

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1298
Economic Matters

(Delegate Taylor, *et al.*)

**Workers' Compensation Commission - Medical Examinations and Evaluations -
Hearings**

This bill requires a physician conducting a medical examination or evaluation of a person claiming to have a permanent impairment as a result of a workplace injury to be licensed in the State. The physician is not permitted to render an opinion outside of his or her area of expertise and is subject to the medical malpractice laws of the State.

Fiscal Summary

State Effect: The bill does not directly affect governmental operations or finances.

Injured Workers' Insurance Fund: Potential operational impact on the ability of the Injured Workers' Insurance Fund (IWIF) to accommodate claimants for whom an out-of-state independent medical exam (IME) is most convenient. Potential minimal impact on IWIF expenditures and no effect on revenues.

Local Effect: Altering medical evaluation procedures for individuals claiming to have an impairment due to a workplace injury does not materially affect local government finances.

Small Business Effect: Potential minimal.

Analysis

Current Law: State law requires a covered employee who is eligible for workers' compensation to submit to a medical examination. If the employee obstructs or refuses to

submit to an examination, the Workers' Compensation Commission (WCC) suspends the employee's right to compensation until the examination has taken place.

Physicians conduct evaluations of employees claiming to have a permanent impairment and report their findings to the commission in accordance with the commission's regulations. Permanent impairment medical evaluations must include information about:

- atrophy;
- pain;
- weakness; and
- loss of endurance, function, and range of motion.

If the impairment involves a behavioral or mental disorder, a licensed psychologist or qualified physician is responsible for evaluating only the mental or behavioral portion of the impairment.

Background: IWIF advises that, because medical examinations and evaluations are required to be conducted by physicians licensed in the State, the bill effectively prohibits employers or insurers from conducting IMEs outside of Maryland. According to IWIF, the agency annually arranges and pays for thousands of IMEs to evaluate injured workers for temporary or permanent impairment. These IME evaluations are requirements for both hearings at WCC and settlements. Over the past three years, 819 of these evaluations have taken place out of State, mostly in Virginia, Pennsylvania, and the District of Columbia. However, others took place in Texas, Massachusetts, and Florida. IMEs are scheduled in other states as an accommodation to the claimant and may be due to a claimant's relocation to another state, or simply because the out-of-state location is more convenient for the claimant (for example, claimants who live in Western Maryland may have easier access to a doctor in West Virginia).

Injured Workers Insurance Fund Effect: IWIF advises that the bill has a significant operational impact on its ability to accommodate claimants who request to undergo an IME outside of the State of Maryland. IWIF arranges an average of about 270 IMEs outside of the State every year. The agency advises that conducting all of these in the State increases the rate of "no shows" and obtaining IMEs for out-of-state claimants becomes very difficult, which may increase "no show" fees and claim costs.

Additional Comments: The Uninsured Employers' Fund (UEF) advises evaluations such as IMEs are generally not considered treatment or care, and thus medical malpractice laws do not apply. According to UEF, this may allow a claimant who is not satisfied with an opposing evaluator's opinion to sue him or her for malpractice. UEF advises that claimant fraud and medical malpractice litigation may increase due to the

bill. However, claimants also have more recourse against physicians – often hired by insurers – whose evaluations intentionally discount the severity of a claimant’s condition.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Maryland Insurance Administration, Injured Workers’ Insurance Fund, Uninsured Employers’ Fund, Workers’ Compensation Commission, Department of Legislative Services

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Analysis by: Michael T. Vorgetts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510