

Department of Legislative Services  
Maryland General Assembly  
2007 Session

FISCAL AND POLICY NOTE

House Bill 203  
Economic Matters

(Delegate Smigiel, *et al.*)

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**Workers' Compensation - Appeals - Admissibility of Medical Records**

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This bill provides that a written medical record is admissible evidence in an appeal of an order of the State Workers' Compensation Commission. In order to be considered on appeal, the record must be introduced at least 60 days before the beginning of the trial in circuit court and notice must be given to all other parties. A party who receives notice of this filing may introduce another record at least 30 days before the beginning of the trial. All records introduced must include the name of the health care provider and the dates of treatment or record.

The bill applies only to appeals filed on or after October 1, 2007.

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**Fiscal Summary**

**State Effect:** Minimal increase in expenditures for the State as an employer due to an increase in the number of workers' compensation appeals and claim amounts. Expenditures would be partially offset by a potential reduction in administrative expenses for appeals.

**Local Effect:** Minimal increase in expenditures for local governments as employers due to an increase in the number of workers' compensation appeals and claim amounts. Any increase in circuit courts' workload is expected to be minimal.

**Small Business Effect:** Minimal.

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## Analysis

**Current Law:** A decision of the Workers' Compensation Commission may be appealed to a circuit court within 30 days of issuance of the order. In the event of an appeal, a circuit court must consider whether the commission considered all relevant facts, exceeded its statutory authority, or misconstrued applicable laws. The decision of a circuit court may be appealed to the Court of Special Appeals as provided for other civil cases.

Written medical records and bills for health care expenses are admissible in certain District Court and circuit court cases that involve personal injury damages or certain insurance benefits. The record may be admitted without the oral testimony of the health care provider to substantiate the condition of the claimant or the necessity of providing health care. These provisions do not currently apply to workers' compensation proceedings.

**Background:** Legislation to allow written medical records in workers' compensation appeals has been previously introduced from 1998 to 2002. In 1998, a conference committee failed to resolve House and Senate differences on SB 41. Subsequent introductions received unfavorable reports in committee.

**State Expenditures:** This bill would potentially reduce the costs for a party to file an appeal of a Workers' Compensation Commission order. This could result in filing of additional appeals by insurers and claimants who would not have otherwise pursued legal action, partially offset by a potential reduction in administrative costs for the minority of appeals that would not require live medical testimony.

The Injured Workers' Insurance Fund (IWIF), which administers the State's workers' compensation program, estimates that 400 cases per year are appealed. IWIF estimates that each appealed claim costs approximately \$3,000 in additional claim payments and administrative costs. Although the majority of cases are settled prior to trial, the appeals process increases administrative costs associated with the claim. Under the bill, additional costs could also accrue for the deposition of health care providers. IWIF advises that the bill would effectively shift costs from the claimant to the insurer, as medical testimony would still be required in many cases for the jury to fully understand and evaluate the testimony of the health care provider. IWIF estimates the average cost of a video deposition at \$1,200, which includes witness fees and transcription.

The net State impact resulting from additional appeals and their potential effect on IWIF premiums cannot be reliably estimated at this time.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** National Council on Compensation Insurance, Uninsured Employers' Fund, Injured Workers' Insurance Fund, Subsequent Injury Fund, Department of Legislative Services

**Fiscal Note History:** First Reader - February 9, 2007  
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