
Commerce & Labor Committee

HB 1587

Brief Description: Concerning industrial insurance medical examinations.

Sponsors: Representatives Hudgins, Conway, Campbell, Hunt, Simpson, Cooper, Wood, McCoy and Kenney.

Brief Summary of Bill

- Establishes requirements for the treatment of injured workers and procedures for the Department of Labor and Industries (Department) and self-insured employers to use when conducting a medical examination of an injured worker.
- Specifies criteria for Department rules governing the qualifications of examiners and their eligibility for the approved list of examiners.

Hearing Date: 2/17/03

Staff: Chris Cordes (786-7103).

Background:

Medical examinations of injured workers

Injured workers claiming industrial insurance benefits are required to submit to medical examinations when requested by the Department of Labor and Industries (Department) or the self-insured employer. These examinations are sometimes referred to as independent medical examinations or "IMEs." These examination 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 reapplication 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:

Requirements for Conducting Medical Examinations

New requirements are added for conducting medical examinations of injured workers. In such a medical examination:

- The examination must be conducted at a medical facility that is suitable and reasonably convenient for the worker.
- The examination must be conducted with due regard for the privacy and dignity of the worker and for the safety and convenient access of the worker.
- The worker may be accompanied during the examination by a person who may observe and, at the worker's expense, record the examination.

Process for Ordering Medical Examinations

When the Department or self-insurer orders a medical examination to resolve a medical issue, the Department or self-insurer must first request that the worker's attending physician or other provider that is treating the worker to conduct the examination. This provider may, without prior authorization, make a consultation referral for the purpose of conducting the examination. If the first examination does not resolve the medical issue, the Department or self-insurer may ask the attending physician to make a consultation referral to an approved provider licensed to practice in the attending physician's field or specialty. If the attending physician is unwilling or unable to conduct the examination or make a referral, the Department or self-insurer may order a medical examination conducted by a provider agreed upon by the worker and Department or self-insurer.

If the Department or self-insurer orders a medical examination to resolve a material dispute between the attending physician and consulting provider, the examination must be conducted by a provider chosen by the injured worker from a list of at least five providers.

Any examiner must be competent to evaluate the worker's injury or disease.

The examiner must submit a copy of the medical report to the worker and the worker's employer, attending physician, and representative, if any, on the same day as it is submitted to the Department or self-insurer. If the Department or self-insurer relies on the medical report to deny or limit benefits, the worker's attending physician must have at least 30 days to respond to the medical report.

Decisions on medical issues must be based on medical opinion that is founded on factual data supported by the evidence and must give special consideration to the attending physician's medical opinion.

Rules Governing Medical Examinations

The requirement for the Department to adopt rules governing "special medical examinations

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

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

The criteria for removing examiners from the list of approved examiners 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 examiner's professional opinion.

Application

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

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

Appropriation: None.

Fiscal Note: Requested on February 11, 2003.

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