

SECOND REGULAR SESSION

HOUSE BILL NO. 2267

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE EGGLESTON.

5080H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 287.140, 287.141, 287.800, and 287.801, RSMo, and to enact in lieu thereof five new sections relating to reviews of workers' compensation claims.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 287.140, 287.141, 287.800, and 287.801, RSMo, are repealed and
2 five new sections enacted in lieu thereof, to be known as sections 287.140, 287.141, 287.201,
3 287.800, and 287.801, to read as follows:

287.140. 1. In addition to all other compensation paid to the employee under this
2 section, the employee shall receive and the employer shall provide such medical, surgical,
3 chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as
4 may reasonably be required after the injury or disability, to cure and relieve from the effects of
5 the injury. If the employee desires, he shall have the right to select his own physician, surgeon,
6 or other such requirement at his own expense. Where the requirements are furnished by a public
7 hospital or other institution, payment therefor shall be made to the proper authorities. Regardless
8 of whether the health care provider is selected by the employer or is selected by the employee
9 at the employee's expense, the health care provider shall have the affirmative duty to
10 communicate fully with the employee regarding the nature of the employee's injury and
11 recommended treatment exclusive of any evaluation for a permanent disability rating. Failure
12 to perform such duty to communicate shall constitute a disciplinary violation by the provider
13 subject to the provisions of chapter 620. When an employee is required to submit to medical
14 examinations or necessary medical treatment at a place outside of the local or metropolitan area
15 from the employee's principal place of employment, the employer or its insurer shall advance or
16 reimburse the employee for all necessary and reasonable expenses; except that an injured

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 employee who resides outside the state of Missouri and who is employed by an employer located
18 in Missouri shall have the option of selecting the location of services provided in this section
19 either at a location within one hundred miles of the injured employee's residence, place of injury
20 or place of hire by the employer. The choice of provider within the location selected shall
21 continue to be made by the employer. In case of a medical examination if a dispute arises as to
22 what expenses shall be paid by the employer, the matter shall be presented to the legal advisor,
23 the administrative law judge or the commission, who shall set the sum to be paid and same shall
24 be paid by the employer prior to the medical examination. In no event~~[, however,]~~ shall the
25 employer or its insurer be required to pay transportation costs for a greater distance than two
26 hundred fifty miles each way from place of treatment.

27 2. If it be shown to the division or the commission that the requirements are being
28 furnished in such manner that there is reasonable ground for believing that the life, health, or
29 recovery of the employee is endangered thereby, the division or the commission may order a
30 change in the physician, surgeon, hospital or other requirement.

31 3. All fees and charges under this chapter shall be fair and reasonable, shall be subject
32 to regulation by the division or the commission, or the board of rehabilitation in rehabilitation
33 cases. A health care provider shall not charge a fee for treatment and care which is governed by
34 the provisions of this chapter greater than the usual and customary fee the provider receives for
35 the same treatment or service when the payor for such treatment or service is a private individual
36 or a private health insurance carrier. The division or the commission, or the board of
37 rehabilitation in rehabilitation cases, shall also have jurisdiction to hear and determine all
38 disputes as to such charges. A health care provider is bound by the determination upon the
39 reasonableness of health care bills.

40 4. The division shall, by regulation, establish methods to resolve disputes concerning the
41 reasonableness of medical charges~~[, services, or aids]~~. This regulation shall govern resolution
42 of disputes between employers and medical providers over fees charged, whether or not paid, and
43 shall be in lieu of any other administrative procedure under this chapter. The employee shall not
44 be a party to a dispute over medical charges, nor shall the employee's recovery in any way be
45 jeopardized because of such dispute. Any application for payment of additional reimbursement,
46 as such term is used in 8 CSR 50- 2.030, as amended, shall be filed not later than:

47 (1) Two years from the date the first notice of dispute of the medical charge was received
48 by the health care provider if such services were rendered before July 1, 2013; and

49 (2) One year from the date the first notice of dispute of the medical charge was received
50 by the health care provider if such services were rendered after July 1, 2013.

51 Notice shall be presumed to occur no later than five business days after transmission by certified
52 United States mail.

53 5. No compensation shall be payable for the death or disability of an employee, if and
54 insofar as the death or disability may be caused, continued or aggravated by any unreasonable
55 refusal to submit to any medical or surgical treatment or operation, the risk of which is, in the
56 opinion of the division or the commission, inconsiderable in view of the seriousness of the
57 injury. If the employee dies as a result of an operation made necessary by the injury, the death
58 shall be deemed to be caused by the injury.

59 6. The testimony of any physician or chiropractic physician who treated the employee
60 shall be admissible in evidence in any proceedings for compensation under this chapter, subject
61 to all of the provisions of section 287.210.

62 7. Every hospital or other person furnishing the employee with medical aid shall permit
63 its record to be copied by and shall furnish full information to the division or the commission,
64 the employer, the employee or his dependents and any other party to any proceedings for
65 compensation under this chapter, and certified copies of the records shall be admissible in
66 evidence in any such proceedings.

67 8. The employer may be required by the division or the commission to furnish an injured
68 employee with artificial legs, arms, hands, surgical orthopedic joints, or eyes, or braces, as
69 needed, for life whenever the division or the commission shall find that the injured employee
70 may be partially or wholly relieved of the effects of a permanent injury by the use thereof. The
71 director of the division shall establish a procedure whereby a claim for compensation may be
72 reactivated after settlement of such claim is completed. The claim shall be reactivated only after
73 the claimant can show good cause for the reactivation of this claim and the claim shall be made
74 only for the payment of medical procedures involving life-threatening surgical procedures or if
75 the claimant requires the use of a new, or the modification, alteration or exchange of an existing,
76 prosthetic device. For the purpose of this subsection, "life threatening" shall mean a situation
77 or condition which, if not treated immediately, will likely result in the death of the injured
78 worker.

79 9. Nothing in this chapter shall prevent an employee being provided treatment for his
80 injuries by prayer or spiritual means if the employer does not object to the treatment.

81 10. The employer shall have the right to select the licensed treating physician, surgeon,
82 chiropractic physician, or other health care provider; provided, however, that such physicians,
83 surgeons or other health care providers shall offer only those services authorized within the scope
84 of their licenses. For the purpose of this subsection, subsection 2 of section 287.030 shall not
85 apply.

86 11. Any physician or other health care provider who orders, directs or refers a patient for
87 treatment, testing, therapy or rehabilitation at any institution or facility shall, at or prior to the
88 time of the referral, disclose in writing if such health care provider, any of his partners or his

89 employer has a financial interest in the institution or facility to which the patient is being
90 referred, to the following:

91 (1) The patient;

92 (2) The employer of the patient with workers' compensation liability for the injury or
93 disease being treated;

94 (3) The workers' compensation insurer of such employer; and

95 (4) The workers' compensation adjusting company for such insurer.

96 12. Violation of subsection 11 of this section is a class A misdemeanor.

97 13. (1) No hospital, physician or other health care provider, other than a hospital,
98 physician or health care provider selected by the employee at his own expense pursuant to
99 subsection 1 of this section, shall bill or attempt to collect any fee or any portion of a fee for
100 services rendered to an employee due to a work-related injury or report to any credit reporting
101 agency any failure of the employee to make such payment, when an injury covered by this
102 chapter has occurred and such hospital, physician or health care provider has received actual
103 notice given in writing by the employee, the employer or the employer's insurer. Actual notice
104 shall be deemed received by the hospital, physician or health care provider five days after
105 mailing by certified mail by the employer or insurer to the hospital, physician or health care
106 provider.

107 (2) The notice shall include:

108 (a) The name of the employer;

109 (b) The name of the insurer, if known;

110 (c) The name of the employee receiving the services;

111 (d) The general nature of the injury, if known; and

112 (e) Where a claim has been filed, the claim number, if known.

113 (3) When an injury is found to be noncompensable under this chapter, the hospital,
114 physician or other health care provider shall be entitled to pursue the employee for any unpaid
115 portion of the fee or other charges for authorized services provided to the employee. Any
116 applicable statute of limitations for an action for such fees or other charges shall be tolled from
117 the time notice is given to the division by a hospital, physician or other health care provider
118 pursuant to subdivision (6) of this subsection, until a determination of noncompensability in
119 regard to the injury which is the basis of such services is made, or in the event there is an appeal
120 to the labor and industrial relations commission, until a decision is rendered by that commission.

121 (4) If a hospital, physician or other health care provider or a debt collector on behalf of
122 such hospital, physician or other health care provider pursues any action to collect from an
123 employee after such notice is properly given, the employee shall have a cause of action against

124 the hospital, physician or other health care provider for actual damages sustained plus up to one
125 thousand dollars in additional damages, costs and reasonable attorney's fees.

126 (5) If an employer or insurer fails to make payment for authorized services provided to
127 the employee by a hospital, physician or other health care provider pursuant to this chapter, the
128 hospital, physician or other health care provider may proceed pursuant to subsection 4 of this
129 section with a dispute against the employer or insurer for any fees or other charges for services
130 provided.

131 (6) A hospital, physician or other health care provider whose services have been
132 authorized in advance by the employer or insurer may give notice to the division of any claim
133 for fees or other charges for services provided for a work-related injury that is covered by this
134 chapter, with copies of the notice to the employee, employer and the employer's insurer. Where
135 such notice has been filed, the administrative law judge may order direct payment from the
136 proceeds of any settlement or award to the hospital, physician or other health care provider for
137 such fees as are determined by the division. The notice shall be on a form prescribed by the
138 division.

139 14. The employer may allow or require an employee to use any of the employee's
140 accumulated paid leave, personal leave, or medical or sick leave to attend to medical treatment,
141 physical rehabilitation, or medical evaluations during work time. The intent of this subsection
142 is to specifically supercede and abrogate any case law that contradicts the express language of
143 this section.

287.141. 1. The purpose of this section is to restore the injured person as soon as
2 possible and as nearly as possible to a condition of self-support and maintenance as an
3 able-bodied worker by physical rehabilitation. The provisions of this chapter relating to physical
4 rehabilitation shall be under the control of and administered by the director of the division of
5 workers' compensation. The division of workers' compensation shall make such rules and
6 regulations as may be necessary to carry out the purposes of this section, subject to the approval
7 of the labor and industrial relations commission of Missouri.

8 2. The division of workers' compensation shall continuously study the problems of
9 physical rehabilitation and shall investigate all rehabilitation facilities, both private and public,
10 and upon such investigation shall approve as qualified all such facilities, institutions and
11 physicians as are capable of rendering competent physical rehabilitation service for seriously
12 injured industrial workers. Rehabilitation facilities shall include medical, surgical, hospital and
13 physical restoration services. No facility or institution shall be considered as qualified unless it
14 is equipped to provide physical rehabilitation services for persons suffering either from some
15 specialized type of disability or general type of disability within the field of industrial injury, and
16 unless such facility or institution is operated under the supervision of a physician qualified to

17 render physical rehabilitation service and is staffed with trained and qualified personnel and has
18 received a certificate of qualification from the division of workers' compensation. No physician
19 shall be considered as qualified unless he has had the experience prescribed by the division.

20 3. In any case of serious injury involving disability following the period of rendition of
21 medical aid as provided by subsection 1 of section 287.140, where physical rehabilitation is
22 necessary if the employer or insurer shall offer such physical rehabilitation to the injured
23 employee and such physical rehabilitation is accepted by the employee, then in such case the
24 director of the division of workers' compensation shall be immediately notified thereof and
25 thereupon enter his approval to such effect, and the director of the division of workers'
26 compensation shall requisition the payment of forty dollars per week benefit from the second
27 injury fund in the state treasury to be paid to the employee while he is actually being
28 rehabilitated, and shall immediately notify the state treasurer thereof by furnishing him with a
29 copy of his order. But in no case shall the period of physical rehabilitation extend beyond twenty
30 weeks except in unusual cases and then only by a special order of the division of workers'
31 compensation for such additional period as the division may authorize.

32 4. In all cases where physical rehabilitation is offered and accepted or ordered by the
33 division, the employer or insurer shall have the right to select any physician, facility, or
34 institution that has been found qualified by the division of workers' compensation as above set
35 forth.

36 5. ~~[If the parties disagree as to such physical rehabilitation treatment, where such~~
37 ~~treatment appears necessary, then either the employee, the employer, or insurer may file a request~~
38 ~~with the division of workers' compensation for an order for physical rehabilitation and the~~
39 ~~director of the division shall hear the parties within ten days after the filing of the request. The~~
40 ~~director of the division shall forthwith notify the parties of the time and place of the hearing, and~~
41 ~~the hearing shall be held at a place to be designated at the discretion of the division. The director~~
42 ~~of the division may conduct such hearing or he may direct one of the administrative law judges~~
43 ~~to conduct same. Such hearing shall be informal in all respects. The director of the division~~
44 ~~shall, after considering all evidence at such hearing, within ten days make his order in the matter,~~
45 ~~either denying such request or ordering the employer or insurer within a reasonable time, to~~
46 ~~furnish physical rehabilitation, and ordering the employee to accept the same, at the expense of~~
47 ~~the employer or insurer. When the order requires physical rehabilitation, it shall also include an~~
48 ~~order to requisition the payment of forty dollars per week out of the second injury fund in the~~
49 ~~state treasury to the injured employee during such time as such employee is actually receiving~~
50 ~~physical rehabilitation.~~

51 ~~6. In every case where physical rehabilitation shall be ordered, the director of the~~
52 ~~division may, in his discretion, order the employer or insurer to furnish transportation to the~~
53 ~~injured employee to such rehabilitation facility or institution.~~

54 ~~7.] As used in this section, the term "physical rehabilitation" shall be deemed to include~~
55 ~~medical, surgical and hospital treatment in the same respect as required to be furnished under~~
56 ~~subsection 1 of section 287.140.~~

57 [8:] 6. An appeal from any order of the division of workers' compensation hereby
58 created to the appellate court may be taken and governed in all respects in the same manner as
59 appeals in workers' compensation cases generally under section 287.495.

**287.201. 1. Any dispute regarding the modification, delay, or denial of health care
2 service or aid received by an employee pursuant to this chapter shall be resolved through
3 a system of binding independent medical review as described in this section. The director
4 shall procure the services of up to three independent review organizations that meet all of
5 the requirements in this section for the purpose of resolving any dispute regarding the
6 modification, delay, or denial of health care service or aid received by an employee. Such
7 services shall be procured by competitive bid consistent with chapter 34.**

8 **2. (1) An independent review organization whose services are procured pursuant**
9 **to subsection 1 of this section shall employ, contract, or otherwise engage the services of**
10 **health care professionals to review the employer's or the agent of the employer's proposed**
11 **medical benefit and the employee's alternative treatment plan. Such health care**
12 **professional assigned to review the dispute by the independent review organization shall**
13 **hold a nonrestricted license to practice in a state of the United States and in the same or**
14 **similar specialty as typically manages the medical condition, procedure, or treatment under**
15 **review.**

16 **(2) An independent review organization, any experts it designates to conduct a**
17 **review, or any officer, director, or employee of the independent review organization, shall**
18 **not own or control, be a subsidiary of, or in any way be owned or controlled by, or exercise**
19 **control with:**

20 **(a) A health carrier;**

21 **(b) A national, state, or local trade association of health carriers; or**

22 **(c) A national, state, or local trade association of health care providers.**

23 **(3) An independent review organization shall not have a material, professional,**
24 **familial, or financial conflict of interest, as determined by the director, with any of the**
25 **following:**

26 **(a) The health carrier that is the subject of the independent medical review;**

27 (b) The employee whose treatment is the subject of the independent medical review
28 or the employee's authorized representative;

29 (c) Any officer, director, or management employee of the health carrier that is the
30 subject of the independent medical review;

31 (d) The health care provider, the health care provider's medical group, or the
32 independent practice association recommending the health care service or treatment that
33 is the subject of the independent medical review;

34 (e) The facility at which the recommended health care service or aid would be
35 provided, if known; or

36 (f) The developer or manufacturer of the principal drug, device, procedure, or
37 other therapy being recommended for the employee whose treatment is the subject of the
38 independent medical review.

39 (4) Any health care professional employed, contracted, or otherwise engaged by an
40 independent review organization shall be knowledgeable in the treatment of the employee's
41 medical condition, knowledgeable about the proposed treatment, and familiar with the
42 guidelines and protocols in the area of treatment under review.

43 3. Within twenty calendar days of the receipt of the request for independent
44 medical review and all medical records relating to the dispute that are in the possession of
45 the director, an independent review organization shall submit to the director its opinion
46 of the issues reviewed. If the independent review organization requires additional time to
47 complete its review, it may request in writing from the director an extension in the time to
48 process the review, not to exceed five calendar days. Such a request shall include the
49 reasons for the request and a specific time at which the review is expected to be complete.

50 4. (1) Any decision as to a dispute filed pursuant to this section shall be based upon
51 a review of the written record before the reviewing entity. The director shall certify the
52 decision as binding within ten calendar days unless the director finds cause to require a
53 further review of the dispute by an independent review organization.

54 (2) The director may, upon his or her own initiative or at the request of the
55 employer or employee party to the decision, order further review by the independent
56 review organization if the director finds the independent review organization's decision
57 was:

58 (a) The result of a plainly erroneous express or implied finding of fact and not a
59 matter that is subject to expert opinion;

60 (b) Made without the ability to consider any document, test, or image that was
61 available at the time of the review but not provided as part of the review file to the
62 independent review organization;

- 63 (c) The result of fraud; or
64 (d) The result of a violation of subdivision (2) or (3) of subsection 2 of this section.
- 65 5. (1) Within ten calendar days of the director certifying the independent review
66 organization's decision, the employer or employee party to the decision may request review
67 by an administrative law judge if either party has evidence that the independent review
68 organization's decision was:
- 69 (a) The result of a plainly erroneous express or implied finding of fact and not a
70 matter that is subject to expert opinion;
- 71 (b) Made without the ability to consider any document, test, or image that was
72 available at the time of review but not provided as part of the review file to the
73 independent review organization;
- 74 (c) The result of fraud; or
75 (d) The result of a violation of subdivision (2) or (3) of subsection 2 of this section.
- 76 (2) An administrative law judge shall have twenty-one calendar days to review the
77 decision submitted to it pursuant to this subsection.
- 78 (3) An administrative law judge shall remit a decision back to the director for a
79 new independent medical review if it finds that the decision of the independent medical
80 organization was:
- 81 (a) The result of a plainly erroneous express or implied finding of fact and not a
82 matter that is subject to expert opinion;
- 83 (b) Made without the ability to consider any document, test, or image that was
84 available at the time of the review but not provided as part of the review file to the
85 independent review organization;
- 86 (c) The result of fraud; or
87 (d) The result of a violation of subdivision (2) or (3) of subsection 2 of this section.
- 88 (4) If the administrative law judge determines that the decision of the independent
89 review organization did not violate the standards described in subdivision (3) of this
90 subsection, the independent review organization's decision shall be binding.
- 91 6. For the purposes of this section, the following terms mean:
- 92 (1) "Director", the director of the division of workers' compensation;
- 93 (2) "Dispute", a written complaint submitted by or on behalf of an employee
94 regarding the modification, delay, or denial of quality of health care services pursuant to
95 a medical review decision;
- 96 (3) "Health carrier", as defined in section 376.1350;
- 97 (4) "Medically necessary" and "medical necessity", medical

98 treatment that is reasonably required to cure or relieve the injured employee of the effects
99 of his or her injury;

100 (5) "Medical review decision", a decision to modify, delay, or deny, based in whole
101 or in part on medical necessity to cure or relieve, a treatment recommendation or
102 recommendations by a physician prior to, retrospectively, or concurrent with the provision
103 of medical treatment.

287.800. 1. Administrative law judges, associate administrative law judges, legal
2 advisors, the labor and industrial relations commission, the division of workers' compensation,
3 any independent review organization selected pursuant to section 287.201, and any
4 reviewing courts shall construe the provisions of this chapter strictly.

5 2. Administrative law judges, associate administrative law judges, legal advisors, the
6 labor and industrial relations commission, any independent review organization selected
7 pursuant to section 287.201, and the division of workers' compensation shall weigh the
8 evidence impartially without giving the benefit of the doubt to any party when weighing evidence
9 and resolving factual conflicts.

287.801. Beginning January 1, 2006, only administrative law judges, the commission,
2 and the appellate courts of this state shall have the power to review claims filed under this
3 chapter, except as otherwise provided in section 287.201.

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