

AMENDED IN SENATE APRIL 30, 2008

SENATE BILL

No. 1338

Introduced by Senator Migden

February 20, 2008

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1338, as amended, Migden. Workers' compensation: medical treatment: predesignation of physician.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law, until December 31, 2009, provides an employee with the right to be treated by his or her personal physician from the date of injury if specified requirements are met, including a requirement that the physician agrees to be predesignated.

This bill would delete the December 31, 2009, repeal date for those provisions pertaining to an employee's predesignation of a personal physician.

Existing law requires the Division of Workers' Compensation to conduct an evaluation of certain predesignation provisions and present its findings to the Governor and the Legislature on or before December 31, 2008.

This bill would delete that requirement.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
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:

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

12 (b) As used in this division and notwithstanding any other
13 provision of law, medical treatment that is reasonably required to
14 cure or relieve the injured worker from the effects of his or her
15 injury means treatment that is based upon the guidelines adopted
16 by the administrative director pursuant to Section 5307.27 or, prior
17 to the adoption of those guidelines, the updated American College
18 of Occupational and Environmental Medicine’s Occupational
19 Medicine Practice Guidelines.

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

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

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

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

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

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

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

15 (C) The physician agrees to be predesignated.

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

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

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

35 (6) An employee shall be entitled to all medically appropriate
36 referrals by the personal physician to other physicians or medical
37 providers within the nonoccupational health care plan. An
38 employee shall be entitled to treatment by physicians or other
39 medical providers outside of the nonoccupational health care plan
40 pursuant to standards established in Article 5 (commencing with

1 Section 1367) of Chapter 2.2 of Division 2 of the Health and Safety
2 Code.

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

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

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

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

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