

HOUSE BILL No. 2814

By Committee on Business, Commerce and Labor

2-8

AN ACT concerning health care providers; relating to compensation and peer review thereof; amending K.S.A. 44-510h and K.S.A. 2001 Supp. 44-508 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2001 Supp. 44-508 is hereby amended to read as follows: 44-508. As used in the workers compensation act:

(a) "Employer" includes: (1) Any person or body of persons, corporate or unincorporate, and the legal representative of a deceased employer or the receiver or trustee of a person, corporation, association or partnership; (2) the state or any department, agency or authority of the state, any city, county, school district or other political subdivision or municipality or public corporation and any instrumentality thereof; and (3) for the purposes of community service work, the entity for which the community service work is being performed and the governmental agency which assigned the community service work, if any, if either such entity or such governmental agency has filed a written statement of election with the director to accept the provisions under the workers compensation act for persons performing community service work and in such case such entity and such governmental agency shall be deemed to be the joint employer of the person performing the community service work and both shall have the rights, liabilities and immunities provided under the workers compensation act for an employer with regard to the community service work, except that the liability for providing benefits shall be imposed only on the party which filed such election with the director, or on both if both parties have filed such election with the director; for purposes of community service work, "governmental agency" shall not include any court or any officer or employee thereof and any case where there is deemed to be a "joint employer" shall not be construed to be a case of dual or multiple employment.

(b) "Workman" or "employee" or "worker" means any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer. Such terms shall include but not be limited to: Executive officers of corporations; professional athletes; persons serving on a volunteer basis as duly authorized law enforcement

1 officers, attendants, as defined in subsection (d) of K.S.A. 65-6112 and
2 amendments thereto, drivers of ambulances as defined in subsection (b)
3 of K.S.A. 65-6112, *and amendments thereto*, firefighters, but only to the
4 extent and during such periods as they are so serving in such capacities;
5 persons employed by educational, religious and charitable organizations,
6 but only to the extent and during the periods that they are paid wages by
7 such organizations; persons in the service of the state, or any department,
8 agency or authority of the state, any city, school district, or other political
9 subdivision or municipality or public corporation and any instrumentality
10 thereof, under any contract of service, express or implied, and every of-
11 ficial or officer thereof, whether elected or appointed, while performing
12 official duties; persons in the service of the state as volunteer members
13 of the Kansas department of civil air patrol, but only to the extent and
14 during such periods as they are officially engaged in the performance of
15 functions specified in K.S.A. 48-3302 and amendments thereto; volun-
16 teers in any employment, if the employer has filed an election to extend
17 coverage to such volunteers; minors, whether such minors are legally or
18 illegally employed; and persons performing community service work, but
19 only to the extent and during such periods as they are performing com-
20 munity service work and if an election has been filed an election to extend
21 coverage to such persons. Any reference to an employee who has been
22 injured shall, where the employee is dead, include a reference to the
23 employee's dependents, to the employee's legal representatives, or, if the
24 employee is a minor or an incapacitated person, to the employee's guard-
25 ian or conservator. Unless there is a valid election in effect which has
26 been filed as provided in K.S.A. 44-542a and amendments thereto, such
27 terms shall not include individual employers, limited or general partners
28 or self-employed persons.

29 (c) (1) "Dependents" means such members of the employee's family
30 as were wholly or in part dependent upon the employee at the time of
31 the accident.

32 (2) "Members of a family" means only surviving legal spouse and
33 children; or if no surviving legal spouse or children, then parents or grand-
34 parents; or if no parents or grandparents, then grandchildren; or if no
35 grandchildren, then brothers and sisters. In the meaning of this section,
36 parents include stepparents, children include stepchildren, grandchildren
37 include stepgrandchildren, brothers and sisters include stepbrothers and
38 stepsisters, and children and parents include that relation by legal adop-
39 tion. In the meaning of this section, a surviving spouse shall not be re-
40 garded as a dependent of a deceased employee or as a member of the
41 family, if the surviving spouse shall have for more than six months willfully
42 or voluntarily deserted or abandoned the employee prior to the date of
43 the employee's death.

1 (3) “Wholly dependent child or children” means:

2 (A) A birth child or adopted child of the employee except such a child
3 whose relationship to the employee has been severed by adoption;

4 (B) a stepchild of the employee who lives in the employee’s
5 household;

6 (C) any other child who is actually dependent in whole or in part on
7 the employee and who is related to the employee by marriage or consan-
8 guinity; or

9 (D) any child as defined in ~~subsections~~ *subsection* (3)(A), (3)(B) or
10 (3)(C) who is less than 23 years of age and who is not physically or men-
11 tally capable of earning wages in any type of substantial and gainful em-
12 ployment or who is a full-time student attending an accredited institution
13 of higher education or vocational education.

14 (d) “Accident” means an undesigned, sudden and unexpected event
15 or events, usually of an afflictive or unfortunate nature and often, but not
16 necessarily, accompanied by a manifestation of force. The elements of an
17 accident, as stated herein, are not to be construed in a strict and literal
18 sense, but in a manner designed to effectuate the purpose of the workers
19 compensation act that the employer bear the expense of accidental injury
20 to a worker caused by the employment.

21 (e) “Personal injury” and “injury” mean any lesion or change in the
22 physical structure of the body, causing damage or harm thereto, so that
23 it gives way under the stress of the worker’s usual labor. It is not essential
24 that such lesion or change be of such character as to present external or
25 visible signs of its existence. An injury shall not be deemed to have been
26 directly caused by the employment where it is shown that the employee
27 suffers disability as a result of the natural aging process or by the normal
28 activities of day-to-day living.

29 (f) The words “arising out of and in the course of employment” as
30 used in the workers compensation act shall not be construed to include
31 injuries to the employee occurring while the employee is on the way to
32 assume the duties of employment or after leaving such duties, the prox-
33 imate cause of which injury is not the employer’s negligence. An em-
34 ployee shall not be construed as being on the way to assume the duties
35 of employment or having left such duties at a time when the worker is
36 on the premises of the employer or on the only available route to or from
37 work which is a route involving a special risk or hazard and which is a
38 route not used by the public except in dealings with the employer. An
39 employee shall not be construed as being on the way to assume the duties
40 of employment, if the employee is a provider of emergency services re-
41 sponding to an emergency.

42 The words, “arising out of and in the course of employment” as used
43 in the workers compensation act shall not be construed to include injuries

1 to employees while engaged in recreational or social events under cir-
2 cumstances where the employee was under no duty to attend and where
3 the injury did not result from the performance of tasks related to the
4 employee's normal job duties or as specifically instructed to be performed
5 by the employer.

6 (g) "Burden of proof" means the burden of a party to persuade the
7 trier of facts by a preponderance of the credible evidence that such party's
8 position on an issue is more probably true than not true on the basis of
9 the whole record.

10 (h) "Director" means the director of workers compensation as pro-
11 vided for in K.S.A. 75-5708 and amendments thereto.

12 (i) "Health care provider" means any person licensed, by the proper
13 licensing authority of this state, another state or the District of Columbia,
14 to practice medicine and surgery, osteopathy, chiropractic, dentistry, op-
15 tometry, podiatry, audiology or psychology.

16 (j) "Secretary" means the secretary of human resources.

17 (k) "Construction design professional" means any person who is an
18 architect, professional engineer, landscape architect or land surveyor who
19 has been issued a license by the state board of technical professions to
20 practice such technical profession in Kansas or any corporation organized
21 to render professional services through the practice of one or more of
22 such technical professions in Kansas under the professional corporation
23 law of Kansas or any corporation issued a certificate of authorization un-
24 der K.S.A. 74-7036 and amendments thereto to practice one or more of
25 such technical professions in Kansas.

26 (l) "Community service work" means: (1) Public or community serv-
27 ice performed as a result of a contract of diversion or of assignment to a
28 community corrections program or conservation camp or suspension of
29 sentence or as a condition of probation or in lieu of a fine imposed by
30 court order; or (2) public or community service or other work performed
31 as a requirement for receipt of any kind of public assistance in accordance
32 with any program administered by the secretary of social and rehabilita-
33 tion services.

34 (m) "Utilization review" means the initial evaluation of appropriate-
35 ness in terms of both the level and the quality of health care and health
36 services provided a patient, based on accepted standards of the health
37 care profession involved. Such evaluation is accomplished by means of a
38 system which identifies the utilization of health care services above the
39 usual range of utilization for such services, which is based on accepted
40 standards of the health care profession involved, and which refers in-
41 stances of possible inappropriate utilization to the director for referral to
42 a peer review committee.

43 (n) "Peer review" means an evaluation by a peer review committee

1 of the appropriateness, quality and cost of health care and health services
2 provided a patient, which is based on accepted standards of the health
3 care profession involved and which is conducted in conjunction with util-
4 ization review.

5 (o) “Peer review committee” means a committee composed of health
6 care providers licensed *in Kansas* to practice the same health care pro-
7 fession as the health care provider who rendered the health care services
8 being reviewed, *who are actively engaged in the practice of such licensed*
9 *profession and who receive less than the 50% of their income from peer*
10 *review activities and witness fees.*

11 (p) “Group-funded self-insurance plan” includes each group-funded
12 workers compensation pool, which is authorized to operate in this state
13 under K.S.A. 44-581 through 44-592 and amendments thereto, each mu-
14 nicipal group-funded pool under the Kansas municipal group-funded pool
15 act which is covering liabilities under the workers compensation act, and
16 any other similar group-funded or pooled plan or arrangement that pro-
17 vides coverage for employer liabilities under the workers compensation
18 act and is authorized by law.

19 (q) On and after the effective date of this act, “workers compensation
20 board” or “board” means the workers compensation board established
21 under K.S.A. 44-555c and amendments thereto.

22 (r) “Usual charge” means the amount most commonly charged by
23 health care providers for the same or similar services.

24 (s) “Customary charge” means the usual rates or range of fees
25 charged by health care providers in a given locale or area.

26 Sec. 2. K.S.A. 44-510h is hereby amended to read as follows: 44-
27 510h. (a) It shall be the duty of the employer to provide the services of
28 a health care provider, and such medical, surgical and hospital treatment,
29 including nursing, medicines, medical and surgical supplies, ambulance,
30 crutches, apparatus and transportation to and from the home of the in-
31 jured employee to a place outside the community in which such employee
32 resides, and within such community if the director, in the director’s dis-
33 cretion, so orders, including transportation expenses computed in ac-
34 cordance with subsection (a) of K.S.A. 44-515 and amendments thereto,
35 as may be reasonably necessary to cure and relieve the employee from
36 the effects of the injury.

37 (b) (1) If the director finds, upon application of an injured employee,
38 that the services of the health care provider furnished as provided in
39 subsection (a) and rendered on behalf of the injured employee are not
40 satisfactory, the director may authorize the appointment of some other
41 health care provider. In any such case, the employer shall submit the
42 names of three health care providers who, if possible given the availability
43 of local health care providers, are not associated in practice together. The

1 injured employee may select one from the list who shall be the authorized
2 treating health care provider. If the injured employee is unable to obtain
3 satisfactory services from any of the health care providers submitted by
4 the employer under this paragraph, either party or both parties may re-
5 quest the director to select a treating health care provider.

6 (2) Without application or approval, an employee may consult a
7 health care provider of the employee's choice for the purpose of exami-
8 nation, diagnosis or treatment, but the employer shall only be liable for
9 the fees and charges of such health care provider up to a total amount of
10 ~~\$500~~ \$1,500. The amount allowed for such examination, diagnosis or
11 treatment shall not be used to obtain a functional impairment rating. Any
12 medical opinion obtained in violation of this prohibition shall not be ad-
13 missible in any claim proceedings under the workers compensation act.

14 (c) An injured employee whose injury or disability has been estab-
15 lished under the workers compensation act may rely, if done in good faith,
16 solely or partially on treatment by prayer or spiritual means in accordance
17 with the tenets of practice of a church or religious denomination without
18 suffering a loss of benefits subject to the following conditions:

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

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

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

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

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

31 (d) In any employment to which the workers compensation act ap-
32 plies, the employer shall be liable to each employee who is employed as
33 a duly authorized law enforcement officer, ambulance attendant, mobile
34 intensive care technician or firefighter, including any person who is serv-
35 ing on a volunteer basis in such capacity, for all reasonable and necessary
36 preventive medical care and treatment for hepatitis to which such em-
37 ployee is exposed under circumstances arising out of and in the course
38 of employment.

39 Sec. 3. K.S.A. 44-510h and K.S.A. 2001 Supp. 44-508 are hereby
40 repealed.

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

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