



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

1 the claimant, and the claimant appeals the denial, which is later  
2 reversed then Claims Administrator shall pay treble damages to the  
3 Claimant for the delayed time period based upon his permanent  
4 partial disability rating.

5 A diagnosis update after one year shall require a diagnostic  
6 test, and any physician determining that the diagnosis is causally  
7 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~~ the 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  
17 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 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.

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