

SECOND REGULAR SESSION

SENATE BILL NO. 897

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CIERPIOT.

Read 1st time January 16, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4884S.011

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, with existing penalty provisions.

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
2 repealed and five new sections enacted in lieu thereof, to be known as sections
3 287.140, 287.141, 287.201, 287.800, and 287.801, to read as 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. The division or the commission,
44 or the board of rehabilitation in rehabilitation cases, shall also have jurisdiction
45 to hear and determine all disputes as to such charges. A health care provider is
46 bound by the determination upon the reasonableness of health care bills.

47 4. The division shall, by regulation, establish methods to resolve disputes
48 concerning the reasonableness of medical charges[, services, or aids]. This
49 regulation shall govern resolution of disputes between employers and medical
50 providers over fees charged, whether or not paid, and shall be in lieu of any other
51 administrative procedure under this chapter. The employee shall not be a party
52 to a dispute over medical charges, nor shall the employee's recovery in any way
53 be jeopardized because of such dispute. Any application for payment of additional

54 reimbursement, as such term is used in 8 CSR 50- 2.030, as amended, shall be
55 filed not later than:

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

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

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

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

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

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

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

90 requires the use of a new, or the modification, alteration or exchange of an
91 existing, prosthetic device. For the purpose of this subsection, "life threatening"
92 shall mean a situation or condition which, if not treated immediately, will likely
93 result in the death of the injured worker.

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

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

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

108 (1) The patient;

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

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

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

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

114 13. (1) No hospital, physician or other health care provider, other than
115 a hospital, physician or health care provider selected by the employee at his own
116 expense pursuant to subsection 1 of this section, shall bill or attempt to collect
117 any fee or any portion of a fee for services rendered to an employee due to a
118 work-related injury or report to any credit reporting agency any failure of the
119 employee to make such payment, when an injury covered by this chapter has
120 occurred and such hospital, physician or health care provider has received actual
121 notice given in writing by the employee, the employer or the employer's
122 insurer. Actual notice shall be deemed received by the hospital, physician or
123 health care provider five days after mailing by certified mail by the employer or
124 insurer to the hospital, physician or health care provider.

125 (2) The notice shall include:

- 126 (a) The name of the employer;
127 (b) The name of the insurer, if known;
128 (c) The name of the employee receiving the services;
129 (d) The general nature of the injury, if known; and
130 (e) Where a claim has been filed, the claim number, if known.

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

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

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

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

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

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

9 2. The division of workers' compensation shall continuously study the
10 problems of physical rehabilitation and shall investigate all rehabilitation
11 facilities, both private and public, and upon such investigation shall approve as
12 qualified all such facilities, institutions and physicians as are capable of
13 rendering competent physical rehabilitation service for seriously injured
14 industrial workers. Rehabilitation facilities shall include medical, surgical,
15 hospital and physical restoration services. No facility or institution shall be
16 considered as qualified unless it is equipped to provide physical rehabilitation
17 services for persons suffering either from some specialized type of disability or
18 general type of disability within the field of industrial injury, and unless such
19 facility or institution is operated under the supervision of a physician qualified
20 to render physical rehabilitation service and is staffed with trained and qualified
21 personnel and has received a certificate of qualification from the division of
22 workers' compensation. No physician shall be considered as qualified unless he
23 has had the experience prescribed by the division.

24 3. In any case of serious injury involving disability following the period
25 of rendition of medical aid as provided by subsection 1 of section 287.140, where
26 physical rehabilitation is necessary if the employer or insurer shall offer such
27 physical rehabilitation to the injured employee and such physical rehabilitation
28 is accepted by the employee, then in such case the director of the division of
29 workers' compensation shall be immediately notified thereof and thereupon enter
30 his approval to such effect, and the director of the division of workers'
31 compensation shall requisition the payment of forty dollars per week benefit from

32 the second injury fund in the state treasury to be paid to the employee while he
33 is actually being rehabilitated, and shall immediately notify the state treasurer
34 thereof by furnishing him with a copy of his order. But in no case shall the
35 period of physical rehabilitation extend beyond twenty weeks except in unusual
36 cases and then only by a special order of the division of workers' compensation
37 for such additional period as the division may authorize.

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

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

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

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

67 [8.] 6. An appeal from any order of the division of workers' compensation

68 hereby created to the appellate court may be taken and governed in all respects
69 in the same manner as appeals in workers' compensation cases generally under
70 section 287.495.

287.201. 1. Any dispute regarding the modification, delay, or
2 denial of health care service or aid received by an employee pursuant
3 to this chapter shall be resolved through a system of binding
4 independent medical review as described in this section. The director
5 shall procure the services of up to three independent review
6 organizations that meet all of the requirements in this section for the
7 purpose of resolving any dispute regarding the modification, delay, or
8 denial of health care service or aid received by an employee. Such
9 services shall be procured by competitive bid consistent with chapter
10 34.

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

21 (2) An independent review organization, any experts it
22 designates to conduct a review, or any officer, director, or employee of
23 the independent review organization, shall not own or control, be a
24 subsidiary of, or in any way be owned or controlled by, or exercise
25 control with:

26 (a) A health carrier;

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

28 or

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

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

34 (a) The health carrier that is the subject of the independent

35 **medical review;**

36 **(b) The employee whose treatment is the subject of the**
37 **independent medical review or the employee's authorized**
38 **representative;**

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

41 **(d) The health care provider, the health care provider's medical**
42 **group, or the independent practice association recommending the**
43 **health care service or treatment that is the subject of the independent**
44 **medical review;**

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

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

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

55 **3. Within twenty calendar days of the receipt of the request for**
56 **independent medical review and all medical records relating to the**
57 **dispute that are in the possession of the director, an independent**
58 **review organization shall submit to the director its opinion of the**
59 **issues reviewed. If the independent review organization requires**
60 **additional time to complete its review, it may request in writing from**
61 **the director an extension in the time to process the review, not to**
62 **exceed five calendar days. Such a request shall include the reasons for**
63 **the request and a specific time at which the review is expected to be**
64 **complete.**

65 **4. (1) Any decision as to a dispute filed pursuant to this section**
66 **shall be based upon a review of the written record before the reviewing**
67 **entity. The director shall certify the decision as binding within ten**
68 **calendar days unless the director finds cause to require a further**
69 **review of the dispute by an independent review organization.**

70 **(2) The director may, upon his or her own initiative or at the**
71 **request of the employer or employee party to the decision, order**

72 further review by the independent review organization if the director
73 finds the independent review organization's decision was:

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

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

79 (c) The result of fraud; or

80 (d) The result of a violation of subdivision (2) or (3) of subsection
81 2 of this section.

82 5. (1) Within ten calendar days of the director certifying the
83 independent review organization's decision, the employer or employee
84 party to the decision may request review by an administrative law
85 judge if either party has evidence that the independent review
86 organization's decision was:

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

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

92 (c) The result of fraud; or

93 (d) The result of a violation of subdivision (2) or (3) of subsection
94 2 of this section.

95 (2) An administrative law judge shall have twenty-one calendar
96 days to review the decision submitted to it pursuant to this subsection.

97 (3) An administrative law judge shall remit a decision back to
98 the director for a new independent medical review if it finds that the
99 decision of the independent medical organization was:

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

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

105 (c) The result of fraud; or

106 (d) The result of a violation of subdivision (2) or (3) of subsection
107 2 of this section.

108 (4) If the administrative law judge determines that the decision

109 of the independent review organization did not violate the standards
110 described in subdivision (3) of this subsection, the independent review
111 organization's decision shall be binding.

112 6. For the purposes of this section, the following terms mean:

113 (1) "Director", the director of the division of workers'
114 compensation;

115 (2) "Dispute", a written complaint submitted by or on behalf of an
116 employee regarding the modification, delay, or denial of quality of
117 health care services pursuant to a medical review decision;

118 (3) "Health carrier", as defined in section 376.1350;

119 (4) "Medically necessary" and "medical necessity", medical
120 treatment that is reasonably required to cure or relieve the injured
121 employee of the effects of his or her injury;

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

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

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

287.801. Beginning January 1, 2006, only administrative law judges, the
2 commission, and the appellate courts of this state shall have the power to review
3 claims filed under this chapter, **except as otherwise provided in section**
4 **287.201**.