

1 SB205
2 155206-1
3 By Senators Beasley, Bedford, Sanders, Coleman, Dial, Figures,
4 Smitherman and Marsh
5 RFD: Health
6 First Read: 15-JAN-14

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8 SYNOPSIS: Under existing Workers' Compensation law,
9 an employee injured in an accident in the course of
10 employment is entitled to medical care including
11 medicines to treat injuries related to the
12 accident.

13 This bill would specify that under the
14 Workers' Compensation Law an employee would have
15 the right to select his or her own pharmacy or
16 pharmacist to dispense and fill prescriptions under
17 the law.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT

22
23 Relating to Workers' Compensation; to amend Section
24 25-5-77, Code of Alabama 1975, relating to the expenses of
25 medical treatment; to specify that an employee may select his
26 or her own pharmacy to fill prescriptions under the law.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

3 "§25-5-77.

4 "(a) In addition to the compensation provided in
5 this article and Article 4 of this chapter, the employer,
6 where applicable, shall pay the actual cost of the repair,
7 refitting, or replacement of artificial members damaged as the
8 result of an accident arising out of and in the course of
9 employment, and the employer, except as otherwise provided in
10 this amendatory act, shall pay an amount not to exceed the
11 prevailing rate or maximum schedule of fees as established
12 herein of reasonably necessary medical and surgical treatment
13 and attention, physical rehabilitation, medicine, medical and
14 surgical supplies, crutches, artificial members, and other
15 apparatus as the result of an accident arising out of and in
16 the course of the employment, as may be obtained by the
17 injured employee or, in case of death, obtained during the
18 period occurring between the time of the injury and the
19 employee's death therefrom. If the employee is dissatisfied
20 with the initial treating physician selected by the employer
21 and if further treatment is required, the employee may so
22 advise the employer, and the employee shall be entitled to
23 select a second physician from a panel or list of four
24 physicians selected by the employer. If surgery is required
25 and if the employee is dissatisfied with the designated
26 surgeon, he or she may so advise the employer, and the
27 employee shall be entitled to select a second surgeon from a

1 panel or list of four surgeons selected by the employer. If
2 four physicians or surgeons are not available to be listed,
3 the employer shall include on the list as many as are
4 available. The four physicians or surgeons selected by the
5 employer hereunder shall not be from or members of the same
6 firm, partnership, or professional corporation. The total
7 liability of the employer shall, unless otherwise provided in
8 this chapter, not exceed the prevailing rate or the maximum
9 schedule of fees as established herein. Notwithstanding the
10 foregoing, in ascertaining the prevailing rate of
11 reimbursement or payment with regard to participating
12 hospitals and ambulatory surgical centers or outpatient
13 rehabilitation centers licensed by the State of Alabama, as
14 well as diagnostic facilities accredited by the Commission on
15 Accreditation of Rehabilitation Facilities, the prevailing
16 rate shall be negotiated with each individual hospital,
17 ambulatory surgical center, licensed outpatient rehabilitation
18 facility, or diagnostic facility based on that institution's
19 treatment of comparable type cases for the 12-month period
20 immediately preceding August 1, 1992. These rates shall be
21 updated every 12 months thereafter. Initial rates shall be
22 established within six months of August 1, 1992. For those
23 non-participating hospitals the prevailing rate shall be
24 determined by a committee. In the first year following August
25 1, 1992, the committee shall be composed of five members. The
26 director shall appoint one member from the Department of
27 Industrial Relations and two members from the community in

1 which the non-participating hospital is located. The
2 non-participating hospital shall appoint two members. This
3 committee shall by a majority vote establish the maximum rates
4 of reimbursement or payment for the non-participating
5 hospital, and the hospital shall be bound for one year by the
6 determined rates of reimbursement or payment for workers'
7 compensation cases. If, following the first year after the
8 rates were established by this committee, the hospital is
9 again non-participating, then another committee shall be
10 appointed. This second committee shall have three members
11 selected by the non-participating hospital and two members
12 selected by the director. The committee composition shall
13 alternate as above described each year the hospital is
14 non-participating. The total liability of the employer shall
15 not exceed the rates established by the committee. This
16 committee, in determining the rates of reimbursement or
17 payments to the hospital, may consider such factors as the
18 size, staffing, and medical equipment of the hospital, and any
19 other factors which the committee may consider relevant. If an
20 insurer of the employee or a benefit association has paid or
21 is liable for the employee's medical, surgical, and hospital
22 service or for a part thereof, or if the employee is entitled
23 to the same or a part thereof, from any source whatever by
24 virtue of any agreement or understanding or law, state or
25 federal, without any loss of benefit to the employee, the
26 employer shall not be required to pay any part of the expense.
27 If the benefits are insufficient to pay all the employee's

1 expense, the employer shall be liable for the deficiency only.
2 All cases of dispute as to the necessity and value of the
3 services shall be determined by the tribunal having
4 jurisdiction of the claim of the injured employee for
5 compensation.

6 "(b) If requested to do so by the employer, the
7 injured employee shall submit to examination by the employer's
8 physician at all reasonable times, but the employee shall have
9 the right to have a physician of his or her own selection
10 present at the examination, in which case the employee shall
11 be liable to the physician of his or her own selection for his
12 or her services. The employer shall pay for the services of
13 the physician making the examination at the instance of the
14 employer. If a dispute arises as to the injury, or as to the
15 extent of the disability therefrom, the court may, at the
16 instance of either party or of its own motion, appoint a
17 neutral physician of good standing and ability to make an
18 examination of the injured employee and to report his or her
19 findings to the court, the expense of which examination shall
20 be borne equally by the parties. If the injured employee
21 refuses to comply with reasonable request for examination, or
22 refuses to accept the medical service or physical
23 rehabilitation, which the employer elects to furnish under
24 this chapter, the employee's right to compensation shall be
25 suspended and no compensation shall be payable for the period
26 of the refusal. A physician whose services are furnished or
27 paid for by the employer, or a physician of the injured

1 employee who treats or makes or is present at any examination
2 of an injured employee may be required to testify as to any
3 knowledge obtained by him or her in the course of the
4 treatment or examination as the treatment or examination
5 related to the injury or the disability arising therefrom. The
6 physician shall, upon written request of the injured employee
7 or his or her employer and without consent of or notice to the
8 employee or employer not making the request, furnish the
9 injured employee or his or her employer a written statement of
10 his or her professional opinion as to the extent of the injury
11 and disability. In all death claims where the cause of death
12 is obscure or is disputed, any interested party may require an
13 autopsy, the cost of which is to be borne by the party
14 demanding the autopsy. The term "physicians" shall include
15 medical doctor, surgeon, and chiropractor. A hospital, medical
16 clinic, rehabilitation service, or other person or entity
17 providing treatment to an employee or providing facilities at
18 which the employee receives treatment shall, upon the written
19 request of the employee or of the employer, furnish, at a
20 reasonable cost, the employee or the employer a copy of the
21 records, including X-rays and laboratory reports, relating to
22 the treatment of the injured employee. The copy may be
23 furnished without the consent of or notice to the employee or
24 employer not making the request. A physician, hospital,
25 medical clinic, rehabilitation service, or other person or
26 entity providing written statement of professional opinion or
27 copies of records pursuant to this subsection shall not be

1 liable to any person for a claim arising out of the release of
2 medical information concerning the employee.

3 "(c) If the employer so elects, the employee shall
4 submit to and undergo vocational rehabilitation at the
5 employer's expense through a vocational rehabilitation
6 specialist, who shall be qualified to render competent
7 vocational rehabilitation service. If an employee who is
8 unable in the opinion of the treating physician to return to
9 his or her former employment shall request vocational
10 rehabilitation and if both a vocational rehabilitation
11 specialist and a treating physician, the cost of whose service
12 is the obligation of the employer under this section, shall
13 express their opinions in writing that in the judgment of each
14 of them vocational rehabilitation is reasonably calculated to
15 restore the employee to gainful employment and is in the best
16 interest of the employee, the cost of the rehabilitation shall
17 be borne by the employer. The cost, where rehabilitation
18 requires residence at or near a facility or institution away
19 from the employee's customary residence, shall include
20 reasonable charges for the employee's necessary board,
21 lodging, and travel.

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

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

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

4 "(g) In a compensable workers' compensation claim,
5 the injured employee shall not be liable for payment of any
6 authorized and compensable medical expenses associated with
7 the workers' compensation claim.

8 "(h) All undisputed medical reimbursements or
9 payments shall be made within 25 working days of receipt of
10 claims in the form specified in Section 25-5-3. There shall be
11 added to any undisputed medical invoice which is not paid
12 within 25 working days an amount equal to 10 percent of the
13 unpaid balance.

14 "If the employer or insurer responsible for payment
15 of the claim fails to add the additional 10 percent to the
16 claim as required by this section, the person, firm,
17 corporation, or partnership providing the medical service for
18 which payment has been delayed beyond the period specified in
19 this section may file a written complaint stating that fact
20 with the director. Upon investigation, if the director
21 determines that the facts stated in the complaint are true,
22 then in that event the director shall order the employer or
23 insurer to pay to the provider the amount of the claim and any
24 applicable penalty, and in addition may assess a civil
25 monetary penalty in amount not to exceed \$500 against the
26 employer or insurer, payment of which shall be made to the
27 director within 30 days of the notice of assessment.

1 "(i) Any party, including a health care provider, is
2 entitled to a review by an ombudsman of medical services that
3 are provided or for which authorization of payment is sought
4 if any party or the health care provider has any of the
5 following:

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

8 "(2) Been denied authorization for the payment of
9 services requested or performed when authorization is
10 required.

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

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

16 "(5) In any review under this subsection of medical
17 services provided by a physician, any party to a dispute may
18 request that the ombudsman consult with an independent medical
19 expert for the purpose of obtaining advice and consultation on
20 the resolution of any issue involving medical practice. If
21 such a request is made, the ombudsman shall select an
22 independent medical expert from among a list of at least three
23 names provided by the Workers' Compensation Medical Services
24 Board in a medical specialty appropriate to the issues raised
25 in the dispute and shall secure a written opinion from the
26 independent medical expert. In rendering a decision or
27 recommendation, the ombudsman shall give full consideration to

1 the opinion of the independent medical expert but shall not be
2 bound by that opinion. The independent medical expert shall be
3 compensated at a rate set by the Workers' Compensation Medical
4 Services Board and approved by the director.

5 "(j) An injured employee shall have the right to
6 select his or her own pharmacy or pharmacist for dispensing
7 and filling prescriptions for medicines required under this
8 chapter."

9 Section 2. This act shall become effective January
10 1, 2015.