

1 AN ACT relating to workers' compensation.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 342.020 is amended to read as follows:

4 (1) In addition to all other compensation provided in this chapter, the employer shall
5 pay for the cure and relief from the effects of an injury or occupational disease the
6 medical, surgical, and hospital treatment, including nursing, medical, and surgical
7 supplies and appliances, as may reasonably be required at the time of the injury and
8 thereafter ***during disability***~~[for the length of time set forth in this section]~~, or as may
9 be required for the cure and treatment of an occupational disease.

10 ~~[(2) In claims resulting in an award of permanent total disability or resulting from an~~
11 ~~injury described in subsection (9) of this section,]~~The employer's obligation to pay
12 the benefits specified in this section shall continue for so long as the employee is
13 disabled regardless of the duration of the employee's income benefits.

14 ~~[(3) (a) In all permanent partial disability claims not involving an injury described in~~
15 ~~subsection (9) of this section, the employer's obligation to pay the benefits~~
16 ~~specified in this section shall continue for seven hundred eighty (780) weeks~~
17 ~~from the date of injury or date of last exposure.~~

18 ~~(b) In all permanent partial disability claims not involving an injury described in~~
19 ~~subsection (9) of this section, the commissioner shall, in writing, advise the~~
20 ~~employee of the right to file an application for the continuation of benefits as~~
21 ~~described in this section. This notice shall be made to the employee seven~~
22 ~~hundred fifty four (754) weeks from the date of injury or last exposure.~~

23 ~~(c) An employee shall receive a continuation of benefits as described in this~~
24 ~~section for additional time beyond the period provided in paragraph (a) of this~~
25 ~~subsection as long as continued medical treatment is reasonably necessary and~~
26 ~~related to the work injury or occupational disease if:~~

27 1. ~~An application is filed within seventy five (75) days prior to the~~

1 ~~termination of the seven hundred eighty (780) week period;~~

2 ~~2. The employee demonstrates that continued medical treatment is~~
3 ~~reasonably necessary and related to the work injury or occupational~~
4 ~~disease; and~~

5 ~~3. An administrative law judge determines and orders that continued~~
6 ~~benefits are reasonably necessary and related to the work injury or~~
7 ~~occupational disease for additional time beyond the original seven~~
8 ~~hundred eighty (780) week period provided in paragraph (a) of this~~
9 ~~subsection.~~

10 ~~(d) If the administrative law judge determines that medical benefits are not~~
11 ~~reasonably necessary or not related to the work injury or occupational disease,~~
12 ~~or if an employee fails to make proper application for continued benefits~~
13 ~~within the time period provided in paragraph (c) of this subsection, any future~~
14 ~~medical treatment shall be deemed to be unrelated to the work injury and the~~
15 ~~employer's obligation to pay medical benefits shall cease permanently.~~

16 ~~(4)~~ In the absence of designation of a managed health care system by the employer, the
17 employee may select medical providers to treat his injury or occupational disease.
18 Even if the employer has designated a managed health care system, the injured
19 employee may elect to continue treating with a physician who provided emergency
20 medical care or treatment to the employee. The employer, insurer, or payment
21 obligor acting on behalf of the employer, shall make all payments for services
22 rendered to an employee directly to the provider of the services within thirty (30)
23 days of receipt of a statement for services. The commissioner shall promulgate
24 administrative regulations establishing conditions under which the thirty (30) day
25 period for payment may be tolled. The provider of medical services shall submit the
26 statement for services within forty-five (45) days of the day treatment is initiated
27 and every forty-five (45) days thereafter, if appropriate, as long as medical services

1 are rendered. Except as provided in subsection ~~(4)~~~~(7)~~ of this section, in no event
2 shall a medical fee exceed the limitations of an adopted medical fee schedule or
3 other limitations contained in KRS 342.035, whichever is lower. The commissioner
4 may promulgate administrative regulations establishing the form and content of a
5 statement for services and procedures by which disputes relative to the necessity,
6 effectiveness, frequency, and cost of services may be resolved.

7 ~~(2)~~~~(5)~~ Notwithstanding any provision of the Kentucky Revised Statutes to the
8 contrary, medical services and treatment provided under this chapter shall not be
9 subject to copayments or deductibles.

10 ~~(3)~~~~(6)~~ Employers may provide medical services through a managed health care
11 system. The managed health care system shall file with the Department of Workers'
12 Claims a plan for the rendition of health care services for work-related injuries and
13 occupational diseases to be approved by the commissioner pursuant to
14 administrative regulations promulgated by the commissioner.

15 ~~(4)~~~~(7)~~ All managed health care systems rendering medical services under this chapter
16 shall include the following features in plans for workers' compensation medical
17 care:

- 18 (a) Copayments or deductibles shall not be required for medical services rendered
19 in connection with a work-related injury or occupational disease;
- 20 (b) The employee shall be allowed choice of provider within the plan;
- 21 (c) The managed health care system shall provide an informal procedure for the
22 expeditious resolution of disputes concerning rendition of medical services;
- 23 (d) The employee shall be allowed to obtain a second opinion, at the employer's
24 expense, from an outside physician if a managed health care system physician
25 recommends surgery;
- 26 (e) The employee may obtain medical services from providers outside the
27 managed health care system, at the employer's expense, when treatment is

1 unavailable through the managed health care system;

2 (f) The managed health care system shall establish procedures for utilization
3 review of medical services to assure that a course of treatment is reasonably
4 necessary; diagnostic procedures are not unnecessarily duplicated; the
5 frequency, scope, and duration of treatment is appropriate; pharmaceuticals
6 are not unnecessarily prescribed; and that ongoing and proposed treatment is
7 not experimental, cost ineffective, or harmful to the employee;~~and~~

8 (g) Statements for services shall be audited regularly to assure that charges are not
9 duplicated and do not exceed those authorized in the applicable fee
10 schedules;~~and~~

11 (h) A schedule of fees for all medical services to be provided under this chapter
12 which shall not be subject to the limitations on medical fees contained in this
13 chapter; and~~and~~

14 (i) Restrictions on provider selection imposed by a managed health care system
15 authorized by this chapter shall not apply to emergency medical care.

16 ~~(5)~~~~(8)~~ Except for emergency medical care, medical services rendered pursuant to this
17 chapter shall be under the supervision of a single treating physician or physicians'
18 group having the authority to make referrals, as reasonably necessary, to appropriate
19 facilities and specialists. The employee may change his designated physician one (1)
20 time and thereafter shall show reasonable cause in order to change physicians.

21 ~~(6)~~~~(9)~~ When a compensable injury or occupational disease results in the amputation
22 or partial amputation of an arm, hand, leg, or foot, or the loss of hearing, or the
23 enucleation of an eye or loss of teeth, or permanent total or permanent partial
24 paralysis, the employer shall pay for, in addition to the other medical, surgical, and
25 hospital treatment enumerated in subsection (1) and this subsection, a modern
26 artificial member and, where required, proper braces as may reasonably be required
27 at the time of the injury and thereafter during disability.

1 ~~(7)~~~~(10)~~ Upon motion of the employer, with sufficient notice to the employee for a
2 response to be filed, if it is shown to the satisfaction of the administrative law judge
3 by affidavits or testimony that, because of the physician selected by the employee to
4 treat the injury or disease, or because of the hospital selected by the employee in
5 which treatment is being rendered, that the employee is not receiving proper
6 medical treatment and the recovery is being substantially affected or delayed; or that
7 the funds for medical expenses are being spent without reasonable benefit to the
8 employee; or that because of the physician selected by the employee or because of
9 the type of medical treatment being received by the employee that the employer will
10 substantially be prejudiced in any compensation proceedings resulting from the
11 employee's injury or disease; then the administrative law judge may allow the
12 employer to select a physician to treat the employee and the hospital or hospitals in
13 which the employee is treated for the injury or disease. No action shall be brought
14 against any employer subject to this chapter by any person to recover damages for
15 malpractice or improper treatment received by any employee from any physician,
16 hospital, or attendant thereof.

17 ~~(8)~~~~(11)~~ An employee who reports an injury alleged to be work-related or files an
18 application for adjustment of a claim shall execute a waiver and consent of any
19 physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect
20 to any condition or complaint reasonably related to the condition for which the
21 employee claims compensation. Notwithstanding any other provision in the
22 Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist,
23 hospital, or health care provider shall, within a reasonable time after written request
24 by the employee, employer, workers' compensation insurer, special fund, uninsured
25 employers' fund, or the administrative law judge, provide the requesting party with
26 any information or written material reasonably related to any injury or disease for
27 which the employee claims compensation.

1 ~~(9)~~~~(12)~~ When a provider of medical services or treatment, required by this chapter,
2 makes referrals for medical services or treatment by this chapter, to a provider or
3 entity in which the provider making the referral has an investment interest, the
4 referring provider shall disclose that investment interest to the employee, the
5 commissioner, and the employer's insurer or the party responsible for paying for the
6 medical services or treatment, within thirty (30) days from the date the referral was
7 made.

8 ~~(10)~~~~(13)~~ (a) Except as provided in paragraphs (b) and (c) of this subsection, the
9 employer, insurer, or payment obligor shall not be liable for urine drug
10 screenings of patients in excess of:

- 11 1. One (1) per year for a patient considered to be low-risk;
 - 12 2. Two (2) per year for a patient considered to be moderate-risk; and
 - 13 3. Four (4) per year for patients considered to be high-risk;
- 14 based upon the screening performed by the treating medical provider and
15 other pertinent factors.

16 (b) The employer, insurer, or payment obligor may be liable for urine drug
17 screening at each office visit for patients that have exhibited aberrant behavior
18 documented by multiple lost prescriptions, multiple requests for early refills of
19 prescriptions, multiple providers prescribing or dispensing opioids or opioid
20 substitutes as evidenced by the electronic monitoring system established in
21 KRS 218A.202 or a similar system, unauthorized dosage escalation, or
22 apparent intoxication.

23 (c) The employer, insurer, or payment obligor may request additional urine drug
24 screenings which shall not count toward the maximum number of drug
25 screenings enumerated in paragraph (a) of this subsection.

26 (d) The commissioner shall promulgate administrative regulations related to urine
27 drug screenings as part of the practice parameters or treatment guidelines

1 required under KRS 342.035.

2 ➔Section 2. KRS 342.315 (Effective until July 1, 2019) is amended to read as
3 follows:

4 (1) For workers who have had injuries or occupational hearing loss, the commissioner
5 shall contract with the University of Kentucky and the University of Louisville
6 medical schools to evaluate workers. For workers who have become affected by
7 occupational diseases, the commissioner shall contract with the University of
8 Kentucky and the University of Louisville medical schools, or other ~~physicians~~
9 ~~otherwise~~ duly qualified physicians ~~as "B" readers who are licensed in the~~
10 ~~Commonwealth and are board certified pulmonary specialists~~. Referral for
11 evaluation may be made whenever a medical question is at issue.

12 (2) The physicians and institutions performing evaluations pursuant to this section shall
13 render reports encompassing their findings and opinions in the form prescribed by
14 the commissioner. Except as otherwise provided in KRS 342.316, the clinical
15 findings and opinions of the designated evaluator shall be afforded presumptive
16 weight by administrative law judges and the burden to overcome such findings and
17 opinions shall fall on the opponent of that evidence. When administrative law
18 judges reject the clinical findings and opinions of the designated evaluator, they
19 shall specifically state in the order the reasons for rejecting that evidence.

20 (3) The commissioner or an administrative law judge may, upon the application of any
21 party or upon his own motion, direct appointment by the commissioner, pursuant to
22 subsection (1) of this section, of a medical evaluator to make any necessary medical
23 examination of the employee. Such medical evaluator shall file with the
24 commissioner within fifteen (15) days after such examination a written report. The
25 medical evaluator appointed may charge a reasonable fee not exceeding fees
26 established by the commissioner for those services.

27 (4) Within thirty (30) days of the receipt of a statement for the evaluation, the employer

1 or carrier shall pay the cost of the examination. Upon notice from the commissioner
2 that an evaluation has been scheduled, the insurance carrier shall forward within
3 seven (7) days to the employee the expenses of travel necessary to attend the
4 evaluation at a rate equal to that paid to state employees for travel by private
5 automobile while conducting state business.

6 (5) Upon claims in which it is finally determined that the injured worker was not the
7 employee at the time of injury of an employer covered by this chapter, the special
8 fund shall reimburse the carrier for any evaluation performed pursuant to this
9 section for which the carrier has been erroneously compelled to make payment.

10 (6) Not less often than annually the designee of the secretary of the Cabinet for Health
11 and Family Services shall assess the performance of the medical schools and render
12 findings as to whether evaluations conducted under this section are being rendered
13 in a timely manner, whether examinations are conducted in accordance with
14 medically recognized techniques, whether impairment ratings are in conformity
15 with standards prescribed by the "Guides to the Evaluation of Permanent
16 Impairment," and whether coal workers' pneumoconiosis examinations are
17 conducted in accordance with the standards prescribed in this chapter.

18 (7) The General Assembly finds that good public policy mandates the realization of the
19 potential advantages, both economic and effectual, of the use of telemedicine and
20 telehealth. The commissioner may, to the extent that he or she finds it feasible and
21 appropriate, require the use of telemedicine and telehealth practices, as authorized
22 under KRS 194A.125, in the independent medical evaluation process required by
23 this chapter.

24 ➔Section 3. KRS 342.315 (Effective July 1, 2019) is amended to read as follows:

25 (1) For workers who have had injuries or occupational hearing loss, the commissioner
26 shall contract with the University of Kentucky and the University of Louisville
27 medical schools to evaluate workers. For workers who have become affected by

1 occupational diseases, the commissioner shall contract with the University of
2 Kentucky and the University of Louisville medical schools, or other~~[- physicians~~
3 ~~otherwise]~~ duly qualified physicians~~[- as "B" readers who are licensed in the~~
4 ~~Commonwealth and are board-certified pulmonary specialists]~~. Referral for
5 evaluation may be made whenever a medical question is at issue.

6 (2) The physicians and institutions performing evaluations pursuant to this section shall
7 render reports encompassing their findings and opinions in the form prescribed by
8 the commissioner. Except as otherwise provided in KRS 342.316, the clinical
9 findings and opinions of the designated evaluator shall be afforded presumptive
10 weight by administrative law judges and the burden to overcome such findings and
11 opinions shall fall on the opponent of that evidence. When administrative law
12 judges reject the clinical findings and opinions of the designated evaluator, they
13 shall specifically state in the order the reasons for rejecting that evidence.

14 (3) The commissioner or an administrative law judge may, upon the application of any
15 party or upon his own motion, direct appointment by the commissioner, pursuant to
16 subsection (1) of this section, of a medical evaluator to make any necessary medical
17 examination of the employee. Such medical evaluator shall file with the
18 commissioner within fifteen (15) days after such examination a written report. The
19 medical evaluator appointed may charge a reasonable fee not exceeding fees
20 established by the commissioner for those services.

21 (4) Within thirty (30) days of the receipt of a statement for the evaluation, the employer
22 or carrier shall pay the cost of the examination. Upon notice from the commissioner
23 that an evaluation has been scheduled, the insurance carrier shall forward within
24 seven (7) days to the employee the expenses of travel necessary to attend the
25 evaluation at a rate equal to that paid to state employees for travel by private
26 automobile while conducting state business.

27 (5) Upon claims in which it is finally determined that the injured worker was not the

1 employee at the time of injury of an employer covered by this chapter, the special
2 fund shall reimburse the carrier for any evaluation performed pursuant to this
3 section for which the carrier has been erroneously compelled to make payment.

4 (6) Not less often than annually the designee of the secretary of the Cabinet for Health
5 and Family Services shall assess the performance of the medical schools and render
6 findings as to whether evaluations conducted under this section are being rendered
7 in a timely manner, whether examinations are conducted in accordance with
8 medically recognized techniques, whether impairment ratings are in conformity
9 with standards prescribed by the "Guides to the Evaluation of Permanent
10 Impairment," and whether coal workers' pneumoconiosis examinations are
11 conducted in accordance with the standards prescribed in this chapter.

12 (7) The General Assembly finds that good public policy mandates the realization of the
13 potential advantages, both economic and effectual, of the use of telehealth. The
14 commissioner may, to the extent that he or she finds it feasible and appropriate,
15 require the use of telehealth, as defined in KRS 304.17A-005, in the independent
16 medical evaluation process required by this chapter.

17 ➔Section 4. KRS 342.316 is amended to read as follows:

18 (1) (a) The employer liable for compensation for occupational disease shall be the
19 employer in whose employment the employee was last exposed to the hazard
20 of the occupational disease. During any period in which this section is
21 applicable to a coal mine, an operator who acquired it or substantially all of its
22 assets from a person who was its operator on and after January 1, 1973, shall
23 be liable for, and secure the payment of, the benefits which would have been
24 payable by the prior operator under this section with respect to miners
25 previously employed in the mine if it had not been acquired by such later
26 operator. At the same time, however, this subsection does not relieve the prior
27 operator of any liability under this section. Also, it does not affect whatever

1 rights the later operator might have against the prior operator.

2 (b) The time of the beginning of compensation payments shall be the date of the
3 employee's last injurious exposure to the cause of the disease, or the date of
4 actual disability, whichever is later.

5 (2) The procedure with respect to the giving of notice and determination of claims in
6 occupational disease cases and the compensation and medical benefits payable for
7 disability or death due to the disease shall be the same as in cases of accidental
8 injury or death under the general provisions of this chapter, except that notice of
9 claim shall be given to the employer as soon as practicable after the employee first
10 experiences a distinct manifestation of an occupational disease in the form of
11 symptoms reasonably sufficient to apprise the employee that he or she has
12 contracted the disease, or a diagnosis of the disease is first communicated to him or
13 her, whichever shall first occur.

14 (3) The procedure for filing occupational disease claims shall be as follows:

15 (a) The application for resolution of claim shall set forth the complete work
16 history of the employee with a concise description of injurious exposure to a
17 specific occupational disease, together with the name and addresses of the
18 employer or employers with the approximate dates of employment. The
19 application shall also include at least one (1) written medical report supporting
20 his or her claim. This medical report shall be made on the basis of clinical or
21 X-ray examination performed in accordance with accepted medical standards
22 and shall contain full and complete statements of all examinations performed
23 and the results thereof. The report shall be made by a duly-licensed physician.
24 The commissioner shall promulgate administrative regulations which
25 prescribe the format of the medical report required by this section and the
26 manner in which the report shall be completed.

27 1. For coal-related occupational pneumoconiosis claims, each clinical

1 examination shall include a chest X-ray interpretation by a National
2 Institute of Occupational Safety and Health (NIOSH) certified "B"
3 reader. The chest X-ray upon which the report is made shall be filed
4 with the application as well as spirometric tests when pulmonary
5 dysfunction is alleged.

6 2. For other compensable occupational pneumoconiosis claims, each
7 clinical examination shall include a chest X-ray examination and
8 appropriate pulmonary function tests.

9 (b) To be admissible, medical evidence offered in any proceeding under this
10 chapter for determining a claim for occupational pneumoconiosis resulting
11 from exposure to coal dust shall comply with accepted medical standards as
12 follows:

13 1. Chest X-rays shall be of acceptable quality with respect to exposure and
14 development and shall be indelibly labeled with the date of the X-ray
15 and the name and Social Security number of the claimant. Physicians'
16 reports of X-ray interpretations shall: identify the claimant by name and
17 Social Security number; include the date of the X-ray and the date of the
18 report; classify the X-ray interpretation using the latest ILO
19 Classification and be accompanied by a completed copy of the latest ILO
20 Classification report. Only interpretations by National Institute of
21 Occupational Safety and Health (NIOSH) certified "B" readers shall be
22 admissible.

23 2. Spirometric testing shall be conducted in accordance with the standards
24 recommended in the "Guides to the Evaluation of Permanent
25 Impairment" and the 1978 ATS epidemiology standardization project
26 with the exception that the predicted normal values for lung function
27 shall not be adjusted based upon the race of the subject. The FVC or the

1 FEV1 values shall represent the largest of such values obtained from
2 three (3) acceptable forced expiratory volume maneuvers as corrected to
3 BTPS (body temperature, ambient pressure and saturated with water
4 vapor at these conditions) and the variance between the two (2) largest
5 acceptable FVC values shall be either less than five percent (5%) of the
6 largest FVC value or less than one hundred (100) milliliters, whichever
7 is greater. The variance between the two (2) largest acceptable FEV1
8 values shall be either less than five percent (5%) of the largest FEV1
9 value or less than one hundred (100) milliliters, whichever is greater.
10 Reports of spirometric testing shall include a description by the
11 physician of the procedures utilized in conducting such spirometric
12 testing and a copy of the spirometric chart and tracings from which
13 spirometric values submitted as evidence were taken. If it is shown that
14 the spirometric testing is not valid due to inadequate cooperation or poor
15 effort on the part of the claimant, the claimant's right to take or prosecute
16 any proceedings under this chapter shall be suspended until the refusal
17 or obstruction ceases. No compensation shall be payable for the period
18 during which the refusal or obstruction continues.

19 3. The commissioner shall promulgate administrative regulations pursuant
20 to KRS Chapter 13A as necessary to effectuate the purposes of this
21 section. The commissioner shall periodically review the applicability of
22 the spirometric test values contained in the "Guides to the Evaluation of
23 Permanent Impairment" and may by administrative regulation substitute
24 other spirometric test values which are found to be more closely
25 representative of the normal pulmonary function of the coal mining
26 population.

27 4. The procedure for determination of occupational disease claims shall be

1 as follows:

- 2 a. Immediately upon receipt of an application for resolution of claim,
3 the commissioner shall notify the responsible employer and all
4 other interested parties and shall furnish them with a full and
5 complete copy of the application.
- 6 b. The commissioner shall assign the claim to an administrative law
7 judge and shall promptly refer the employee to ~~[-a duly qualified~~
8 ~~"B" reader physician who is licensed in the Commonwealth and is~~
9 ~~a board-certified pulmonary specialist as set forth pursuant to KRS~~
10 ~~342.315 and 342.794(1)]~~ *the physician or medical facility as the*
11 *commissioner may select for examination*. The report from this
12 examination shall be provided to all parties of record. The
13 employee shall not be referred by the commissioner for
14 examination within two (2) years following any prior referral for
15 examination for the same disease.
- 16 c. The commissioner shall develop a procedure to annually audit the
17 performance of physicians and facilities that are selected to
18 perform examinations pursuant to this section. The audit shall
19 include an evaluation of the physician and facility with respect to
20 the timeliness and completeness of the reports and the frequency at
21 which the physician's classification of an X-ray differs from those
22 of the other physicians of that X-ray. The commissioner shall
23 remove a physician or facility from selection consideration if the
24 physician or facility consistently renders incomplete or untimely
25 reports or if the physician's interpretations of X-rays are not in
26 conformity with the readings of other physicians of record at least
27 fifty percent (50%) of the time. The report required under this

- 1 subdivision shall be provided to the Interim Joint Committee on
2 Economic Development and Workforce Investment on or before
3 July 1, 2019, and on or before July 1 of each year thereafter.
- 4 d. In coal workers' pneumoconiosis claims, if the physician selected
5 by the commissioner interprets an X-ray as positive for
6 complicated coal workers' pneumoconiosis, the commissioner
7 shall refer the employee to the facility at which the claimant was
8 previously evaluated for a computerized tomography scan in order
9 to verify the findings. The computerized tomography scan shall be
10 interpreted by the facility and a report shall be filed with the
11 commissioner. The employer, insurer, or payment obligor shall pay
12 the cost of the examination pursuant to the medical fee schedule.
13 The administrative law judge may rely upon the findings in the
14 report in accepting or rejecting ILO radiographic evidence of the
15 disease required under KRS 342.732 for benefit determination.
- 16 e. Within forty-five (45) days following the notice of filing an
17 application for resolution of claim, the employer or carrier shall
18 notify the commissioner and all parties of record of its acceptance
19 or denial of the claim. A denial shall be in writing and shall state
20 the specific basis for the denial.
- 21 f. The administrative law judge shall conduct such proceedings as
22 are necessary to resolve the claim and shall have authority to grant
23 or deny any relief, including interlocutory relief, to order additional
24 proof, to conduct a benefit review conference, or to take such other
25 action as may be appropriate to resolve the claim.
- 26 g. Unless a voluntary settlement is reached by the parties, or the
27 parties agree otherwise, the administrative law judge shall issue a

1 written determination within sixty (60) days following a hearing.
2 The written determination shall address all contested issues and
3 shall be enforceable under KRS 342.305.

4 h. Within thirty (30) days of the receipt of the statement for the
5 evaluation, the employer, insurer, or payment obligor shall pay the
6 cost of the examination. Upon notice from the commissioner that
7 an evaluation has been scheduled, the employer, insurer, or
8 payment obligor shall forward the expenses of travel necessary to
9 attend the evaluation at the state employee reimbursement rates to
10 the employee within seven (7) days. However, if the employee has
11 alleged a pulmonary dysfunction but has not filed spirometric
12 evidence as required by paragraph (a) of this subsection at the time
13 the evaluation is scheduled by the commissioner, the employee
14 will be responsible for fifty percent (50%) of the cost of the
15 evaluation.

16 5. The procedure for appeal from a determination of an administrative law
17 judge shall be as set forth in KRS 342.285.

18 (4) (a) The right to compensation under this chapter resulting from an occupational
19 disease shall be forever barred unless a claim is filed with the commissioner
20 within three (3) years after the last injurious exposure to the occupational
21 hazard or after the employee first experiences a distinct manifestation of an
22 occupational disease in the form of symptoms reasonably sufficient to apprise
23 the employee that he or she has contracted the disease, whichever shall last
24 occur; and if death results from the occupational disease within that period,
25 unless a claim therefor be filed with the commissioner within three (3) years
26 after the death; but that notice of claim shall be deemed waived in case of
27 disability or death where the employer, or its insurance carrier, voluntarily

1 makes payment therefor, or if the incurrence of the disease or the death of the
2 employee and its cause was known to the employer. However, the right to
3 compensation for any occupational disease shall be forever barred, unless a
4 claim is filed with the commissioner within five (5) years from the last
5 injurious exposure to the occupational hazard, except that, in cases of
6 radiation disease, asbestos-related disease, or a type of cancer specified in
7 KRS 61.315(11)(b), a claim must be filed within twenty (20) years from the
8 last injurious exposure to the occupational hazard.

9 (b) Income benefits for the disease of pneumoconiosis resulting from exposure to
10 coal dust or death therefrom shall not be payable unless the employee has
11 been exposed to the hazards of such pneumoconiosis in the Commonwealth of
12 Kentucky over a continuous period of not less than two (2) years during the
13 ten (10) years immediately preceding the date of his or her last exposure to
14 such hazard, or for any five (5) of the fifteen (15) years immediately preceding
15 the date of such last exposure.

16 (5) The amount of compensation payable for disability due to occupational disease or
17 for death from the disease, and the time and manner of its payment, shall be as
18 provided for under the general provisions of the Workers' Compensation Act, but:

19 (a) In no event shall the payment exceed the amounts that were in effect at the
20 time of the last injurious exposure;

21 (b) The time of the beginning of compensation payments shall be the date of the
22 employee's last injurious exposure to the cause of the disease, or the date of
23 actual disability, whichever is later; and

24 (c) In case of death where the employee has been awarded compensation or made
25 timely claim within the period provided for in this section, and an employee
26 has suffered continuous disability to the date of his or her death occurring at
27 any time within twenty (20) years from the date of disability, his or her

1 dependents, if any, shall be awarded compensation for his or her death as
2 provided for under the general provisions of the Workers' Compensation Act
3 and in this section, except as provided in KRS 342.750(6).

4 (6) If an autopsy has been performed, no testimony relative thereto shall be admitted
5 unless the employer or its representative has available findings and reports of the
6 pathologist or doctor who performed the autopsy examination.

7 (7) No compensation shall be payable for occupational disease if the employee at the
8 time of entering the employment of the employer by whom compensation would
9 otherwise be payable, falsely represented himself or herself, in writing, as not
10 having been previously disabled, laid-off, or compensated in damages or otherwise,
11 because of the occupational disease, or failed or omitted truthfully to state to the
12 best of his or her knowledge, in answer to written inquiry made by the employer, the
13 place, duration, and nature of previous employment, or, to the best of his or her
14 knowledge, the previous state of his or her health.

15 (8) No compensation for death from occupational disease shall be payable to any
16 person whose relationship to the deceased, which under the provisions of this
17 chapter would give right to compensation, arose subsequent to the beginning of the
18 first compensable disability, except only for after-born children of a marriage
19 existing at the beginning of such disability.

20 (9) Whenever any claimant misconceives his or her remedy and files an application for
21 adjustment of claim under the general provisions of this chapter and it is
22 subsequently discovered, at any time before the final disposition of the cause, that
23 the claim for injury, disability, or death which was the basis for his or her
24 application should properly have been made under the provisions of this section,
25 then the application so filed may be amended in form or substance, or both, to assert
26 a claim for injury, disability, or death under the provisions of this section, and it
27 shall be deemed to have been so filed as amended on the date of the original filing

1 thereof, and compensation may be awarded that is warranted by the whole evidence
2 pursuant to the provisions of this chapter. When amendment of this type is
3 submitted, further or additional evidence may be heard when deemed necessary.
4 Nothing this section contains shall be construed to be or permit a waiver of any of
5 the provisions of this chapter with reference to notice of time for filing of a claim,
6 but notice of filing a claim, if given or done, shall be deemed to be a notice of filing
7 of a claim under provisions of this chapter, if given or done within the time required
8 by this subsection.

9 (10) When an employee has an occupational disease that is covered by this chapter, the
10 employer in whose employment he or she was last injuriously exposed to the hazard
11 of the disease, and the employer's insurance carrier, if any, at the time of the
12 exposure, shall alone be liable therefor, without right to contribution from any prior
13 employer or insurance carrier, except as otherwise provided in this chapter.

14 (11) (a) For claims filed on or before June 30, 2017, income benefits for coal-related
15 occupational pneumoconiosis shall be paid fifty percent (50%) by the
16 Kentucky coal workers' pneumoconiosis fund as established in KRS 342.1242
17 and fifty percent (50%) by the employer in whose employment the employee
18 was last exposed to the hazard of that occupational disease.

19 (b) Income benefits for coal-related occupational pneumoconiosis for claims filed
20 after June 30, 2017, shall be paid by the employer in whose employment the
21 employee was last exposed to the hazards of coal workers' pneumoconiosis.

22 (c) Compensation for all other occupational disease shall be paid by the employer
23 in whose employment the employee was last exposed to the hazards of the
24 occupational disease.

25 (12) A concluded claim for benefits by reason of contraction of coal workers'
26 pneumoconiosis in the severance or processing of coal shall bar any subsequent
27 claim for benefits by reason of contraction of coal workers' pneumoconiosis, unless

1 there has occurred in the interim between the conclusion of the first claim and the
2 filing of the second claim at least two (2) years of employment wherein the
3 employee was continuously exposed to the hazards of the disease in the
4 Commonwealth.

5 ➔Section 5. KRS 342.794 is amended to read as follows:

6 (1) The commissioner shall maintain a list of duly qualified "B" reader physicians ~~who~~
7 ~~are licensed in the Commonwealth and are board certified pulmonary specialists,~~
8 ~~currently certified by the National Institute of Occupational Safety and Health~~
9 ~~(NIOSH) who have agreed to perform pulmonary examinations,~~ interpret chest X-
10 rays~~,~~ and review other medical evidence pursuant to KRS 342.316 for a fee to be
11 fixed by the commissioner and paid by the Kentucky coal workers' pneumoconiosis
12 fund or the carrier, whichever is the appropriate payment obligor, the provisions of
13 KRS 342.1242 notwithstanding, for claims filed on or before June 30, 2017, and by
14 the employer for claims filed after June 30, 2017.

15 (2) "'B' reader" means a physician who has demonstrated proficiency in evaluating
16 chest roentgenograms for roentgenographic quality and in the use of the ILO
17 classification for interpreting chest roentgenograms for pneumoconiosis and other
18 diseases by taking and passing a specially designed proficiency examination given
19 on behalf of the National Institute of Occupational Safety and Health (NIOSH) or
20 by the Appalachian Laboratory for Occupational Safety and Health (ALOSH), or
21 successors.

22 ~~[(3) "Board certified pulmonary specialist" means a physician licensed in the~~
23 ~~Commonwealth who is board certified in internal medicine with a certification in~~
24 ~~the subspecialty of pulmonary medicine by the American Board of Internal~~
25 ~~Medicine.]~~

26 ➔Section 6. KRS 342.610 is amended to read as follows:

27 (1) Every employer subject to this chapter shall be liable for compensation for injury,

1 occupational disease, or death without regard to fault as a cause of the injury,
 2 occupational disease, or death.

3 (2) A contractor who subcontracts all or any part of a contract and his or her carrier
 4 shall be liable for the payment of compensation to the employees of the
 5 subcontractor unless the subcontractor primarily liable for the payment of such
 6 compensation has secured the payment of compensation as provided for in this
 7 chapter. Any contractor or his or her carrier who shall become liable for such
 8 compensation may recover the amount of such compensation paid and necessary
 9 expenses from the subcontractor primarily liable therefor. A person who contracts
 10 with another:

11 (a) To have work performed consisting of the removal, excavation, or drilling of
 12 soil, rock, or mineral, or the cutting or removal of timber from land; or

13 (b) To have work performed of a kind which is a regular or recurrent part of the
 14 work of the trade, business, occupation, or profession of such person

15 shall for the purposes of this section be deemed a contractor, and such other person
 16 a subcontractor. This subsection shall not apply to the owner or lessee of land
 17 principally used for agriculture.

18 (3) Liability for compensation shall not apply ~~where~~^{to} injury, occupational disease, or
 19 death to the employee **was proximately caused primarily by voluntary intoxication**
 20 **as defined in KRS 501.010, or by his or her willful intention to**~~if the employee~~
 21 ~~willfully intended to~~ injure or kill himself, herself, or another.

22 ~~{If an employee voluntarily introduced an illegal, nonprescribed substance or~~
 23 ~~substances or a prescribed substance or substances in amounts in excess of~~
 24 ~~prescribed amounts into his or her body detected in the blood, as measured by a~~
 25 ~~scientifically reliable test, that could cause a disturbance of mental or physical~~
 26 ~~capacities, it shall be presumed that the illegal, nonprescribed substance or~~
 27 ~~substances or the prescribed substance or substances in amounts in excess of~~

1 ~~prescribed amounts caused the injury, occupational disease, or death of the~~
2 ~~employee and liability for compensation shall not apply to the injury, occupational~~
3 ~~disease, or death to the employee.~~

4 ~~(5)~~ If injury or death results to an employee through the deliberate intention of his or
5 her employer to produce such injury or death, the employee or the employee's
6 dependent as herein defined shall receive the amount provided in this chapter in a
7 lump sum to be used, if desired, to prosecute the employer. The dependents may
8 bring suit against the employer for any amount they desire. If injury or death results
9 to an employee through the deliberate intention of his or her employer to produce
10 such injury or death, the employee or the employee's dependents may take under
11 this chapter, or in lieu thereof, have a cause of action at law against the employer as
12 if this chapter had not been passed, for such damage so sustained by the employee,
13 his dependents or personal representatives as is recoverable at law. If a suit is
14 brought under this subsection, all right to compensation under this chapter shall
15 thereby be waived as to all persons. If a claim is made for the payment of
16 compensation or any other benefit provided by this chapter, all rights to sue the
17 employer for damages on account of such injury or death shall be waived as to all
18 persons.

19 ~~(5)~~~~(6)~~ Prior to issuing any building permit pursuant to KRS 198B.060(10), every
20 local building official shall require proof of workers' compensation coverage from
21 the builder before a permit is issued. A person who is exempt under the exception
22 contained in KRS 342.650(2), and any contractor otherwise exempt from this
23 chapter, shall so certify to the local building official, in writing and on a form
24 prescribed by the commissioner, in lieu of providing proof of workers'
25 compensation coverage.

26 ~~(6)~~~~(7)~~ Every employer subject to this chapter, at its principal office and such other
27 locations where employees customarily report for payroll and personnel matters,

1 shall post a notice stating the name of its workers' compensation insurance carrier
2 and policy number, setting forth the means to access medical care for injuries, the
3 employee's obligation to give notice of accidents, and such other matters concerning
4 the employee's rights under this chapter as may be required by the commissioner so
5 as to afford every employee the opportunity to become informed about the
6 employer's workers' compensation program. The format and contents of the notice
7 shall be established by the commissioner through administrative regulation, and
8 copies shall be provided to the employer by its insurance carrier.

9 ➔Section 7. KRS 342.990 is amended to read as follows:

- 10 (1) The commissioner shall initiate enforcement of civil and criminal penalties imposed
11 in this section.
- 12 (2) When the commissioner receives information that he or she deems sufficient to
13 determine that a violation of this chapter has occurred, he or she shall seek civil
14 penalties pursuant to subsections (3) to (7) of this section, criminal penalties
15 pursuant to subsections (8) and (9) of this section, or both.
- 16 (3) The commissioner shall initiate enforcement of a civil penalty by simultaneously
17 citing the appropriate party for the offense and stating the civil penalty to be paid.
- 18 (4) If, within fifteen (15) working days from the receipt of the citation, a cited party
19 fails to notify the commissioner that he or she intends to contest the citation, then
20 the citation shall be deemed final.
- 21 (5) If a cited party notifies the commissioner that he or she intends to challenge a
22 citation issued under this section, the commissioner shall cause the matter to be
23 heard as soon as practicable by an administrative law judge and in accordance with
24 the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney
25 representing the commissioner to prove the offense stated in the citation by a
26 preponderance of the evidence. The parties shall stipulate to uncontested facts and
27 issues prior to the hearing before the administrative law judge. The administrative

1 law judge shall issue a ruling within sixty (60) days following the hearing.

2 (6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit
3 Court in conformity with KRS 13B.140.

4 (7) The following civil penalties shall be applicable for violations of particular
5 provisions of this chapter:

6 (a) Any employer, insurer, or payment obligor subject to this chapter who fails to
7 make a report required by KRS 342.038 within fifteen (15) days from the date
8 it was due, shall be fined not less than one hundred dollars (\$100) nor more
9 than one thousand dollars (\$1,000) for each offense;

10 (b) Any employer, insurer, or payment obligor acting on behalf of an employer
11 who fails to make timely payment of a statement for services under subsection
12 (1) of Section 1 of this Act~~[KRS 342.020(4)]~~ without having reasonable
13 grounds to delay payment may be fined not less than one hundred dollars
14 (\$100) nor more than one thousand dollars (\$1,000) for each offense;

15 (c) Any person who violates subsection (9) of Section 1 of this Act~~[KRS~~
16 ~~342.020(12)]~~, 342.035(2), 342.040, 342.340, 342.400, 342.420, or 342.630
17 shall be fined not less than one hundred dollars (\$100) nor more than one
18 thousand dollars (\$1,000) for each offense. With respect to employers who fail
19 to maintain workers' compensation insurance coverage on their employees,
20 each employee of the employer and each day of violation shall constitute a
21 separate offense. With respect to KRS 342.040, any employer's insurance
22 carrier or other party responsible for the payment of workers' compensation
23 benefits shall be fined for failure to notify the commissioner of a failure to
24 make payments when due if a report indicating the reason payment of income
25 benefits did not commence within twenty-one (21) days of the date the
26 employer was notified of an alleged work-related injury or disease is not filed
27 with the commissioner within twenty-one (21) days of the date the employer

1 received notice, and if the employee has not returned to work within that
2 period of time. The date of notice indicated in the report filed with the
3 department pursuant to KRS 342.038(1), shall raise a rebuttable presumption
4 of the date on which the employer received notice;

5 (d) Any person who violates any of the provisions of KRS 342.165(2), 342.335,
6 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two
7 hundred dollars (\$200) nor more than two thousand dollars (\$2,000) for each
8 offense. With respect to KRS 342.395, each required notice of rejection form
9 executed by an employee or potential employee of an employer shall
10 constitute a separate offense;

11 (e) Any person who fails to comply with the data reporting provisions of
12 administrative regulations promulgated by the commissioner pursuant to KRS
13 342.039, or with utilization review and medical bill audit administrative
14 regulations promulgated pursuant to KRS 342.035(5), shall be fined not less
15 than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)
16 for each violation;

17 (f) Except as provided in paragraph (g) of this subsection, a person who violates
18 any of the provisions of KRS 342.335(1) or (2) where the claim,
19 compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less
20 than or equal to three hundred dollars (\$300) shall be fined per occurrence not
21 more than one thousand dollars (\$1,000) per individual nor five thousand
22 dollars (\$5,000) per corporation, or twice the amount of gain received as a
23 result of the violation, whichever is greater;

24 (g) Any person who violates any of the provisions of KRS 342.335(1) or (2)
25 where the claim, compensation, benefit, or money referred to in KRS
26 342.335(1) or (2) exceeds three hundred dollars (\$300) shall be fined per
27 occurrence not more than five thousand dollars (\$5,000) per individual nor ten

- 1 thousand dollars (\$10,000) per corporation, or twice the amount of gain
2 received as a result of the violation, whichever is greater;
- 3 (h) Any person who violates the employee leasing provision of this chapter shall
4 be fined not less than five hundred dollars (\$500) nor more than five thousand
5 dollars (\$5,000) for each violation;
- 6 (i) Any violation of the provisions of this chapter relating to self-insureds shall
7 constitute grounds for decertification of such self-insured, a fine of not less
8 than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000)
9 per occurrence, or both; and
- 10 (j) Actions to collect the civil penalties imposed under this subsection shall be
11 instituted in the Franklin District Court and the Franklin Circuit Court.
- 12 (8) The commissioner shall initiate enforcement of a criminal penalty by causing a
13 complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to
14 act on the violation within twenty (20) days following the filing of the complaint,
15 the commissioner shall certify the inaction by the local prosecutor to the Attorney
16 General who shall initiate proceedings to prosecute the violation. The provisions of
17 KRS 15.715 shall not apply to this section.
- 18 (9) The following criminal penalties shall be applicable for violations of particular
19 provisions of this chapter:
- 20 (a) Any person who violates subsection (9) of Section 1 of this Act~~KRS~~
21 ~~342.020(12)]~~, 342.035(2), 342.040, 342.400, 342.420, or 342.630, shall, for
22 each offense, be fined not less than one hundred dollars (\$100) nor more than
23 one thousand dollars (\$1,000), or imprisoned for not less than thirty (30) days
24 nor more than one hundred eighty (180) days, or both;
- 25 (b) Any person who violates any of the provisions of KRS 342.165(2), 342.335,
26 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than
27 two hundred dollars (\$200) nor more than two thousand dollars (\$2,000), or

1 imprisoned for not less than thirty (30) days nor more than one hundred and
2 eighty (180) days, or both;

3 (c) Any corporation, partnership, sole proprietorship, or other form of business
4 entity and any officer, general partner, agent, or representative of the
5 foregoing who knowingly utilizes or participates in any employee leasing
6 arrangement or mechanism as defined in KRS 342.615 for the purpose of
7 depriving one (1) or more insurers of premium otherwise properly payable or
8 for the purpose of depriving the Commonwealth of any tax or assessment due
9 and owing and based upon said premium shall upon conviction thereof be
10 subject to a fine of not less than five hundred dollars (\$500) nor more than
11 five thousand dollars (\$5,000), or imprisonment for not more than one
12 hundred eighty (180) days, or both, for each offense; and

13 (d) Notwithstanding any other provisions of this chapter to the contrary, when any
14 employer, insurance carrier, or individual self-insured fails to comply with
15 this chapter for which a penalty is provided in subparagraphs (7), (8), and (9)
16 above, such person, if the person is an owner in the case of a sole
17 proprietorship, a partner in the case of a partnership, a principal in the case of
18 a limited liability company, or a corporate officer in the case of a corporation,
19 who knowingly authorized, ordered, or carried out the violation, failure, or
20 refusal shall be personally and individually liable, both jointly and severally,
21 for the penalties imposed in the above cited subparagraphs. Neither the
22 dissolution nor withdrawal of the corporation, partnership, or other entity from
23 the state, nor the cessation of holding status as a proprietor, partner, principal,
24 or officer shall discharge the foregoing liability of any person.

25 (10) Fines paid pursuant to KRS 342.267 and subsections (7) and (9) of this section shall
26 be paid into the self-insurance fund established in KRS 342.920.

27 (11) In addition to the penalties provided in this section, the commissioner and any

- 1 administrative law judge or court of jurisdiction may order restitution of a benefit
- 2 secured through conduct proscribed by this chapter.