

SENATE BILL No. 189

By Senators Sykes, Corson, Francisco, Holscher and Pettey

2-4

1 AN ACT concerning workers compensation; relating to injured employees;
2 providing the employee the freedom of choice in designating a
3 healthcare provider; requiring the employer to pay for the services of
4 the designated healthcare provider; amending K.S.A. 2024 Supp. 44-
5 510h, 44-510k and 44-525 and repealing the existing sections.
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2024 Supp. 44-510h is hereby amended to read as
9 follows: 44-510h. (a) It shall be the duty of the employer to ~~provide pay~~
10 ~~for~~ the services of a healthcare provider *designated by the injured*
11 *employee* and ~~such any~~ medical, surgical and hospital treatment, including
12 nursing, medicines, medical and surgical supplies, ambulance, crutches,
13 apparatus and transportation to and from the home of the injured employee
14 to a place outside the community in which such employee resides and
15 within such community if the director, in the director's discretion, so
16 orders, including transportation expenses computed in accordance with
17 K.S.A. 44-515(a), and amendments thereto, as may be reasonably
18 necessary to cure and relieve the employee from the effects of the injury.

19 ~~(b)(1) If the director finds, upon application of an injured employee,~~
20 ~~that the services of the healthcare provider furnished as provided in~~
21 ~~subsection (a) and rendered on behalf of the injured employee are not~~
22 ~~satisfactory, the director may authorize the appointment of some other~~
23 ~~healthcare provider. In any such case, the employer shall submit the names~~
24 ~~of two healthcare providers who, if possible given the availability of local~~
25 ~~healthcare providers, are not associated in practice together. The injured~~
26 ~~employee may select one from the list who shall be the authorized treating~~
27 ~~healthcare provider. If the injured employee is unable to obtain satisfactory~~
28 ~~services from any of the healthcare providers submitted by the employer~~
29 ~~under this paragraph, either party or both parties may request the director~~
30 ~~to select a treating healthcare provider.~~

31 ~~(2) Without application or approval, an employee may consult a~~
32 ~~healthcare provider of the employee's choice for the purpose of~~
33 ~~examination, diagnosis or treatment, but the employer shall only be liable~~
34 ~~for the fees and charges of such healthcare provider up to a total amount of~~
35 ~~\$800. The amount allowed for such examination, diagnosis or treatment~~
36 ~~shall not be used to obtain a functional impairment rating. Any medical~~

1 ~~opinion obtained in violation of this prohibition shall not be admissible in~~
2 ~~any claim proceedings under the workers compensation act.~~

3 (e) An injured employee whose injury or disability has been
4 established under the workers compensation act may rely, if done in good
5 faith, solely or partially on treatment by prayer or spiritual means in
6 accordance with the tenets of practice of a church or religious
7 denomination without suffering a loss of benefits subject to the following
8 conditions:

9 (1) The employer or the employer's insurance carrier agrees thereto in
10 writing either before or after the injury;

11 (2) the employee submits to all physical examinations required by the
12 workers compensation act;

13 (3) the cost of such treatment shall be paid by the employee unless
14 the employer or insurance carrier agrees to make such payment;

15 (4) the injured employee shall be entitled only to benefits that would
16 reasonably have been expected had such employee undergone medical or
17 surgical treatment; and

18 (5) the employer or insurance carrier that made an agreement under
19 paragraph (1) or (3) may withdraw from the agreement on 10 days' written
20 notice.

21 ~~(d)~~(c) In any employment to which the workers compensation act
22 applies, the employer shall be liable to each employee who is employed as
23 a duly authorized law enforcement officer, firefighter, an emergency
24 medical service provider as defined in K.S.A. 65-6112, and amendments
25 thereto, or a member of a regional emergency medical response team as
26 provided in K.S.A. 48-928, and amendments thereto, including any person
27 who is serving on a volunteer basis in such capacity, for all reasonable and
28 necessary preventive medical care and treatment for hepatitis to which
29 such employee is exposed under circumstances arising out of and in the
30 course of employment.

31 ~~(e)~~(d) (1) It is presumed that the employer's obligation to ~~provide pay~~
32 *for* the services of a healthcare provider and such medical, surgical and
33 hospital treatment, including nursing, medicines, medical and surgical
34 supplies, ambulance, crutches, apparatus and transportation to and from
35 the home of the injured employee to a place outside the community in
36 which such employee resides and within such community if the director, in
37 the director's discretion, so orders, including transportation expenses
38 computed in accordance with K.S.A. 44-515(a), and amendments thereto,
39 shall terminate upon the employee reaching maximum medical
40 improvement.

41 (2) If the employee has undergone an invasive or surgical procedure
42 or an authorized treating healthcare provider recommends that the
43 employee will need an invasive or surgical procedure in the future, the

1 presumption in subsection ~~(e)(1)~~ (d)(1) as to termination of the right to
2 medical treatment may be overcome with evidence that it is more probably
3 true than not that future medical treatment will be needed after the
4 employee reaches maximum medical improvement.

5 (3) In all other cases, such presumption to terminate the right to
6 medical treatment provided by the employer may be overcome only with
7 clear and convincing evidence of the need for future medical treatment.

8 (4) As used in this subsection, "medical treatment" means only that
9 treatment provided or prescribed by a licensed healthcare provider and
10 shall not include home exercise programs or over-the-counter medications.

11 Sec. 2. K.S.A. 2024 Supp. 44-510k is hereby amended to read as
12 follows: 44-510k. (a) (1) At any time after the entry of an award for
13 compensation wherein future medical benefits were awarded, the
14 employee, employer or insurance carrier may make application for a
15 hearing, in such form as the director may require for the furnishing,
16 termination or modification of medical treatment. Such post-award hearing
17 shall be held by the assigned administrative law judge, in any county
18 designated by the administrative law judge, and the judge shall conduct the
19 hearing as provided in K.S.A. 44-523, and amendments thereto.

20 (2) Proceedings for post-award medical benefits shall proceed only
21 under the provisions set forth in this section. Post-award medical benefits
22 shall not be pursued or ordered under the procedures set forth in K.S.A.
23 44-534a, and amendments thereto.

24 (3) The administrative law judge may:

25 (A) make an award for further medical care if the administrative law
26 judge finds that it is more probably true than not that the injury which was
27 the subject of the underlying award is the prevailing factor in the need for
28 further medical care and that the care requested is necessary to cure or
29 relieve the effects of such injury; or

30 (B) terminate or modify an award of current or future medical care if
31 the administrative law judge finds that no further medical care is required,
32 the injury which was the subject of the underlying award is not the
33 prevailing factor in the need for further medical care, or that the care
34 requested is not necessary to cure or relieve the effects of such injury.

35 (4) If the claimant has not received medical treatment, as defined in
36 K.S.A. ~~44-510h(e)~~ 44-510h(d), and amendments thereto, from an
37 authorized healthcare provider within two years from the date of the award
38 or two years from the date the claimant last received medical treatment
39 from an authorized healthcare provider, the employer shall be permitted to
40 make application under this section for permanent termination of future
41 medical benefits. In such case, there shall be a presumption that no further
42 medical care is needed as a result of the underlying injury. The
43 presumption may be overcome by competent medical evidence.

1 (5) No post-award benefits shall be ordered, modified or terminated
2 without giving all parties to the award the opportunity to present evidence,
3 including taking testimony on any disputed matters. A finding with regard
4 to a disputed issue shall be subject to a full review by the board under
5 K.S.A. 44-551(b), and amendments thereto. Any action of the board
6 pursuant to post-award orders shall be subject to review under K.S.A. 44-
7 556, and amendments thereto.

8 (b) (1) Any application for hearing made pursuant to this section shall
9 receive priority setting by the administrative law judge, only superseded
10 by preliminary hearings pursuant to K.S.A. 44-534a, and amendments
11 thereto.

12 (2) The application for hearing pursuant to this section shall, with
13 specificity, identify the post-award medical benefit being sought. If the
14 employer or insurance carrier provides the requested benefit within 30
15 days of receipt of the application, it shall be presumed that no costs or
16 attorney fees shall be awarded. Such presumption may be overcome by
17 clear and convincing evidence that the attorney pursuing post-award
18 medical benefits expended significant time or resources in obtaining such
19 benefits.

20 (3) The parties shall meet and confer prior to the hearing pursuant to
21 this section, but a prehearing settlement conference shall not be necessary.
22 The administrative law judge shall have authority to award medical
23 treatment relating back to the entry of the underlying award, but in no
24 event shall such medical treatment relate back more than six months
25 following the filing of such application for post-award medical treatment.
26 Reviews taken under this section shall receive priority settings before the
27 board, only superseded by reviews for preliminary hearings. A decision
28 shall be rendered by the board within 30 days from the time the review is
29 submitted.

30 (c) The administrative law judge may award attorney fees and costs
31 on the claimant's behalf consistent with K.S.A. 44-536(g), and
32 amendments thereto. As used in this subsection, "costs" include, but are
33 not limited to, witness fees, mileage allowances, any costs associated with
34 reproduction of documents that become a part of the hearing record, the
35 expense of making a record of the hearing and such other charges as are by
36 statute authorized to be taxed as costs.

37 Sec. 3. K.S.A. 2024 Supp. 44-525 is hereby amended to read as
38 follows: 44-525. (a) Every finding or award of compensation shall be in
39 writing, signed and acknowledged by the administrative law judge and
40 shall specify the amount due and unpaid by the employer to the employee
41 up to the date of the award, if any, and the amount of the payments
42 thereafter to be paid by the employer to the employee, if any, and the
43 length of time such payment shall continue. No award shall include the

1 right to future medical treatment, unless the claimant establishes the
2 requirements of K.S.A. ~~44-510h(c)~~ *44-510h(d)*, and amendments thereto.
3 The award of the administrative law judge shall be effective the day
4 following the date noted in the award.

5 (b) No award shall be or provide for payment of compensation in a
6 lump sum, except as to such portion of the compensation as shall be found
7 to be due and unpaid at the time of the award, or except at the discretion of
8 the director on settlement agreements, and credit shall be given to the
9 employer in such award for any amount or amounts paid by the employer
10 to the employee as compensation prior to the date of the award.

11 (c) In the event the employee has been overpaid temporary total
12 disability benefits as described in K.S.A. 44-534a(b), and amendments
13 thereto, and the employee is entitled to additional disability benefits, the
14 administrative law judge shall provide for the application of a credit
15 against such benefits. The credit shall first be applied to the final week of
16 any such additional disability benefit award and then to each preceding
17 week until the credit is exhausted.

18 Sec. 4. K.S.A. 2024 Supp. 44-510h, 44-510k and 44-525 are hereby
19 repealed.

20 Sec. 5. This act shall take effect and be in force from and after its
21 publication in the statute book.