

1 H.425

2 Introduced by Representative Greshin of Warren

3 Referred to Committee on

4 Date:

5 Subject: Labor; employer's liability and workers' compensation

6 Statement of purpose of bill as introduced: This bill proposes to make changes
7 to the workers' compensation statutes.

8 An act relating to workers' compensation

9 It is hereby enacted by the General Assembly of the State of Vermont:

10 Sec. 1. 21 V.S.A. § 640 is amended to read:

11 § 640. MEDICAL BENEFITS; ASSISTIVE DEVICES; HOME AND
12 AUTOMOBILE MODIFICATIONS

13 * * *

14 (d) The liability of the employer to pay for medical, surgical, hospital, and
15 nursing services and supplies, prescription drugs, and durable medical
16 equipment provided to the injured employee under this section shall not exceed
17 the maximum fee for a particular service, prescription drug, or durable medical
18 equipment as provided by a schedule of fees and rates prepared by the
19 ~~commissioner~~ Commissioner. The reimbursement rate for services and
20 supplies in the fee schedule shall include consideration of medical necessity,

1 clinical efficacy, cost-effectiveness, and safety, and those services and supplies
2 shall be provided on a nondiscriminatory basis consistent with workers'
3 compensation and health care law. The ~~commissioner~~ Commissioner shall
4 authorize reimbursement at a rate higher than the scheduled rate if the
5 employee demonstrates to the ~~commissioner's~~ Commissioner's satisfaction
6 that reasonable and necessary treatment, prescription drugs, or durable medical
7 equipment is not available at the scheduled rate. An employer shall establish
8 direct billing and payment procedures and notification procedures as necessary
9 for coverage of medically-necessary prescription medications for chronic
10 conditions of injured employees, in accordance with rules adopted by the
11 ~~commissioner~~ Commissioner. The employer shall not be liable to pay for
12 drugs or treatments which are not approved by the Food and Drug
13 Administration. The Department shall not authorize the use of drugs or
14 treatments that are not approved by the Food and Drug Administration.

15 * * *

16 Sec. 2. 21 V.S.A. § 640b is amended to read:

17 § 640b. REQUEST FOR PREAUTHORIZATION TO DETERMINE IF
18 PROPOSED TREATMENT IS NECESSARY

19 (a) Within ~~14~~ 21 days of receiving a request for preauthorization for a
20 proposed medical treatment and all relevant medical evidence supporting the
21 requested treatment, a workers' compensation insurer shall:

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(3) notify the health care provider, the injured worker, and the ~~department~~ Department that the insurer has scheduled an examination of the employee or ordered a medical record review pursuant to section 655 of this title. Based on the examination or review, the insurer shall authorize or deny the treatment and notify the ~~department~~ Department and the injured worker of the decision within ~~45~~ 50 days of a request for preauthorization. The ~~commissioner~~ Commissioner may in his or her sole discretion grant a 10-day extension to the insurer to authorize or deny treatment, and such an extension shall not be subject to appeal.

(b) If the insurer fails to authorize or deny the treatment pursuant to subsection (a) of this section within ~~44~~ 21 days of receiving a request, the claimant or health care provider may request that the ~~department~~ Department issue an order authorizing treatment. After receipt of the request, the ~~department~~ Department shall issue an interim order within five days after notice to the insurer, and five days in which to respond, absent evidence that the entire claim is disputed. Upon request of a party, the ~~commissioner~~ Commissioner shall notify the parties that the treatment has been authorized by operation of law.

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1 Sec. 3. 21 V.S.A. § 643a is amended to read:

2 § 643a. DISCONTINUANCE OF BENEFITS

3 Unless an injured worker has successfully returned to work, an employer
4 shall notify both the ~~commissioner~~ Commissioner and the employee prior to
5 terminating benefits under either section 642 or 646 of this title. The notice of
6 intention to discontinue payments shall be filed on forms prescribed by the
7 ~~commissioner~~ Commissioner and shall include the date of the proposed
8 discontinuance, the reasons for it, and, if the employee has been out of work
9 for 90 days, a verification that the employer offered vocational rehabilitation
10 screening and services as required under this chapter. ~~All relevant evidence,~~
11 ~~including evidence that does not support discontinuance in the possession of~~
12 ~~the employer not already filed, shall be filed with the notice~~ The employer
13 shall file evidence that is relevant to the discontinuance with the notice of
14 discontinuance. The liability for the payments shall continue for seven days
15 after the notice is received by the ~~commissioner~~ Commissioner and the
16 employee. Those payments shall be made without prejudice to the employer
17 and may be deducted from any amounts due pursuant to section 648 of this
18 title if the ~~commissioner~~ Commissioner determines that the discontinuance is
19 warranted or if otherwise ordered by the ~~commissioner~~ Commissioner. Every
20 notice shall be reviewed by the ~~commissioner~~ Commissioner to determine the
21 sufficiency of the basis for the proposed discontinuance. If, after review of all

1 the evidence in the file, the ~~commissioner~~ Commissioner finds that a
2 preponderance of all the evidence in the file does not reasonably support the
3 proposed discontinuance, the ~~commissioner~~ Commissioner shall order that
4 payments continue until a hearing is held and a decision is rendered. Prior to a
5 formal hearing, an injured worker may request reinstatement of benefits by
6 providing additional new evidence to the ~~department~~ Department that
7 establishes that a preponderance of all evidence now supports the claim. If the
8 ~~commissioner's~~ Commissioner's decision, after a hearing, is that the employee
9 was not entitled to any or all benefits paid between the discontinuance and the
10 final decision, upon request of the employer, the ~~commissioner~~ Commissioner
11 may order that the employee repay all benefits to which the employee was not
12 entitled. The employer may enforce a repayment order in any court of law
13 having jurisdiction.

14 Sec. 4. 21 V.S.A. § 648 is amended to read:

15 § 648. PERMANENT PARTIAL DISABILITY BENEFITS

16 * * *

17 (b) Any determination of the existence and degree of permanent partial
18 impairment shall be made only in accordance with the whole person
19 determinations as set out in the ~~fifth~~ sixth or subsequent edition of the
20 American Medical Association Guides to the Evaluation of Permanent
21 Impairment. In order to utilize any subsequent edition of the American

1 Medical Association Guides to the Evaluation of Permanent Impairment or any
2 other appropriate guides to the evaluation of permanent impairment, the
3 ~~commissioner~~ Commissioner, in consultation with the ~~department of labor~~
4 ~~advisory council~~ Department of Labor Advisory Council, shall adopt a rule.
5 The ~~commissioner~~ Commissioner shall adopt a supplementary schedule for
6 injuries that are not rated by the impairment guide authorized for use by the
7 ~~department~~ Department to determine permanent disability.

8 * * *

9 Sec. 5. 21 V.S.A. § 655 is amended to read:

10 § 655. PROCEDURE IN OBTAINING COMPENSATION; MEDICAL
11 EXAMINATION; VIDEO AND AUDIO RECORDING

12 After an injury and during the period of disability, if so requested by his or
13 her employer, or ordered by the ~~commissioner~~ Commissioner, the employee
14 shall submit to examination, at reasonable times and places, by a duly licensed
15 physician or surgeon designated and paid by the employer. The employer may
16 designate an alternative physician or surgeon in order to avoid unnecessary
17 delay. The employee may make a video or audio recording of any examination
18 performed by the insurer's physician or surgeon or have a licensed health care
19 provider designated and paid by the employee present at the examination. The
20 employer may make an audio recording of the examination. The right of the
21 employee to record the examination shall not be construed to deny to the

1 employer's physician the right to visit the injured employee at all reasonable
2 times and under all reasonable conditions during total disability. If an
3 employee refuses to submit to or in any way obstructs the examination, the
4 employee's right to prosecute any proceeding under the provisions of this
5 chapter shall be suspended until the refusal or obstruction ceases, and
6 compensation shall not be payable for the period which the refusal or
7 obstruction continues.

8 Sec. 6. 21 V.S.A. § 663b is added to read:

9 § 663b. FRAUD

10 (a) Claims of fraud submitted by an employer shall be investigated by the
11 Commissioner, and the Commissioner shall make a decision on the claim
12 within 30 days of receipt of the claim. A party may appeal the decision of the
13 Commissioner.

14 (b) An employee found to have committed fraud in order to receive
15 compensation under this chapter shall be ordered to repay all compensation
16 received. The employer shall not be charged for these payments when the
17 employer's experience rating is determined.

18 Sec. 7. EFFECTIVE DATE

19 This act shall take effect on July 1, 2013.