers Washington Chapter.

**Persons Testifying (Appropriations):** Tammy Fellin, Department of Labor and Industries.

**Persons Signed In To Testify But Not Testifying (Labor & Workplace Standards):**  
None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.