



# Ohio Legislative Service Commission

## Bill Analysis

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### **H.B. 518\***

129th General Assembly  
(As Introduced)

**Reps.** Sears and Landis, Henne, Hackett, Boose, Buchy, Amstutz, Grossman, J. Adams, Rosenberger, Thompson, Stebelton, Wachtmann, Sprague, McGregor

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## **BILL SUMMARY**

- Exempts documents, reports, and evidence pertaining to a workers' compensation fraud investigation from the requirements of the Public Records Law.
- Prescribes when and to whom such documents, reports, and evidence may be shared.
- Statutorily permits the Bureau of Workers' Compensation (BWC) to summarily suspend a health care provider's certification to participate in the Health Partnership Program and specifies procedures regarding the suspension.
- Expands the defined function of a peer review committee of BWC or the Industrial Commission to include a review of the professional qualifications and performance of providers certified to participate in the Health Partnership Program.
- Requires BWC's peer review committee that is responsible for reviewing the professional qualifications and the performance of providers certified to participate in the Health Partnership Program to follow the confidentiality requirements pertaining to committee records and proceedings as set forth in continuing law, subject to specified exceptions.
- Requires appeals of BWC decisions regarding participation in the Health Partnership Program to be filed in the Franklin County Court of Common Pleas.

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\* This analysis was prepared before the bill was introduced in the House Journal. Note that the list of sponsors and co-sponsors and the legislative history may be incomplete.

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## CONTENT AND OPERATION

### Workers' compensation fraud investigatory records

The bill makes all documents, reports, and evidence in the possession of the Administrator of Workers' Compensation or the Administrator's designee that pertain to a workers' compensation fraud investigation confidential law enforcement investigatory records under the Public Records Law. Consequently, those documents, reports, and evidence are exempt under the bill from the requirements of that law. A "workers' compensation fraud investigation," under the bill, is any investigation that relates to a fraudulent workers' compensation act that is conducted by the Administrator or the Administrator's designee under the Administrator's authority to investigate fraud or other illegalities pertaining to the operation of the workers' compensation system.<sup>1</sup>

Notwithstanding the requirements of the Public Records Law, the bill prohibits the Administrator from prohibiting public inspection of the records that pertain to a workers' compensation fraud investigation for a period longer than two years after the date the investigation is closed. Additionally, except when made confidential or otherwise exempt from the Public Records Law, all documents, reports, and evidence in the possession of the Administrator or the Administrator's designee that do not pertain to a workers' compensation fraud investigation are public records under the Public Records Law and are not by that possession alone confidential law enforcement investigatory records.<sup>2</sup>

Under the bill, all documents, reports, and evidence in the possession of the Bureau of Workers' Compensation (BWC) Special Investigation Department or the Administrator's designee that pertain to a workers' compensation fraud investigation are not subject to subpoena in civil actions or administrative proceeding by any court or tribunal of this state until opened for public inspection by the Administrator as described above or with the Public Records Law, unless the Administrator or the Administrator's designee consents. The Administrator and the Administrator's designee are not subject to subpoena in civil actions by any Ohio court to testify concerning any matter of which they have knowledge pursuant to a pending workers' compensation fraud investigation by the Administrator.<sup>3</sup>

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<sup>1</sup> R.C. 4121.132(A) and (B) by reference to R.C. 4121.13(F), not in the bill.

<sup>2</sup> R.C. 4121.132(B) and (C).

<sup>3</sup> R.C. 4121.132(D) and (H).

The bill permits the Administrator, notwithstanding the confidentiality requirements described above, to share the documents, reports, and evidence pertaining to a workers' compensation fraud investigation with any of the following persons or entities, provided that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged document, report, or evidence and has authority to do so:

- Any person employed by, or acting on behalf of, the Administrator;
- Local, state, federal, and international regulatory and law enforcement agencies;
- Local, state, and federal prosecutors.

Under the bill, the Administrator may enter into agreements with the persons or entities listed immediately above governing the sharing and use of documents, reports, and evidence consistent with the bill's requirements.

Additionally, the Administrator may disclose documents, reports, and evidence pertaining to a workers' compensation fraud investigation in the furtherance of any regulatory or legal action brought by or on behalf of the Administrator or the state, resulting from the exercise of the Administrator's official duties.

Under the bill, no waiver of any applicable privilege or claim of confidentiality in the documents, reports, and evidence pertaining to a workers' compensation fraud investigation occurs as a result of sharing or receiving documents, reports, and evidence as authorized under the bill.<sup>4</sup>

## **Health Partnership Program providers**

### **Summary suspension of certification**

The Health Partnership Program (HPP) is the managed care portion of Ohio's Workers' Compensation system used by employers who pay premiums into the State Insurance Fund. A health care provider must be certified by BWC to participate in the HPP, and the Administrator may limit provider access to claimants by requiring a claimant to pay an appropriate out-of-plan copayment for selecting a medical provider not within the HPP.<sup>5</sup>

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<sup>4</sup> R.C. 4121.132(E), (F), and (G).

<sup>5</sup> R.C. 4121.44 and 4121.441, not in the bill.

The bill statutorily permits BWC to summarily suspend the certification of a provider to participate in the HPP without a prior hearing. BWC currently has this ability, and may even revoke a certification, under rules adopted by the Administrator for the HPP. Under the bill, BWC may summarily suspend a certification if the BWC determines any of the following apply to the provider:

- The professional license, certification, or registration held by the provider has been revoked or suspended (same as the administrative rule).
- The provider has been convicted of or has pleaded guilty to workers' compensation fraud, engaging in a pattern of corrupt activity, or any other criminal offense related to the delivery of or billing for health care benefits (same as the administrative rule).
- The continued participation by the provider in the HPP presents a danger to the health and safety of claimants (similar to the administrative rule).<sup>6</sup>

Under the bill, BWC must issue a written order of summary suspension by certified mail or in person in accordance with the Administrative Procedure Act. The order is not subject to suspension by the court during pendency of any appeal filed under the Administrative Procedure Act. Currently a court may suspend the order under specified circumstances. If the provider subject to the summary suspension requests an adjudicatory hearing by BWC, the bill requires the date set for the hearing to be not later than 15 days, but not earlier than seven days, after the provider requests the hearing, unless otherwise agreed to by both BWC and the provider.<sup>7</sup>

Any summary suspension imposed under the bill remains in effect, unless reversed on appeal, until a final adjudication order issued by BWC pursuant to the bill and the Administrative Procedure Act takes effect. BWC must issue its final adjudication order within 75 days after completion of its hearing. A failure to issue the order within the 75-day time period results, under the bill, in dissolution of the summary suspension order but does not invalidate any subsequent, final adjudication order.<sup>8</sup>

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<sup>6</sup> R.C. 4121.443(A) and Ohio Administrative Code (O.A.C.) 4123-6-02.5(C), by reference to R.C. 2913.48 and 2923.31 to 2923.36, not in the bill.

<sup>7</sup> R.C. 4121.443(B), by reference to R.C. 119.12 and R.C. 119.07, not in the bill.

<sup>8</sup> R.C. 4121.443(C).

## **Peer review committee**

### **Definition**

The bill expands the defined function of a peer review committee of BWC or the Industrial Commission to include a review of the professional qualifications and performance of providers certified by BWC to participate in the HPP. Continuing law requires the BWC or Commission peer review committee to review the professional qualifications and the performance of providers conducting medical examinations or file reviews for BWC or the Commission.<sup>9</sup>

### **Confidentiality of proceedings and records**

Continuing law prohibits proceedings and records resulting from a peer review committee from being subject to discovery or from being introduced into evidence in any civil action against a health care entity or health care provider. However, continuing law does not prohibit information, documents, or records that are otherwise available from their original sources from discovery or from use in a civil action on the basis that they were produced or presented during proceedings of a peer review committee meeting so long as the information is obtained from the original source and not the committee's records or proceedings.

Similarly, any individual who attends a peer review committee meeting, serves as a member of the committee, works for or on behalf of the committee, or provides information to a committee, is prohibited from testifying in any civil action as to evidence, matters presented during the proceedings of the committee, or the actions of any committee member. However, continuing law does not prohibit an individual from testifying as to matters within the individual's knowledge, but the individual cannot be asked about the individual's testimony before the committee, information provided to the committee, or any opinion formed as a result of the committee's activities.<sup>10</sup>

The bill makes the peer review committee confidentiality requirements in continuing law, as explained above, applicable to a BWC peer review committee that is responsible for reviewing the professional qualifications and the performance of providers certified by BWC to participate in the HPP. However, the bill provides an exception from those confidentiality requirements if the proceedings and records within the scope of the peer review committee are subject to discovery or court subpoena and may be admitted into evidence in a criminal, administrative, or civil action that is initiated, prosecuted or adjudicated by BWC. The bill also permits BWC to share

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<sup>9</sup> R.C. 2305.25(E)(2)(j).

<sup>10</sup> R.C. 2305.252(A).

proceedings and records within the scope of the peer review committee, including claimant records and claimant file information, with law enforcement agencies, licensing boards, and other governmental agencies involved in prosecuting, adjudicating, or investigating an alleged violation of applicable law or administrative rule. If BWC chooses to share a confidential record, the recipient is required to take appropriate measures to maintain the confidentiality of the information.<sup>11</sup>

## Appeals

The bill requires appeals of BWC decisions regarding participation in the HPP to be filed in the Franklin County Court of Common Pleas.<sup>12</sup> Currently, under rules adopted by the Administrator for the HPP, should the provider or a managed care organization (an entity that medically manages workers' compensation claims) be adversely affected by the Administrator's order, the provider or organization may file a notice of appeal of the decision with the Administrator, setting forth the order appealed from and the grounds of the provider's or organization's appeal. The provider or organization also must file a copy of the notice of appeal with the Franklin County Court of Common Pleas. The rule requires notices of appeal to be filed within 15 days after the mailing of the Administrator's order. Within 30 days after receipt of the notice of appeal from an order in any case in which a hearing was required, BWC must prepare and certify to the court a complete record of the proceedings in the case.<sup>13</sup>

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## HISTORY

ACTION	DATE
Introduced	--

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<sup>11</sup> R.C. 2305.252(B).

<sup>12</sup> R.C. 119.12.

<sup>13</sup> O.A.C. 4123-6-17(I).

