

Senate Bill No. 522

(By Senator Yost)

[Introduced February 10, 2014; referred to the Committee on the
Judiciary.]

A BILL to amend and reenact §23-4-3 of the Code of West Virginia,
1931, as amended, relating generally to workers' compensation
benefits; providing quick and efficient delivery of medical
benefits to injured workers; providing for medical treatment
that is reasonably and causally related to the injury;
ensuring that treating doctor's opinion is not superseded by
guidelines; and allowing for diagnosis updates based upon
diagnostic testing that is consistent with the legislative
intent set forth in this code.

Be it enacted by the Legislature of West Virginia:

That §23-4-3 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-3. Schedule of maximum disbursements for medical, surgical,

1 **dental and hospital treatment; legislative approval;**
2 **guidelines; preferred provider agreements; charges in**
3 **excess of scheduled amounts not to be made; required**
4 **disclosure of financial interest in sale or rental of**
5 **medically related mechanical appliances or devices;**
6 **promulgation of rules to enforce requirement;**
7 **consequences of failure to disclose; contract by**
8 **employer with hospital, physician, etc., prohibited;**
9 **criminal penalties for violation; payments to certain**
10 **providers prohibited; medical cost and care program;**
11 **payments; interlocutory orders.**

12 (a) The Workers' Compensation Commission, and effective upon
13 termination of the commission, the Insurance Commissioner, shall
14 establish and alter from time to time, as it determines
15 appropriate, a schedule of the maximum reasonable amounts to be
16 paid to health care providers, providers of rehabilitation
17 services, providers of durable medical and other goods and
18 providers of other supplies and medically related items or other
19 persons, firms or corporations for the rendering of treatment or
20 services to injured employees under this chapter. The commission
21 and effective upon termination of the commission, the Insurance
22 Commissioner, also, on the first day of each regular session and
23 also from time to time, as it may consider appropriate, shall

1 submit the schedule, with any changes thereto, to the Legislature.

2 The commission, and effective upon termination of the
3 commission, all private carriers and self-insured employers or
4 their agents, shall disburse and pay for personal injuries to the
5 employees who are entitled to the benefits under this chapter as
6 follows:

7 (1) (A) Sums for health care services, rehabilitation services,
8 durable medical and other goods and other supplies and medically
9 related items as may be reasonably ~~required~~ and causally related to
10 the occupational injury. The commission, and effective upon
11 termination of the commission, all private carriers and
12 self-insured employers or their agents, shall determine that which
13 is reasonably required within the meaning of this section in
14 accordance with the guidelines developed by the health care
15 advisory panel pursuant to section three-b of this article:
16 *Provided*, That nothing in this section shall prevent the
17 implementation of guidelines applicable to a particular type of
18 treatment or service or to a particular type of injury before
19 guidelines have been developed for other types of treatment or
20 services or injuries: *Provided, however*, That any guidelines for
21 utilization review which are developed in addition to the
22 guidelines provided for in section three-b of this article may be
23 used by the commission, and effective upon termination of the
24 commission, all private carriers and self-insured employers or

1 their agents, until superseded by guidelines developed by the
2 health care advisory panel pursuant to said section: Provided,
3 further, That any guidelines approved or authorized will not
4 supersede the treating physician's opinion regarding treatment of
5 a compensable occupational injury or disease. Each health care
6 provider who seeks to provide services or treatment which are not
7 within any guideline shall submit to the commission, and effective
8 upon termination of the commission, all private carriers,
9 self-insured employers and other payors, specific justification for
10 the need for the additional services in the particular case and the
11 commission shall have the justification reviewed by a health care
12 professional before authorizing the additional services. The
13 commission, and effective upon termination of the commission, all
14 private carriers, self-insured employers and other payors, may
15 enter into preferred provider and managed care agreements which
16 provides for fees and other payments which deviate from the
17 schedule set forth in this subsection.

18 (B) When the claim has been ruled compensable, any diagnostic
19 testing that is requested causally related to the injury shall be
20 approved. Any new diagnosis based upon the above diagnostic testing
21 is automatically granted, if any physician determines that the new
22 diagnosis is causally related to the compensable injury. If the
23 claim has been ruled compensable and diagnostic testing has been
24 denied and delays medical treatment to the claimant, and the

1 claimant appeals the denial, which is later reversed, then the
2 claims administrator shall pay treble damages to the claimant for
3 the delayed time period based upon his or her permanent partial
4 disability rating.

5 A diagnosis update after one year shall require a diagnostic
6 test, and any physician may determine that the diagnosis is
7 causally related to the injury and that the treatment is medically
8 reasonable and necessary.

9 (2) Payment for health care services, rehabilitation services,
10 durable medical and other goods and other supplies and medically
11 related items authorized under this subsection may be made to the
12 injured employee or to the person, firm or corporation who or which
13 has rendered the treatment or furnished health care services,
14 rehabilitation services, durable medical or other goods or other
15 supplies and items, or who has advanced payment for them, as the
16 commission, and effective upon termination of the commission, all
17 private carriers, self-insured employers and other payors,
18 considers proper, but no payments or disbursements shall be made or
19 awarded by the commission unless duly verified statements on forms
20 prescribed by the commission, and effective upon termination of the
21 commission, all private carriers, self-insured employers and other
22 payors, have been filed within six months after the rendering of
23 the treatment or the delivery of such goods, supplies or items or
24 within ninety days of a subsequent compensability ruling if a claim

1 is initially rejected: *Provided*, That no payment under this section
2 shall be made unless a verified statement shows no charge for or
3 with respect to the treatment or for or with respect to any of the
4 items specified in this subdivision has been or will be made
5 against the injured employee or any other person, firm or
6 corporation. When an employee covered under the provisions of this
7 chapter is injured, in the course of and as a result of his or her
8 employment and is accepted for health care services, rehabilitation
9 services, or the provision of durable medical or other goods or
10 other supplies or medically related items, the person, firm or
11 corporation rendering the treatment may not make any charge or
12 charges for the treatment or with respect to the treatment against
13 the injured employee or any other person, firm or corporation which
14 would result in a total charge for the treatment rendered in excess
15 of the maximum amount set forth therefor in the commission schedule
16 set forth in this subsection.

17 (3) Any pharmacist filling a prescription for medication for
18 a workers' compensation claimant shall dispense a generic brand of
19 the prescribed medication if a generic brand exists. If a generic
20 brand does not exist, the pharmacist may dispense the name brand.
21 In the event that a claimant wishes to receive the name brand
22 medication in lieu of the generic brand, the claimant may receive
23 the name brand medication but, in that event, the claimant is
24 personally liable for the difference in costs between the generic

1 brand medication and the brand name medication.

2 (4) In the event that a claimant elects to receive health care
3 services from a health care provider from outside of the State of
4 West Virginia and if that health care provider refuses to abide by
5 and accept as full payment the reimbursement made by the Workers'
6 Compensation Commission, and effective upon termination of the
7 commission, all private carriers and self-insured employers or
8 their agents, pursuant to the schedule of maximum reasonable
9 amounts of fees authorized by this subsection, with the exceptions
10 noted below, the claimant is personally liable for the difference
11 between the scheduled fee and the amount demanded by the
12 out-of-state health care provider.

13 (A) In the event of an emergency where there is an urgent need
14 for immediate medical attention in order to prevent the death of a
15 claimant or to prevent serious and permanent harm to the claimant,
16 if the claimant receives the emergency care from an out-of-state
17 health care provider who refuses to accept as full payment the
18 scheduled amount, the claimant is not personally liable for the
19 difference between the amount scheduled and the amount demanded by
20 the health care provider. Upon the claimant's attaining a stable
21 medical condition and being able to be transferred to either a West
22 Virginia health care provider or an out-of-state health care
23 provider who has agreed to accept the scheduled amount of fees as
24 payment in full, if the claimant refuses to seek the specified

1 alternative health care providers, he or she is personally liable
2 for the difference in costs between the scheduled amount and the
3 amount demanded by the health care provider for services provided
4 after attaining stability and being able to be transferred.

5 (B) In the event that there is no health care provider
6 reasonably near to the claimant's home who is qualified to provide
7 the claimant's needed medical services who is either located in the
8 State of West Virginia or who has agreed to accept as payment in
9 full the scheduled amounts of fees, the commission, upon
10 application by the claimant, may authorize the claimant to receive
11 medical services from another health care provider. The claimant is
12 not personally liable for the difference in costs between the
13 scheduled amount and the amount demanded by the health care
14 provider.

15 (b) (1) No employer shall enter into any contracts with any
16 hospital, its physicians, officers, agents or employees to render
17 medical, dental or hospital service or to give medical or surgical
18 attention to any employee for injury compensable within the purview
19 of this chapter and no employer shall permit or require any
20 employee to contribute, directly or indirectly, to any fund for the
21 payment of such medical, surgical, dental or hospital service
22 within such hospital for the compensable injury. Any employer
23 violating this subsection is liable in damages to the employer's
24 employees as provided in section eight, article two of this

1 chapter, and any employer or hospital or agent or employee thereof
2 violating the provisions of this section is guilty of a misdemeanor
3 and, upon conviction thereof, shall be punished by a fine not less
4 than \$100 nor more than \$1,000 or by imprisonment not exceeding one
5 year, or both.

6 (2) The provisions of this subsection shall not prohibit an
7 employer, the successor to the commission, other private carrier or
8 self-insured employer from participating in a managed health care
9 plan, including, but not limited to, a preferred provider
10 organization or program or a health maintenance organization or
11 managed care organization or other medical cost containment
12 relationship with the providers of medical, hospital or other
13 health care. An employer, successor to the commission, other
14 private carrier or self-insured employer that provides a managed
15 health care plan approved by the commission or, upon termination of
16 the commission, the Insurance Commissioner, for its employees or
17 the employees of its insured may require an injured employee to use
18 health care providers authorized by the managed health care plan
19 for care and treatment of his or her compensable injuries. If the
20 employer does not provide a managed health care plan or program,
21 the claimant may select his or her initial health care provider for
22 treatment of a compensable injury or disease, except as provided
23 under subdivision (3) of this subsection. If a claimant wishes to
24 change his or her health care provider and if his or her employer

1 has established and maintains a managed health care plan, the
2 claimant shall select a new health care provider through the
3 managed health care plan. A claimant who has used the providers
4 under the employer's managed health care plan may select a health
5 care provider outside the employer's plan for treatment of the
6 compensable injury or disease if the employee receives written
7 approval from the commission to do so and the approval is given
8 pursuant to criteria established by rule of the commission.

9 (3) If the commission enters into an agreement which has been
10 approved by the board of managers with a managed health care plan,
11 including, but not limited to, a preferred provider organization or
12 program, a health maintenance organization or managed care
13 organization or other health care delivery organization or
14 organizations or other medical cost containment relationship with
15 the providers of medical, hospital or other health care, then:

16 (A) If an injured employee's employer does not provide a
17 managed health care plan approved by the commission for its
18 employees as described in subdivision (2) of this subsection, the
19 commission may require the employee to use health care providers
20 authorized by the commission's managed health care plan for care
21 and treatment of his or her compensable injuries; and

22 (B) If a claimant seeks to change his or her initial choice of
23 health care provider where neither the employer nor the commission
24 had an approved health care management plan at the time the initial

1 choice was made, and if the claimant's employer does not provide
2 access to such a plan as part of the employer's general health
3 insurance benefit, then the claimant shall be provided with a new
4 health care provider from the commission's managed health care plan
5 available to him or her.

6 (c) When an injury has been reported to the commission by the
7 employer without protest, the commission or self-insured employer
8 may pay, within the maximum amount provided by schedule established
9 under this section, bills for health care services without
10 requiring the injured employee to file an application for benefits.

11 (d) The commission, successor to the commission, other private
12 carrier or self-insured employer, whichever is applicable, shall
13 provide for the replacement of artificial limbs, crutches, hearing
14 aids, eyeglasses and all other mechanical appliances provided in
15 accordance with this section which later wear out, or which later
16 need to be refitted because of the progression of the injury which
17 caused the devices to be originally furnished, or which are broken
18 in the course of and as a result of the employee's employment. The
19 commission, successor to the commission, other private carrier or
20 self-insured employer shall pay for these devices, when needed,
21 notwithstanding any time limits provided by law.

22 (e) No payment shall be made to a health care provider who is
23 suspended or terminated under the terms of section three-c of this
24 article except as provided in subsection (c) of said section.

1 (f) The commission, successor to the commission, other private
2 carrier or self-insured employer, whichever is applicable, may
3 engage in and contract for medical cost containment programs,
4 pharmacy benefits management programs, medical case management
5 programs and utilization review programs. Payments for these
6 programs shall be made from the Workers' Compensation Fund or the
7 funds of the successor to the commission, other private carrier, or
8 self-insured employer. Any order issued pursuant to the program
9 shall be interlocutory in nature until an objecting party has
10 exhausted all review processes provided for by the commission,
11 successor to the commission, other private carrier or self-insured
12 employer, whichever is applicable.

13 (g) Notwithstanding the provisions of this section, the
14 commission, successor to the commission, other private carrier or
15 self-insured employer may establish fee schedules, make payments
16 and take other actions required or allowed pursuant to article
twenty-nine-d, chapter sixteen of this code.

NOTE: The purpose of this bill is to provide quick and efficient delivery of medical benefits to injured workers, provide for medical treatment that is reasonably and causally related to the injury, ensure that the treating doctor's opinion is not superseded by guidelines and allow for diagnosis updates based upon diagnostic testing that is consistent with the legislative intent under 23-1-1(b).

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.