



STATE OF CONNECTICUT

165 Capitol Avenue  
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SB 151

An Act Concerning Additional Requirements for an Employer's Notice to Dispute  
Certain Care Deemed Reasonable for an Employee under the Workers'  
Compensation Act

Labor & Public Employees Committee  
February 28, 2012

Thank you for allowing the Department of Administrative Services (DAS) to offer information on SB 151. DAS respectfully submits that, while SB 151 is well-intentioned, it would fundamentally change the medical treatments covered under Workers' Compensation and the process by which employees and employers/carriers resolve disputes about medical treatments. These changes will have a significant fiscal impact on the State of Connecticut's Workers' Compensation program.

Changes to Which Medical Treatments are Covered

The State's average medical spend over each of the last two completed fiscal years (FY10 and FY11) was \$45,552,725.

Under section (c) of this bill, in order to challenge a proposed course of treatment under workers' compensation, the employer must obtain "an opinion from a physician licensed to practice medicine in Connecticut that the course of treatment recommended by the attending physician is not reasonable or necessary and does not meet the standard of care that should be exercised by a physician practicing in the same specialty as the attending physician and the basis for that opinion." (Lines 42-47) (Emphasis added.) In other words, the only treatment that an employer can challenge is treatment that rises to the level of malpractice. By requiring the employer to pay for any and all medical treatment unless it can prove malpractice, SB 151 completely eviscerates the employer's ability to manage medical costs. This change is likely to increase the State's medical treatment costs exponentially.

Section (d) of the bill states that if the dispute over treatment is "not as to the reasonableness of the course of care, but as to the better course of care, the patient shall be entitled to choose the course of care ...." (Lines 60-63) By giving the employee the

unfettered discretion to choose the course of care, this provision changes the standard by which the Workers' Compensation Commission resolves disputes and thus eliminates the employer's ability to present alternative course of care options obtained through the managed care process or the respondent's medical examination. As a result, medical treatment costs in the state's workers' compensation system are likely to increase significantly.

### Changes to the Process for Disputing Coverage of Medical Treatments

*Workers' Comp Continues to Pay During Contest, and does not get Reimbursed if the Treatment is later Adjudged Non-Compensable.* Under current law, if an employer disputes a proposed course of treatment, it is required to notify the employee that it will not cover the treatment. The employee has the opportunity to request a hearing with the Workers' Compensation Commission. While the dispute is pending, costs of the treatment are paid by the employee's group health insurer (subject to the terms of such plan). If the Workers' Compensation Commission determines that the treatment is covered under workers' compensation, the employer/workers' compensation carrier reimburses the group health insurer. (C.G.S. §31-299a(b)).

SB 151 changes this process by requiring the employer/workers' compensation carrier to continue to pay for the course of treatment unless and until the Workers' Compensation Commission approves the discontinuance, reduction or denial of such care in writing. This process could take anywhere from a few weeks to several months. There is no mechanism in the proposed bill to allow the employer to recoup the costs associated with paying for treatment that is later determined to be unreasonable or unnecessary. As a result, it is likely that SB 151 will cause the state to pay for medical treatment that is not compensable under workers' compensation law, thus increasing workers' compensation medical treatment costs.

*5-day Notice Requirement.* Moreover, Section (b) of SB 151 requires the employer to notify an employee that it intends to discontinue, reduce or deny a proposed course of treatment "not later than five days" after it receives notice of the need for treatment. (Lines 31-34) Presumably, if the employer fails to issue the notice within the five days, it waives its rights to challenge the treatment. This provision is also likely to result in significant costs to the state.

An employer can receive notice of the need for treatment in many ways: formal physician opinions, work status reports, medical reports and updates, and medical bills. Currently, the third party administrator (TPA) for the State Employee Workers' Compensation program receives an average of 13,000 pieces of such medical treatment-related correspondence each month from state employees and their doctors. In order to meet the SB 151 five-day deadline, the TPA would have to hire a minimum of four additional clerical employees and one additional adjuster to review, index and assess the proposed treatment. The increased costs to the TPA would translate to higher costs to the State.

Even if the TPA hires additional staff, given the high volume of medical treatment-related correspondence and the short deadline, it is reasonable to assume that the State will not be able to catch each and every problematic course of treatment. Every time the State must pay for unnecessary medical treatment simply because it missed the 5-day deadline to file the required notice there will be an additional cost to the State attributed to SB 151.

*Documentary Support Required.* Section (c) requires employers to include with the notice of intent to discontinue, reduce or deny medical care either a written opinion from a doctor or a document stating that the employer intends to rely on an independent medical examination to support its challenge, and identifying the name of the doctor and the date, time and location of the examination. The examination must be held not more than two weeks after the employer's receipt of the notice of proposed treatment. (Lines 41-53)

The requirement that the employer cannot dispute a claim for medical treatment without first obtaining a physician opinion or a medical examination will significantly increase the State's medical provider/expert witness costs.

It is likely that the State will not be able to find doctors willing or able to meet the short deadlines imposed by SB 151 (five days for a written opinion and 15 days for the independent medical exam). The State may have to pay higher rates to incentivize doctors to accept the State's requests for written opinions or exams in order to meet these deadlines.

