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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/12/13

SPONSOR     Kane     LAST UPDATED                      HB     430    

SHORT TITLE     Workers' Comp Guides & Committee     SB                     

ANALYST     Trowbridge    

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$1.0	\$1.0	\$1.0	\$3.0	Recurring	Other State Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Worker's Comp Administration (WCA)  
 Public Regulation Commission (PRC)  
 General Services Department (GSD)  
 Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

House Bill 430 (HB 430) would amend the Workers Compensation Act (Act) in connection with the creation of a committee to advise the Director of the Worker's Compensation Administration (WCA) regarding the adoption of new editions of the American Medical Association's guides (Guides) to the evaluation of permanent impairment.

The definition of "impairment" contained in Section 52-1-24 of the Act references "the most recent edition of the American Medical Association's guide to the evaluation of permanent impairment or comparable publications of the American Medical Association." Section 1 of the bill would limit the reference to such guides to those approved by the advisory committee.

Section 2 of HB 430 would add a new section to the Act providing for the creation of the advisory committee, detailing the committee's duties, and specifying its composition. The bill provides that the committee members would be chosen by the Director and would review all new editions to the Guides. Under the bill, the committee would make recommendations to the

Director regarding whether to approve and adopt each new edition of the Guides for use in workers compensation cases. HB 430 further provides that until a new edition of the Guides is approved, the last edition approved shall control. The bill requires that the committee include, at a minimum: a physician who treats injured workers and uses the guides; a representative of employers; a representative of workers compensation insurers; a representative of workers' unions; an attorney who regularly represents workers before the administration; and an attorney who regularly represents insurers before the administration.

### **FISCAL IMPLICATIONS**

The WCA estimates it will cost approximately \$1,000 to adopt new rules to ensure compatibility with the new statute.

### **SIGNIFICANT ISSUES**

The Attorney General's Office (AGO) states that it is not entirely clear under the bill whether the Director is free to reject the recommendation of the committee. Section 1 of the bill adds the words "as approved by the advisory committee" to qualify a reference to the Guides. Section 2, in contrast, states that the committee will "make recommendations to the Director regarding whether to approve and adopt the new edition [of the Guides]." The next sentence of Section 2 continues, however: "Based on the recommendations of that advisory committee, the Director shall decide whether to adopt the new edition. . . ." The AGO indicates this implies that the Director must base his/her decision on the recommendation of the committee.

The WCA states that the bill changes the statute requiring application of the most current version of the American Medical Association (AMA) guides when assigning an impairment rating for an injured worker, which empowers the Director to decide which version of the guides should be used, even if it is two versions old. The amendment would require physicians to remain fluent in older versions of the AMA guides, placing an additional burden on physicians in an arena that is already administratively burdensome for physicians.

The WCA states that the bill is internally inconsistent. Section 1 requires the usage of the version of the AMA guides approved by the advisory committee; however, Section 2 requires the advisory committee to make recommendations to the Director, who has the ultimate authority to decide which version shall be used. The WCA maintains the bill could cause greater confusion than currently exists over which edition of the guides apply to a specific claimant. Finally, pursuant to NMSA 1978 §52-4-5(F), there already exists a medical advisory committee which makes recommendations to the Director on medical issues, including the annual medical fee schedule and utilization review procedures. The WCA indicates that the creation of a new committee may be administratively redundant.

### **SIGNIFICANT ISSUES**

The Public Regulation Commission (PRC) reports that revisions to AMA guides used to determine impairments can have a material impact on benefits to injured workers and costs to the workers compensation system. The bill requires that the advisory committee contain at least six members, one of whom is a doctor and the rest of whom represent workers, employers, insurers and attorneys, respectively. Subjecting medically produced guides to review by an advisory committee that is dominated by non-medical members would lessen the role that medical science

has, and would increase the role that competing vested interests have, in defining impairment.

**PERFORMANCE IMPLICATIONS**

The amendment would require a change in the WCA’s medical rules which requires the most current version of the AMA guides to be used.

**ADMINISTRATIVE IMPLICATIONS**

The WCA indicates that the bill creates new administrative duties for the agency. It would require the organization and solicitation of membership for the committee, which is purely advisory. It also requires the director to appoint committee members and decide which version of the AMA guides would apply to all workers’ compensation cases where impairment ratings are necessary.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 261 also proposes to amend §52-1-24. HB 261 specifies that the version of the AMA guide should be the one in effect on the date an injured worker reaches “Maximum Medical Improvement” or “MMI.”

**TECHNICAL ISSUES**

The WCA notes that this bill has not been reviewed or approved by the Advisory Council on Workers’ Compensation and Occupational Disease.

**AMENDMENTS NEEDED TO IMPROVE THIS BILL**

The AGO states the bill could be amended to clarify whether the Director must adopt the recommendations of the advisory committee, or conversely, that the Director is free to reject the recommendation.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Determinations of the impairment of injured workers will continue to be based on the latest version of AMA guides.

TT/svb