
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anna Caballero, Chair
2025 - 2026 Regular Session

AB 1398 (Valencia) - Workers' compensation

Version: April 24, 2025

Urgency: No

Hearing Date: August 18, 2025

Policy Vote: L., P.E. & R. 5 - 0

Mandate: Yes

Consultant: Robert Ingenito

Bill Summary: AB 1398 would clarify provisions of current law to facilitate the prosecution of fraud within the workers' compensation system.

Fiscal Impact:

- The Department of Industrial Relations (DIR) indicates that this bill would not have a fiscal impact to its Division of Workers' Compensation (DWC).
- This bill could result in cost pressures of an unknown, but potentially significant, amount to the courts to adjudicate violations of the crime this bill makes more likely to be prosecuted. A defendant charged with a felony is entitled to no-cost legal representation and a jury trial (Trial Court Trust Fund (TCTF)). The specific number of new actions that could be filed under the bill is unknown; however, it generally costs about \$10,500 to operate a courtroom for an eight-hour day. Courts are not funded on the basis of workload, and increased pressure on TCTF may create a need for increased funding for courts from the General Fund. The enacted 2025-26 budget includes \$38 million in ongoing support from the General Fund to continue to backfill TCTF for revenue declines.
- Additionally, this bill could result in General Fund costs of an unknown, but potentially significant amount, to the Department of Corrections and Rehabilitation and the counties to incarcerate people convicted of a violation. The specific incarceration costs resulting from the bill would be driven by the number of convictions, the length of each sentence, and whether each sentence must be served in county jail or state prison. Incarceration in county jail costs, on average, \$29,000; the comparable figure for state prison is \$133,000. County incarceration costs generally are not considered reimbursable state mandates pursuant to Proposition 30 (2012); however, overcrowding in county jails creates General Fund cost pressures, as the State has historically granted new funding to counties to offset overcrowding resulting from 2011 public safety realignment.

Background: Under the California workers' compensation system, if a worker is injured on a job, the employer must pay for the worker's medical treatment, and provide monetary benefits if the injury is permanent. In return for receiving free medical treatment, the worker surrenders the right to sue the employer for monetary damages in civil court.

The workers' compensation system can be complex. If a worker is injured, they must first report the injury to their employer and file a claim in order to receive treatment or benefits. While the injured worker receives an initial evaluation by a medical provider within a network specified by the employer or their insurer, the employer submits a report of the injury to the insurer. A claims administrator with the insurer then determines whether the claim is approved or denied, and if approved, the treatment can be provided. There are several formal dispute resolution processes for any disputes among the interested parties regarding the details of the injury, the medical necessity of aspects of the treatment plan, or the billing of insurers by medical providers, etc. that involve qualified medical evaluators (QMEs), workers' compensation administrative law judges, and the Workers' Compensation Appeals Board (WCAB) among others.

Consequently, many different parties and professionals are involved from beginning to end in the workers' compensation process. The injured worker or employer depends on interpreters, attorneys, medical providers, and many other professionals who then depend on other networks from the initial filing of a claim until the completion of treatment. Unfortunately, workers' compensation fraud reportedly costs the State billions of dollars annually, and this fraud can take many forms, including (1) health care providers billing for services never performed, (2) employers under-reporting payroll, and (3) attorneys or claims adjusters facilitating fraud.

The varied interests involved in the workers' compensation system can presents an opportunity for elaborate fraud schemes based on illegal referrals, or "kickback schemes." Current law, Labor Code Section 139.32, prohibits certain referrals for service made in relation to a workers' compensation claim, such as a prohibition on referring a person for services provided by another entity paid through the workers' compensation system if the referrer has a financial interest in the referee. A violation of this Labor Code provision is punishable as a misdemeanor and subject to civil penalties of up to \$15,000 per offense. At the same time, Penal Code Section 550 also prohibits certain actions regarding insured property and insurers, such as prohibiting a person from concealing, or knowingly failing to disclose, the occurrence of an event that affects a person's right or entitlement to an insurance benefit or payment. A violation of this provision is punishable as a felony and subject to imprisonment and fines up to \$50,000. While far more general than the Labor Code provision, the Penal Code provision nevertheless similarly prohibits a referral for service in which the referrer has a financial interest in the referee. However, in addition to the differences in penalties, the Penal Code provision is subject to a four-year statute of limitations and the Labor Code provision is subject to a statute of limitations of one year.

The relationship between these statutes came into question in *People v. Luna* (2023), in which the appellate court upheld that felony charges under Penal Code Section 550 must be dismissed due to the existence of Labor Code Section 139.32, as the Williamson rule precludes criminal prosecution under a general statute if there is a more specific statute that applies to the defendant's conduct. Consequently, prosecutors have struggled to bring felony charges for illegal referrals under the Penal Code, which has a longer statute of limitations needed to fully investigate and charge a complex fraud case.

Proposed Law: This bill would do the following:

- Provide that an interested party in a workers' compensation claim must disclose a financial interest in an entity providing claim services to a third-party payer or any other entity paid for services furnished pursuant to a referral. Specify the disclosure must be made in writing, at the time the claim for payment is presented for services furnished pursuant to a referral.
- Clarify that existing laws concerning referrals for workers' compensation-related services do not preclude the ability of any other law that may apply to the transaction.

Related Legislation:

- SB 536 (Archuleta) would (1) require an insurer or licensed rating organization to notify the Employment Development Department (EDD) of suspected workers' compensation fraudulent acts related to premium fraud for the purpose of notification and investigation, and (2) require EDD, upon written request, to release detailed payroll information, to insurers or licensed rating organizations that would allow the insurer or licensed rating organization to compare the records with the information they are otherwise entitled to receive from employers in workers' compensation claims, in a confidential manner, and if specific requirements are met. This bill is currently pending in the Assembly Insurance Committee.
- AB 2046 (Daly, Chapter 709, Statutes of 2018), among other things, (1) required an authorized governmental agency that is provided with specified information, upon request, to release information deemed important related to workers' compensation fraud, and (2) authorized governmental agency that seeks to disclose this information to any other governmental agency that is not authorized to receive that information to obtain EDD approval prior to disclosure, as specified.
- SB 863 (De Leon, Chapter 363, Statutes of 2012) enacted major reforms to the workers' compensation system, including establishing the independent medical review (IMR) procedure for evaluating disputes pertaining to medically necessary treatment, and authorizing appeal of IMR findings in the event there was fraud or a conflict of interest on the part of the IMR.

Staff Comments: This bill would address the aforementioned statutory overlap by amending the Labor Code provision to provide that the section "does not preclude the applicability of any other law that applies or may apply to a transaction," which was the recommendation of the court in the *Luna* decision if the intent of the Legislature is to allow for prosecution under either law.

Additionally, this bill would resolve another issue stemming from the *Luna* decision, which held that the district attorney could not bring charges against an interested party for failure to disclose a financial interest because the statute is unconstitutionally vague. The statute does not specify how, when, or to whom the disclosure must be made. This bill would specify that the disclosure must be made to a third-party payer or other entity to whom a claim for payment is presented for services pursuant to a referral. The disclosure must be made in writing and at the time the claim for payment is presented.

Any local government costs resulting from the mandate in this measure are not state-reimbursable because the mandate only involves the definition of a crime or the penalty for conviction of a crime.

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