

2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2432

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2432

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 4, 2009

Recorder Job Number: 8611

Committee Clerk Signature

Eva Lubell

Minutes:

Senator O'Connell: This is a bill aimed at increasing the fairness and giving them a loss of wages until they get back to work.

Sylvan Loegring, Volunteer Coordinator, injured Workers Support Group: Written Testimony Attached. Talks about the fairness that should be given to the worker. He wants sections repealed. Explains how the WSI handles the workers claims and what they have to go through to get a second opinion.

Senator Wanzek: A second opinion sounds reasonable but don't we have to put a number on how many doctors' can be seen?

Sylvan: I am not saying there should be a revolving door. There are people that feel they are not being heard and they are suffering.

Senator Andrist: If we let the worker have the full say then he can shop until he gets the opinion he wants.

Sylvan: If the employer doesn't have a preferred doctor, the doctor is of WSI choosing.

Senator Potter: As an employer you go to the doctor of my choosing or don't go at all. What does the employer have to do with this?

Sylvan: That's how it is. The employer chooses a preferred provider and it saves WSI money.

Chairman Klein: Do people with WSI not go right away to where they need to go?

Sylvan: If it's an emergency of course you could go to the hospital of your choosing.

Dave Kemnitz, President of ND AFL – CIO: There are some that go through the cracks. What the law says now is the employer does the doctor shopping, instead of the employee finding the doctor he wants.

Senator Horne: If we do repeal this do we just leave it open or do we add something else?

Dave: Before it was your choice and now they are referred.

Senator Behm: It makes sense to let the injured worker go where he feels comfortable.

Sebald Vetter: C.A.R.E.: I am in support of this bill. I like choosing my own doctor.

Anne Green, Staff Counsel, and WSI: Written Testimony Attached. I feel a designated medical provider that works with the employer is aware of the workers workplace and can better evaluate what has happened to the injured worker.

Chairman Klein: This is a preferred provider but you can give written notice of the provider you want to see correct?

Anne: Yes, the employer must post the preferred provider and if the employee does not want that provider they can opt out.

Chairman Klein: so the employee has been notified and they can opt out of the preferred provider.

Anne: That's correct.

Senator Horne: If I am unhappy with the preferred provider and I have to wait sixty days to find another doctor, then I am not getting the care I need.

Anne: That's assuming he is inadequate to take care of the employee.

Senator Wanzek: I am assuming that the preferred provider might be the same provider that there health plan recommends.

Anne: It could be.

Senator Potter: I find it ironic that we don't have the same choice as Canada.

Bill Shalhoob, ND Chamber of Commerce: Written Testimony Attached. Comments on the question asked about the medical provider. The medical provider came to the employer and told them that they could control their cost by becoming their designated provider. Anyone has time to opt out prior to their injury.

Senator Horne: Is there any more cost to me if I choose not to be in your provider program?

Bill: I don't believe there is.

Chairman Klein: Preferred provider doesn't mean a certain doctor but a medical facility. So you can choose your doctor from there correct?

Bill: That's correct.

Vern Hoechst, Steel worker at Bobcat: The majority of workers at Bobcat have chosen to opt out because we want to be able to choose our own doctor.

Senator Potter: What are the incentives for staying in or opting out?

Vern: I don't think it matters.

Barbara May: I am a former employee of Case in Fargo. The only way we could opt out is by going to the union. There Case had a doctor on site and we protested that. Then Merit Care became the provider. I don't like not being able to choose my doctor.

Chairman Klein: Closed hearing on Senate Bill 2432.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2432

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 4, 2009

Recorder Job Number: 8617

Committee Clerk Signature

Eva Lickelt

Minutes:

Chairman Klein: Called meeting back to order. We will look at Senate Bill 2432.

Senator Wanzek: I had talked to Anne Green about a possible amendment for 2432. Where it says that an injured worker wants a different provider they have to wait sixty days before they can make a written request, and all this does is change sixty to thirty. I heard Anne say the acute time period was very important in medical treatment. Well you actually have to exhaust those sixty days as I read the law, before an injured worker can even request for a different provider. And that starts out the process which will probably be another ninety to a hundred and some days. Just change the sixty to thirty is all the amendment will do and it will leave the law intact.

Senator Potter: I think are citizens should have the same rights as the people in Canada do and pick their own doctor.

Senator Nodland: So you're not repealing this section, you're leaving it in and just changing the sixty to thirty?

Senator Wanzek: It would not repeal the sections. As the current law reads they cannot even make the request until after sixty days. At least this would speed it up thirty days.

Senator Potter: We had testimony that about eight percent was the number of our employers use preferred providers. I'd be curious of what percentage of our work force are they covering in that eight percent. Just for reference.

Chairman Klein: I would guess it would be the big companies. The self insured groups.

We will hold that until this afternoon. Meeting adjourned.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2432

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 4, 2009

Recorder Job Number: 8700

Committee Clerk Signature

Eva Liebelt

Minutes:

Chairman Klein: Called meeting back to order. We will go back to 2432.

Senator Wanzek: You have the amendment before you. Hog house is a bill that would remove the repeal and in its place makes it makes a change to the section of law of the injured workers request to seek a different provider, other than a preferred provider.

Motion made by Senator Wanzek to accept the amendment.

Seconded by Senator Andrist.

Senator Potter: I oppose the amendment. I like the bill. Again I believe we should all have free choice of doctors. And here not only are we taking away the government agency, we're taking away the employers involvement, it seems to me.

Senator Wanzek: This is a response to a bill that otherwise would not make it. At least it has a chance.

Row Call Vote: Yes: 6 No: 0 Absent: 0

Senator Wanzek: I vote for a do pass as amended. Senator Nodland: Seconded.

Roll Call Vote: Yes: 7 No:0 Absent: 0

Floor Assignment: Senator Wanzek

FISCAL NOTE
Requested by Legislative Council
03/05/2009

Amendment to: Engrossed
 SB 2432

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation shortens the time period after an injury from 60 days to 30 days when an employee may make a written request to the organization to change from an employer's preferred provider to another provider.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE
2009 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: Engrossed SB 2432 w/ House Amendments

BILL DESCRIPTION: Time Period for Provider Change Request

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation shortens the time period after an injury from 60 days to 30 days when an employee may make a written request to the organization to change from an employer's preferred provider to another provider.

Fiscal Impact: We do not anticipate the proposed legislation will have a material impact on statewide premium and reserve levels.

DATE: March 5, 2009

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-6016	Date Prepared:	03/05/2009

FISCAL NOTE
Requested by Legislative Council
02/06/2009

Amendment to: SB 2432

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation shortens the time period after an injury from 60 days to 30 days when an employee may make a written request to the organization to change from an employer's preferred provider to another provider.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE
2009 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: Engrossed SB 2432

BILL DESCRIPTION: Time Period for Provider Change Request

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation shortens the time period after an injury from 60 days to 30 days when an employee may make a written request to the organization to change from an employer's preferred provider to another provider.

Fiscal Impact: We do not anticipate the proposed legislation will have a material impact on statewide premium and reserve levels.

DATE: February 7, 2009

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-6016	Date Prepared:	02/09/2009

FISCAL NOTE
Requested by Legislative Council
01/28/2009

Bill/Resolution No.: SB 2432

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation repeals the preferred provider statutes.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE
2009 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: SB 2432

BILL DESCRIPTION: Repeals Preferred Provider Statutes

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation repeals the preferred provider statutes.

Reserve and Premium Rate Level Impact:

We are pleased to offer our preliminary thoughts regarding the potential reserve and rate level impact of Senate Bill 2432. The proposed legislation will repeal Sections 65-05-28.1 and 65-05-28.2 of the North Dakota Century Code. The two sections in question permit employers to select a preferred provider to render medical treatment to employees that sustain compensable injuries. We understand that the provider choice provision was expanded through HB 1221 which was included as part of the workers' compensation reform effort that passed in the 1995 legislative session. WSI credits the preferred provider program as one of the changes that helped reduce the steady increase in medical costs experienced by the workers' compensation program in the early 1990's. A sufficiently refined database does not exist to quantify the likely financial impact of this bill on rate and reserve levels. That stated, based on observed changes in North Dakota loss costs during the mid 1990's as well as experience in other states, we believe that the increase in costs could be material to the program as a whole if the proposed legislation passes.

DATE: February 3, 2009

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-6016	Date Prepared:	02/03/2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2432

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 3 of section 65-05-28.2 of the North Dakota Century Code, relating to preferred providers for work-related injuries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 65-05-28.2 of the North Dakota Century Code is amended and reenacted as follows:

3. After ~~sixty~~ thirty days have passed following the injury, the employee may make a written request to the organization to change providers. The employee shall make the request and serve it on the employer and the organization at least thirty days prior to treatment by the provider. The employee shall state the reasons for the request and the employee's choice of provider."

Renumber accordingly

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Date: 2/4/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2432

Senate

Committee

Industry, Business and Labor

Check here for Conference Committee

Legislative Council Amendment Number 98330.0201

Action Taken Pass Do Not Pass Amended

Motion Made By Senator Wanzek Seconded By Senator Andrist

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Home	✓	
Senator John M. Andrist	✓		Senator Tracy Potter		✓
Senator George Nodland	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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Date: 2/4/09
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2432

Senate

Committee

Industry, Business and Labor

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Pass Do Not Pass Amended

Motion Made By Senator Wanzek Seconded By Senator Nodland

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Wanzek

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2432: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2432 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 3 of section 65-05-28.2 of the North Dakota Century Code, relating to preferred providers for work-related injuries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 65-05-28.2 of the North Dakota Century Code is amended and reenacted as follows:

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Renumber accordingly

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2432

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2432

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 2, 2009

Recorder Job Number: 9990

Committee Clerk Signature

Ellen Letang

Chairman Keiser: Opened the hearing on SB 2432 relating to preferred providers for work-related injuries.

Sylvan Loegering~North Dakota Injured Worker Support Group. Introduces SB 2432.

This bill started out originally as a bill to delete the entire preferred provider section of WSI

century code, when an injured worker works for an employer who has a preferred provider.

WSI picks the doctors, they don't and the employer can choose a preferred provider to treat their injured workers. If the employer has a preferred provider there is only two circumstances where that injured worker can go to anybody else and that in an emergency or if the preferred provider provides a referral. What it boils down to under present law is the injured worker cannot even request different doctor for 60 days. Then they cannot go to another doctor until 30 days after they request a different doctor. So the present law without a referral that injured worker is bound to that preferred provider for 90 days and the way I read the statute not even WSI could, go to a different doctor because the statute says that you can't go to anybody else without a referral. My appeal is when they get stuck with this preferred provider thing, resulted in cutting back that time frame 30 days. There is a problem in the law that's what ends up happening, if the injured worker requests a different doctor, has to do it in writing, notify WSI & the employer, then the employer has 5 days to respond whether it's ok with him or not. If the

employer says I don't want him changing doctors, then the employee has another 5 days to respond to that objection, then WSI and another 15 days to weigh out the objection and their response. In fact it was 15 they don't deny the request, it's an automatic given. What is totally missing in the law is what happens if WSI agrees with the employer that the injured worker should stay with the preferred provider, I don't see any section in the law that says this is what happens except, do you stay forever, I don't know. It started out as a unique preferred providers and it turn into a at least 30 days. I can tell you where the 30 days cutback came from. WSI testifier indicated the reason for the 60 day wait before applying for a new doctor, is 60 days is considered a critical or acute care case. They didn't want to change doctors during the critical phase, so it's a compromise, but it's a long ways from the original bill.

Dave Kemnitz~North Dakota President of AFL-CIO. I agree with Sylvan Loegering and we support SB 2432.

Rob Forward~Staff Attorney for WSI. See testimony attachment.

Representative Amerman: All we are doing with the amendment is another section of the code of changing the 60 to 30?

Forward: That's correct.

Chairman Keiser: On the original bill its subsection three, you have it labeled number one, how does that work?

Representative N Johnson: You would be inserting a section one and the section three would drop down.

Forward: Representative N Johnson is correct.

Chairman Keiser: On your amendment, when you use preferred provider, WSI provided that kind certification?

Forward: Basically the penalty for not going to your (?), if you chosen of the one the employer chosen.

Sebald Vetter~C.A.R.E. I support this bill.

Bill Shalhoob~North Dakota Chamber of Commerce. We have a cautious support. There are 631 medical providers and as you are aware, this is a cost control element to help employers control medical costs. It's usually involved with not only with the Worker's Compensation but also all of their claims. Thirty days does not seem like a lot of time for the initial treatment of anything and I suspect that's why the 60 days was there. I will be interested to see how it will work out the next few years.

Chairman Keiser: Anyone here to testify in opposition of SB 2432, neutral? Rob, could I ask you one more question? Do we have a break down on the average length of acute care phase?

Forward: I don't know.

Chairman Keiser: Committee, you may want to know that but in fact the average length of a claim is 75 days, this might not be the best thing for the injured worker to switch horses mid stream.

(?)~As a practical matter, many of them do because they get a referral.

Chairman Keiser: I understand from the referral point.

LeRoy Volk: Tells a story about a friend that worked at Wal-Mart. I feel it should be cut down a lot faster that it is.

Chairman Keiser: What are the wishes of the committee?

Representative Vigesaa: Motions the amendment made by Rob Forward (see attachment).

Representative N Johnson: Second.

Voice roll call taken all ayes.

Chairman Keiser: We have the amended bill before us, what are your wishes?

Representative Clark: Moves a Do Pass as Amended.

Representative Thorpe: Second.

Roll call was taken on SB2432 for a Do Pass as Amended with 11 ayes, 0 nays, 0 absent and Representative Ruby is the carrier.

March 2, 2009

VR
3/3/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2432

Page 1, line 1, replace "subsection" with "subsections 1 and"

Page 1, line 4, replace "Subsection" with "Subsections 1 and"

Page 1, line 5, replace "is" with "are" and after the colon insert:

- "1. During the first ~~sixty~~ thirty days after a work injury, an employee of an employer who has selected a preferred provider under this section may seek medical treatment only from the preferred provider for the injury. Treatment by a provider other than the preferred provider is not compensable and the organization may not pay for treatment by a provider who is not a preferred provider, unless a referral was made by the preferred provider. A provider who is not a preferred provider may not certify disability or render an opinion about any matter pertaining to the injury, including causation, compensability, impairment, or disability. This section does not apply to emergency care nor to any care the employee reasonably did not know was related to a work injury."

Renumber accordingly

Date: Mar 2 - 2009

Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2432

House House, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended

Motion Made By Vigesaa Seconded By N Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	}		Representative Amerman	}	
Vice Chairman Kasper		Representative Boe			
Representative Clark		Representative Gruchalla			
Representative N Johnson		Representative Schneider			
Representative Nottestad		Representative Thorpe			
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*voice vote
all ayes*

Date: Mar 2 - 2009

Roll Call Vote # 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2432

House House, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended

Motion Made By Clark Seconded By Thorpe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	1		Representative Amerman	1	
Vice Chairman Kasper			Representative Boe	1	
Representative Clark	1		Representative Gruchalia	1	
Representative N Johnson	1		Representative Schneider		
Representative Nottestad	1		Representative Thorpe	1	
Representative Ruby	1				
Representative Sukut	1				
Representative Vigesaa	1				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Ruby

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2432, as engrossed: Industry, Business and Labor Committee (Rep. Kelsner, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2432 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "subsection" with "subsections 1 and"

Page 1, line 4, replace "Subsection" with "Subsections 1 and"

Page 1, line 5, replace "is" with "are" and after the colon insert:

- "1. During the first ~~sixty~~ thirty days after a work injury, an employee of an employer who has selected a preferred provider under this section may seek medical treatment only from the preferred provider for the injury. Treatment by a provider other than the preferred provider is not compensable and the organization may not pay for treatment by a provider who is not a preferred provider, unless a referral was made by the preferred provider. A provider who is not a preferred provider may not certify disability or render an opinion about any matter pertaining to the injury, including causation, compensability, impairment, or disability. This section does not apply to emergency care nor to any care the employee reasonably did not know was related to a work injury."

Renumber accordingly

2009 TESTIMONY

SB 2432

Remarks from Sylvan Loegering, re SB 2432
Volunteer coordinator, ND Injured Workers Support Group
February 4, 2009

I have been hearing horror stories about what are loosely called "WSI doctors", a term that gets used interchangeably between IME doctors and preferred providers. The perception many injured workers have is that a preferred provider's goal is to get them back to work quickly at all costs and that they basically say, "take pain killers and go back to work". The other commonly heard theory is if they don't run diagnostic tests there is no proof they were seriously injured so later on it can be claimed that the injury happened some other way or was preexisting. I'm not accusing preferred providers of these things but it does lead us to a very important point. **Why doesn't the injured worker request a different doctor?**

The portion of the law that this bill would repeal contains very specific language that actually **prevents WSI from switching doctors or paying for a different doctor unless the original doctor provides a referral**. I won't take your time reading the points in question but they are 65-05-28.2 subsections 1, 3 and 4. Instead I'd like to walk you through a potential scenario. This scenario is based on 3 assumptions: 1) the employer has a preferred provider and 2) The initial doctor doesn't provide a referral to someone else and 3) The employee hadn't selected his own provider before injury. Each step in this scenario is followed by a citation of existing law that applies.

Day 1- Employee is injured, reports it properly and sees a doctor (not an emergency visit).

Day 3- Employee asks to see doctor again. Not happy with doctor. Calls WSI claims analyst to request a different doctor. Request is denied. 65-05-28.2 (1)

Days 4 through 90- The only doctor this employee can see is the initial doctor. If he goes to a different doctor the treating physician won't get paid and cannot "certify disability or render an opinion to WSI about any matter pertaining to the injury, including causation, compensability, impairment or disability." 65-05-28.2 (1)

Day 60- Employee is finally allowed to make a written request to see a doctor chosen by him. He must serve notice on WSI and his employer. 65-05-28.2 (3)


Day 65- Employer may object until this day to employee's choice of doctor by serving the objection on employee and WSI. 65-05-28.2 (4)

Day 70- Time allowed for employee to respond to employer's objection. 65-05-28.2 (4)

Day 85- last day WSI has to rule on employer's objection and employee's response. Failure to rule implies consent to change doctors. 65-05-28.2 (4)



NOTE: The law is unclear what happens if WSI agrees with employer.

Day 90- The first day an employee may go to a doctor of his own choosing EVEN IF THERE WERE NO OBJECTIONS FROM EMPLOYER AND NO OTHER delays
65-05-28.2 (1)



Mr. Chairman, members of the committee, we probably are comfortable with insurance companies that use preferred providers. I have one and I'm happy with it. **THIS IS NOT A PREFERRED PROVIDER THAT ANY OF US WOULD WANT FOR OUR HEALTH CARE.** 65-05-28.2 is so full of problems that I wouldn't know where to start amending it. Repealing it along with 65-05-28.1 is the only thing that makes sense to me. Then, if there really is a legitimate need for a preferred provider start over with some common sense, balanced provisions that provides the advantage of a preferred provider and still assures the injured worker of his sure and certain relief.

I urge a "do pass" vote on SB2432





Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
SB 2432
February 4, 2009

Mr. Chairman and members of the committee, my name is Bill Shalhoob and am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also representing seven local chambers with total membership over 7,000 members and ten employer associations. A list of those associations is attached. As a group we stand in opposition to SB 2432 and urge a do not pass from the committee on this bill.

SB 2432 eliminates an employer's ability to select a designated medical provider. As medical costs and hence premiums rise one of the most effective tools to help control costs on the medical side is using a designated medical provider. This same right does and should be available for workers comp accidents. An employer who believes in controlling cost through a managed care system wants to designate a provider who is familiar with their particular workplace. The employee has options. They can opt away from the designated medical provider anytime prior to the injury or can request a referral elsewhere sixty days after treatment by the designated provider. All in all it appears to us the current system has a good mix of checks and balances and should be retained as is.

Thank you for the opportunity to appear before you today in opposition to SB 2432. I would be happy to answer any questions.

THE VOICE OF NORTH DAKOTA BUSINESS

2009 Senate Bill No. 2432
Testimony before the Senate Industry, Business, and Labor Committee
Anne Jorgenson Green, Staff Counsel
Workforce Safety and Insurance
February 4th, 2009

Mr. Chairman, Members of the Committee:

My name is Anne Green. I am staff counsel for Workforce Safety and Insurance (WSI). I am here to testify on Senate Bill 2432 which repeals the ability of a North Dakota employer to select a preferred provider. The WSI Board of Directors unanimously opposes this bill.

Workers compensation laws across the country typically contain provisions that monitor the quality and cost effectiveness of medical benefits. Workers compensation is a system of managed care.

In 1995, the legislature passed (unanimously in the Senate) two new sections of law which permitted an employer to select a designated medical provider (dmp) and directed, at least initially, that an injured worker treat with that provider unless a decision to select another provider was made prior to a workplace injury. That law remains substantially as it was enacted in 1995.

When originally introduced, WSI testified in support of this proposal. We noted a number of advantages to a preferred provider program. First, an employer has a substantial incentive to provide quality care for an injured worker. Doing so promotes targeted, experienced and immediate attention to an injury. A designated medical provider gains insight into the workplace of the employer, providing that physician with background in determining work restrictions and facilitating modified work. A designated medical provider might be selected by an employer because he is a specialist in occupational medicine or understands the complexity of workers compensation injuries.

It is important to note that an injured employee is not hamstrung by an employer's selection of a preferred provider program. Under current law, the employer is mandated to inform their employees of the preferred provider program. Further, they must provide an employee with the ability to opt out of the system. Even if an employee does not opt out, and is later injured, that worker may still make a written request to change their physician after the first sixty days of treatment.

The preferred provider system allows an employer to participate in the quick return to work of an employee and to play an active role in the management of an expense which translates into premium cost. WSI urges a do not pass on SB 2432. That concludes my testimony. I am happy to answer any questions that you might have.

organization may not pay benefits relative to the aggravation or worsening, unless the activities were undertaken at the demand of an employer. An employer's account may not be charged with the expenses of an aggravation or worsening of a work-related injury or condition unless the employer knowingly required the employee to perform activities that exceed the treatment recommendations of the employee's doctor.

SB 2432

65-05-28.1. Employer to select preferred provider. Notwithstanding section 65-05-28, any employer subject to this title may select a preferred provider to render medical treatment to employees who sustain compensable injuries. "Preferred provider" means a designated provider or group of providers of medical services, including consultations or referral by the provider or providers.

65-05-28.2. Preferred provider - Use required - Exceptions - Notice.

1. During the first sixty days after a work injury, an employee of an employer who has selected a preferred provider under this section may seek medical treatment only from the preferred provider for the injury. Treatment by a provider other than the preferred provider is not compensable and the organization may not pay for treatment by a provider who is not a preferred provider, unless a referral was made by the preferred provider. A provider who is not a preferred provider may not certify disability or render an opinion about any matter pertaining to the injury, including causation, compensability, impairment, or disability. This section does not apply to emergency care nor to any care the employee reasonably did not know was related to a work injury.
2. An employee of an employer who has selected a preferred provider may elect to be treated by a different provider provided the employee makes the election and notifies the employer in writing prior to the occurrence of an injury.
3. After sixty days have passed following the injury, the employee may make a written request to the organization to change providers. The employee shall make the request and serve it on the employer and the organization at least thirty days prior to treatment by the provider. The employee shall state the reasons for the request and the employee's choice of provider.
4. If the employer objects to the provider selected by the employee under subsection 2 or 3, the employer may file an objection to the change of provider. The employer shall detail in the objection the grounds for the objection and shall serve the objection on the employee and the organization within five days of service of the request. The employee may serve, within five days of service of the employer's objection, a written response on the employer and the organization in support of the request for change of provider. Within fifteen days after receipt of the response or of the expiration of the time for filing the response, the organization shall rule on the request. Failure of the organization to rule constitutes approval of the request. Treatment by the employee's chosen provider is not compensable until the organization approves the request. The preferred provider remains the treating provider until the organization approves the employee's request to change providers.
5. An employer shall give written notice to its employees when the employer makes an initial selection of a preferred provider or changes the selection of the preferred provider. An employer shall give written notice identifying the selected preferred provider to every employee hired after the selection was made. An employer who has selected a preferred provider shall display notice of the preferred provider in a conspicuous manner at fixed worksites, and wherever feasible at mobile worksites, and in a sufficient number of places to reasonably inform employees of the preferred provider and of the requirements of this section. Failure to give written notice or to properly post notice as required under this subsection invalidates the selection, allowing the employee to make the initial selection of a medical provider.

2009 Engrossed Senate Bill No. 2432
Testimony before the House Industry, Business, and Labor Committee
Rob Forward, Staff Attorney
Workforce Safety and Insurance
March 2, 2009

Mr. Chairman, Members of the Committee:

My name is Rob Forward and I am a staff attorney for Workforce Safety and Insurance (WSI). I am here to testify on Engrossed Senate Bill 2432 and offer a further amendment. The WSI Board of Directors supports the engrossed version of this bill.

Workers compensation laws across the country typically contain provisions that monitor the quality and cost effectiveness of medical benefits. To that end, North Dakota's workers compensation system has a managed care approach which includes a statutory preferred provider program, often referred to as a "designated medical provider" or "DMP" system.

In 1995, the legislature passed two new sections of law which permitted an employer to select a designated medical provider and directed, at least initially, that an injured worker treat with that provider unless that worker selected another provider prior to a workplace injury. This allows employers to participate in the safe return-to-work of an employee and pursue quality care for their employees. The law remains substantially the same as it was when it was enacted in 1995.

The current law does not apply to emergency care, and employees may opt-out of the program. Therefore, employees are not forced to use a doctor who is chosen by their employer as long as they designate their own doctor before a work injury occurs. Even if an employee does not opt-out, they may still change providers after the first 60 days of treatment by obtaining a referral from the DMP or making a written request to WSI.

When SB 2432 was introduced, it was a repeal of the entire designated medical provider law. The Senate Industry Business and Labor Committee rejected that repeal, and instead passed an amendment which permits an injured worker to request a new treating physician after a waiting period of 30 days as compared to 60 days under current law. This change should not jeopardize the effectiveness of the DMP law, and it will make it more user-friendly for injured workers.

The amendment that is stapled to my testimony eliminates another reference to 60 days, changing it to 30 days, in order to be consistent with the Senate's changes.

That concludes my testimony. I am happy to answer any questions that you might have.

Proposed Amendment to Engrossed Senate Bill No. 2432

Page 1, line 1, replace "subsection" with "subsections 1 and"

Page 1, line 4, replace "subsection" with "subsections 1 and"

Page 1, line 6, insert:

- "1. During the first ~~sixty~~ thirty days after a work injury, an employee of an employer who has selected a preferred provider under this section may seek medical treatment only from the preferred provider for the injury. Treatment by a provider other than the preferred provider is not compensable and the organization may not pay for treatment by a provider who is not a preferred provider, unless a referral was made by the preferred provider. A provider who is not a preferred provider may not certify disability or render an opinion about any matter pertaining to the injury, including causation, compensability, impairment, or disability. This section does not apply to emergency care nor to any care the employee reasonably did not know was related to a work injury."

Renumber accordingly