WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 72

FISCAL NOTE

BY SENATOR YOST

[Introduced January 13, 2016;

Referred to the Committee on Banking and Insurance;

then to the Committee on the Judiciary; and then to

the Committee on Finance.]

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4 causally related to injury; ensuring that treating doctor's opinion is not superseded by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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; guidelines; preferred provider agreements; charges in excess of scheduled amounts not to be made; required disclosure of financial interest in sale or rental of medically related mechanical appliances or devices; promulgation of rules to enforce requirement; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited; medical cost and care program; payments; interlocutory orders.

1 (a) The Workers' Compensation Commission, and effective upon termination of the
2 commission, the Insurance Commissioner, shall establish and alter from time to time, as it
3 determines appropriate, a schedule of the maximum reasonable amounts to be paid to health
4 care providers, providers of rehabilitation services, providers of durable medical and other goods
5 and providers of other supplies and medically related items or other persons, firms or corporations
6 for the rendering of treatment or services to injured employees under this chapter. The
7 commission and effective upon termination of the commission, the Insurance Commissioner, also,
8 on the first day of each regular session and also from time to time, as it may consider appropriate,

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

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

(1)(A) Sums for health care services, rehabilitation services, durable medical and other goods and other supplies and medically related items as may be reasonably ~~required~~ and causally related to the occupational injury. The commission, and effective upon termination of the commission, all private carriers and self-insured employers or their agents, shall determine that which is reasonably required within the meaning of this section in accordance with the guidelines developed by the health care advisory panel pursuant to section three-b of this article*: Provided,* That nothing in this section shall prevent the implementation of guidelines applicable to a particular type of treatment or service or to a particular type of injury before guidelines have been developed for other types of treatment or services or injuries: *Provided, however,* That any guidelines for utilization review which are developed in addition to the guidelines provided for in section three-b of this article may be used by the commission, and effective upon termination of the commission, all private carriers and self-insured employers or their agents, until superseded by guidelines developed by the health care advisory panel pursuant to said section: *Provided further,* That any guidelines approved or authorized will not supersede the treating physician's opinion regarding treatment of a compensable occupational injury or disease. Each health care provider who seeks to provide services or treatment which are not within any guideline shall submit to the commission, and effective upon termination of the commission, all private carriers, self-insured employers and other payors, specific justification for the need for the additional services in the particular case and the commission shall have the justification reviewed by a health care professional before authorizing the additional services. The commission, and effective upon termination of the commission, all private carriers, self-insured employers and other payors, may enter into preferred provider and managed care agreements which provides for fees and other

35 payments which deviate from the schedule set forth in this subsection.

36 (B) When the claim has been ruled compensable, any diagnostic testing that is requested
37 causally related to the injury shall be approved. Any new diagnosis based on the above diagnostic
38 testing is automatically granted, if any physician determines that the new diagnosis is causally
39 related to the compensable injury. If the claim has been ruled compensable and diagnostic testing
40 has been denied and delays medical treatment to the claimant, and the claimant appeals the
41 denial, which is later reversed, then the claims administrator shall pay treble damages to the
42 claimant for the delayed time period based on his or her permanent partial disability rating.

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

46 (2) Payment for health care services, rehabilitation services, durable medical and other
47 goods and other supplies and medically related items authorized under this subsection may be
48 made to the injured employee or to the person, firm or corporation who or which has rendered the
49 treatment or furnished health care services, rehabilitation services, durable medical or other
50 goods or other supplies and items, or who has advanced payment for them, as the commission,
51 and effective upon termination of the commission, all private carriers, self-insured employers and
52 other payors, considers proper, but no payments or disbursements shall be made or awarded by
53 the commission unless duly verified statements on forms prescribed by the commission, and
54 effective upon termination of the commission, all private carriers, self-insured employers and other
55 payors, have been filed within six months after the rendering of the treatment or the delivery of
56 such goods, supplies or items or within ninety days of a subsequent compensability ruling if a
57 claim is initially rejected: *Provided,* That no payment under this section shall be made unless a
58 verified statement shows no charge for or with respect to the treatment or for or with respect to
59 any of the items specified in this subdivision has been or will be made against the injured
60 employee or any other person, firm or corporation. When an employee covered under the

61 provisions of this chapter is injured, in the course of and as a result of his or her employment and
62 is accepted for health care services, rehabilitation services, or the provision of durable medical or
63 other goods or other supplies or medically related items, the person, firm or corporation rendering
64 the treatment may not make any charge or charges for the treatment or with respect to the
65 treatment against the injured employee or any other person, firm or corporation which would result
66 in a total charge for the treatment rendered in excess of the maximum amount set forth therefor
67 in the commission schedule set forth in this subsection.

68 (3) Any pharmacist filling a prescription for medication for a workers' compensation
69 claimant shall dispense a generic brand of the prescribed medication if a generic brand exists. If
70 a generic brand does not exist, the pharmacist may dispense the name brand. In the event that a
71 claimant wishes to receive the name brand medication in lieu of the generic brand, the claimant
72 may receive the name brand medication but, in that event, the claimant is personally liable for the
73 difference in costs between the generic brand medication and the brand name medication.

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

82 (A) In the event of an emergency where there is an urgent need for immediate medical
83 attention in order to prevent the death of a claimant or to prevent serious and permanent harm to
84 the claimant, if the claimant receives the emergency care from an out-of-state health care provider
85 who refuses to accept as full payment the scheduled amount, the claimant is not personally liable
86 for the difference between the amount scheduled and the amount demanded by the health care

87 provider. Upon the claimant's attaining a stable medical condition and being able to be transferred
88 to either a West Virginia health care provider or an out-of-state health care provider who has
89 agreed to accept the scheduled amount of fees as payment in full, if the claimant refuses to seek
90 the specified alternative health care providers, he or she is personally liable for the difference in
91 costs between the scheduled amount and the amount demanded by the health care provider for
92 services provided after attaining stability and being able to be transferred.
93 (B) In the event that there is no health care provider reasonably near to the claimant's
94 home who is qualified to provide the claimant's needed medical services who is either located in
95 the State of West Virginia or who has agreed to accept as payment in full the scheduled amounts
96 of fees, the commission, upon application by the claimant, may authorize the claimant to receive
97 medical services from another health care provider. The claimant is not personally liable for the
98 difference in costs between the scheduled amount and the amount demanded by the health care
99 provider.
100 (b) (1) No employer shall enter into any contracts with any hospital, its physicians, officers,
101 agents or employees to render medical, dental or hospital service or to give medical or surgical
102 attention to any employee for injury compensable within the purview of this chapter and no
103 employer shall permit or require any employee to contribute, directly or indirectly, to any fund for
104 the payment of such medical, surgical, dental or hospital service within such hospital for the
105 compensable injury. Any employer violating this subsection is liable in damages to the employer's
106 employees as provided in section eight, article two of this chapter, and any employer or hospital
107 or agent or employee thereof violating the provisions of this section is guilty of a misdemeanor
108 and, upon conviction thereof, shall be punished by a fine not less than $100 nor more than $1,000
109 or by imprisonment not exceeding one year, or both.
110 (2) The provisions of this subsection shall not prohibit an employer, the successor to the
111 commission, other private carrier or self-insured employer from participating in a managed health
112 care plan, including, but not limited to, a preferred provider organization or program or a health

113 maintenance organization or managed care organization or other medical cost containment
114 relationship with the providers of medical, hospital or other health care. An employer, successor
115 to the commission, other private carrier or self-insured employer that provides a managed health
116 care plan approved by the commission or, upon termination of the commission, the Insurance
117 Commissioner, for its employees or the employees of its insured may require an injured employee
118 to use health care providers authorized by the managed health care plan for care and treatment
119 of his or her compensable injuries. If the employer does not provide a managed health care plan
120 or program, the claimant may select his or her initial health care provider for treatment of a
121 compensable injury or disease, except as provided under subdivision (3) of this subsection. If a
122 claimant wishes to change his or her health care provider and if his or her employer has
123 established and maintains a managed health care plan, the claimant shall select a new health
124 care provider through the managed health care plan. A claimant who has used the providers
125 under the employer's managed health care plan may select a health care provider outside the
126 employer's plan for treatment of the compensable injury or disease if the employee receives
127 written approval from the commission to do so and the approval is given pursuant to criteria
128 established by rule of the commission.

129 (3) If the commission enters into an agreement which has been approved by the board of
130 managers with a managed health care plan, including, but not limited to, a preferred provider
131 organization or program, a health maintenance organization or managed care organization or
132 other health care delivery organization or organizations or other medical cost containment
133 relationship with the providers of medical, hospital or other health care, then:

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

139 (B) If a claimant seeks to change his or her initial choice of health care provider where
140 neither the employer nor the commission had an approved health care management plan at the
141 time the initial choice was made, and if the claimant's employer does not provide access to such
142 a plan as part of the employer's general health insurance benefit, then the claimant shall be
143 provided with a new health care provider from the commission's managed health care plan
144 available to him or her.

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

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

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

160 (f) The commission, successor to the commission, other private carrier or self-insured
161 employer, whichever is applicable, may engage in and contract for medical cost containment
162 programs, pharmacy benefits management programs, medical case management programs and
163 utilization review programs. Payments for these programs shall be made from the Workers'
164 Compensation Fund or the funds of the successor to the commission, other private carrier, or self-

165 insured employer. Any order issued pursuant to the program shall be interlocutory in nature until
166 an objecting party has exhausted all review processes provided for by the commission, successor
167 to the commission, other private carrier or self-insured employer, whichever is applicable.
168 (g) Notwithstanding the provisions of this section, the commission, successor to the
169 commission, other private carrier or self-insured employer may establish fee schedules, make
170 payments and take other actions required or allowed pursuant to article twenty-nine-d, chapter
171 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 on diagnostic testing that is consistent with the legislative intent under 23-1-1(b)..

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