

BILL NUMBER: AB 3026 AMENDED
BILL TEXT

AMENDED IN SENATE AUGUST 16, 2006
AMENDED IN ASSEMBLY MAY 3, 2006
AMENDED IN ASSEMBLY APRIL 6, 2006

INTRODUCED BY Assembly Member Lieber

FEBRUARY 24, 2006

~~An act to amend Section 4604.5 of the Labor Code,~~
~~relating to~~ An act to add Article 7.5 (commencing with
Section 4860) to Chapter 2 of Part 3 of Division 4 of the Labor Code,
relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 3026, as amended, Lieber Workers' compensation:
~~medical service visits~~ peace officers .

Existing law 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.

This bill would require an employee who is a peace officer and who suffers an injury that arises out of, or in the course of, employment to have the right to be treated for that injury by a physician of his or her choice at a facility of his or her choice within a reasonable geographic distance.

~~Existing workers' compensation law 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 entitles an employee, for injuries occurring on and after January 1, 2004, to no more than 24 chiropractic, 24 occupational therapy, and 24 physical therapy visits per industrial injury, unless an employer authorizes, in writing, additional visits to a health care practitioner for physical medical services.~~

~~This bill would, instead, specify that an employer may authorize a specific number of additional chiropractic, occupational therapy, and physical therapy visits.~~

~~The bill would declare the amendments made by the bill are declarative of existing law.~~

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

(a) Peace officers swear an oath to protect the public even at the risk of suffering personal injury or death in the line of duty.

(b) Law enforcement work is unpredictable and dangerous, and peace officers are more likely than other employees to suffer injury or death as a result of their employment.

(c) California citizens expect peace officers to put themselves in

harm's way if necessary and, for that reason, California law should provide for prompt, reasonable medical care and adequate disability benefits for these law enforcement employees.

(d) The Legislature has recognized the need for peace officers to receive adequate medical care and disability benefits for injuries sustained on the job, but recent legislation has severely curtailed many workers' compensation benefits and has adversely affected the ability of injured peace officers to obtain reasonable medical care and related benefits that would enable those public safety employees to quickly recover from their injuries and return to work on a timely basis.

(e) Long delays and denials of appropriate medical treatment for injured peace officers can cause manpower shortages in critical public safety positions.

(f) It is the intent of the Legislature to provide peace officers who sustain job-related injuries with prompt and appropriate medical care and related benefits, and allow those employees to resolve medical treatment disputes expeditiously.

SEC. 2. Article 7.5 (commencing with Section 4860) is added to Chapter 2 of Part 3 of Division 4 of the Labor Code , to read:

Article 7.5. Peace Officers

4860. For purposes of this article, the following definitions shall apply:

(a) "Injury" includes injury or disease as defined in Section 3208 and includes any medical condition arising from an injury.

(b) "Employee designated physician" means the physician selected by the employee to treat an injury that arises out of, or in the course of, employment.

(c) "Peace officer" has the same meaning as in Section 50920 of the Government Code.

(d) "Treatment" includes all items described in subdivision (a) of Section 4600, as well as diagnostic examinations, tests, and procedures necessary to the determination of appropriate therapeutic interventions.

4860.1. (a) Notwithstanding any other provision of law, an employee who is a peace officer who suffers an injury that arises out of, or in the course of, employment shall have the right to be treated for that injury by a physician of his or her choice at a facility of his or her choice within a reasonable geographic distance. Notwithstanding any other provision of law, medical treatment reasonably required to cure or relieve from the effects of the industrial injury suffered by a peace officer shall be determined in accordance with this section.

(b) In the case of a peace officer who suffers an injury that arises out of, or in the course of, employment, an employer shall provide to that injured employee all reasonable medical treatment recommended by the employee's designated treating physician to cure or relieve the employee from the effects of his or her injury.

(c) The employer may contest liability for the provision or scope of any recommended medical treatment, based on sound medical or scientific evidence that the treatment is contraindicated for the employee's injury. The employer shall not modify, delay, or deny reasonable medical treatment recommended by the employee's designated treating physician by relying on guidelines that do not address the specific treatment requested. An employer shall not modify, delay, or deny treatment based on the American College of Occupational and Environmental Medicine's (ACOEM) Guidelines where the requested treatment is to occur more than 90 days after the date of injury.

4860.2. (a) Nothing in this section is intended to preclude an

employer from submitting a request for treatment to utilization review established pursuant to Section 4610. If the employer chooses to do so, it must adhere to the timeframes set forth in that section. However, notwithstanding any other provision of law, decisions to approve, deny, or modify treatment in the case of a peace officer shall be consistent with the standards set forth in subdivisions (b) and (c) of Section 4860.1.

(b) Where an employer chooses to submit a treatment request to utilization review, it is the employer's responsibility to submit to its utilization reviewer all relevant medical and other information in its possession or within its control so that review may be conducted promptly within the timeframes set forth in Section 4610. If recommended treatment is delayed or denied because the utilization reviewer did not receive sufficient medical or other information necessary to make a determination and if that information was within the employer's possession or control when the request for utilization review was made, it shall be presumed that treatment has been unreasonably delayed or denied, and the employee will be entitled to increased compensation under Section 5814.

4860.3. Notwithstanding any other provision of law, if treatment recommended by the employee's designated physician is not approved in full, the employee may proceed to the appeals board to resolve the dispute or elect to proceed in accordance with Section 4062.

4860.4. If an employer denies or modifies treatment recommended by the employee's designated physician and if the treatment is later determined to be appropriate, either by the appeals board or by agreement of the parties, it shall be presumed that the treatment has been unreasonably delayed. If the employee is represented by an attorney when the dispute is resolved, the appeals board may award attorneys' fees incurred by the employee in obtaining appropriate medical treatment.

4860.5. If an employer objects to a report of the employee's designated physician recommending spinal surgery, the parties shall resolve the dispute in accordance with subdivision (b) of Section 4062, except, if the report of the second opinion physician cannot be served on the parties within 45 days of the receipt of the recommendation for spinal surgery from the employee's designated physician, the employee may elect to proceed to the appeals board to resolve the dispute regarding surgery.

The employer shall be liable for medical treatment costs for the disputed surgical procedure, whether through a lien filed with the appeals board or as a self-procured medical expense and for periods of temporary disability resulting from the surgery, if the disputed surgical procedure is performed prior to the completion of the second opinion process set forth in this section and if it is later determined by the second opinion physician, by agreement of the parties, or by the appeals board, that the surgery should be authorized.

4860.6. This article shall apply to all treatment requests made on or after January 1, 2007, regardless of the date of injury.

4860.7. Notwithstanding any other provision of law, with respect to peace officers covered by this article, aggregate disability payments for a single injury occurring on or after April 19, 2004, causing temporary disability shall not extend for more than 104 weeks within a period of five years from the date of injury.

~~SECTION 1. Section 4604.5 of the Labor Code is amended to read:~~

~~4604.5. (a) Upon adoption by the administrative director of a medical treatment utilization schedule pursuant to Section 5307.27, the recommended guidelines set forth in the schedule shall be presumptively correct on the issue of extent and scope of medical~~

~~treatment. The presumption is rebuttable and may be controverted by a preponderance of the scientific medical evidence establishing that a variance from the guidelines is reasonably required to cure or relieve the injured worker from the effects of his or her injury. The presumption created is one affecting the burden of proof.~~

~~(b) The recommended guidelines set forth in the schedule adopted pursuant to subdivision (a) shall reflect practices that are evidence and scientifically based, nationally recognized, and peer reviewed. The guidelines shall be designed to assist providers by offering an analytical framework for the evaluation and treatment of injured workers, and shall constitute care in accordance with Section 4600 for all injured workers diagnosed with industrial conditions.~~

~~(c) Three months after the publication date of the updated American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines, and continuing until the effective date of a medical treatment utilization schedule, pursuant to Section 5307.27, the recommended guidelines set forth in the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines shall be presumptively correct on the issue of extent and scope of medical treatment, regardless of date of injury. The presumption is rebuttable and may be controverted by a preponderance of the evidence establishing that a variance from the guidelines is reasonably required to cure and relieve the employee from the effects of his or her injury, in accordance with Section 4600. The presumption created is one affecting the burden of proof.~~

~~(d) Notwithstanding the medical treatment utilization schedule or the guidelines set forth in the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines, for injuries occurring on and after January 1, 2004, an employee shall be entitled to no more than 24 chiropractic, 24 occupational therapy, and 24 physical therapy visits per industrial injury, except that an employer may authorize, in writing, a specific number of additional chiropractic, occupational therapy, and physical therapy visits.~~

~~(e) For all injuries not covered by the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines or official utilization schedule after adoption pursuant to Section 5307.27, authorized treatment shall be in accordance with other evidence-based medical treatment guidelines generally recognized by the national medical community and that are scientifically based.~~

~~SEC. 2. The amendments made by this act to amend Section 4604.5 of the Labor Code are declaratory of existing law.~~