

Testifying



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**Raised Bill 907  
Public Hearing 2/26/2013**

**TO: MEMBERS OF THE LABOR AND PUBLIC EMPLOYEES COMMITTEE**  
**FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION**  
**DATE: FEBRUARY 26, 2013**

**RE: SUPPORT RAISED BILL 907: AN ACT CONCERNING ADDITIONAL REQUIREMENTS FOR AN EMPLOYER'S NOTICE TO DISPUTE CERTAIN CARE DEEMED REASONABLE FOR AN EMPLOYEE UNDER THE WORKERS' COMPENSATION ACT**

The CTLA strongly SUPPORTS the ATTACHED SUBSTITUTE to Raised Bill 907 and respectfully contend that the bill should pass.

Delay in the authorization of medical treatment in accepted workers' compensation claims is a common occurrence. Simply put, there has been a breakdown in the delivery process of Workers' Compensation benefits to injured workers, which results in confusion, delay and additional hearings. Delay comes in many forms. Typically, it is due to the failure of the insurer to timely authorize continued treatment; the unilateral cessation of treatment by the insurer; the refusal of physicians to provide treatment until they receive confirmation from the insurer that they will be paid, even though such confirmation is not required; and poor communication between insurers and medical providers.

Recently the WCC enacted *Guidelines to Improve the Coordination of Medical Services*. The goal of these Guidelines is to provide the timely and efficient delivery of medical services. The adoption of the Guidelines is recognition by the WCC that there are impediments to the delivery of medical services to injured workers. The Guidelines outline ways to minimize potential disruptions and to encourage compliance with Connecticut's Workers' Compensation laws. The Guidelines are only advisory and do not contain any enforcement provisions. They are limited to the treatment recommendations of the medical care protocols, which do not address more serious injuries. Most importantly, the Guidelines do not prevent the unilateral termination of previously authorized and approved medical treatment.

The substitute to Raised Bill 907 will accomplish the following:

- **Reduces delays in obtaining medical treatment:**  
Section one prohibits a respondent from discontinuing, reducing or denying medical treatment, which the treating physician deems to be reasonable or necessary, in an accepted claim without first notifying the medical provider, commissioner and employee.

- Provides a timetable to resolve disputes:**  
 No reduction or discontinuation of treatment is effective until it is approved in writing by a commissioner. The respondent has 10 days after receiving notice of the requested treatment to file its notice contesting the recommended treatment. The parties may request a hearing not later than 15 days after receipt of the respondent's notice. The commissioner shall not approve the requested discontinuation, reduction or denial of treatment before the expiration of the 15 day period or the completion of the hearing, whichever is later. The respondent bears the burden of proof that the requested medical care or treatment is unreasonable.
- No changes to employers' rights to contest denied claims**  
 Section 1(c) states that the employer is required to file a Form 36 with an opinion from a physician practicing in the same specialty as the attending physician that the recommended course of treatment is not reasonable or necessary. A respondent may rely on the opinion of a physician who performs an examination at its request and such examination must occur within 30 days of the respondent's notice if it has not already occurred.
- Injured workers get back to work quicker**  
 In section 1 (d) , if there is a dispute over the better course of medical treatment, and not the reasonableness of the treatment, the claimant may choose the course of treatment.
- Comparison to last year's proposal:**  
 This bill is similar to last year's Raised Bill 151, but there are significant improvements. Both bills prohibit the unilateral cessation or denial of treatment in an acceptable case. Like last year's bill, Raised Bill 907 eliminates the need for preauthorization of treatment; medical providers are assured of payment until the employer notifies the injured worker of its intent to dispute treatment based on medical evidence. It specifies a notification procedure for discontinuing, reducing or denying medical treatment in an accepted case that is similar to a Form 36.

In response to some concerns raised by last year's bill, the period of time to file the notice of intention to discontinue or reduce treatment has been increased from 5 to 10 days.

Likewise, this year's proposed substitute increases the period of time for an employer can obtain a medical examination to support its opposition to the proposed medical treatment from 2 weeks to 30 days after the employee receives the Notice of Intent to Reduce or Deny Care.

There is a significant reduction in the burden of disputing the proposed treatment. Raised Bill 907 only requires that the employer provide a medical opinion from a physician licensed to practice medicine in Connecticut that the proposed care is not reasonable or necessary and the basis for such an opinion. Prior versions of this bill had a higher burden - that the proposed treatment does not meet the standard of care.

Also, the substitute to Raised Bill 907 states that its notice provisions do not apply to the termination of a predetermined course of limited medical treatment.

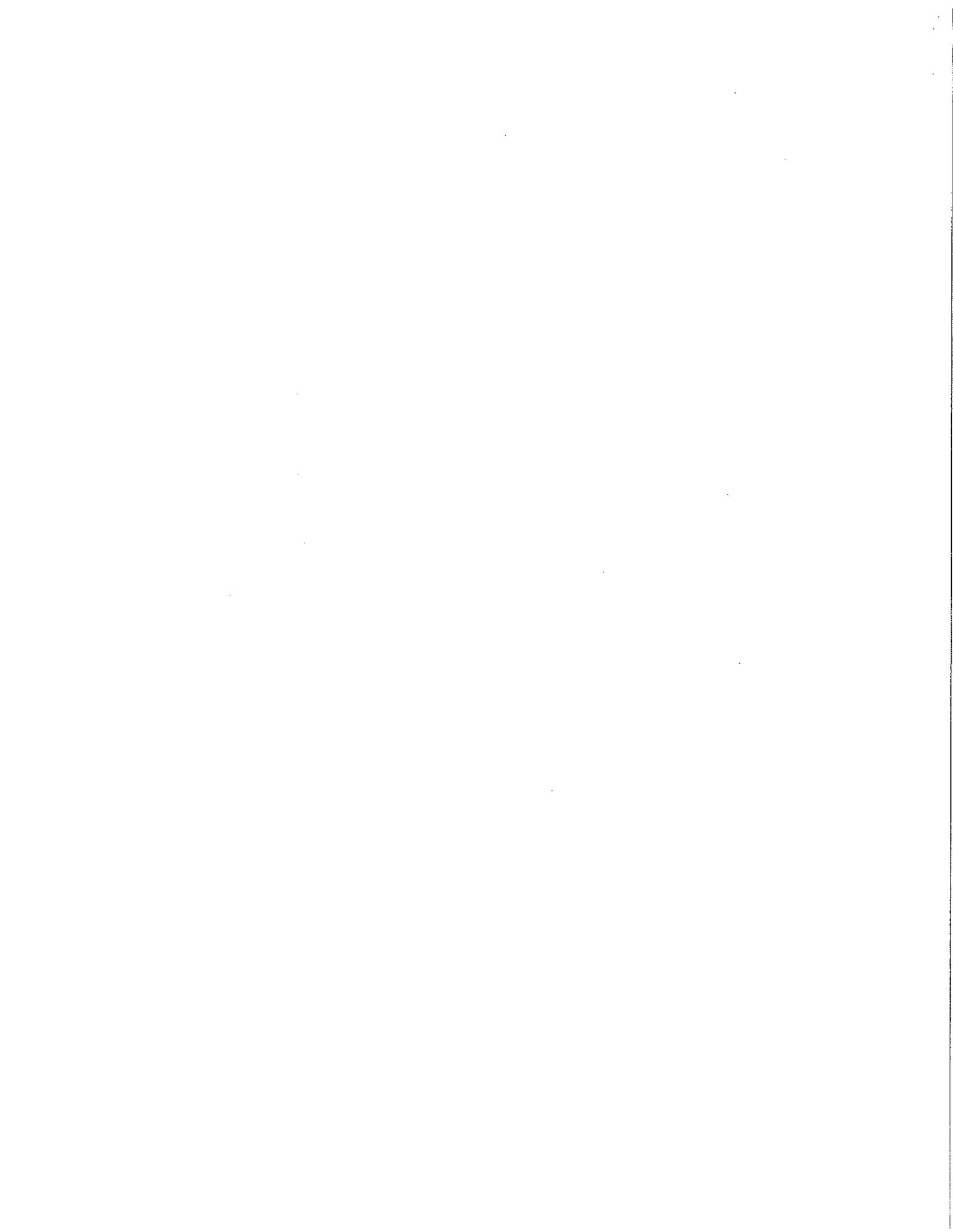
Lastly, the most significant change is stated in Section 2. The substitute to Raised Bill 907 creates an exception to the notice provision for employers who comply with Connecticut General Statute Section 31-284b by providing their employees with health insurance while the employee receives worker's compensation benefits.

#### **A Note about the Possible Fiscal Impact**

The substitute to RB 907 will not have a significant fiscal impact. It only addresses accepted Worker's Compensation claims. More importantly, it does not mandate approval of routine medical treatment. Simply put, this bill is a modified legislative adoption of the Medical Provider Guidelines which the Worker's Compensation Commission recently enacted. No new or additional routine examinations are required or even contemplated by the bill. Instead, it sets forth a procedure by which the employer is required to notify the employee, the medical provider and the Worker's Compensation Commission of its intent to discontinue treatment. This procedure is identical to the procedure currently used for a Form 36. This bill requires the employer to provide reasonable medical care on a timely basis unless there is a valid medical reason for denying the treatment.

Employers who provide health insurance to employees that are receiving worker's compensation benefits are not required to comply with the bill's notice provision. Likewise, the notice provision does not apply to the termination of a predetermined course of treatment.

**CTLA RESPECTLY URGES THE COMMITTEE TO PASS THE ATTACHED  
SUBSTITUTE TO RAISED BILL 907**



## PROPOSED SUBSTITUTE LANGUAGE

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

Section 1. (NEW) (*Effective October 1, 2013*) (a) No employer or an employer's insurer shall discontinue, reduce or deny a course of treatment which a physician or surgeon deems reasonable or necessary unless the employer notifies the commissioner, physician or surgeon and the employee of the proposed discontinuance, reduction or denial of the course of medical care and the commissioner approves such discontinuance, reduction or denial of such care in writing. Such notice shall specify the reason maintained by the employer or the employer's insurer that the course of medical care deemed reasonable by the physician is not reasonable and be in substantially the following form:

IMPORTANT

STATE OF CONNECTICUT WORKERS' COMPENSATION COMMISSION

YOU ARE HEREBY NOTIFIED THAT THE EMPLOYER OR INSURER INTENDS TO DISCONTINUE, REDUCE OR DENY TREATMENT .... (date) FOR THE FOLLOWING REASONS:

If you object to the discontinuance, reduction, or denial of treatment as stated in this notice, YOU MUST REQUEST A HEARING NOT LATER THAN 15 DAYS after your receipt of this notice, or this notice will automatically be approved.

To request an Informal Hearing, call the Workers' Compensation Commission District Office in which your case is pending.

Be prepared to provide medical and other documentation to support your objection. For your protection, note the date when you received this notice.

(b) No discontinuance or reduction of an ongoing course of treatment shall be effective unless approved in writing by the commissioner upon a determination that the proposed care is not reasonable. The parties may request a hearing on any such proposed discontinuance, reduction or denial not later than fifteen days after receipt of such notice. Such notice of intention to discontinue, reduce or deny medical treatment shall be issued not later than ten days after a notice of need for treatment is received by the employer, employer's insurer, employer's claim administrator or Second Injury Fund. The commissioner shall not approve such discontinuance, reduction or denial prior to expiration of the period for requesting a hearing or the completion of the hearing, whichever is later. Either party may request a formal hearing on the commissioner's decision to grant or deny the discontinuance, reduction or denial. The employer shall have the burden of proof that the medical care or treatment is unreasonable. Failure to issue the notice of intention to discontinue, reduce or deny medical treatment precludes the employer and the employer's insurer from discontinuing, reducing or denying the request for medical treatment.

(c) The notice required in subsection (a) of this section shall include 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 the basis for such opinion. If the employer intends to rely on the opinion of a physician who performs an examination pursuant to section 31-294f of the general statutes, and such examination has not yet taken place, then the name of the physician, date, time and location of the examination, which shall be held not more than thirty days after the employee's receipt of the notice, shall be attached to the notice in lieu of an opinion that the treatment is not reasonable or necessary. Failure to conduct the examination within thirty days of the notice shall preclude the employer and the employer's insurer from disputing, discontinuing or reducing the requested treatment. The treatment recommended by the attending physician or surgeon may not be discontinued, reduced or denied until the results of the examination pursuant to section 31-294f of the general statutes is considered at an informal hearing.

(d) If the employer or employer's insurer seeks to discontinue, reduce or deny the course of medical care found reasonable by a physician based upon a dispute between physicians 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 after informed consent.

(e) An employer or an employer's insurer is not required to comply with the notice provisions set forth in Section 1(a), (b) and (c) for an ongoing course of medical treatment of limited duration.

Section 2. (New): (a) Employers and employer's insurers are exempt from the notice provisions of Section 1(a), (b) and (c) if the employer provides the injured employee with accident and health insurance pursuant to Connecticut General Statute Sec. 31.284b.