

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 446
Finance

(Senator Ruben, *et al.*)

Workers' Compensation - Appeals - Evidence

This bill allows a writing or record containing a physician's opinion to be admitted into evidence in an appeal from a Workers' Compensation Commission decision if: (1) the presenting party gives a copy of the report to the other party; and (2) the responding party has an opportunity to depose the physician. The responding party may offer the deposition into evidence. The writing or record must be submitted into evidence in accordance with a pre-existing statute governing health care provider writings and records in other contexts.

The bill applies retroactively and specifically applies to all appeals filed after January 1, 2001.

Fiscal Summary

State Effect: Minimal increase in expenditures from the non-budgeted Injured Worker's Insurance Fund for any additional depositions taken or appeals handled as a result of this bill.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Generally, a writing or record may not be admitted into evidence without having a witness with knowledge of the writing or record testify as to the "authenticity" of it (*i.e.*, testify that it is what it claims to be). The contents of the writing or record may

not be admitted for the truth of the matter asserted without meeting one of the exceptions to the hearsay rule, which generally prohibits statements made outside the court to be admitted in court for their truth. A common exception in the context of health care is a statement made for the purpose of medical diagnosis or treatment.

A statute provides for the admissibility of health care provider writings or records in cases relating to:

- damages for personal injury;
- medical, hospital, or disability benefits under motor vehicle personal liability coverage;
- first party motor vehicle benefits under uninsured motorist liability coverage; and
- first party health insurance benefits.

In such cases, a writing or record of a health care provider may be admitted into evidence without the health care provider's own testimony in any civil action if, at least 60 days prior to trial, the party introducing the writing or record: (1) serves on all parties notice of its intent, a list identifying each writing or record, and a copy of the writing or record; and (2) files with the court notice of service and the list identifying each writing or record.

In such cases, a writing or record of a health care provider made to document a medical, dental, or other health condition, a health care provider's opinion, or the provision of health care is admissible as evidence of the existence of a condition, opinion, or provision of health care, without the need to have the health care provider testify as the maker or custodian of the writing or record.

State Expenditures: The Injured Workers' Insurance Fund (IWIF) administers the State's self-funded workers' compensation program. IWIF advises that administrative costs and claims payments would increase by approximately \$2,000 per case that may be appealed as a result of this bill. IWIF handles approximately 325 appeals annually. The exact number of additional appeals that may be taken as a result of this bill's provisions cannot be reliably quantified, but is expected to be minimal. IWIF also posits that this bill would have the effect of "shifting" some costs from the claimant (who is most likely to take advantage of this evidentiary procedure) to IWIF under the theory that the claimant would not have to pay for the physician's in-court testimony, but IWIF would have to depose the physician. A videotaped deposition, including witness fees and transcription, costs about \$1,200. The decision to depose a physician as part of the discovery process should not necessarily rest upon whether the physician testifies "live" or via the writing or record. Nevertheless, IWIF may choose to depose some physicians that it otherwise would not depose, adding costs accordingly.

Additional Information

Prior Introductions: Similar bills were introduced as HB 568 in 2001 and as HB 578 in 2000. HB 568 of 2001 and HB 578 of 2000 each received an unfavorable report from the Economic Matters Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Injured Workers' Insurance Fund, Workers' Compensation Commission, Department of Legislative Services

Fiscal Note History: First Reader - February 25, 2002
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