

Assembly Bill No. 2616

Passed the Assembly August 22, 2014

Chief Clerk of the Assembly

Passed the Senate August 20, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 4663 of, and to add Section 3212.13 to, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2616, Skinner. Workers' compensation: hospital employers: compensation.

Existing law provides that an injury of an employee arising out of and in the course of employment is generally compensable through the workers' compensation system. Existing law provides that, in the case of certain public employees, the term "injury" includes heart trouble, hernia, pneumonia, meningitis, lower back impairment, and other injuries and diseases.

This bill would provide, with respect to hospital employees who provide direct patient care in an acute care hospital, that the term "injury" includes a methicillin-resistant *Staphylococcus aureus* skin infection (MRSA skin infection) that develops or manifests itself during the period of the person's employment with the hospital. This bill would create a presumption that a MRSA skin infection arises out of and in the course of the person's employment if the MRSA skin infection develops or manifests, as specified. This bill would prohibit attributing a MRSA skin infection that develops or manifests in those cases to any disease or skin infection existing prior to that development or manifestation.

Existing law requires any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury to address the issue of causation of the permanent disability, subject to exemptions for specified injuries or illnesses.

This bill would also exempt a MRSA skin infection that develops or manifests, as specified, for hospital employees who provide direct patient care in an acute care hospital from the application of this requirement.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) According to the United States Department of Labor, health care is the second fastest growing sector of the United States economy, currently employing over 16 million workers. Women represent nearly 80 percent of the health care workforce.

(b) By the nature of their profession, health care workers are in constant danger of being directly exposed to many infectious diseases and indirectly exposed through contact with various pieces of equipment, chemicals, and clothing.

(c) Registered nurses constitute the largest occupation within the health care sector and number over 2.5 million, of which 70 percent are employed in hospitals.

(d) Health care-acquired infections in California hospitals account for an estimated 200,000 infections and 12,000 deaths annually, according to the State Department of Public Health.

(e) According to the Office of Statewide Health Planning and Development, in 2007 there were 52,000 cases of patients infected by methicillin-resistant *Staphylococcus aureus* (MRSA) at hospitals across the state.

(f) Public safety employees, such as police officers and firefighters, already have guaranteed access to the workers' compensation system for methicillin-resistant *Staphylococcus aureus* skin infection (MRSA skin infection), HIV, cancer, leukemia, meningitis, back injuries, and other work-related illnesses and injuries. However, presumptive eligibility for workers' compensation is nonexistent for health care workers.

(g) Due to the rise in work-related illnesses and injuries, including a MRSA skin infection, it is most appropriate to protect health care workers by ensuring access to workers' compensation for health care workers who suffer workplace injuries or contract infectious diseases.

SEC. 2. Section 3212.13 is added to the Labor Code, to read:

3212.13. (a) In the case of a hospital employee who provides direct patient care in an acute care hospital, referred to in this section as hospital employee, the term "injury," as used in this section, includes a methicillin-resistant *Staphylococcus aureus* skin infection (MRSA skin infection) that develops or manifests itself during a period of the person's employment with the hospital. The compensation awarded for that injury shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(b) (1) A MRSA skin infection that develops or manifests itself shall be presumed to arise out of and in the course of employment. This presumption is disputable and may be controverted by other evidence, but if controverting evidence is not produced, the presumption shall prevail.

(2) The MRSA skin infection presumption shall be extended to a hospital employee following termination of service for a period of 60 days, commencing with the last date actually worked.

(c) A MRSA skin infection that develops or manifests itself in circumstances described in subdivision (b) shall not be attributed to a disease or skin infection existing prior to that development or manifestation.

(d) For the purposes of this section, “acute care hospital” means a health facility as defined in subdivision (a) or (b) of Section 1250 of the Health and Safety Code.

SEC. 3. Section 4663 of the Labor Code is amended to read:

4663. (a) Apportionment of permanent disability shall be based on causation.

(b) Any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury shall in that report address the issue of causation of the permanent disability.

(c) In order for a physician’s report to be considered complete on the issue of permanent disability, the report must include an apportionment determination. A physician shall make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries. If the physician is unable to include an apportionment determination in his or her report, the physician shall state the specific reasons why the physician could not make a determination of the effect of that prior condition on the permanent disability arising from the injury. The physician shall then consult with other physicians or refer the employee to another physician from whom the employee is authorized to seek treatment or evaluation in accordance with this division in order to make the final determination.

(d) An employee who claims an industrial injury shall, upon request, disclose all previous permanent disabilities or physical impairments.

(e) Subdivisions (a), (b), and (c) shall not apply to injuries or illnesses covered under Sections 3212, 3212.1, 3212.2, 3212.3, 3212.4, 3212.5, 3212.6, 3212.7, 3212.8, 3212.85, 3212.9, 3212.10, 3212.11, 3212.12, 3212.13, 3213, and 3213.2.

Approved _____, 2014

Governor