

**Written Only Proponent Testimony on SB 430
Senate Committee on Commerce &
House Commerce, Labor & Economic Development Committee
Jeff King, Workers Compensation Director, KDOL
Thursday, February 1, 2024**

Madame Chairwoman, Mr. Chairman & Committee Members,

I am Jeff King, the Workers Compensation Director for the Kansas Department of Labor. Please accept this written proponent testimony for SB 430. I want to begin by thanking the stakeholders and subject matter experts that came together to craft this important update to the Kansas Workers Compensation Act. Without countless hours volunteered and a spirit of collaboration and compromise, we would not be before you today. The agency stands in full support of the changes agreed to by all stakeholders, and we ask that the legislature support this working group by keeping the bill clean, without any amendments to the carefully negotiated legislation before you.

I want to provide you with a brief overview of the changes within this legislation.

44-501 was changed to allow a 50% offset for SS retirement benefits instead of 100%. This is to acknowledge that workers invest 50% of their earned wages into SS retirement, and they should not then have it counted against them if they become injured. This offset will not apply to temporary total or temporary partial disability benefits.

44-508(u) made a change to reference the 6th edition of AMA Guides to correct an oversight in language from legislation passed in 2013 that made the 6th edition effective as of January 1, 2015.

44-508(x) adds a definition for registered mail to include certified mail, electronic mail with proof of delivery or fax with proof of receipt.

44-508(y) adds a definition for a 'complete medical report' as the term is used in 44-519.

44-510b will change the maximum death benefit from \$300K to \$500K. It also changes how long a child of the deceased worker could get benefits. The cap shall not apply to children through 23 years of age, if such child is a student enrolled full-time in an accredited institution of higher education or vocational education. The maximum death benefit will be subject to a COLA increase tied to the average percentage (over 5 years and not beginning until 2027) increase in the State's average weekly wage.

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44-510c added a threshold requirement that an employee show they suffered a 10% or more general bodily functional impairment from the work injury to be eligible to receive permanent total disability, or an overall general bodily functional impairment of 15% or greater.

44-510d language was changed to mirror the language in 44-510e indicating functional impairment be established by competent medical evidence and based on the sixth edition of the American Medical Association (AMA) guides to the evaluation of permanent impairment. This is consistent with a recent Kansas Supreme Court decision finding that the requirement for determining scheduled injury impairment should be the same as general bodily impairment of 44-510e.

44-510e was changed to delete reference to the fourth edition of the AMA guides which were used prior to 2015, and in addition, specified that the threshold required by the employee to obtain a work disability, be equal to or exceed 7.5% functional impairment solely due to the injury.

44-510f changed caps for PTD (permanent total disability) from \$155,000 to \$400,000. It also changed caps for TT (temporary total) & TPD (temporary partial) from \$130,000 to \$225,000 and PPD (perm partial) or TPD (temp partial) from \$130,000 to \$225,000. PPD where functional only is awarded is changing from \$75,000 to \$100,000. These caps will be subject to a COLA increase tied to the average percentage increase in the State's average weekly wage. As with 44-510b, it is based on an average percentage increase in the state's average weekly wage over a 5-year period and will not go into effect until 2027.

44-510h changes the employee's burden of proof to be eligible for future medical benefits. If claimant had an invasive or surgical procedure, or one is anticipated, the employee's burden is more probably true than not. If there was no invasive or surgical procedure, the employee's burden to prove the need for future medical is by clear and convincing evidence. This will allow employers to fully resolve less serious claims. In addition, the amount of medical an employee may use on an unauthorized physician increases from \$500 to \$800.

44-510k states that post award medical can only proceed under this section, not under 44-534a, the preliminary hearing statute. Application for post-award medical shall, with specificity, identify medical benefits being sought. If the employer/carrier provide the benefits requested within 30 days of receipt of application, it shall be presumed that no cost or attorney fees shall be awarded. This presumption may be overcome by clear and convincing evidence.

44-511 deals with determining an employee's average weekly wage. Section (a)(1) changes the term "money" so that it also includes sick, vacation or other paid time off. Section (b)(2) provides that if an employee works less than the expected weekly schedule during the first week of employment, the first week shall not be included in the calculation.

44-512 states that the method of payment may include EFT (electronic fund transfer) or use of a payment card if agreed to by the parties. If the injured worker is represented and EFT or debit card is used, the employer shall also notify the worker's attorney each time a payment is made.

44-515 was changed to provide that expenses for medical examinations shall include reimbursement of the reasonable expenses for overnight accommodations as needed to avoid undue hardship on the employee and \$30/day for meals for each full day the employee is required to be away. This had been \$15/day for board and lodging since 1977.

44-516 states that only one neutral IME (independent medical exam) may be ordered by the administrative law judge prior to the commencement of a PHSC (prehearing settlement conference) unless the parties agree to additional IMEs. The report shall be admitted into evidence. The judge's appointed neutral physician shall only address the injured workers diagnosis, treatment recommendations and temporary restrictions. The neutral physician shall not address permanent restrictions, impairment, permanent partial disability, job task loss, wage loss, or permanent total disability status.

44-519 provides that upon notice from the division of workers compensation scheduling a preliminary hearing, the parties shall arrange to exchange medical records. The failure of a party to comply may be grounds for the administrative law judge to grant a party's request for additional time to present evidence. The statute also establishes a procedure for testimony of a treating or examining healthcare provider's report to be submitted into evidence without foundation testimony if certain procedures are followed. Nothing prevents the parties from taking depositions of the healthcare providers or agreeing to admit medical records or reports by consent.

44-520 changes the requirement to give notice of injury to 30 calendar days from the date of the accident or injury by repetitive trauma, or if employee is no longer employed, 20 days from the date of last employment with the employer.

44-523 removes the requirement that a motion to extend time to pursue a claim be filed before the 3-year time limitation has run.

44-525 states that no award shall include the right to future medical unless the claimant establishes the requirements in subsection (e) of 44-510.

44-526 made a terminology change from 'workman' to 'claimant'.

44-531 allows the parties to resolve a claim by a settlement award on written stipulation if the claimant is over 18 years of age and both parties are represented by attorneys. The form will be

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established by the director of the division of workers compensation. The form may be submitted to and approved or rejected by the administrative law judge assigned to the case.

44-534a provides a requirement for the exchange of medical records, without charge, by the parties or their attorneys at least 20 days prior to the date of the preliminary hearing. Failure to comply may result in additional time for a party to present evidence. This section also clarifies that a preliminary hearing may no longer be used to seek post-award medical.

44-552 allows for hearings to be recorded and transcribed. This is necessary due to court reporters being in short supply.

44-566a allows the workers compensation fund the right to implead a principal employer as a party to the proceedings.

And lastly, the Kansas National Guard has requested to come under the Kansas Workers Compensation Act for the purpose of addressing guard members who are injured while activated by the Governor of Kansas. The agency and stakeholders have no issue with the inclusion of this language.

Madame Chairwoman, Mr., Chairman, and committee members, I thank the committee for your willingness to work with our agency and would like to reiterate our desire to pass this carefully crafted and agreed upon language by the stakeholders in its current form, without any amendments. I am happy to stand for questions at the appropriate time.