

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

Senate Bill 904

By Senator Azinger

[Introduced February 10, 2026; referred
to the Committee on Banking and Insurance]

A BILL to amend and reenact §23-4-1a, §23-4-1b, §23-4-1c, §23-4-1d, §23-4-1e, §23-4-3, §23-4-4, §23-4-5, §23-4-6, §23-4-6a, §23-4-6d, §23-4-7, §23-4-7a, §23-4-8a, §23-4-8b, §23-4-8c, §23-4-9, §23-4-11, §23-4-12, §23-4-14, §23-4-15, §23-4-15a, §23-4-15b, §23-4-16, §23-4-16a, §23-4-17, §23-4-18, §23-4-20, §23-4-23, §23-4-24, §23-4-25, §23-5-2, §23-5-4, §23-5-7, §23-5-11a, and §23-5-14 of the Code of West Virginia, 1931, as amended; and to repeal §23-4-3b, §23-4-3c, §23-4-22, §23-5-1, §23-5-3, §23-5-5, §23-5-6, §23-5-8, §23-5-9, §23-5-10, §23-5-11, §23-5-12, §23-5-13, and §23-5-16, relating to modernizing and updating workers' compensation statutes; removing or revising provisions made obsolete by legislation and regulatory revisions in 2005 and 2006; standardizing references to public offices or agencies; updating statutory citations; making spelling and grammatical changes throughout; and modifying the number of Board of Review members from five to at least three but no more than five.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1a. Report of injuries by employee.

Every employee who sustains an injury subject to this chapter, or his or her representative, shall immediately on the occurrence of the injury or as soon thereafter as practicable give or cause to be given to the employer or any of the employer's agents a written notice of the occurrence of the injury ~~with like notice or a copy of the notice to the workers' compensation commission~~ stating in ordinary language the name and address of the employer, the name and address of the employee, the time, place, nature, and cause of the injury, and whether temporary total disability has resulted from the injury. The notice shall be given personally to the employer or any of the employer's agents, or may be sent by certified mail addressed to the employer at the employer's last known residence or place of business. ~~The notice may be given to the workers' compensation commission~~ _____ by _____ mail.

§23-4-1b. Report of injuries by employers.

1 It is the duty of every employer to report ~~to the commission, the successor to the~~
2 ~~commission or another private carrier, whichever is applicable,~~ every injury sustained by any
3 person in his or her employ to its workers' compensation insurance carrier or claims administrator,
4 if applicable. The report shall be on forms prescribed by the ~~commission or the Insurance~~
5 ~~Commissioner whichever is applicable,~~ and shall be made within five days of the employer's
6 receipt of the employee's notice of injury as required by §23-4-1a of this code. ~~or within five days~~
7 ~~after the employer has been notified by the commission or the Insurance Commissioner,~~
8 ~~whichever is applicable, that a claim for benefits has been filed on account of such injury,~~
9 ~~whichever is sooner, and, notwithstanding any other provision of this chapter to the contrary, the~~
10 The five-day period may not be extended by the commission the successor to the commission, or
11 another private carrier, whichever is employer's workers' compensation insurance carrier or
12 claims administrator, if applicable, but the employer has the right to file a supplemental report at a
13 later date. The employer's report of injury shall include a statement as to whether ~~or not,~~ on the
14 basis of the information available, the employer disputes the compensability of the injury or objects
15 to the payment of temporary total disability benefits in connection with the injury. The statements
16 by the employer shall not prejudice the employer's right thereafter to contest the compensability of
17 the injury, or to object to any subsequent finding or award, in accordance with §23-5-1 *et seq.* of
18 this code; but an employer's failure to make timely report of an injury as required in this section, or
19 statements in the report to the effect that the employer does not dispute the compensability of the
20 injury or object to the payment of temporary total disability benefits for the injury, shall be
21 considered to be a waiver of the employer's right to object to any interim payment of temporary
22 total disability benefits ~~paid by the commission, the successor to the commission, or another~~
23 ~~private carrier~~ with respect to any period from the date of injury to the date of receipt of any
24 objection made to the interim payments by the employer.

**§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of
medical benefits; payments of benefits during protest; right of ~~commission,~~**

~~successor to the commission,~~ Insurance Commissioner, private carriers, and self-insured employers to collect payments improperly made.

1 (a) In any claim for benefits under this chapter, the Insurance Commissioner, private
2 carrier, or self-insured employer, whichever is applicable, shall determine whether the claimant
3 has sustained a compensable injury within the meaning of §23-4-1 of this code and enter an order
4 giving all parties immediate notice of the decision.

5 (1) The Insurance Commissioner, private carrier, or self-insured employer, whichever is
6 applicable, may enter an order conditionally approving the claimant's application if it finds that
7 obtaining additional medical evidence or evaluations or other evidence related to the issue of
8 compensability would aid the Insurance Commissioner, private carrier, or self-insured employer
9 ~~whichever is applicable~~, in making a correct final decision. Benefits shall be paid during the period
10 of conditional approval; however, if the final decision is one that rejects the claim, the payments
11 shall be considered an overpayment. The Insurance Commissioner, private carrier, or self-insured
12 employer, whichever is applicable, may only recover the amount of the overpayment as provided
13 for in §23-4-1c(h) of this code.

14 (2) In making a determination regarding the compensability of a newly filed claim or upon a
15 filing for the reopening of a prior claim pursuant to the provisions of §23-4-16 of this code based
16 upon an allegation of recurrence, reinjury, aggravation, or progression of the previous
17 compensable injury, or in the case of a filing of a request for any other benefits under the
18 provisions of this chapter, the Insurance Commissioner, private carrier, or self-insured employer,
19 whichever is applicable, shall consider the date of the filing of the claim for benefits for a
20 determination of the following:

21 (A) Whether the claimant had a scheduled shutdown beginning within one week of the date
22 of the filing;

23 (B) Whether the claimant received notice within 60 days of the filing that his or her
24 employment position was to be eliminated, including, but not limited to, the closure of the

claimant's worksite, a layoff, or the elimination of the claimant's employment position;

(C) Whether the claimant is receiving unemployment compensation benefits at the time of the filing; or

(D) Whether the claimant has received unemployment compensation benefits within 60 days of the filing.

In the event of an affirmative finding upon any of these four factors, the finding shall be given probative weight in the overall determination of the compensability of the claim or of the merits of the reopening request.

(3) Any party may object to the order of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, and obtain an evidentiary hearing as provided in ~~section one, article five of this chapter~~ §23-5-1a of this code: *Provided*, That if the ~~successor to the commissioner, other~~ a private carrier or self-insured ~~whichever is applicable,~~ employer fails to timely issue a ruling upon any application or motion as provided by law, or if the claimant files a timely protest to the ruling of a private carrier or self-insured employer ~~private carrier or other issuing entity~~, denying the compensability of the claim, denying temporary total disability benefits, or denying medical authorization, the ~~Office of Judges~~ Board of Review shall provide a hearing on the protest on an expedited basis as determined by rule of the ~~Office of Judges~~ Board of Review.

(b) Where it appears from the employer's report, or from proper medical evidence, that a compensable injury will result in a disability which will last longer than three days as provided in §23-4-5 of this code, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may immediately enter an order commencing the payment of temporary total disability benefits to the claimant in the amounts provided for in §23-4-6 and §23-4-14 of this code, and the payment of the expenses provided for in §23-4-3(a) of this code, relating to the injury, without waiting for the expiration of the 30-day period during which objections may be filed to the findings as provided in ~~section one, article five of this chapter~~ §23-5-1a of this code. The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall

51 enter an order commencing the payment of temporary total disability or medical benefits within 15
52 working days of receipt of either the employee's or employer's report of injury, whichever is
53 received sooner, and also upon receipt of either a proper physician's report or any information
54 necessary for a determination. The Insurance Commissioner, private carrier, or self-insured
55 employer, whichever is applicable, shall give to the parties immediate notice of any order granting
56 temporary total disability or medical benefits. When an order granting temporary total disability
57 benefits is made, the claimant's return-to-work potential shall be assessed. The Insurance
58 Commissioner, private carrier, or self-insured employer, whichever is applicable, may schedule
59 medical and vocational evaluation of the claimant and assign appropriate personnel to expedite
60 the claimant's return to work as soon as reasonably possible.

61 (c) The Insurance Commissioner, private carrier, or self-insured employer, whichever is
62 applicable, may enter orders granting temporary total disability benefits upon receipt of medical
63 evidence justifying the payment of the benefits. The Insurance Commissioner, private carrier, or
64 self-insured employer, whichever is applicable, may not enter an order granting prospective
65 temporary total disability benefits for a period of more than 90 days: *Provided*, That when the
66 Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable~~,
67 determines that the claimant remains disabled beyond the period specified in the prior order
68 granting temporary total disability benefits, the Insurance Commissioner, private carrier, or self-
69 insured employer shall enter an order continuing the payment of temporary total disability benefits
70 for an additional period not to exceed 90 days and shall give immediate notice to all parties of the
71 decision.

72 (d) Upon receipt of the first report of injury in a claim, the Insurance Commissioner, private
73 carrier, or self-insured employer, whichever is applicable, shall request from the employer or
74 employers any wage information necessary for determining the rate of benefits to which the
75 employee is entitled. If an employer does not furnish this information within 15 days from the date
76 the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable,

received the first report of injury in the case, the employee shall be paid temporary total disability benefits for lost time at the rate the ~~commission~~ Insurance Commissioner obtains from reports made pursuant to §23-2-2(b) of this code. If no wages have been reported, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall make the payments at the rate the Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable~~, finds would be justified by the usual rate of pay for the occupation of the injured employee. The rate of benefits shall be adjusted both retroactively and prospectively upon receipt of proper wage information. The Insurance Commissioner shall have access to all wage information in the possession of any state agency.

(e) Subject to the limitations set forth in §23-4-16 of this code, upon a finding of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, that a claimant who has sustained a previous compensable injury which has been closed by order, or by the claimant's return to work, suffers further temporary total disability or requires further medical or hospital treatment resulting from the compensable injury, payment of temporary total disability benefits to the claimant in the amount provided for in §23-4-6 and §23-4-14 of this code, ~~shall immediately commence, and~~ including the expenses provided for in §23-4-3(a) of this code, shall immediately commence relating to the disability, without waiting for the expiration of the 30-day period during which objections may be filed. Immediate notice to the parties of the decision shall be given.

(f) The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall deliver amounts due for temporary total disability benefits directly to the claimant.

(g) Where the employer has elected to carry its own risk under §23-2-9 of this code, and upon the findings aforesaid, the self-insured employer shall immediately pay the amounts due the claimant for temporary total disability benefits. A copy of the notice shall be sent to the claimant.

(h) In the event that an employer files a timely objection to any order of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, with respect to

103 compensability, or any order denying an application for modification with respect to temporary total
104 disability benefits, or with respect to those expenses outlined in §23-4-3(a) of this code, the
105 ~~division~~ Insurance Commissioner, private carrier, or self-insured employer shall continue to pay to
106 the claimant such benefits and expenses during the period of such disability. ~~Where it is~~
107 ~~subsequently found by the Insurance Commissioner, private carrier or self-insured, whichever is~~
108 ~~applicable, that the claimant was not entitled to receive such temporary total disability benefits or~~
109 ~~expenses, or any part thereof, so paid, the Insurance Commissioner, private carrier or self-~~
110 ~~insured, whichever is applicable, shall credit said employer's account with the amount of the~~
111 ~~overpayment.~~ When the employer has protested the compensability or applied for modification of
112 a temporary total disability benefit award or expenses and the final decision in that case
113 determines that the claimant was not entitled to the benefits or expenses, the disputed amount of
114 benefits or expenses is considered ~~overpaid~~ an overpayment. ~~For all awards made or nonawarded~~
115 ~~partial benefits paid the~~ The Insurance Commissioner, private ~~carriers~~ carrier, or self-insured
116 employer, whichever is applicable, may recover the ~~amount of overpaid benefits or expenses~~ the
117 overpayment by withholding, in whole or in part, future ~~disability~~ benefits payable to the individual
118 in the same or other claims and credit the amount against the overpayment until it is repaid in full.

119 (i) In the event that the Insurance Commissioner, private carrier, or self-insured employer,
120 whichever is applicable, finds that, based upon the employer's report of injury, the claim is not
121 compensable, the Insurance Commissioner, private carrier, or self-insured employer ~~whichever is~~
122 ~~applicable~~, shall provide a copy of the employer's report to the claimant in addition to the order
123 denying the claim.

124 (j) If a claimant is receiving benefits paid through a wage replacement plan, salary
125 continuation plan, or other benefit plan provided by the employer to which the employee has not
126 contributed, and that plan does not provide an offset for temporary total disability benefits to which
127 the claimant is also entitled under this chapter as a result of the same injury or disease, the
128 employer shall notify the Insurance Commissioner, private carrier, or self-insured employer,

129 whichever is applicable, of the duplication of the benefits paid to the claimant. Upon receipt of the
130 notice, the Insurance Commissioner, private carrier, or self-insured employer, whichever is
131 applicable, shall reduce the temporary total disability benefits provided under this chapter by an
132 amount sufficient to ensure that the claimant does not receive monthly benefits in excess of the
133 amount provided by the employer's plan or the temporary total disability benefit, whichever is
134 greater: *Provided*, That this subsection does not apply to benefits being paid under the terms and
135 conditions of a collective bargaining agreement.

§23-4-1d. Method and time of payments for permanent disability.

1 (a) If the ~~commission, successor to the commission, other~~ Insurance Commissioner,
2 private carrier, or self-insured employer, whichever is applicable, makes an award for permanent
3 partial or permanent total disability, the ~~commission, successor to the commission, other~~
4 Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable~~, shall
5 start payment of benefits by mailing or delivering the amount due directly to the employee within
6 15 working days from the date of the award: *Provided*, That the ~~commission, successor to the~~
7 ~~commission, other~~ Insurance Commissioner, private carrier, or self-insured employer ~~whichever is~~
8 ~~applicable~~, may withhold payment of the portion of the award that is the subject of §23-4-1d(b) of
9 this code until 77 days have expired without an objection being filed.

10 (b) When the ~~commission, successor to the commission, other~~ Insurance Commissioner,
11 private carrier, self-insured employer, ~~the office of judges~~ or the Workers' Compensation Board of
12 Review, whichever is applicable, enters an order or provides notice granting the claimant a
13 permanent total disability award and an objection or petition for appeal is filed ~~by the employer, the~~
14 ~~commission the successor to the commission or other private carrier~~, payment of monthly
15 permanent total disability benefits shall begin. However, any payment for a back period of benefits
16 from the onset date of total permanent disability to the date of the award shall be limited to a period
17 of 12 months of benefits. If, after all litigation is completed and the time for the filing of any further
18 objections or appeals to the award has expired and the award of permanent total disability benefits

is upheld, the claimant shall receive the remainder of benefits due to him or her based upon the onset date of permanent total disability that was finally determined.

(c) If the claimant is owed any additional payment of back permanent total disability benefits, the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall not only pay the claimant the sum owed but shall also add thereto interest at the simple rate of six percent per annum from the date of the initial award granting the total permanent disability to the date of the final order upholding the award. In the event that an intermediate order directed an earlier onset date of permanent total disability than was found in the initial award, the interest-earning period for that additional period shall begin upon the date of the intermediate award. ~~Any interest payable shall be charged to the account of the employer or shall be paid by the employer if it has elected to carry its own risk.~~

(d) If a timely protest to the award is filed, as provided in ~~section one or nine, article five of this chapter~~ §23-5-1a or §23-5-9a of this code, benefits shall continue to be paid to the claimant ~~benefits~~ during the period of the disability unless it is subsequently found that the claimant was not entitled to receive the benefits, or any part thereof ~~in which event the commission shall, where the employer is a subscriber to the fund, credit the employer's account with the amount of the overpayment.~~ If the final decision in any case determines that a claimant was not lawfully entitled to benefits paid to him or her pursuant to a prior decision, the amount of ~~benefit~~ benefits paid shall be considered ~~overpaid. For all awards made or nonawarded partial benefits paid the commission, successor to the commission, other~~ an overpayment and the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may only recover that amount by withholding, in whole or in part, ~~as determined by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable,~~ future disability benefits payable to the individual in the same or other claims and credit the amount against the overpayment until it is repaid in full.

(e) An award for permanent partial disability shall be made as expeditiously as possible

45 and in accordance with the time frame requirements promulgated by ~~the board of managers~~ rule of
46 the Insurance Commissioner.

47 (f) If a claimant is receiving benefits paid through a retirement plan, wage replacement
48 plan, salary continuation plan, or other benefit plan provided by the employer to which the
49 employee has not contributed, and that plan does not provide an offset for permanent total
50 disability benefits to which the claimant is also entitled under this chapter as a result of the same
51 injury or disease, the employer shall notify the ~~commission, successor to the commission, other~~
52 Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, of the
53 duplication of the benefits paid to the claimant. Upon receipt of the notice, the ~~commission,~~
54 ~~successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured
55 employer, whichever is applicable, shall reduce the permanent total disability benefits provided
56 under this chapter by an amount sufficient to ensure that the claimant does not receive monthly
57 benefits in excess of the amount provided by the employer's plan or the permanent total disability
58 benefit, whichever is greater: *Provided*, That this subsection does not apply to benefits being paid
59 under the terms and conditions of a collective bargaining agreement.

**§23-4-1e. Temporary total disability benefits not to be paid for periods of correctional
center or jail confinement; denial of workers' compensation benefits for injuries or
disease incurred while confined.**

1 (a) Notwithstanding any provision of this code to the contrary, no person shall be
2 jurisdictionally entitled to temporary total disability benefits for that period of time in excess of three
3 days during which that person is confined in a state correctional facility or jail: *Provided*, That
4 confinement shall not affect the claimant's eligibility for payment of expenses: *Provided, however*,
5 That this subsection is applicable only to injuries and diseases incurred prior to any period of
6 confinement. Upon release from confinement, the payment of benefits for the remaining period of
7 temporary total disability shall be made if justified by the evidence and authorized by order of the
8 ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-

9 insured employer, whichever is applicable.

10 (b) Notwithstanding any provision of this code to the contrary, no person confined in a state
11 correctional facility or jail who suffers injury or a disease in the course of and resulting from his or
12 her work during the period of confinement which work is imposed by the administration of the state
13 correctional facility or jail and is not suffered during the person's usual employment with his or her
14 usual employer when not confined shall receive benefits under the provisions of this chapter for
15 the injury or disease: *Provided*, That individuals otherwise confined in a state correctional facility or
16 jail, or at a juvenile services facility, and working in a program authorized by §25-7-14 or §25-7-16
17 of this code, shall be eligible to receive benefits under the provisions of this chapter while working
18 in an authorized program. The coverage for benefits may be obtained either by the private entity or
19 by agreement with the state agency as specified in §25-7-14(a)(5) or §25-7-16(a)(5) of this code.

**§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~~ he or
3 she 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
6 corporations for the rendering of treatment or services to injured employees under this chapter.
7 ~~The commission and effective upon termination of the commission, the Insurance Commissioner,~~

8 also, on the first day of each regular session and also from time to time, as it may consider
9 appropriate, shall submit the schedule, with any changes thereto, to the Legislature.

10 The commission, and effective upon termination of the commission, all Insurance
11 Commissioner, private carriers and carrier, or self-insured employers or their agents employer,
12 whichever is applicable, shall disburse and pay for personal injuries to the employees who are
13 entitled to the benefits under this chapter as follows:

14 (1) Sums for health care services, rehabilitation services, durable medical and other goods
15 and other supplies, and medically related items as may be reasonably required. The commission,
16 and effective upon termination of the commission, all Insurance Commissioner, private carriers
17 and carrier, or self-insured employers or their agents employer, whichever is applicable, shall
18 determine that which is reasonably required within the meaning of this section in accordance with
19 the guidelines developed by the health care advisory panel pursuant to section three-b of this
20 article: *Provided*, That nothing in this section shall prevent the implementation of guidelines
21 applicable to a particular type of treatment or service or to a particular type of injury before
22 guidelines have been developed for other types of treatment or services or injuries: *Provided*,
23 *however*, That any guidelines for utilization review which are developed in addition to the
24 guidelines provided for in section three-b of this article may be used by the commission, and
25 effective upon termination of the commission, all private carriers and self-insured employers or
26 their agents, until superseded by guidelines developed by the health care advisory panel pursuant
27 to said section medical management rule established by the Insurance Commissioner and
28 approved by the Workers' Compensation Industrial Council pursuant to §23-2C-5 of this code.

29 Each health care provider who seeks to provide services or treatment which are not within any
30 guideline set forth in the rule shall submit to the commission, and effective upon termination of the
31 commission, all Insurance Commissioner, private carriers carrier, self-insured employers, and
32 other payors employer, whichever is applicable, specific justification for the need for the additional
33 services in the particular case and the commission Insurance Commissioner, private carrier, or

34 self-insured employer shall have the justification reviewed by a health care professional before
35 authorizing the additional services. ~~The commission, and effective upon termination of the~~
36 ~~commission, all Insurance Commissioner, private carriers, and~~ self-insured employers and other
37 payers may enter into preferred provider and managed care agreements which provides for fees
38 and other payments which deviate from the schedule set forth in this subsection.

39 (2) Payment for health care services, rehabilitation services, durable medical and other
40 goods and other supplies, and medically related items authorized under this subsection may be
41 made to the injured employee or to the person, firm, or corporation who or which has rendered the
42 treatment or furnished health care services, rehabilitation services, durable medical or other
43 goods or other supplies and items, or who has advanced payment for them, as the ~~commission,~~
44 ~~and effective upon termination of the commission, all Insurance Commissioner, private carriers,~~
45 ~~and~~ self-insured employers and other payers ~~considers~~ consider proper, but no payments or
46 disbursements shall be made ~~or awarded by the commission~~ unless duly verified statements on
47 ~~forms prescribed by the commission, and effective upon termination of the commission, all private~~
48 ~~carriers, self-insured employers and other payers,~~ have been filed within six months after the
49 rendering of the treatment or the delivery of such goods, supplies or items or within 90 days of a
50 subsequent compensability ruling if a claim is initially rejected: *Provided*, That no payment under
51 this section shall be made unless a verified statement shows ~~no~~ a charge for ~~or with respect to the~~
52 ~~treatment or for~~ or with respect to any of the items specified in this subdivision has been or will be
53 made against the injured employee or any other person, firm, or corporation. When an employee
54 covered under the provisions of this chapter is injured in the course of and as a result of his or her
55 employment and is accepted for health care services, rehabilitation services, or the provision of
56 durable medical or other goods or other supplies or medically related items, the person, firm, or
57 corporation rendering the treatment may not make any charge or charges for the treatment or with
58 respect to the treatment against the injured employee or any other person, firm, or corporation
59 which would result in a total charge for the treatment rendered in excess of the maximum amount

60 ~~set forth therefor in the commission fee~~ schedule set forth in this subsection.

61 (3) Any pharmacist filling a prescription for medication for a workers' compensation
62 claimant shall dispense a generic brand of the prescribed medication if a generic brand exists. If a
63 generic brand does not exist, the pharmacist may dispense the name brand. In the event that a
64 claimant wishes to receive the name brand medication in lieu of the generic brand, the claimant
65 may receive the name brand medication but, in that event, the claimant is personally liable for the
66 difference in costs between the generic brand medication and the brand name medication.

67 ~~(4) In the event that a claimant elects to receive health care services from a health care~~
68 ~~provider from outside of the State of West Virginia and if that health care provider refuses to abide~~
69 ~~by and accept as full payment the reimbursement made by the Workers' Compensation~~
70 ~~Commission, and effective upon termination of the commission, all private carriers and self-~~
71 ~~insured employers or their agents, pursuant to the schedule of maximum reasonable amounts of~~
72 ~~fees authorized by this subsection, with the exceptions noted below, the claimant is personally~~
73 ~~liable for the difference between the scheduled fee and the amount demanded by the out-of-state~~
74 ~~health care provider. If a claimant elects to receive health care services for a compensable injury~~
75 ~~from an out-of-state health care provider, and the out-of-state health care provider refuses to~~
76 ~~accept the rate of reimbursement set forth in the fee schedule established by the Insurance~~
77 ~~Commissioner, the claimant is personally liable for the difference between the scheduled fee and~~
78 ~~the amount demanded by the out-of-state health care provider.~~

79 (A) In the event of an emergency where there is an urgent need for immediate medical
80 attention in order to prevent the death of a claimant or to prevent serious and permanent harm to
81 the claimant, if the claimant receives the emergency care from an out-of-state health care provider
82 who refuses to accept as full payment the scheduled amount, the claimant is not personally liable
83 for the difference between the amount scheduled and the amount demanded by the health care
84 provider. Upon the claimant's attaining a stable medical condition and being able to be transferred
85 to either a West Virginia health care provider or an out-of-state health care provider who has

86 agreed to accept the scheduled amount of fees as payment in full, if the claimant refuses to seek
87 the specified alternative health care providers, he or she is personally liable for the difference in
88 costs between the scheduled amount and the amount demanded by the health care provider for
89 services provided after attaining stability and being able to be transferred.

90 (B) In the event that there is no health care provider reasonably near to the claimant's
91 home who is qualified to provide the claimant's needed medical services who is either located in
92 the State of West Virginia or who has agreed to accept as payment in full the scheduled amounts
93 of fees, the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer,
94 whichever is applicable, upon application by the claimant, may authorize the claimant to receive
95 medical services from another health care provider. The claimant is not personally liable for the
96 difference in costs between the scheduled amount and the amount demanded by the health care
97 provider.

98 (b)(1) No employer shall enter into any contracts with any hospital, its physicians, officers,
99 agents, or employees to render medical, dental, or hospital service or to give medical or surgical
100 attention to any employee for injury compensable within the purview of this chapter and no
101 employer shall permit or require any employee to contribute, directly or indirectly, to any fund for
102 the payment of such medical, surgical, dental, or hospital service within such hospital for the
103 compensable injury. Any employer violating this subsection is liable in damages to the employer's
104 employees as provided in §23-2-8 of this code, and any employer or hospital or agent or employee
105 thereof violating the provisions of this section is guilty of a misdemeanor and, upon conviction
106 thereof, shall be punished by a fine not less than \$100 nor more than \$1,000 or by imprisonment
107 not exceeding one year, or both.

108 (2) The provisions of this subsection shall not prohibit an employer, ~~the successor to the~~
109 ~~commission, or the~~ private carrier, or self-insured employer from participating in a managed health
110 care plan, including, but not limited to, a preferred provider organization or program or a health
111 maintenance organization or managed care organization or other medical cost containment

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

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

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

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

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

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

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

~~(f) (d) The commission, successor to the commission, other Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may engage in and contract for medical cost containment programs, pharmacy benefits management programs, medical case management programs, and utilization review programs. Payments for these programs shall be~~

made from the ~~Workers' Compensation Old~~ Fund, or ~~the funds of the successor to the~~
~~commission, other~~ by the private carrier or self-insured employer, whichever is applicable. Any
order issued pursuant to the program shall be interlocutory in nature until an objecting party has
exhausted all review processes provided for by the ~~commission, successor to the commission,~~
~~other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable.

~~(g) (e)~~ Notwithstanding the provisions of this section, the ~~commission, successor to the~~
~~commission, other~~ Insurance Commissioner, private carrier, or self-insured employer may
establish fee schedules, make payments, and take other actions required or allowed pursuant to
§16-29D-1 *et seq.* of this code.

§23-4-3b. Creation of health care advisory panel.

[Repealed.]

§23-4-3c. Suspension or termination of providers of health care.

[Repealed.]

§23-4-4. Funeral expenses; wrongfully seeking payment; criminal penalties.

(a) In case the personal injury causes death, reasonable funeral or cemetery expense, in
an amount to be fixed, from time to time, by the ~~commission, and upon its termination, the~~
Insurance Commissioner, shall be paid ~~from the fund, or~~ by the Insurance Commissioner, the
private carrier, or self-insured employer, whichever is applicable, ~~payment to be made to the to~~
persons who have furnished the services and supplies, or to the persons who have advanced
payment for the services and supplies, ~~as the commission may determine proper,~~ in addition to
any award made to the employee's dependents.

(b) A funeral director ~~or cemeterian,~~ or any person who furnished the services and supplies
associated with the funeral or cemetery expenses, or a person who has advanced payment for the
services and supplies, is prohibited from making any charge or charges against the employee's
dependents for funeral expenses which would result in a total charge for funeral expenses in

12 excess of the amount fixed by the ~~commission, and upon its termination,~~ the Insurance
13 Commissioner, unless:

14 (1) The person seeking funeral expenses notifies, in writing and prior to the rendering of
15 any service, the employee's dependent as to the exact cost of the service and the exact amount
16 the employee's dependent would be responsible for paying in excess of the amount fixed by the
17 ~~commission or~~ Insurance Commissioner; and

18 (2) The person seeking funeral expenses secures, in writing and prior to the rendering of
19 any service, consent from the employee's dependent that he or she will be responsible to make
20 payment for the amount in excess of the amount fixed by the ~~commission or the~~ Insurance
21 Commissioner.

22 (c) Any person who knowingly and willfully seeks or receives payment of funeral expenses
23 in excess of the amount fixed by the ~~commission or the~~ Insurance Commissioner without satisfying
24 both of the requirements of §23-4-4(b) of this code is guilty of a misdemeanor and, upon conviction
25 thereof, shall be fined \$3,000 or confined in jail for a definite term of confinement of 12 months, or
26 both.

§23-4-5. Benefits for first three days after injury.

1 If the period of disability does not last longer than three days from the day the employee
2 leaves work as the result of the injury, no award shall be allowed, except the ~~disbursements~~
3 payments provided for in the ~~two next preceding sections~~ §23-4-6 and §23-4-6a of this code, but if
4 the period of disability lasts longer than seven days from the day the employee leaves work as a
5 result of the injury, an award shall be allowed for the first three days of such disability.

§23-4-6. Classification of and criteria for disability benefits.

1 Where compensation is due an employee under the provisions of this chapter for personal
2 injury, the compensation shall be as provided in the following schedule:

3 (a) The terms "average weekly wage earnings, wherever earned, of the injured employee,
4 at the date of injury" and "average weekly wage in West Virginia", as used in this chapter, have the

5 meaning and shall be computed as set forth in §23-4-14 of this code except for the purpose of
6 computing temporary total disability benefits for part-time employees pursuant to the provisions of
7 §23-4-6d of this code.

8 (b) For all awards made on and after the effective date of the amendment and reenactment
9 of this section during the year 2003, if the injury causes temporary total disability, the employee
10 shall receive during the continuance of the disability a maximum weekly benefit to be computed on
11 the basis of 66 and two-thirds percent of the average weekly wage earnings, wherever earned, of
12 the injured employee, at the date of injury, not to exceed 100 percent of the average weekly wage
13 in West Virginia: *Provided*, That in no event shall an award for temporary total disability be subject
14 to annual adjustments resulting from changes in the average weekly wage in West Virginia:
15 *Provided, however, That* in the case of a claimant whose award was granted prior to the effective
16 date of the amendment and reenactment of this section during the year 2003, the maximum
17 benefit rate shall be the rate applied under the prior enactment of this subsection which was in
18 effect at the time the injury occurred. The minimum weekly benefits paid under this subdivision
19 shall not be less than 33 and one-third percent of the average weekly wage in West Virginia,
20 except as provided in §23-4-6d and §23-4-9 of this code. In no event, however, shall the minimum
21 weekly benefits exceed the level of benefits determined by use of the applicable federal minimum
22 hourly wage: *Provided further*, That any claimant receiving permanent total disability benefits,
23 permanent partial disability benefits, or dependents' benefits prior to July 1, 1994, shall not have
24 his or her benefits reduced based upon the requirement in this subdivision that the minimum
25 weekly benefit shall not exceed the applicable federal minimum hourly wage.

26 (c) Subdivision (b) of this section is limited as follows: Aggregate award for a single injury
27 causing temporary disability shall be for a period not exceeding 208 weeks; aggregate award for a
28 single injury for which an award of temporary total disability benefits is made on or after the
29 effective date of the amendment and reenactment of this section in the year 2003 shall be for a
30 period not exceeding 104 weeks. Notwithstanding any other provision of this subdivision to the

31 contrary, no person may receive temporary total disability benefits under an award for a single
32 injury for a period exceeding 104 weeks from the effective date of the amendment and
33 reenactment of this section in the year 2003.

34 (d) For all awards of permanent total disability benefits that are made on or after February
35 2, 1995, including those claims in which a request for an award was pending before the former
36 workers' compensation division of the Bureau of Employment Programs or which were in litigation
37 but not yet submitted for a decision, then benefits shall be payable until the claimant attains the
38 age necessary to receive federal old age retirement benefits under the provisions of the Social
39 Security Act, 42 U.S.C. §§ 401 and 402, in effect on the effective date of this section. The claimant
40 shall be paid benefits so as not to exceed a maximum benefit of 66 and two-thirds percent of the
41 claimant's average weekly wage earnings, wherever earned, at the time of the date of injury not to
42 exceed 100 percent of the average weekly wage in West Virginia. The minimum weekly benefits
43 paid under this section shall be as is provided for in §23-4-6(b) of this code. In all claims in which
44 an award for permanent total disability benefits was made prior to February 2, 1995, the awards
45 shall continue to be paid at the rate in effect prior to the effective date of the amendment and
46 reenactment of this section in the year 2003. ~~Provided, That the provisions of sections one through~~
47 ~~eight, inclusive, article four-a of this chapter shall be applied thereafter to all prior awards that were~~
48 ~~previously subject to its provisions.~~ A single or aggregate permanent disability of 85 percent or
49 more entitles the employee to a rebuttable presumption of a permanent total disability for the
50 purpose of §23-4-6(n)(2) of this code: ~~Provided, however,~~ That the claimant must also be at least
51 50 percent medically impaired upon a whole body basis or has sustained a 35 percent statutory
52 disability pursuant to the provisions of §23-4-6(f) of this code. The presumption may be rebutted if
53 the evidence establishes that the claimant is not permanently and totally disabled pursuant to §23-
54 4-6(n) of this code. Under no circumstances may the ~~commission, successor to the commission,~~
55 ~~or~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable,
56 grant an additional permanent disability award to a claimant receiving a permanent total disability

award: *Provided, ~~further~~ however,* That if any claimant thereafter sustains another compensable injury and has permanent partial disability resulting from the injury, the total permanent disability award benefit rate shall be computed at the highest benefit rate justified by any of the compensable injuries.

(e)(1) For all awards made on or after the effective date of the amendment and reenactment of this section during the year 2003, if the injury causes permanent disability less than permanent total disability, the percentage of disability to total disability shall be determined and the award computed on the basis of four weeks' compensation for each percent of disability determined at the maximum or minimum benefit rates as follows: 66 and two-thirds percent of the average weekly wage earnings, wherever earned, of the injured employee at the date of injury, not to exceed 70 percent of the average weekly wage in West Virginia: *Provided,* That in no event shall an award for permanent partial disability be subject to annual adjustments resulting from changes in the average weekly wage in West Virginia: *Provided, however,* That in the case of a claimant whose award was granted prior to the effective date of the amendment and reenactment of this section during the year 2003, the maximum benefit rate shall be the rate applied under the prior enactment of this section which was in effect at the time the injury occurred.

(2) If a claimant is released by his or her treating physician to return to work at the job he or she held before the occupational injury occurred and if the claimant's preinjury employer does not offer the preinjury job or a comparable job to the employee when a position is available to be offered, the award for the percentage of partial disability shall be computed on the basis of six weeks of compensation for each percent of disability.

(3) The minimum weekly benefit under this subdivision shall be as provided in §23-4-6(b) of this code for temporary total disability.

(f) If the injury results in the total loss by severance of any of the members named in this subdivision, the percentage of disability shall be determined by the percentage of disability, specified in the following table:

- 83 The loss of a great toe shall be considered a 10 percent disability.
- 84 The loss of a great toe (one phalanx) shall be considered a five percent disability.
- 85 The loss of other toes shall be considered a four percent disability.
- 86 The loss of other toes (one phalanx) shall be considered a two percent disability.
- 87 The loss of all toes shall be considered a 25 percent disability.
- 88 The loss of forepart of foot shall be considered a 30 percent disability.
- 89 The loss of a foot shall be considered a 35 percent disability.
- 90 The loss of a leg shall be considered a 45 percent disability.
- 91 The loss of thigh shall be considered a 50 percent disability.
- 92 The loss of thigh at hip joint shall be considered a 60 percent disability.
- 93 The loss of a little or fourth finger (one phalanx) shall be considered a three percent
- 94 disability.
- 95 The loss of a little or fourth finger shall be considered a five percent disability.
- 96 The loss of ring or third finger (one phalanx) shall be considered a three percent disability.
- 97 The loss of ring or third finger shall be considered a five percent disability.
- 98 The loss of middle or second finger (one phalanx) shall be considered a three percent
- 99 disability.
- 100 The loss of middle or second finger shall be considered a seven percent disability.
- 101 The loss of index or first finger (one phalanx) shall be considered a six percent disability.
- 102 The loss of index or first finger shall be considered a 10 percent disability.
- 103 The loss of thumb (one phalanx) shall be considered a 12 percent disability.
- 104 The loss of thumb shall be considered a 20 percent disability.
- 105 The loss of thumb and index fingers shall be considered a 32 percent disability.
- 106 The loss of index and middle fingers shall be considered a 20 percent disability.
- 107 The loss of middle and ring fingers shall be considered a 15 percent disability.
- 108 The loss of ring and little fingers shall be considered a 10 percent disability.

109 The loss of thumb, index and middle fingers shall be considered a 40 percent disability.

110 The loss of index, middle and ring fingers shall be considered a 30 percent disability.

111 The loss of middle, ring and little fingers shall be considered a 20 percent disability.

112 The loss of four fingers shall be considered a 32 percent disability.

113 The loss of hand shall be considered a 50 percent disability.

114 The loss of forearm shall be considered a 55 percent disability.

115 The loss of arm shall be considered a 60 percent disability.

116 The total and irrecoverable loss of the sight of one eye shall be considered a 33 percent
117 disability. For the partial loss of vision in one or both eyes, the percentages of disability shall be
118 determined by the ~~commission~~ the Insurance Commissioner, private carrier, or self-insured
119 employer, whichever is applicable, using as a basis the total loss of one eye.

120 The total and irrecoverable loss of the hearing of one ear shall be considered a 22 and one-
121 half percent disability. The total and irrecoverable loss of hearing of both ears shall be considered
122 a 55 percent disability.

123 For the partial loss of hearing in one or both ears, the percentage of disability shall be
124 determined by the ~~commission, successor to the commission, other~~ Insurance Commissioner,
125 private carrier, or self-insured employer, whichever is applicable, using as a basis the total loss of
126 hearing in both ears.

127 If a claimant sustains a compensable injury which results in the total loss by severance of
128 any of the bodily members named in this subdivision or dies from sickness or noncompensable
129 injury before the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer,
130 whichever is applicable, makes the proper award for the injury, the ~~commission~~ Insurance
131 Commissioner, private carrier, or self-insured employer shall make the award to the claimant's
132 dependents as defined in this chapter, if any; the payment to be made in the same installments
133 that would have been paid to claimant if living: *Provided*, That no payment shall be made to any
134 surviving spouse of the claimant after his or her remarriage and that this liability shall not accrue to

the estate of the claimant and is not subject to any debts of, or charges against, the estate.

(g) If a claimant to whom has been made a permanent partial award dies from sickness or noncompensable injury, the unpaid balance of the award shall be paid to claimant's dependents as defined in this chapter, if any; the payment to be made in the same installments that would have been paid to claimant if living: *Provided*, That no payment shall be made to any surviving spouse of the claimant after his or her remarriage, and that this liability shall not accrue to the estate of the claimant and is not subject to any debts of, or charges against, such estate.

(h) For the purposes of this chapter, a finding of the occupational pneumoconiosis board has the force and effect of an award.

(i) For the purposes of this chapter, with the exception of those injuries provided for in §23-4-6(f) and §23-4-6b of this code, the degree of permanent disability other than permanent total disability shall be determined exclusively by the degree of whole body medical impairment that a claimant has suffered. For those injuries provided for in §23-4-6(f) and §23-4-6b of this code, the degree of disability shall be determined exclusively by the provisions of said subdivision and said section. The occupational pneumoconiosis board created pursuant to §23-4-8a of this code shall premise its decisions on the degree of pulmonary function impairment that claimants suffer solely upon whole body medical impairment. The ~~Workers' Compensation Commission~~ Insurance Commissioner shall adopt standards for the evaluation of claimants and the determination of a claimant's degree of whole body medical impairment. Once the degree of medical impairment has been determined, that degree of impairment shall be the degree of permanent partial disability that shall be awarded to the claimant. This subdivision is applicable to all injuries incurred and diseases with a date of last exposure on or after February 2, 1995, to all applications for an award of permanent partial disability made on and after that date and to all applications for an award of permanent partial disability that were pending before the former workers' compensation commission or pending in litigation but not yet submitted for decision on and after that date. The prior provisions of this subdivision remain in effect for all other claims.

(j) ~~From a list of names of seven persons submitted to the executive director by the health care advisory panel, the executive director shall appoint an interdisciplinary examining board consisting of five members to evaluate claimants, including by examination if the board elects. The interdisciplinary examining board shall terminate upon termination of the commission and all administrative and adjudicatory functions performed by the interdisciplinary examining board shall be performed by the following reviewing bodies for those claims over which they have administrative jurisdiction: (1) The Insurance Commissioner or his or her designated administrator of each of the funds set forth in this chapter; (2) private carriers; or (3) self-insured employers. The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall establish a reviewing body to review applications for permanent total disability. The reviewing bodies shall employ or otherwise engage adequate resources, including medical professionals, to perform the functions of the interdisciplinary examining board. The board shall be composed of three qualified physicians with specialties and expertise qualifying them to evaluate medical impairment and two vocational rehabilitation specialists who are qualified to evaluate the ability of a claimant to perform gainful employment with or without retraining. One member of the board shall be designated annually as chairperson by the executive director. The term of office of each member of the board shall be six years and until his or her successor has been appointed and has qualified. Any member of the board may be appointed to any number of terms. Any two physician members and one vocational rehabilitation specialist member shall constitute a quorum for the transaction of business. The executive director, from time to time, shall fix the compensation to be paid to each member of the board, and the members are also entitled to reasonable and necessary traveling and other expenses incurred while actually engaged in the performance of their duties. The board shall perform the duties and responsibilities assigned by the provisions of this chapter, consistent with the administrative policies developed by the executive director with the approval of the board of managers.~~

(1) ~~The executive director~~ Insurance Commissioner shall establish requirements for the

proper completion and support for an application for permanent total disability benefits ~~within an~~
~~existing or a new rule no later than January 1, 2004. Upon adoption of the rule by the board of~~
~~managers, and~~ no issue of permanent total disability may be referred to the interdisciplinary
examining board, or, any other a reviewing body unless a properly completed and supported
application for permanent total disability benefits has been first filed. Prior to the referral of any
issue to the interdisciplinary examining board, or, upon its termination, prior to a reviewing body's
adjudication of a permanent total disability application, the ~~commission, or~~ reviewing body shall
conduct examinations of the claimant that it finds necessary and obtain all pertinent records
concerning the claimant's medical history and reports of examinations. ~~and forward them to the~~
~~board at the time of the referral. The commission or reviewing body shall provide adequate notice~~
~~to the employer of the filing of the request for a permanent total disability award and the employer~~
~~shall be granted an appropriate period in which to respond to the request. The claimant and the~~
~~employer may furnish all pertinent information to the board or other reviewing body and shall~~
~~furnish to the board or other reviewing body any information requested. The claimant and the~~
~~employer may each submit no more than one report and opinion regarding each issue present in a~~
~~given claim. The employer may have the claimant examined by medical specialists and vocational~~
~~rehabilitation specialists: *Provided*, That the employer is entitled to only one examination on each~~
~~issue present in a given claim. Any additional examinations must be approved by the commission~~
~~or other reviewing body and shall be granted only upon a showing of good cause. The reports from~~
~~all employer-conducted examinations must be filed with the board or other reviewing body and~~
~~served upon the claimant. The board or other reviewing body may request that those persons who~~
~~have furnished reports and opinions regarding a claimant provide it with additional information~~
~~considered necessary. Both the The claimant and the employer, as well as the commission, or~~
~~other reviewing body may submit or obtain reports from experts challenging or supporting the~~
~~other reports in the record regardless of whether or not the expert examined the claimant or relied~~
solely upon the evidence of record.

~~(2) If the board or a quorum of the board elects to examine a claimant, the individual members shall conduct any examinations that are pertinent to each of their specialties. If a claim presents an issue beyond the expertise of the board, the board may obtain advice or evaluations by other specialists. In addition, if the board of managers determines that the number of applications pending before the interdisciplinary examining board has exceeded the level at which the board can review and make recommendations within a reasonable time, the board of managers may authorize the executive director to appoint any additional members to the board that are necessary to reduce the backlog of applications. The additional members shall be recommended by the health care advisory panel. The executive director may make any appointments he or she chooses from the recommendations. The additional board members shall not serve a set term but shall serve until the board of managers determines that the number of pending applications has been reduced to an acceptable level.~~

~~(3) Referrals to the board shall be limited to matters related to the determination of permanent total disability under the provisions of subdivision (n) of this section and to questions related to medical cost containment, utilization review decisions and managed care decisions arising under section three of this article.~~

~~(4)~~ (2) In the event the board members or other a reviewing body elects to examine a claimant, the board or other reviewing body shall prepare a report stating the tests, examinations, procedures, and other observations that were made, the manner in which each was conducted and the results of each. The report shall state the findings made by the board or other reviewing body and the reasons for the findings. Copies of the reports of all examinations made by the board or other reviewing body shall be served upon the parties and the commission until its termination. Each shall be given an opportunity to respond in writing to the findings and conclusions stated in the reports.

~~(5)~~ (3) The board or other A reviewing body shall state its initial recommendations to the commission in writing with an explanation for each recommendation setting forth the reasons for

239 each. The recommendations shall be served upon the ~~parties and the commission~~ claimant and
240 ~~each~~ the claimant shall be afforded a 30-day opportunity to respond in writing to the ~~board or other~~
241 reviewing body regarding its recommendations. The ~~board or other~~ reviewing body shall review
242 any responses and issue its final recommendations. The final recommendations shall be
243 effectuated by the entry of an appropriate order by ~~the commission, or, upon its termination,~~
244 Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable. For all
245 awards for permanent total disability where the claim was filed on or after the effective date of the
246 amendment and reenactment of this section in the year 2003, the ~~commission or other~~ reviewing
247 body shall establish the date of onset of the claimant's permanent total disability as the date when
248 a properly completed and supported application for permanent total disability benefits as
249 prescribed in §23-4-6(j)(1) of this code that results in a finding of permanent total disability was
250 filed ~~with the commission or other reviewing body:~~ *Provided*, That upon notification of to the
251 ~~commission or other reviewing body~~ Insurance Commissioner, private carrier, or self-insured
252 employer, whichever is applicable, by a claimant or his or her representative that the claimant
253 seeks to be evaluated for permanent total disability, the ~~commission or other reviewing body~~
254 Insurance Commissioner, private carrier, or self-insured employer shall send the claimant or his or
255 her representative the proper application form. The ~~commission or other reviewing body~~ Insurance
256 Commissioner, private carrier, or self-insured employer, whichever is applicable, shall set time
257 limits for the return of the application. A properly completed and supported application returned
258 within the time limits set by the ~~commission or other reviewing body~~ Insurance Commissioner,
259 private carrier, or self-insured employer, whichever is applicable, shall be treated as if received on
260 the date the ~~commission or other reviewing body~~ Insurance Commissioner, private carrier, or self-
261 insured employer was notified the claimant was seeking evaluation for permanent total disability:
262 *Provided, however,* That notwithstanding any other provision of this section to the contrary, the
263 onset date may not be sooner than the date upon which the claimant meets the percentage
264 thresholds of prior permanent partial disability that are established by §23-4-6(n) of this code as a

prerequisite to the claimant's qualification for consideration for a permanent total disability award.

~~(6) Except as noted below, objections pursuant to section one, article five of this chapter to any order shall be limited in scope to matters within the record developed before the Workers' Compensation Commission and the board or other reviewing body and shall further be limited to the issue of whether the board or other reviewing body properly applied the standards for determining medical impairment, if applicable, and the issue of whether the board's findings are clearly wrong in view of the reliable, probative and substantial evidence on the whole record. The preponderance of the evidence set forth in article one of this chapter shall apply to decisions made by reviewing bodies other than the commission instead of the clearly wrong standard. If either party contends that the claimant's condition has changed significantly since the review conducted by the board or other reviewing body, the party may file a motion with the administrative law judge, together with a report supporting that assertion. Upon the filing of the motion, the administrative law judge shall cause a copy of the report to be sent to the examining board or other reviewing body asking the board to review the report and provide comments if the board chooses within sixty days of the board's receipt of the report. The board or other reviewing body may either supply comments or, at the board's or other reviewing body's discretion, request that the claim be remanded to the board for further review. If remanded, the claimant is not required to submit to further examination by the employer's medical specialists or vocational rehabilitation specialists. Following the remand, the board or other reviewing body shall file its recommendations with the administrative law judge for his or her review. If the board or other reviewing body elects to respond with comments, the comments shall be filed with the administrative law judge for his or her review. Following the receipt of either the board's or other reviewing body's recommendations or comments, the administrative law judge shall issue a written decision ruling upon the asserted change in the claimant's condition. No additional evidence may be introduced during the review of the objection before the office of judges or elsewhere on appeal: *Provided*, That each party and the commission may submit one written opinion on each issue pertinent to a given claim based upon a~~

~~review of the evidence of record either challenging or defending the board's or other reviewing body's findings and conclusions. Thereafter, based upon the evidence of record, the administrative law judge shall issue a written decision containing his or her findings of fact and conclusions of law regarding each issue involved in the objection. The limitation of the scope of review otherwise provided in this subsection is not applicable upon termination of the commission and any objections shall be subject to article five of this chapter in its entirety. Any objection filed in regard to a decision on an application for permanent total disability benefits shall be subject to the review provisions of §23-5-1 et seq. of this code.~~

(k) Compensation payable under any subdivision of this section shall not exceed the maximum nor be less than the weekly benefits specified in §23-4-6(b) of this code.

(l) Except as otherwise specifically provided in this chapter, temporary total disability benefits payable under §23-4-6(b) of this code shall not be deductible from permanent partial disability awards payable under §23-4-6(e) or (f) of this code. Compensation, either temporary total or permanent partial, under this section shall be payable only to the injured employee and the right to the compensation shall not vest in his or her estate, except that any unpaid compensation which would have been paid or payable to the employee up to the time of his or her death, if he or she had lived, shall be paid to the dependents of the injured employee if there are any dependents at the time of death.

(m) The following permanent disabilities shall be conclusively presumed to be total in character:

Loss of both eyes or the sight thereof.

Loss of both hands or the use thereof.

Loss of both feet or the use thereof.

Loss of one hand and one foot or the use thereof.

(n)(1) Other than for those injuries specified in §23-4-6(m) of this code, in order to be eligible to apply for an award of permanent total disability benefits for all injuries incurred and all

diseases, including occupational pneumoconiosis, regardless of the date of last exposure, on and after the effective date of the amendment and reenactment of this section during the year 2003, a claimant: (A) ~~Must~~ must have been awarded the sum of 50 percent in prior permanent partial disability awards; (B) must have suffered a single occupational injury or disease which results in a finding ~~by the commission~~ that the claimant has suffered a medical impairment of 50 percent; or (C) has sustained a 35 percent statutory disability pursuant to the provisions of §23-4-6(f) of this code. Upon filing an application, the claim will be reevaluated by the ~~examining board or other~~ reviewing body pursuant to §23-4-6(i) of this code to determine if the claimant has suffered a whole body medical impairment of 50 percent or more resulting from either a single occupational injury or occupational disease or a combination of occupational injuries and occupational diseases or has sustained a 35 percent statutory disability pursuant to the provisions of §23-4-6(f) of this code. A claimant whose prior permanent partial disability awards total 85 percent or more shall also be examined by the ~~board or other~~ reviewing body and must be found to have suffered a whole body medical impairment of 50 percent in order for his or her request to be eligible for further review. The ~~examining board or other~~ reviewing body shall review the claim as provided for in §23-4-6(j) of this code. If the claimant has not suffered whole body medical impairment of at least 50 percent or has sustained a 35 percent statutory disability pursuant to the provisions of §23-4-6(f) of this code, the request shall be denied. Upon a finding that the claimant has a 50 percent whole body medical impairment or has sustained a 35 percent statutory disability pursuant to the provisions of §23-4-6(f) of this code, the review of the application continues as provided for in the following paragraph of this subdivision. Those claimants whose prior permanent partial disability awards total 85 percent or more and who have been found to have a whole body medical impairment of at least 50 percent or have sustained a 35 percent statutory disability pursuant to the provisions of §23-4-6(f) of this code are entitled to the rebuttable presumption created pursuant to §23-4-6(d) of this code for the remaining issues in the request.

(2) For all awards made on or after the effective date of the amendment and reenactment

of this section during the year 2003, disability which renders the injured employee unable to engage in substantial gainful activity requiring skills or abilities which can be acquired or which are comparable to those of any gainful activity in which he or she has previously engaged with some regularity and over a substantial period of time shall be considered in determining the issue of total disability. The comparability of preinjury income to post-disability income will not be a factor in determining permanent total disability. Geographic availability of gainful employment within a driving distance of 75 miles from the residence of the employee or within the distance from the residence of the employee to his or her preinjury employment, whichever is greater, will be a factor in determining permanent total disability. For any permanent total disability award made after the amendment and reenactment of this section in the year 2003, permanent total disability benefits shall cease at age 70 years. ~~In addition, the vocational standards adopted pursuant to subsection (m), section seven, article three of this chapter shall be considered once they are effective.~~

(3) In the event that a claimant, who has been found to have at least a 50 percent whole body medical impairment or has sustained a 35 percent statutory disability pursuant to the provisions of §23-4-6(f) of this code, is denied an award of permanent total disability benefits pursuant to this subdivision and accepts and continues to work at a lesser paying job than he or she previously held, the claimant is eligible, notwithstanding the provisions of §23-4-9 of this code, to receive temporary partial rehabilitation benefits for a period of four years. The benefits shall be paid at the level necessary to ensure the claimant's receipt of the following percentages of the average weekly wage earnings of the claimant at the time of injury calculated as provided in this section and §23-4-6d and §23-4-14 of this code:

(A) 80 percent for the first year;

(B) 70 percent for the second year;

(C) 60 percent for the third year; and

(D) 50 percent for the fourth year: *Provided*, That in no event shall the benefits exceed 100 percent of the average weekly wage in West Virginia. In no event shall the benefits be subject to

the minimum benefit amounts required by the provisions of §23-4-6(b) of this code.

(4) Notwithstanding any provision of this ~~subsection~~ subdivision, §23-4-6(d) of this code or any other provision of this code to the contrary, on any claim filed on or after the effective date of the amendment and reenactment of this section in the year 2003:

(A) No percent of whole body medical impairment existing as the result of carpal tunnel syndrome for which a claim has been made under this chapter may be included in the aggregation of permanent disability under the provisions of this ~~subsection~~ subdivision or §23-4-6(d) of this code; and

(B) No percent of whole body medical impairment existing as the result of any occupational disease, the diagnosis of which is based solely upon symptoms rather than specific, objective, and measurable medical findings, and for which a claim has been made under this chapter may be included in the aggregation of permanent disability under the provisions of this ~~subsection~~ subdivision or §23-4-6(d) of this code.

(o) To confirm the ongoing permanent total disability status of the claimant, the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may elect to have any recipient of a permanent total disability award undergo one ~~independent~~ medical examination during each of the first five years that the permanent total disability award is paid and one ~~independent~~ medical examination during each three-year period thereafter until the claimant reaches the age of 70 years: *Provided*, That the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable~~, may elect to have any recipient of a permanent total disability award under the age of 50 years undergo one ~~independent~~ medical examination during each year that the permanent total disability award is paid until the recipient reaches the age of 50 years, and thereafter one ~~independent~~ medical examination during each three-year period thereafter until the claimant reaches the age of 70 years.

§23-4-6a. Benefits and mode of payment to employees and dependents for occupational

pneumoconiosis; further adjustment of claim for occupational pneumoconiosis.

1 If an employee is found to be permanently disabled due to occupational pneumoconiosis,
2 as defined in §23-4-1 of this code, the percentage of permanent disability is determined by the
3 degree of medical impairment that is found by the occupational pneumoconiosis board. The
4 ~~commission, successor to the commission, or the~~ Insurance Commissioner, private carrier, or self-
5 insured employer, whichever is applicable, shall enter an order setting forth the findings of the
6 occupational pneumoconiosis board with regard to whether the claimant has occupational
7 pneumoconiosis and the degree of medical impairment, if any, resulting therefrom. That order is
8 the final decision of the ~~commission~~ Insurance Commissioner, private carrier, or self-insured
9 employer, whichever is applicable, for purposes of ~~section one, article five of this chapter~~ §23-5-1a
10 of this code. If a decision is objected to, the ~~office of judges~~ Board of Review shall affirm the
11 decision of the Occupational Pneumoconiosis Board made following hearing unless the decision
12 is clearly wrong in view of the reliable, probative, and substantial evidence on the whole record.
13 Compensation is paid therefor in the same manner and at the same rate as is provided for
14 permanent disability under the provisions of ~~subdivisions (d), (e), (g), (h), (i), (j), (k), (m) and (n),~~
15 ~~section six of this article~~ §23-4-6 of this code: *Provided*, That for any employee who applies for
16 occupational pneumoconiosis benefits whose award was granted on or after the effective date of
17 the amendment and reenactment of this section during the year 2003, there shall be no permanent
18 partial disability awarded based solely upon a diagnosis of occupational pneumoconiosis, it being
19 the intent of the Legislature to eliminate any permanent partial disability awards for occupational
20 pneumoconiosis without a specific finding of measurable impairment.

21 If the employee dies from occupational pneumoconiosis, the benefits shall be as provided
22 for in §23-4-10 of this code; as to the benefits, §23-4-11 through §23-4-14 of this code, inclusive, of
23 this article apply.

24 In cases of permanent disability or death due to occupational pneumoconiosis, as defined
25 in §23-4-1 of this code, accompanied by active tuberculosis of the lungs, compensation shall be

26 payable as for disability or death due to occupational pneumoconiosis alone.

27 The provisions of §23-4-16 of this code and ~~sections two, three, four and five, article five of~~
28 ~~this chapter~~ §23-5-2, §23-5-3a, §23-5-4, and §23-5-5a of this code providing for the further
29 adjustment of claims are applicable to the claim of any claimant who receives a permanent partial
30 disability award for occupational pneumoconiosis.

§23-4-6d. Benefits payable to part-time employees.

1 (a) For purposes of this section, a part-time employee means an employee who, at the
2 date of injury, is customarily employed 25 hours per week or less on a regular basis and is
3 classified by the employer as a part-time employee: *Provided*, That the term "part-time employee"
4 shall not include an employee who regularly works more than 25 hours per week for the employer,
5 nor shall it include an employee who regularly works for more than one employer and whose
6 regular combined working hours total more than 25 hours per week when that employee is
7 rendered unable to perform the duties of his or her employment as a result of the injury, nor shall it
8 include any employee in the construction industry who works less than 25 hours per week.

9 (b) For purposes of establishing temporary total disability weekly benefits pursuant to §23-
10 4-6(b) of this code for part-time employees, the "average weekly wage earnings, wherever earned,
11 of the injured person at the date of injury" shall be computed based upon the best average weekly
12 gross pay, wherever earned, which is received by the employee during the best quarter of wages
13 out of the preceding four quarters of wages as reported to the ~~commission~~ Insurance
14 Commissioner pursuant to §23-2-2(b) of this code: *Provided*, That for part-time employees who
15 have been employed less than two months but more than one week prior to the date of injury or
16 any employee whose wages have not yet been reported to the ~~commission~~ Insurance
17 Commissioner, the average weekly wage earnings shall be calculated based upon the average
18 gross earnings in the weeks actually worked: *Provided, however*, That for part-time employees
19 who have been employed one week or less, the average weekly wage earnings shall be calculated
20 based upon the average weekly wage prevailing for the same or similar part-time employment at

the time of injury except that when an employer has agreed to pay a certain hourly wage to a part-time employee, the average weekly wage shall be computed by multiplying the hourly wage by the regular numbers of hours contracted to be worked each week: *Provided further*, That notwithstanding any provision of this article to the contrary, no part-time employee shall receive temporary total disability benefits greater than his or her average weekly wage earnings as so calculated.

(c) Notwithstanding any other provisions of this article to the contrary, benefits payable to a part-time injured employee for any permanent disability shall be computed and paid on the same basis as if the injured employee is not a part-time employee within the meaning of this section.

§23-4-7. Release of medical information to employer; legislative findings; effect of application for benefits; duty of employer.

(a) The Legislature hereby finds and declares that two of the primary objectives of the workers' compensation system established by this chapter are to provide benefits to an injured claimant promptly and to effectuate his or her return to work at the earliest possible time; and that the prompt dissemination of medical information to the ~~commission and~~ employer as to diagnosis, treatment, and recovery is essential if these two objectives are to be achieved. ~~that claimants are increasingly burdened with the task of contacting their treating physicians to request the furnishing of detailed medical information to the commission and their employers; that the commission is increasingly burdened with the administrative responsibility of providing copies of medical reports to the employer involved, whereas in other states the employer can obtain the necessary medical information direct from the treating physician; that much litigation is occasioned in this state because of a lack of medical information having been received by the employer as to the continuing disability of a claimant; and that detailed narrative reports from the treating physician are often necessary in order for the commission, the claimant's representatives and the employer to evaluate a claim and determine whether additional or different treatment is indicated.~~

(b) In view of the foregoing findings, a claimant irrevocably agrees by the filing of his or her

16 application for benefits that any physician may release to and orally discuss with the claimant's
17 employer, or its representative, or with a representative of the ~~commission, successor to the~~
18 ~~commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is
19 applicable, from time to time, the claimant's medical history and any medical reports pertaining to
20 the occupational injury or disease and to any prior injury or disease of the portion of the claimant's
21 body to which a medical impairment is alleged containing detailed information as to the claimant's
22 condition, treatment, prognosis, and anticipated period of disability and dates as to when the
23 claimant will reach or has reached his or her maximum degree of improvement or will be or was
24 released to return to work. For the exclusive purposes of this chapter, the patient-physician
25 privilege of confidentiality is waived with regard to the physician's ~~providing~~ provision of this
26 medical information ~~to the commission, the employer or to the employer's representative~~ pursuant
27 to this section. Whenever a copy of any medical report is obtained by the employer or its
28 representative and the physician has not also forwarded a copy of the medical report to the
29 ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-
30 insured employer, whichever is applicable, the employer shall forward a copy of the medical report
31 to the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier,
32 or self-insured employer ~~whichever is applicable~~, within 10 days from the date the employer
33 received the medical report from the physician.

**§23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence;
recommendation of authorized treating physician; independent medical
evaluations; temporary total disability benefits and the termination thereof;
mandatory action; additional authority; suspension of benefits.**

1 (a) The Legislature hereby finds and declares that injured claimants should receive the
2 type of treatment needed as promptly as possible; that overpayments of benefits with the resultant
3 hardship created by the requirement of repayment should be minimized; and that to achieve these
4 two objectives it is essential that the ~~commission~~ Insurance Commissioner, private carriers, and

5 self-insured employers establish and operate a systematic program for the monitoring of injury
6 claims where the disability continues longer than might ordinarily be expected.

7 (b) In view of the foregoing findings, the ~~commission, in consultation with the health care~~
8 ~~advisory panel,~~ Insurance Commissioner shall establish guidelines as to the anticipated period of
9 disability for the various types of injuries. Each injury claim in which temporary total disability
10 continues beyond the anticipated period of disability established for the injury involved shall be
11 reviewed ~~by the commission~~. If satisfied after reviewing the medical evidence that the claimant
12 would not benefit by ~~an independent~~ a medical evaluation, the ~~commission~~ Insurance
13 Commissioner, private carrier, or self-insured employer, whichever is applicable, shall mark the
14 claim file accordingly and shall diary the claim file as to the next date for required review which
15 shall not exceed 60 days. If the ~~commission~~ Insurance Commissioner, private carrier, or self-
16 insured employer, whichever is applicable, concludes that the claimant might benefit by an
17 ~~independent~~ a medical evaluation, the ~~commission~~ Insurance Commissioner, private carrier, or
18 self-insured employer shall proceed as specified in §23-4-7a(d) and (e) of this code.

19 (c) When the authorized treating physician concludes that the claimant has either reached
20 his or her maximum degree of improvement or is ready for disability evaluation, or when the
21 claimant has returned to work, the authorized treating physician may recommend a permanent
22 partial disability award for residual impairment relating to and resulting from the compensable
23 injury, and the following provisions govern and control:

24 (1) If the authorized treating physician recommends a permanent partial disability award of
25 15 percent or less, the ~~commission~~ Insurance Commissioner, private carrier, or self-insured
26 employer, whichever is applicable, shall enter an award of permanent partial disability benefits
27 based upon the recommendation and all other available information. The claimant's entitlement to
28 temporary total disability benefits ceases upon the entry of the award unless previously terminated
29 under the provisions of §23-4-7a(e) of this code.

30 (2) If, however, the authorized treating physician recommends a permanent partial

31 disability award in excess of 15 percent, or recommends a permanent total disability award, the
32 claimant's entitlement to temporary total disability benefits ceases upon the receipt by the
33 ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-
34 insured employer, whichever is applicable, of the medical report. The ~~commission, successor to~~
35 ~~the commission, other~~ Insurance Commissioner, private carrier or self-insured employer,
36 whichever is applicable, shall refer the claimant to a physician or physicians of its selection for
37 ~~independent~~ evaluation prior to the entry of a permanent disability award: *Provided*, That unless
38 the claimant has returned to work, the claimant shall thereupon receive benefits which shall be at
39 the permanent partial disability rate as provided in §23-4-6(e) of this code until the entry of a
40 permanent disability award or until the claimant returns to work. The amount of benefits paid prior
41 to the receipt of the ~~independent~~ evaluation report shall be considered and determined to be
42 payment of the permanent disability award granted, if any. In the event that benefits actually paid
43 exceed the amount granted by the permanent partial disability award, the claimant is entitled to no
44 further benefits by the award and the excess paid shall be an overpayment. For all awards made
45 or nonawarded partial benefits paid, the ~~commission, successor to the commission, other~~
46 Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may
47 only recover the amount of overpaid benefits or expenses by withholding, in whole or in part, future
48 disability benefits payable to the individual in the same or other claims and credit the amount
49 against the overpayment until it is repaid in full.

50 (d) When the ~~commission, successor to the commission, other~~ Insurance Commissioner,
51 private carrier, or self-insured employer, whichever is applicable, concludes that an ~~independent~~ a
52 medical evaluation is indicated, or that a claimant may be ready for disability evaluation in
53 accordance with other provisions of this chapter, the ~~commission, successor to the commission,~~
54 ~~other~~ Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable,~~
55 shall refer the claimant to a physician or physicians of its selection for examination and evaluation.
56 If the physician or physicians selected recommend continued, additional, or different treatment,

the recommendation shall be relayed to the claimant and the claimant's treating physician and the recommended treatment may be authorized by the ~~commission, successor to the commission,~~ other Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable.

(e) Notwithstanding any provision in §23-4-7a(c) of this code, the ~~commission, successor to the commission,~~ other Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall enter a notice suspending the payment of temporary total disability benefits but providing a reasonable period of time during which the claimant may submit evidence justifying the continued payment of temporary total disability benefits when:

(1) The physician or physicians selected by the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, conclude that the claimant has reached his or her maximum degree of improvement;

(2) When the authorized treating physician advises the ~~commission, successor to the commission,~~ other Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, that the claimant has reached his or her maximum degree of improvement or that he or she is ready for disability evaluation and when the authorized treating physician has not made any recommendation with respect to a permanent disability award as provided in §23-4-7a(c) of this code;

(3) When other evidence submitted to the ~~commission, successor to the commission,~~ other Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, justifies a finding that the claimant has reached his or her maximum degree of improvement; or

(4) When other evidence submitted or otherwise obtained justifies a finding that the claimant has engaged or is engaging in abuse, including, but not limited to, physical activities inconsistent with his or her compensable workers' compensation injury.

In all cases, a finding by the ~~commission, successor to the commission,~~ other Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, that the claimant has reached his or her maximum degree of improvement terminates the claimant's entitlement to

temporary total disability benefits regardless of whether the claimant has been released to return to work. Under no circumstances shall a claimant be entitled to receive temporary total disability benefits either beyond the date the claimant is released to return to work or beyond the date he or she actually returns to work.

In the event that the medical or other evidence indicates that claimant has a permanent disability, unless he or she has returned to work, the claimant shall thereupon receive benefits which shall be at the permanent partial disability rate as provided in §23-4-6(e) of this code until entry of a permanent disability award, pursuant to an evaluation by a physician or physicians selected by the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, or until the claimant returns to work. The amount of benefits shall be considered and determined to be payment of the permanent disability award granted, if any. In the event that benefits actually paid exceed the amount granted under the permanent disability award, the claimant is entitled to no further benefits by the order.

(f) Notwithstanding the anticipated period of disability established pursuant to the provisions of §23-4-7a(b) of this code, whenever in any claim temporary total disability continues longer than 120 days from the date of injury (or from the date of the last preceding examination and evaluation pursuant to the provisions of this subsection or pursuant to the directions of the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, under other provisions of this chapter), the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall refer the claimant to a physician or physicians of the ~~commission's~~ Insurance Commissioner's, private carrier's, or self-insured employer's selection for examination and evaluation in accordance with the provisions of §23-4-7a(d) of this code, and the provisions of §23-4-7a(e) of this code are fully applicable: *Provided*, That the requirement of mandatory examinations and evaluations pursuant to the provisions of this subsection shall not apply to any claimant who sustained a brain stem or spinal cord injury with resultant paralysis or an injury which

109 resulted in an amputation necessitating a prosthetic appliance.

110 (g) The provisions of this section are in addition to and in no way in derogation of the power
111 and authority vested in the ~~commission, successor to the commission, other~~ Insurance
112 Commissioner, private carrier, or self-insured employer, whichever is applicable, by other
113 provisions of this chapter or vested in the employer to have a claimant examined by a physician or
114 physicians of the employer's selection and at the employer's expense, or vested in the claimant or
115 employer to file a protest, under other provisions of this chapter.

116 (h) All evaluations and examinations performed by physicians shall be performed in
117 accordance with the protocols and procedures established by the ~~health care advisory panel~~
118 ~~pursuant to section three-b of this article~~ rule of the Insurance Commissioner: *Provided*, That the
119 physician may exceed these protocols when additional evaluation is medically necessary.

120 (i) The ~~commission, successor to the commission, other~~ Insurance Commissioner, private
121 carrier, or self-insured employer, whichever is applicable, may suspend benefits being paid to a
122 claimant if the claimant refuses, without good cause, to undergo the examinations or needed
123 treatments provided for in this section until the claimant submits to the examination or needed
124 treatments. ~~The executive director shall propose rules for approval by the commission to~~
125 ~~implement the provisions of this subsection.~~

**§23-4-8a. Occupational Pneumoconiosis Board; composition; term of office; duties;
quorum; remuneration.**

1 The Occupational Pneumoconiosis Board shall consist of five licensed physicians who
2 shall be appointed by the ~~executive director. Effective upon termination of the commission, the~~
3 ~~physicians shall be appointed by the~~ Insurance Commissioner: *Provided*, That those physicians
4 serving as of the termination of the former workers' compensation commission shall continue to
5 serve until replaced. No person shall be appointed as a member of the board, or as a consultant
6 thereto, who has not by special study or experience, or both, acquired special knowledge of
7 pulmonary diseases. All members of the Occupational Pneumoconiosis Board shall be physicians

8 of good professional standing admitted to practice medicine and surgery in this state. Two
9 members shall be roentgenologists. One member of the board shall be designated annually as
10 chairman by the ~~executive director~~ Insurance Commissioner. The term of office of each member of
11 the board shall be six years. ~~The five members of the existing board in office on the effective date~~
12 ~~of this section shall continue to serve until their terms expire and until their successors have been~~
13 ~~appointed and have qualified.~~ Any member of the board may be appointed to any number of terms.
14 The function of the board is to determine all medical questions relating to cases of compensation
15 for occupational pneumoconiosis under the direction and supervision of the ~~executive director~~
16 ~~and, effective upon termination of the commission,~~ the Insurance Commissioner. Any three
17 members of the board constitute a quorum for the transaction of its business if at least one of the
18 members present is a roentgenologist. ~~The executive director and, effective upon termination of~~
19 ~~the commission,~~ the Insurance Commissioner, shall, from time to time, fix the compensation to be
20 paid each member of the board. Members are also entitled to reasonable and necessary traveling
21 and other expenses incurred while actually engaged in the performance of their duties. In fixing the
22 compensation of board members, ~~the executive director or the~~ Insurance Commissioner shall take
23 into consideration the number of claimants a member of the board actually examines, the actual
24 time spent by members in discharging their duties, and the recommendation of the ~~board of~~
25 ~~managers and~~ Governor as to reasonable reimbursement per unit of time expended based on
26 comparative data for physicians within the state in the same medical specialties.

§23-4-8b. Occupational Pneumoconiosis Board; procedure; autopsy.

1 The Occupational Pneumoconiosis Board, upon reference to it by an appropriate party of a
2 case of occupational pneumoconiosis, shall notify the employee, or in case he or she is dead, the
3 claimant, and the employer, ~~successor to the commission, other~~ as well as the Insurance
4 Commissioner, private carrier, or self-insured employer, whichever is applicable, to appear before
5 the board at a time and place stated in the notice. If the employee is living, he or she shall appear
6 before the board at the time and place specified and submit to the examination, including clinical

7 and X-ray examinations, required by the board. If a physician licensed to practice medicine in the
8 state makes an affidavit that the employee is physically unable to appear at the time and place
9 designated by the board, the board shall, on notice to the proper parties, change the place and
10 time as may reasonably facilitate the hearing or examination of the employee or may appoint a
11 qualified specialist in the field of respiratory disease to examine the claimant on behalf of the
12 board. The employee, or in case he or she is dead, the claimant, and employer shall also produce
13 as evidence to the board all reports of medical and X-ray examinations which may be in their
14 respective possession or control, showing the past or present condition of the employee. If the
15 employee is dead, the notice of the board shall further require that the claimant produce necessary
16 consents and permits so that an autopsy may be performed, if the board so directs. When in the
17 opinion of the board an autopsy is considered necessary to accurately and scientifically to
18 ascertain and determine the cause of death, the autopsy examination shall be ordered by the
19 board, which shall designate a duly licensed physician, a pathologist, or any other specialists
20 determined necessary by the board, to make the examination and tests to determine the cause of
21 death and certify his or her or their written findings, in triplicate, to the board. The findings shall be
22 public records. In the event that a claimant for compensation for the death refuses to consent and
23 permit the autopsy to be made, all rights for compensation are forfeited.

24 The employee, or if he or she be dead, the claimant, and the employer, shall be entitled to
25 be present at all examinations conducted by the board and to be represented by attorneys and
26 physicians.

**§23-4-8c. Occupational Pneumoconiosis Board; reports and distribution thereof;
presumption; findings required of board; objection to findings; procedure thereon;
limitations on refilings; consolidation of claims.**

1 (a) The Occupational Pneumoconiosis Board, as soon as practicable after it has
2 completed its investigation, shall make its written report to the Insurance Commissioner, private
3 carrier, or self-insured employer, whichever is applicable, of its findings and conclusions on every

4 medical question in controversy and the board shall send one copy of the report to the employee
5 or claimant and one copy to the employer. The ~~board~~ Occupational Pneumoconiosis Board shall
6 also return to and file with the Insurance Commissioner, private carrier, or self-insured employer,
7 whichever is applicable, all the evidence as well as all statements under oath, if any, of the persons
8 who appeared before it on behalf of the employee or claimant, or employer, and also all medical
9 reports and X-ray examinations produced by or on behalf of the employee or claimant, or
10 employer.

11 (b) If it can be shown that the claimant or deceased employee has been exposed to the
12 hazard of inhaling minute particles of dust in the course of and resulting from his or her
13 employment for a period of 10 years during the 15 years immediately preceding the date of his or
14 her last exposure to such hazard and that the claimant or deceased employee has sustained a
15 chronic respiratory disability, it shall be presumed that the claimant is suffering or the deceased
16 employee was suffering at the time of his or her death from occupational pneumoconiosis which
17 arose out of and in the course of his or her employment. This presumption is not conclusive.

18 (c) The findings and conclusions of the ~~board~~ Occupational Pneumoconiosis Board shall
19 set forth, among other things, the following:

20 (1) Whether or not the claimant or the deceased employee has contracted occupational
21 pneumoconiosis and, if so, the percentage of permanent disability resulting therefrom;

22 (2) Whether or not the exposure in the employment was sufficient to have caused the
23 claimant's or deceased employee's occupational pneumoconiosis or to have perceptibly
24 aggravated an existing occupational pneumoconiosis or other occupational disease; and

25 (3) What, if any, physician appeared before the board on behalf of the claimant or employer
26 and what, if any, medical evidence was produced by or on behalf of the claimant or employer.

27 (d) If either party objects to the whole or any part of the findings and conclusions of the
28 ~~board~~ Occupational Pneumoconiosis Board, the party shall file with the ~~Office of Judges~~ Board of
29 Review, within 60 days from receipt of the copy to that party, unless for good cause shown the

30 ~~chief administrative law judge~~ Board of Review extends the time, the party's objections to the
31 findings and conclusions of the ~~board~~ Occupational Pneumoconiosis Board in writing, specifying
32 the particular statements of the ~~board's~~ Occupational Pneumoconiosis Board's findings and
33 conclusions to which such party objects. The filing of an objection within the time specified is a
34 condition of the right to litigate the findings and therefore jurisdictional. After the time has expired
35 for the filing of objections to the findings and conclusions of the ~~board~~ Occupational
36 Pneumoconiosis Board, the ~~commission or administrative law judge~~ Board of Review shall
37 proceed to act as provided in this chapter. If, after the time has expired for the filing of objections to
38 the findings and conclusions of the ~~board~~ Occupational Pneumoconiosis Board, no objections
39 have been filed, the report of a majority of the ~~board~~ Occupational Pneumoconiosis Board of its
40 findings and conclusions on any medical question shall be taken to be plenary and conclusive
41 evidence of the findings and conclusions stated in the report. If objection has been filed to the
42 findings and conclusions of the ~~board~~ Occupational Pneumoconiosis Board, notice of the
43 objection shall be given to the board. ~~and the~~ The members of the ~~board~~ Occupational
44 Pneumoconiosis Board joining in the findings and conclusions shall appear at the time fixed by the
45 ~~Office of Judges~~ Board of Review for the hearing to submit to examination and cross-examination
46 in respect to the findings and conclusions. At the hearing, evidence to support or controvert the
47 findings and conclusions of the ~~board~~ Occupational Pneumoconiosis Board shall be limited to
48 examination and cross-examination of the members of the board and to the taking of testimony of
49 other qualified physicians and roentgenologists.

50 (e) In the event that a claimant receives a final decision that he or she has no evidence of
51 occupational pneumoconiosis, the claimant is barred for a period of three years from the date of
52 the Occupational Pneumoconiosis Board's decision or until his or her employment with the
53 employer who employed the claimant at the time designated as the claimant's last date of
54 exposure in the denied claim has terminated, whichever is sooner, from filing a new claim or
55 pursuing a previously filed, but unruled upon, claim for occupational pneumoconiosis or

requesting a modification of any prior ruling finding him or her not to be suffering from occupational pneumoconiosis. For the purposes of this subsection, a claimant's employment shall be considered to be terminated if, for any reason, he or she has not worked for that employer for a period in excess of 90 days. Any previously filed, but unrul'd upon, claim shall be consolidated with the claim in which the board's Occupational Pneumoconiosis Board's decision is made and shall be denied together with the decided claim. The provisions of this subsection shall not be applied in any claim where doing so would, in and of itself, later cause a claimant's claim to be forever barred by the provisions of §23-4-15 of this code.

(f) Effective upon termination of the former workers' compensation commission, the Insurance Commissioner shall assume all administrative powers and responsibilities necessary to administer ~~sections eight-a, eight-b and eight-c of this article~~ this section and §23-4-8a and §23-4-8b of this code.

§23-4-9. Physical and vocational rehabilitation.

(a) The Legislature hereby finds that it is a goal of the workers' compensation program to assist employees to return to suitable gainful employment after an injury. In order to encourage workers to return to employment and to encourage and assist employers in providing suitable employment to injured employees, it is a priority of the ~~commission, successor to the commission, or~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, to achieve early identification of individuals likely to need rehabilitation services and to assess the rehabilitation needs of these injured employees. It is the goal of rehabilitation to return injured employees to employment which is comparable in work and pay to that which the individual performed prior to the injury. If a return to comparable work is not possible, the goal of rehabilitation is to return the individual to alternative suitable employment, using all possible alternatives of job modification, restructuring, reassignment, and training, so that the individual will return to productivity with his or her employer or, if necessary, with another employer. The Legislature further finds that it is the shared responsibility of the employer, the employee, the

14 physician, and the ~~commission~~ Insurance Commissioner or private carrier to cooperate in the
15 development of a rehabilitation process designed to promote reemployment for the injured
16 employee.

17 (b) In cases where an employee has sustained a permanent disability, or has sustained an
18 injury likely to result in temporary disability as determined by the ~~commission, successor to the~~
19 ~~commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is
20 applicable, the ~~commission, successor to the commission, other~~ Insurance Commissioner, private
21 carrier, or self-insured employer ~~whichever is applicable~~, shall at the earliest possible time
22 determine whether the employee would be assisted in returning to remunerative employment with
23 the provision of rehabilitation services and if it is determined that the employee can be physically
24 and vocationally rehabilitated and returned to remunerative employment by the provision of
25 rehabilitation services including, but not limited to, vocational or on-the-job training, counseling,
26 assistance in obtaining appropriate temporary or permanent work site, work duties, or work hours
27 modification, by the provision of crutches, artificial limbs, or other approved mechanical
28 appliances, or medicines, medical, surgical, dental, or hospital treatment or other services which
29 the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or
30 self-insured employer ~~whichever is applicable~~, in its sole discretion determines will directly assist
31 the employee's return to employment, the ~~commission, successor to the commission, other~~
32 Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable~~, shall
33 immediately develop a rehabilitation plan for the employee and, after due notice to the employer,
34 expend an amount necessary for that purpose: *Provided*, That the expenditure for vocational
35 rehabilitation shall not exceed \$20,000 for any one injured employee: *Provided, however*, That no
36 payment shall be made for such vocational rehabilitation purposes as provided in this section
37 unless authorized by the ~~commission, successor to the commission, other~~ Insurance
38 Commissioner, private carrier, or self-insured employer ~~whichever is applicable~~, prior to the
39 rendering of the physical or vocational rehabilitation, except that payments shall be made for

40 reasonable medical expenses without prior authorization if sufficient evidence exists which would
41 relate the treatment to the injury and the attending physician or physicians have requested
42 authorization prior to the rendering of the treatment: *Provided further*, That payment for physical
43 rehabilitation, including the purchase of prosthetic devices and other equipment and training in
44 use of the devices and equipment, are considered expenses within the meaning of §23-4-3 of this
45 code and are subject to the provisions of ~~sections three, three-b and three-c of this article~~ said
46 section. The provision of any rehabilitation services may be pursuant to a rehabilitation plan to be
47 developed and monitored by a rehabilitation professional for each injured employee or by such
48 other provider as determined by the ~~commission, successor to the commission, other~~ Insurance
49 Commissioner, private carrier, or self-insured employer, whichever is applicable. Notwithstanding
50 any other provision of this section to the contrary, the ~~commission~~ Insurance Commissioner may
51 determine ~~under rules promulgated by the board of managers~~ by rule that a rehabilitation plan or
52 any component thereof is not appropriate for an injured employee.

53 (c) In every case in which the ~~commission, successor to the commission, other~~ Insurance
54 Commissioner, private carrier, or self-insured employer, whichever is applicable, orders physical
55 or vocational rehabilitation of a claimant as provided in this section, the claimant shall, during the
56 time he or she is receiving any vocational rehabilitation or rehabilitative treatment that renders him
57 or her totally disabled during the period of rehabilitation, be compensated on a temporary total
58 disability basis for that period.

59 (d) In every case in which the claimant returns to gainful employment as part of a
60 rehabilitation plan, and the employee's average weekly wage earnings are less than the average
61 weekly wage earnings earned by the injured employee at the time of the injury, he or she shall
62 receive temporary partial rehabilitation benefits calculated as follows: The temporary partial
63 rehabilitation benefit shall be 70 percent of the difference between the average weekly wage
64 earnings earned at the time of the injury and the average weekly wage earnings earned at the new
65 employment, both to be calculated as provided in §23-4-6, §23-4-6d, and §23-4-14 of this code as

the calculation is performed for temporary total disability benefits, subject to the following limitations: In no event are the benefits subject to the minimum benefit amounts required by the provisions of §23-4-6(b) of this code, nor may the benefits exceed the temporary total disability benefits to which the injured employee would be entitled pursuant to §23-4-6, §23-4-6d, and §23-4-14 of this code during any period of temporary total disability resulting from the injury in the claim: *Provided*, That no temporary total disability benefits shall be paid for any period for which temporary partial rehabilitation benefits are paid: *Provided, however*, That the aggregate award of temporary total rehabilitation or temporary partial rehabilitation benefits for a single injury for which an award of temporary total rehabilitation or temporary partial rehabilitation benefits is made on or after the effective date of the amendment and reenactment of this section in the year 2003 shall be for a period not exceeding 52 weeks unless the payment of temporary total rehabilitation disability benefits is in conjunction with an approved vocational rehabilitation plan for retraining, in which event the payment period of temporary total rehabilitation disability benefits may be extended for a period not to exceed a total of 104 weeks. The amount of temporary partial rehabilitation benefits payable under this subsection shall be reviewed every 90 days to determine whether the injured employee's average weekly wage in the new employment has changed and, if the change has occurred, the amount of benefits payable under this subsection shall be adjusted prospectively. Temporary partial rehabilitation benefits shall only be payable when the injured employee is receiving vocational rehabilitation services in accordance with a rehabilitation plan developed under this section and no payment of temporary partial rehabilitation benefits shall be made after the claimant has received the vocational training provided under the rehabilitation plan.

(e) ~~The executive director, in consultation with the board of managers,~~ Insurance Commissioner shall propose for promulgation rules for the purpose of developing a comprehensive rehabilitation program which will assist injured workers to return to suitable gainful employment after an injury in a manner consistent with the provisions and findings of this section. The rules shall provide definitions for rehabilitation facilities and rehabilitation services pursuant to

92 this section. Notwithstanding any other provision of this chapter to the contrary, and in addition to
93 the provisions of §23-4-3 of this code authorizing ~~employers~~ an employer or the employer's
94 representative to participate in a managed health care plan, including a managed health care plan
95 that provides physical and vocational rehabilitation services, an employer or the employer's
96 representative may contract directly with one or more providers of vocational rehabilitation
97 services to be the employer's preferred provider of vocational rehabilitation services for its
98 employees who receive injuries compensable under the provisions of this chapter and the rules
99 promulgated under this section may require those employees to use the preferred providers.

§23-4-11. To whom death benefits paid.

1 The benefits, in case of death, shall be paid to one or more dependents of the decedent, or
2 to any other persons, for the benefit of all of the dependents, as may be determined by the
3 ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-
4 insured employer, whichever is applicable, who may apportion the benefits among the dependents
5 in the manner as they consider just and equitable. Payment to a dependent subsequent in right
6 may be made if the ~~commission~~ Insurance Commissioner, private carrier, or self-insured
7 employer, whichever is applicable, considers proper and it operates to discharge all other claims
8 for the benefits.

§23-4-12. Application of benefits.

1 The dependent or person to whom benefits are paid shall apply the benefits to the use of
2 the several beneficiaries of the benefits according to their respective claims upon the decedent for
3 support, in compliance with the finding and direction of the ~~commission, successor to the~~
4 ~~commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is
5 applicable.

§23-4-14. Computation of benefits.

1 (a) The average weekly wage earnings, wherever earned, of the injured person at the date
2 of injury and the average weekly wage in West Virginia as determined by the ~~commission, and,~~

3 ~~effective January 1, 2006, the~~ Insurance Commissioner, in effect at the date of injury, shall be
4 taken as the basis upon which to compute the benefits.

5 (1) In cases involving occupational pneumoconiosis or other occupational diseases, the
6 "date of injury" is the date of the last exposure to the hazards of occupational pneumoconiosis or
7 other occupational diseases.

8 (2) In computing benefits payable on account of occupational pneumoconiosis, the
9 ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-
10 insured employer, whichever is applicable, shall deduct the amount of all prior workers'
11 compensation benefits paid to the same claimant on account of silicosis, but a prior silicosis award
12 shall not, in any event, preclude an award for occupational pneumoconiosis otherwise payable
13 under this article.

14 (b)(1) Until July 1, 1994, the expression "average weekly wage earnings, wherever earned,
15 of the injured person, at the date of injury", within the meaning of this chapter, shall be computed
16 based upon the daily rate of pay at the time of the injury or upon the average pay received during
17 the two months, six months or 12 months immediately preceding the date of the injury, whichever
18 is most favorable to the injured employee, except for the purpose of computing temporary total
19 disability benefits for part-time employees pursuant to the provisions of §23-4-6d of this code.

20 (2) On and after July 1, 1994, the expression "average weekly wage earnings, wherever
21 earned, of the injured person, at the date of injury", within the meaning of this chapter, shall be
22 computed based upon the daily rate of pay at the time of the injury or upon the weekly average
23 derived from the best quarter of wages out of the preceding four quarters of wages as reported to
24 the ~~commission~~ Insurance Commissioner pursuant to §23-2-2(b) of this code, whichever is most
25 favorable to the injured employee, except for the purpose of computing temporary total disability
26 benefits for part-time employees pursuant to the provisions of §23-4-6d of this code.

27 (c) The expression "average weekly wage in West Virginia", within the meaning of this
28 chapter, is the average weekly wage in West Virginia as determined by the Commissioner of the

29 Bureau of Employment Programs in accordance with the provisions of §21A-6-10 and §21A-6-11
30 of this code and other applicable provisions of said chapter.

31 (d) In any claim for injuries, including occupational pneumoconiosis and other occupational
32 diseases, occurring on or after July 1, 1971, any award for temporary total, permanent partial, or
33 permanent total disability benefits or for dependent benefits shall be paid at the weekly rates or in
34 the monthly amount in the case of dependent benefits applicable to the claimant in effect on the
35 date of the injury. In no event shall an award for permanent total disability be subject to annual
36 adjustments resulting from changes in the average weekly wage in West Virginia.

§23-4-15. Application for benefits.

1 (a) To entitle any employee or dependent of a deceased employee to compensation under
2 this chapter, other than for occupational pneumoconiosis or other occupational disease, the
3 application for compensation shall be made on the form or forms prescribed by the Insurance
4 Commissioner, and filed with the Insurance Commissioner, private carrier, or self-insured
5 employer, whichever is applicable, within six months from and after the injury or death, as the case
6 may be, and unless filed within the six months period, the right to compensation under this chapter
7 is forever barred, such time limitation being hereby declared to be a condition of the right and
8 hence jurisdictional, and all proofs of dependency in fatal cases must also be filed ~~with the~~
9 ~~commission~~ within six months from and after the death. In case the employee is mentally or
10 physically incapable of filing the application, it may be filed by his or her attorney or by a member of
11 his or her family.

12 (b) To entitle any employee to compensation for occupational pneumoconiosis under the
13 provisions of this subsection, the application for compensation shall be made on the form or forms
14 prescribed by the Insurance Commissioner, and filed with the Insurance Commissioner, private
15 carrier, or self-insured employer, whichever is applicable, within three years from and after the last
16 day of the last continuous period of 60 days or more during which the employee was exposed to
17 the hazards of occupational pneumoconiosis or within three years from and after a diagnosed

18 impairment due to occupational pneumoconiosis was made known to the employee by a physician
19 and unless filed within the three-year period, the right to compensation under this chapter is
20 forever barred, such time limitation being hereby declared to be a condition of the right and hence
21 jurisdictional, or, in the case of death, the application shall be filed by the dependent of the
22 employee within two years from and after the employee's death, and such time limitation is a
23 condition of the right and hence jurisdictional.

24 (c) To entitle any employee to compensation for occupational disease other than
25 occupational pneumoconiosis under the provisions of this section, the application for
26 compensation shall be made on the form or forms prescribed by the Insurance Commissioner, and
27 filed with the Insurance Commissioner, private carrier, or self-insured employer, whichever is
28 applicable, within three years from and after the day on which the employee was last exposed to
29 the particular occupational hazard involved or within three years from and after the employee's
30 occupational disease was made known to him or her by a physician or which he or she should
31 reasonably have known, whichever last occurs, and unless filed within the three-year period, the
32 right to compensation under this chapter shall be forever barred, such time limitation being hereby
33 declared to be a condition of the right and therefore jurisdictional, or, in case of death, the
34 application shall be filed as aforesaid by the dependent of the employee within one year from and
35 after the employee's death, and such time limitation is a condition of the right and hence
36 jurisdictional.

§23-4-15a. Nonresident alien beneficiaries.

1 Notwithstanding any other provisions of this chapter, nonresident alien beneficiaries are
2 entitled to the same benefits as citizens of the United States: *Provided*, That the ~~commission,~~
3 ~~successor to the commission,~~ other Insurance Commissioner, private carrier, or self-insured
4 employer, whichever is applicable, in its discretion may make, and the beneficiary shall accept,
5 commutation of the benefits into a lump sum settlement and payment. Nonresident alien
6 beneficiaries within the meaning of this section means persons not citizens of the United States

7 residing outside of the territorial limits of the United States at the time of the injury with respect to
8 which benefits are awarded.

§23-4-15b. Determination of nonmedical questions; claims for occupational pneumoconiosis; hearing.

1 If a claim for occupational pneumoconiosis benefits is filed by an employee within three
2 years from and after the last day of the last continuous period of 60 days' exposure to the hazards
3 of occupational pneumoconiosis, the Insurance Commissioner, private carrier, or self-insured
4 employer, whichever is applicable, shall determine whether the claimant was exposed to the
5 hazards of occupational pneumoconiosis for a continuous period of not less than 60 days while in
6 the employ of the employer within three years prior to the filing of his or her claim, whether in the
7 State of West Virginia the claimant was exposed to such hazard over a continuous period of not
8 less than two years during the 10 years immediately preceding the date of his or her last exposure
9 to the hazard and whether the claimant was exposed to the hazard over a period of not less than
10 10 years during the 15 years immediately preceding the date of his or her last exposure to the
11 hazard. If a claim for occupational pneumoconiosis benefits is filed by an employee within three
12 years from and after the employee's occupational pneumoconiosis was made known to the
13 employee by a physician, the Insurance Commissioner, private carrier, or self-insured employer,
14 whichever is applicable, shall determine whether the claimant filed his or her application within that
15 period and whether in the State of West Virginia the claimant was exposed to the hazard over a
16 continuous period of not less than two years during the 10 years immediately preceding the date of
17 last exposure to the hazard and whether the claimant was exposed to the hazard over a period of
18 not less than 10 years during the 15 years immediately preceding the date of last exposure to the
19 hazard. If a claim for occupational pneumoconiosis benefits is filed by a dependent of a deceased
20 employee, the Insurance Commissioner, private carrier, or self-insured employer, whichever is
21 applicable, shall determine whether the deceased employee was exposed to the hazards of

22 occupational pneumoconiosis for a continuous period of not less than 60 days while in the employ
23 of the employer within 10 years prior to the filing of the claim, whether in the State of West Virginia
24 the deceased employee was exposed to the hazard over a continuous period of not less than two
25 years during the 10 years immediately preceding the date of his or her last exposure to the hazard
26 and whether the claimant was exposed to the hazard over a period of not less than 10 years during
27 the 15 years immediately preceding the date of his or her last exposure to the hazard. The
28 Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall
29 also determine other nonmedical facts that, in the opinion of the Insurance Commissioner, private
30 carrier, or self-insured employer ~~whichever is applicable~~, are pertinent to a decision on the validity
31 of the claim.

32 The Insurance Commissioner, private carrier, or self-insured employer, whichever is
33 applicable, shall enter an order with respect to nonmedical findings within 90 days following receipt
34 by the Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable~~,
35 of both the claimant's application for occupational pneumoconiosis benefits and the physician's
36 report filed in connection with the claimant's application and shall give each interested party notice
37 in writing of these findings with respect to all the nonmedical facts. The findings and actions of the
38 Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, are
39 final unless the employer, employee, claimant, or dependent, within 60 days after receipt of the
40 notice, objects to the findings and, unless an objection is filed within the 60-day period, the findings
41 are forever final, the time limitation is a condition of the right to litigate the findings and therefore
42 jurisdictional. Upon receipt of an objection, the ~~chief administrative law judge~~ Board of Review
43 shall set a hearing as provided in ~~section nine, article five of this chapter~~ §23-5-9a of this code. In
44 the event of an objection to the findings by the employer, the claim shall, notwithstanding the fact
45 that one or more hearings may be held with respect to the objection, mature for reference to the
46 Occupational Pneumoconiosis Board with like effect as if the objection had not been filed. If the
47 ~~administrative law judge~~ Board of Review concludes after the ~~protest~~ objection hearings that the

claim should be dismissed, a final order of dismissal shall be entered. The final order is subject to appeal in accordance with the provisions of ~~sections ten and twelve, article five of this chapter~~ §23-5-10a and §23-5-12a of this code. If the ~~administrative law judge~~ Board of Review concludes after the ~~protest~~ objection hearings that the claim should be referred to the Occupational Pneumoconiosis Board for its review, the order entered shall be interlocutory only and may be appealed only in conjunction with an appeal from a final order with respect to the findings of the Occupational Pneumoconiosis Board.

§23-4-16. Jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses; reopening cases involving permanent total disability; promulgation of rules.

(a) The power and jurisdiction of the ~~commission, successor to the commission, other Insurance Commissioner,~~ private carrier, or self-insured employer, whichever is applicable, over each case is continuing and the ~~commission, successor to the commission, other Insurance Commissioner,~~ private carrier, or self-insured employer ~~whichever is applicable,~~ may, in accordance with the provisions of this section and after due notice to the employer, make modifications or changes with respect to former findings or orders that are justified. ~~Upon and after February 2, 1995, the~~ The period in which a claimant may request a modification, change, or reopening of a prior award ~~that was entered either prior to or after that date~~ shall be determined by the following subdivisions of this subsection. Any request that is made beyond that period shall be refused.

(1) Except as provided in §23-4-22 of this code, in any claim which was closed without the entry of an order regarding the degree, if any, of permanent disability that a claimant has suffered, or in any case in which no award has been made, any request must be made within five years of the closure. During that time period, only two requests may be filed.

(2) Except as stated below, in any claim in which an award of permanent disability was made, any request must be made within five years of the date of the initial award. During that time

17 period, only two requests may be filed. With regard to those occupational diseases, including
18 occupational pneumoconiosis, which are medically recognized as progressive in nature, if any
19 such request is granted by the ~~commission, successor to the commission, other~~ Insurance
20 Commissioner, private carrier, or self-insured employer, whichever is applicable, a new five-year
21 period begins upon the date of the subsequent award. ~~With the advice of the health care advisory~~
22 ~~panel, the executive director and the board of managers shall by rule designate those progressive~~
23 ~~diseases which are customarily the subject of claims.~~

24 (3) No further award may be made in fatal cases except within two years after the death of
25 the employee.

26 (4) With the exception of the items set forth in §23-4-3(d) of this code, in any claim in which
27 medical or any type of rehabilitation service has not been rendered or durable medical goods or
28 other supplies have not been received for a period of five years, no request for additional medical
29 or any type of rehabilitation benefits shall be granted nor shall any medical or any type of
30 rehabilitation benefits or any type of goods or supplies be paid for by the ~~commission, successor to~~
31 ~~the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer,
32 whichever is applicable, if they were provided without a prior request. For the exclusive purposes
33 of this subdivision, medical services and rehabilitation services shall not include any encounter in
34 which significant treatment was not performed.

35 (b) In any claim in which an injured employee makes application for a further period of
36 temporary total disability, if the application is in writing and filed within the applicable time limit
37 stated above, the ~~commission, successor to the commission, other~~ Insurance Commissioner,
38 private carrier, or self-insured employer, whichever is applicable, shall pass upon the request
39 within 30 days of the receipt of the request. If the decision is to grant the request, the order shall
40 provide for the receipt of temporary total disability benefits. In any case in which an injured
41 employee makes application for a further award of permanent partial disability benefits or for an
42 award of permanent total disability benefits, if the application is in writing and filed within the

43 applicable time limit as stated above, the ~~commission, successor to the commission, other~~
44 Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall
45 pass upon the request within 30 days of its receipt and, if the ~~commission~~ Insurance
46 Commissioner, private carrier, or self-insured employer determines that the claimant may be
47 entitled to an award, the ~~commission, successor to the commission, other~~ Insurance
48 Commissioner, private carrier, or self-insured employer ~~whichever is applicable~~, shall refer the
49 claimant for further examinations that are necessary.

50 (c) If the application is based on a report of any medical examination made of the claimant
51 and submitted by the claimant to the ~~commission, successor to the commission, other~~ Insurance
52 Commissioner, private carrier, or self-insured employer, whichever is applicable, in support of his
53 or her application and the claim is opened for further consideration and additional award is later
54 made, the claimant shall be reimbursed for the expenses of the examination. The reimbursement
55 shall be made by the ~~commission, successor to the commission, other~~ Insurance Commissioner,
56 private carrier, or self-insured employer, whichever is applicable, to the claimant, in addition to all
57 other benefits awarded, upon due proof of the amount thereof being furnished by the claimant, but
58 shall in no case exceed the sum fixed pursuant to the applicable schedule of maximum reasonable
59 fees.

60 (d) The ~~commission, successor to the commission, other~~ Insurance Commissioner, private
61 carrier, or self-insured employer, whichever is applicable, has continuing power and jurisdiction
62 over claims in which permanent total disability awards have been made after April 8, 1993.

63 (1) The ~~commission, successor to the commission, other~~ Insurance Commissioner, private
64 carrier, or self-insured employer, whichever is applicable, shall continuously monitor permanent
65 total disability awards and may, from time to time, after due notice to the claimant, reopen a claim
66 for reevaluation of the continuing nature of the disability and possible modification of the award. At
67 such times as the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer,
68 whichever is applicable, may determine, the ~~commission~~ Insurance Commissioner, private carrier,

69 or self-insured employer may require the claimant to provide documents and other information to
70 ~~the commission, successor to the commission, other private carrier or self-insured employer,~~
71 ~~whichever is applicable,~~ including, but not limited to, tax returns, financial records, and affidavits
72 demonstrating level of income, recreational activities, work activities, medications used, and
73 physicians or other medical or rehabilitation providers treating or prescribing medication or other
74 services for the claimant; require the claimant to appear under oath ~~before the commission,~~
75 ~~successor to the commission, other private carrier or self-insured employer, whichever is~~
76 ~~applicable, or its duly authorized representative~~ and answer questions; and suspend or terminate
77 any benefits of a claimant who willfully fails to provide the information or appear as required.
78 ~~Provided, That the commission shall develop, implement and complete a program as soon as~~
79 ~~reasonably possible that requires each person receiving permanent total disability benefits on the~~
80 ~~effective date of the amendment and reenactment of this section in the year 2003, and each~~
81 ~~person who is awarded those benefits thereafter, to submit the tax returns and the affidavit~~
82 ~~described herein at least once: *Provided, however,* That this requirement does not restrict the~~
83 ~~commission's authority to require the information that may be required herein at such other times~~
84 ~~as the commission may determine. The commission, successor to the commission, other~~
85 Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may
86 reopen a claim for reevaluation when, in its sole discretion, it concludes that there exists good
87 cause to believe that the claimant no longer meets the eligibility requirements under §23-4-6(n) of
88 this code. The eligibility requirements, including any vocational standards, shall be applied as
89 those requirements are stated at the time of a claim's reopening.

90 (2) Upon reopening a claim under this subsection, ~~the commission, successor to the~~
91 ~~commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is
92 applicable, may take evidence, have the claimant evaluated, make findings of fact and
93 conclusions of law, and shall vacate, modify, or affirm the original permanent total disability award
94 as the record requires. ~~The claimant's former employer shall not be a party to the reevaluation, but~~

95 ~~shall be notified of the reevaluation and may submit any information as the employer may elect. In~~
96 the event the claimant retains his or her award following the reevaluation, the claimant's
97 reasonable attorneys' fees incurred in defending the award shall be paid by the ~~Workers'~~
98 ~~Compensation Commission, successor to the commission, other~~ Insurance Commissioner,
99 private carrier, or self-insured employer, whichever is applicable. In addition, the ~~Workers'~~
100 ~~Compensation Commission, successor to the commission, other~~ Insurance Commissioner,
101 private carrier, or self-insured employer, whichever is applicable, shall reimburse a prevailing
102 claimant for his or her costs in obtaining one evaluation on each issue during the course of the
103 reevaluation ~~with the reimbursement being made from the fund. The board of managers shall~~
104 ~~adopt criteria for the determination of reasonable attorneys' fees.~~

105 (3) This subsection shall not be applied to awards made under the provisions of §23-4-
106 6(m) of this code. The claimant may seek review of the final order as otherwise provided in §23-5-1
107 *et seq.* of this code for review of orders granting or denying permanent disability awards.

108 (4) ~~The commission~~ Insurance Commissioner shall establish by rule criteria for review,
109 reopening, and reevaluating a claim under this subsection. ~~The commission shall at least quarterly~~
110 ~~provide a report of the exercise of its authority to continuously monitor permanent total disability~~
111 ~~awards under this section to the Joint Committee on Government and Finance and the Joint~~
112 ~~Commission on Economic Development.~~

113 (e) A claimant may have only one active request for a permanent disability award pending
114 in a claim at any one time. Any new request that is made while another is pending shall be
115 consolidated into the former request.

§23-4-16a. Interest on benefits.

1 Whenever any award of temporary total, permanent partial or permanent total disability
2 benefits or dependent benefits is made on or after July 1, 1971, and a protest is filed to the award
3 or an appeal is taken from the award by an employer only and not by the claimant or dependent
4 and the award is not ultimately denied or reduced following the protest or appeal, the ~~commission,~~

5 ~~successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured
6 employer, whichever is applicable, shall add interest to the award at the simple rate of six percent
7 per annum from the date the award would have been payable had the protest or appeal not been
8 filed or taken, exclusive of any period for which a continuance was granted upon motion of any
9 party other than the protesting or appealing employer. ~~Any interest payable shall be charged to the~~
10 ~~account of the protesting or appealing employer to the extent that the benefits upon which such~~
11 ~~interest is computed are charged to the account of the employer.~~

§23-4-17. Commutation of periodical benefits.

1 ~~The commission, successor to the commission, other~~ Insurance Commissioner, private
2 carrier, or self-insured employer, whichever is applicable, under special circumstances and when it
3 is considered advisable, may commute periodical benefits to one or more lump-sum payments.
4 Upon the application of any claimant who has received an award of partial or total disability, who is
5 not a citizen of the United States and desires to reside permanently beyond the territorial limits of
6 the United States, or upon the application of an alien dependent of a deceased employee with
7 respect of whose death award of compensation has been made, the dependent residing in the
8 territorial limits of the United States at the time of the decedent's death, and desiring to reside
9 permanently beyond the territorial limits of the United States, ~~the commission, successor to the~~
10 ~~commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is
11 applicable, may commute into one lump-sum payment the periodical payments to which the
12 claimant or dependent would be entitled, but at the rate of one-half the amount that would be
13 payable to a citizen of the United States under like circumstances. The lump-sum payment at the
14 rate specified in this section discharges all liability with respect to the award, but in no event shall
15 the award be paid until the claimant or dependent has actually arrived and domiciled himself or
16 herself outside the territorial limits of the United States, except a sufficient portion of the award to

17 pay transportation and other necessary expenses.

§23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.

1 Except as provided by this section, compensation shall be paid only to the employees or
2 their dependents and is exempt from all claims of creditors and from any attachment, execution or
3 assignment other than compensation to counsel for legal services, under the provisions of, and
4 subject to the limitations contained in ~~section sixteen, article five of this chapter~~ §23-5-16a of this
5 code, and other than for the enforcement of orders for child or spousal support entered pursuant to
6 the provisions of chapter 48 of this code. Payments may be made in the periodic installments
7 determined by the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer,
8 whichever is applicable, in each case, but in no event less frequently than semimonthly for any
9 temporary award and monthly for any permanent award. Payments for permanent disability shall
10 be paid on or before the third day of the month in which they are due. In all cases where
11 compensation is awarded or increased, the amount of compensation shall be calculated and paid
12 from the date of disability.

§23-4-20. Postmortem examinations.

1 The ~~commission, successor to the commission, other~~ Insurance Commissioner, private
2 carrier, or self-insured employer, whichever is applicable, may, after due notice to the employer
3 and claimant, whenever it considers it necessary, order an autopsy and may designate a duly
4 licensed physician to make the postmortem examination or examinations that are necessary to
5 determine the cause of the deceased employee's death. The physician shall file with the
6 ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is
7 applicable, a written report of his or her findings. The claimant ~~and the employer, respectively,~~
8 ~~have~~ has the right to select a physician of his or her ~~or its~~ own choosing and, at his or her ~~or its~~ own
9 expense, to participate in the postmortem examination. The ~~respective physicians selected by the~~
10 ~~claimant and the employer have~~ claimant's physician has the right to concur in any report made by

the physician selected by the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, or ~~each~~ may file ~~with the commission, successor to the commission, other private carrier or self-insured employer,~~ whichever is applicable, a separate report. In any case, including silicosis cases, in which either ~~the employer or~~ a claimant requests that an autopsy be performed, the autopsy shall be directed as provided in this section. In the event that a claimant ~~for compensation for the death~~ refuses to consent and permit the autopsy, ~~to be made~~ all rights to compensation shall be forfeited.

§23-4-22. Permanent disability evaluations; limitations; notice.

[Repealed.]

§23-4-23. Permanent total disability benefits; reduction of disability benefits; reduction of benefits; application of section; severability.

(a) This section is applicable whenever benefits are being paid for permanent total disability benefits arising under §23-4-6(d), (m), or (n) of this code or under §23-4-8c of this code. This section is not applicable to the receipt of temporary total disability benefits, the receipt of permanent partial disability benefits, the receipt of benefits by partially or wholly dependent persons, or to the receipt of benefits pursuant to the provisions of §23-4-10(e) of this code. This section is not applicable to the receipt of medical benefits or the payment for medical benefits.

(b) Whenever applicable benefits are paid to a beneficiary with respect to the same time period for which payments under a self-insurance plan, a wage continuation plan, or a disability insurance policy provided by an employer are also received or being received by the beneficiary, the applicable benefits shall be reduced by these amounts:

(1) The after-tax amount of the payments received or being received under a self-insurance plan, a wage continuation plan, or under a disability insurance policy provided by an employer if the employee did not contribute directly to the plan or to the payment of premiums regarding the disability insurance policy; or

(2) The proportional amount, based on the ratio of the employer's contributions to the total

insurance premiums for the policy period involved, of the after-tax amount of the payments received or being received by the employee pursuant to a disability insurance policy provided by an employer if the employee did contribute directly to the payment of premiums regarding the disability insurance policy: *Provided*, That in no event shall applicable benefits be reduced below the minimum weekly benefits as provided for in §23-4-6(b) and (d) of this code.

(c) This section applies to awards of permanent total disability made after the effective date of this section.

(d) The ~~board of managers~~ Insurance Commissioner shall promulgate the appropriate rules for the interpretation, processing, and enforcement of this section.

(e) If any portion of this section or any application of this section is subsequently found to be unconstitutional or in violation of applicable law, it shall not affect the validity of the remainder of this section or the applications of the section that are not unconstitutional or in violation.

§23-4-24. Permanent total disability awards; retirement age; limitations on eligibility and the introduction of evidence; effects of other types of awards; procedures; requests for awards; jurisdiction.

(a) Notwithstanding any provision of this chapter to the contrary, except as stated below, no claimant shall be awarded permanent total disability benefits arising under §23-4-6(d) or (n) of this code or §23-4-8c of this code who terminates active employment and is receiving full old-age retirement benefits under the Social Security Act, 42 U.S.C. §§ 401 and 402. Any claimant shall be evaluated only for the purposes of receiving a permanent partial disability award premised solely upon the claimant's impairments. This subsection is not applicable in any claim in which the claimant has completed the submission of his or her evidence on the issue of permanent total disability prior to the later of the following: Termination of active employment or the initial receipt of full old-age retirement benefits under the Social Security Act. Once the claimant has terminated active employment and has begun to receive full old-age social security retirement benefits, the claimant may not produce additional evidence of permanent total disability nor shall the claim be

remanded for the production of the evidence.

(b) ~~The Workers' Compensation Commission, successor to the commission, other~~
Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, has
the sole and exclusive jurisdiction to initially hear and decide any claim or request pertaining, in
whole or in part, to §23-4-6(d) or (n) of this code. Any claim or request for permanent total disability
benefits arising under said subdivisions shall first be presented ~~to the commission~~ as part of the
initial claim filing or by way of an application for modification or adjustment pursuant to §23-4-16 of
this code. ~~The office of judges~~ Board of Review may consider a claim only after the ~~commission,~~
~~successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured
employer, whichever is applicable, has entered an appropriate order.

**§23-4-25. Permanent total disability benefits; reduction of disability benefits for wages
earned by claimant.**

(a) After April 8, 1993, a reduction in the amount of benefits as specified in §23-4-25(b) of
this code shall be made whenever benefits are being paid for a permanent total disability award
regardless of when the benefits were awarded. This section is not applicable to the receipt of
medical benefits or the payment for medical benefits, the receipt of permanent partial disability
benefits, the receipt of benefits by partially or wholly dependent persons, or to the receipt of
benefits pursuant to the provisions of §23-4-10(e) of this code. Prior to the application of this
section to any claimant, ~~the commission, successor to the commission, other~~ Insurance
Commissioner, private carrier, or self-insured employer, whichever is applicable, shall give the
claimant notice of the effect of this section upon a claimant's award if and when the claimant later
earns wages.

(b) Whenever applicable benefits are paid to a claimant with respect to the same time
period in which the claimant has earned wages as a result of his or her employment, the following
reduction in applicable benefits shall be made. The claimant's applicable monthly benefits and
monthly net wages received from the current employment shall be added together. If the total

15 exceeds by more than 120 percent of the amount of the claimant's monthly net wages earned
16 during his or her last employment prior to the award of permanent total disability benefits, the
17 excess shall be reduced by \$1 for each \$2 that the claimant's monthly benefits and monthly net
18 wages exceed the 120 percent level: *Provided*, That in no event shall applicable benefits be
19 reduced below the minimum weekly benefits as provided in §23-4-6(b) and (d) of this code.

ARTICLE 5. REVIEW.

§23-5-1. Notice by commission or self-insured employer of decision; procedures on claims; objections and hearing; effective until June 30, 2022.

1 [Repealed.]

§23-5-2. Application by employee for further adjustment of claim; objection to modification; hearing.

1 In any case where an injured employee makes application in writing for a further
2 adjustment of his or her claim under the provisions of §23-4-16 of this code and the application
3 discloses cause for a further adjustment, the ~~commission~~ Insurance Commissioner, private carrier,
4 or self-insured employer, whichever is applicable, shall ~~after due notice to the employer,~~ make the
5 modifications or changes with respect to former findings or orders in the claim that are justified.
6 Any party dissatisfied with any modification or change made by the ~~commission, the successor to~~
7 ~~the commission, other private insurance carriers and self-insured employers,~~ Insurance
8 Commissioner, private carrier, or self-insured employer, whichever is applicable, is, upon proper
9 and timely objection, entitled to a hearing, as provided in ~~section nine of this article~~ §23-5-9a of this
10 code.

§23-5-3. Refusal to reopen claim; notice; objection; effective until June 30, 2022.

1 [Repealed.]

§23-5-4. Application by employer for modification of award; objection to modification; hearing.

1 In any case in which an employer makes application in writing for a modification of any

2 award previously made to an employee of the employer, the ~~commission, the successor to the~~
3 ~~commission, other private insurance carriers and self-insured employers,~~ Insurance
4 Commissioner, private carrier, or self-insured employer, whichever is applicable, shall make a
5 decision upon the application. If the application discloses cause for a further adjustment, the
6 ~~commission, the successor to the commission, other private insurance carriers and self-insured~~
7 ~~employers,~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is
8 applicable, shall, after due notice to the employee, make the modifications or changes with respect
9 to former findings or orders that are justified. Any party dissatisfied with any modification or change
10 made or by the denial of an application for modification is, upon proper and timely objection,
11 entitled to a hearing as provided in ~~either §23-5-9 or §23-5-9a~~ of this code.

§23-5-5. Refusal of modification; notice; objection; effective until June 30, 2022.

1 [Repealed.]

§23-5-6. Time periods for objections and appeals; extensions; effective until June 30, 2022.

1 [Repealed.]

§23-5-7. Compromise and settlement.

1 (a) The claimant, the employer, and the ~~Workers' Compensation Commission, the~~
2 ~~successor to the commission, other private insurance carriers, and self-insured employers,~~
3 Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may
4 negotiate a final settlement of any and all issues in a claim wherever the claim is in the
5 administrative or appellate processes: *Provided*, That in the settlement of medical benefits for
6 nonorthopedic occupational disease claims, the claimant shall be represented by legal counsel:
7 *Provided, however*, That for the purposes of this section, the term "nonorthopedic occupational
8 disease claim" does not include an occupational hearing loss or hearing impairment claim. If the
9 employer is not active in the claim, the ~~commission, the successor to the commission, other~~
10 ~~private insurance carriers, and self-insured employers,~~ Insurance Commissioner, private carrier,
11 or self-insured employer, whichever is applicable, may negotiate a final settlement with the
12 claimant and the settlement shall be made a part of the claim record. Except in cases of fraud, no

13 issue that is the subject of an approved settlement agreement may be reopened by any party,
14 including the ~~commission, the successor to the commission, other private insurance carriers, and~~
15 ~~self-insured employers,~~ Insurance Commissioner, private carrier, or self-insured employer,
16 whichever is applicable. Any settlement agreement may provide for a lump-sum payment or a
17 structured payment plan, or any combination thereof, or any other basis as the parties may agree.
18 If a self-insured employer later fails to make the agreed-upon payment, the ~~commission~~ Insurance
19 Commissioner shall assume the obligation to make the payments and shall recover the amounts
20 paid or to be paid from the self-insured employer and its sureties or guarantors, or both, as
21 provided in §23-2-5 or §23-2-5a of this code.

22 (b) Each settlement agreement shall provide the toll-free number of the West Virginia State
23 Bar Association and shall provide the injured worker with five business days to revoke the
24 executed agreement. The Insurance Commissioner may void settlement agreements entered into
25 by an unrepresented injured worker which are determined to be unconscionable pursuant to
26 criteria established by rule of the commissioner.

27 (c) The amendments to this section enacted during the regular session of the Legislature,
28 2015, apply to all settlement agreements executed after the effective date.

**§23-5-8. Designation of Office of Administrative Law Judges; powers of chief
administrative law judge; effective until June 30, 2022.**

1 [Repealed.]

**§23-5-9. Hearings on objections to Insurance Commissioner; private carrier or self-insured
employer decisions; mediation; remand; effective until June 30, 2022.**

1 [Repealed.]

**§23-5-10. Appeal from administrative law judge decision to appeal board; effective until
June 30, 2022.**

1 [Repealed.]

§23-5-11. Workers' Compensation Board of Review generally; administrative powers and

duties of the board; effective until June 30, 2022.

1 [Repealed.]

§23-5-11a. Workers' Compensation Board of Review generally; administrative powers and duties of the board effective July 1, 2022.

1 (a) The "Workers' Compensation Board of Review", which may also be referred to as "the
2 Board of Review" or "the board" is hereby continued and granted exclusive jurisdiction over all
3 objections to decisions of the Insurance Commissioner, private carriers, and self-insured
4 employers, whichever is applicable, including any and all matters that were pending before the
5 former Office of Judges after September 30, 2022.

6 (b) The board ~~consists~~ shall consist of at least three members not to exceed a total of five
7 members.

8 (c) The Governor shall appoint, with the advice and consent of the Senate, ~~five~~ attorneys
9 qualified in accordance with subsection (f) of this section to serve as members of the Board of
10 Review. A member of the Board of Review may be removed by the Governor for official
11 misconduct, incompetence, neglect of duty, gross immorality, or malfeasance and then only after
12 notice and opportunity to respond and present evidence. ~~No~~ If the board consists of five members,
13 no more than three of the members of the board may be of the same political party. If the board
14 consists of three or four members, no more than two of the members may be of the same political
15 party. The Governor shall set the salary of the members of the board: *Provided, however,* That the
16 annual salary of a member of the Board of Review shall not exceed \$125,000. Members are
17 entitled to be reimbursed for actual and necessary travel expenses incurred in the discharge of
18 official duties in a manner consistent with the guidelines of the Travel Management Office of the
19 Department of Administration.

20 (d) Of the initial appointments of the two additional seats created during the 2021 Regular
21 Session, one member shall be appointed for a term ending December 31, 2025; one member shall
22 be appointed for a term ending December 31, 2027. Thereafter, ~~The~~ the appointments shall be for
23 six-year terms. Notwithstanding any other provision of this code, the term of a member shall expire

24 pursuant to this subsection unless the member is reappointed by the Governor as set forth in
25 subsection (c) of this section.

26 (e) A member of the Board of Review must, at the time he or she takes office and thereafter
27 during his or her continuance in office, be a resident of this state, be a member in good standing of
28 the West Virginia State Bar, have a minimum of 10 years' experience as an attorney admitted to
29 practice law in this state prior to appointment and have a minimum of five years' experience in
30 preparing and presenting cases or hearing actions and making decisions on the basis of the
31 record of those hearings before administrative agencies, regulatory bodies, or courts of record at
32 the federal, state, or local level.

33 (f) No member of the Board of Review may hold any other office, or accept any
34 appointment or public trust, nor may he or she become a candidate for any elective public office or
35 nomination thereto. Violation of this subsection requires the member to vacate his or her office. No
36 member of the Board of Review may engage in the practice of law during his or her term of office.

37 (g) A vacancy occurring on the board other than by expiration of a term shall be filled in the
38 manner original appointments were made, for the unexpired portion of the term.

39 (h) The board shall designate one of its members in rotation to be chair of the board for as
40 long as the board may determine by order made and entered of record. In the absence of the chair,
41 any other member designated by the members present shall act as chair.

42 (i) The Board of Review shall meet as often as necessary to conduct the board's
43 administrative business and make rules of practice and procedure, at such times and places as
44 the chair may determine. Two members shall be present in order to conduct administrative
45 business and make rules of practice and procedure. All decisions of the board upon administrative
46 matters, pursuant to this section, shall be determined by a majority of the members of the board.
47 In the event of a tie vote, the chair shall cast the deciding vote.

48 (j) The Board of Review shall, from time to time, promulgate rules of practice and
49 procedure for the review and determination of all objections filed with the board. The board does

not have the power to initiate or to promulgate legislative rules as that phrase is defined in §29A-3-1 *et seq.* of this code. Any rules adopted pursuant to this section which are applicable to the provisions of this article are not subject to §29A-3-9 through §29A-3-16 of this code. The board shall follow the remaining provisions of chapter 29A of this code for giving notice to the public of its actions and the holding of hearings or receiving of comments on the rules.

(k) The Board of Review may hire a clerk, hearing examiners, and other professional and clerical staff necessary to carry out the requirements of this article. It is the duty of the clerk of the Board of Review to attend in person, or by deputy, all the sessions of the board, to obey its orders and directions, to take care of and preserve in an office, kept for the purpose, all records and papers of the board and to perform other duties as prescribed by law or required of him or her by the board. All employees of the board serve at the will and pleasure of the board. The board's employees are exempt from the salary schedule or pay plan adopted by the Division of Personnel: *Provided*, That for the purpose of any applicable Division of Personnel Class Specifications, hearing examiners must be classified under a class with "attorney" in the class title. All personnel of the Board of Review are under the supervision of the chair of the Board of Review.

(l) The administrative expenses of the Board of Review shall be included within the annual budget of the Insurance Commissioner, and the Insurance Commissioner shall have administrative authority and oversight over the Board of Review.

(m) The amendments to this section made during the 2021 Regular Session of the Legislature shall become effective on July 1, 2022: *Provided*, That the board is authorized to promulgate rules and hire staff, pursuant to subsection (k) and (l) of this section respectively, prior to July 1, 2022, to the extent necessary to comply with the requirements of this article that shall become effective on that date.

§23-5-12. Appeal to board; procedure; remand and supplemental hearing; effective until June 30, 2022.

[Repealed.]

§23-5-13. Continuances and supplemental hearings; claims not to be denied on technicalities; effective until June 30, 2022.

1 [Repealed.]

§23-5-14. Disqualification of board members.

1 In any ~~appeal~~ matter wherein a ~~board~~ member of the Workers' Compensation Board of
2 Review is a party, or is personally interested in the results thereof ~~otherwise than as a general~~
3 ~~subscriber to the compensation fund, or he or she is connected with a contributor therein, or is a~~
4 beneficiary therein, or is connected with a beneficiary therein, he or she shall be disqualified from
5 participating in the hearing and determination of ~~such appeal~~ any objection to decisions of the
6 Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable.

§23-5-16. Fees of attorney for claimant; unlawful charging or receiving of attorney fees; effective until June 30, 2022.

1 [Repealed.]

NOTE: The purpose of this bill is to revise outdated provisions within Articles 4 and 5, Chapter 23 of the West Virginia Code, which pertain to the administration of workers' compensation claims. Much of the revised language is antiquated and predates the 2005/2006 regulatory transition from a state-operated monopolistic system for workers' compensation to a competitive, private market system. The bill also repeals obsolete code sections.

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