



Senate

General Assembly

File No. 313

January Session, 2013

Substitute Senate Bill No. 907

Senate, April 3, 2013

The Committee on Labor and Public Employees reported through SEN. OSTEN of the 19th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING ADDITIONAL REQUIREMENTS FOR AN EMPLOYER'S NOTICE TO DISPUTE CERTAIN CARE DEEMED REASONABLE FOR AN EMPLOYEE UNDER THE WORKERS' COMPENSATION ACT.

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

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

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IMPORTANT

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STATE OF CONNECTICUT WORKERS' COMPENSATION

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COMMISSION

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YOU ARE HEREBY NOTIFIED THAT THE EMPLOYER OR

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INSURER INTENDS TO DISCONTINUE, REDUCE OR DENY

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TREATMENT ... (date) FOR THE FOLLOWING REASONS:

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If you object to the discontinuance, reduction, or denial of treatment

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as stated in this notice, YOU MUST REQUEST A HEARING NOT

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LATER THAN FIFTEEN DAYS after your receipt of this notice, or this

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notice will automatically be approved.

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To request an Informal Hearing, call the Workers' Compensation

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Commission District Office in which your case is pending.

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Be prepared to provide medical and other documentation to

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support your objection. For your protection, note the date when you

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received this notice.

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(b) No discontinuance or reduction of an ongoing course of

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treatment shall be effective unless approved in writing by the

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commissioner upon a determination that the proposed care is not

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reasonable. The parties may request a hearing on any such proposed

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discontinuance, reduction or denial not later than fifteen days after

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receipt of such notice. Such notice of intention to discontinue, reduce

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or deny medical treatment shall be issued not later than ten days after

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a notice of need for treatment is received by the employer, employer's

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insurer, employer's claim administrator or Second Injury Fund. The

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commissioner shall not approve such discontinuance, reduction or

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denial prior to expiration of the period for requesting a hearing or the

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completion of the hearing, whichever is later. Either party may request

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a formal hearing on the commissioner's decision to grant or deny the

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discontinuance, reduction or denial. The employer shall have the

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burden of proof that the medical care or treatment is unreasonable.

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Failure to issue such notice of intention to discontinue, reduce or deny

43 medical treatment shall preclude the employer and the employer's
44 insurer from discontinuing, reducing or denying the request for
45 medical treatment.

46 (c) The notice required in subsection (a) of this section shall include
47 an opinion from a physician or surgeon licensed to practice medicine
48 in this state that the course of treatment recommended by the
49 attending physician or surgeon is not reasonable or necessary and the
50 basis for such opinion. If the employer intends to rely on the opinion of
51 a physician or surgeon who performs an examination pursuant to
52 section 31-294f of the general statutes, and such examination has not
53 yet taken place, then the name of the physician or surgeon, date, time
54 and location of the examination, which shall be held not more than
55 thirty calendar days after the employee's receipt of the notice, shall be
56 attached to the notice in lieu of an opinion that the treatment is not
57 reasonable or necessary. Failure to conduct the examination not later
58 than thirty days after receipt of such notice shall preclude the
59 employer or employer's insurer from disputing, discontinuing or
60 reducing the requested treatment. The treatment recommended by the
61 attending physician or surgeon may not be discontinued, reduced or
62 denied until the results of the examination pursuant to section 31-294f
63 of the general statutes is considered at an informal hearing.

64 (d) If the employer or employer's insurer seeks to discontinue,
65 reduce or deny the course of medical care found reasonable by a
66 physician or surgeon based upon a dispute between physicians or
67 surgeons not as to the reasonableness of the course of care, but as to
68 the better course of care, the patient shall be entitled to choose the
69 course of care after informed consent.

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

73 Sec. 2. (NEW) (*Effective October 1, 2013*) An employer and the
74 employer's insurer are exempt from the notice provisions of
75 subsections (a) to (c), inclusive, of section 1 of this act if the employer

76 provides the injured employee with accident and health insurance
77 pursuant to section 31-284b of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2013	New section
Sec. 2	October 1, 2013	New section

Statement of Legislative Commissioners:

Section 2 was rewritten for proper grammar.

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:

Agency Affected	Fund-Effect	FY 14 \$	FY 15 \$
Various State Agencies	GF, TF - Cost	Potential Significant	Potential Significant
Dept. of Administrative Services	GF - Cost	\$85,510	\$88,075
State Comptroller - Fringe Benefits ¹	GF - Cost	\$29,535	\$30,421
Dept. of Administrative Services (WC Administrator Account)	GF - Cost	At least \$150,000	At least \$150,000

Municipal Impact:

Municipalities	Effect	FY 14 \$	FY 15 \$
All Municipalities	STATE MANDATE - Cost	Potential Significant	Potential Significant

Explanation

The bill will result in a cost to the state² and municipalities' workers' compensation programs, the Department of Administrative Services (Personnel Services and Workers' Compensation Third Party Administrator (TPA) accounts), and the Office of the State Comptroller Fringe Benefit Accounts in order to comply with the provisions of the bill. The fiscal impact is as follows:

Medical Costs for Workers' Compensation Programs

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 34.54% of payroll in FY 14 and FY 15.

² The State's workers' compensation program is self-insured and therefore is responsible for the total cost of claims incurred as opposed to a fully-insured policy where the state pays a set premium irrespective of cost.

The bill will result in potentially significant medical costs for public workers' compensation programs'. First, the bill limits the employers' ability to provide alternative courses of care provided through the managed care process to injured workers. The bill allows the injured worker to select their course of care in the event there is a disagreement between providers. The managed care process provides the state and municipalities a mechanism for controlling medical costs in their workers' compensation programs. The state's average medical spend for its workers' compensation program over the past two fiscal years (FY 11 and FY 12) was \$43.8 million. The cost to the program would depend on the cost differential between the course of medical care selected by the employee and its alternative.

Secondly, the bill requires the state to continue to cover disputed medical care for an injured worker until a written decision is rendered by the Workers' Compensation Commission (WCC) which may take several weeks. In the event the care is determined to be unreasonable, there is no procedure for reimbursing the state for the cost of the medical care provided. The cost to the state and municipalities will be based on the amount of medical care provided which is determined to be unnecessary. This provision of the bill only applies to those state and municipal employees that are not afforded health insurance coverage. In the case of the state this includes many temporary, part-time and newly hired employees.

Under current law if an employer disputes a proposed course of treatment, the employer is required to notify the employee and the employee may request a hearing before the WCC. While the dispute is pending the cost of treatment is paid by an employee's group health insurance. If the WCC determines the treatment is covered under workers' compensation the employer or workers' compensation carrier (for fully insured municipalities) reimburses the health insurer.

Third, if a notice is required to be issued to an employee³, the notice needs to include a Respondent's Medical Examination (RME) or an

³ The notice requirements in the bill apply to employees without health insurance.

appointment for an RME. The state and municipalities workers' compensation programs will bear the cost of the RME and the cost of care while the results from the RME are pending. In FY 11 the state spent approximately \$2.9 million on medical exams and approximately \$786,000 in FY 12. The wide spread in cost is due to the complexity of the claims.⁴

Lastly, the bill imposes strict notice deadlines which if unmet preclude the employer from discontinuing, reducing or denying the disputed medical treatment. Consequently, the bill may result in increased medical costs as the timeframe under current law is open ended and the bill imposes a 10 day notice requirement and a 30 day requirement for a RME if needed. The state and municipalities' liability will depend on the medical care provided which might have otherwise not been covered under workers' compensation.

Personnel and TPA Costs

The bill will result in increased personnel costs to the Department of Administrative Services and the Office of the State Comptroller's fringe benefit accounts of \$115,045 and \$118,496 in FY 14 and FY 15 respectively to hire two additional clerical staff. The clerical staff is necessary to review health insurance coverage for employees with workers' compensation claims to determine notice requirements.

Lastly, the state will bear increased contract costs in order to comply with the 10 day notice requirement imposed in the bill. The increased cost to the Workers' Compensation Third Party Administrator contract will be at least \$150,000 per year for increased administrative expenses. The current TPA contract's annual award is approximately \$5.3 million. Under the bill the TPA will have 10 days to review proposed treatment for injured workers. The TPA receives an average of 13,000 pieces of medical treatment correspondence, in various forms each

⁴ The FY 11 and FY 12 medical exam costs are included in the aforementioned total average medical spend for the same periods.

month.⁵

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation. In addition, normal annual pension costs (currently estimated at 7.5% of payroll) attributable to the identified personnel changes will be recognized in the state's annual required pension contribution in future actuarial valuations.

⁵ Source: Department of Administrative Services

OLR Bill Analysis**sSB 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.*****SUMMARY:**

This bill requires certain employers, or their workers' compensation insurers, to obtain written approval from a workers' compensation commissioner before discontinuing, reducing, or denying an employee's course of medical treatment deemed reasonable or necessary by a physician or surgeon (hereafter, "physicians"). The requirement does not apply to (1) employers that maintain an employee's health insurance coverage while the employee is receiving workers' compensation benefits or (2) an ongoing course of medical treatment of limited duration.

The bill specifies the procedure, including a notice requirement and hearing, that must be followed before the employer or insurer can discontinue, reduce, or deny the medical treatment. To grant approval, a compensation commissioner must find the proposed treatment unreasonable.

The bill also allows any employee receiving medical treatment under workers' compensation to choose his or her course of medical care if the (1) employer or insurer seeks to discontinue, reduce, or deny a course of care and (2) employee's physician and employer's physician disagree over which course of care is better, but agree that either course is reasonable. The employee must choose by informed consent.

EFFECTIVE DATE: October 1, 2013

PROCEDURE

To obtain written approval from a commissioner, the bill requires an employer or its insurer to first notify the employee, commissioner, and the physician who found the treatment reasonable or necessary that it intends to discontinue, reduce, or deny the treatment. The employer or insurer must issue the notice within 10 days after the employer, insurer, claim administrator, or Second Injury Fund receives notice of the employee's need for treatment. The bill precludes the employer or insurer from discontinuing, reducing, or denying the request for treatment if it does not issue the notice.

The bill requires the notice to include (1) the reason that the treatment is not reasonable, (2) a licensed physician's opinion that the treatment is not reasonable or necessary, and (3) the basis for this opinion. If the employer (or, presumably, its insurer) intends to rely on a physician's opinion based on a future independent medical examination, the notice must instead include an appointment for the exam within 30 days after the employee receives the notice. If the exam is not conducted before the 30-day deadline, the bill precludes the employer or insurer from disputing, discontinuing, or reducing the requested treatment. The employee's treatment cannot be modified until the exam's results have been considered at an informal hearing.

Under the bill, the notice must also advise the employee (1) of the 15-day deadline to request an informal hearing, (2) how to request the hearing, (3) to be prepared to support his or her objection with medical and other documentation, and (4) to note the date he or she receives the notice. The bill prohibits a commissioner from approving any changes in the employee's treatment until the deadline to request a hearing has passed or the case has been heard, whichever is later.

At a hearing, the employer must prove that the proposed medical care or treatment is not reasonable. Either party can request a formal hearing on the commissioner's decision.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 7 Nay 3 (03/19/2013)