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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO LABOR AND LABOR AND LABOR RELATIONS -- WORKERS'
COMPENSATION

Introduced By: Senator Frank A. Ciccone

Date Introduced: June 18, 2020

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-53-7 of the General Laws in Chapter 28-53 entitled "Rhode Island
2 Uninsured Protection Fund" is hereby amended to read as follows:

3 **28-53-7. Payments to employees of uninsured employers.**

4 (a) Where it is determined that the employee was injured in the course of employment
5 while working for an employer who fails to maintain a policy of workers' compensation insurance
6 as required by § 28-36-1 et seq., in accordance with the provisions of this chapter, the uninsured
7 protection fund is authorized to pay the benefits to which the injured employee would be entitled
8 pursuant to chapters 29 to 38 of this title subject to the limitations set forth herein.

9 (b) The workers' compensation court shall hear all petitions for payment from the fund
10 pursuant to § 28-30-1 et seq.; provided, however, that any petition for the commencement of
11 compensation benefits filed against the uninsured protection fund shall be accompanied or preceded
12 by a separate petition for the commencement of compensation benefits timely filed against the
13 uninsured unless the petition to be filed against the uninsured employer is otherwise enjoined or
14 prevented by law ~~and the employer shall be named as parties to any petition seeking payment of~~
15 ~~benefits from the fund.~~

16 (c) Where an employee is deemed to be entitled to benefits from the uninsured protection
17 fund, the fund shall pay benefits for incapacity as provided pursuant to chapters 29 to 38 of this
18 title except that the employee shall not be entitled to receive benefits for medical expenses pursuant

1 to the provisions of § 28-33-5 or loss of function and disfigurement pursuant to the provisions of §
2 28-33-19 from the uninsured protection fund. Nothing herein shall affect an employee's right to
3 otherwise recover such benefits for medical expenses, loss of function and disfigurement from an
4 uninsured employer.

5 (d) The fund shall pay costs, counsel, and witness fees, as provided in § 28-35-32, to any
6 employee who successfully prosecutes any petitions for payment; petitions to amend a pretrial
7 order; and all other employee petitions; and to employees who successfully defend, in whole or in
8 part, proceedings seeking to reduce or terminate any and all payments; provided, however, that the
9 attorney's fees awarded to counsel who represent the employee in petitions for lump-sum
10 commutation filed pursuant to § 28-33-25, or in the settlement of disputed cases pursuant to § 28-
11 33-25.1, shall be limited to the maximum amount paid to counsel who serve as court-appointed
12 attorneys in workers' compensation proceedings as established by rule or order of the Rhode Island
13 supreme court. Any payment ordered by the court or due under this section shall not be subject to
14 liens set forth in § 28-33-27(b), nor shall such payments be assignable or subject to assignment in
15 any way.

16 (e) In the event that the uninsured employer makes payment of any monies to the employee
17 to compensate the employee in any way for the alleged work injury ~~lost wages or medical expenses,~~
18 the fund ~~shall~~ may be entitled to a credit for all such monies received by, or on behalf of, the
19 employee, including, but not limited to, monies paid to the employee by any other party for the
20 employee's lost wages against any future benefits payable directly to the employee. The fund shall
21 be entitled to full reimbursement from the uninsured employer for any and all payments made by
22 the fund to the employee, as well as all costs, counsel, and witness fees paid out by the fund in
23 connection with any claim and/or petition, plus any and all costs and attorney's fees associated with
24 collection and reimbursement of the fund.

25 (f) This section shall apply to injuries that occur on or after September 1, 2019.

26 SECTION 2. Section 28-33-8 of the General Laws in Chapter 28-33 entitled "Workers'
27 Compensation - Benefits" is hereby amended to read as follows:

28 **28-33-8. Employee's choice of physician, dentist, or hospital -- Payment of charges --**
29 **Physician reporting schedule.**

30 (a)(1) An injured employee shall initially have freedom of choice to obtain health care,
31 diagnosis, and treatment from any qualified health care provider. The initial health care provider of
32 record may, without prior approval, refer the injured employee to any qualified specialist for
33 independent consultation or assessment, or specified treatment. If the insurer or self-insured
34 employer has a preferred-provider network approved and kept on record by the medical advisory

1 board, any change by the employee from the initial health care provider of record shall only be to
2 a health care provider listed in the approved preferred-provider network; provided, however, that
3 any contract proffered or maintained that restricts or limits the health care provider's ability to make
4 referrals pursuant to the provisions of this section; restricts the injured employee's first choice of
5 health care provider; substitutes or overrules the treatment protocols maintained by the medical
6 advisory board; or attempts to evade or limit the jurisdiction of the workers' compensation court
7 shall be void as against public policy. If the employee seeks to change to a health care provider not
8 in the approved preferred-provider network, the employee must obtain the approval of the insurer
9 or self-insured employer. Nothing contained in this section shall prevent the treatment, care, or
10 rehabilitation of an employee by more than one physician, dentist, or hospital. The employee's first
11 visit to any facility providing emergency care or to a physician or medical facility under contract
12 with or agreement with the employer or insurer to provide priority care, shall not constitute the
13 employee's initial choice to obtain health care, diagnosis, or treatment.

14 (2) In addition to the treatment of qualified health care providers, the employee shall have
15 the freedom to obtain a rehabilitation evaluation by a rehabilitation counselor certified by the
16 director pursuant to § 28-33-41 in cases where the employee has received compensation for a period
17 of more than three (3) months, and the employer shall pay the reasonable fees incurred by the
18 rehabilitation counselor for the initial assessment.

19 (b) Within three (3) days of an initial visit following an injury, the health care provider
20 shall provide to the insurer or self-insured employer, and the employee and his or her attorney, a
21 notification of compensable injury form to be approved by the administrator of the medical
22 advisory board. Within three (3) days of the injured employee's release or discharge, return to work,
23 and/or recovery from an injury covered by chapters 29 -- 38 of this title, the health care provider
24 shall provide a notice of release to the insurer or self-insured employer, and the employee and his
25 or her attorney, on a form approved by the division. A ~~twenty~~ thirty dollar ~~(\$20.00)~~ (\$30.00) fee
26 may be charged by the health care provider to the insurer or self-insured employer for the
27 notification of compensable injury forms or notice of release forms or for affidavits filed pursuant
28 to subsection (c) of this section, but only if filed in a timely manner. No claim for care or treatment
29 by a physician, dentist, or hospital chosen by an employee shall be valid and enforceable as against
30 his or her employer, the employer's insurer, or the employee, unless the physician, dentist, or
31 hospital gives written notice of the employee's choice to the employer/insurance carrier within
32 fifteen (15) days after the beginning of the services or treatment. The health care provider shall, in
33 writing, submit to the employer or insurance carrier an itemized bill and report for the services or
34 treatment and a final itemized bill for all unpaid services or treatment within three (3) months after

1 the conclusion of the treatment. The employee shall not be personally liable to pay any physician,
2 dentist, or hospital bills in cases where the physician, dentist, or hospital has forfeited the right to
3 be paid by the employer or insurance carrier because of noncompliance with this section.

4 (c)(1) At ~~six (6)~~ ten (10) weeks from the date of injury, then every ~~twelve (12)~~ ten (10)
5 weeks thereafter until maximum medical improvement, any qualified physician or other health care
6 professional providing medical care or treatment to any person for an injury covered by chapters
7 29 -- 38 of this title shall file an itemized bill and an affidavit with the insurer, the employee and
8 his or her attorney, and the medical advisory board. ~~A ten percent (10%) discount may be taken on~~
9 ~~the itemized bill affidavits not filed in a timely manner and received by the insurer one week or~~
10 ~~more late.~~ The affidavit shall be on a form designed and provided by the administrator of the
11 medical advisory board and shall state:

12 (i) The type of medical treatment provided to date, including type and frequency of
13 treatment(s);

14 (ii) Anticipated further treatment, including type, frequency, and duration of treatment(s),
15 whether or not maximum medical improvement has been reached, and the anticipated date of
16 discharge;

17 (iii) Whether the employee can return to the former position of employment, or is capable
18 of other work, specifying work restrictions and work capabilities of the employee;

19 (2) The affidavit shall be admissible as an exhibit of the workers' compensation court with
20 or without the appearance of the affiant.

21 (d) "Itemized bill", as referred to in this section, means a completed statement of charges,
22 on a form CMS HCFA 1500, UB 92/94 or other form suitable to the insurer, that includes, but is
23 not limited to, an enumeration of specific types of care provided; facilities or equipment used;
24 services rendered; and appliances or medicines prescribed, for purposes of identifying the treatment
25 given the employee with respect to his or her injury.

26 (e)(1) The treating physician shall furnish to the employee, or to his or her legal
27 representative, a copy of his or her medical report within ten (10) days of the examination date.

28 (2) The treating physician shall notify the employer, and the employee and his or her
29 attorney, immediately when an employee is able to return to full or modified work.

30 (3) There shall be no charge for a health record when that health record is necessary to
31 support any appeal or claim under the Workers' Compensation Act § 23-17-19.1(16). The treating
32 physician shall furnish to the employee, or to his or her legal representative, a medical report, within
33 ten (10) days of the request, stating the diagnosis, disability, loss of use, end result and/or causal
34 relationship of the employee's condition associated with the work related injury. The physician

1 shall be entitled to charge for these services only as enunciated in the State of Rhode Island workers
2 compensation medical fee schedule.

3 (f)(1) Compensation for medical expenses and other services under §§ 28-33-5, 28-33-7,
4 or 28-33-8 is due and payable within twenty-one (21) days from the date a request is made for
5 payment of these expenses by the provider of the medical services. In the event payment is not
6 made within twenty-one (21) days from the date a request is made for payment, the provider of
7 medical services may add, and the insurer or self-insurer shall pay, interest at the per annum rate
8 as provided in § 9-21-10 on the amount due. The employee or the medical provider may file a
9 petition with the administrator of the workers' compensation court which petition shall follow the
10 procedure as authorized in chapter 35 of this title.

11 (2) The twenty-one day (21) period in subdivision (1) of this subsection and in § 28-35-12
12 shall begin on the date the insurer receives a request with appropriate documentation required to
13 determine whether the claim is compensable and the payment requested is due.

14 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO LABOR AND LABOR AND LABOR RELATIONS -- WORKERS'
COMPENSATION

1 This is the annual workers' compensation omnibus bill. It would slightly alter the process
2 and type of benefits for which work-related injured employees of uninsured employers may seek
3 compensation. It would also reduce the frequency from every twelve (12) weeks, to every ten (10)
4 weeks, with which an employee's medical provider must render a status report, concerning his or
5 her actual and anticipated medical treatment plans, with an itemization of any of their work
6 restrictions and capabilities, and whether they have reached maximum medical improvement.

7 This act would take effect upon passage.

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