

SECOND REGULAR SESSION

# SENATE BILL NO. 601

99TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR SCHATZ.

Pre-filed December 1, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4669S.011

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## AN ACT

To repeal section 287.140, RSMo, and to enact in lieu thereof two new sections relating to fee schedules for purposes of covering injuries compensable under workers' compensation laws, with an existing penalty provision.

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

Section A. Section 287.140, RSMo, is repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 287.140 and 287.142, to read as  
3 follows:

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

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

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

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

37         3. [All fees and charges under this chapter shall be fair and reasonable,  
38 shall be subject to regulation by the division or the commission, or the board of  
39 rehabilitation in rehabilitation cases.] A health care provider shall not charge a  
40 fee for treatment and care which is governed by the provisions of this chapter  
41 greater than [the usual and customary fee the provider receives for the same  
42 treatment or service when the payor for such treatment or service is a private  
43 individual or a private health insurance carrier] **that set forth in the medical**  
44 **fee schedule promulgated by the division under section 287.142.** The  
45 division or the commission, or the board of rehabilitation in rehabilitation cases,  
46 shall also have jurisdiction to hear and determine all disputes as to such charges.  
47 A health care provider is bound by the determination upon the reasonableness of  
48 health care bills.

49         4. The division shall, by regulation, establish methods to resolve disputes  
50 concerning the reasonableness of medical charges, services, or aids. This  
51 regulation shall govern resolution of disputes between employers and medical  
52 providers over fees charged, whether or not paid, and shall be in lieu of any other  
53 administrative procedure under this chapter. The employee shall not be a party

54 to a dispute over medical charges, nor shall the employee's recovery in any way  
55 be jeopardized because of such dispute. Any application for payment of additional  
56 reimbursement, as such term is used in 8 CSR 50-2.030, as amended, shall be  
57 filed not later than:

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

61 (2) One year from the date the first notice of dispute of the medical charge  
62 was received by the health care provider if such services were rendered after July  
63 1, 2013.

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

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

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

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

82 8. The employer may be required by the division or the commission to  
83 furnish an injured employee with artificial legs, arms, hands, surgical orthopedic  
84 joints, or eyes, or braces, as needed, for life whenever the division or the  
85 commission shall find that the injured employee may be partially or wholly  
86 relieved of the effects of a permanent injury by the use thereof. The director of  
87 the division shall establish a procedure whereby a claim for compensation may  
88 be reactivated after settlement of such claim is completed. The claim shall be  
89 reactivated only after the claimant can show good cause for the reactivation of

90 this claim and the claim shall be made only for the payment of medical  
91 procedures involving life-threatening surgical procedures or if the claimant  
92 requires the use of a new, or the modification, alteration or exchange of an  
93 existing, prosthetic device. For the purpose of this subsection, "life threatening"  
94 shall mean a situation or condition which, if not treated immediately, will likely  
95 result in the death of the injured worker.

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

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

104 11. Any physician or other health care provider who orders, directs or  
105 refers a patient for treatment, testing, therapy or rehabilitation at any institution  
106 or facility shall, at or prior to the time of the referral, disclose in writing if such  
107 health care provider, any of his partners or his employer has a financial interest  
108 in the institution or facility to which the patient is being referred, to the  
109 following:

110 (1) The patient;

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

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

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

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

116 13. (1) No hospital, physician or other health care provider, other than  
117 a hospital, physician or health care provider selected by the employee at his own  
118 expense pursuant to subsection 1 of this section, shall bill or attempt to collect  
119 any fee or any portion of a fee for services rendered to an employee due to a  
120 work-related injury or report to any credit reporting agency any failure of the  
121 employee to make such payment, when an injury covered by this chapter has  
122 occurred and such hospital, physician or health care provider has received actual  
123 notice given in writing by the employee, the employer or the employer's  
124 insurer. Actual notice shall be deemed received by the hospital, physician or  
125 health care provider five days after mailing by certified mail by the employer or

126 insurer to the hospital, physician or health care provider.

127 (2) The notice shall include:

128 (a) The name of the employer;

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

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

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

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

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

143 (4) If a hospital, physician or other health care provider or a debt collector  
144 on behalf of such hospital, physician or other health care provider pursues any  
145 action to collect from an employee after such notice is properly given, the  
146 employee shall have a cause of action against the hospital, physician or other  
147 health care provider for actual damages sustained plus up to one thousand  
148 dollars in additional damages, costs and reasonable attorney's fees.

149 (5) If an employer or insurer fails to make payment for authorized  
150 services provided to the employee by a hospital, physician or other health care  
151 provider pursuant to this chapter, the hospital, physician or other health care  
152 provider may proceed pursuant to subsection 4 of this section with a dispute  
153 against the employer or insurer for any fees or other charges for services  
154 provided.

155 (6) A hospital, physician or other health care provider whose services have  
156 been authorized in advance by the employer or insurer may give notice to the  
157 division of any claim for fees or other charges for services provided for a  
158 work-related injury that is covered by this chapter, with copies of the notice to  
159 the employee, employer and the employer's insurer. Where such notice has been  
160 filed, the administrative law judge may order direct payment from the proceeds  
161 of any settlement or award to the hospital, physician or other health care

162 provider for such fees as are determined by the division. The notice shall be on  
163 a form prescribed by the division.

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

287.142. 1. (1) **The division shall promulgate rules for the  
2 purpose of establishing a medical fee schedule specifying the maximum  
3 allowable amounts to reimburse for any treatment and care rendered  
4 to employees under this chapter. Any rule or portion of a rule, as that  
5 term is defined in section 536.010 that is created under the authority  
6 delegated in this section shall become effective only if it complies with  
7 and is subject to all of the provisions of chapter 536, and, if applicable,  
8 section 536.028. This section and chapter 536 are nonseverable and if  
9 any of the powers vested with the general assembly pursuant to chapter  
10 536, to review, to delay the effective date, or to disapprove and annul  
11 a rule are subsequently held unconstitutional, then the grant of  
12 rulemaking authority and any rule proposed or adopted after August  
13 28, 2018, shall be invalid and void.**

14 (2) **The medical fee schedule shall promote health care cost  
15 containment and efficiency, and shall be sufficient to ensure  
16 availability of such reasonably necessary treatment, care, and  
17 attendance to each injured employee to cure and relieve the employee  
18 from the effects of the injury.**

19 (3) **The medical fee schedule shall be increased or decreased on  
20 January 1, 2020, and on January first of each successive year, by the  
21 increase or decrease in the cost of living. On September 30, 2019, and  
22 on each September thirtieth of each successive year, the director shall  
23 measure the increase or decrease in the cost of living by the percentage  
24 increase or decrease as of the preceding July over the level as of July  
25 of the immediately preceding year of the Consumer Price Index for  
26 Urban Wage Earners and Clerical Workers (CPI-W) or successor index  
27 as published by the U.S. Department of Labor or its successor agency,  
28 with the amount of the increase or decrease rounded to the nearest  
29 dollar.**

30 2. **The division shall produce the initial medical fee schedule no**

31 later than December 1, 2018. The initial medical fee schedule shall take  
32 effect on January 1, 2019.

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