

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

The Committee on **Commerce, Labor and Economic Development** recommends **SB 187**, as amended by Senate Committee of the Whole, be amended on page 1, in line 10, after "include" by inserting a comma; also in line 10 after "to" by inserting a comma;

On page 4, in line 29, by striking "75%" and inserting "85%";

On page 5, in line 11, after "the" by inserting "workers compensation appeals"; in line 33, by striking "(i)(1)" and inserting "(l)(1)";

On page 7, in line 9, by striking ", except as provided for the first"; in line 10, by striking "members appointed to the board under subsection (f)"; in line 34, by striking "board" and inserting "and employment security boards";

On page 9, in line 3, after "the" by inserting "workers compensation and employment security boards";

On page 10, in line 35, after the second "the" by inserting "employment security";

On page 11, in line 22, after "the" by inserting "employment security"; in line 37, by striking "a" and inserting "an employment security";

On page 12, in line 26, after "the" by inserting "workers compensation and employment security boards"; in line 28, after "the" by inserting "employment security"; in line 35, by striking "board" and inserting "employment security board of review"; in line 38, by striking "board"; also in line 38, after "member" by inserting "of the employment security board of review"; in line 39, after "the" by inserting "employment security";

On page 13, in line 3, by striking "board" and inserting "employment security board of

review"; in line 10, by striking "board" and inserting "employment security board of review"; in line 17, by striking "board" and inserting "employment security board of review"; in line 27, by striking "board" and inserting "employment security board of review"; in line 34, by striking "board" and inserting "employment security board of review";

On page 14, in line 5, by striking "board" and inserting "employment security board of review"; in line 8, by striking the second "the" and inserting "such"; in line 11, by striking "the" and inserting "such"; in line 16, after "the" by inserting "employment security"; in line 24, by striking "board" and inserting "employment security board of review"; following line 35, by inserting:

"Sec. 4. K.S.A. 2012 Supp. 44-508 is hereby amended to read as follows: 44-508. As used in the workers compensation act:

(a) "Employer" includes: (1) Any person or body of persons, corporate or unincorporated, and the legal representative of a deceased employer or the receiver or trustee of a person, corporation, association or partnership; (2) the state or any department, agency or authority of the state, any city, county, school district or other political subdivision or municipality or public corporation and any instrumentality thereof; and (3) for the purposes of community service work, the entity for which the community service work is being performed and the governmental agency which assigned the community service work, if any, if either such entity or such governmental agency has filed a written statement of election with the director to accept the provisions under the workers compensation act for persons performing community service work and in such case such entity and such governmental agency shall be deemed to be the joint employer of the person performing the community service work and both shall have the rights, liabilities and immunities provided under the workers compensation act for an employer with regard to the community service work, except that the liability for providing benefits shall be imposed only on the party which filed such election with the director, or on both if both parties have filed such election with the director; for purposes of community service work,

"governmental agency" shall not include any court or any officer or employee thereof and any case where there is deemed to be a "joint employer" shall not be construed to be a case of dual or multiple employment.

(b) "Workman" or "employee" or "worker" means any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer. Such terms shall include, but not be limited to: Executive officers of corporations; professional athletes; persons serving on a volunteer basis as duly authorized law enforcement officers, attendants, as defined in subsection ~~(d)~~ (f) of K.S.A. 65-6112, and amendments thereto, drivers of ambulances as defined in subsection ~~(b)~~ (d) of K.S.A. 65-6112, and amendments thereto, firefighters, but only to the extent and during such periods as they are so serving in such capacities; persons employed by educational, religious and charitable organizations, but only to the extent and during the periods that they are paid wages by such organizations; persons in the service of the state, or any department, agency or authority of the state, any city, school district, or other political subdivision or municipality or public corporation and any instrumentality thereof, under any contract of service, express or implied, and every official or officer thereof, whether elected or appointed, while performing official duties; persons in the service of the state as volunteer members of the Kansas department of civil air patrol, but only to the extent and during such periods as they are officially engaged in the performance of functions specified in K.S.A. 48-3302, and amendments thereto; volunteers in any employment, if the employer has filed an election to extend coverage to such volunteers; minors, whether such minors are legally or illegally employed; and persons performing community service work, but only to the extent and during such periods as they are performing community service work and if an election has been filed an election to extend coverage to such persons. Any reference to an employee who has been injured shall, where the employee is dead, include a reference to the employee's dependents, to the employee's legal representatives, or, if the employee is a minor or an incapacitated person, to the employee's guardian or

conservator. Unless there is a valid election in effect which has been filed as provided in K.S.A. 44-542a, and amendments thereto, such terms shall not include individual employers, limited liability company members, partners or self-employed persons.

(c) (1) "Dependents" means such members of the employee's family as were wholly or in part dependent upon the employee at the time of the accident or injury.

(2) "Members of a family" means only surviving legal spouse and children; or if no surviving legal spouse or children, then parents or grandparents; or if no parents or grandparents, then grandchildren; or if no grandchildren, then brothers and sisters. In the meaning of this section, parents include stepparents, children include stepchildren, grandchildren include stepgrandchildren, brothers and sisters include stepbrothers and stepsisters, and children and parents include that relation by legal adoption. In the meaning of this section, a surviving spouse shall not be regarded as a dependent of a deceased employee or as a member of the family, if the surviving spouse shall have for more than six months willfully or voluntarily deserted or abandoned the employee prior to the date of the employee's death.

(3) "Wholly dependent child or children" means:

(A) A birth child or adopted child of the employee except such a child whose relationship to the employee has been severed by adoption;

(B) a stepchild of the employee who lives in the employee's household;

(C) any other child who is actually dependent in whole or in part on the employee and who is related to the employee by marriage or consanguinity; or

(D) any child as defined in subsection (c)(3)(A), (3)(B) or (3)(C) who is less than 23 years of age and who is not physically or mentally capable of earning wages in any type of substantial and gainful employment or who is a full-time student attending an accredited institution of higher education or vocational education.

(d) "Accident" means an undesigned, sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift. The accident must be the prevailing factor in causing the injury. "Accident" shall in no case be construed to include repetitive trauma in any form.

(e) "Repetitive trauma" refers to cases where an injury occurs as a result of repetitive use, cumulative traumas or microtraumas. The repetitive nature of the injury must be demonstrated by diagnostic or clinical tests. The repetitive trauma must be the prevailing factor in causing the injury. "Repetitive trauma" shall in no case be construed to include occupational disease, as defined in K.S.A. 44-5a01, and amendments thereto.

In the case of injury by repetitive trauma, the date of injury shall be the earliest of:

(1) The date the employee, while employed for the employer against whom benefits are sought, is taken off work by a physician due to the diagnosed repetitive trauma;

(2) the date the employee, while employed for the employer against whom benefits are sought, is placed on modified or restricted duty by a physician due to the diagnosed repetitive trauma;

(3) the date the employee, while employed for the employer against whom benefits are sought, is advised by a physician that the condition is work-related; or

(4) the last day worked, if the employee no longer works for the employer against whom benefits are sought.

In no case shall the date of accident be later than the last date worked.

(f) (1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto. Personal injury or injury may occur only by accident, repetitive trauma or occupational disease as those terms are defined.

(2) An injury is compensable only if it arises out of and in the course of employment. An

injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

(A) An injury by repetitive trauma shall be deemed to arise out of employment only if:

(i) The employment exposed the worker to an increased risk or hazard which the worker would not have been exposed in normal non-employment life;

(ii) the increased risk or hazard to which the employment exposed the worker is the prevailing factor in causing the repetitive trauma; and

(iii) the repetitive trauma is the prevailing factor in causing both the medical condition and resulting disability or impairment.

(B) An injury by accident shall be deemed to arise out of employment only if:

(i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and

(ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

(3) (A) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include:

(i) Injury which occurred as a result of the natural aging process or by the normal activities of day-to-day living;

(ii) accident or injury which arose out of a neutral risk with no particular employment or personal character;

(iii) accident or injury which arose out of a risk personal to the worker; or

(iv) accident or injury which arose either directly or indirectly from idiopathic causes.

(B) The words "arising out of and in the course of employment" as used in the workers

compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises owned or under the exclusive control of the employer or on the only available route to or from work which is a route involving a special risk or hazard connected with the nature of the employment that is not a risk or hazard to which the general public is exposed and which is a route not used by the public except in dealings with the employer. An employee shall not be construed as being on the way to assume the duties of employment, if the employee is a provider of emergency services responding to an emergency.

(C) The words, "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to employees while engaged in recreational or social events under circumstances where the employee was under no duty to attend and where the injury did not result from the performance of tasks related to the employee's normal job duties or as specifically instructed to be performed by the employer.

(g) "Prevailing" as it relates to the term "factor" means the primary factor, in relation to any other factor. In determining what constitutes the "prevailing factor" in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.

(h) "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

(i) "Director" means the director of workers compensation as provided for in K.S.A. 75-5708, and amendments thereto.

(j) "Health care provider" means any person licensed, by the proper licensing authority of this state, another state or the District of Columbia, to practice medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry, audiology or psychology.

(k) "Secretary" means the secretary of labor.

(l) "Construction design professional" means any person who is an architect, professional engineer, landscape architect or land surveyor who has been issued a license by the state board of technical professions to practice such technical profession in Kansas or any corporation organized to render professional services through the practice of one or more of such technical professions in Kansas under the professional corporation law of Kansas or any corporation issued a certificate of authorization under K.S.A. 74-7036, and amendments thereto, to practice one or more of such technical professions in Kansas.

(m) "Community service work" means: (1) Public or community service performed as a result of a contract of diversion or of assignment to a community corrections program or conservation camp or suspension of sentence or as a condition of probation or in lieu of a fine imposed by court order; or (2) public or community service or other work performed as a requirement for receipt of any kind of public assistance in accordance with any program administered by the secretary of social and rehabilitation services.

(n) "Utilization review" means the initial evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on accepted standards of the health care profession involved. Such evaluation is accomplished by means of a system which identifies the utilization of health care services above the usual range of utilization for such services, which is based on accepted standards of the health care profession involved, and which refers instances of possible inappropriate utilization to the director for referral to a peer review committee.

(o) "Peer review" means an evaluation by a peer review committee of the appropriateness,



quality and cost of health care and health services provided a patient, which is based on accepted standards of the health care profession involved and which is conducted in conjunction with utilization review.

(p) "Peer review committee" means a committee composed of health care providers licensed to practice the same health care profession as the health care provider who rendered the health care services being reviewed.

(q) "Group-funded self-insurance plan" includes each group-funded workers compensation pool, which is authorized to operate in this state under K.S.A. 44-581 through 44-592, and amendments thereto, each municipal group-funded pool under the Kansas municipal group-funded pool act which is covering liabilities under the workers compensation act, and any other similar group-funded or pooled plan or arrangement that provides coverage for employer liabilities under the workers compensation act and is authorized by law.

(r) On and after the effective date of this act, "workers compensation board" or "board" means the workers compensation appeals board established under K.S.A. 44-555c, and amendments thereto.

(s) "Usual charge" means the amount most commonly charged by health care providers for the same or similar services.

(t) "Customary charge" means the usual rates or range of fees charged by health care providers in a given locale or area.

(u) "Functional impairment" means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American medical association guides to the evaluation of impairment, if the impairment is contained therein.

(v) "Authorized treating physician" means a licensed physician or other health care provider authorized by the employer or insurance carrier or both, or appointed pursuant to court-order to provide

those medical services deemed necessary to diagnose and treat an injury arising out of and in the course of employment.

(w) "Mail" means the use of the United States postal service or other land based delivery service or transmission by electronic means, including delivery by fax, e-mail or other electronic delivery method designated by the director of workers compensation.

Sec. 5. K.S.A. 44-510j is hereby amended to read as follows: 44-510j. When an employer's insurance carrier or a self-insured employer disputes all or a portion of a bill for services rendered for the care and treatment of an employee under this act, the following procedures apply:

(a) (1) The employer or carrier shall notify the service provider within 30 days of receipt of the bill of the specific reason for refusing payment or adjusting the bill. Such notice shall inform the service provider that additional information may be submitted with the bill and reconsideration of the bill may be requested. The provider shall send any request for reconsideration within 30 days of receiving written notice of the bill dispute. If the employer or carrier continues to dispute all or a portion of the bill after receiving additional information from the provider, the employer, carrier or provider may apply for an informal hearing before the director.

(2) If a provider sends a bill to such employer or carrier and receives no response within 30 days as allowed in subsection (a) and if a provider sends a second bill and receives no response within 60 days of the date the provider sent the first bill, the provider may apply for an informal hearing before the director.

(3) Payments shall not be delayed beyond 60 days for any amounts not in dispute. Acceptance by any provider of a payment amount which is less than the full amount charged for the services shall not affect the right to have a review of the claim for the outstanding or remaining amounts.

(b) The application for informal hearing shall include copies of the disputed bills, all correspondence concerning the bills and any additional written information the party deems

appropriate. When anyone applies for an informal hearing before the director, copies of the application shall be sent to all parties to the dispute and the employee. Within 20 days of receiving the application for informal hearing, the other parties to the dispute shall send any additional written information deemed relevant to the dispute to the director.

(c) The director or the director's designee shall hold the informal hearing to hear and determine all disputes as to such bills and interest due thereon. Evidence in the informal hearing shall be limited to the written submissions of the parties. The informal hearing may be held by electronic means. Any employer, carrier or provider may personally appear in or be represented at the hearing. If the parties are unable to reach a settlement regarding the dispute, the officer hearing the dispute shall enter an order so stating.

(d) After the entry of the order indicating that the parties have not settled the dispute after the informal hearing, the director shall schedule a formal hearing.

(1) Prior to the date of the formal hearing, the director may conduct a utilization review concerning the disputed bill. The director shall develop and implement, or contract with a qualified entity to develop and implement, utilization review procedures relating to the services rendered by providers and facilities, which services are paid for in whole or in part pursuant to the workers compensation act. The director may contract with one or more private foundations or organizations to provide utilization review of service providers pursuant to the workers compensation act. Such utilization review shall result in a report to the director indicating whether a provider improperly utilized or otherwise rendered or ordered unjustified treatment or services or that the fees for such treatment or services were excessive and a statement of the basis for the report's conclusions. After receiving the utilization review report, the director also may order a peer review. A copy of such reports shall be provided to all parties to the dispute at least 20 days prior to the formal hearing. No person shall be subject to civil liability for libel, slander or any other relevant tort cause of action by virtue of

performing a peer or utilization review under contract with the director.

(2) The formal hearing shall be conducted by hearing officers, the medical administrator or both as appointed by the director. During the formal hearing parties to the dispute shall have the right to appear or be represented and may produce witnesses, including expert witnesses, and such other relevant evidence as may be otherwise allowed under the workers compensation act. If the director finds that a provider or facility has made excessive charges or provided or ordered unjustified treatment, services, hospitalization or visits, the provider or facility may, subject to the director's order, receive payment pursuant to this section from the carrier, employer or employee for the excessive fees or unjustified treatment, services, hospitalization or visits and such provider may be ordered to repay any fees or charges collected therefor. If it is determined after the formal hearing that a provider improperly utilized or otherwise rendered or ordered unjustified treatment or services or that the fees for such treatment or services were excessive, the director may provide a report to the licensing board of the service provider with full documentation of any such determination, except that no such report shall be provided until after judicial review if the order is appealed. Any decision rendered under this section may be reviewed by the workers compensation appeals board. A party must file a notice of appeal within 10 days of the issuance of any decision under this section. The record on appeal shall be limited only to the evidence presented to the hearing officer. The decision of the director shall be affirmed unless the board determines that the decision was not supported by substantial competent evidence.

(e) By accepting payment pursuant to this section for treatment or services rendered to an injured employee, the provider shall be deemed to consent to submitting all necessary records to substantiate the nature and necessity of the service or charge and other information concerning such treatment to utilization review under this section. Such health care provider shall comply with any decision of the director pursuant to this section.

(f) Except as provided in K.S.A. 60-437, and amendments thereto, and this section, findings and records which relate to utilization and peer review conducted pursuant to this section shall be privileged and shall not be subject to discovery, subpoena or other means of legal compulsion for release to any person or entity and shall not be admissible in evidence in any judicial or administrative proceeding, except those proceedings authorized pursuant to this section. In any proceedings where there is an application by an employee, employer, insurance carrier or the workers compensation fund for a hearing pursuant to K.S.A. 44-534a, and amendments thereto, for a change of medical benefits which has been filed after a health care provider, employer, insurance carrier or the workers compensation fund has made application to the medical services section of the division for the resolution of a dispute or matter pursuant to the provisions of this section, all reports, information, statements, memoranda, proceedings, findings and records which relate to utilization and peer review including the records of contract reviewers and findings and records of the medical services section of the division shall be admissible at the hearing before the administrative law judge on the issue of the medical benefits to which an employee is entitled.

(g) A provider may not improperly overcharge or charge for services which were not provided for the purpose of obtaining additional payment. Any dispute regarding such actions shall be resolved in the same manner as other bill disputes as provided by this section. Any violation of the provisions of this section or K.S.A. 44-510i, and amendments thereto, which is willful or which demonstrates a pattern of improperly charging or overcharging for services rendered pursuant to this act constitutes grounds for the director to impose a civil fine not to exceed \$5,000. Any civil fine imposed under this section shall be subject to review by the board. All moneys received for civil fines imposed under this section shall be deposited in the state treasury to the credit of the workers compensation fund.

(h) Any health care provider, nurse, physical therapist, any entity providing medical, physical or vocational rehabilitation services or providing reeducation or training pursuant to K.S.A. 44-510g,

and amendments thereto, medical supply establishment, surgical supply establishment, ambulance service or hospital which accept the terms of the workers compensation act by providing services or material thereunder shall be bound by the fees approved by the director and no injured employee or dependent of a deceased employee shall be liable for any charges above the amounts approved by the director. If the employer has knowledge of the injury and refuses or neglects to reasonably provide the services of a health care provider required by this act, the employee may provide the same for such employee, and the employer shall be liable for such expenses subject to the regulations adopted by the director. No action shall be filed in any court by a health care provider or other provider of services under this act for the payment of an amount for medical services or materials provided under the workers compensation act and no other action to obtain or attempt to obtain or collect such payment shall be taken by a health care provider or other provider of services under this act, including employing any collection service, until after final adjudication of any claim for compensation for which an application for hearing is filed with the director under K.S.A. 44-534, and amendments thereto. In the case of any such action filed in a court prior to the date an application is filed under K.S.A. 44-534, and amendments thereto, no judgment may be entered in any such cause and the action shall be stayed until after the final adjudication of the claim. In the case of an action stayed hereunder, any award of compensation shall require any amounts payable for medical services or materials to be paid directly to the provider thereof plus an amount of interest at the rate provided by statute for judgments. No period of time under any statute of limitation, which applies to a cause of action barred under this subsection, shall commence or continue to run until final adjudication of the claim under the workers compensation act.

(i) As used in this section, unless the context or the specific provisions clearly require otherwise, "carrier" means a self-insured employer, an insurance company or a qualified group-funded workers compensation pool and "provider" means any health care provider, vocational rehabilitation

service provider or any facility providing health care services or vocational rehabilitation services, or both, including any hospital.

Sec. 6. K.S.A. 2012 Supp. 75-5708 is hereby amended to read as follows: 75-5708. (a) There is hereby established within and as a part of the department of labor a division of workers compensation. The division shall be administered, under the supervision of the secretary of labor, by the director of workers compensation, who shall be the chief administrative officer of the division. The director of workers compensation shall be appointed by the secretary of labor and shall serve at the pleasure of the secretary. The director shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary of labor, with the approval of the governor. The director of workers compensation shall be an attorney admitted to practice law in the state of Kansas. The director shall devote full time to the duties of such office and shall not engage in the private practice of law during the director's term of office.

(b) The director of workers compensation may appoint two assistant directors of workers compensation. The secretary of labor may appoint not to exceed 10 administrative law judges. Such assistant directors shall be in the classified service. Such administrative law judges shall be in the unclassified service under the Kansas civil service act unless an administrative law judge elects to stay in the classified service under subsection (g) of K.S.A. 44-551, and amendments thereto. The assistant directors shall act for and exercise the powers of the director of workers compensation to the extent authority to do so is delegated by the director. The assistant directors and administrative law judges shall be attorneys admitted to practice law in the state of Kansas, and shall have such powers, duties and functions as are assigned to them by the director or are prescribed by law. The assistant directors and administrative law judges shall devote full time to the duties of their offices and shall not engage in the private practice of law during their terms of office.

(c) Assistant directors shall be selected by the director of workers compensation, with the

approval of the secretary of labor. Except as otherwise provided under K.S.A. 44-551, and amendments thereto, on and after July 1, ~~2006~~ 2013, administrative law judges shall be selected by the ~~administrative law judge nominating and review~~ workers compensation and employment security boards nominating committee and appointed by the secretary of labor. Each assistant director and administrative law judge shall be subject to either dismissal or suspension of up to 30 days for any of the following:

- (1) Failure to conduct oneself in a manner appropriate to the appointee's professional capacity;
- (2) failure to perform duties as required by the workers compensation act; or
- (3) any reason set out for dismissal or suspension in the Kansas civil service act or rules and regulations adopted pursuant thereto.

No appointee shall be appointed, dismissed or suspended for political, religious or racial reasons or by reason of the appointee's sex.";

And by renumbering sections accordingly;

Also on page 14, in line 36, after "K.S.A." by inserting "44-510j and K.S.A."; also in line 36, after "Supp." by inserting "44-508,"; also in line 36, by striking "and 44-709" and inserting ", 44-709 and 75-5708";

On page 1, in the title, in line 4, after "K.S.A." by inserting "44-510j and K.S.A."; in line 4, after "Supp." by inserting "44-508,"; also in line 4, by striking "and 44-709" and inserting ", 44-709 and 75-5708"; and the bill be passed as amended.

---

Chairperson