



Colorado Legislative Council Staff Fiscal Note
REVISED NO FISCAL IMPACT

(replaces fiscal note dated March 5, 2010)

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Date: March 22, 2010

Prime Sponsor(s): Rep. Pace
Sen. Carroll M.

Bill Status: Senate Introduction

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TITLE: CONCERNING LIMITATIONS ON THE USE OF SURVEILLANCE OF EMPLOYEES WHO HAVE SUBMITTED A WORKERS' COMPENSATION CLAIM.

Summary of Legislation

As amended by the Appropriations Committee, this bill allows an insurer or employer to introduce evidence of the presence or absence of a medical condition that was obtained through surveillance on an injured employee at an administrative hearing if certain conditions have been met. These conditions include:

- the insurer or employer submitted the evidence to the treating physician prior to the hearing;
- a reasonable basis to suspect fraud or misstatements concerning the claim had been made by the injured employee prior to surveillance;
- the surveillance was not intrusive, intimidating, or harassing; and
- the person who was conducting the surveillance did not misrepresent the insurer or employer when questioned by the employee.

This bill also instructs the insurer or employer to destroy all materials collected during surveillance no later than 5 years after resolution of the claim unless the materials are needed to resolve an ongoing claim of fraud.

Assessment

The bill is assessed at no fiscal impact. The Division of Workers' Compensation in the Department of Labor and Employment conducts administrative hearings on claims-related issues. Any issues regarding surveillance will be discussed within the scope of the administrative hearings or upon meeting or submitting information to the appropriate parties prior to the administrative hearings.

Departmental Differences

Under this bill, it is the position of the Department of Personnel and Administration (DPA) that this creates justification for additional 'reasonableness hearings' in their Risk Management division that will require the state's legal counsel to develop the documentation necessary to prove that there was a reasonable suspicion of fraud. The DPA believes that an average of 80 injured state employees per year will require three hours per case for litigation, costing \$31,200 per year. The fiscal note assumes that, due to the expensive nature of surveillance, and as part of the protocol

established to determine who can be surveilled, the state will not pursue surveillance on anyone that is not suspected of committing fraud or providing misstatements regarding their claim. It is assumed that the state will have already exercised due diligence in its investigation and subsequent conclusion to pursue surveillance.

The DPA also believes that the proposed legislation will increase the number of hearings that will be required in the Office of the Administrative Courts because injured employees and their legal counsel have an incentive to preclude the possibility of surveillance, costing an additional \$22,848 per year. This is based on a proportion of all injured employees requesting a pre-trial hearing because they believe they were improperly surveiled, even if there is no monetary award. The fiscal note assumes that there is no further incentive to request hearings in addition to the number of hearings currently requested regarding surveillance.

Consequently, the fiscal note assumes that these issues would be discussed at a regular pre-trial hearing and could be completed within existing resources.

Departments Contacted

Labor and Employment
Personnel and Administration

Colorado Counties
Regulatory Agencies

Pinnacol Assurance