

1 AN ACT relating to workers' compensation.

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

3 ➔Section 1. KRS 342.0011 is amended to read as follows:

4 As used in this chapter, unless the context otherwise requires:

- 5 (1) "Injury" means any work-related traumatic event or series of traumatic events,
6 including cumulative trauma, arising out of and in the course of employment which
7 is the proximate cause producing a harmful change in the human organism
8 evidenced by objective medical findings. "Injury" does not include the effects of the
9 natural aging process, and does not include any communicable disease unless the
10 risk of contracting the disease is increased by the nature of the employment.
11 "Injury" when used generally, unless the context indicates otherwise, shall include
12 an occupational disease and damage to a prosthetic appliance, but shall not include
13 a psychological, psychiatric, or stress-related change in the human organism, unless
14 it is a direct result of a physical injury **or is a diagnosis of class 2 or greater post-**
15 **traumatic stress disorder, diagnosed under the latest version of the Diagnostic**
16 **and Statistical Manual of Mental Disorders and determined according to the**
17 **Guides to the Evaluation of Permanent Impairment, stemming from a death or**
18 **threatened death by direct exposure to oneself or witnessing the death, threat of**
19 **death, or its immediate aftermath;**
- 20 (2) "Occupational disease" means a disease arising out of and in the course of the
21 employment;
- 22 (3) An occupational disease as defined in this chapter shall be deemed to arise out of
23 the employment if there is apparent to the rational mind, upon consideration of all
24 the circumstances, a causal connection between the conditions under which the
25 work is performed and the occupational disease, and which can be seen to have
26 followed as a natural incident to the work as a result of the exposure occasioned by
27 the nature of the employment and which can be fairly traced to the employment as

1 the proximate cause. The occupational disease shall be incidental to the character of
2 the business and not independent of the relationship of employer and employee. An
3 occupational disease need not have been foreseen or expected but, after its
4 contraction, it must appear to be related to a risk connected with the employment
5 and to have flowed from that source as a rational consequence;

6 (4) "Injurious exposure" shall mean that exposure to occupational hazard which would,
7 independently of any other cause whatsoever, produce or cause the disease for
8 which the claim is made;

9 (5) "Death" means death resulting from an injury or occupational disease;

10 (6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the
11 liability of employers under this chapter and includes a self-insurer;

12 (7) "Self-insurer" is an employer who has been authorized under the provisions of this
13 chapter to carry his or her own liability on his or her employees covered by this
14 chapter;

15 (8) "Department" means the Department of Workers' Claims in the Education and
16 Labor Cabinet;

17 (9) "Commissioner" means the commissioner of the Department of Workers' Claims
18 under the direction and supervision of the secretary of the Education and Labor
19 Cabinet;

20 (10) "Board" means the Workers' Compensation Board;

21 (11) (a) "Temporary total disability" means the condition of an employee who has not
22 reached maximum medical improvement from an injury and has not reached a
23 level of improvement that would permit a return to employment;

24 (b) "Permanent partial disability" means the condition of an employee who, due
25 to an injury, has a permanent disability rating but retains the ability to work;
26 and

27 (c) "Permanent total disability" means the condition of an employee who, due to

- 1 an injury, has a permanent disability rating and has a complete and permanent
2 inability to perform any type of work as a result of an injury, except that total
3 disability shall be irrebuttably presumed to exist for an injury that results in:
- 4 1. Total and permanent loss of sight in both eyes;
 - 5 2. Loss of both feet at or above the ankle;
 - 6 3. Loss of both hands at or above the wrist;
 - 7 4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at
8 or above the wrist;
 - 9 5. Permanent and complete paralysis of both arms, both legs, or one (1)
10 arm and one (1) leg;
 - 11 6. Incurable insanity or imbecility; or
 - 12 7. Total loss of hearing;
- 13 (12) "Income benefits" means payments made under the provisions of this chapter to the
14 disabled worker or his or her dependents in case of death, excluding medical and
15 related benefits;
- 16 (13) "Medical and related benefits" means payments made for medical, hospital, burial,
17 and other services as provided in this chapter, other than income benefits;
- 18 (14) "Compensation" means all payments made under the provisions of this chapter
19 representing the sum of income benefits and medical and related benefits;
- 20 (15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical
21 rehabilitation services, medicines, and fittings for artificial or prosthetic devices;
- 22 (16) "Person" means any individual, partnership, limited partnership, limited liability
23 company, firm, association, trust, joint venture, corporation, or legal representative
24 thereof;
- 25 (17) "Wages" means, in addition to money payments for services rendered, the
26 reasonable value of board, rent, housing, lodging, fuel, or similar advantages
27 received from the employer, and gratuities received in the course of employment

1 from persons other than the employer as evidenced by the employee's federal and
2 state tax returns;

3 (18) "Agriculture" means the operation of farm premises, including the planting,
4 cultivation, producing, growing, harvesting, and preparation for market of
5 agricultural or horticultural commodities thereon, the raising of livestock for food
6 products and for racing purposes, and poultry thereon, and any work performed as
7 an incident to or in conjunction with the farm operations, including the sale of
8 produce at on-site markets and the processing of produce for sale at on-site markets.
9 It shall not include the commercial processing, packing, drying, storing, or canning
10 of such commodities for market, or making cheese or butter or other dairy products
11 for market;

12 (19) "Beneficiary" means any person who is entitled to income benefits or medical and
13 related benefits under this chapter;

14 (20) "United States," when used in a geographic sense, means the several states, the
15 District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the
16 territories of the United States;

17 (21) "Alien" means a person who is not a citizen, a national, or a resident of the United
18 States or Canada. Any person not a citizen or national of the United States who
19 relinquishes or is about to relinquish his or her residence in the United States shall
20 be regarded as an alien;

21 (22) "Insurance carrier" means every insurance carrier or insurance company authorized
22 to do business in the Commonwealth writing workers' compensation insurance
23 coverage and includes the Kentucky Employers Mutual Insurance Authority and
24 every self-insured group operating under the provisions of this chapter;

25 (23) (a) "Severance or processing of coal" means all activities performed in the
26 Commonwealth at underground, auger, and surface mining sites; all activities
27 performed at tipple or processing plants that clean, break, size, or treat coal;

1 and all activities performed at coal loading facilities for trucks, railroads, and
2 barges. Severance or processing of coal shall not include acts performed by a
3 final consumer if the acts are performed at the site of final consumption.

4 (b) "Engaged in severance or processing of coal" shall include all individuals,
5 partnerships, limited partnerships, limited liability companies, corporations,
6 joint ventures, associations, or any other business entity in the Commonwealth
7 which has employees on its payroll who perform any of the acts stated in
8 paragraph (a) of this subsection, regardless of whether the acts are performed
9 as owner of the coal or on a contract or fee basis for the actual owner of the
10 coal. A business entity engaged in the severance or processing of coal,
11 including but not limited to administrative or selling functions, shall be
12 considered wholly engaged in the severance or processing of coal for the
13 purpose of this chapter. However, a business entity which is engaged in a
14 separate business activity not related to coal, for which a separate premium
15 charge is not made, shall be deemed to be engaged in the severance or
16 processing of coal only to the extent that the number of employees engaged in
17 the severance or processing of coal bears to the total number of employees.
18 Any employee who is involved in the business of severing or processing of
19 coal and business activities not related to coal shall be prorated based on the
20 time involved in severance or processing of coal bears to his or her total time;

21 (24) "Premium" for every self-insured group means any and all assessments levied on its
22 members by such group or contributed to it by the members thereof. For special
23 fund assessment purposes, "premium" also includes any and all membership dues,
24 fees, or other payments by members of the group to associations or other entities
25 used for underwriting, claims handling, loss control, premium audit, actuarial, or
26 other services associated with the maintenance or operation of the self-insurance
27 group;

1 (25) (a) "Premiums received" for policies effective on or after January 1, 1994, for
2 insurance companies means direct written premiums as reported in the annual
3 statement to the Department of Insurance by insurance companies, except that
4 "premiums received" includes premiums charged off or deferred, and, on
5 insurance policies or other evidence of coverage with provisions for
6 deductibles, the calculated cost for coverage, including experience
7 modification and premium surcharge or discount, prior to any reduction for
8 deductibles. The rates, factors, and methods used to calculate the cost for
9 coverage under this paragraph for insurance policies or other evidence of
10 coverage with provisions for deductibles shall be the same rates, factors, and
11 methods normally used by the insurance company in Kentucky to calculate
12 the cost for coverage for insurance policies or other evidence of coverage
13 without provisions for deductibles, except that, for insurance policies or other
14 evidence of coverage with provisions for deductibles effective on or after
15 January 1, 1995, the calculated cost for coverage shall not include any
16 schedule rating modification, debits, or credits. For policies with provisions
17 for deductibles with effective dates on or after January 1, 1995, assessments
18 shall be imposed on premiums received as calculated by the deductible
19 program adjustment. The cost for coverage calculated under this paragraph by
20 insurance companies that issue only deductible insurance policies in Kentucky
21 shall be actuarially adequate to cover the entire liability of the employer for
22 compensation under this chapter, including all expenses and allowances
23 normally used to calculate the cost for coverage. For policies with provisions
24 for deductibles with effective dates of May 6, 1993, through December 31,
25 1993, for which the insurance company did not report premiums and remit
26 special fund assessments based on the calculated cost for coverage prior to the
27 reduction for deductibles, "premiums received" includes the initial premium

1 plus any reimbursements invoiced for losses, expenses, and fees charged
2 under the deductibles. The special fund assessment rates in effect for
3 reimbursements invoiced for losses, expenses, or fees charged under the
4 deductibles shall be those percentages in effect on the effective date of the
5 insurance policy. For policies covering covered employees having a co-
6 employment relationship with a professional employer organization and a
7 client as defined in KRS Chapter 336, "premiums received" means premiums
8 calculated using the experience modification factor of each client as defined
9 in KRS Chapter 336 for each covered employee for that portion of the payroll
10 pertaining to the covered employee.

11 (b) "Direct written premium" for insurance companies means the gross premium
12 written less return premiums and premiums on policies not taken but
13 including policy and membership fees.

14 (c) "Premium," for policies effective on or after January 1, 1994, for insurance
15 companies means all consideration, whether designated as premium or
16 otherwise, for workers' compensation insurance paid to an insurance company
17 or its representative, including, on insurance policies with provisions for
18 deductibles, the calculated cost for coverage, including experience
19 modification and premium surcharge or discount, prior to any reduction for
20 deductibles. The rates, factors, and methods used to calculate the cost for
21 coverage under this paragraph for insurance policies or other evidence of
22 coverage with provisions for deductibles shall be the same rates, factors, and
23 methods normally used by the insurance company in Kentucky to calculate
24 the cost for coverage for insurance policies or other evidence of coverage
25 without provisions for deductibles, except that, for insurance policies or other
26 evidence of coverage with provisions for deductibles effective on or after
27 January 1, 1995, the calculated cost for coverage shall not include any

1 schedule rating modifications, debits, or credits. For policies with provisions
2 for deductibles with effective dates on or after January 1, 1995, assessments
3 shall be imposed as calculated by the deductible program adjustment. The cost
4 for coverage calculated under this paragraph by insurance companies that
5 issue only deductible insurance policies in Kentucky shall be actuarially
6 adequate to cover the entire liability of the employer for compensation under
7 this chapter, including all expenses and allowances normally used to calculate
8 the cost for coverage. For policies with provisions for deductibles with
9 effective dates of May 6, 1993, through December 31, 1993, for which the
10 insurance company did not report premiums and remit special fund
11 assessments based on the calculated cost for coverage prior to the reduction
12 for deductibles, "premium" includes the initial consideration plus any
13 reimbursements invoiced for losses, expenses, or fees charged under the
14 deductibles.

15 (d) "Return premiums" for insurance companies means amounts returned to
16 insureds due to endorsements, retrospective adjustments, cancellations,
17 dividends, or errors.

18 (e) "Deductible program adjustment" means calculating premium and premiums
19 received on a gross basis without regard to the following:

- 20 1. Schedule rating modifications, debits, or credits;
- 21 2. Deductible credits; or
- 22 3. Modifications to the cost of coverage from inception through and
23 including any audit that are based on negotiated retrospective rating
24 arrangements, including but not limited to large risk alternative rating
25 options;

26 (26) "Insurance policy" for an insurance company or self-insured group means the term
27 of insurance coverage commencing from the date coverage is extended, whether a

1 new policy or a renewal, through its expiration, not to exceed the anniversary date
2 of the renewal for the following year;

3 (27) "Self-insurance year" for a self-insured group means the annual period of
4 certification of the group created pursuant to KRS 342.350(4) and 304.50-010;

5 (28) "Premium" for each employer carrying his or her own risk pursuant to KRS
6 342.340(1) shall be the projected value of the employer's workers' compensation
7 claims for the next calendar year as calculated by the commissioner using
8 generally-accepted actuarial methods as follows:

9 (a) The base period shall be the earliest three (3) calendar years of the five (5)
10 calendar years immediately preceding the calendar year for which the
11 calculation is made. The commissioner shall identify each claim of the
12 employer which has an injury date or date of last injurious exposure to the
13 cause of an occupational disease during each one (1) of the three (3) calendar
14 years to be used as the base, and shall assign a value to each claim. The value
15 shall be the total of the indemnity benefits paid to date and projected to be
16 paid, adjusted to current benefit levels, plus the medical benefits paid to date
17 and projected to be paid for the life of the claim, plus the cost of medical and
18 vocational rehabilitation paid to date and projected to be paid. Adjustment to
19 current benefit levels shall be done by multiplying the weekly indemnity
20 benefit for each claim by the number obtained by dividing the statewide
21 average weekly wage which will be in effect for the year for which the
22 premium is being calculated by the statewide average weekly wage in effect
23 during the year in which the injury or date of the last exposure occurred. The
24 total value of the claims using the adjusted weekly benefit shall then be
25 calculated by the commissioner. Values for claims in which awards have been
26 made or settlements reached because of findings of permanent partial or
27 permanent total disability shall be calculated using the mortality and interest

1 discount assumptions used in the latest available statistical plan of the
2 advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The
3 sum of all calculated values shall be computed for all claims in the base
4 period;

5 (b) The commissioner shall obtain the annual payroll for each of the three (3)
6 years in the base period for each employer carrying his or her own risk from
7 records of the department and from the records of the Department of
8 Workforce Development, Education and Labor Cabinet. The commissioner
9 shall multiply each of the three (3) years of payroll by the number obtained by
10 dividing the statewide average weekly wage which will be in effect for the
11 year in which the premium is being calculated by the statewide average
12 weekly wage in effect in each of the years of the base period;

13 (c) The commissioner shall divide the total of the adjusted claim values for the
14 three (3) year base period by the total adjusted payroll for the same three (3)
15 year period. The value so calculated shall be multiplied by 1.25 and shall then
16 be multiplied by the employer's most recent annualized payroll, calculated
17 using records of the department and the Department of Workforce
18 Development data which shall be made available for this purpose on a
19 quarterly basis as reported, to obtain the premium for the next calendar year
20 for assessment purposes under KRS 342.122;

21 (d) For November 1, 1987, through December 31, 1988, premium for each
22 employer carrying its own risk shall be an amount calculated by the board
23 pursuant to the provisions contained in this subsection and such premium
24 shall be provided to each employer carrying its own risk and to the funding
25 commission on or before January 1, 1988. Thereafter, the calculations set
26 forth in this subsection shall be performed annually, at the time each employer
27 applies or renews its application for certification to carry its own risk for the

1 next twelve (12) month period and submits payroll and other data in support
2 of the application. The employer and the funding commission shall be notified
3 at the time of the certification or recertification of the premium calculated by
4 the commissioner, which shall form the employer's basis for assessments
5 pursuant to KRS 342.122 for the calendar year beginning on January 1
6 following the date of certification or recertification;

7 (e) If an employer having fewer than five (5) years of doing business in this state
8 applies to carry its own risk and is so certified, its premium for the purposes
9 of KRS 342.122 shall be based on the lesser number of years of experience as
10 may be available including the two (2) most recent years if necessary to create
11 a three (3) year base period. If the employer has less than two (2) years of
12 operation in this state available for the premium calculation, then its premium
13 shall be the greater of the value obtained by the calculation called for in this
14 subsection or the amount of security required by the commissioner pursuant to
15 KRS 342.340(1);

16 (f) If an employer is certified to carry its own risk after having previously insured
17 the risk, its premium shall be calculated using values obtained from claims
18 incurred while insured for as many of the years of the base period as may be
19 necessary to create a full three (3) year base. After the employer is certified to
20 carry its own risk and has paid all amounts due for assessments upon
21 premiums paid while insured, the employer shall be assessed only upon the
22 premium calculated under this subsection;

23 (g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated
24 as set forth in this subsection; and

25 (h) Notwithstanding any other provision of this subsection, the premium of any
26 employer authorized to carry its own risk for purposes of assessments due
27 under this chapter shall be no less than thirty cents (\$0.30) per one hundred

- 1 dollars (\$100) of the employer's most recent annualized payroll for employees
2 covered by this chapter;
- 3 (29) "SIC code" as used in this chapter means the Standard Industrial Classification
4 Code contained in the latest edition of the Standard Industrial Classification Manual
5 published by the Federal Office of Management and Budget;
- 6 (30) "Investment interest" means any pecuniary or beneficial interest in a provider of
7 medical services or treatment under this chapter, other than a provider in which that
8 pecuniary or investment interest is obtained on terms equally available to the public
9 through trading on a registered national securities exchange, such as the New York
10 Stock Exchange or the American Stock Exchange, or on the National Association
11 of Securities Dealers Automated Quotation System;
- 12 (31) "Managed health care system" means a health care system that employs gatekeeper
13 providers, performs utilization review, and does medical bill audits;
- 14 (32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists,
15 podiatrists, and osteopathic and chiropractic practitioners acting within the scope of
16 the license or other credentials required by his or her specialty of practice in the
17 United States jurisdiction in which he or she is authorized to practice;
- 18 (33) "Objective medical findings" means information gained through direct observation
19 and testing of the patient applying objective or standardized methods;
- 20 (34) "Work" means providing services to another in return for remuneration on a regular
21 and sustained basis in a competitive economy;
- 22 (35) "Permanent impairment rating" means percentage of whole body impairment
23 caused by the injury or occupational disease as determined by the []Guides to the
24 Evaluation of Permanent Impairment[];
- 25 (36) "Permanent disability rating" means the permanent impairment rating selected by
26 an administrative law judge times the factor set forth in the table that appears at
27 KRS 342.730(1)(b);~~and~~

1 (37) "Guides to the Evaluation of Permanent Impairment" means, except as provided in
2 KRS 342.262:

- 3 (a) The fifth edition published by the American Medical Association; and
- 4 (b) For psychological impairments, Chapter 12 of the second edition published by
- 5 the American Medical Association; and

6 **(38) "Medical professional" means physicians, audiologists holding a doctorate in**
 7 **audiology, surgeons, psychologists, optometrists, dentists, podiatrists, and**
 8 **osteopathic and chiropractic practitioners, clinicians with a master's level degree**
 9 **as a physician associate or physician assistant, and clinicians with a master's or**
 10 **doctoral level degree with advanced clinical training that designates the**
 11 **individual as a nurse practitioner authorized to practice medicine as certified by**
 12 **any applicable board or duly licensed in any state in the United States.**

13 ➔Section 2. KRS 342.020 is amended to read as follows:

14 (1) In addition to all other compensation provided in this chapter, the employer shall
 15 pay for the cure and relief from the effects of an injury or occupational disease the
 16 medical, surgical, and hospital treatment, including nursing, medical, and surgical
 17 supplies and appliances, as may reasonably be required at the time of the injury and
 18 thereafter for the length of time set forth in this section, or as may be required for
 19 the cure and treatment of an occupational disease.

20 (2) In claims resulting in an award of permanent total disability or resulting from an
 21 injury described in subsection (9) of this section, the employer's obligation to pay
 22 the benefits specified in this section shall continue for so long as the employee is
 23 disabled regardless of the duration of the employee's income benefits.

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

- 1 (b) In all permanent partial disability claims not involving an injury described in
2 subsection (9) of this section, the commissioner shall, in writing, advise the
3 employee of the right to file an application for the continuation of benefits as
4 described in this section. This notice shall be made to the employee seven
5 hundred fifty-four (754) weeks from the date of injury or last exposure.
- 6 (c) An employee shall receive a continuation of benefits as described in this
7 section for additional time beyond the period provided in paragraph (a) of this
8 subsection as long as continued medical treatment is reasonably necessary and
9 related to the work injury or occupational disease if:
- 10 1. An application is filed within seventy-five (75) days prior to the
11 termination of the seven hundred eighty (780) week period;
 - 12 2. The employee demonstrates that continued medical treatment is
13 reasonably necessary and related to the work injury or occupational
14 disease; and
 - 15 3. An administrative law judge determines and orders that continued
16 benefits are reasonably necessary and related to the work injury or
17 occupational disease for additional time beyond the original seven
18 hundred eighty (780) week period provided in paragraph (a) of this
19 subsection.
- 20 (d) 1. If the administrative law judge determines that medical benefits are not
21 reasonably necessary or not related to the work injury or occupational
22 disease, or if an employee fails to make proper application for continued
23 benefits within the time period provided in paragraph (c) of this
24 subsection, any future medical treatment shall be deemed to be unrelated
25 to the work injury and the employer's obligation to pay medical benefits
26 shall cease permanently.
- 27 2. *In determining whether a medical benefit is reasonably necessary, the*

1 administrative law judge may rely upon an objective medical opinion
2 or objective medical data in addition to the practice parameters or
3 evidence-based treatment guidelines developed or adopted by the
4 commissioner under Section 4 of this Act. When medical treatment is
5 denied by a carrier or a third-party administrator and any portion of
6 the denial is based upon the treatment guidelines developed or adopted
7 by the commissioner, the treatment guidelines being relied upon shall
8 be set forth in full in the denial and the specific guidelines shall be
9 provided in full to the employee and medical provider.

10 (4) (a) In the absence of designation of a managed health care system by the
11 employer, the employee may select medical providers to treat his or her
12 injury or occupational disease.

13 (b) Even if the employer has designated a managed health care system, the
14 injured employee may elect to continue treating with a physician who
15 provided emergency medical care or treatment to the employee.

16 (c) Except as provided by paragraph (d) of this subsection, the employer,
17 insurer, or payment obligor acting on behalf of the employer, shall make all
18 payments for services rendered to an employee directly to the provider of the
19 services within thirty (30) days of receipt of a statement for services.

20 (d) The requirement for the employer, insurer, or payment obligor to pay a
21 medical provider within thirty (30) days of receipt of the statement of
22 services does not apply until after the carrier has accepted the claim as
23 compensable or after there has been an initial determination of
24 compensability by an administrative law judge, whichever occurs first. In
25 addition, the commissioner shall promulgate administrative regulations
26 establishing conditions under which the thirty (30) day period for payment
27 may be tolled.

1 (e) Except as provided in paragraph (f) of this subsection, the provider of
2 medical services shall submit the statement for services within forty-five (45)
3 days of the day treatment is initiated and every forty-five (45) days thereafter,
4 if appropriate, as long as medical services are rendered.

5 (f) The requirement for the medical provider to submit a statement for services
6 within forty-five (45) days of when the treatment is rendered does not apply
7 until after the injured worker and the medical provider have received
8 notification from the employer, insurer, or medical payment obligor that the
9 claim has been determined to be compensable, or there has been an initial
10 determination of compensability by an administrative law judge, whichever
11 first occurs. To be effective, the notice of compensability shall advise the
12 injured worker and the medical provider of any necessary information
13 regarding the process by which and the location where statements for
14 services shall be sent. [~~Except as provided in subsection (7) of this section,~~
15 ~~in~~]

16 (g) In no event shall a medical fee exceed the limitations of an adopted medical
17 fee schedule or other limitations contained in KRS 342.035, whichever is
18 lower.

19 (h) The commissioner may promulgate administrative regulations establishing the
20 form and content of a statement for services and procedures by which disputes
21 relative to the necessity, effectiveness, frequency, and cost of services may be
22 resolved.

23 (i) If the employee prevails in a medical fee dispute, he or she shall be entitled
24 to attorney's fees not to exceed one hundred fifty dollars (\$150) per hour,
25 subject to the limitations provided in Section 11 of this Act. The employee
26 may submit a bill of costs detailing any expenses to be considered by the
27 administrative law judge.

- 1 (5) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary,
2 medical services and treatment provided under this chapter shall not be subject to
3 copayments or deductibles.
- 4 (6) Employers may provide medical services through a managed health care system.
5 The managed health care system shall file with the Department of Workers' Claims
6 a plan for the rendition of health care services for work-related injuries and
7 occupational diseases to be approved by the commissioner pursuant to
8 administrative regulations promulgated by the commissioner.
- 9 (7) All managed health care systems rendering medical services under this chapter shall
10 include the following features in plans for workers' compensation medical care:
- 11 (a) Copayments or deductibles shall not be required for medical services rendered
12 in connection with a work-related injury or occupational disease;
 - 13 (b) The employee shall be allowed choice of provider within the plan;
 - 14 (c) The managed health care system shall provide an informal procedure for the
15 expeditious resolution of disputes concerning rendition of medical services;
 - 16 (d) The employee shall be allowed to obtain a second opinion, at the employer's
17 expense, from an outside physician if a managed health care system physician
18 recommends surgery;
 - 19 (e) The employee may obtain medical services from providers outside the
20 managed health care system, at the employer's expense, when treatment is
21 unavailable through the managed health care system;
 - 22 (f) The managed health care system shall establish procedures for utilization
23 review of medical services to assure that a course of treatment is reasonably
24 necessary; diagnostic procedures are not unnecessarily duplicated; the
25 frequency, scope, and duration of treatment is appropriate; pharmaceuticals
26 are not unnecessarily prescribed; and that ongoing and proposed treatment is
27 not experimental, cost ineffective, or harmful to the employee; and

- 1 (g) Statements for services shall be audited regularly to assure that charges are
2 not duplicated and do not exceed those authorized in the applicable fee
3 schedules.
- 4 (h) A schedule of fees for all medical services to be provided under this chapter
5 which shall not be subject to the limitations on medical fees contained in this
6 chapter.
- 7 (i) Restrictions on provider selection imposed by a managed health care system
8 authorized by this chapter shall not apply to emergency medical care.
- 9 (8) Except for emergency medical care, medical services rendered pursuant to this
10 chapter shall be under the supervision of a single treating physician or physicians'
11 group having the authority to make referrals, as reasonably necessary, to
12 appropriate facilities and specialists. The employee may change his or her
13 designated physician one (1) time and thereafter shall show reasonable cause in
14 order to change physicians.
- 15 (9) When a compensable injury or occupational disease results in the amputation or
16 partial amputation of an arm, hand, leg, or foot, or the loss of hearing, or the
17 enucleation of an eye or loss of teeth, or permanent total or permanent partial
18 paralysis, the employer shall pay for, in addition to the other medical, surgical, and
19 hospital treatment enumerated in subsection (1) and this subsection, a modern
20 artificial member and, where required, proper braces as may reasonably be required
21 at the time of the injury and thereafter during disability.
- 22 (10) Upon motion of the employer, with sufficient notice to the employee for a response
23 to be filed, if it is shown to the satisfaction of the administrative law judge by
24 affidavits or testimony that, because of the physician selected by the employee to
25 treat the injury or disease, or because of the hospital selected by the employee in
26 which treatment is being rendered, that the employee is not receiving proper
27 medical treatment and the recovery is being substantially affected or delayed; or

1 that the funds for medical expenses are being spent without reasonable benefit to
2 the employee; or that because of the physician selected by the employee or because
3 of the type of medical treatment being received by the employee that the employer
4 will substantially be prejudiced in any compensation proceedings resulting from the
5 employee's injury or disease; then the administrative law judge may allow the
6 employer to select a physician to treat the employee and the hospital or hospitals in
7 which the employee is treated for the injury or disease. No action shall be brought
8 against any employer subject to this chapter by any person to recover damages for
9 malpractice or improper treatment received by any employee from any physician,
10 hospital, or attendant thereof.

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

22 (12) When a provider of medical services or treatment, required by this chapter, makes
23 referrals for medical services or treatment by this chapter, to a provider or entity in
24 which the provider making the referral has an investment interest, the referring
25 provider shall disclose that investment interest to the employee, the commissioner,
26 and the employer's insurer or the party responsible for paying for the medical
27 services or treatment, within thirty (30) days from the date the referral was made.

- 1 (13) (a) Except as provided in paragraphs (b) and (c) of this subsection, the employer,
2 insurer, or payment obligor shall not be liable for urine drug screenings of
3 patients in excess of:
- 4 1. One (1) per year for a patient considered to be low-risk;
 - 5 2. Two (2) per year for a patient considered to be moderate-risk; and
 - 6 3. Four (4) per year for patients considered to be high-risk;
- 7 based upon the screening performed by the treating medical provider and
8 other pertinent factors.
- 9 (b) The employer, insurer, or payment obligor may be liable for urine drug
10 screening at each office visit for patients that have exhibited aberrant behavior
11 documented by multiple lost prescriptions, multiple requests for early refills
12 of prescriptions, multiple providers prescribing or dispensing opioids or
13 opioid substitutes as evidenced by the electronic monitoring system
14 established in KRS 218A.202 or a similar system, unauthorized dosage
15 escalation, or apparent intoxication.
- 16 (c) The employer, insurer, or payment obligor may request additional urine drug
17 screenings which shall not count toward the maximum number of drug
18 screenings enumerated in paragraph (a) of this subsection.
- 19 (d) The commissioner shall promulgate administrative regulations related to urine
20 drug screenings as part of the practice parameters or treatment guidelines
21 required under KRS 342.035.
- 22 (14) (a) As used in this subsection, "practice of pharmacy" has the same meaning as in
23 KRS 315.010.
- 24 (b) In addition to all other compensation that may be reimbursed to a pharmacist
25 under this chapter, the employer, insurer, or payment obligor shall be liable
26 for the reimbursement of a pharmacist for a service or procedure at a rate not
27 less than that provided to other nonphysician practitioners if the service or

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procedure:

- 1. Is within the scope of the practice of pharmacy;
- 2. Would otherwise be compensable under this chapter if the service or procedure were provided by a:
 - a. Physician;
 - b. Advanced practice registered nurse; or
 - c. Physician assistant; and
- 3. Is performed by the pharmacist in strict compliance with laws and administrative regulations related to the pharmacist's license.

➔Section 3. KRS 342.033 is amended to read as follows:

- (1) As used in this section, **medical professionals shall include individuals**~~["physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners]~~ acting within the scope of the license or other credentials required by **their**~~[his or her]~~ specialty of practice in the United States jurisdiction in which **they are**~~[he or she is]~~ authorized to practice, and any retired **physicians**~~[physician]~~ previously authorized to practice in the Commonwealth of Kentucky, who surrendered **their**~~[his or her]~~ license while in good standing with their respective licensing board and was not subject to an ongoing investigation for improper practices.
- (2) In a claim for benefits, no party may introduce direct testimony from more than two (2) **medical professionals**~~[physicians]~~ without prior consent from the administrative law judge. The motion requesting additional testimony shall clearly demonstrate the need for such additional testimony. A party may introduce direct testimony from a **medical professional**~~[physician]~~ through a written medical report. The report shall become a part of the evidentiary record, subject to the right of an adverse party to object to the admissibility of the report and to cross-examine the reporting **medical professional**~~[physician]~~. The commissioner shall promulgate administrative

1 regulations prescribing the format and content of written medical reports.

2 ➔Section 4. KRS 342.035 is amended to read as follows:

- 3 (1) Periodically, the commissioner shall promulgate administrative regulations to adopt
4 a schedule of fees for the purpose of ensuring that all fees, charges, and
5 reimbursements under KRS 342.020 and this section shall be fair, current, and
6 reasonable and shall be limited to such charges as are fair, current, and reasonable
7 for similar treatment of injured persons in the same community for like services,
8 where treatment is paid for by general health insurers. In determining what fees are
9 reasonable, the commissioner may also consider the increased security of payment
10 afforded by this chapter. On or before November 1, 1994, and on July 1 every two
11 (2) years thereafter, the schedule of fees contained in administrative regulations
12 promulgated pursuant to this section shall be reviewed and updated, if appropriate.
13 Within ten (10) days of April 4, 1994, the commissioner shall execute a contract
14 with an appropriately qualified consultant pursuant to which each of the following
15 elements within the workers' compensation system are evaluated; the methods of
16 health care delivery; quality assurance and utilization mechanisms; type, frequency,
17 and intensity of services; risk management programs; and the schedule of fees
18 contained in administrative regulation. The consultant shall present
19 recommendations based on its review to the commissioner not later than sixty (60)
20 days following execution of the contract. The commissioner shall consider these
21 recommendations and, not later than thirty (30) days after their receipt, promulgate
22 a regulation which shall be effective on an emergency basis, to effect a twenty-five
23 percent (25%) reduction in the total medical costs within the program.
- 24 (2) ~~A~~No provider of medical services or treatment required by this chapter, its agent,
25 servant, employee, assignee, employer, or independent contractor acting on behalf
26 of any medical provider, shall ***not*** knowingly collect, attempt to collect, coerce, or
27 attempt to coerce, directly or indirectly, the payment of any charge, for services

1 covered by a workers' compensation insurance plan for the treatment of a work-
2 related injury or occupational disease, in excess of that provided by a schedule of
3 fees, or cause the credit of any employee to be impaired by reason of the
4 employee's failure or refusal to pay the excess charge. When an administrative law
5 judge determines a statement for services is not compensable because it was
6 submitted more than forty-five (45) days after the treatment date, the medical
7 provider shall not seek payment from the employee or the employee's legal
8 counsel. In addition to the penalty imposed in KRS 342.990 for violations of this
9 subsection, any individual who sustains damages by any act in violation of the
10 provisions of this subsection shall have a civil cause of action in Circuit Court to
11 enjoin further violations and to recover the actual damages sustained by the
12 individual, together with the costs of the lawsuit, including a reasonable attorney's
13 fee.

14 (3) Where these requirements are furnished by a public hospital or other institution,
15 payment thereof shall be made to the proper authorities conducting it. No
16 compensation shall be payable for the death or disability of an employee if his or
17 her death is caused, or if and insofar as his or her disability is aggravated, caused,
18 or continued, by an unreasonable failure to submit to or follow any competent
19 surgical treatment or medical aid or advice.

20 (4) The commissioner shall, by December 1, 1994, promulgate administrative
21 regulations to adopt a schedule of fees for the purpose of regulating charges by
22 medical providers and other health care professionals for testimony presented and
23 medical reports furnished in the litigation of a claim by an injured employee against
24 the employer. The workers' compensation medical fee schedule for physicians, 803
25 KAR 25:089, having an effective date of February 9, 1995, shall remain in effect
26 until July 1, 1996, or until the effective date of any amendments promulgated by the
27 commissioner, whichever occurs first, it being determined that this administrative

1 regulation is within the statutory grant of authority, meets legislative intent, and is
2 not in conflict with the provisions of this chapter. The medical fee schedule and
3 amendments shall be fair, current, and reasonable and otherwise comply with this
4 section.

- 5 (5) (a) To ensure compliance with subsections (1) and (4) of this section, the
6 commissioner shall promulgate administrative regulations by December 31,
7 1994, which require each insurance carrier, self-insured group, and self-
8 insured employer to certify to the commissioner the program or plan it has
9 adopted to ensure compliance.
- 10 (b) In addition, the commissioner shall periodically have an independent audit
11 conducted by a qualified independent person, firm, company, or other entity
12 hired by the commissioner, in accordance with the personal service contract
13 provisions contained in KRS 45A.690 to 45A.725, to ensure that the
14 requirements of subsection (1) of this section are being met. The independent
15 person, firm, company, or other entity selected by the commissioner to
16 conduct the audit shall protect the confidentiality of any information it
17 receives during the audit, shall divulge information received during the audit
18 only to the commissioner, and shall use the information for no other purpose
19 than the audit required by this paragraph.
- 20 (c) The commissioner shall promulgate administrative regulations governing
21 medical provider utilization review activities conducted by an insurance
22 carrier, self-insured group, or self-insured employer pursuant to this chapter.
23 Utilization review required under administrative regulations may be waived if
24 the insurance carrier, self-insured group, or self-insured employer agrees that
25 the recommended medical treatment is medically necessary and appropriate or
26 if the injured employee elects not to proceed with the recommended medical
27 treatment.

- 1 (d) Periodically, or upon request, the commissioner shall report to the Interim
2 Joint Committee on Economic Development and Workforce Investment of the
3 Legislative Research Commission or to the corresponding standing
4 committees of the General Assembly, as appropriate, the degree of
5 compliance or lack of compliance with the provisions of this section and make
6 recommendations thereon.
- 7 (e) The cost of implementing and carrying out the requirements of this subsection
8 shall be paid from funds collected pursuant to KRS 342.122.
- 9 (6) The commissioner may promulgate administrative regulations incorporating
10 managed care or other concepts intended to reduce costs or to speed the delivery or
11 payment of medical services to employees receiving medical and related benefits
12 under this chapter.
- 13 (7) For purposes of this chapter, any medical provider shall charge only its customary
14 fee for photocopying requested documents. However, in no event shall a
15 photocopying fee of a medical provider or photocopying service exceed fifty cents
16 (\$0.50) per page. However, a medical provider shall not charge a fee when the
17 initial copy of medical records is provided to the injured worker or his or her
18 attorney in response to a written request pursuant to KRS 422.317. In addition,
19 there shall be no charge for reviewing any records of a medical provider, during
20 regular business hours, by any party who is authorized to review the records and
21 who requests a review pursuant to this chapter.
- 22 (8) (a) The commissioner shall develop or adopt practice parameters or evidence-
23 based treatment guidelines for medical treatment for use by medical providers
24 under this chapter, including but not limited to chronic pain management
25 treatment and opioid use, and promulgate administrative regulations in order
26 to implement the developed or adopted practice parameters or evidenced-
27 based treatment guidelines on or before December 31, 2019. The

1 commissioner may adopt any parameters for medical treatment as developed
2 and updated by the federal Agency for Health Care Policy Research, or the
3 commissioner may adopt other parameters for medical treatment which are
4 developed by qualified bodies, as determined by the commissioner, with
5 periodic updating based on data collected during the application of the
6 parameters.

7 (b) The commissioner shall develop or adopt a pharmaceutical formulary for
8 medications prescribed for the cure of and relief from the effects of a work
9 injury or occupational disease and promulgate administrative regulations to
10 implement the developed or adopted pharmaceutical formulary on or before
11 December 31, 2018.

12 (c) Any provider of medical services under this chapter who has followed the
13 practice parameters or treatment guidelines or formularies developed or
14 adopted and implemented pursuant to this subsection shall be presumed to
15 have met the appropriate legal standard of care in medical malpractice cases
16 regardless of any unanticipated complication that may thereafter develop or be
17 discovered.

18 (9) (a) Notwithstanding any other provision of law to the contrary, the medical fee
19 schedule adopted under subsection (4) of this section shall require all worker's
20 compensation insurance carriers, worker's compensation self-insured groups,
21 and worker's compensation self-insured employers to provide coverage and
22 payment for surgical first assisting services to registered nurse first assistants
23 as defined in KRS 216B.015.

24 (b) The provisions of this subsection apply only if reimbursement for an assisting
25 physician would be covered and a registered nurse first assistant who
26 performed the services is used as a substitute for the assisting physician. The
27 reimbursement shall be made directly to the registered nurse first assistant if

1 the claim is submitted by a registered nurse first assistant who is not an
2 employee of the hospital or the surgeon performing the services.

3 ➔Section 5. KRS 342.125 is amended to read as follows:

4 (1) Upon motion by any party or upon an administrative law judge's own motion, an
5 administrative law judge may reopen and review any award or order on any of the
6 following grounds:

7 (a) Fraud;

8 (b) Newly-discovered evidence which could not have been discovered with the
9 exercise of due diligence;

10 (c) Mistake;~~and~~

11 (d) Change of disability as shown by objective medical evidence of worsening or
12 improvement of impairment due to a condition caused by the injury since the
13 date of the award or order; **and**

14 **(e) Consideration of a post-award request for vocational rehabilitation**
15 **necessitated by the work injury or disease.**

16 (2) No claim which has been previously dismissed or denied on the merits shall be
17 reopened except upon the grounds set forth in this section.

18 (3) Except for reopening solely for determination of the compensability of medical
19 expenses, fraud, **entitlement to rehabilitation as set forth in KRS 342.710**, or
20 conforming the award as set forth in KRS 342.730(1)(c)2., or for reducing a
21 permanent total disability award when an employee returns to work, or seeking
22 temporary total disability benefits during the period of an award, no claim shall be
23 reopened more than four (4) years following the date of the original award or
24 original order granting or denying benefits, when such an award or order becomes
25 final and nonappealable, and no party may file a motion to reopen within one (1)
26 year of any previous motion to reopen by the same party. Orders granting or
27 denying benefits that are entered subsequent to an original final award or order

1 granting or denying benefits shall not be considered to be an original order granting
2 or denying benefits under this subsection and shall not extend the time to reopen a
3 claim beyond four (4) years following the date of the final, nonappealable original
4 award or original order.

5 (4) Reopening and review under this section shall be had upon notice to the parties and
6 in the same manner as provided for an initial proceeding under this chapter. Upon
7 reopening, the administrative law judge may end, diminish, or increase
8 compensation previously awarded, within the maximum and minimum provided in
9 this chapter, or change or revoke a previous order. The administrative law judge
10 shall immediately send all parties a copy of the subsequent order or award.
11 Reopening shall not affect the previous order or award as to any sums already paid
12 thereunder, and any change in the amount of compensation shall be ordered only
13 from the date of filing the motion to reopen. No employer shall suspend benefits
14 during pendency of any reopening procedures except upon order of the
15 administrative law judge.

16 (5) (a) Upon the application of the affected employee, and a showing of progression
17 of his or her previously-diagnosed occupational pneumoconiosis resulting
18 from exposure to coal dust and development of respiratory impairment due to
19 that pneumoconiosis and two (2) additional years of employment in the
20 Commonwealth wherein the employee was continuously exposed to the
21 hazards of the disease, the administrative law judge may review an award or
22 order for benefits attributable to coal-related pneumoconiosis under KRS
23 342.732. An application for review under this subsection shall be made within
24 one (1) year of the date the employee knew or reasonably should have known
25 that a progression of his or her disease and development or progression of
26 respiratory impairment have occurred. Review under this subsection shall
27 include a review of all evidence admitted in all prior proceedings.

- 1 (b) Benefits awarded as a result of a review under this subsection shall be reduced
2 by the amount of retraining incentive benefits or income benefits previously
3 awarded under KRS 342.732. The amount to be deducted shall be subtracted
4 from the total amount awarded, and the remaining amount shall be divided by
5 the number of weeks, for which the award was made, to arrive at the weekly
6 benefit amount which shall be apportioned in accordance with the provisions
7 of KRS 342.316.
- 8 (6) In a reopening or review proceeding where there has been additional permanent
9 partial disability awarded, the increase shall not extend the original period, unless
10 the combined prior disability and increased disability exceeds fifty percent (50%),
11 but less than one hundred percent (100%), in which event the awarded period shall
12 not exceed five hundred twenty (520) weeks, from commencement date of the
13 original disability previously awarded. The law in effect on the date of the original
14 injury controls the rights of the parties.
- 15 (7) Where an agreement has become an award by approval of the administrative law
16 judge, and a reopening and review of that award is initiated, no statement contained
17 in the agreement, whether as to jurisdiction, liability of the employer, nature and
18 extent of disability, or as to any other matter, shall be considered by the
19 administrative law judge as an admission against the interests of any party. The
20 parties may raise any issue upon reopening and review of this type of award which
21 could have been considered upon an original application for benefits.
- 22 (8) The time limitation prescribed in this section shall apply to all claims irrespective of
23 when they were incurred, or when the award was entered, or the settlement
24 approved. However, claims decided prior to December 12, 1996, may be reopened
25 within four (4) years of the award or order or within four (4) years of December 12,
26 1996, whichever is later, provided that the exceptions to reopening established in
27 subsections (1) and (3) of this section shall apply to these claims as well.

1 →Section 6. KRS 342.276 is amended to read as follows:

- 2 (1) The commissioner shall establish a program to provide an opportunity for
3 mediation of disputes as to the entitlement to benefits under this chapter.
- 4 (2) The commissioner shall promulgate administrative regulations **in accordance with**
5 **KRS Chapter 13A** necessary to establish and implement the mediation program,
6 which shall:
- 7 **(a) Prescribe** ~~prescribe~~ the qualifications and duties of mediators;
8 **(b) Establish** a process for the designation of mediators;
9 **(c) Establish** procedures for the conduct of mediation proceedings;
10 **(d) Establish** ~~and~~ the issues which shall be subject to mediation; **and**
11 **(e) Require a statement of the party or parties seeking mediation for the**
12 **resolution of contested issues that at least one (1) prior attempt has been**
13 **made to reach a settlement prior to mediation.**
- 14 (3) Recommendations by mediators are without administrative or judicial authority and
15 are not binding on the parties unless the parties enter into a settlement agreement
16 incorporating the recommendations. Administrative law judges may participate in
17 the mediation process but shall not issue findings or orders as a result of the process
18 unless agreed to by the parties.

19 →Section 7. KRS 342.281 is amended to read as follows:

20 Within fourteen (14) days from the date of the award, order, or decision any party may
21 file a petition for reconsideration of the award, order, or decision of the administrative
22 law judge. The petition for reconsideration shall clearly set out the errors relied upon with
23 the reasons and argument for reconsideration of the pending award, order, or decision.
24 All other parties shall have ten (10) days thereafter to file a response to the petition. The
25 administrative law judge shall be limited in the review to the correction of errors patently
26 appearing upon the face of the award, order, or decision and shall overrule the petition for
27 reconsideration or make any correction within ten (10) days after submission. **After an**

1 order on reconsideration has been rendered, subsequent petitions for reconsideration
2 shall not toll or extend the time to file an appeal unless the subsequent petition for
3 reconsideration is filed to correct a patent error in the order.

4 ➔Section 8. KRS 342.310 is amended to read as follows:

5 (1) If any administrative law judge, the board, or any court before whom any
6 proceedings are brought under this chapter determines that such proceedings have
7 been brought, prosecuted, or defended without reasonable ground, he, she or it may
8 assess the whole cost of the proceedings which shall include actual expenses but not
9 be limited to the following: court costs, travel expenses, deposition costs, physician
10 expenses for attendance fees at depositions, attorney fees, and all other out-of-
11 pocket expenses upon the party who has so brought, prosecuted, or defended them.

12 (2) If any administrative law judge, the board, or any court before whom any
13 proceedings are brought under this chapter determines that a party has committed
14 acts in violation of KRS 342.335(1) or (2), that party may be ordered to make
15 restitution for any compensation paid as a result of the commission of such acts.

16 (3) If an administrative law judge determines a medical dispute was filed frivolously
17 or for the purpose of harassment by an employer, its third-party administrator, or
18 the responsible insurer, in addition to the attorney's fees in subsection (4)(i)
19 Section 2 of this Act, the administrative law judge may fine the employer an
20 amount not less than one thousand dollars (\$1,000) and not more than five
21 thousand dollars (\$5,000) to be paid to the employee.

22 ➔Section 9. KRS 342.315 is amended to read as follows:

23 (1) (a) For workers who have had injuries or occupational hearing loss, the
24 commissioner shall contract with the University of Kentucky, ~~and~~ the
25 University of Louisville, and the University of Pikeville medical schools to
26 evaluate workers. For workers who have become affected by occupational
27 hearing loss, audiologists holding a doctorate in audiology affiliated with

1 *the University of Kentucky, the University of Louisville, or the University of*
 2 *Pikeville medical schools may perform hearing loss evaluations.* For
 3 workers who have become affected by occupational diseases, the
 4 commissioner shall contract with the University of Kentucky, ~~and~~ the
 5 University of Louisville, *and the University of Pikeville* medical schools.

6 *(b) In cases alleging coal workers' pneumoconiosis, in addition to the medical*
 7 *schools listed in this subsection, the commissioner may contract with*
 8 *medical professionals who are* ~~[or other physicians otherwise]~~ duly qualified
 9 as "B" readers ~~[who are licensed in the Commonwealth]~~ and *who* are board-
 10 certified pulmonary specialists.

11 *(c)* Referral for evaluation may be made whenever a medical question is at issue.
 12 *Medical professionals affiliated with the University of Kentucky, the*
 13 *University of Louisville, or the University of Pikeville medical schools may*
 14 *perform the evaluations.*

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

24 (3) The commissioner or an administrative law judge may, upon the application of any
 25 party or upon his *or her* own motion, direct appointment by the commissioner,
 26 pursuant to subsection (1) of this section, of *an* ~~[a medical]~~ evaluator to make any
 27 necessary medical examination of the employee. *The* ~~[Such medical]~~ evaluator shall

1 file with the commissioner within fifteen (15) days after such examination a written
2 report. The appointed evaluator~~medical evaluator appointed~~ may charge a
3 reasonable fee not exceeding fees established by the commissioner for those
4 services.

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

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

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

23 (7) The General Assembly finds that good public policy mandates the realization of the
24 potential advantages, both economic and effectual, of the use of telehealth. The
25 commissioner may, to the extent that he or she finds it feasible and appropriate,
26 require the use of telehealth, as defined in KRS 211.332, in the independent medical
27 evaluation process required by this chapter.

1 ➔Section 10. KRS 342.316 is amended to read as follows:

- 2 (1) (a) The employer liable for compensation for occupational disease shall be the
3 employer in whose employment the employee was last exposed to the hazard
4 of the occupational disease. During any period in which this section is
5 applicable to a coal mine, an operator who acquired it or substantially all of its
6 assets from a person who was its operator on and after January 1, 1973, shall
7 be liable for, and secure the payment of, the benefits which would have been
8 payable by the prior operator under this section with respect to miners
9 previously employed in the mine if it had not been acquired by such later
10 operator. At the same time, however, this subsection does not relieve the prior
11 operator of any liability under this section. Also, it does not affect whatever
12 rights the later operator might have against the prior operator.
- 13 (b) The time of the beginning of compensation payments shall be the date of the
14 employee's last injurious exposure to the cause of the disease, or the date of
15 actual disability, whichever is later.
- 16 (2) The procedure with respect to the giving of notice and determination of claims in
17 occupational disease cases and the compensation and medical benefits payable for
18 disability or death due to the disease shall be the same as in cases of accidental
19 injury or death under the general provisions of this chapter, except that notice of
20 claim shall be given to the employer as soon as practicable after the employee first
21 experiences a distinct manifestation of an occupational disease in the form of
22 symptoms reasonably sufficient to apprise the employee that he or she has
23 contracted the disease, or a diagnosis of the disease is first communicated to him or
24 her, whichever shall first occur.
- 25 (3) The procedure for filing occupational disease claims shall be as follows:
- 26 (a) The application for resolution of claim shall set forth the complete work
27 history of the employee with a concise description of injurious exposure to a

1 specific occupational disease, together with the name and addresses of the
2 employer or employers with the approximate dates of employment. The
3 application shall also include at least one (1) written medical report
4 supporting his or her claim. This medical report shall be made on the basis of
5 clinical or X-ray examination performed in accordance with accepted medical
6 standards and shall contain full and complete statements of all examinations
7 performed and the results thereof. The report shall be made by a duly-licensed
8 medical professional~~physician~~. The commissioner shall promulgate
9 administrative regulations which prescribe the format of the medical report
10 required by this section and the manner in which the report shall be
11 completed.

12 1. For coal-related occupational pneumoconiosis claims, each clinical
13 examination shall include a chest X-ray interpretation by a National
14 Institute of Occupational Safety and Health (NIOSH) certified "B"
15 reader. The chest X-ray upon which the report is made shall be filed
16 with the application as well as spirometric tests when pulmonary
17 dysfunction is alleged.

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

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

25 1. Chest X-rays shall be of acceptable quality with respect to exposure and
26 development and shall be indelibly labeled with the date of the X-ray
27 and the name and Social Security number of the claimant. Reports by

1 medical professionals~~[Physicians' reports]~~ of X-ray interpretations
2 shall:

3 a. Identify~~[identify]~~ the claimant by name and Social Security
4 number;

5 b. Include~~[include]~~ the date of the X-ray and the date of the report;

6 and

7 c. Classify~~[classify]~~ the X-ray interpretation using the latest ILO
8 Classification and be accompanied by a completed copy of the
9 latest ILO Classification report.

10 Only interpretations by National Institute of Occupational Safety and
11 Health (NIOSH) certified "B" readers shall be admissible.

12 2. Spirometric testing shall be conducted in accordance with the standards
13 recommended in the "Guides to the Evaluation of Permanent
14 Impairment" and the 1978 ATS epidemiology standardization project
15 with the exception that the predicted normal values for lung function
16 shall not be adjusted based upon the race of the subject. The FVC or the
17 FEV1 values shall represent the largest of such values obtained from
18 three (3) acceptable forced expiratory volume maneuvers as corrected to
19 BTPS (body temperature, ambient pressure and saturated with water
20 vapor at these conditions) and the variance between the two (2) largest
21 acceptable FVC values shall be either less than five percent (5%) of the
22 largest FVC value or less than one hundred (100) milliliters, whichever
23 is greater. The variance between the two (2) largest acceptable FEV1
24 values shall be either less than five percent (5%) of the largest FEV1
25 value or less than one hundred (100) milliliters, whichever is greater.
26 Reports of spirometric testing shall include a description by the
27 physician of the procedures utilized in conducting such spirometric

1 testing and a copy of the spirometric chart and tracings from which
 2 spirometric values submitted as evidence were taken. If it is shown that
 3 the spirometric testing is not valid due to inadequate cooperation or poor
 4 effort on the part of the claimant, the claimant's right to take or
 5 prosecute any proceedings under this chapter shall be suspended until
 6 the refusal or obstruction ceases. No compensation shall be payable for
 7 the period during which the refusal or obstruction continues.

8 3. The commissioner shall promulgate administrative regulations pursuant
 9 to KRS Chapter 13A as necessary to effectuate the purposes of this
 10 section. The commissioner shall periodically review the applicability of
 11 the spirometric test values contained in the "Guides to the Evaluation of
 12 Permanent Impairment" and may by administrative regulation substitute
 13 other spirometric test values which are found to be more closely
 14 representative of the normal pulmonary function of the coal mining
 15 population.

16 4. The procedure for determination of occupational disease claims shall be
 17 as follows:

18 a. Immediately upon receipt of an application for resolution of claim,
 19 the commissioner shall notify the responsible employer and all
 20 other interested parties and shall furnish them with a full and
 21 complete copy of the application.

22 b. The commissioner shall assign the claim to an administrative law
 23 judge and shall promptly refer the employee to a duly qualified
 24 medical professional who is board certified in the area
 25 concerning the alleged occupational disease, and in the case of
 26 claims for coal workers' pneumoconiosis to a medical
 27 professional duly who is qualified as a "B" reader ~~physician who~~

1 is ~~licensed in the Commonwealth~~ and ***who*** is a board-certified
2 pulmonary specialist as set forth pursuant to KRS 342.315 and
3 342.794(1). The report from this examination shall be provided to
4 all parties of record. The employee shall not be referred by the
5 commissioner for examination within two (2) years following any
6 prior referral for examination for the same disease.

7 c. The commissioner shall develop a procedure to annually audit the
8 performance of ***medical professionals***~~[physicians]~~ and facilities
9 that are selected to perform examinations pursuant to this section.
10 The audit shall include an evaluation of the ***medical***
11 ***professional***~~[physician]~~ and facility with respect to the timeliness
12 and completeness of the reports and the frequency at which the
13 ***medical professional's***~~[physician's]~~ classification of an X-ray
14 differs from those of the other ***medical professionals***~~[physicians]~~
15 of that X-ray. The commissioner shall remove a ***medical***
16 ***professional***~~[physician]~~ or facility from selection consideration if
17 the ***medical professional***~~[physician]~~ or facility consistently
18 renders incomplete or untimely reports or if the ***X-ray***~~[physician's]~~
19 interpretations~~[of X-rays]~~ are not in conformity with the readings
20 of other ***medical professionals***~~[physicians]~~ of record at least fifty
21 percent (50%) of the time. The report required under this
22 subdivision shall be provided to the Interim Joint Committee on
23 Economic Development and Workforce Investment on or before
24 July 1, 2019, and on or before July 1 of each year thereafter.

25 d. In coal workers' pneumoconiosis claims, if the ***medical***
26 ***professional***~~[physician]~~ selected by the commissioner interprets an
27 X-ray as positive for complicated coal workers' pneumoconiosis,

1 the commissioner shall refer the employee to the facility at which
2 the claimant was previously evaluated for a computerized
3 tomography scan in order to verify the findings. The computerized
4 tomography scan shall be interpreted by the facility and a report
5 shall be filed with the commissioner. The employer, insurer, or
6 payment obligor shall pay the cost of the examination pursuant to
7 the medical fee schedule. The administrative law judge may rely
8 upon the findings in the report in accepting or rejecting ILO
9 radiographic evidence of the disease required under KRS 342.732
10 for benefit determination.

11 e. Within forty-five (45) days following the notice of filing an
12 application for resolution of claim, the employer or carrier shall
13 notify the commissioner and all parties of record of its acceptance
14 or denial of the claim. A denial shall be in writing and shall state
15 the specific basis for the denial.

16 f. The administrative law judge shall conduct such proceedings as
17 are necessary to resolve the claim and shall have authority to grant
18 or deny any relief, including interlocutory relief, to order
19 additional proof, to conduct a benefit review conference, or to take
20 such other action as may be appropriate to resolve the claim.

21 g. Unless a voluntary settlement is reached by the parties, or the
22 parties agree otherwise, the administrative law judge shall issue a
23 written determination within sixty (60) days following a hearing.
24 The written determination shall address all contested issues and
25 shall be enforceable under KRS 342.305.

26 h. Within thirty (30) days of the receipt of the statement for the
27 evaluation, the employer, insurer, or payment obligor shall pay the

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

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

13 (4) (a) The right to compensation under this chapter resulting from an occupational
14 disease shall be forever barred unless a claim is filed with the commissioner
15 within three (3) years after the last injurious exposure to the occupational
16 hazard or after the employee first experiences a distinct manifestation of an
17 occupational disease in the form of symptoms reasonably sufficient to apprise
18 the employee that he or she has contracted the disease, whichever shall last
19 occur; and if death results from the occupational disease within that period,
20 unless a claim therefor be filed with the commissioner within three (3) years
21 after the death; but that notice of claim shall be deemed waived in case of
22 disability or death where the employer, or its insurance carrier, voluntarily
23 makes payment therefor, or if the incurrence of the disease or the death of the
24 employee and its cause was known to the employer. However, the right to
25 compensation for any occupational disease shall be forever barred, unless a
26 claim is filed with the commissioner within five (5) years from the last
27 injurious exposure to the occupational hazard, except that, in cases of

- 1 radiation disease, asbestos-related disease, or a type of cancer specified in
2 KRS 61.315(11)(b), a claim must be filed within twenty (20) years from the
3 last injurious exposure to the occupational hazard.
- 4 (b) Income benefits for the disease of pneumoconiosis resulting from exposure to
5 coal dust or death therefrom shall not be payable unless the employee has
6 been exposed to the hazards of such pneumoconiosis in the Commonwealth of
7 Kentucky over a continuous period of not less than two (2) years during the
8 ten (10) years immediately preceding the date of his or her last exposure to
9 such hazard, or for any five (5) of the fifteen (15) years immediately
10 preceding the date of such last exposure.
- 11 (5) The amount of compensation payable for disability due to occupational disease or
12 for death from the disease, and the time and manner of its payment, shall be as
13 provided for under the general provisions of the Workers' Compensation Act, but:
- 14 (a) In no event shall the payment exceed the amounts that were in effect at the
15 time of the last injurious exposure;
- 16 (b) The time of the beginning of compensation payments shall be the date of the
17 employee's last injurious exposure to the cause of the disease, or the date of
18 actual disability, whichever is later; and
- 19 (c) In case of death where the employee has been awarded compensation or made
20 timely claim within the period provided for in this section, and an employee
21 has suffered continuous disability to the date of his or her death occurring at
22 any time within twenty (20) years from the date of disability, his or her
23 dependents, if any, shall be awarded compensation for his or her death as
24 provided for under the general provisions of the Workers' Compensation Act
25 and in this section, except as provided in KRS 342.750(6).
- 26 (6) If an autopsy has been performed, no testimony relative thereto shall be admitted
27 unless the employer or its representative has available findings and reports of the

1 pathologist or doctor who performed the autopsy examination.

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

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

15 (9) Whenever any claimant misconceives his or her remedy and files an application for
16 adjustment of claim under the general provisions of this chapter and it is
17 subsequently discovered, at any time before the final disposition of the cause, that
18 the claim for injury, disability, or death which was the basis for his or her
19 application should properly have been made under the provisions of this section,
20 then the application so filed may be amended in form or substance, or both, to
21 assert a claim for injury, disability, or death under the provisions of this section, and
22 it shall be deemed to have been so filed as amended on the date of the original filing
23 thereof, and compensation may be awarded that is warranted by the whole evidence
24 pursuant to the provisions of this chapter. When amendment of this type is
25 submitted, further or additional evidence may be heard when deemed necessary.
26 Nothing this section contains shall be construed to be or permit a waiver of any of
27 the provisions of this chapter with reference to notice of time for filing of a claim,

1 but notice of filing a claim, if given or done, shall be deemed to be a notice of filing
2 of a claim under provisions of this chapter, if given or done within the time required
3 by this subsection.

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

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

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

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

20 (12) A concluded claim for benefits by reason of contraction of coal workers'
21 pneumoconiosis in the severance or processing of coal shall bar any subsequent
22 claim for benefits by reason of contraction of coal workers' pneumoconiosis, unless
23 there has occurred in the interim between the conclusion of the first claim and the
24 filing of the second claim at least two (2) years of employment wherein the
25 employee was continuously exposed to the hazards of the disease in the
26 Commonwealth.

27 ➔Section 11. KRS 342.320 is amended to read as follows:

- 1 (1) All fees of attorneys and medical professionals~~[physicians]~~, and all charges of
2 hospitals under this chapter, shall be subject to the approval of an administrative
3 law judge pursuant to the statutes and administrative regulations.
- 4 (2) In an original claim, attorney's fees for services under this chapter on behalf of an
5 employee shall be subject to the following maximum limits:
- 6 (a) For attorney-client employment contracts entered into and signed after July
7 14, 2000, but before July 14, 2018, twenty percent (20%) of the first twenty-
8 five thousand dollars (\$25,000) of the award, fifteen percent (15%) of the next
9 ten thousand dollars (\$10,000), and five percent (5%) of the remainder of the
10 award, not to exceed a maximum fee of twelve thousand dollars (\$12,000).
11 This fee shall be paid by the employee from the proceeds of the award or
12 settlement; and
- 13 (b) For attorney-client employment contracts entered into and signed on or after
14 July 14, 2018, twenty percent (20%) of the first twenty-five thousand dollars
15 (\$25,000) of the award, fifteen percent (15%) of the next twenty-five
16 thousand dollars (\$25,000), and ten percent (10%) of the remainder of the
17 award, not to exceed a maximum fee of eighteen thousand dollars (\$18,000).
18 This fee shall be paid by the employee from the proceeds of the award or
19 settlement.
- 20 (3) In approving an allowance of attorney's fees, the administrative law judge shall
21 consider the extent, complexity, and quality of services rendered, and in the case of
22 death, the Remarriage Tables of the Dutch Royal Insurance Institute. An attorney's
23 fee may be denied or reduced upon proof of solicitation by the attorney. However,
24 this provision shall not be construed to preclude advertising in conformity with
25 standards prescribed by the Kentucky Supreme Court.
- 26 (4) No attorney's fee in any case involving benefits under this chapter shall be paid
27 until the fee is approved by the administrative law judge, and any contract for the

1 payment of attorney's fees otherwise than as provided in this section shall be void.
2 The motion for approval of an attorney's fee shall be submitted within thirty (30)
3 days following finality of the claim. Except when the attorney's fee is to be paid by
4 the employer or carrier, the attorney's fee shall be paid in one (1) of the following
5 ways:

6 (a) The employee may pay the attorney's fee out of his or her personal funds or
7 from the proceeds of a lump-sum settlement; or

8 (b) The administrative law judge, upon request of the employee, may order the
9 payment of the attorney's fee in a lump sum directly to the attorney of record
10 and deduct the attorney's fee from the weekly benefits payable to the
11 employee in equal installments over the duration of the award or until the
12 attorney's fee has been paid, commuting sufficient sums to pay the fee.

13 (5) At the commencement of the attorney-client relationship, the attorney shall explain
14 to the employee the methods by which this section provides for the payment of the
15 attorney's fee, and the employee shall select the method in which the attorney's fee
16 is to be paid. His or her selection and statement that he or she fully understands the
17 method to be used shall be submitted by his or her attorney, on a notarized form
18 signed by the employee, at the time the motion for approval of the attorney's fee is
19 submitted. The commissioner shall develop the format and content of the form to be
20 used pursuant to this section. The form to be used shall list on its face all options
21 permitted in this section for the payment of an attorney's fees and contain an
22 explanation in nontechnical language of each method.

23 (6) In a claim that has been reopened pursuant to the provisions of this chapter, an
24 attorney's fee may be awarded by the administrative law judge subject to the limits
25 set forth in subsection (2) of this section. In awarding the attorney's fee, the
26 administrative law judge shall consider the factors set forth in subsection (3) of this
27 section. If no additional amount is recovered upon reopening, no attorney's fee shall

1 be awarded. No attorney's fee shall be allowed or approved exceeding the amounts
2 provided in subsection (2)(a) of this section applicable to any additional amount
3 recovered.

4 (7) Attorney's fees for representing employers in proceedings under this chapter
5 pursuant to contract with the employer shall be subject to approval of the
6 administrative law judge in the same manner as prescribed for attorney
7 representation of employees. Employer attorney's fees are subject to the limitation
8 of eighteen thousand dollars (\$18,000) maximum fees except that fees for
9 representing employers shall not be dependent upon the result achieved. Employer
10 attorney's fees may be paid on a periodic basis while a claim is adjudicated and the
11 payments need not be approved until the claims resolution process is completed. All
12 such approved fees shall be paid by the employer and in no event shall exceed the
13 amount the employer agreed by contract to pay.

14 **(8) The commissioner shall promulgate administrative regulations in accordance**
15 **with KRS Chapter 13A establishing a schedule of fees that may be charged by**
16 **court reporters for services rendered pursuant to KRS Chapter 342.**

17 ➔Section 12. KRS 342.730 is amended to read as follows:

18 (1) Except as provided in KRS 342.732, income benefits for disability shall be paid to
19 the employee as follows:

20 (a) For temporary or permanent total disability, sixty-six and two-thirds percent
21 (66-2/3%) of the employee's average weekly wage but not more than one
22 hundred ten percent (110%) of the state average weekly wage and not less
23 than twenty percent (20%) of the state average weekly wage as determined in
24 KRS 342.740 during that disability. Nonwork-related impairment and
25 conditions compensable under KRS 342.732 and hearing loss covered in KRS
26 342.7305 shall not be considered in determining whether the employee is
27 totally disabled for purposes of this subsection.

1 (b) For permanent partial disability, sixty-six and two-thirds percent (66-2/3%) of
 2 the employee's average weekly wage but not more than eighty-two and one-
 3 half percent (82.5%) of the state average weekly wage as determined by KRS
 4 342.740, multiplied by the permanent impairment rating caused by the injury
 5 or occupational disease as determined by the "Guides to the Evaluation of
 6 Permanent Impairment," times the factor set forth in the table that follows:

7 AMA Impairment	8 Factor
9 0 to 5%	0.65
10 6 to 10%	0.85
11 11 to 15%	1.00
12 16 to 20%	1.00
13 21 to 25%	1.15
14 26 to 30%	1.35
15 31 to 35%	1.50
36% and above	1.70

16 Any temporary total disability period within the maximum period for
 17 permanent, partial disability benefits shall extend the maximum period but
 18 shall not make payable a weekly benefit exceeding that determined in
 19 subsection (1)(a) of this section. Notwithstanding any section of this chapter
 20 to the contrary, there shall be no minimum weekly income benefit for
 21 permanent partial disability and medical benefits shall be paid for the duration
 22 of the disability.

23 (c) 1. If, due to an injury, an employee does not retain the physical capacity to
 24 return to the type of work that the employee performed at the time of
 25 injury, the benefit for permanent partial disability shall be multiplied by
 26 three (3) times the amount otherwise determined under paragraph (b) of
 27 this subsection, but this provision shall not be construed so as to extend

- 1 the duration of payments; or
- 2 2. If an employee returns to work at a weekly wage equal to or greater than
- 3 the average weekly wage at the time of injury, the weekly benefit for
- 4 permanent partial disability shall be determined under paragraph (b) of
- 5 this subsection for each week during which that employment is
- 6 sustained. During any period of cessation of that employment,
- 7 temporary or permanent, for any reason, with or without cause, payment
- 8 of weekly benefits for permanent partial disability during the period of
- 9 cessation shall be two (2) times the amount otherwise payable under
- 10 paragraph (b) of this subsection. This provision shall not be construed so
- 11 as to extend the duration of payments.
- 12 3. Recognizing that limited education and advancing age impact an
- 13 employee's post-injury earning capacity, an education and age factor,
- 14 when applicable, shall be added to the income benefit multiplier set
- 15 forth in paragraph (c)1. of this subsection. If at the time of injury, the
- 16 employee had less than eight (8) years of formal education, the
- 17 multiplier shall be increased by four-tenths (0.4); if the employee had
- 18 less than twelve (12) years of education or a high school Equivalency
- 19 diploma, the multiplier shall be increased by two-tenths (0.2); if the
- 20 employee was age sixty (60) or older, the multiplier shall be increased
- 21 by six-tenths (0.6); if the employee was age fifty-five (55) or older, the
- 22 multiplier shall be increased by four-tenths (0.4); or if the employee was
- 23 age fifty (50) or older, the multiplier shall be increased by two-tenths
- 24 (0.2).
- 25 4. Notwithstanding the provisions of KRS 342.125, a claim may be
- 26 reopened at any time during the period of permanent partial disability in
- 27 order to conform the award payments with the requirements of

1 subparagraph 2. of this paragraph.

2 (d) For permanent partial disability, if an employee has a permanent disability
3 rating of fifty percent (50%) or less as a result of a work-related injury, the
4 compensable permanent partial disability period shall be four hundred twenty-
5 five (425) weeks, and if the permanent disability rating is greater than fifty
6 percent (50%), the compensable permanent partial disability period shall be
7 five hundred twenty (520) weeks from the date the impairment or disability
8 exceeding fifty percent (50%) arises. Benefits payable for permanent partial
9 disability shall not exceed ninety-nine percent (99%) of sixty-six and two-
10 thirds percent (66-2/3%) of the employee's average weekly wage as
11 determined under KRS 342.740 and shall not exceed eighty-two and one-half
12 percent (82.5%) of the state average weekly wage, except for benefits payable
13 pursuant to paragraph (c)1. of this subsection, which shall not exceed one
14 hundred ten percent (110%) of the state average weekly wage, nor shall
15 benefits for permanent partial disability be payable for a period exceeding five
16 hundred twenty (520) weeks, notwithstanding that multiplication of
17 impairment times the factor set forth in paragraph (b) of this subsection would
18 yield a greater percentage of disability.

19 (e) For permanent partial disability, impairment for nonwork-related disabilities,
20 conditions previously compensated under this chapter, conditions covered by
21 KRS 342.732, and hearing loss covered in KRS 342.7305 shall not be
22 considered in determining the extent of disability or duration of benefits under
23 this chapter.

24 (2) The period of any income benefits payable under this section on account of any
25 injury shall be reduced by the period of income benefits paid or payable under this
26 chapter on account of a prior injury if income benefits in both cases are for
27 disability of the same member or function, or different parts of the same member or

1 function, and the income benefits payable on account of the subsequent disability in
2 whole or in part would duplicate the income benefits payable on account of the pre-
3 existing disability.

4 (3) Subject to the limitations contained in subsection (4) of this section, when an
5 employee, who has sustained disability compensable under this chapter, and who
6 has filed, or could have timely filed, a valid claim in his or her lifetime, dies from
7 causes other than the injury before the expiration of the compensable period
8 specified, portions of the income benefits specified and unpaid at the individual's
9 death, whether or not accrued or due at his or her death, shall be paid, under an
10 award made before or after the death, for the period specified in this section, to and
11 for the benefit of the persons within the classes at the time of death and in the
12 proportions and upon the conditions specified in this section and in the order
13 named:

14 (a) To the widow or widower, if there is no child under the age of eighteen (18)
15 or incapable of self-support, benefits at fifty percent (50%) of the rate
16 specified in the award; or

17 (b) If there are both a widow or widower and such a child or children, to the
18 widow or widower, forty-five percent (45%) of the benefits specified in the
19 award, or forty percent (40%) of those benefits if such a child or children are
20 not living with the widow or widower; and, in addition thereto, fifteen percent
21 (15%) of the benefits specified in the award to each child. Where there are
22 more than two (2) such children, the indemnity benefits payable on account of
23 two (2) children shall be divided among all the children, share and share alike;
24 or

25 (c) If there is no widow or widower but such a child or children, then to the child
26 or children, fifty percent (50%) of the benefits specified in the award to one
27 (1) child, and fifteen percent (15%) of those benefits to a second child, to be

- 1 shared equally. If there are more than two (2) such children, the indemnity
2 benefits payable on account of two (2) children shall be divided equally
3 among all the children; or
- 4 (d) If there is no survivor in the above classes, then the parent or parents wholly
5 or partly actually dependent for support upon the decedent, or to other wholly
6 or partly actually dependent relatives listed in paragraph (g) of subsection (1)
7 of KRS 342.750, or to both, in proportions that the commissioner provides by
8 administrative regulation.
- 9 (e) To the widow or widower upon remarriage, up to two (2) years, benefits as
10 specified in the award and proportioned under paragraphs (a) or (b) of this
11 subsection, if the proportioned benefits remain unpaid, to be paid in a lump
12 sum.
- 13 (4) All income benefits payable pursuant to this chapter shall terminate as of the date
14 upon which the employee reaches the age of seventy (70), or four (4) years after the
15 employee's injury or last exposure, whichever last occurs. In like manner all income
16 benefits payable pursuant to this chapter to spouses and dependents shall terminate
17 as of the date upon which the employee would have reached age seventy (70) or
18 four (4) years after the employee's date of injury or date of last exposure, whichever
19 last occurs.
- 20 (5) All income benefits pursuant to this chapter otherwise payable for temporary total
21 and permanent total disability shall ***not*** be offset by unemployment insurance
22 benefits paid for unemployment during the period of temporary total or permanent
23 total disability.
- 24 (6) All income benefits otherwise payable pursuant to this chapter shall be offset by
25 payments made under an exclusively employer-funded disability plan, exclusively
26 employer-funded disability retirement plan, exclusively employer-funded sickness
27 and accident plan, or salary continuation, which extends income benefits for the

1 same disability covered by this chapter, except where the employer-funded plan
 2 contains an internal offset provision for workers' compensation benefits which is
 3 inconsistent with this provision.

4 (7) Income benefits otherwise payable pursuant to this chapter for temporary total
 5 disability during the period the employee has returned to a light-duty or other
 6 alternative job position shall be offset by an amount equal to the employee's gross
 7 income minus applicable taxes during the period of light-duty work or work in an
 8 alternative job position.

9 (8) If an employee receiving a permanent total disability award returns to work, that
 10 employee shall notify the employer, payment obligor, insurance carrier, or special
 11 fund as applicable.

12 (9) Income benefits otherwise payable pursuant to this chapter for temporary total
 13 disability to a professional athlete under the direction and control of an employer
 14 that is a professional team located in Kentucky, absent any collective bargaining
 15 agreement, shall terminate no later than the date on which the contract for hire upon
 16 which the employment is based expires, so long as the professional athlete has been
 17 released to return to employment for which he or she has prior training or
 18 experience.

19 ➔Section 13. KRS 342.794 is amended to read as follows:

20 (1) The commissioner shall maintain a list of duly qualified "B" reader medical
 21 professionals who~~physicians who are licensed in the Commonwealth and~~ are
 22 board-certified pulmonary specialists, currently certified by the National Institute of
 23 Occupational Safety and Health (NIOSH) who have agreed to perform pulmonary
 24 examinations, interpret chest X-rays, and review other medical evidence pursuant to
 25 KRS 342.316 for a fee to be fixed by the commissioner and paid by the Kentucky
 26 coal workers' pneumoconiosis fund or the carrier, whichever is the appropriate
 27 payment obligor, the provisions of KRS 342.1242 notwithstanding, for claims filed

1 on or before June 30, 2017, and by the employer for claims filed after June 30,
2 2017.

3 (2) "'B' reader" means a medical professional~~[physician]~~ who has demonstrated
4 proficiency in evaluating chest roentgenograms for roentgenographic quality and in
5 the use of the ILO classification for interpreting chest roentgenograms for
6 pneumoconiosis and other diseases by taking and passing a specially designed
7 proficiency examination given on behalf of the National Institute of Occupational
8 Safety and Health (NIOSH) or by the Appalachian Laboratory for Occupational
9 Safety and Health (ALOSH), or successors.

10 (3) "Board-certified pulmonary specialist" means a medical professional~~[physician]~~
11 ~~licensed in the Commonwealth]~~ who is board-certified in internal medicine with a
12 certification in the subspecialty of pulmonary medicine by the American Board of
13 Internal Medicine.

14 ➔Section 14. KRS 342.122 is amended to read as follows:

15 (1) (a) For calendar year 1997 and for each calendar year thereafter, for the purpose
16 of funding and prefunding the liabilities of the special fund, financing the
17 administration and operation of the Kentucky Workers' Compensation
18 Funding Commission, and financing the expenditures for all programs in the
19 Department of Workers' Claims, Occupational Safety and Health Review
20 Commission, Workers' Compensation Nominating Committee, Department of
21 Workplace Standards, except expenditures for the Division of Wages and
22 Hours contained in the Department of Workplace Standards and the
23 proportional support for general administration and support based on an
24 approved indirect cost allocation plan within the Education and Labor
25 Cabinet, as reflected in the enacted budget of the Commonwealth and enacted
26 by the General Assembly, the funding commission shall impose a special fund
27 assessment rate of nine percent (9%) upon the amount of workers'

1 compensation premiums received on and after January 1, 1997, through
2 December 31, 1997, by every insurance carrier writing workers' compensation
3 insurance in the Commonwealth, by every self-insured group operating under
4 the provisions of KRS 342.350(4) and Chapter 304, and against the premium,
5 as defined in KRS 342.0011, of every employer carrying his or her own risk.

6 (b) The funding commission shall, for calendar year 1998 and thereafter, establish
7 for the special fund an assessment rate to be assessed against all premium
8 received during that calendar year which shall produce enough revenue to
9 amortize on a level basis the unfunded liability of the special fund as of June
10 30 preceding January 1 of each year, for the period remaining until December
11 31, 2029. The interest rate to be used in this calculation shall reflect the
12 funding commission's investment experience to date and the current
13 investment policies of the commission. When the claim liabilities of the
14 special fund are fully funded or prefunded, the assessment shall continue
15 for the purpose of financing the administration, operation, and
16 expenditures established in paragraph (a) of this subsection. This
17 assessment shall be imposed upon the amount of workers' compensation
18 premiums received by every insurance carrier writing workers' compensation
19 insurance in the Commonwealth, by every self-insured group operating under
20 the provisions of KRS 342.350(4) and Chapter 304, and against the premium,
21 as defined in KRS 342.0011, of every employer carrying its own risk. On or
22 before October 1 of each year, the commission shall notify each insurance
23 carrier writing workers' compensation insurance in the Commonwealth, every
24 group of self-insured employers, and each employer carrying its own risk, of
25 the rates which shall become effective on January 1 of each year, unless
26 modified by the General Assembly.

27 (c) All assessments imposed by this section shall be paid to the Kentucky

1 Workers' Compensation Funding Commission and shall be credited to the
2 benefit reserve fund within the Kentucky Workers' Compensation Funding
3 Commission.

4 (d) The assessments imposed in this chapter shall be in lieu of all other
5 assessments or taxes on workers' compensation premiums.

6 (2) (a) These assessments shall be paid quarterly not later than the thirtieth day of the
7 month following the end of the quarter in which the premium is received.
8 Receipt shall be considered timely through actual physical receipt or by
9 postmark of the United States Postal Service. Employers carrying their own
10 risk and employers defined in KRS 342.630(2) shall pay the annual
11 assessments in four (4) equal quarterly installments.

12 (b) Beginning on January 1, 2020, all assessments shall be electronically remitted
13 to the funding commission quarterly not later than the thirtieth day of the
14 month following the end of the quarter in which the premium is received.
15 Receipt shall be considered timely when filed and remitted using the
16 appropriate electronic pay system as prescribed by the funding commission.
17 Employers carrying their own risk and employers defined in KRS 342.630(2)
18 shall pay the annual assessments in four (4) equal quarterly installments.

19 (3) The assessments imposed by this section may be collected by the insurance carrier
20 from the insured. However, the insurance carrier shall not collect from the employer
21 any amount exceeding the assessments imposed pursuant to this section. If the
22 insurance carrier collects the assessment from an insured, the assessment shall be
23 collected at the same time and in the same proportion as the premium is collected.
24 The assessment for an insurance policy or other evidence of coverage providing a
25 deductible may be collected in accordance with this chapter on a premium amount
26 that equates to the premium that would have applied without the deductible. Each
27 statement from an insurance carrier presented to an insured reflecting premium and

1 assessment amounts shall clearly identify and distinguish the amount to be paid for
2 premium and the amount to be paid for assessments. No insurance carrier shall
3 collect from an insured an amount in excess of the assessment percentages imposed
4 by this chapter. The assessment for an insurance policy or other evidence of
5 coverage providing a deductible may be collected in accordance with this chapter
6 on a premium amount that equates to the premium that would have applied without
7 the deductible. The percentages imposed by this chapter for an insurance policy
8 issued by an insurance company shall be those percentages in effect on the annual
9 effective date of the policy, regardless of the date that the premium is actually
10 received by the insurance company.

11 (4) A self-insured group may elect to report its premiums and to have its assessments
12 computed in the same manner as insurance companies. This election may not be
13 rescinded for at least ten (10) years, nor may this election be made a second time
14 for at least another ten (10) years, except that the board of directors of the funding
15 commission may, at its discretion, waive the ten (10) year ban on a case-by-case
16 basis after formal petition has been made to the funding commission by a self-
17 insured group.

18 (5) The funding commission, as part of the collection and auditing of the special fund
19 assessments required by this section, shall annually require each insurance carrier
20 and each self-insured group to provide a list of employers which it has insured or
21 which are members and the amount collected from each employer. Additionally, the
22 funding commission shall require each entity paying a special fund assessment to
23 report the SIC code for each employer and the amount of premium collected from
24 each SIC code. An insurance carrier or self-insured group may require its insureds
25 or members to furnish the SIC code for each of their employees. However, the
26 failure of any employer to furnish said codes shall not relieve the insurance carrier
27 or self-insured group from the obligation to furnish same to the funding

1 commission. The Department of Workforce Development, Education and Labor
2 Cabinet, is hereby directed to make available the SIC codes assigned in its records
3 to specific employers to aid in the reporting and recording of the special fund
4 assessment data.

5 (6) Each self-insured employer, self-insured group, or insurance carrier shall provide
6 any information and submit any reports the Department of Revenue or the funding
7 commission may require to effectuate the provisions of this section. In addition, the
8 funding commission may enter reciprocal agreements with other governmental
9 agencies for the exchange of information necessary to effectuate the provisions of
10 this section.

11 (7) The special fund shall be required to maintain a central claim registry of all claims
12 to which it is named a party, giving each such claim a unique claim number and
13 thereafter recording the status of each claim on a current basis. The registry shall be
14 established by January 26, 1988, for all claims on which payments were made since
15 July 1, 1986, or which were pending adjudication since July 1, 1986, by audit of all
16 claim files in the possession of the special fund.

17 (8) The fund heretofore designated as the subsequent claim fund is abolished, and there
18 is substituted therefor the special fund as set out by this section, and all moneys and
19 properties owned by the subsequent claim fund are transferred to the special fund.

20 (9) Notwithstanding any other provisions of this section or this chapter to the contrary,
21 the total amount of funds collected pursuant to the assessment rates adopted by the
22 funding commission shall not be limited to the provisions of this section.

23 (10) All assessment rates imposed for periods prior to January 1, 1997, under KRS
24 342.122 shall forever remain applicable to premiums received on policies with
25 effective dates prior to January 1, 1997, by every insurance carrier writing workers'
26 compensation insurance in the Commonwealth, by every self-insured group
27 operating under the provision of KRS 342.350(4) and Chapter 304, and against the

1 premium, as defined in KRS 342.0011, of every employer carrying its own risk.

2 ➔Section 15. KRS 342.610 is amended to read as follows:

- 3 (1) Every employer subject to this chapter shall be liable for compensation for injury,
 4 occupational disease, or death without regard to fault as a cause of the injury,
 5 occupational disease, or death.
- 6 (2) A contractor who subcontracts all or any part of a contract and his or her carrier
 7 shall be liable for the payment of compensation to the employees of the
 8 subcontractor unless the subcontractor primarily liable for the payment of such
 9 compensation has secured the payment of compensation as provided for in this
 10 chapter. Any contractor or his or her carrier who shall become liable for such
 11 compensation may recover the amount of such compensation paid and necessary
 12 expenses from the subcontractor primarily liable therefor. A person who contracts
 13 with another:
- 14 (a) To have work performed consisting of the removal, excavation, or drilling of
 15 soil, rock, or mineral, or the cutting or removal of timber from land; or
- 16 (b) To have work performed of a kind which is a regular or recurrent part of the
 17 work of the trade, business, occupation, or profession of such person
 18 shall for the purposes of this section be deemed a contractor, and such other person
 19 a subcontractor. This subsection shall not apply to the owner or lessee of land
 20 principally used for agriculture.
- 21 (3) Liability for compensation shall not apply to injury, occupational disease, or death
 22 to the employee if the employee willfully intended to injure or kill himself, herself,
 23 or another.
- 24 (4) If an employee **knowingly introduced into his or her body a legal or illegal**
 25 **intoxicating substance,**~~voluntarily introduced an illegal, nonprescribed substance~~
 26 ~~or substances or a prescribed substance or substances in amounts in excess of~~
 27 ~~prescribed amounts into his or her body detected in the blood, as measured by a~~

1 ~~scientifically reliable test, that could cause a disturbance of mental or physical~~
2 ~~capacities, it shall be presumed that the illegal, nonprescribed substance or~~
3 ~~substances or the prescribed substance or substances in amounts in excess of~~
4 ~~prescribed amounts caused the injury, occupational disease, or death of the~~
5 ~~employee and] liability for compensation shall not apply to the injury, occupational~~
6 ~~disease, or death to the employee~~ **if the intoxicating substance is determined to be**
7 **the proximate cause of the injury, occupational disease, or death to the employee.**

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

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

1 prescribed by the commissioner, in lieu of providing proof of workers'
2 compensation coverage.

3 (7) Every employer subject to this chapter, at its principal office and such other
4 locations where employees customarily report for payroll and personnel matters,
5 shall post a notice stating the name of its workers' compensation insurance carrier
6 and policy number, setting forth the means to access medical care for injuries, the
7 employee's obligation to give notice of accidents, and such other matters
8 concerning the employee's rights under this chapter as may be required by the
9 commissioner so as to afford every employee the opportunity to become informed
10 about the employer's workers' compensation program. The format and contents of
11 the notice shall be established by the commissioner through administrative
12 regulation, and copies shall be provided to the employer by its insurance carrier.