

SENATE BILL REPORT

SB 5310

As of January 26, 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: Senators Lovelett, Saldaña, Cleveland, Conway, Hasegawa, Keiser, Kuderer, Nobles, Trudeau, Wellman and Wilson, C.; by request of Department of Labor & Industries.

Brief History:

Committee Activity: Labor & Commerce: 1/26/23.

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 proceedings.

SENATE COMMITTEE ON LABOR & COMMERCE

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.

Staff: Susan Jones (786-7404)

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 (L&I) 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 L&I. L&I 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 the worker's 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 L&I using facsimile mail.

Attending Providers. An injured worker is entitled to proper and necessary care from a physician or ARNP of the worker's choice and within L&I'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 are established in various parts of the Act and L&I rules. There is no definition of attending provider in the Act. L&I 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. L&I rules allow physician assistants to also sign any certificates, forms, or other required documents that the physician assistant's supervising physician may sign. However, a physician assistant may not rate permanent disability or impairment or perform independent medical examinations or consultations. In addition, 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 L&I, 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 L&I as requested.

Mental Health Issues. Mental health treatment may be authorized for mental health conditions caused or aggravated by an accepted condition. For certain workers, there is a presumption that posttraumatic stress disorder is a compensable occupational disease. Psychologists have a doctorate degree, two years of supervised experience, and successfully complete an examination to be licensed.

Summary of Bill: Attending Providers. A definition of attending provider is created, 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:
 1. physician;
 2. osteopathy;
 3. chiropractic;
 4. naturopathy;
 5. podiatric medicine and surgery;
 6. dentistry;
 7. optometry;
 8. psychology, in claims solely for mental health conditions;
 9. physician assistant; and
 10. licensed advanced registered nurse practitioner.

Various 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 L&I.

Other Changes. The provision specifying that any physician or licensed advanced registered nurse practitioner 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.

L&I'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 L&I electronically using facsimile is removed and instead, applications for benefits may be transmitted electronically.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony: PRO: This is an agency request bill to ensure workers, especially first responders who have had a traumatic event that has created a mental health crisis for them, to have a psychologist be their attending provider. This will avoid them having to go back and forth with their general provider. This is well worked and agreed to.

This does not change who is eligible for workers' compensation benefits. It allows doctor level psychologists to be the attending provider. They do activities like coordinate care. This allows workers like first responders to have access to mental health providers who can help them file their claims. The bill would remove the barrier to have quicker access to care and improve outcomes. The bill would allow for collaboration and appropriate referrals.

CON: Psychologists do not have medical training to be in charge of a worker's care. They should see someone with medical training. The worker may have a mental health condition but also an underlying medical condition.

OTHER: The bill does not go far enough. You could have a broader provider pool by adding licensed independent clinical social workers. This is well within their scope of practice.

Persons Testifying: PRO: Senator Liz Lovelett, Prime Sponsor; Beth Murphy; Tammy Fellin, Labor & Industries.

CON: Avanti Bergquist, The Washington State Psychiatric Association (WSPA).

OTHER: Bob Cooper, National Association of Social Workers WA Chapter.

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