

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 specified~~  
16 ~~in this section shall continue for seven hundred eighty (780) weeks from the date of~~  
17 ~~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 hundred~~  
22 ~~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 section for~~  
24 ~~additional time beyond the period provided in paragraph (a) of this subsection as~~  
25 ~~long as continued medical treatment is reasonably necessary and related to the work~~  
26 ~~injury or occupational disease if:~~
- 27 1. ~~An application is filed within seventy five (75) days prior to the termination of the~~

1       seven hundred eighty (780) week period;

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

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

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

14       ~~(4)~~ } In the absence of designation of a managed health care system by the employer,  
15       the employee may select medical providers to treat his injury or occupational  
16       disease. Even if the employer has designated a managed health care system, the  
17       injured employee may elect to continue treating with a physician who provided  
18       emergency medical care or treatment to the employee. The employer, insurer, or  
19       payment obligor acting on behalf of the employer, shall make all payments for  
20       services rendered to an employee directly to the provider of the services within  
21       thirty (30) days of receipt of a statement for services. The commissioner shall  
22       promulgate administrative regulations establishing conditions under which the thirty  
23       (30) day period for payment may be tolled. The provider of medical services shall  
24       submit the statement for services within forty-five (45) days of the day treatment is  
25       initiated and every forty-five (45) days thereafter, if appropriate, as long as medical  
26       services are rendered. Except as provided in subsection ~~(4)~~~~(7)~~ of this section, in no  
27       event shall a medical fee exceed the limitations of an adopted medical fee schedule

1 or other limitations contained in KRS 342.035, whichever is lower. The  
2 commissioner may promulgate administrative regulations establishing the form and  
3 content of a statement for services and procedures by which disputes relative to the  
4 necessity, effectiveness, frequency, and cost of services may be resolved.

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

8 ~~(3)~~~~(6)~~ Employers may provide medical services through a managed health care  
9 system. The managed health care system shall file with the Department of Workers'  
10 Claims a plan for the rendition of health care services for work-related injuries and  
11 occupational diseases to be approved by the commissioner pursuant to  
12 administrative regulations promulgated by the commissioner.

13 ~~(4)~~~~(7)~~ All managed health care systems rendering medical services under this chapter  
14 shall include the following features in plans for workers' compensation medical  
15 care:

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

1 review of medical services to assure that a course of treatment is reasonably  
2 necessary; diagnostic procedures are not unnecessarily duplicated; the  
3 frequency, scope, and duration of treatment is appropriate; pharmaceuticals  
4 are not unnecessarily prescribed; and that ongoing and proposed treatment is  
5 not experimental, cost ineffective, or harmful to the employee;~~and~~

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

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

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

14 ~~(5)~~~~(8)~~ Except for emergency medical care, medical services rendered pursuant to this  
15 chapter shall be under the supervision of a single treating physician or physicians'  
16 group having the authority to make referrals, as reasonably necessary, to appropriate  
17 facilities and specialists. The employee may change his designated physician one (1)  
18 time and thereafter shall show reasonable cause in order to change physicians.

19 ~~(6)~~~~(9)~~ When a compensable injury or occupational disease results in the amputation  
20 or partial amputation of an arm, hand, leg, or foot, or the loss of hearing, or the  
21 enucleation of an eye or loss of teeth, or permanent total or permanent partial  
22 paralysis, the employer shall pay for, in addition to the other medical, surgical, and  
23 hospital treatment enumerated in subsection (1) and this subsection, a modern  
24 artificial member and, where required, proper braces as may reasonably be required  
25 at the time of the injury and thereafter during disability.

26 ~~(7)~~~~(10)~~ Upon motion of the employer, with sufficient notice to the employee for a  
27 response to be filed, if it is shown to the satisfaction of the administrative law judge

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

15 ~~(8)~~~~(11)~~ An employee who reports an injury alleged to be work-related or files an  
16 application for adjustment of a claim shall execute a waiver and consent of any  
17 physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect  
18 to any condition or complaint reasonably related to the condition for which the  
19 employee claims compensation. Notwithstanding any other provision in the  
20 Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist,  
21 hospital, or health care provider shall, within a reasonable time after written request  
22 by the employee, employer, workers' compensation insurer, special fund, uninsured  
23 employers' fund, or the administrative law judge, provide the requesting party with  
24 any information or written material reasonably related to any injury or disease for  
25 which the employee claims compensation.

26 ~~(9)~~~~(12)~~ When a provider of medical services or treatment, required by this chapter,  
27 makes referrals for medical services or treatment by this chapter, to a provider or

1       entity in which the provider making the referral has an investment interest, the  
2       referring provider shall disclose that investment interest to the employee, the  
3       commissioner, and the employer's insurer or the party responsible for paying for the  
4       medical services or treatment, within thirty (30) days from the date the referral was  
5       made.

6       ~~(10)~~~~(13)~~ (a) Except as provided in paragraphs (b) and (c) of this subsection, the  
7       employer, insurer, or payment obligor shall not be liable for urine drug  
8       screenings of patients in excess of:

- 9           1. One (1) per year for a patient considered to be low-risk;
- 10          2. Two (2) per year for a patient considered to be moderate-risk; and
- 11          3. Four (4) per year for patients considered to be high-risk;

12       based upon the screening performed by the treating medical provider and  
13       other pertinent factors.

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

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

24       (d) The commissioner shall promulgate administrative regulations related to urine  
25       drug screenings as part of the practice parameters or treatment guidelines  
26       required under KRS 342.035.

27       ➔Section 2. KRS 342.990 is amended to read as follows:

- 1 (1) The commissioner shall initiate enforcement of civil and criminal penalties imposed  
2 in this section.
- 3 (2) When the commissioner receives information that he or she deems sufficient to  
4 determine that a violation of this chapter has occurred, he or she shall seek civil  
5 penalties pursuant to subsections (3) to (7) of this section, criminal penalties  
6 pursuant to subsections (8) and (9) of this section, or both.
- 7 (3) The commissioner shall initiate enforcement of a civil penalty by simultaneously  
8 citing the appropriate party for the offense and stating the civil penalty to be paid.
- 9 (4) If, within fifteen (15) working days from the receipt of the citation, a cited party  
10 fails to notify the commissioner that he or she intends to contest the citation, then  
11 the citation shall be deemed final.
- 12 (5) If a cited party notifies the commissioner that he or she intends to challenge a  
13 citation issued under this section, the commissioner shall cause the matter to be  
14 heard as soon as practicable by an administrative law judge and in accordance with  
15 the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney  
16 representing the commissioner to prove the offense stated in the citation by a  
17 preponderance of the evidence. The parties shall stipulate to uncontested facts and  
18 issues prior to the hearing before the administrative law judge. The administrative  
19 law judge shall issue a ruling within sixty (60) days following the hearing.
- 20 (6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit  
21 Court in conformity with KRS 13B.140.
- 22 (7) The following civil penalties shall be applicable for violations of particular  
23 provisions of this chapter:
- 24 (a) Any employer, insurer, or payment obligor subject to this chapter who fails to  
25 make a report required by KRS 342.038 within fifteen (15) days from the date  
26 it was due, shall be fined not less than one hundred dollars (\$100) nor more  
27 than one thousand dollars (\$1,000) for each offense;

- 1 (b) Any employer, insurer, or payment obligor acting on behalf of an employer  
2 who fails to make timely payment of a statement for services under KRS  
3 342.020~~(1)(4)~~ without having reasonable grounds to delay payment may be  
4 fined not less than one hundred dollars (\$100) nor more than one thousand  
5 dollars (\$1,000) for each offense;
- 6 (c) Any person who violates KRS 342.020~~(9)(12)~~, 342.035(2), 342.040,  
7 342.340, 342.400, 342.420, or 342.630 shall be fined not less than one  
8 hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each  
9 offense. With respect to employers who fail to maintain workers'  
10 compensation insurance coverage on their employees, each employee of the  
11 employer and each day of violation shall constitute a separate offense. With  
12 respect to KRS 342.040, any employer's insurance carrier or other party  
13 responsible for the payment of workers' compensation benefits shall be fined  
14 for failure to notify the commissioner of a failure to make payments when due  
15 if a report indicating the reason payment of income benefits did not  
16 commence within twenty-one (21) days of the date the employer was notified  
17 of an alleged work-related injury or disease is not filed with the commissioner  
18 within twenty-one (21) days of the date the employer received notice, and if  
19 the employee has not returned to work within that period of time. The date of  
20 notice indicated in the report filed with the department pursuant to KRS  
21 342.038(1), shall raise a rebuttable presumption of the date on which the  
22 employer received notice;
- 23 (d) Any person who violates any of the provisions of KRS 342.165(2), 342.335,  
24 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two  
25 hundred dollars (\$200) nor more than two thousand dollars (\$2,000) for each  
26 offense. With respect to KRS 342.395, each required notice of rejection form  
27 executed by an employee or potential employee of an employer shall



- 1           constitute a separate offense;
- 2           (e) Any person who fails to comply with the data reporting provisions of  
3           administrative regulations promulgated by the commissioner pursuant to KRS  
4           342.039, or with utilization review and medical bill audit administrative  
5           regulations promulgated pursuant to KRS 342.035(5), shall be fined not less  
6           than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)  
7           for each violation;
- 8           (f) Except as provided in paragraph (g) of this subsection, a person who violates  
9           any of the provisions of KRS 342.335(1) or (2) where the claim,  
10          compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less  
11          than or equal to three hundred dollars (\$300) shall be fined per occurrence not  
12          more than one thousand dollars (\$1,000) per individual nor five thousand  
13          dollars (\$5,000) per corporation, or twice the amount of gain received as a  
14          result of the violation, whichever is greater;
- 15          (g) Any person who violates any of the provisions of KRS 342.335(1) or (2)  
16          where the claim, compensation, benefit, or money referred to in KRS  
17          342.335(1) or (2) exceeds three hundred dollars (\$300) shall be fined per  
18          occurrence not more than five thousand dollars (\$5,000) per individual nor ten  
19          thousand dollars (\$10,000) per corporation, or twice the amount of gain  
20          received as a result of the violation, whichever is greater;
- 21          (h) Any person who violates the employee leasing provision of this chapter shall  
22          be fined not less than five hundred dollars (\$500) nor more than five thousand  
23          dollars (\$5,000) for each violation;
- 24          (i) Any violation of the provisions of this chapter relating to self-insureds shall  
25          constitute grounds for decertification of such self-insured, a fine of not less  
26          than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000)  
27          per occurrence, or both; and

1 (j) Actions to collect the civil penalties imposed under this subsection shall be  
2 instituted in the Franklin District Court and the Franklin Circuit Court.

3 (8) The commissioner shall initiate enforcement of a criminal penalty by causing a  
4 complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to  
5 act on the violation within twenty (20) days following the filing of the complaint,  
6 the commissioner shall certify the inaction by the local prosecutor to the Attorney  
7 General who shall initiate proceedings to prosecute the violation. The provisions of  
8 KRS 15.715 shall not apply to this section.

9 (9) The following criminal penalties shall be applicable for violations of particular  
10 provisions of this chapter:

11 (a) Any person who violates KRS 342.020~~(9)~~~~(12)~~, 342.035(2), 342.040,  
12 342.400, 342.420, or 342.630, shall, for each offense, be fined not less than  
13 one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or  
14 imprisoned for not less than thirty (30) days nor more than one hundred eighty  
15 (180) days, or both;

16 (b) Any person who violates any of the provisions of KRS 342.165(2), 342.335,  
17 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than  
18 two hundred dollars (\$200) nor more than two thousand dollars (\$2,000), or  
19 imprisoned for not less than thirty (30) days nor more than one hundred and  
20 eighty (180) days, or both;

21 (c) Any corporation, partnership, sole proprietorship, or other form of business  
22 entity and any officer, general partner, agent, or representative of the  
23 foregoing who knowingly utilizes or participates in any employee leasing  
24 arrangement or mechanism as defined in KRS 342.615 for the purpose of  
25 depriving one (1) or more insurers of premium otherwise properly payable or  
26 for the purpose of depriving the Commonwealth of any tax or assessment due  
27 and owing and based upon said premium shall upon conviction thereof be

1 subject to a fine of not less than five hundred dollars (\$500) nor more than  
2 five thousand dollars (\$5,000), or imprisonment for not more than one  
3 hundred eighty (180) days, or both, for each offense; and

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

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

18 (11) In addition to the penalties provided in this section, the commissioner and any  
19 administrative law judge or court of jurisdiction may order restitution of a benefit  
20 secured through conduct proscribed by this chapter.