

# SENATE BILL REPORT

## SHB 1402

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As of March 25, 2009

**Title:** An act relating to contact with medical providers after appeals have been filed under industrial insurance.

**Brief Description:** Restricting contact with medical providers after appeals have been filed under industrial insurance.

**Sponsors:** House Committee on Commerce & Labor (originally sponsored by Representatives Williams, Campbell, Conway, Moeller and Green).

**Brief History:** Passed House: 3/11/09, 55-42.

**Committee Activity:** Labor, Commerce & Consumer Protection: 3/24/09.

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### SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

**Staff:** Mac Nicholson (786-7445)

**Background:** Washington's Industrial Insurance Act requires medical providers examining or treating injured workers to make reports as requested by the worker's self-insured employer or by the Department of Labor and Industries (L&I) on the injured worker's condition, treatment, or any other matters concerning the injured worker. All medical information in the possession of any person relevant to the injury must be made available at any stage of the proceedings to the employer, the claimant, and L&I. The law specifically provides that individuals will not incur legal liability for releasing such information.

L&I, or a self-insured employer, can order an independent medical examination of the injured worker in order to resolve any medical issue. Any action or decision made by L&I relating to any phase of an injured worker's claim can be appealed by the worker, beneficiary, employer, or any other aggrieved person to L&I or to the Board of Industrial Insurance Appeals (Board). Generally, an appeal to the Board must be filed within 60 days from the day the order or decision was communicated to the person seeking appeal. The Board must notify all interested parties to an appeal within ten days of granting the appeal. After an appeal has been granted, the Board or any involved parties may request a conference prior to the hearing in order to settle the dispute or resolve other matters that may aid in the disposition of the appeal. At the hearing on the appeal, each party has the opportunity to present evidence with respect to issues raised on appeal. After hearing the evidence, the Board judge must enter a decision and order, which can be appealed to superior court.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Summary of Bill:** Restrictions are placed on the ability of claimants, employers, and L&I to communicate with medical providers involved in workers compensation claims after appeals have been filed with the Board.

Contact by Employer with Claimant's Medical Provider. After receipt of notice that an appeal has been filed with the Board, the employer and its representatives cannot have contact with any medical provider who has treated the claimant at the request of the claimant to discuss issues in question in the appeal unless written authorization to do so has been given by the claimant.

Contact is permitted without prior authorization as necessary for ongoing management of the claim, including communications about the worker's treatment needs and the provider's treatment plan, vocational and return-to-work issues, and certification of the worker's inability to work, unless those issues are in question in the appeal.

An employer who has not obtained authorization from the claimant can communicate with the examining or treating medical provider about issues in question in the appeal as long as the communication is in writing or email and sent to all parties contemporaneously with a notice that any response must be in writing; is in person or by telephone at a date and time agreed to by all parties with the claimant having the opportunity to participate; or is made pursuant to a properly scheduled and noted deposition.

Contact by Claimant with Employer's Medical Provider. After receipt of notice that an appeal has been filed with the Board, the claimant cannot have contact with any medical provider who has examined the claimant at the request of the employer to discuss issues in question in the appeal unless written authorization to do so has been given by the employer.

A claimant who has not obtained authorization from the employer can communicate with the examining medical provider as long as the communication is in writing or email and sent to all parties contemporaneously with a notice that any response must be in writing; is in person or by telephone at a date and time agreed to by all parties with L&I and the employer having the opportunity to participate; or is made pursuant to a properly scheduled and noted deposition.

Contact by L&I with Claimant's Medical Provider. After a notice of appeal has been filed with the Board, a conference has been held to schedule hearings, and the claimant has named his or her witnesses, L&I cannot have any contact to discuss issues in question in the appeal with any medical provider who has examined or treated the claimant at the request of the claimant unless written authorization has been granted to do so.

Contact by L&I is permitted without prior authorization as necessary for ongoing management of the claim, including communications about the worker's treatment needs and the provider's treatment plan, vocational and return-to-work issues, and certification of the worker's inability to work, unless those issues are in question in the appeal.

If L&I has not obtained authorization from the claimant, L&I can communicate with the examining or treating medical provider about issues in question in the appeal as long as the communication is in writing or email and sent to all parties contemporaneously with a notice

that any response must be in writing; is in person or by telephone at a date and time agreed to by all parties with the claimant having the opportunity to participate; or is made pursuant to a properly scheduled and noted deposition.

Contact by Claimant With L&I's Medical Provider. After a notice of appeal has been filed with the Board, a conference has been held to schedule hearings, and the claimant has named his or her witnesses, the claimant cannot have any contact to discuss issues in question in the appeal with any medical provider who has examined the claimant at the request of L&I unless written authorization has been granted to do so.

A claimant who has not obtained authorization from L&I can communicate with the examining medical provider as long as the communication is in writing or email and sent to all parties contemporaneously with a notice that any response must be in writing; is in person or by telephone at a date and time agreed to by all parties with L&I and the employer having the opportunity to participate; or is made pursuant to a properly scheduled and noted deposition.

General. In all cases, written authorization must be granted after the date the appeal is filed, and is good for 90 days. Written authorization is not needed if the claimant, employer, or L&I, as appropriate, fail to identify or confirm the medical provider as a witness.

The Board can determine whether the parties have made themselves reasonably available to participate in telephone conferences.

L&I and the Board are given rule-making authority to implement the legislation.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This is a well balanced bill that recognizes differences between L&I and self-insurers. The bill should help in resolution of claims, as all parties will be in the same room at same time hearing the same information. The bill will keep nonrelevant medical information out of workers compensation discussions. Ex parte restrictions only apply to issues before the Board. While workers compensations system may not be an adversarial situation, when there is an issue in front of the Board, there is a yes and a no, which makes it an adversarial situation. Everybody should get the same information at the same time. The bill would keep opposing attorneys from contacting an injured worker's doctor without telling the injured worker. Information can still be exchanged about an issue up until the issue goes before the Board. Doctors are approached and harassed to change their opinions, and this bill will prevent that. There are ample reasons to treat L&I and self-insured employers different in this legislation, including L&I's role as a trustee of the Workers Compensation Fund. Injured workers deserve the protections contain in the legislation.

CON: The bill represents a fundamental change to the state workers comp system, one which has already been rejected by the state Supreme Court. Employers and L&I should be treated the same. The bill will increase deposition and attorney costs for employers. The bill will increase complexity for medical providers when determining when they can and cannot release information, particularly in complex claims where appeals run simultaneously with ongoing claim management. This bill could increase potential liability for health care workers. For self-insurers, the cost will be high and will affect public employers. This is a law looking for a problem. The bill treats parties who are equally situated in a disparate way in the system. The bill prohibits contact with any doctor who treated the injured worker, including doctors who are no longer treating the worker.

**Persons Testifying:** PRO: Owen Linch, Joint Council of Teamsters; Michael Temple, Washington State Association for Justice; David Johnson, Washington State Building Trades; Kathy Comfort, Small, Snell, Weiss & Comfort.

CON: Kris Tefft, Association of Washington Business; Rebecca Forrester, Group Health; Bernadette Pratt, Craig, Jessup & Stratton; Kathleen Collins, Washington Self Insurers Association, Washington Academy of Family Physicians, Spokane Transit; Kelly Early, Educational Service District 113 Workers Compensation Trust.