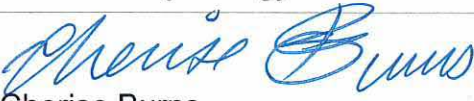


## MEMORANDUM

<b>DATE</b>	February 28, 2017
<b>TO</b>	Board of Psychology
<b>FROM</b>	 Cherise Burns Central Services Manager
<b>SUBJECT</b>	Agenda Item #7 (a)(i)(A) – AB 44 (Reyes) Workers' Compensation: Medical Treatment: Terrorist Attacks: Workplace Violence

### **Background:**

This bill would create specified exemptions for workers' compensation claims and benefits when the individual was injured as a result of an act of terrorism or violence that occurred in the workplace. Specifically, this bill would exempt these claims from the utilization review process, create a 30 day expedited proceeding to make determinations on these claims, and allow temporary disability payment benefits to be extended up to 240 weeks.

Physical and psychological injuries from terrorist attacks and incidents of workplace violence are often of a different nature and severity than average workers' compensation claims, making delays in treatment and benefits more detrimental to recovery. Due to the complexity and severity of the physical and psychological injuries of these individuals, staff recommends supporting in concept efforts to ensure that treatment is not delayed or denied due to administrative barriers that do not adequately take into account the complexity and severity of these types of injuries. However, staff does not have comments on the appropriateness of the specific expedited process created by the bill.

A full analysis of AB 44 is attached for the Committees review.

**Location:** Assembly Committee on Insurance

**Status:** 12/05/2016 Introduced

### **Action Requested:**

The staff recommendation is for the Committee to watch AB 44 (Reyes). Staff will continue to monitor the development of the bill as stakeholders debate the merits of the bill's proposed expedited process.

Attachment A: Staff Analysis of AB 44 (Reyes)

Attachment B: AB 44 (Reyes) Text

## 2017 Bill Analysis

<b>Author:</b> Reyes	<b>Bill Number:</b> AB 44	<b>Related Bills:</b> Not Applicable
<b>Sponsor:</b> Author	<b>Version:</b> Introduced	
<b>Subject:</b> Workers' Compensation: Medical Treatment: Terrorist Attacks: Workplace Violence		

### SUMMARY

This bill would create specified exemptions for workers' compensation claims and benefits when the individual was injured as a result of an act of terrorism or violence that occurred in the workplace. Specifically, this bill would exempt these claims from the utilization review process, create a 30 day expedited proceeding to make determinations on these claims, and allow temporary disability payment benefits to be extended up to 240 weeks.

### RECOMMENDATION

**WATCH** – This bill would expedite workers' compensation claims and potentially extend benefits for individuals who have been injured in the workplace due to a terrorist attack or incident of workplace violence. Physical and psychological injuries from terrorist attacks and incidents of workplace violence are often of a different severity than average workers' compensation claims, making delays in treatment and benefits more detrimental to recovery. Due to the complexity and severity of the physical and psychological injuries of these individuals, Board of Psychology (Board) staff recommends supporting in concept efforts to ensure that treatment is not delayed or denied due to administrative barriers that do not adequately take into account the complexity and severity of these types of injuries. However, Board staff does not have comments on the appropriateness of the specific expedited process created by the bill.

### REASON FOR THE BILL

According to the author, the workers' compensation system guidelines and the utilization review process were created to address common workplace injuries, but are less clear and are not appropriate when it comes to the catastrophic injuries, such as gunshot and shrapnel wounds and psychological trauma, which can arise from acts of

Other Boards/Departments that may be affected: Department of Industrial Relations	
<input type="checkbox"/> Change in Fee(s) <input type="checkbox"/> Affects Licensing Processes <input type="checkbox"/> Affects Enforcement Processes	
<input type="checkbox"/> Urgency Clause <input type="checkbox"/> Regulations Required <input type="checkbox"/> Legislative Reporting <input type="checkbox"/> New Appointment Required	
<b>Policy &amp; Advocacy Committee Position:</b> <input type="checkbox"/> Support <input type="checkbox"/> Support if Amended <input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended <input type="checkbox"/> Neutral <input type="checkbox"/> Watch Date: _____ Vote: _____	<b>Full Board Position:</b> <input type="checkbox"/> Support <input type="checkbox"/> Support if Amended <input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended <input type="checkbox"/> Neutral <input type="checkbox"/> Watch Date: _____ Vote: _____

comments on the proposed expedited dispute process proposed by the bill, or the merits of that process over the utilization review process, board staff does see the merit in having a separate and expedited process for terrorism related workers compensation claims. Due to the nature and severity of these injuries, using standard guidelines and processes meant for common workplace injuries seems inappropriate and ineffectual if the intent is to rehabilitate and reintegrate these injured workers back into the workforce. Therefore, Board staff recommends that the Board support the concept of expediting the processing of claims and extending the benefits for workers injured during terrorist attacks, but take a watch position on the bill and continue to monitor the details of the bill as stakeholders debate the merits of the proposed expedited process.

This bill would not have an impact on the Board's operations or programs.

### **LEGISLATIVE HISTORY**

Not applicable as past workers' compensation bills did not deal with claims related to terrorist attacks.

### **OTHER STATES' INFORMATION**

Due to the specificity of these types of workers compensation claims, those involving terrorist attacks, there is limited information on how other states have dealt with similar shooting based attacks on a similar scale as the San Bernardino attacks. Although the scale and type of terrorist attack is vastly different, New York State's handling of the victims of the September 11, 2001 attacks may be useful. A 2009 report by the New York State Workers' Compensation Board titled [World Trade Center Cases in the New York Workers' Compensation System](#) notes that for the processing of these workers compensation claims, New York uses dedicated work groups and specially trained judges and staff to handle these special claims on an expedited basis. Although different in scope and type of attack, and therefore types of injuries as well, the concept of having a specialized and expedited process to handle terrorist attack related workers' compensation claims outside of the normal workers' compensation claim processing system has been used successfully by other states.

### **PROGRAM BACKGROUND**

The Board advances quality psychological services for Californians by ensuring ethical and legal practice and supporting the evolution of the practice. To accomplish this, the Board regulates licensed psychologists, psychological assistants, and registered psychologists.

This bill would have no impact on the Board of Psychology's operations or programs, but could potentially affect its licensees. Licensed psychologists work within the workers' compensation system in different ways, some as qualified medical evaluators in the utilization review process and others by treating injured workers in their private practices. For this reason, the Board is interested in the bill's effects on adequate access to psychological services for injured workers and therefore California consumers' access to psychological services through the workers' compensation system.

**ASSEMBLY BILL**

**No. 44**

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**Introduced by Assembly Member Reyes**  
**(Coauthors: Assembly Members Aguiar-Curry, Cooley, Gipson,**  
**Holden, Limón, Medina, Rodriguez, Rubio, and Mark Stone)**  
**(Coauthor: Senator Leyva)**

December 5, 2016

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An act to amend Section 4656 of, and to add Section 4610.7 to, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 44, as introduced, Reyes. Workers' compensation: medical treatment: terrorist attacks: workplace violence.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law requires every employer to establish a utilization review process, and defines "utilization review" as utilization review or utilization management functions that prospectively, retrospectively, or concurrently review and approve, modify, or deny, based in whole or in part on medical necessity to cure and relieve, treatment recommendations by physicians, prior to, retrospectively, or concurrent with providing medical treatment services. Existing law also provides for an independent medical review process to resolve disputes over utilization review decisions, as defined.

This bill would exempt medical treatment for employees or first responders who sustain physical or psychological injury as a result of an act of terrorism or violence in the workplace from the utilization review process and the independent medical review process, and would

1 (c) This section shall apply retroactively to the employees and  
2 first responders injured in the San Bernardino terrorist attack of  
3 December 2, 2015, and any other employees or first responders  
4 injured by an act of terrorism or violence in the workplace that  
5 occurred prior to January 1, 2018.

6 SEC. 2. Section 4656 of the Labor Code is amended to read:

7 4656. (a) Aggregate disability payments for a single injury  
8 occurring prior to January 1, 1979, causing temporary disability  
9 shall not extend for more than 240 compensable weeks within a  
10 period of five years from the date of the injury.

11 (b) Aggregate disability payments for a single injury occurring  
12 on or after January 1, 1979, and prior to April 19, 2004, causing  
13 temporary partial disability shall not extend for more than 240  
14 compensable weeks within a period of five years from the date of  
15 the injury.

16 (c) (1) Aggregate disability payments for a single injury  
17 occurring on or after April 19, 2004, causing temporary disability  
18 shall not extend for more than 104 compensable weeks within a  
19 period of two years from the date of commencement of temporary  
20 disability payment.

21 (2) Aggregate disability payments for a single injury occurring  
22 on or after January 1, 2008, causing temporary disability shall not  
23 extend for more than 104 compensable weeks within a period of  
24 five years from the date of injury.

25 (3) Notwithstanding paragraphs (1) and (2), for an employee  
26 who suffers from the following injuries or conditions, aggregate  
27 disability payments for a single injury occurring on or after April  
28 19, 2004, causing temporary disability shall not extend for more  
29 than 240 compensable weeks within a period of five years from  
30 the date of the injury:

- 31 (A) Acute and chronic hepatitis B.
- 32 (B) Acute and chronic hepatitis C.
- 33 (C) Amputations.
- 34 (D) Severe burns.
- 35 (E) Human immunodeficiency virus (HIV).
- 36 (F) High-velocity eye injuries.
- 37 (G) Chemical burns to the eyes.
- 38 (H) Pulmonary fibrosis.
- 39 (I) Chronic lung disease.