



House of Representatives

General Assembly

File No. 294

February Session, 2008

Substitute House Bill No. 5334

House of Representatives, March 31, 2008

The Committee on Labor and Public Employees reported through REP. RYAN, K. of the 139th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING TIMELY MEDICAL TREATMENT FOR INJURED WORKERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-294d of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2008*):

3 (a) (1) The employer, as soon as the employer has knowledge of an
4 injury, shall provide a competent physician or surgeon to attend the
5 injured employee and, in addition, shall furnish any medical and
6 surgical aid or hospital and nursing service, including medical
7 rehabilitation services and prescription drugs, as the physician or
8 surgeon deems reasonable or necessary. The employer, any insurer
9 acting on behalf of the employer, or any other entity acting on behalf of
10 the employer or insurer shall be responsible for paying the cost of such
11 prescription drugs directly to the provider.

12 (2) If the injured employee is a local or state police officer, state

13 marshal, judicial marshal, correction officer, emergency medical
14 technician, paramedic, ambulance driver, firefighter, or active member
15 of a volunteer fire company or fire department engaged in volunteer
16 duties, who has been exposed in the line of duty to blood or bodily
17 fluids that may carry blood-borne disease, the medical and surgical aid
18 or hospital and nursing service provided by the employer shall include
19 any relevant diagnostic and prophylactic procedure for and treatment
20 of any blood-borne disease.

21 (b) The employee shall select the physician or surgeon from an
22 approved list of physicians and surgeons prepared by the chairman of
23 the Workers' Compensation Commission. If the employee is unable to
24 make the selection, the employer shall do so, subject to ratification by
25 the employee or his next of kin. If the employer has a full-time staff
26 physician or if a physician is available on call, the initial treatment
27 required immediately following the injury may be rendered by that
28 physician, but the employee may thereafter select his own physician as
29 provided by this chapter for any further treatment without prior
30 approval of the commissioner.

31 (c) The commissioner may, without hearing, at the request of the
32 employer or the injured employee, when good reason exists, or on his
33 own motion, authorize or direct a change of physician or surgeon or
34 hospital or nursing service provided pursuant to subsection (a) of this
35 section.

36 (d) The pecuniary liability of the employer for the medical and
37 surgical service required by this section shall be limited to the charges
38 that prevail in the same community or similar communities for similar
39 treatment of injured persons of a like standard of living when the
40 similar treatment is paid for by the injured person. The liability of the
41 employer for hospital service shall be the amount it actually costs the
42 hospital to render the service, as determined by the commissioner,
43 except in the case of state humane institutions, the liability of the
44 employer shall be the per capita cost as determined by the Comptroller
45 under the provisions of section 17b-223. All disputes concerning

46 liability for hospital services in workers' compensation cases shall be
47 settled by the commissioner in accordance with this chapter.

48 (e) If the employer fails to promptly provide a physician or surgeon
49 or any medical and surgical aid or hospital and nursing service as
50 required by this section, the injured employee may obtain a physician
51 or surgeon, selected from the approved list prepared by the chairman,
52 or such medical and surgical aid or hospital and nursing service at the
53 expense of the employer.

54 (f) If an employer has good cause to believe that proposed treatment
55 recommended by a (1) medical provider participating in an employer
56 medical care plan approved pursuant to the provisions of section 31-
57 279; (2) physician identified in an approved voluntary agreement
58 pursuant to section 31-296 of the 2008 supplement to the general
59 statutes; or (3) provider to whom the employee has been referred by
60 such physician or medical provider for treatment, is unreasonable and
61 unnecessary, the employer shall promptly issue a written notice to the
62 employee and employee's representative, if any, indicating the medical
63 evidence upon which it relies for concluding that the proposed
64 treatment is either unnecessary or unreasonable. If the employer
65 wishes to support its denial of such treatment by a medical
66 examination pursuant to section 31-294f, as amended by this act, the
67 employer shall forthwith, and in all events not later than thirty days
68 from the receipt of the recommendation of the proposed treatment
69 from such medical provider or physician, schedule its medical
70 examination as authorized in subsection (a) of section 31-294f, as
71 amended by this act.

72 (g) Whenever an examination requested by the employer pursuant
73 to subsection (a) of section 31-294f, as amended by this act, results in
74 concurrence that the proposed treatment recommended by a medical
75 provider or physician described in subdivisions (1) to (3), inclusive, of
76 subsection (f) of this section was reasonable and necessary, the
77 employer shall pay the employee (1) for total incapacity, one hundred
78 per cent of the employee's average weekly earnings after such earnings

79 have been reduced by any deduction for federal or state taxes or both,
80 and for the federal Insurance Contributions Act made from such
81 employee's total wages received during the period of calculation, as
82 described in subsection (a) of section 31-307; or (2) for partial
83 incapacity, one hundred per cent of the difference, as described in
84 subsection (a) of section 31-308. The payments described in
85 subdivisions (1) and (2) of this subsection shall be provided for the
86 period the employee's treatment was delayed by the employer
87 provided the employee is otherwise eligible for benefits for total or
88 partial incapacity. If an employer fails to schedule a medical
89 examination pursuant to the provisions of subsection (a) of section 31-
90 294f, as amended by this act, by the date thirty days after the date of
91 such employer's receipt of a recommendation for treatment, the
92 employee, in any proceeding resulting in authorization of such
93 treatment, shall be entitled to recover reasonable attorney's fees arising
94 out of the employee's claim for the recommended treatment.

95 Sec. 2. Section 31-294f of the general statutes is repealed and the
96 following is substituted in lieu thereof (*Effective October 1, 2008*):

97 (a) An injured employee shall submit himself to examination by a
98 reputable practicing physician or surgeon, at any time while claiming
99 or receiving compensation, upon the reasonable request of the
100 employer or at the direction of the commissioner. The examination
101 shall be performed to determine the nature of the injury and the
102 incapacity resulting from the injury. The physician or surgeon shall be
103 selected by the employer from an approved list of physicians and
104 surgeons prepared by the chairman of the Workers' Compensation
105 Commission and shall be paid by the employer. At any examination
106 requested by the employer or directed by the commissioner under this
107 section, the injured employee shall be allowed to have in attendance
108 any reputable practicing physician or surgeon that the employee
109 obtains and pays for himself or to record such examination by way of
110 any medium which creates an audio or video recording. The employee
111 shall submit to all other physical examinations as required by this
112 chapter. The refusal of an injured employee to submit himself to a

113 reasonable examination under this section shall suspend his right to
114 compensation during such refusal.

115 (b) All medical reports concerning any injury of an employee
116 sustained in the course of his employment shall be furnished within
117 thirty days after the completion of the reports, at the same time and in
118 the same manner, to the employer and the employee or his attorney.

119 Sec. 3. Subsection (b) of section 31-288 of the 2008 supplement to the
120 general statutes is repealed and the following is substituted in lieu
121 thereof (*Effective October 1, 2008*):

122 (b) (1) Whenever through the fault or neglect of an employer or
123 insurer, the adjustment or payment of compensation due under this
124 chapter or the provision of reasonable and necessary medical
125 treatment is unduly delayed, such employer or insurer may be
126 assessed by the commissioner hearing the claim a civil penalty of not
127 more than one thousand dollars for each such case of delay, to be paid
128 to the claimant. For purposes of this subsection, the failure to promptly
129 provide medical services recommended by a (A) medical provider
130 participating in an employer medical care plan approved pursuant to
131 the provisions of section 31-279; (B) physician identified in an
132 approved voluntary agreement pursuant to section 31-296 of the 2008
133 supplement to the general statutes; or (C) provider to whom the
134 employee has been referred by such medical provider or physician for
135 recommended treatment, shall be presumed to be the unreasonable
136 delay of treatment without good cause unless the commissioner finds
137 the recommended medical care was neither reasonable or necessary at
138 the time such care was recommended.

139 (2) Whenever either party to a claim under this chapter has
140 unreasonably, and without good cause, delayed the completion of the
141 hearings on such claim, the delaying party or parties may be assessed a
142 civil penalty of not more than five hundred dollars by the
143 commissioner hearing the claim for each such case of delay. Any
144 appeal of a penalty assessed pursuant to this subsection shall be taken
145 in accordance with the provisions of section 31-301 of the 2008

146 supplement to the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2008	31-294d
Sec. 2	October 1, 2008	31-294f
Sec. 3	October 1, 2008	31-288(b)

Statement of Legislative Commissioners:

In subsection (g) of section 1, language was added to clarify that subdivision (1) covers employees "for total incapacity" and subdivision (2) covers employees "for partial incapacity".

LAB *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Dept. of Administrative Services - Workers' Comp. Claims	GF - Cost	Potential	Potential

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 09 \$	FY 10 \$
Various Municipalities	Cost	Potential	Potential

Explanation

The bill makes changes in workers' compensation law regarding delays of recommended medical treatment. Under certain conditions, an employer or insurer can be assessed a penalty of up to \$1,000 for an unreasonable delay in promptly providing treatment. This may result in a minimal cost to the state and municipalities if they are assessed this penalty.

The bill requires employers who object to a claimant's recommended medical treatment to issue written notice upon which the objection is based, and if they are seeking an independent medical examination (IME) to support their view, to schedule it no later than 30 days after receiving the proposed treatment recommendation. If the employer fails to schedule the IME within 30 days, the employee is entitled to recover any reasonable attorney's fees arising out of his or her claim for the treatment. Requiring the insurer or self-insured employer to pay the claimant's attorney fees if the time frame for scheduling IME's is missed may minimally increase state and municipal costs.

The bill also gives an employee the right to record his or her IME

with either audio or video devices. This provision may decrease the number of participating physicians in the network; a smaller pool of participating physicians may have cost implications for the state and municipalities.

OLR Bill Analysis**sHB 5334*****AN ACT CONCERNING TIMELY MEDICAL TREATMENT FOR INJURED WORKERS.*****SUMMARY:**

This bill makes two changes in workers' compensation law regarding delays of recommended medical treatment.

First, it creates the presumption that an employer's or insurer's failure to promptly provide treatment recommended by a medical provider is an unreasonable delay without good cause unless a workers' compensation commissioner finds the recommended medical care was neither reasonable or necessary when it was recommended. The commissioner can assess a penalty of up to \$1,000 for each case of delay.

Second, the bill requires employers who choose to object to a claimant's recommended medical treatment because it is unreasonable or unnecessary (1) to issue a written notice to the employee containing the medical evidence upon which the objection is based and (2) if they are seeking an independent medical examination (IME) to support their view, to schedule it no later than 30 days after receiving the proposed treatment recommendation. If the employer fails to schedule the IME within 30 days, the employee is entitled to recover any reasonable attorney's fees arising out of his or her claim for the treatment.

If the employer's IME concurs with the original treatment recommendation, the employer must pay the claimant wage replacement benefits at a rate of 100% of the employee's net wages for the period the treatment was delayed due to the IME request, rather

than the regular rate of 75% of net wages. The 100% calculation applies whether the employee qualifies for total or partial incapacity benefits.

It also gives an employee the right to record his or her IME with either audio or video devices.

EFFECTIVE DATE: October 1, 2008

RECOMMENDED MEDICAL TREATMENT

For the bill's purposes, recommended treatment that the employer or insurer is (1) unreasonably delaying or (2) objecting to as unreasonable or unnecessary is medical treatment recommended by a:

1. provider participating in an employer's medical plan, which was approved by a compensation commissioner,
2. physician in an approved voluntary agreement, as defined in workers' compensation law, or
3. medical provider the employee was referred to by a provider described in (1) or (2).

INJURED EMPLOYEES' RIGHTS AT AN IME

By law, an injured employee is allowed to have his own physician accompany him or her to the IME. The bill also allows the employee to record the IME by either an audio or video means.

BACKGROUND

HB 5727

This bill (File 240) empowers compensation commissioners the power to fully review a decision on providing or denying medical care. He or she may determine if the care is reasonable or necessary. Furthermore, it permits a commissioner to impose interest and other penalties for undue delay of medical treatment by the employer or insurer.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 8 Nay 1 (03/13/2008)