

ASSEMBLY BILL

No. 54

Introduced by Assembly Member Dymally

December 4, 2006

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

LEGISLATIVE COUNSEL'S DIGEST

AB 54, as introduced, Dymally. Workers' compensation: acupuncture.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including acupuncture treatment, for injuries incurred by their employees that arise out of, or in the course of, employment.

Existing law requires the administrative director to adopt a medical treatment utilization schedule, as specified, that is required to address the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers' compensation cases.

This bill would define acupuncture treatment to mean treatment based upon these guidelines or, prior to the adoption of these guidelines, the specified guidelines published by the Council of Acupuncture and Oriental Medicine Association and the Foundation for Acupuncture Research, including specified information.

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. The Legislature hereby finds and declares all of
2 the following:

3 (a) In order to encourage the more effective utilization of
4 acupuncture and oriental medicine services, to provide California
5 citizens a holistic approach, and to promote the health, safety, and
6 welfare of the public, the Legislature created the Acupuncture
7 Licensure Act as a framework to establish a profession that would
8 provide these services.

9 (b) There are reports of shortages of qualified health care
10 professionals who can address the needs of citizens who suffer
11 from pain, work-related injuries, and other nonlife-threatening
12 illnesses.

13 (c) The National Institutes of Health has adopted a Consensus
14 Statement on Acupuncture, recognizing a need for utilizing
15 acupuncture in the American system of health care.

16 (d) For these reasons and others, acupuncture has been a
17 common and effective treatment for work-related injuries and
18 should continue to be a medical treatment choice for injured
19 workers.

20 SEC. 2. Section 4600 of the Labor Code is amended to read:

21 4600. (a) Medical, surgical, chiropractic, acupuncture, and
22 hospital treatment, including nursing, medicines, medical and
23 surgical supplies, crutches, and ~~apparatuses~~ *apparatus*, including
24 orthotic and prosthetic devices and services, that is reasonably
25 required to cure or relieve the injured worker from the effects of
26 his or her injury shall be provided by the employer. In the case of
27 his or her neglect or refusal reasonably to do so, the employer is
28 liable for the reasonable expense incurred by or on behalf of the
29 employee in providing treatment.

30 (b) As used in this division and notwithstanding any other
31 provision of law, medical treatment that is reasonably required to
32 cure or relieve the injured worker from the effects of his or her
33 injury means treatment that is based upon the guidelines adopted
34 by the administrative director pursuant to Section 5307.27 or, prior
35 to the adoption of those guidelines, the updated American College
36 of Occupational and Environmental Medicine’s Occupational
37 Medicine Practice Guidelines.

1 (c) As used in this division and notwithstanding any other
2 provision of law, acupuncture treatment that is reasonable required
3 to relieve the injured worker from the effects of his or her injury
4 means treatment that is based upon the guidelines adopted by the
5 administrative director pursuant to Section 5307.27 or, prior to
6 the adoption of those guidelines, as set forth in the “Acupuncture
7 and Electroacupuncture: Evidence-Based Treatment
8 Guidelines-August 2004” published by the Council of Acupuncture
9 and Oriental Medicine Associations and the Foundation for
10 Acupuncture Research, and which shall include any subsequent
11 updates of those guidelines or other guidelines. Nothing in this
12 section shall prohibit the administrative director from adopting
13 treatment guidelines for acupuncture if those guidelines are at
14 least as comprehensive as the “Acupuncture and
15 Electroacupuncture: Evidence-Based Treatment Guidelines-August
16 2004.”

17 (e)

18 (d) Unless the employer or the employer’s insurer has
19 established a medical provider network as provided for in Section
20 4616, after 30 days from the date the injury is reported, the
21 employee may be treated by a physician of his or her own choice
22 or at a facility of his or her own choice within a reasonable
23 geographic area.

24 (f)

25 (e) (1) If an employee has notified his or her employer in
26 writing prior to the date of injury that he or she has a personal
27 physician, the employee shall have the right to be treated by that
28 physician from the date of injury if either of the following
29 conditions exist:

30 (A) The employer provides nonoccupational group health
31 coverage in a health care service plan, licensed pursuant to Chapter
32 2.2 (commencing with Section 1340) of Division 2 of the Health
33 and Safety Code.

34 (B) The employer provides nonoccupational health coverage in
35 a group health plan or a group health insurance policy as described
36 in Section 4616.7.

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

1 (A) The physician is the employee’s regular physician and
2 surgeon, licensed pursuant to Chapter 5 (commencing with Section
3 2000) of Division 2 of the Business and Professions Code.

4 (B) The physician is the employee’s primary care physician and
5 has previously directed the medical treatment of the employee,
6 and who retains the employee’s medical records, including his or
7 her medical history. “Personal physician” includes a medical group,
8 if the medical group is a single corporation or partnership
9 composed of licensed doctors of medicine or osteopathy, which
10 operates an integrated multispecialty medical group providing
11 comprehensive medical services predominantly for
12 nonoccupational illnesses and injuries.

13 (C) The physician agrees to be predesignated.

14 (3) If the employer provides nonoccupational health care
15 pursuant to Chapter 2.2 (commencing with Section 1340) of
16 Division 2 of the Health and Safety Code, and the employer is
17 notified pursuant to paragraph (1), all medical treatment, utilization
18 review of medical treatment, access to medical treatment, and other
19 medical treatment issues shall be governed by Chapter 2.2
20 (commencing with Section 1340) of Division 2 of the Health and
21 Safety Code. Disputes regarding the provision of medical treatment
22 shall be resolved pursuant to Article 5.55 (commencing with
23 Section 1374.30) of Chapter 2.2 of Division 2 of the Health and
24 Safety Code.

25 (4) If the employer provides nonoccupational health care, as
26 described in Section 4616.7, all medical treatment, utilization
27 review of medical treatment, access to medical treatment, and other
28 medical treatment issues shall be governed by the applicable
29 provisions of the Insurance Code.

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

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

1 (7) The division shall conduct an evaluation of this program
2 and present its findings to the Governor and the Legislature on or
3 before December 31, 2008.

4 (8) This subdivision shall remain in effect only until December
5 31, 2009, and as of that date is repealed, unless a later enacted
6 statute that is enacted before December 31, 2009, deletes or extends
7 that date.

8 (e)

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

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

27 (f)

28 (g) 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

- 1 Division 3 of Title 2 of, or Section 68566 of, the Government
- 2 Code.

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