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HOUSE BILL 562

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

James G. Taylor

AN ACT

RELATING TO WORKERS' COMPENSATION; PROVIDING FOR AN INDEPENDENT
MEDICAL EXAMINATION; PROVIDING FOR ACCESS TO INFORMATION
REGARDING A WORKER'S STATUS; AMENDING A SECTION OF THE WORKERS'
COMPENSATION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 52-1-25.1 NMSA 1978 (being Laws 1990
(2nd S.S.), Chapter 2, Section 10) is amended to read:

"52-1-25.1. TEMPORARY TOTAL DISABILITY--RETURN TO WORK. --

A. As used in the Workers' Compensation Act,
"temporary total disability" means the inability of ~~the~~ a
worker, by reason of accidental injury arising out of and in
the course of his employment, to perform his duties prior to
the date of his maximum medical improvement.

B. If, prior to the date of maximum medical

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1 improvement, an injured worker's health care provider releases
2 the worker to return to work and ~~the~~ any employer offers work
3 at the worker's pre-injury wage, the worker is not entitled to
4 temporary total disability benefits.

5 C. If, prior to the date of ~~maximum~~ medical
6 improvement, an injured worker's health care provider releases
7 the worker to return to work and the employer offers work at
8 less than the worker's pre-injury wage, the worker is disabled
9 and shall receive temporary total disability compensation
10 benefits equal to ~~[sixty-six and]~~ two-thirds ~~[percent]~~ of the
11 difference between the worker's pre-injury wage and his post-
12 injury wage.

13 D. If the worker returns to work pursuant to the
14 provisions of Subsection B of this section, the employer shall
15 continue to provide reasonable and necessary medical care
16 pursuant to Section 52-1-49 NMSA 1978. "

17 Section 2. Section 52-1-51 NMSA 1978 (being Laws 1929,
18 Chapter 113, Section 19, as amended) is amended to read:

19 "52-1-51. PHYSICAL EXAMINATIONS OF WORKER--INDEPENDENT
20 MEDICAL EXAMINATION--UNSANITARY OR INJURIOUS PRACTICES BY
21 WORKER--TESTIMONY OF HEALTH CARE PROVIDERS.--

22 A. ~~[In the event of a dispute concerning any~~
23 ~~medical issue, if the parties cannot agree upon the use of a~~
24 ~~specific independent medical examiner, either]~~ If a party to a
25 claim disputes the reasonableness or necessity of treatment, or

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1 the cause of the injury, that party may petition a workers'
2 compensation judge for permission to have the worker undergo an
3 independent medical examination. If a workers' compensation
4 judge believes that an independent medical examination will
5 assist the judge with the proper determination of any issue in
6 the case, including the cause of the injury, the workers'
7 compensation judge may order an independent medical examination
8 upon the judge's own motion. The independent medical
9 examination shall be performed immediately, pursuant to
10 procedures adopted by the director, by a health care provider
11 other than the designated health care provider, unless the
12 employer and the worker otherwise agree.

13 B. In deciding who may conduct the independent
14 medical examination, the workers' compensation judge shall not
15 designate the health care provider initially chosen by the
16 petitioner. The workers' compensation judge shall designate a
17 health care provider on the approved list of persons authorized
18 by the committee appointed by the advisory council on workers'
19 compensation to create that list. The decision of the workers'
20 compensation judge shall be final. The employer shall pay for
21 any independent medical examination.

22 C. Only a health care provider who has treated the
23 worker pursuant to Section 52-1-49 NMSA 1978 or the health care
24 provider providing the independent medical examination pursuant
25 to this section may offer testimony at any workers'

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1 compensation hearing concerning the particular injury in
2 question.

3 D. If, pursuant to Subsection C of Section 52-1-49
4 NMSA 1978, the injured worker selects a new health care
5 provider, the employer shall be entitled to periodic
6 examinations of the worker by the health care provider he
7 previously selected. Examinations may not be required more
8 frequently than at six-month intervals; except that upon
9 application to the workers' compensation judge having
10 jurisdiction of the claim and after [~~reasonable~~] reasonable
11 cause therefor, examinations within six-month intervals may be
12 ordered. In considering such applications, the workers'
13 compensation judge [~~should~~] shall exercise care to prevent
14 harassment of the claimant.

15 E. If the employer requests an independent medical
16 examination or an examination pursuant to Subsection D of this
17 section, the worker shall travel to the place at which the
18 examination shall be conducted. Within thirty days after the
19 examination, the worker shall be compensated by the party
20 requesting the examination for all necessary and reasonable
21 expenses incidental to submitting to the examination, including
22 the cost of travel, meals, lodging, loss of pay or other like
23 direct expense, but the amount to be compensated for meals and
24 lodging shall not exceed that allowed for nonsalaried public
25 officers under the Per Diem and Mileage Act.

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1 F. No attorney shall be present at any examination
2 authorized under this section.

3 G. Both the employer and the worker shall be given
4 a copy of the report of the examination of the worker made by
5 the independent health care provider pursuant to this section.

6 H. If a worker fails or refuses to submit to
7 examination in accordance with this section, he shall forfeit
8 all workers' compensation benefits that would accrue or become
9 due to him except for ~~[such]~~ that failure or refusal to submit
10 to examination during the period that he persists in such
11 failure and refusal unless he is by reason of disability unable
12 to appear for examination.

13 I. If any worker persists in any unsanitary or
14 injurious practice that tends to imperil, retard or impair his
15 recovery or increase his disability or refuses to submit to
16 such medical or surgical treatment as is reasonably essential
17 to promote his recovery, the workers' compensation judge may in
18 his discretion reduce or suspend the workers' compensation
19 benefits. "

20 Section 3. Section 52-10-1 NMSA 1978 (being Laws 1990
21 (2nd S.S.), Chapter 2, Section 90) is amended to read:

22 "52-10-1. RELEASE OF MEDICAL RECORDS--ACCESS TO
23 INFORMATION REGARDING A WORKER'S STATUS. --

24 A. A health care provider shall immediately release
25 to a worker, that worker's employer, that employer's insurer,

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1 the appropriate peer review organization or the health care
2 selection board all medical records, medical bills and other
3 information concerning any health care or health care service
4 provided to the worker, upon either party's written request to
5 the health care provider for that information. Except for
6 those records that are directly related to any injuries or
7 disabilities claimed by a worker for which that worker is
8 receiving benefits from his employer, the request shall be
9 accompanied by a signed authorization for that request by the
10 worker.

11 B. An employer or worker shall not be required to
12 continue to pay any health care provider who refuses to comply
13 with Subsection A of this section.

14 C. Any party to a claim, including a medical case
15 manager, may contact a health care provider for the purpose of
16 determining a worker's disability status, work restrictions or
17 treatment plan. A party to a claim shall not attempt to coerce
18 a health care provider. "

19 Section 4. EFFECTIVE DATE. --The effective date of the
20 provisions of this act is July 1, 2004.