

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES BILL ANALYSIS

BILL NUMBER: SB 1002 VERSION: AMENDED MARCH 24, 2022

AUTHOR: PORTANTINO SPONSOR: AUTHOR

RECOMMENDED POSITION: SUPPORT

SUBJECT: WORKERS' COMPENSATION: LICENSED CLINICAL SOCIAL WORKERS

Summary:

This bill adds licensed clinical social workers as direct providers in the workers' compensation system.

Existing Law:

- 1) Establishes the workers' compensation system and sets forth its provisions. (Labor Code (LC) Division 4, Part 1, Chapter 1)
- 2) Specifies that medical treatment for injuries must be readily available at reasonable times to all employees. Provides that an insurer, employer, or entity that provides physician network services may establish or modify a medical provider network for the provision of medical treatment to injured employees. The network shall include physicians, and the administrative director shall also encourage the integration of occupational and nonoccupational providers. (LC §4616)
- 3) Provides that medical, surgical, and hospital treatment includes, but is not limited to services and supplies by physical therapists, chiropractic practitioners, and acupuncturists licensed in California and acting within their scope of practice. (LC §3209.5)
- 4) Specifies that treatment reasonable required to cure or relieve from the effects of an injury shall include the services of marriage and family therapists (LMFTs), professional clinical counselors (LPCCs), and clinical social workers (LCSWs) acting within their scope of practice if the injured person is referred to them by a licensed physician and surgeon, with employer approval, for treatment of a condition arising from the injury. (LC §3209.8)

This Bill:

- 1) Adds LCSWs to the provision that defines medical, surgical, and hospital treatment as including services and supplies by physical therapists, chiropractic practitioners,

and acupuncturists licensed in California and acting within their scope of practice. (LC §3209.5)

- 2) States that an employer, workers' compensation insurer, self-insured employer, or their agent may provide an employee with access to the services of an LCSW acting within their scope of practice. (LC §3209.11)
- 3) Permits medical provider networks to add LCSWs as network providers. (LC §3209.11)
- 4) Defines an LCSW as an individual licensed as such by the Board, and who has at least two years of clinical experience in a recognized health setting, or who has met the standards of the Association of Social Work Boards (ASWB). (LC §3209.11)
- 5) Specifies that the provisions in items 2-5 above do not authorize LCSWs to determine disability for purposes of workers compensation or disability benefits. (LC §3209.11)

Comments:

- 1) **Author's Intent.** In their fact sheet for the bill, the author's office states the following:

"California is facing a mental and behavioral health crisis that has further escalated with the COVID-19 pandemic. While mental health needs among workers skyrocket, the number of professionals available to help is decreasing. States such as Texas and New York have mobilized Licensed Clinical Social Workers (LCSWs) to help fill the gap, but workers' compensation law in California does not include LCSWs in the definition of those permitted to assess, evaluate, and treat mental illness among affected workers."

The author's office states that this bill will enable an employee to seek services from an LCSW without a physician referral.

- 2) **LMFTs and LPCCs Not Included**

Section 3209.8 of the Labor Code provides that LMFTs, LCSWs, and LPCCs can provide treatment that is reasonably required to cure or relieve the effects of an injury, if the injured person is referred to them by a licensed physician and surgeon, and with employer approval.

The intent of this bill appears to be to take the next step, in allowing mental health treatment to be provided without a doctor's referral. Given this, it is unclear why LMFTs and LPCCs are not also included in the bill.

3) Recommended Position. At its April 20, 2022 meeting, the Policy and Advocacy Committee recommended that the Board consider taking a “support” position on this bill. It also directed staff to reach out to the author’s office to discuss the possibility of also including LMFTs and LPCCs in the bill as direct providers in the workers’ compensation system.

4) Support and Opposition

Support

- American Association of Payers Administrators and Networks
- California Asian Pacific Chamber of Commerce
- California Association for Micro Enterprise Opportunity
- California Hispanic Chambers of Commerce
- California Labor Federation, AFL-CIO
- California Metals Coalition
- California Professional Firefighters
- Coalition of Small & Disabled Veteran Business
- Coventry
- Flasher Barricade Association
- Medex Health Care, Inc.
- National Association of Social Workers, California Chapter
- National Association of Women Business Owners - California
- National Federation of Independent Business - California
- Risk & Insurance Management Society
- Sierra Business Council
- Small Business California
- Steinberg Institute

Oppose

None currently.

5) History

2022

04/19/22	Read second time. Ordered to third reading.
04/18/22	From committee: Be ordered to second reading pursuant to Senate Rule 28.8.
04/06/22	Set for hearing April 18.
04/05/22	From committee: Do pass and re-refer to Com. on APPR. (Ayes 5. Noes 0.) (April 4). Re-referred to Com. on APPR.
03/29/22	Set for hearing April 4.
03/24/22	From committee with author's amendments. Read second time and amended. Re-referred to Com. on L., P.E. & R.
03/14/22	March 21 set for first hearing canceled at the request of author.
03/11/22	Set for hearing March 21.
02/23/22	Referred to Com. on L., P.E. & R.
02/15/22	From printer.

02/14/22 Article IV Section 8(a) of the Constitution and Joint Rule 55 dispensed
with February 7, 2022, suspending the 30-calendar day requirement.
02/14/22 Introduced. Read first time. To Com. on RLS. for assignment. To print.

AMENDED IN SENATE MARCH 24, 2022

SENATE BILL

No. 1002

Introduced by Senator Portantino

February 14, 2022

An act to amend ~~Sections 3209.5 and 3209.8 of, Section 3209.5 of,~~ and to add Section 3209.11 to, the Labor Code, relating to workers' compensation.

legislative counsel's digest

SB 1002, as amended, Portantino. Workers' compensation: licensed clinical social workers.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, that generally requires employers to secure the payment of workers' compensation for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law requires an employer to provide all medical services reasonably required to cure or relieve the injured worker from the effects of the injury. Existing law includes in the meaning of medical treatment services and supplies by physical therapists, chiropractic practitioners, and acupuncturists, that are licensed and within the scope of their practice. ~~Existing law requires a referral from a licensed physician and surgeon before an injured worker may treat with a licensed clinical social worker (LCSW).~~ Existing law authorizes an insurer, employer, or entity that provides physician network services to establish or modify a medical provider network for the provision of medical treatment to injured employees, and requires that a network include an adequate number and type of physicians or other providers, as defined.

This bill would expand the meaning of medical treatment to include the services of an LCSW. ~~The bill would delete the requirement that an employee be referred by a licensed physician and surgeon to an LCSW and would require a licensed clinical social worker (LCSW) and would authorize an employer to provide an employee with access to an LCSW, as defined. The bill defined, acting within the scope of their practice. The bill would authorize medical provider networks to add LCSWs as providers and would prohibit an LCSW from determining disability, as specified, and authorize an employer to request an appropriate medical consultation when an LCSW provides assessment, evaluation, or treatment. specified.~~ This bill would make legislative findings and declarations in support of allowing licensed clinical social workers to treat work-related mental and behavioral health issues.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

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

- 1 SECTION 1. It is the intent of the Legislature to authorize
- 2 qualified licensed clinical social workers to assess, evaluate and
- 3 treat the behavioral and mental health needs of injured workers
- 4 within the workers’ compensation system, thereby providing
- 5 additional and readily available resources to injured employees
- 6 who need mental health services.
- 7 SEC. 2. Section 3209.5 of the Labor Code is amended to read:
- 8 3209.5. Medical, surgical, and hospital treatment, including
- 9 nursing, medicines, medical and surgical supplies, crutches, and
- 10 apparatus, includes but is not limited to services and supplies by
- 11 physical therapists, licensed clinical social workers, chiropractic
- 12 practitioners, and acupuncturists, as licensed by California state
- 13 law and within the scope of their practice as defined by law.
- 14 SEC. 3. ~~Section 3209.8 of the Labor Code is amended to read:~~
- 15 ~~3209.8. Treatment reasonably required to cure or relieve from~~
- 16 ~~the effects of an injury shall include the services of marriage and~~
- 17 ~~family therapists and professional clinical counselors licensed by~~
- 18 ~~California state law and within the scope of their practice as defined~~
- 19 ~~by California state law if the injured person is referred to the~~
- 20 ~~marriage and family therapist or the professional clinical counselor~~
- 21 ~~by a licensed physician and surgeon, with the approval of the~~
- 22 ~~employer, for treatment of a condition arising out of the injury.~~

1 This section does not authorize marriage and family therapists or
 2 professional clinical counselors to determine disability for the
 3 purposes of Article 3 (commencing with Section 4650) of Chapter
 4 2 of Part 2. The requirement of this section that the employer
 5 approve the referral by a licensed physician or surgeon shall not
 6 be construed to preclude reimbursement for self-procured
 7 treatment, found by the appeals board to be otherwise compensable
 8 pursuant to this division, if the employer has refused to authorize
 9 any treatment for the condition arising from the injury treated by
 10 the marriage and family therapist or professional clinical counselor.

11 ~~SEC. 4.~~

12 *SEC. 3.* Section 3209.11 is added to the Labor Code, to read:

13 3209.11. (a) ~~Notwithstanding any other provision of this~~
 14 ~~division, an~~ *An* employer, workers' compensation insurer,
 15 self-insured employer, or agent of an employer, insurer, or
 16 self-insured employer ~~shall~~ *may* provide an employee with access
 17 to the services of a licensed clinical social worker ~~for assessment,~~
 18 ~~evaluation, and treatment reasonably required to cure or relieve the~~
 19 ~~effects of a work-related injury. acting within their scope of~~
 20 *practice.*

21 (b) ~~When a licensed clinical social worker licensed pursuant to~~
 22 ~~subdivision (c) and within the scope of their practice provides an~~
 23 ~~assessment, evaluation, or treatment as a participating provider~~
 24 ~~pursuant to this section, provision shall be made for appropriate~~
 25 ~~medical consultation when requested by the employer or the~~
 26 ~~insurer.~~

27 (b) *Medical provider networks may add licensed clinical social*
 28 *workers as providers in the networks established or modified*
 29 *pursuant to Section 4616.*

30 (c) For purposes of this section, "licensed clinical social worker"
 31 means a licensed clinical social worker with a master's degree in
 32 clinical social work, or a degree deemed equivalent for licensure
 33 by the Board of Behavioral Sciences pursuant to Article 4
 34 (commencing with Section 4996) of Chapter 14 of Division 2 of
 35 the Business and Professions Code, and who either has at least
 36 two years of clinical experience in a recognized health setting or
 37 has met the standards of the Association of Social Work Boards.

38 (d) This section does not authorize licensed clinical social
 39 workers to determine disability for the purposes of Article 3

- 1 (commencing with Section 4650) of Chapter 2 of Part 2, or under
- 2 Section 2708 of the Unemployment Insurance Code.

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