



# House of Representatives

General Assembly

**File No. 148**

January Session, 2009

Substitute House Bill No. 5249

*House of Representatives, March 24, 2009*

The Committee on Labor and Public Employees reported through REP. RYAN 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 Section 31-294d of the general statutes is repealed and the  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, 2009*):

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 (1) a medical provider participating in an employer  
56 medical care plan approved pursuant to the provisions of section 31-  
57 279, as amended by this act; (2) a physician identified in an approved  
58 voluntary agreement pursuant to section 31-296; or (3) a provider to  
59 whom the employee has been referred by such physician or medical  
60 provider for treatment, is unreasonable or unnecessary, the employer  
61 shall promptly issue a written notice to the employee and employee's  
62 representative, if any, indicating the medical evidence upon which it  
63 relies for concluding that the proposed treatment is either unnecessary  
64 or unreasonable. If the employer wishes to support its denial of such  
65 treatment by a medical examination, the employer shall, after receipt  
66 of the recommendation of the proposed treatment from such medical  
67 provider or physician, schedule such medical examination in  
68 accordance with the provisions of this subsection and subsection (a) of  
69 section 31-294f, as amended by this act, to occur within thirty days.  
70 The employee shall attend this scheduled medical examination or  
71 provide written notice of the employee's need for the employer to  
72 reschedule said examination within an additional thirty-day period.

73 (g) Whenever an examination requested by the employer pursuant  
74 to subsection (f) of this section results in concurrence that the proposed  
75 treatment recommended by a medical provider or physician described  
76 in subdivisions (1) to (3), inclusive, of subsection (f) of this section was  
77 reasonable and necessary, the employer shall pay the employee for the  
78 period the employee's treatment was delayed by the employer,

79 provided the employee is otherwise eligible for benefits for total or  
80 partial incapacity: (1) For total incapacity, one hundred per cent of the  
81 employee's average weekly earnings, calculated pursuant to section 31-  
82 310, subject to the reductions to such earnings specified in subsection  
83 (a) of section 31-307; or (2) for partial incapacity, one hundred per cent  
84 of the difference in wages described in subsection (a) of section 31-308,  
85 subject to the reductions to such wages specified in said subsection (a).  
86 If an employer fails to schedule a medical examination pursuant to the  
87 provisions of subsection (f) of this section, the employee, in any  
88 proceeding resulting in authorization of such treatment, may recover  
89 reasonable attorney's fees arising out of the employee's claim for the  
90 recommended treatment.

91 Sec. 2. Section 31-294f of the general statutes is repealed and the  
92 following is substituted in lieu thereof (*Effective October 1, 2009*):

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

111 (b) All medical reports concerning any injury of an employee

112 sustained in the course of his employment shall be furnished within  
113 thirty days after the completion of the reports, at the same time and in  
114 the same manner, to the employer and the employee or his attorney.

115 Sec. 3. Subsection (b) of section 31-288 of the general statutes is  
116 repealed and the following is substituted in lieu thereof (*Effective*  
117 *October 1, 2009*):

118 (b) (1) Whenever through the fault or neglect of an employer or  
119 insurer, the adjustment or payment of compensation due under this  
120 chapter or the provision of reasonable and necessary medical  
121 treatment is unduly delayed, such employer or insurer may be  
122 assessed by the commissioner hearing the claim a civil penalty of not  
123 more than one thousand dollars for each such case of delay, to be paid  
124 to the claimant. For purposes of this subsection, the failure to promptly  
125 provide medical services recommended by (A) a medical provider  
126 participating in an employer medical care plan approved pursuant to  
127 the provisions of section 31-279, as amended by this act; (B) a physician  
128 identified in an approved voluntary agreement pursuant to section 31-  
129 296; or (C) a provider to whom the employee has been referred by such  
130 medical provider or physician for recommended treatment, shall be  
131 presumed to be the unreasonable delay of treatment without good  
132 cause unless the commissioner finds the recommended medical care  
133 was either unreasonable or unnecessary at the time such care was  
134 recommended. (2) Whenever either party to a claim under this chapter  
135 has unreasonably, and without good cause, delayed the completion of  
136 the hearings on such claim, the delaying party or parties may be  
137 assessed a civil penalty of not more than five hundred dollars by the  
138 commissioner hearing the claim for each such case of delay. Any  
139 appeal of a penalty assessed pursuant to this subsection shall be taken  
140 in accordance with the provisions of section 31-301.

141 Sec. 4. Section 31-279 of the general statutes is amended by adding  
142 subsection (f) as follows (*Effective October 1, 2009*):

143 (NEW) (f) The Worker's Compensation Commission shall have  
144 plenary review of decisions with respect to the provision or denial of

145 medical care under any plan approved by the chairman under  
146 subsection (d) of this section and may determine whether such medical  
147 care is reasonable or necessary.

148 Sec. 5. Section 31-300 of the general statutes is repealed and the  
149 following is substituted in lieu thereof (*Effective October 1, 2009*):

150 As soon as may be after the conclusion of any hearing, but no later  
151 than one hundred twenty days after such conclusion, the  
152 commissioner shall send to each party a written copy of the  
153 commissioner's findings and award. The commissioner shall, as part of  
154 the written award, inform the employee or the employee's dependent,  
155 as the case may be, of any rights the individual may have to an annual  
156 cost-of-living adjustment or to participate in a rehabilitation program  
157 under the provisions of this chapter. The commissioner shall retain the  
158 original findings and award in said commissioner's office. If no appeal  
159 from the decision is taken by either party within twenty days  
160 thereafter, such award shall be final and may be enforced in the same  
161 manner as a judgment of the Superior Court. The court may issue  
162 execution upon any uncontested or final award of a commissioner in  
163 the same manner as in cases of judgments rendered in the Superior  
164 Court; and, upon the filing of an application to the court for an  
165 execution, the commissioner in whose office the award is on file shall,  
166 upon the request of the clerk of said court, send to the clerk a certified  
167 copy of such findings and award. In cases where, through the fault or  
168 neglect of the employer or insurer, medical treatment or adjustments  
169 of compensation have been unduly delayed, or where through such  
170 fault or neglect, payments have been unduly delayed, the  
171 commissioner may include in the award interest at the rate prescribed  
172 in section 37-3a and a reasonable attorney's fee in the case of undue  
173 delay in medical treatment or adjustments of compensation and may  
174 include in the award in the case of undue delay in payments of  
175 compensation, interest at twelve per cent per annum and a reasonable  
176 attorney's fee. Payments not commenced within thirty-five days after  
177 the filing of a written notice of claim shall be presumed to be unduly  
178 delayed unless a notice to contest the claim is filed in accordance with

179 section 31-297. In cases where there has been delay in either  
180 adjustment or payment, which delay has not been due to the fault or  
181 neglect of the employer or insurer, whether such delay was caused by  
182 appeals or otherwise, the commissioner may allow interest at such  
183 rate, not to exceed the rate prescribed in section 37-3a, as may be fair  
184 and reasonable, taking into account whatever advantage the employer  
185 or insurer, as the case may be, may have had from the use of the  
186 money, the burden of showing that the rate in such case should be less  
187 than the rate prescribed in section 37-3a to be upon the employer or  
188 insurer. In cases where the claimant prevails and the commissioner  
189 finds that the employer or insurer has unreasonably contested liability,  
190 the commissioner may allow to the claimant a reasonable attorney's  
191 fee. No employer or insurer shall discontinue or reduce payment on  
192 account of total or partial incapacity under any such award, if it is  
193 claimed by or on behalf of the injured person that such person's  
194 incapacity still continues, unless such employer or insurer notifies the  
195 commissioner and the employee of such proposed discontinuance or  
196 reduction in the manner prescribed in section 31-296 and the  
197 commissioner specifically approves such discontinuance or reduction  
198 in writing. The commissioner shall render the decision within fourteen  
199 days of receipt of such notice and shall forward to all parties to the  
200 claim a copy of the decision not later than seven days after the decision  
201 has been rendered. If the decision of the commissioner finds for the  
202 employer or insurer, the injured person shall return any wrongful  
203 payments received from the day designated by the commissioner as  
204 the effective date for the discontinuance or reduction of benefits. Any  
205 employee whose benefits for total incapacity are discontinued under  
206 the provisions of this section and who is entitled to receive benefits for  
207 partial incapacity as a result of an award, shall receive those benefits  
208 commencing the day following the designated effective date for the  
209 discontinuance of benefits for total incapacity. In any case where the  
210 commissioner finds that the employer or insurer has discontinued or  
211 reduced any such payment without having given such notice and  
212 without the commissioner having approved such discontinuance or  
213 reduction in writing, the commissioner shall allow the claimant a

214 reasonable attorney's fee together with interest at the rate prescribed in  
215 section 37-3a on the discontinued or reduced payments.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	31-294d
Sec. 2	<i>October 1, 2009</i>	31-294f
Sec. 3	<i>October 1, 2009</i>	31-288(b)
Sec. 4	<i>October 1, 2009</i>	31-279
Sec. 5	<i>October 1, 2009</i>	31-300

**LAB**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

### **OFA Fiscal Note**

#### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 10 \$</b>	<b>FY 11 \$</b>
Dept. of Administrative Services - Workers' Comp. Claims	GF - Cost	Potential Significant	Potential Significant
Workers' Compensation Com.	WCF - None	None	None

Note: GF=General Fund; WCF=Workers' Compensation Fund

#### **Municipal Impact:**

<b>Municipalities</b>	<b>Effect</b>	<b>FY 10 \$</b>	<b>FY 11 \$</b>
Various Municipalities	Cost	Potential Significant	Potential Significant

#### **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 IME concurs with the recommended course of treatment, the employer must pay an injured worker who is totally incapacitated at a rate equal to 100% of the employee's average weekly wage. Under current law, an injured worker would receive 75% of the employee's average weekly wage calculated pursuant to CGS 31-310, after such

earnings have been reduced by a deduction for federal or state taxes. Increasing the total disability and partial disability payments whenever an IME physician concurs with the prescribing physician may result in a significant fiscal impact to the state and municipalities.

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.

Lastly, the bill gives a workers' compensation commissioner the power to fully review a decision on providing or denying medical care. This provision has no fiscal impact.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

*Source: Department of Administrative Services; Workers' Compensation Commission*

**OLR Bill Analysis**

**sHB 5249**

***AN ACT CONCERNING TIMELY MEDICAL TREATMENT FOR INJURED WORKERS.***

**SUMMARY:**

This bill makes a number of changes in workers' compensation law regarding medical treatment for injured workers.

First, it creates a 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 nor necessary when it was recommended. The commissioner can assess a penalty of up to \$1,000 for each case of delay.

Second, the bill places specific requirements on employers who choose to object to a claimant's recommended medical treatment because they believe it is unreasonable or unnecessary. This includes, in cases involving an independent medical examination (IME), scheduling the IME to occur within 30 days after receiving the proposed treatment recommendation. The bill establishes employer penalties if the IME concurs with the original recommended treatment.

Third, it gives an employee the right to record his or her IME with either audio or video devices.

Lastly, it gives a workers' compensation commissioner the power to (1) fully review a decision to provide or deny medical care and (2) determine whether such care is reasonable or necessary.

EFFECTIVE DATE: October 1, 2009

---

**DELAY OF RECOMMENDED MEDICAL TREATMENT**

The bill creates a 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 nor necessary when it was recommended. The commissioner can assess a penalty of up to \$1,000 for each case of delay.

***Recommended Medical Treatment Defined***

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).

**REQUIREMENTS ON EMPLOYERS THAT OBJECT TO TREATMENT**

The bill requires employers who have good cause 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 to occur no later than 30 days after receiving the proposed treatment recommendation. If the employer fails to schedule the IME to occur within 30 days, the employee is entitled to recover any reasonable attorney's fees arising out of his or her successful claim for the treatment.

The bill also requires the employee to attend the scheduled IME or

provide written notice that the employee needs the employer to reschedule it within an additional 30-day period.

### ***Penalties If IME Concurs With Original Recommendation***

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.

### **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, whether it is requested by the employer or ordered by a commissioner. The bill also allows the employee to record the IME by either an audio or video means.

### **COMMISSIONER'S POWER TO REVIEW**

By law, employers and insurers can sponsor medical plans, which must be approved by a commissioner, to provide the necessary care for injured workers under the Workers' Compensation Act. Under current regulation, a decision by the plan's chief executive officer to deny payment for medical or health care services is subject to review only if it is shown to be unreasonable, arbitrary, or capricious (CT. Agencies Reg. § 31-279-10(f)). The bill gives a commissioner the power to review a decision to provide or deny medical care under such a plan without having to show it meets the threshold stated in regulation. The bill allows the commissioner to decide whether the medical care is reasonable or necessary.

But it is unclear if the bill applies just to a medical plan's chief executive officer's decision or if it could be triggered by a decision at an earlier stage in the medical plan process.

By law, if a commissioner finds an insurer or employer caused an undue delay of wage loss payments through its own fault or neglect, the commissioner can order them to pay interest penalties and

reasonable attorney's fees. The bill also allows the commissioner to make such a ruling for undue delays of medical treatment.

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 10 Nay 1 (03/10/2009)