

HOUSE BILL REPORT

HB 2980

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to ex parte contacts with medical providers during industrial insurance appeals.

Brief Description: Prohibiting ex parte contacts with medical providers during industrial insurance appeals.

Sponsors: Representatives Williams, Conway, Moeller and Hasegawa.

Brief History:

Committee Activity:

Commerce & Labor: 2/1/08, 2/5/08 [DPS].

Brief Summary of Substitute Bill

- Limits ex parte contact with medical providers after an appeal is filed in an industrial insurance case.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Crouse.

Staff: Joan Elgee (786-7106).

Background:

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 must be made available at any stage of

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proceedings to the employer, the worker's 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 proceedings before the Department, the Board of Industrial Insurance Appeals (Board), or before any court, providers may be required to testify regarding examination or treatment and are not exempt from testifying based on the doctor-patient relationship.

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

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

Summary of Substitute Bill:

After the filing of an appeal in an industrial insurance claim, the Department and the employer, and their representatives, are generally prohibited from ex parte contact with any medical provider who examined or treated the claimant at the request of the claimant or treating medical provider to discuss the facts or issues on appeal without written authorization from the claimant or his or her representative. Similarly, after the filing of an appeal, a claimant and representative for the claimant are generally prohibited from ex parte contact with any independent medical provider without written authorization by the Department or self-insured employer or their representative. Any written authorization must be given after the appeal is filed and expires in 90 days.

Without a 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 or their representative, or the Department, self-insured employer and representatives, as the case may be, given the opportunity to fully participate; or
- by deposition.

The restrictions on ex parte contact do not apply in some situations. Written authorization is not required if the claimant or the Department or self-insured employer fails to identify or confirm the medical provider as a witness. With respect to the Department, the restriction does not apply if the Department is making a decision on whether to modify, reverse, change, or hold an order in abeyance.

The restrictions on ex parte contact apply only to issues set forth in a notice of appeal.

The provisions apply to orders entered after the effective date of the Act.

Substitute Bill Compared to Original Bill:

The substitute bill provides that the provisions apply to orders entered after the effective date of the Act.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This bill addresses the tension between efficiently resolving cases and prejudicing the outcome by ex parte communication with medical providers. The bill only applies when a claim is in litigation and the regular civil rules should apply. Under current law, for example, an attorney for an employer can contact the worker's doctor and obtain irrelevant and personal information. Workers should not lose the right to privacy because of a work place injury.

(Concerns) Everyone shares in the goal of a fair and balanced process. Workers' compensation is designed to provide sure and certain relief and a less formal process has been created to quickly resolve cases. The informal nature includes letting all parties have access to the medical information in the file. This bill does not deal with the role of the Department as the trustee for the system. Before such a change is made, there needs to be a discussion of how it would affect the model.

The Department may have to use depositions which are more costly and time-consuming. The bill may also impact our processes. Issues on appeal can be muddied and it could be hard to decide when a party could communicate with a doctor. Also, a doctor may prefer to communicate by phone and it may cause delay to require communication in writing. Some medical providers will like the change but others may view the system as more adversarial and it's not clear how they might react to continuing to be a provider.

(Opposed) Industrial insurance is not a tort system. Allowing ex parte contact expedites cases and the receipt of benefits. This bill casts the medical profession negatively because it suggests physicians will change their minds. Attorneys are already governed by ethical standards.

If, for example, a claimant appeals and the attending physician thinks a claim closure was correct, the employer would not be able to talk to the physician whose opinion supports its case. The bill also could encourage gamesmanship by listing witnesses late. The 90 days is unworkable. Also, there are nurse managers and others who need to be able to talk to the attending physician.

Persons Testifying: (In support) Representative Williams, prime sponsor; Kathy Comfort; and Robby Stern, Washington State Labor Council.

(Concerns) Vickie Kennedy, Department of Labor and Industries.

(Opposed) Kris Tefft, Association of Washington Business; Bernadette Pratt, Craig, Jessup & Stratton, and Washington Self-Insurers Association; and Dave Kaplan, Washington Self-Insurers Association.

Persons Signed In To Testify But Not Testifying: (In support) Michael Temple, Washington State Trial Lawyers Association.