

ASSEMBLY BILL

No. 2407

Introduced by Assembly Member Chávez

February 19, 2016

An act to amend Section 4600 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2407, as introduced, Chávez. Workers' compensation.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, that generally requires employers to secure the payment of workers' compensation for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law requires an employer to provide all medical services reasonably required to cure or relieve the injured worker from the effects of the injury.

This bill would, if the employee's injury affects his or her back, require a provider to assess the employee's level of risk for chronic back pain and whether he or she meets the criteria for a surgical consultation. The bill would set forth the treatments that may be deemed appropriate after the assessment, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4600 of the Labor Code is amended to
2 read:

1 4600. (a) Medical, surgical, chiropractic, acupuncture, and
2 hospital treatment, including nursing, medicines, medical and
3 surgical supplies, crutches, and apparatuses, including orthotic and
4 prosthetic devices and services, that is reasonably required to cure
5 or relieve the injured worker from the effects of his or her injury
6 shall be provided by the employer. ~~In the case of his or her neglect~~
7 ~~or refusal reasonably to do so, If the employer neglects or~~
8 ~~reasonably refuses to provide that treatment,~~ the employer is liable
9 for the reasonable expense incurred by or on behalf of the employee
10 in providing treatment.

11 (b) As used in this division and notwithstanding any other law,
12 medical treatment that is reasonably required to cure or relieve the
13 injured worker from the effects of his or her injury means treatment
14 that is based upon the guidelines adopted by the administrative
15 director pursuant to Section 5307.27.

16 (c) Unless the employer or the employer's insurer has
17 established or contracted with a medical provider network as
18 provided for in Section 4616, after 30 days from the date the injury
19 is reported, the employee may be treated by a physician of his or
20 her own choice or at a facility of his or her own choice within a
21 reasonable geographic area. A chiropractor shall not be a treating
22 physician after the employee has received the maximum number
23 of chiropractic visits allowed by subdivision (c) of Section 4604.5.

24 (d) (1) If an employee has notified his or her employer in
25 writing prior to the date of injury that he or she has a personal
26 physician, the employee shall have the right to be treated by that
27 physician from the date of injury if the employee has health care
28 coverage for nonoccupational injuries or illnesses on the date of
29 injury in a plan, policy, or fund as described in subdivisions (b),
30 (c), and (d) of Section 4616.7.

31 (2) For purposes of paragraph (1), a personal physician shall
32 meet all of the following conditions:

33 (A) Be the employee's regular physician and surgeon, licensed
34 pursuant to Chapter 5 (commencing with Section 2000) of Division
35 2 of the Business and Professions Code.

36 (B) Be the employee's primary care physician and has
37 previously directed the medical treatment of the employee, and
38 who retains the employee's medical records, including his or her
39 medical history. "Personal physician" includes a medical group,
40 if the medical group is a single corporation or partnership

1 composed of licensed doctors of medicine or osteopathy, which
2 operates an integrated multispecialty medical group providing
3 comprehensive medical services predominantly for
4 nonoccupational illnesses and injuries.

5 (C) The physician agrees to be predesignated.

6 (3) If the employee has health care coverage for nonoccupational
7 injuries or illnesses on the date of injury in a health care service
8 plan licensed pursuant to Chapter 2.2 (commencing with Section
9 1340) of Division 2 of the Health and Safety Code, and the
10 employer is notified pursuant to paragraph (1), all medical
11 treatment, utilization review of medical treatment, access to
12 medical treatment, and other medical treatment issues shall be
13 governed by Chapter 2.2 (commencing with Section 1340) of
14 Division 2 of the Health and Safety Code. Disputes regarding the
15 provision of medical treatment shall be resolved pursuant to Article
16 5.55 (commencing with Section 1374.30) of Chapter 2.2 of
17 Division 2 of the Health and Safety Code.

18 (4) If the employee has health care coverage for nonoccupational
19 injuries or illnesses on the date of injury in a group health insurance
20 policy as described in Section 4616.7, all medical treatment,
21 utilization review of medical treatment, access to medical
22 treatment, and other medical treatment issues shall be governed
23 by the applicable provisions of the Insurance Code.

24 (5) The insurer may require prior authorization of any
25 nonemergency treatment or diagnostic service and may conduct
26 reasonably necessary utilization review pursuant to Section 4610.

27 (6) An employee shall be entitled to all medically appropriate
28 referrals by the personal physician to other physicians or medical
29 providers within the nonoccupational health care plan. An
30 employee shall be entitled to treatment by physicians or other
31 medical providers outside of the nonoccupational health care plan
32 pursuant to standards established in Article 5 (commencing with
33 Section 1367) of Chapter 2.2 of Division 2 of the Health and Safety
34 Code.

35 (7) *If the employee's injury affects his or her back, the physician*
36 *or other medical provider shall assess the employee's level of risk*
37 *for chronic back pain and determine whether he or she meets the*
38 *criteria for a surgical consultation. After the assessment, one or*
39 *more of the following covered treatments may be deemed*
40 *appropriate: acupuncture, chiropractic manipulation, cognitive*

1 *behavioral therapy, medications, including short-term opiate drugs,*
 2 *but excluding long-term prescriptions, office visits, osteopathic*
 3 *manipulation, and physical and occupational therapy. Surgery*
 4 *may be recommended, but only for a limited number of conditions*
 5 *and only if there is sufficient evidence to indicate that surgery is*
 6 *more effective than other treatment options. Yoga, intensive*
 7 *rehabilitation, massage, or supervised exercise therapy may also*
 8 *be recommended for inclusion in the comprehensive treatment*
 9 *plan.*

10 (e) (1) When at the request of the employer, the employer’s
 11 insurer, the administrative director, the appeals board, or a workers’
 12 compensation administrative law judge, the employee submits to
 13 examination by a physician, he or she shall be entitled to receive,
 14 in addition to all other benefits herein provided, all reasonable
 15 expenses of transportation, meals, and lodging incident to reporting
 16 for the examination, together with one day of temporary disability
 17 indemnity for each day of wages lost in submitting to the
 18 examination.

19 (2) Regardless of the date of injury, “reasonable expenses of
 20 transportation” includes mileage fees from the employee’s home
 21 to the place of the examination and back at the rate of twenty-one
 22 cents (\$0.21) a mile or the mileage rate adopted by the Director
 23 of the Department of Human Resources pursuant to Section 19820
 24 of the Government Code, whichever is higher, plus any bridge
 25 tolls. The mileage and tolls shall be paid to the employee at the
 26 time he or she is given notification of the time and place of the
 27 examination.

28 (f) When at the request of the employer, the employer’s insurer,
 29 the administrative director, the appeals board, or a workers’
 30 compensation administrative law judge, an employee submits to
 31 examination by a physician and the employee does not proficiently
 32 speak or understand the English language, he or she shall be
 33 entitled to the services of a qualified interpreter in accordance with
 34 conditions and a fee schedule prescribed by the administrative
 35 director. These services shall be provided by the employer. For
 36 purposes of this section, “qualified interpreter” means a language
 37 interpreter certified, or deemed certified, pursuant to Article 8
 38 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of
 39 Division 3 of Title 2 of, or Section 68566 of, the Government
 40 Code.

1 (g) If the injured employee cannot effectively communicate
2 with his or her treating physician because he or she cannot
3 proficiently speak or understand the English language, the injured
4 employee is entitled to the services of a qualified interpreter during
5 medical treatment appointments. To be a qualified interpreter for
6 purposes of medical treatment appointments, an interpreter is not
7 required to meet the requirements of subdivision (f), but shall meet
8 any requirements established by rule by the administrative director
9 that are substantially similar to the requirements set forth in Section
10 1367.04 of the Health and Safety Code. The administrative director
11 shall adopt a fee schedule for qualified interpreter fees in
12 accordance with this section. Upon request of the injured employee,
13 the employer or insurance carrier shall pay for interpreter services.
14 An employer shall not be required to pay for the services of an
15 interpreter who is not certified or is provisionally certified by the
16 person conducting the medical treatment or examination unless
17 either the employer consents in advance to the selection of the
18 individual who provides the interpreting service or the injured
19 worker requires interpreting service in a language other than the
20 languages designated pursuant to Section 11435.40 of the
21 Government Code.

22 (h) Home health care services shall be provided as medical
23 treatment only if *those services are* reasonably required to cure or
24 relieve the injured employee from the effects of his or her injury
25 and prescribed by a physician and surgeon licensed pursuant to
26 Chapter 5 (commencing with Section 2000) of Division 2 of the
27 Business and Professions Code, and subject to Section 5307.1 or
28 ~~5703.8~~: 5307.8. The employer shall not be liable for home health
29 care services that are provided more than 14 days prior to the date
30 of the employer's receipt of the physician's prescription.

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