

Assembly Bill No. 2287

Passed the Assembly August 29, 2006

Chief Clerk of the Assembly

Passed the Senate August 28, 2006

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 4600 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2287, Chu. Workers' compensation: acupuncture.

(1) Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including acupuncture treatment, for injuries incurred by their employees that arise out of, or in the course of, employment.

Existing law requires the administrative director to adopt a medical treatment utilization schedule, as specified, that is required to address the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers' compensation cases.

This bill would define acupuncture treatment to mean treatment based upon these guidelines or, prior to the adoption of these guidelines, the specified guidelines published by the Council of Acupuncture and Oriental Medicine Association and the Foundation for Acupuncture Research, including specified information.

(2) This bill would incorporate amendments to Section 4600 of the Labor Code contained in AB 2068, with the amendments from each bill to become operative only if that section is amended by each bill, and if this bill is enacted after AB 2068.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) In order to encourage the more effective utilization of acupuncture and oriental medicine services, to provide California citizens a holistic approach, and to promote the health, safety, and welfare of the public, the Legislature created the Acupuncture Licensure Act as a framework to establish a profession that would provide these services.

(b) There are reports of shortages of qualified health care professionals who can address the needs of citizens who suffer from pain, work-related injuries, and other nonlife-threatening illnesses.

(c) The National Institutes of Health has adopted a Consensus Statement on Acupuncture, recognizing a need for utilizing acupuncture in the American system of health care.

(d) For these reasons and others, acupuncture has been a common and effective treatment for work-related injuries and should continue to be a medical treatment choice for injured workers.

SEC. 2. Section 4600 of the Labor Code is amended to read:

4600. (a) Medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of his or her injury shall be provided by the employer. In the case of his or her neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment.

(b) As used in this division and notwithstanding any other provision of law, medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury means treatment that is based upon the guidelines adopted by the administrative director pursuant to Section 5307.27 or, prior to the adoption of those guidelines, the updated American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines.

(c) As used in this division and notwithstanding any other provision of law, acupuncture treatment that is reasonably required to relieve the injured worker from the effects of his or her injury means treatment that is based upon the guidelines adopted by the administrative director pursuant to Section 5307.27 or, prior to the adoption of those guidelines, as set forth in the "Acupuncture and Electroacupuncture: Evidence-Based Treatment Guidelines-August 2004" published by the Council of Acupuncture and Oriental Medicine Associations and the Foundation for Acupuncture Research, and which shall include any subsequent updates of those guidelines or other guidelines.

Nothing in this section shall prohibit the administrative director from adopting treatment guidelines for acupuncture if those guidelines are at least as comprehensive as the “Acupuncture and Electroacupuncture: Evidence-Based Treatment Guidelines-August 2004.”

(d) Unless the employer or the employer’s insurer has established a medical provider network as provided for in Section 4616, after 30 days from the date the injury is reported, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area.

(e) (1) If an employee has notified his or her employer in writing prior to the date of injury that he or she has a personal physician, the employee shall have the right to be treated by that physician from the date of injury if either of the following conditions exist:

(A) The employer provides nonoccupational group health coverage in a health care service plan, licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(B) The employer provides nonoccupational health coverage in a group health plan or a group health insurance policy as described in Section 4616.7.

(2) For purposes of paragraph (1), a personal physician shall meet all of the following conditions:

(A) The physician is the employee’s regular physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(B) The physician is the employee’s primary care physician and has previously directed the medical treatment of the employee, and who retains the employee’s medical records, including his or her medical history.

(C) The physician agrees to be predesignated.

(3) If the employer provides nonoccupational health care pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, and the employer is notified pursuant to paragraph (1), all medical treatment, utilization review of medical treatment, access to medical treatment, and other medical treatment issues shall be governed

by Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code. Disputes regarding the provision of medical treatment shall be resolved pursuant to Article 5.55 (commencing with Section 1374.30) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(4) If the employer provides nonoccupational health care, as described in Section 4616.7, all medical treatment, utilization review of medical treatment, access to medical treatment, and other medical treatment issues shall be governed by the applicable provisions of the Insurance Code.

(5) The insurer may require prior authorization of any nonemergency treatment or diagnostic service and may conduct reasonably necessary utilization review pursuant to Section 4610.

(6) The maximum percentage of all employees who are covered under paragraph (1) that may be predesignated at any time in the state is 7 percent.

(7) If any court finds that any portion of this subdivision is invalid or in violation of any state or federal law, then this subdivision shall be inoperative.

(8) The division shall conduct an evaluation of this program and present its findings to the Governor and the Legislature on or before March 1, 2006.

(9) This subdivision shall remain in effect only until April 30, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before April 30, 2007, deletes or extends that date.

(f) (1) When at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers' compensation administrative law judge, the employee submits to examination by a physician, he or she shall be entitled to receive, in addition to all other benefits herein provided, all reasonable expenses of transportation, meals, and lodging incident to reporting for the examination, together with one day of temporary disability indemnity for each day of wages lost in submitting to the examination.

(2) Regardless of the date of injury, "reasonable expenses of transportation" includes mileage fees from the employee's home to the place of the examination and back at the rate of twenty-one cents (\$0.21) a mile or the mileage rate adopted by the Director of the Department of Personnel Administration pursuant to

Section 19820 of the Government Code, whichever is higher, plus any bridge tolls. The mileage and tolls shall be paid to the employee at the time he or she is given notification of the time and place of the examination.

(g) When at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers' compensation administrative law judge, an employee submits to examination by a physician and the employee does not proficiently speak or understand the English language, he or she shall be entitled to the services of a qualified interpreter in accordance with conditions and a fee schedule prescribed by the administrative director. These services shall be provided by the employer. For purposes of this section, "qualified interpreter" means a language interpreter certified, or deemed certified, pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code.

SEC. 2.5. Section 4600 of the Labor Code is amended to read:

4600. (a) Medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of his or her injury shall be provided by the employer. In the case of his or her neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment.

(b) As used in this division and notwithstanding any other provision of law, medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury means treatment that is based upon the guidelines adopted by the administrative director pursuant to Section 5307.27 or, prior to the adoption of those guidelines, the updated American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines.

(c) As used in this division and notwithstanding any other provision of law, acupuncture treatment that is reasonably required to relieve the injured worker from the effects of his or her injury means treatment that is based upon the guidelines

adopted by the administrative director pursuant to Section 5307.27 or, prior to the adoption of those guidelines, as set forth in the “Acupuncture and Electroacupuncture: Evidence-Based Treatment Guidelines-August 2004” published by the Council of Acupuncture and Oriental Medicine Associations and the Foundation for Acupuncture Research, and which shall include any subsequent updates of those guidelines, or other guidelines. Nothing in this section shall prohibit the administrative director from adopting treatment guidelines for acupuncture if those guidelines are at least as comprehensive as the “Acupuncture and Electroacupuncture: Evidence-Based Treatment Guidelines-August 2004.”

(d) Unless the employer or the employer’s insurer has established a medical provider network as provided for in Section 4616, after 30 days from the date the injury is reported, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area.

(e) (1) If an employee has notified his or her employer in writing prior to the date of injury that he or she has a personal physician, the employee shall have the right to be treated by that physician from the date of injury if either of the following conditions exist:

(A) The employer provides nonoccupational group health coverage in a health care service plan, licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(B) The employer provides nonoccupational health coverage in a group health plan or a group health insurance policy as described in Section 4616.7.

(2) For purposes of paragraph (1), a personal physician shall meet all of the following conditions:

(A) The physician is the employee’s regular physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(B) The physician is the employee’s primary care physician and has previously directed the medical treatment of the employee, and who retains the employee’s medical records, including his or her medical history. “Personal physician”

includes a medical group, if the medical group is a single corporation or partnership composed of licensed doctors of medicine or osteopathy, which operates an integrated multispecialty medical group providing comprehensive medical services predominantly for nonoccupational illnesses and injuries.

(C) The physician agrees to be predesignated.

(3) If the employer provides nonoccupational health care pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, and the employer is notified pursuant to paragraph (1), all medical treatment, utilization review of medical treatment, access to medical treatment, and other medical treatment issues shall be governed by Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code. Disputes regarding the provision of medical treatment shall be resolved pursuant to Article 5.55 (commencing with Section 1374.30) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(4) If the employer provides nonoccupational health care, as described in Section 4616.7, all medical treatment, utilization review of medical treatment, access to medical treatment, and other medical treatment issues shall be governed by the applicable provisions of the Insurance Code.

(5) The insurer may require prior authorization of any nonemergency treatment or diagnostic service and may conduct reasonably necessary utilization review pursuant to Section 4610.

(6) An employee shall be entitled to all medically appropriate referrals by the personal physician to other physicians or medical providers within the nonoccupational health care plan. An employee shall be entitled to treatment by physicians or other medical providers outside of the nonoccupational health care plan pursuant to standards established in Article 5 (commencing with Section 1367) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(7) The division shall conduct an evaluation of this program and present its findings to the Governor and the Legislature on or before December 31, 2008.

(8) This subdivision shall remain in effect only until December 31, 2009, and as of that date is repealed, unless a later

enacted statute, that is enacted before December 31, 2009, deletes or extends that date.

(f) (1) When at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers' compensation administrative law judge, the employee submits to examination by a physician, he or she shall be entitled to receive, in addition to all other benefits herein provided, all reasonable expenses of transportation, meals, and lodging incident to reporting for the examination, together with one day of temporary disability indemnity for each day of wages lost in submitting to the examination.

(2) Regardless of the date of injury, "reasonable expenses of transportation" includes mileage fees from the employee's home to the place of the examination and back at the rate of twenty-one cents (\$0.21) a mile or the mileage rate adopted by the Director of the Department of Personnel Administration pursuant to Section 19820 of the Government Code, whichever is higher, plus any bridge tolls. The mileage and tolls shall be paid to the employee at the time he or she is given notification of the time and place of the examination.

(g) When at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers' compensation administrative law judge, an employee submits to examination by a physician and the employee does not proficiently speak or understand the English language, he or she shall be entitled to the services of a qualified interpreter in accordance with conditions and a fee schedule prescribed by the administrative director. These services shall be provided by the employer. For purposes of this section, "qualified interpreter" means a language interpreter certified, or deemed certified, pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code.

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 4600 of the Labor Code proposed by both this bill and AB 2068. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 4600 of the Labor Code, and (3) this bill is enacted after AB 2068, in which case Section 2 of this bill shall not become operative.

Approved _____, 2006

Governor