

1 HB502
2 97200-2
3 By Representatives Gordon, Howard, Barton, Bandy, Buskey,
4 Jackson, Baker (L), Martin, England, Salaam, Fields, Davis,
5 Grimes, Warren, Grantland, Scott, Rogers, Robinson (O),
6 Hilliard, Treadaway, Todd and Hall
7 RFD: Commerce
8 First Read: 19-FEB-08

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8 SYNOPSIS: Under existing law, if an employee who is
9 injured on the job is dissatisfied with the initial
10 treating physician selected by the employer, and if
11 further treatment is required, the employee may
12 advise the employer and select a second physician
13 from a panel or list of four physicians selected by
14 the employer.

15 This bill would allow an employee who is
16 injured on the job to have a physician of his or
17 her own selection to treat him or her for the
18 injury.

19 This bill would provide that the fee paid to
20 the physician selected by the employee would be the
21 same as the fee paid to the physician selected by
22 the employer.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 To amend Section 25-5-77, Code of Alabama 1975,
2 relating to workers' compensation; to allow an employee who is
3 injured on the job to have a physician of his or her own
4 selection treat him or her for the injury; and to provide that
5 the fee paid to the physician selected by the employee would
6 be the same as the fee paid to a physician selected by the
7 employer.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Section 25-5-77, Code of Alabama 1975, is
10 amended to read as follows:

11 "§25-5-77.

12 "(a) (1) In addition to the compensation provided in
13 this article and Article 4 of this chapter, the employer,
14 where applicable, shall pay the actual cost of the repair,
15 refitting, or replacement of artificial members damaged as the
16 result of an accident arising out of and in the course of
17 employment, and the employer, except as otherwise provided in
18 this amendatory act, shall pay an amount not to exceed the
19 prevailing rate or maximum schedule of fees as established
20 herein of reasonably necessary medical and surgical treatment
21 and attention, physical rehabilitation, medicine, medical and
22 surgical supplies, crutches, artificial members, and other
23 apparatus as the result of an accident arising out of and in
24 the course of the employment, as may be obtained by the
25 injured employee or, in case of death, obtained during the
26 period occurring between the time of the injury and the
27 employee's death therefrom. If the employee is dissatisfied

1 with the initial treating physician selected by the employer
2 and if further treatment is required, the employee may so
3 advise the employer, and the employee shall be entitled to
4 select a second physician from a panel or list of four
5 physicians selected by the employer. If surgery is required
6 and if the employee is dissatisfied with the designated
7 surgeon, he or she may so advise the employer, and the
8 employee shall be entitled to select a second surgeon from a
9 panel or list of four surgeons selected by the employer. If
10 four physicians or surgeons are not available to be listed,
11 the employer shall include on the list as many as are
12 available. The four physicians or surgeons selected by the
13 employer hereunder shall not be from or members of the same
14 firm, partnership, or professional corporation. The total
15 liability of the employer shall, unless otherwise provided in
16 this chapter, not exceed the prevailing rate or the maximum
17 schedule of fees as established herein. Notwithstanding the
18 foregoing, in ascertaining the prevailing rate of
19 reimbursement or payment with regard to participating
20 hospitals and ambulatory surgical centers or outpatient
21 rehabilitation centers licensed by the State of Alabama, as
22 well as diagnostic facilities accredited by the Commission on
23 Accreditation of Rehabilitation Facilities, the prevailing
24 rate shall be negotiated with each individual hospital,
25 ambulatory surgical center, licensed outpatient rehabilitation
26 facility, or diagnostic facility based on that institution's
27 treatment of comparable type cases for the 12-month period

1 immediately preceding August 1, 1992. These rates shall be
2 updated every 12 months thereafter. Initial rates shall be
3 established within six months of August 1, 1992. For those
4 non-participating hospitals the prevailing rate shall be
5 determined by a committee. In the first year following August
6 1, 1992, the committee shall be composed of five members. The
7 director shall appoint one member from the Department of
8 Industrial Relations and two members from the community in
9 which the non-participating hospital is located. The
10 non-participating hospital shall appoint two members. This
11 committee shall by a majority vote establish the maximum rates
12 of reimbursement or payment for the non-participating
13 hospital, and the hospital shall be bound for one year by the
14 determined rates of reimbursement or payment for workers'
15 compensation cases. If, following the first year after the
16 rates were established by this committee, the hospital is
17 again non-participating, then another committee shall be
18 appointed. This second committee shall have three members
19 selected by the non-participating hospital and two members
20 selected by the director. The committee composition shall
21 alternate as above described each year the hospital is
22 non-participating. The total liability of the employer shall
23 not exceed the rates established by the committee. This
24 committee, in determining the rates of reimbursement or
25 payments to the hospital, may consider such factors as the
26 size, staffing, and medical equipment of the hospital, and any
27 other factors which the committee may consider relevant. If an

1 insurer of the employee or a benefit association has paid or
2 is liable for the employee's medical, surgical, and hospital
3 service or for a part thereof, or if the employee is entitled
4 to the same or a part thereof, from any source whatever by
5 virtue of any agreement or understanding or law, state or
6 federal, without any loss of benefit to the employee, the
7 employer shall not be required to pay any part of the expense.
8 If the benefits are insufficient to pay all the employee's
9 expense, the employer shall be liable for the deficiency only.
10 All cases of dispute as to the necessity and value of the
11 services shall be determined by the tribunal having
12 jurisdiction of the claim of the injured employee for
13 compensation.

14 "(2) Notwithstanding the provisions of subdivision
15 (1) of this subsection, an employee may have a physician of
16 his or her own selection treat him or her. The fee paid to a
17 physician selected by the employee shall be the same as the
18 fee that would be paid to a physician selected by the
19 employer. The fee shall be paid for treatment for no more than
20 four weeks or up to 16 treatments on non-surgery required
21 strains/sprains without broken bones.

22 "(b) If requested to do so by the employer, the
23 injured employee shall submit to examination by the employer's
24 physician at all reasonable times, but the employee shall have
25 the right to have a physician of his or her own selection
26 present at the examination, in which case the employee shall
27 be liable to the physician of his or her own selection for his

1 or her services. The employer shall pay for the services of
2 the physician making the examination at the instance of the
3 employer. If a dispute arises as to the injury, or as to the
4 extent of the disability therefrom, the court may, at the
5 instance of either party or of its own motion, appoint a
6 neutral physician of good standing and ability to make an
7 examination of the injured employee and to report his or her
8 findings to the court, the expense of which examination shall
9 be borne equally by the parties. If the injured employee
10 refuses to comply with reasonable request for examination, or
11 refuses to accept the medical service or physical
12 rehabilitation, which the employer elects to furnish under
13 this chapter, the employee's right to compensation shall be
14 suspended and no compensation shall be payable for the period
15 of the refusal. A physician whose services are furnished or
16 paid for by the employer, or a physician of the injured
17 employee who treats or makes or is present at any examination
18 of an injured employee may be required to testify as to any
19 knowledge obtained by him or her in the course of the
20 treatment or examination as the treatment or examination
21 related to the injury or the disability arising therefrom. The
22 physician shall, upon written request of the injured employee
23 or his or her employer and without consent of or notice to the
24 employee or employer not making the request, furnish the
25 injured employee or his or her employer a written statement of
26 his or her professional opinion as to the extent of the injury
27 and disability. In all death claims where the cause of death

1 is obscure or is disputed, any interested party may require an
2 autopsy, the cost of which is to be borne by the party
3 demanding the autopsy. The term "physicians" shall include
4 medical doctor, surgeon, and chiropractor. A hospital, medical
5 clinic, rehabilitation service, or other person or entity
6 providing treatment to an employee or providing facilities at
7 which the employee receives treatment shall, upon the written
8 request of the employee or of the employer, furnish, at a
9 reasonable cost, the employee or the employer a copy of the
10 records, including X-rays and laboratory reports, relating to
11 the treatment of the injured employee. The copy may be
12 furnished without the consent of or notice to the employee or
13 employer not making the request. A physician, hospital,
14 medical clinic, rehabilitation service, or other person or
15 entity providing written statement of professional opinion or
16 copies of records pursuant to this subsection shall not be
17 liable to any person for a claim arising out of the release of
18 medical information concerning the employee.

19 "(c) If the employer so elects, the employee shall
20 submit to and undergo vocational rehabilitation at the
21 employer's expense through a vocational rehabilitation
22 specialist, who shall be qualified to render competent
23 vocational rehabilitation service. If an employee who is
24 unable in the opinion of the treating physician to return to
25 his or her former employment shall request vocational
26 rehabilitation and if both a vocational rehabilitation
27 specialist and a treating physician, the cost of whose service

1 is the obligation of the employer under this section, shall
2 express their opinions in writing that in the judgment of each
3 of them vocational rehabilitation is reasonably calculated to
4 restore the employee to gainful employment and is in the best
5 interest of the employee, the cost of the rehabilitation shall
6 be borne by the employer. The cost, where rehabilitation
7 requires residence at or near a facility or institution away
8 from the employee's customary residence, shall include
9 reasonable charges for the employee's necessary board,
10 lodging, and travel.

11 "(d) If an employee refuses, without the consent of
12 the court, to accept vocational rehabilitation at the
13 employer's request, the refusal shall result in loss of
14 compensation for the period of refusal.

15 "(e) All disputes with regard to vocational
16 rehabilitation may be submitted to the court for resolution.

17 "(f) The employer shall pay mileage costs to and
18 from medical and rehabilitation providers at the same rate as
19 provided by law for official state travel.

20 "(g) In a compensable workers' compensation claim,
21 the injured employee shall not be liable for payment of any
22 authorized and compensable medical expenses associated with
23 the workers' compensation claim.

24 "(h) All undisputed medical reimbursements or
25 payments shall be made within 25 working days of receipt of
26 claims in the form specified in Section 25-5-3. There shall be
27 added to any undisputed medical invoice which is not paid

1 within 25 working days an amount equal to 10 percent of the
2 unpaid balance.

3 If the employer or insurer responsible for payment
4 of the claim fails to add the additional 10 percent to the
5 claim as required by this section, the person, firm,
6 corporation, or partnership providing the medical service for
7 which payment has been delayed beyond the period specified in
8 this section may file a written complaint stating that fact
9 with the director. Upon investigation, if the director
10 determines that the facts stated in the complaint are true,
11 then in that event the director shall order the employer or
12 insurer to pay to the provider the amount of the claim and any
13 applicable penalty, and in addition may assess a civil
14 monetary penalty in amount not to exceed \$500 against the
15 employer or insurer, payment of which shall be made to the
16 director within 30 days of the notice of assessment.

17 "(i) Any party, including a health care provider, is
18 entitled to a review by an ombudsman of medical services that
19 are provided or for which authorization of payment is sought
20 if any party or the health care provider has any of the
21 following:

22 "(1) Been denied payment or had the charge reduced
23 for medical services rendered.

24 "(2) Been denied authorization for the payment of
25 services requested or performed when authorization is
26 required.

1 "(3) Been ordered by the director to refund payments
2 received for the provision of medical services.

3 "(4) A party to a medical dispute that remains
4 unresolved after a review of medical services as provided by
5 this section may petition the court for relief.

6 "(5) In any review under this subsection of medical
7 services provided by a physician, any party to a dispute may
8 request that the ombudsman consult with an independent medical
9 expert for the purpose of obtaining advice and consultation on
10 the resolution of any issue involving medical practice. If
11 such a request is made, the ombudsman shall select an
12 independent medical expert from among a list of at least three
13 names provided by the Workers' Compensation Medical Services
14 Board in a medical specialty appropriate to the issues raised
15 in the dispute and shall secure a written opinion from the
16 independent medical expert. In rendering a decision or
17 recommendation, the ombudsman shall give full consideration to
18 the opinion of the independent medical expert but shall not be
19 bound by that opinion. The independent medical expert shall be
20 compensated at a rate set by the Workers' Compensation Medical
21 Services Board and approved by the director."

22 Section 2. This act shall become effective on the
23 first day of the third month following its passage and
24 approval by the Governor, or its otherwise becoming law.