

1 AN ACT relating to workers' compensation.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔ Section 1. KRS 342.020 is amended to read as follows:

4 (1) (a) In addition to all other compensation provided in this chapter, the employer
5 shall pay for the cure and relief from the effects of an injury or occupational
6 disease the medical, surgical, and hospital treatment, including nursing,
7 medical, and surgical supplies and appliances, as may reasonably be required
8 at the time of the injury and thereafter ***during disability***~~[for the length of time~~
9 ~~set forth in this section]~~, or as may be required for the cure and treatment of an
10 occupational disease.

11 ~~[(2) In claims resulting in an award of permanent total disability or resulting from an~~
12 ~~injury described in subsection (9) of this section,]~~

13 (b) The employer's obligation to pay the benefits specified in this section shall
14 continue for so long as the employee is disabled regardless of the duration of
15 the employee's income benefits.

16 ~~[(3) (a) In all permanent partial disability claims not involving an injury described in~~
17 ~~subsection (9) of this section, the employer's obligation to pay the benefits specified~~
18 ~~in this section shall continue for seven hundred eighty (780) weeks from the date of~~
19 ~~injury or date of last exposure.~~

20 ~~(b) In all permanent partial disability claims not involving an injury described in~~
21 ~~subsection (9) of this section, the commissioner shall, in writing, advise the~~
22 ~~employee of the right to file an application for the continuation of benefits as~~
23 ~~described in this section. This notice shall be made to the employee seven hundred~~
24 ~~fifty four (754) weeks from the date of injury or last exposure.~~

25 ~~(c) An employee shall receive a continuation of benefits as described in this section for~~
26 ~~additional time beyond the period provided in paragraph (a) of this subsection as~~
27 ~~long as continued medical treatment is reasonably necessary and related to the work~~

1 injury or occupational disease if:

2 1. ~~An application is filed within seventy five (75) days prior to the termination of the~~
3 ~~seven hundred eighty (780) week period;~~

4 2. ~~The employee demonstrates that continued medical treatment is reasonably~~
5 ~~necessary and related to the work injury or occupational disease; and~~

6 3. ~~An administrative law judge determines and orders that continued benefits are~~
7 ~~reasonably necessary and related to the work injury or occupational disease for~~
8 ~~additional time beyond the original seven hundred eighty (780) week period~~
9 ~~provided in paragraph (a) of this subsection.~~

10 ~~(d) If the administrative law judge determines that medical benefits are not reasonably~~
11 ~~necessary or not related to the work injury or occupational disease, or if an~~
12 ~~employee fails to make proper application for continued benefits within the time~~
13 ~~period provided in paragraph (c) of this subsection, any future medical treatment~~
14 ~~shall be deemed to be unrelated to the work injury and the employer's obligation to~~
15 ~~pay medical benefits shall cease permanently.]~~

16 (c)~~(4)~~ In the absence of designation of a managed health care system by the
17 employer, the employee may select medical providers to treat his injury or
18 occupational disease. Even if the employer has designated a managed health
19 care system, the injured employee may elect to continue treating with a
20 physician who provided emergency medical care or treatment to the employee.
21 The employer, insurer, or payment obligor acting on behalf of the employer,
22 shall make all payments for services rendered to an employee directly to the
23 provider of the services within thirty (30) days of receipt of a statement for
24 services. The commissioner shall promulgate administrative regulations
25 establishing conditions under which the thirty (30) day period for payment
26 may be tolled. The provider of medical services shall submit the statement for
27 services within forty-five (45) days of the day treatment is initiated and every

1 forty-five (45) days thereafter, if appropriate, as long as medical services are
2 rendered. Except as provided in subsection ~~(4)~~~~((7))~~ of this section, in no event
3 shall a medical fee exceed the limitations of an adopted medical fee schedule
4 or other limitations contained in KRS 342.035, whichever is lower. The
5 commissioner may promulgate administrative regulations establishing the
6 form and content of a statement for services and procedures by which disputes
7 relative to the necessity, effectiveness, frequency, and cost of services may be
8 resolved.

9 ~~(2)~~~~((5))~~ Notwithstanding any provision of the Kentucky Revised Statutes to the
10 contrary, medical services and treatment provided under this chapter shall not be
11 subject to copayments or deductibles.

12 ~~(3)~~~~((6))~~ Employers may provide medical services through a managed health care
13 system. The managed health care system shall file with the Department of Workers'
14 Claims a plan for the rendition of health care services for work-related injuries and
15 occupational diseases to be approved by the commissioner pursuant to
16 administrative regulations promulgated by the commissioner.

17 ~~(4)~~~~((7))~~ All managed health care systems rendering medical services under this chapter
18 shall include the following features in plans for workers' compensation medical
19 care:

- 20 (a) Copayments or deductibles shall not be required for medical services rendered
21 in connection with a work-related injury or occupational disease;
- 22 (b) The employee shall be allowed choice of provider within the plan;
- 23 (c) The managed health care system shall provide an informal procedure for the
24 expeditious resolution of disputes concerning rendition of medical services;
- 25 (d) The employee shall be allowed to obtain a second opinion, at the employer's
26 expense, from an outside physician if a managed health care system physician
27 recommends surgery;

- 1 (e) The employee may obtain medical services from providers outside the
2 managed health care system, at the employer's expense, when treatment is
3 unavailable through the managed health care system;
- 4 (f) The managed health care system shall establish procedures for utilization
5 review of medical services to assure that a course of treatment is reasonably
6 necessary; diagnostic procedures are not unnecessarily duplicated; the
7 frequency, scope, and duration of treatment is appropriate; pharmaceuticals
8 are not unnecessarily prescribed; and that ongoing and proposed treatment is
9 not experimental, cost ineffective, or harmful to the employee;~~and~~
- 10 (g) Statements for services shall be audited regularly to ensure~~assure~~ that
11 charges are not duplicated and do not exceed those authorized in the
12 applicable fee schedules;~~and~~
- 13 (h) A schedule of fees for all medical services to be provided under this chapter,
14 which shall not be subject to the limitations on medical fees contained in this
15 chapter; and~~and~~
- 16 (i) Restrictions on provider selection imposed by a managed health care system
17 authorized by this chapter shall not apply to emergency medical care.
- 18 ~~(5)(8)~~ Except for emergency medical care, medical services rendered pursuant to this
19 chapter shall be under the supervision of a single treating physician or physicians'
20 group having the authority to make referrals, as reasonably necessary, to appropriate
21 facilities and specialists. The employee may change his designated physician one (1)
22 time and thereafter shall show reasonable cause in order to change physicians.
- 23 ~~(6)(9)~~ When a compensable injury or occupational disease results in the amputation
24 or partial amputation of an arm, hand, leg, or foot, or the loss of hearing, or the
25 enucleation of an eye or loss of teeth, or permanent total or permanent partial
26 paralysis, the employer shall pay for, in addition to the other medical, surgical, and
27 hospital treatment enumerated in subsection (1) and this subsection, a modern

1 artificial member and, where required, proper braces as may reasonably be required
2 at the time of the injury and thereafter during disability.

3 ~~(7)(10)~~ Upon motion of the employer, with sufficient notice to the employee for a
4 response to be filed, if it is shown to the satisfaction of the administrative law judge
5 by affidavits or testimony that, because of the physician selected by the employee to
6 treat the injury or disease, or because of the hospital selected by the employee in
7 which treatment is being rendered, that the employee is not receiving proper
8 medical treatment and the recovery is being substantially affected or delayed; or that
9 the funds for medical expenses are being spent without reasonable benefit to the
10 employee; or that because of the physician selected by the employee or because of
11 the type of medical treatment being received by the employee that the employer will
12 substantially be prejudiced in any compensation proceedings resulting from the
13 employee's injury or disease; then the administrative law judge may allow the
14 employer to select a physician to treat the employee and the hospital or hospitals in
15 which the employee is treated for the injury or disease. No action shall be brought
16 against any employer subject to this chapter by any person to recover damages for
17 malpractice or improper treatment received by any employee from any physician,
18 hospital, or attendant thereof.

19 ~~(8)(11)~~ An employee who reports an injury alleged to be work-related or files an
20 application for adjustment of a claim shall execute a waiver and consent of any
21 physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect
22 to any condition or complaint reasonably related to the condition for which the
23 employee claims compensation. Notwithstanding any other provision in the
24 Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist,
25 hospital, or health care provider shall, within a reasonable time after written request
26 by the employee, employer, workers' compensation insurer, special fund, uninsured
27 employers' fund, or the administrative law judge, provide the requesting party with

1 any information or written material reasonably related to any injury or disease for
2 which the employee claims compensation.

3 ~~(9)~~~~(12)~~ When a provider of medical services or treatment, required by this chapter,
4 makes referrals for medical services or treatment by this chapter, to a provider or
5 entity in which the provider making the referral has an investment interest, the
6 referring provider shall disclose that investment interest to the employee, the
7 commissioner, and the employer's insurer or the party responsible for paying for the
8 medical services or treatment, within thirty (30) days from the date the referral was
9 made.

10 ~~(10)~~~~(13)~~ (a) Except as provided in paragraphs (b) and (c) of this subsection, the
11 employer, insurer, or payment obligor shall not be liable for urine drug
12 screenings of patients in excess of:

- 13 1. One (1) per year for a patient considered to be low-risk;
14 2. Two (2) per year for a patient considered to be moderate-risk; and
15 3. Four (4) per year for patients considered to be high-risk;
16 based upon the screening performed by the treating medical provider and
17 other pertinent factors.

18 (b) The employer, insurer, or payment obligor may be liable for urine drug
19 screening at each office visit for patients that have exhibited aberrant behavior
20 documented by multiple lost prescriptions, multiple requests for early refills of
21 prescriptions, multiple providers prescribing or dispensing opioids or opioid
22 substitutes as evidenced by the electronic monitoring system established in
23 KRS 218A.202 or a similar system, unauthorized dosage escalation, or
24 apparent intoxication.

25 (c) The employer, insurer, or payment obligor may request additional urine drug
26 screenings which shall not count toward the maximum number of drug
27 screenings enumerated in paragraph (a) of this subsection.

1 (d) The commissioner shall promulgate administrative regulations related to urine
2 drug screenings as part of the practice parameters or treatment guidelines
3 required under KRS 342.035.

4 ~~(11)~~~~(14)~~ (a) As used in this subsection, "practice of pharmacy" has the same meaning
5 as in KRS 315.010.

6 (b) In addition to all other compensation that may be reimbursed to a pharmacist
7 under this chapter, the employer, insurer, or payment obligor shall be liable
8 for the reimbursement of a pharmacist for a service or procedure at a rate not
9 less than that provided to other nonphysician practitioners if the service or
10 procedure:

- 11 1. Is within the scope of the practice of pharmacy;
- 12 2. Would otherwise be compensable under this chapter if the service or
13 procedure were provided by a:
 - 14 a. Physician;
 - 15 b. Advanced practice registered nurse; or
 - 16 c. Physician assistant; and
- 17 3. Is performed by the pharmacist in strict compliance with laws and
18 administrative regulations related to the pharmacist's license.

19 ➔Section 2. KRS 342.990 is amended to read as follows:

- 20 (1) The commissioner shall initiate enforcement of civil and criminal penalties imposed
21 in this section.
- 22 (2) When the commissioner receives information that he or she deems sufficient to
23 determine that a violation of this chapter has occurred, he or she shall seek civil
24 penalties pursuant to subsections (3) to (7) of this section, criminal penalties
25 pursuant to subsections (8) and (9) of this section, or both.
- 26 (3) The commissioner shall initiate enforcement of a civil penalty by simultaneously
27 citing the appropriate party for the offense and stating the civil penalty to be paid.

- 1 (4) If, within fifteen (15) working days from the receipt of the citation, a cited party
2 fails to notify the commissioner that he or she intends to contest the citation, then
3 the citation shall be deemed final.
- 4 (5) If a cited party notifies the commissioner that he or she intends to challenge a
5 citation issued under this section, the commissioner shall cause the matter to be
6 heard as soon as practicable by an administrative law judge and in accordance with
7 the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney
8 representing the commissioner to prove the offense stated in the citation by a
9 preponderance of the evidence. The parties shall stipulate to uncontested facts and
10 issues prior to the hearing before the administrative law judge. The administrative
11 law judge shall issue a ruling within sixty (60) days following the hearing.
- 12 (6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit
13 Court in conformity with KRS 13B.140.
- 14 (7) The following civil penalties shall be applicable for violations of particular
15 provisions of this chapter:
- 16 (a) Any employer, insurer, or payment obligor subject to this chapter who fails to
17 make a report required by KRS 342.038 within fifteen (15) days from the date
18 it was due, shall be fined not less than one hundred dollars (\$100) nor more
19 than one thousand dollars (\$1,000) for each offense;
- 20 (b) Any employer, insurer, or payment obligor acting on behalf of an employer
21 who fails to make timely payment of a statement for services under KRS
22 342.020~~(1)(4)~~ without having reasonable grounds to delay payment may be
23 fined not less than one hundred dollars (\$100) nor more than one thousand
24 dollars (\$1,000) for each offense;
- 25 (c) Any person who violates KRS 342.020~~(9)(12)~~, 342.035(2), 342.040,
26 342.340, 342.400, 342.420, or 342.630 shall be fined not less than one
27 hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each

1 offense. With respect to employers who fail to maintain workers'
2 compensation insurance coverage on their employees, each employee of the
3 employer and each day of violation shall constitute a separate offense. With
4 respect to KRS 342.040, any employer's insurance carrier or other party
5 responsible for the payment of workers' compensation benefits shall be fined
6 for failure to notify the commissioner of a failure to make payments when due
7 if a report indicating the reason payment of income benefits did not
8 commence within twenty-one (21) days of the date the employer was notified
9 of an alleged work-related injury or disease is not filed with the commissioner
10 within twenty-one (21) days of the date the employer received notice, and if
11 the employee has not returned to work within that period of time. The date of
12 notice indicated in the report filed with the department pursuant to KRS
13 342.038(1), shall raise a rebuttable presumption of the date on which the
14 employer received notice;

15 (d) Any person who violates any of the provisions of KRS 342.165(2), 342.335,
16 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two
17 hundred dollars (\$200) nor more than two thousand dollars (\$2,000) for each
18 offense. With respect to KRS 342.395, each required notice of rejection form
19 executed by an employee or potential employee of an employer shall
20 constitute a separate offense;

21 (e) Any person who fails to comply with the data reporting provisions of
22 administrative regulations promulgated by the commissioner pursuant to KRS
23 342.039, or with utilization review and medical bill audit administrative
24 regulations promulgated pursuant to KRS 342.035(5), shall be fined not less
25 than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)
26 for each violation;

27 (f) Except as provided in paragraph (g) of this subsection, a person who violates

1 any of the provisions of KRS 342.335(1) or (2) where the claim,
2 compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less
3 than or equal to three hundred dollars (\$300) shall be fined per occurrence not
4 more than one thousand dollars (\$1,000) per individual nor five thousand
5 dollars (\$5,000) per corporation, or twice the amount of gain received as a
6 result of the violation, whichever is greater;

7 (g) Any person who violates any of the provisions of KRS 342.335(1) or (2)
8 where the claim, compensation, benefit, or money referred to in KRS
9 342.335(1) or (2) exceeds three hundred dollars (\$300) shall be fined per
10 occurrence not more than five thousand dollars (\$5,000) per individual nor ten
11 thousand dollars (\$10,000) per corporation, or twice the amount of gain
12 received as a result of the violation, whichever is greater;

13 (h) Any person who violates the employee leasing provision of this chapter shall
14 be fined not less than five hundred dollars (\$500) nor more than five thousand
15 dollars (\$5,000) for each violation;

16 (i) Any violation of the provisions of this chapter relating to self-insureds shall
17 constitute grounds for decertification of such self-insured, a fine of not less
18 than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000)
19 per occurrence, or both; and

20 (j) Actions to collect the civil penalties imposed under this subsection shall be
21 instituted in the Franklin District Court and the Franklin Circuit Court.

22 (8) The commissioner shall initiate enforcement of a criminal penalty by causing a
23 complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to
24 act on the violation within twenty (20) days following the filing of the complaint,
25 the commissioner shall certify the inaction by the local prosecutor to the Attorney
26 General who shall initiate proceedings to prosecute the violation. The provisions of
27 KRS 15.715 shall not apply to this section.

- 1 (9) The following criminal penalties shall be applicable for violations of particular
2 provisions of this chapter:
- 3 (a) Any person who violates KRS 342.020~~(9)~~~~(12)~~, 342.035(2), 342.040,
4 342.400, 342.420, or 342.630, shall, for each offense, be fined not less than
5 one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or
6 imprisoned for not less than thirty (30) days nor more than one hundred eighty
7 (180) days, or both;
- 8 (b) Any person who violates any of the provisions of KRS 342.165(2), 342.335,
9 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than
10 two hundred dollars (\$200) nor more than two thousand dollars (\$2,000), or
11 imprisoned for not less than thirty (30) days nor more than one hundred and
12 eighty (180) days, or both;
- 13 (c) Any corporation, partnership, sole proprietorship, or other form of business
14 entity and any officer, general partner, agent, or representative of the
15 foregoing who knowingly utilizes or participates in any employee leasing
16 arrangement or mechanism as defined in KRS 342.615 for the purpose of
17 depriving one (1) or more insurers of premium otherwise properly payable or
18 for the purpose of depriving the Commonwealth of any tax or assessment due
19 and owing and based upon said premium shall upon conviction thereof be
20 subject to a fine of not less than five hundred dollars (\$500) nor more than
21 five thousand dollars (\$5,000), or imprisonment for not more than one
22 hundred eighty (180) days, or both, for each offense; and
- 23 (d) Notwithstanding any other provisions of this chapter to the contrary, when any
24 employer, insurance carrier, or individual self-insured fails to comply with
25 this chapter for which a penalty is provided in subparagraphs (7), (8), and (9)
26 above, such person, if the person is an owner in the case of a sole
27 proprietorship, a partner in the case of a partnership, a principal in the case of

1 a limited liability company, or a corporate officer in the case of a corporation,
2 who knowingly authorized, ordered, or carried out the violation, failure, or
3 refusal shall be personally and individually liable, both jointly and severally,
4 for the penalties imposed in the above cited subparagraphs. Neither the
5 dissolution nor withdrawal of the corporation, partnership, or other entity from
6 the state, nor the cessation of holding status as a proprietor, partner, principal,
7 or officer shall discharge the foregoing liability of any person.

8 (10) Fines paid pursuant to KRS 342.267 and subsections (7) and (9) of this section shall
9 be paid into the self-insurance fund established in KRS 342.920.

10 (11) In addition to the penalties provided in this section, the commissioner and any
11 administrative law judge or court of jurisdiction may order restitution of a benefit
12 secured through conduct proscribed by this chapter.