



COMPILATION OF
CHANGES IN THE
WORKERS' COMPENSATION LAW

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§27 WORKERS' COMPENSATION JUDGE DEFINED

Whenever the term "workers' compensation judge" or "workers' compensation referee" is used in this code in connection with the workers' compensation law, the term shall mean "workers' compensation administrative law judge." ~~This section shall not apply to settlement conference referees hired to conduct the settlement conferences required by subdivision (d) of Section 5502.~~

(Amended by Stats. 1998, C. 448 (S.B. 453) Effective January 1, 1999)

§123.6 WORKERS' COMPENSATION REFEREES TO ADHERE TO CODE OF JUDICIAL CONDUCT; PRIOR APPROVAL BY ADMINISTRATIVE DIRECTOR FOR HONORARIA OR TRAVEL PAYMENTS

(a) All workers' compensation referees ~~administrative law judges~~ employed by the administrative director shall subscribe to the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the California Constitution for the conduct of judges and shall not otherwise, directly or indirectly, engage in conduct contrary to that code.

The administrative director shall adopt regulations to enforce this section. To the extent possible, the rules shall be consistent with the procedures established by the Commission on Judicial Performance for regulating the activities of state judges, and, to the extent possible, with the gift, honoraria, and travel restrictions on legislators contained in the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

(b) Honoraria or travel allowed by the administrative director or otherwise not prohibited by this section in connection with any public or private conference, convention, meeting, social event, or like gathering, the cost of which is significantly paid for by attorneys who practice before the board, may not be accepted unless the administrative director has provided prior approval in writing to the workers' compensation referee allowing him or her to accept those payments.

(Amended by Stats. 1998, C. 448 (S.B. 453) Effective January 1, 1999.)

§138.7 "INDIVIDUALLY IDENTIFIABLE INFORMATION"; RESTRICTED ACCESS

It is the intent of the Legislature in enacting this act to further the purposes of Section 1 of Article I of the California Constitution, which establishes the right of privacy of all Californians, while protecting the right of the press to access public records in order to perform its

LABOR CODE §138.7

constitutional role of monitoring government institutions on behalf of the public these institutions serve.

(a) Except as expressly permitted in subdivision (b), a person or public or private entity not a party to a claim for workers' compensation benefits may not obtain individually identifiable information obtained or maintained by the division on that claim. For purposes of this section, "individually identifiable information" means any data concerning an injury or claim that is linked to a uniquely identifiable employee, employer, claims administrator, or any other person or entity.

(b) (1) The administrative director, or a statistical agent designated by the administrative director, may use individually identifiable information for purposes of creating and maintaining the workers' compensation information system as specified in Section 138.6.

(2) The State Department of Health Services may use individually identifiable information for purposes of establishing and maintaining a program on occupational health and occupational disease prevention as specified in Section 105175 of the Health and Safety Code.

(3) Individually identifiable information may be used by the Division of Workers' Compensation, the Division of Occupational Safety and Health, and the Division of Labor Statistics and Research as necessary to carry out their duties. The administrative director shall adopt regulations governing the access to the information described in this subdivision by these divisions. Any regulations adopted pursuant to this subdivision shall set forth the specific uses for which this information may be obtained.

(4) The administrative director shall adopt regulations allowing reasonable access to individually identifiable information by other persons or public or private entities for the purpose of bona fide statistical research. This research shall not divulge individually identifiable information concerning a particular employee, employer, claims administrator, or any other person or entity. The regulations adopted pursuant to this paragraph shall include provisions guaranteeing the confidentiality of individually identifiable information.

(5) This section shall not operate to exempt from disclosure any information that is considered to be a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) contained in an individual's file once an application for adjudication has been filed pursuant to Section 5501.5 of the Labor Code.

However, individually identifiable information shall not be provided to any person or public or private entity who is not a party to the claim unless that person identifies himself or herself or that public or private entity

identifies itself and states the reason for making the request. The administrative director may require the person or public or private entity making the request to produce information to verify that the name and address of the requester is valid and correct. If the purpose of the request is related to preemployment screening, the administrative director shall notify the person about whom the information is requested that the information was provided and shall include the following in 12-point type:

"IT MAY BE A VIOLATION OF FEDERAL AND STATE LAW TO DISCRIMINATE AGAINST A JOB APPLICANT BECAUSE THE APPLICANT HAS FILED A CLAIM FOR WORKERS' COMPENSATION BENEFITS."

Any residence address is confidential and shall not be disclosed to any person or public or private entity except to a party to the claim, a law enforcement agency, an office of a district attorney, any person for a journalistic purpose, or other governmental agency.

Nothing in this paragraph shall be construed to prohibit the use of individually identifiable information for purposes of identifying bona fide lien claimants.

(c) Except as provided in subdivision (b), individually identifiable information obtained by the division is privileged and is not subject to subpoena in a civil proceeding unless, after reasonable notice to the division and a hearing, a court determines that the public interest and the intent of this section will not be jeopardized by disclosure of the information. This section shall not operate to restrict access to information by any law enforcement agency or district attorney's office or to limit admissibility of that information in a criminal proceeding.

(d) It shall be unlawful for any person who has received individually identifiable information from the division pursuant to this section to provide that information to any person who is not entitled to it under this section.

Severability of Act: The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(Amended by Stats.1998,C. 624 (S.B. 1430).Effective January 1, 1999.)

LABOR CODE §3209.5-§3368

§3209.5. OSTEOPATHIC, CHIROPRACTIC AND ACUPUNCTURE PRACTITIONERS

Medical, surgical, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, includes but is not limited to services and supplies by physical therapists, and chiropractic practitioners and acupuncturists, as licensed by California state law and within the scope of their practice as defined by law.

(Amended by Stats.1998, C.440 (A.B. 204). Effective January 1, 1999.)

§3368 SUPERVISION OF WORK EXPERIENCE EDUCATION, COOPERATIVE VOCATIONAL EDUCATION, COMMUNITY CLASSROOM, OR STUDENT APPRENTICES PROGRAM BY SCHOOL, SCHOOL DISTRICT, OR COUNTY SUPERINTENDENT; SCHOOL, SCHOOL DISTRICT OR COUNTY SUPERINTENDENT AS "EMPLOYER"; EXCEPTIONS: "REGISTERED STUDENT APPRENTICE"; REGIONAL AND JOINT SUPERVISION OF PROGRAM

Notwithstanding any provision of this code or the Education Code to the contrary, the school district, county superintendent of schools, or any school administered by the State Department of Education under whose supervision work experience education, cooperative vocational education, or community classrooms, as defined by regulations adopted by the Superintendent of Public Instruction, or student apprenticeship programs registered by the Division of Apprenticeship Standards for registered student apprentices, are provided, shall be considered the employer under Division 4 (commencing with Section 3200) of persons receiving this training unless the persons during the training are being paid a cash wage or salary by a private employer, ~~except~~ However, in the case of students being paid a cash wage or salary by a private employer in supervised work experience education, or cooperative vocational education, or in the case of registered student apprentices, ~~when~~ the school district, county superintendent of schools, or any school administered by the State Department of Education may elects to provide workers' compensation insurance, ~~or coverage,~~ unless the person or firm under whom the persons are receiving work experience or occupational training elects to provide workers' compensation insurance coverage. If the school district or other educational agency elects to provide workers' compensation coverage for students being paid a cash wage or salary by a private employer in supervised work experience education or cooperative vocational education, it may only be for a transitional period not to exceed three months. A registered student apprentice is a registered apprentice who is (1) at least 16 years of age, (2) a full-time high school student in the 10th, 11th, or 12th grade, and (3) in an apprenticeship program for registered student apprentices registered with the Division of

Apprenticeship Standards. An apprentice, while attending related and supplemental instruction classes, shall be considered to be in the employ of the apprentice's employer and not subject to this section, unless the apprentice is unemployed. Whenever this work experience education, cooperative vocational education, community classroom education, or student apprenticeship program registered by the Division of Apprenticeship Standards for registered student apprentices, is under the supervision of a regional occupational center or program operated by two or more school districts pursuant to Section 52301 of the Education Code, the district of residence of the persons receiving the training shall be deemed the employer for the purposes of this section.

(Amended by Stats.1998,C. 541 (S.B. 1817).Effective January 1, 1999.)

§3600.4 LOCAL FIREFIGHTERS NOT ACTING UNDER EMPLOYER'S IMMEDIATE DIRECTION

(a) Whenever any firefighter, ~~as defined in Section 50925 of the Government Code, of a city, county, city and county, district, or other public or municipal corporation or political subdivision,~~ **or any firefighter employed by a private entity,** is injured, dies, or is disabled from performing his or her duties as a firefighter by reason of his or her proceeding to or engaging in a fire suppression or rescue operation, or the protection or preservation of life or property, anywhere in this state, including the local jurisdiction in which he or she is employed, but is not at the time acting under the immediate direction of his or her employer, he or she or his or her dependents, as the case may be, shall be accorded by his or her employer all of the same benefits of this division which he or she or they would have received had that firefighter been acting under the immediate direction of his or her employer. Any injury, disability, or death incurred under the circumstances described in this section shall be deemed to have arisen out of and been sustained in the course of employment for purposes of workers' compensation and all other benefits.

(b) Nothing in this section shall be deemed to:

(1) Require the extension of any benefits to a firefighter who at the time of his or her injury, death, or disability is acting for compensation from one other than the city, county, city and county, district, or other public or municipal corporation or political subdivision, **or private entity,** of his or her primary employment or enrollment.

(2) Require the extension of any benefits to a firefighter employed by a city, county, city and county, district, or other public or municipal corporation or political subdivision, **or private entity,** which by charter, ordinance, or departmental regulation, **or private employer policy,** whether now in force or hereafter enacted or promulgated, expressly prohibits the

LABOR CODE §3600.4-§4600

activity giving rise to the injury, disability, or death. However, this paragraph shall not apply to relieve the employer from liability for benefits for any injury, disability, or death of a firefighter when the firefighter is acting pursuant to Section 1977.107 of the Health and Safety Code.

(Amended by Stats.1998, C.617 (A.B. 2173).Effective January 1, 1999.)

§4600 MEDICAL AND HOSPITAL TREATMENT

Medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve from the effects of the injury shall be provided by the employer. In the case of his or her neglect or refusal seasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment. After 30 days from the date the injury is reported, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area. However, if an employee has notified his or her employer in writing prior to the date of injury that he or she has a personal physician, the employee shall have the right to be treated by that physician from the date of injury. If an employee requests a change of physician pursuant to Section 4601, the request may be made at any time after the injury, and the alternative physician, ~~or~~ chiropractor, or acupuncturist shall be provided within five days of the request as required by Section 4601. For the purpose of this section, "personal physician" means the employee's regular physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, who has previously directed the medical treatment of the employee, and who retains the employee's medical records, including his or her medical history.

Where at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers' compensation judge, the employee submits to examination by a physician, he or she shall be entitled to receive in addition to all other benefits herein provided all reasonable expenses of transportation, meals, and lodging incident to reporting for the examination, together with one day of temporary disability indemnity for each day of wages lost in submitting to the examination. Regardless of the date of injury, "reasonable expenses of transportation" includes mileage fees from the employee's home to the place of the examination and back at the rate of twenty-one cents (\$.21) a mile or the mileage rate adopted by the Director of the Department of Personnel Administration pursuant to Section 19820 of the Government Code, whichever is higher, plus any bridge tolls. The mileage and tolls shall be paid to the employee at the time he or she is given notification of the time and place of the

Where at the request of the employer, the employer's insurer, the administrative director, the appeals board, a workers' compensation judge, an employee submits to examination by a physician and the employee does not proficiently speak or understand the English language, he or she shall be entitled to the services of a qualified interpreter in accordance with conditions and a fee schedule prescribed by the administrative director. These services shall be provided by the employer. For purposes of this section, "qualified interpreter" means a language interpreter certified, or deemed certified, pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code.

(Amended by Stats.1998, C.440 (A.B. 204). Effective January 1, 1999.)

§4600.3 EMPLOYEE TO CHOOSE HEALTH CARE PROVIDER; HEALTH CARE ORGANIZATION CONTRACT - STANDARDS; PAYMENT FOR SERVICES; OPTION TO SWITCH HEALTH CARE PROVIDER

(a) (1) Notwithstanding Section 4600, when a self-insured employer, group of self-insured employers, or the insurer of an employer contracts with at least two health care organizations certified pursuant to Section 4600.5 for health care services required by this article to be provided to injured employees, those employees who are subject to the contract shall receive medical services in the manner prescribed in the contract, providing that the employee may choose to be treated by a personal physician, ~~or~~ personal chiropractor, or personal acupuncturist he or she has designated prior to the injury, in which case the employee shall not be treated by the health care organization. Every employee shall be given an affirmative choice at the time of employment and at least annually thereafter to designate or change the designation of a health care organization or a personal physician, ~~or~~ personal chiropractor, or personal acupuncturist. The choice shall be memorialized in writing and maintained in the employee's personnel records. The employee who has designated a personal physician, ~~or~~ personal chiropractor, or personal acupuncturist may change physicians their designated caregiver at any time prior to the injury. Any employee who fails to choose between health care organizations or to designate a personal physician, ~~or~~ personal chiropractor, or personal acupuncturist shall be treated by the health care organization selected by the employer.

(2) Each such contract described in paragraph (1) ~~must~~ shall comply with the certification standards provided in Section 4600.5, and shall provide all medical, surgical, chiropractic, acupuncture and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including artificial members, that is reasonably required to cure or relieve the effects of the injury, as required by this division, without any payment by the employee of deductibles, copayments, or any share of

LABOR CODE §4600.3

the premium. However, an employee may receive immediate emergency medical treatment that is compensable from a medical service or health care provider who is not a member of the health care organization.

(3) The employee shall be allowed to choose from at least two health care organizations, of which at least one must be compensated on a fee-for-service basis. If one or more of the health care organizations offered by the employer is the workers' compensation insurer that covers the employee or is an entity that controls or is controlled by that insurer, as defined by Section 1215 of the Insurance Code, the employee shall be allowed to choose from at least one additional health care organization, that is not the workers' compensation insurer that covers the employee, or entities that control or are controlled by that insurer, of which at least one must be compensated on a fee-for-service basis.

(4) Insurers of employers, a group of self-insured employers, or self-insured employers who contract with a health care organization for medical services shall give notice to employees of eligible medical service providers and ~~such~~ **any** other information regarding the contract and manner of receiving medical services as the administrative director may prescribe. Employees shall be duly notified that if they choose to receive care from the health care organization they must receive treatment for all occupational injuries and illnesses as prescribed by this section.

(b) Notwithstanding subdivision (a), no employer which is required to bargain with an exclusive or certified bargaining agent which represents employees of the employer in accordance with state or federal employer-employee relations law shall contract with a health care organization for purposes of Section 4600.5 with regard to employees whom the bargaining agent is recognized or certified to represent for collective bargaining purposes pursuant to state or federal employer-employee relations law unless authorized to do so by mutual agreement between the bargaining agent and the employer. If the collective bargaining agreement is subject to the National Labor Relations Act, the employer may contract with a health care organization for purposes of Section 4600.5 at any time when the employer and bargaining agent have bargained to impasse to the extent required by federal law.

(c) (1) When an employee is not receiving or is not eligible to receive health care coverage for nonoccupational injuries or illnesses provided by the employer, if 90 days from the date the injury is reported the employee who has been receiving treatment from a health care organization or his or her physician, chiropractor, **acupuncturist**, or other agent notifies his or her employer in writing that he or she desires to stop treatment by the health care organization, he or she shall have the right to be treated by a physician, **chiropractor, or acupuncturist** or at a facility of his or her own choosing within a reasonable geographic area.

(2) When an employee is receiving or is eligible to receive health care coverage for nonoccupational injuries or illnesses

provided by the employer, and has agreed to receive care for occupational injuries and illnesses from a health care organization provided by the employer, the employee may be treated for occupational injuries and diseases by a physician, chiropractor, or acupuncturist of his or her own choice or at a facility of his or her own choice within a reasonable geographic area if the employee or his or her physician, chiropractor, acupuncturist, or other agent notifies his or her employer in writing only after 180 days from the date the injury was reported, or upon the date of contract renewal or open enrollment of the health care organization, whichever occurs first, but in no case until 90 days from the date the injury was reported.

(3) If the employee is receiving or is eligible to receive health care coverage for nonoccupational injuries or illnesses provided by the employer, and his or her physician, ~~or~~ chiropractor, or acupuncturist for nonoccupational illnesses or injuries is participating in at least one of the health care organizations offered to the employee, and he or she has chosen treatment by one of these health care organizations for occupational injuries or illnesses, the employee may be treated by a physician, chiropractor or acupuncturist of his or her own choice or at a facility of his or her own choice within a reasonable geographic area if the employee or his or her physician, chiropractor, or acupuncturist, or other agent notifies his or her employer in writing only after 365 days from the date the injury was reported, or upon the date of contract renewal or open enrollment, whichever occurs first, but in no case until 90 days from the date the injury was reported.

(4) For purposes of this subdivision, an employer shall be deemed to provide health care coverage for nonoccupational injuries and illnesses if the employer pays more than one-half the costs of the coverage, or if the plan is established pursuant to collective bargaining.

(d) An employee and employer may agree to other forms of therapy pursuant to Section 3209.7.

(e) An employee enrolled in a health care organization shall have the right to no less than one change of physician on request, and shall be given a choice of physicians affiliated with the health care organization. The health care organization shall provide the employee a choice of participating physicians within five days of receiving a request. In addition, the employee shall have the right to a second opinion from an participating physician on a matter pertaining to diagnosis from a participating physician.

(f) Nothing in this section or Section 4600.5 shall be construed to prohibit a self-insured employer, a group of self-insured employers, or insurer from engaging in any activities permitted by Section 4600.

(g) Notwithstanding subdivision (c), in the event that the employer, group of employers, or the employer's workers' compensation

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insurer no longer contracts with the health care organization that has been treating an injured employee, the employee may continue treatment provided or arranged by the health care organization. If the employee does not choose to continue treatment by the health care organization, the employer may control the employee's treatment for 30 days from the date the injury was reported. After that period, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area.

(Amended by Stats.1998, C.440 (A.B. 204). Effective January 1, 1999.)

§4600.5 APPLICATION FOR CERTIFICATION AS HEALTH CARE ORGANIZATION; APPLICATION FEE; CERTIFICATION REQUIREMENTS FOR HEALTH CARE SERVICE PLAN DISABILITY INSURER, WORKERS' COMPENSATION INSURER, THIRD-PARTY ADMINISTRATOR, WORKERS' COMPENSATION HEALTH CARE PROVIDER AND OTHER ENTITIES; CLAIMANT'S MEDICAL TREATMENT RECORDS; HEALTH CARE SERVICE PLAN CHARGES; LIMITATIONS AND ALLOWANCES OF ACT; GROUNDS FOR REFUSAL, REVOCATION OR SUSPENSION OF CERTIFICATION; PROVISION AND REGULATION OF CHIROPRACTIC CARE; INDIVIDUAL PATIENT INFORMATION

(a) Any health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act, a disability insurer licensed by the Department of Insurance, or any entity, including, but not limited to, workers' compensation insurers and third-party administrators authorized by the administrative director under subdivision (e), may make written application to the administrative director to become certified as a health care organization to provide health care to injured employees for injuries and diseases compensable under this article.

(b) Each application for certification shall be accompanied by a reasonable fee prescribed by the administrative director, sufficient to cover the actual cost of processing the application. A certificate is valid for the period that the director may prescribe unless sooner revoked or suspended.

(c) If the health care organization is a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act, the administrative director shall certify the plan to provide health care pursuant to Section 4600.3 if the director finds that the plan is in good standing with the Department of Corporations and meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records prepared and submitted to the Department of Corporations in compliance with the Knox-Keene Health Care Service Plan Act, relating to financial solvency, provider accessibility, peer review, utilization review, and quality assurance, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees in compliance with the requirements of this code.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to Sections 1370 and 1370.1 of the Health and Safety Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(d) If the health care organization is a disability insurer licensed by the Department of Insurance, and is in compliance with subdivision (d) of Sections 10133 and 10133.5 of the Insurance Code, the administrative director shall certify the organization to provide health care pursuant to Section 4600.3 if the director finds that the plan is in good standing with the Department of Insurance and meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and

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utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records prepared and submitted to the Department of Insurance in compliance with the Insurance Code relating to financial solvency, provider accessibility, peer review, utilization review, and quality assurance, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees consistent with the intent of this article.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to subdivision (d) of Section 10133 of the Insurance Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(e) If the health care organization is a workers' compensation insurer, third-party administrator, or any other entity that the administrative director determines ~~to meet~~ meets the requirements of Section 4600.6, the administrative director shall certify the organization to provide health care pursuant to Section 4600.3 if the director finds that it meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records relating to provider accessibility, peer review, utilization review, quality assurance, advertising,

disclosure, medical and financial audits, and grievance systems, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees consistent with the intent of this article.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to subdivision (d) of Section 10133 of the Insurance Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(7) Complies with the following requirements:

(A) An organization certified by the administrative director under this subdivision may not provide or undertake to arrange for the provision of health care to employees, or to pay for or to reimburse any part of the cost of that health care in return for a prepaid or periodic charge paid by or on behalf of those employees.

(B) Every organization certified under this subdivision shall operate on a fee-for-service basis. As used in this section, fee for service refers to the situation where the amount of reimbursement paid by the employer to the organization or providers of health care is determined by the amount and type of health care rendered by the organization or provider of health care.

(C) An organization certified under this subdivision is prohibited from assuming risk.

(f) (1) A workers' compensation health care provider organization authorized by the Department of Corporations on December 31, 1997, shall be eligible for certification as a health care organization under subdivision (e).

(2) An entity that had, on December 31, 1997, submitted an application with the Commissioner of Corporations under Part 3.2 (commencing with Section 5150) shall be considered an applicant for certification under subdivision (e) and shall be entitled to priority in consideration of its application. The Commissioner of Corporations shall provide complete files for all pending applications to the administrative director on or before January 31, 1998.

(g) The provisions of this section shall not affect the confidentiality or admission in evidence of a claimant's medical treatment records.

LABOR CODE §4600.5

(h) Charges for services arranged for or provided by health care service plans certified by this section and that are paid on a per-enrollee-periodic-charge basis shall not be subject to the schedules adopted by the administrative director pursuant to Section 5307.1.

(i) Nothing in this section shall be construed to expand or constrict any requirements imposed by law on a health care service plan or insurer when operating as other than a health care organization pursuant to this section.

(j) In consultation with interested parties, including the Department of Corporations and the Department of Insurance, the administrative director shall adopt rules necessary to carry out this section.

(k) The administrative director shall refuse to certify or may revoke or suspend the certification of any health care organization under this section if the director finds that:

(1) The plan for providing medical treatment fails to meet the requirements of this section.

(2) A health care service plan licensed by the Department of Corporations, a workers' compensation health care provider organization authorized by the Department of Corporations, or a carrier licensed by the Department of Insurance is not in good standing with its licensing agency.

(3) Services under the plan are not being provided in accordance with the terms of a certified plan.

(1) (1) When an injured employee requests chiropractic treatment for work-related injuries, the health care organization shall provide the injured worker with access to the services of a chiropractor pursuant to guidelines for chiropractic care established by paragraph (2). Within five working days of the employee's request to see a chiropractor, the health care organization and any person or entity who directs the kind or manner of health care services for the plan shall refer an injured employee to an affiliated chiropractor for work-related injuries that are within the guidelines for chiropractic care established by paragraph (2). Chiropractic care rendered in accordance with guidelines for chiropractic care established pursuant to paragraph (2) shall be provided by duly licensed chiropractors affiliated with the plan.

(2) The health care organization shall establish guidelines for chiropractic care in consultation with affiliated chiropractors who are participants in the health care organization's utilization review process for chiropractic care, which may include qualified medical evaluators knowledgeable in the treatment of chiropractic conditions.

The guidelines for chiropractic care shall, at a minimum, explicitly require the referral of any injured employee who so requests to an affiliated chiropractor for the evaluation or treatment, or both of neuromusculoskeletal conditions.

(3) Whenever a dispute concerning the appropriateness or necessity of chiropractic care for work-related injuries arises, the dispute shall be resolved by the health care organization's utilization review process for chiropractic care in accordance with the health care organization's guidelines for chiropractic care established by paragraph (2).

Chiropractic utilization review for work-related injuries shall be conducted in accordance with the health care organization's approved quality assurance standards and utilization review process for chiropractic care. Chiropractors affiliated with the plan shall have access to the health care organization's provider appeals process and, in the case of chiropractic care for work-related injuries, the review shall include review by a chiropractor affiliated with the health care organization, as determined by the health care organization.

(4) The health care organization shall inform employees of the procedures for processing and resolving grievances, including those related to chiropractic care, including the location and telephone number where grievances may be submitted.

(5) All guidelines for chiropractic care and utilization review shall be consistent with the standards of this code that require care to cure or relieve the effects of the industrial injury.

(m) Individually identifiable medical information on patients submitted to the division shall not be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(n) (1) When an injured employee requests acupuncture treatment for work-related injuries, the health care organization shall provide the injured worker with access to the services of an acupuncturist pursuant to guidelines for acupuncture care established by paragraph (2). Within five working days of the employee's request to see an acupuncturist, the health care organization and any person or entity who directs the kind or manner of health care services for the plan shall refer an injured employee to an affiliated acupuncturist for work-related injuries that are within the guidelines for acupuncture care established by paragraph (2). Acupuncture care rendered in accordance with guidelines for acupuncture care established pursuant to paragraph (2) shall be provided by duly licensed acupuncturists affiliated with the plan.

LABOR CODE §4600.5-§4600.7

(2) The health care organization shall establish guidelines for acupuncture care in consultation with affiliated acupuncturists who are participants in the health care organization's utilization review process for acupuncture care, which may include qualified medical evaluators. The guidelines for acupuncture care shall, at a minimum, explicitly require the referral of any injured employee who so requests to an affiliated acupuncturist for the evaluation or treatment, or both, of neuromusculoskeletal conditions.

(3) Whenever a dispute concerning the appropriateness or necessity of acupuncture care for work-related injuries arises, the dispute shall be resolved by the health care organization's utilization review process for acupuncture care in accordance with the health care organization's guidelines for acupuncture care established by paragraph (2).

Acupuncture utilization review for work-related injuries shall be conducted in accordance with the health care organization's approved quality assurance standards and utilization review process for acupuncture care. Acupuncturists affiliated with the plan shall have access to the health care organization's provider appeals process and, in the case of acupuncture care for work-related injuries, the review shall include review by an acupuncturist affiliated with the health care organization, as determined by the health care organization.

(4) The health care organization shall inform employees of the procedures for processing and resolving grievances, including those related to acupuncture care, including the location and telephone number where grievances may be submitted.

(5) All guidelines for acupuncture care and utilization review shall be consistent with the standards of this code that require care to cure or relieve the effects of the industrial injury.

(Amended by Stats.1998,C. 440 (A.B. 204). Effective January 1, 1999.)

§4600.7 WORKERS' COMPENSATION MANAGED CARE FUND

The Workers' Compensation Managed Care Fund is hereby created in the State Treasury for the administration of Sections 4600.3 and 4600.5 by the Division of Workers' Compensation. The administrative director shall establish a schedule of fees and revenues to be charged to certified health care organizations and applicants for

certification to fully fund the administration of these provisions and to repay amounts received as a loan from the General Fund. All fees and revenues shall be deposited in the Workers' Compensation Managed Care Fund and shall be used when appropriated by the Legislature solely for the purpose of carrying out the responsibilities of the Division of Workers' Compensation under Section 4600.3 or 4600.5.

(b) On and after July 1, 1998, no funds received as a loan from the General Fund shall be used to support the administration of Sections 4600.3 and 4600.5. The loan amount shall be repaid to the General Fund by assessing a surcharge on the enrollment fee for each of the next five fiscal years. In the event the surcharge does not produce sufficient revenue over this period, the surcharge shall be adjusted to fully repay the loan over the following three fiscal years, with the final assessment calculated by dividing the balance of the loan by the enrollees at the end of the final fiscal year.

(Amended by Stats.1998,C. 282 (S.B. 2101) Effective January 1, 1999.)

§4601 EMPLOYEE REQUEST TO CHANGE PHYSICIAN

(a) If the employee so requests, the employer shall tender the employee one change of physician. The employee at any time may request that the employer tender this one-time change of physician. Upon request of the employee for a change of physician, the maximum amount of time permitted by law for the employer or insurance carrier to provide the employee an alternative physician or, if requested by the employee, a chiropractor, or an acupuncturist shall be five working days from the date of the request. Notwithstanding the 30-day time period specified in Section 4600, a request for a change of physician pursuant to this section may be made at any time. The employee is entitled, in any serious case, upon request, to the services of a consulting physician, or chiropractor, or acupuncturist of his or her choice at the expense of the employer. The treatment shall be at the expense of the employer.

(b) If an employee requesting a change of physician pursuant to subdivision (a) has notified his or her employer in writing prior to the date of injury that he or she has a personal chiropractor, the alternative physician tendered by the employer to the employee, if the employee so requests, shall be the employee's personal chiropractor. For the purpose of this section article, "personal chiropractor" means the employee's regular chiropractor licensed pursuant to Chapter 2 (commencing with Section 1000) of Division 2 of the Business and Professions Code, who has previously directed treatment of the employee, and who retains the employee's chiropractic treatment records, including his or her chiropractic history.

LABOR CODE §4601-§4707

(c) If an employee requesting a change of physician pursuant to subdivision (a) has notified his or her employer in writing prior to the date of injury that he or she has a personal acupuncturist, the alternative physician tendered by the employer to the employee, if the employee so requests, shall be the employee's personal acupuncturist. For the purpose of this article, "personal acupuncturist" means that the employee's regular acupuncturist licensed pursuant to Chapter 12 (commencing with Section 4935) of Division 2 of the Business and Professions Code, who has previously directed treatment of the employee, and who retains the employee's acupuncture treatment records, including his or her acupuncture history.

(Amended by Stats.1998,C. 440 (A.B. 204). Effective January 1, 1999.)

§4646 SETTLEMENT OR COMMUTATION OF SERVICES

Settlement or commutation of prospective vocational rehabilitation services shall not be permitted under Chapter 2 (commencing with Section 5000) or Chapter 3 (commencing with Section 5100) of Part 3 except upon a finding by a workers' compensation judge that there are good faith issues which, if resolved against the employee, would defeat the employee's right to all compensation under this division.

The amendments of Section 4646 of the Labor Code do not constitute a change in, but are declaratory of, existing law.

(Amended by Stats.1998,C.524 (S.B. 1965). Effective January 1, 1999.)

§4707 LIMITATIONS ON BENEFITS FOR MEMBERS OF PUBLIC EMPLOYEES' RETIREMENT SYSTEM

(a) Except as provided in subdivision (b), no benefits, except reasonable expenses of burial not exceeding one thousand dollars (\$1,000), shall be awarded under this division on account of the death of an employee who is an active member of the Public Employees' Retirement System unless it is determined that a special death benefit, as defined in the Public Employees' Retirement Law, or the benefit provided in lieu of the special death benefit in Section 21365.6 of the Government Code, will not be paid by the Public Employees' Retirement System to the surviving spouse or children under 18 years of age, of the deceased, on account of the death, but if the total death allowance paid to the surviving spouse and children is less than the benefit otherwise payable under this division the surviving spouse and children are entitled, under this division, to the difference.

LABOR CODE §4707-§5307.1

The amendments to this section during the 1977-78 Regular Session shall be applied retroactively to July 1, 1976.

(b) The limitation prescribed by subdivision (a) shall not apply to local safety members, or patrol members, as defined in Section 20390 of the Government Code, of the Public Employees' Retirement System.

(Amended by Stats.1998,C. 770 (A.B. 2342).Effective January 1, 1999.)

§5100.6 NO COMMUTATION OR SETTLEMENT OF REHABILITATION BENEFITS

Notwithstanding the provisions of Section 5100, the appeals board shall not permit the commutation or settlement of prospective compensation or indemnity payments or other benefits to which the employee is entitled under rehabilitation.

The amendments of Section 5100.6 of the Labor Code do not constitute a change in, but are declaratory of, existing law.

(Amended by Stats.1998,C. 524 (S.B. 1965). Effective January 1, 1999.)

§5307.1 OFFICIAL MEDICAL FEE SCHEDULE

(a) (1) The administrative director, after public hearings, shall adopt and revise, no less frequently than biennially, an official medical fee schedule which shall establish reasonable maximum fees paid for medical services provided pursuant to this division. No later than January 1, 1995, the administrative director shall have revised the schedule. By no later than January 1, 1995, the schedule shall include services for health care facilities licensed pursuant to Section 1250 of the Health and Safety Code, and drugs and pharmacy services. The fee schedule for health care facilities shall take into consideration cost and service differentials for various types of facilities.

(2) The administrative director shall include services provided by physical therapists, physician assistants, and nurse practitioners in the official fee schedule adopted and revised pursuant to paragraph (1). Nothing in this paragraph shall affect the ability of physicians to continue to be reimbursed for their services in accordance with the official medical fee schedule adopted pursuant to paragraph (1) for the provision of services within their scope of practice.

(3) The administrative director shall consult with state-wide professional organizations representing affected providers on the update of the official medical fee schedule.

LABOR CODE §5307.1

(b) Nothing in this section shall prohibit a medical provider or a licensed health care facility from being paid by an employer or carrier fees in excess of those set forth on the official medical fee schedule, provided that the fee is:

(1) Reasonable.

(2) Accompanied by itemization and justified by an explanation of extra-ordinary circumstances related to the unusual nature of the medical services rendered.

In no event shall a physician charge in excess of his or her usual fee.

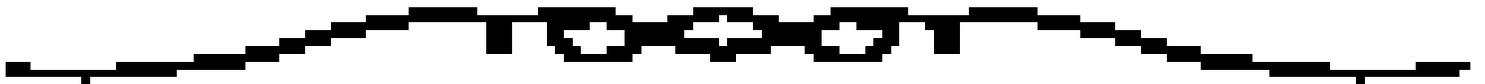
(c) In the event of a dispute between the physician and the employer or carrier concerning the medical fees charged, the physician may be allowed a reasonable fee for testimony, if a physician testifies pursuant to the employer's or carrier's subpoena, and the referee determines that the medical fee charged was reasonable.

(d) Except as provided in Section 4626, the official medical fee schedule shall not apply to medical-legal expenses as defined by Section 4620.

(Amended by Stats.1998,C.388 (S.B. 1940). Effective January 1, 1999)



APPENDIX



ASSEMBLY BILLS
10/1/98

BILL #	SUBJECT	COMMITTEE/ACTION
AB 204 (Migden)	Acupuncturists	Signed 9/13; Chapter 440
AB 236 (Figueroa)	W.C./Interpreter Fees	Vetoed 9/19/98
AB 462 (Floyd)	W.C./UEF - Penalties	Vetoed 9/29/98
AB 840 (Morrissey)	W.C./Hepatitis (See AB 1244)	Sen I. R. (Dead per I.R.)
AB 956 (Figueroa)	Benefit Increase	Senate I.R. (Hold)
AB 1183 (Perata)	Credit against Liability	Vetoed 9/30/98
AB 1454 (House)	Ex Mod/New Business	Senate Judiciary/Sen Floor DEAD
AB 1670 (Morrissey)	W.C./Leukemia(presumption)	Sen Approps, 7/13; died 2-5
AB 1723 (Floyd)	Peace Officer/IMC	Assy Pub. Safety Failed
AB 1732 (Bowler)	W.C. Death Benefits/Relatives	SApprop 8/4/98-SUS 8/19 DEAD
AB 1751 (Wildman)	W.C. Judges (Name change)	Vetoed 7/3/98
AB 1806 (Floyd)	Peace Officer Class/Santa Clara	Assy Pub Sfty Failed 4/21
AB 1821 (Ackerman)	Expand employer med control	Assy Ins. Failed 4/22
AB 1965 (Aguiar)	Transitional W.C. Fund (Creation of)	Assy Ins. Failed 4/22
AB 1985 (Brewer)	W.C./Clerical Error/No Penalty	Assy Ins. Failed 5/6/98
AB 2012 (Keeley)	Public Records	G.O., E.R., & C.A.
AB 2123 (Cuneen)	Independent Contractor Criteria	Assy Ins. Off Calendar
AB 2162 (Brown)	WCAB Hearings/Serve Notice	Assy Approps/Held 5/21/98
AB 2163 (Brown)	WC/Apply penalties, atty fees, State	Vetoed 9/13/98
AB 2164 (Wayne)	Adm. Law Judges/Ethics	Chapter 95
AB 2173 (Pacheco)	W.C./Firefighters	Chapter 617
AB 2184 (Figueroa)	WCAB/Liens	Assy Ins.
AB 2334 (Baugh)	W.C./Policyholder benefits	Chapter 176
AB 2342 (Cuneen)	W.C./Death Benefits/State employees	Chapter 770
AB 2470 (Brewer)	W.C./Liens	Assy Ins.
AB 2497 (Brewer)	SDI Liens/file/Proof of Service	Assy Ins.
AB 2503 (Goldsmith)	Abolishment, State Agencies	C.P., G.E&E.D. Failed 4/21
ACA 35 (Goldsmith)	Regs, abolishment of	C.P., G.E&E.D. Failed 4/21

Appendix "B"

SENATE BILLS
As of 10/1/98

BILL #	SUBJECT	COMMITTEE/ACTION
SB 453 (Solis)	W.C. JUDGE (title)	Signed 9/13; Chapter 448
SB 474 (Calderon)	OFMS/Facilities	Assy Approps-
SB 570 (Solis)	Death Benefits/Benefits Increase	Assy Ins. (RULE WAIVED)
SB 622 (Solis)	Vov Rehab;Premium Refunds;3 yrs	Assy Ins.
SB 924 (Solis)	W.C./Fraud Assessments;Penalties	Vetoed 9/25/98
SB 1043 (Vasco)	Employment/OT/W.C.	Assy L & E
SB 1364 (Ayala)	Open Meetings	Sen. G.O. 4/14 Failed
SB 1406 (Peace)	W.C./Hepatitis	Vetoed 9/13/98
SB 1430 (Solis)	W.C./Privacy	Signed 9/19/98;Chpt 624
SB 1545 (Johnson)	Insurer solvency/monopoly	Assy Ins.
SB 1551 (Solis)	W.C./penalty assessments	Assy Ins. (RULE WAIVED)
SB 1695 (Brulte)	QMEs/Osteopathic specialty	Sen. I.R. Dropped per author
SB 1705 (Johnston)	W.C./Med Evaluation/Presumptions	Sen. I.R. Author may not pursue
1766 (Rosenthal)	Mgd Care Fraud Bureau, Creation	Sen. Approps Susp.Failed 5/26
SB 1817 (Johnston)	W.C./Work Experience Education	Signed; Chpt. 541
SB 1933 (Johnston)	W.C./Alien Workers	Vetoed 9/27/98
SB 1940 (Peace)	W.C./Nurse Practitioners	Chapter 388
SB 1965(Peace)	W.C./Voc Rehab	Signed; Chpt. 524
SB 2019 (Mountjoy)	W.C./ADR/not part of Col. Barg	Sen. I.R. Pulled off by author
SB 2076 (O'Connell)	LC 4850 benefits	Sen. Approps Susp5/26HELD
SB 2096 (Mountjoy)	W.C./Independent Contractor	Sen I.R.&R&T Failed 4/22
SB 2101 (Peaace)	HCO - Loan Repayment	Chapter 282 (signed 8/10)
SB 2112 (Peace)	W.C./OSHA Consult Services	Sen. I.R. (Dosh) 4/22
SB 2119 (Hurtt)	Public Records/Internet Availability	Sen. G.O. 4/14
SB 2144 (Johnson)	W.C/ADR Aerospace Industry	Sen. I.R. Failed 4/22

