

PUBLIC COMMENTS

HB 3098

HOUSE COMMITTEE ON BUSINESS & INDUSTRY

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Hearing Date: April 20, 2021 8:00 AM

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Kay Goggin

Texas Workers Advocates and Self, a workers compensation attorney

DALLAS, TX

I am opposed to HB 3098 for my self and for the Texas Workers Advocates as it will set bad policy and is not a solution to any possible issue. The medical examinations to determine Maximum medical improvement and impairment rating are critical in determining benefits under the workers compensation Act. I have represented injured Texas workers for more than 32 years, and immediate past president of the statewide organization of workers compensation claimant attorneys. Range of motion, sensory testing, and other required testing to determine MMI and IR requires hands on, and while the certifying physician may have a technician perform some of these tests, this evaluation is not merely a records review. Telehealth services, or remote services, while working and during pandemic critical, is not always ideal. The Division of Workers Compensation admittedly has had trouble retaining qualified reviewers, cutting corners on getting a valid and appropriate examinations would benefit the evaluators financially (no travel, can do more appointments) more than providing a valid, proper exam that determines a major component of workers compensation benefits . Many Texans don't have access to the technology for appropriate and consistent exam.

Alan Tysinger

self

Adkins, TX

I am an attorney practicing in the area of workers' compensation law. I oppose this legislation, although it would be a boon for workers' compensation litigation. A critical component of the workers' compensation system is the determination by a doctor of whether an employee has reached maximum medical improvement and performing a physical examination to calculate the level of permanent bodily damage to calculate the impairment rating. This bill purports to create a scheme in which the determination of permanent physical impairment could be determined by a doctor remotely via telemedicine. The statute and the text required for such determinations-- the AMA Guide to the Evaluation of Permanent Impairment-- require a physical examination documenting clinical or laboratory findings. This proposal is entirely inconsistent with the current statutory scheme and the underlying text adopted by the legislature. The AMA Guides provide for an impairment rating, determined as a percentage of the permanent loss of function of the body systems of the whole person. This involves hands on clinical evaluation by a competent physician of such things as calculation of range of motion loss, loss of reflexes, the presence of muscle spasms, loss of nerve sensation, and anatomical measurements including loss of girth due to muscle atrophy. Telemedicine is a valuable innovation for increasing access to medical care and lowering costs, both from the payor side for obvious reasons, but also for the patient side (reducing the need for frequent follow-up appointments that are simply chats about the status for updated prescriptions and referrals). But the revolution in telemedicine that has occurred by necessity with COVID should not obscure its real limitations. There is a reason medical schools don't operate virtually, and it's not technological. In assessing physical harm, visual observation and interview-- which are well done by telemedicine-- are but two items in the toolkit of a clinician. There is no substitute for the physical touch of a trained expert to diagnose and evaluate an injury. This bill would sacrifice that key medical concept of in person clinical examination on the altar of cost and expediency, and open the floodgates (this is where lawyers like me come in) attacking the evidentiary validity, competency, and accuracy of telemedicine determinations of maximum medical improvement and impairment.

Doris Spraggins

Self

Fredericksburg, TX

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I am FOR this bill.

Don Spraggins

Self

Fredericksburg, TX

I support hb3098