

HOUSE BILL No. 2260

By Committee on Commerce, Labor and Economic Development

2-12

1 AN ACT concerning workers compensation; relating to selection of
2 healthcare provider; unauthorized medical treatment; per diem benefits
3 for injured workers for medical treatment; amending K.S.A. 2018
4 Supp. 44-510h and 44-515 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2018 Supp. 44-510h is hereby amended to read as
8 follows: 44-510h. (a) It shall be the duty of the employer to provide *and*
9 *pay for* the services of a healthcare provider *selected by the employee*, and
10 such medical, surgical and hospital treatment, including nursing,
11 medicines, medical and surgical supplies, ambulance, crutches, apparatus
12 and transportation to and from the home of the injured employee to a place
13 outside the community in which such employee resides, and within such
14 community if the director, in the director's discretion, so orders, including
15 transportation expenses *and an amount per day or part thereof to defray*
16 *the employee's expenses* computed in accordance with ~~subsection (a) of~~
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 *any party*, that the services of the healthcare provider furnished as
21 provided in subsection (a) and rendered on behalf of the injured employee
22 are not satisfactory, the director may authorize the appointment of some
23 other healthcare provider. In any such case, the employer shall submit the
24 names of two healthcare providers who, if possible given the availability
25 of local healthcare providers, are not associated in practice together. The
26 injured employee may select one from the list who shall be the authorized
27 treating healthcare provider. If the injured employee is unable to obtain
28 satisfactory services from ~~any of the healthcare providers~~ *provider*
29 submitted by the employer *and selected by the employee* under this
30 paragraph, either party or both parties may request the director to select a
31 treating ~~healthcare~~ provider.

32 (2) Without application or approval, *and in addition to the services of*
33 *a healthcare provider selected in accordance with subsection (a) or (b)(1)*,
34 an employee may consult a healthcare provider of the employee's choice
35 for the purpose of examination, diagnosis or treatment, but the employer
36 shall only be liable for the fees and charges of such healthcare provider up

1 to a total amount of ~~-\$500~~ \$1,500. The amount allowed for such
2 examination, diagnosis or treatment shall not be used to obtain a functional
3 impairment rating. Any medical opinion obtained in violation of this
4 prohibition shall not be admissible in any claim proceedings under the
5 workers compensation act.

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

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

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

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

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

21 (5) the employer or insurance carrier that made an agreement under
22 paragraph (1) or (3) of this subsection may withdraw from the agreement
23 on 10 days' written notice.

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

35 (e) It is presumed that the employer's obligation to provide the
36 services of a healthcare provider, and such medical, surgical and hospital
37 treatment, including nursing, medicines, medical and surgical supplies,
38 ambulance, crutches, apparatus and transportation to and from the home of
39 the injured employee to a place outside the community in which such
40 employee resides, and within such community if the director, in the
41 director's discretion, so orders, including transportation expenses *and an*
42 *amount per day or part thereof to defray the employee's expenses*
43 computed in accordance with ~~subsection (a) of~~ K.S.A. 44-515(a), and

1 amendments thereto, shall terminate upon the employee reaching
2 maximum medical improvement. Such presumption may be overcome
3 with medical evidence that it is more probably true than not that additional
4 medical treatment will be necessary after such time as the employee
5 reaches maximum medical improvement. The term "medical treatment" as
6 used in this subsection—(e) means only that treatment provided or
7 prescribed by a licensed healthcare provider and shall not include home
8 exercise programs or over-the-counter medications.

9 Sec. 2. K.S.A. 2018 Supp. 44-515 is hereby amended to read as
10 follows: 44-515. (a) After an employee sustains an injury, the employee
11 shall, upon request of the employer, submit to an examination at any
12 reasonable time and place by any one or more reputable healthcare
13 providers, selected by the employer, and shall so submit to an examination
14 thereafter at intervals during the pendency of such employee's claim for
15 compensation, upon the request of the employer, but the employee shall
16 not be required to submit to an examination oftener than twice in any one
17 month, unless required to do so in accordance with such orders as may be
18 made by the director. All benefits shall be suspended to an employee who
19 refuses to submit to such examination or examinations until such time as
20 the employee complies with the employer's request. The suspension of
21 benefits shall occur even if the employer is under preliminary order to
22 provide such benefits. Any employee so submitting to an examination or
23 such employee's authorized representative shall upon written request be
24 entitled to receive and shall have delivered to such employee a copy of the
25 healthcare provider's report of such examination within a reasonable
26 amount of time after such examination, which report shall be identical to
27 the report submitted to the employer. If the employee is notified to submit
28 to an examination before any healthcare provider ~~in any town or city other~~
29 ~~than the residence of the employee at the time that the employee received~~
30 ~~an injury~~, the employee shall not be required to submit to an examination
31 until such employee has been furnished with sufficient funds to pay for
32 transportation to and from the place of examination at the rate prescribed
33 for compensation of state officers and employees under K.S.A. 75-3203a,
34 and amendments thereto, for each mile actually and necessarily traveled to
35 and from the place of examination, any turnpike or other tolls and any
36 parking fees actually and necessarily incurred, *if a private conveyance is*
37 *used, or actual transportation cost if a private conveyance is not used,*
38 *and which mileage allowance shall not be subject to the restrictions*
39 *relating to the use of vehicles prescribed by K.S.A. 75-3203 and 75-3203a,*
40 *and amendments thereto, and in addition the ~~sum of \$15 amount~~*
41 *prescribed for members of the legislature under K.S.A. 46-137a(b), and*
42 *amendments thereto, per day for each ~~full~~ day or part thereof that the*
43 *employee was required to be away from such employee's residence or*

1 ~~place of employment to defray such employee's board and lodging and~~
2 ~~living~~ expenses. The employee shall not be liable for any fees or charge of
3 any healthcare provider selected by the employer for making any
4 examination of the employee. The employer or the insurance carrier of the
5 employer of any employee making claim for compensation under the
6 workers compensation act shall be entitled to a copy of the report of any
7 healthcare provider who has examined or treated the employee in regard to
8 such claim upon written request to the employee or the employee's
9 attorney within a reasonable amount of time after such examination or
10 treatment, which report shall be identical to the report submitted to the
11 employee or the employee's attorney.

12 (b) If the employee requests, such employee shall be entitled to have
13 healthcare providers of such employee's own selection present at the time
14 to participate in such examination.

15 (c) Unless a report is furnished as provided in subsection (a) and
16 unless there is a reasonable opportunity thereafter for the healthcare
17 providers selected by the employee to participate in the examination in the
18 presence of the healthcare providers selected by the employer, the
19 healthcare providers selected by the employer or employee shall not be
20 permitted afterwards to give evidence of the condition of the employee at
21 the time such examination was made.

22 (d) Except as provided in this section, there shall be no
23 disqualification or privilege preventing the furnishing of reports by or the
24 testimony of any healthcare provider who actually makes an examination
25 or treats an injured employee, prior to or after an injury.

26 (e) Any healthcare provider's opinion, whether the provider is a
27 treating healthcare provider or is an examining healthcare provider,
28 regarding a claimant's need for medical treatment, inability to work,
29 prognosis, diagnosis and disability rating shall be considered and given
30 appropriate weight by the trier of fact together with consideration of all
31 other evidence.

32 Sec. 3. K.S.A. 2018 Supp. 44-510h and 44-515 are hereby repealed.

33 Sec. 4. This act shall take effect and be in force from and after its
34 publication in the statute book.