

SENATE BILL No. 547

By Committee on Ways and Means

2-15

9 AN ACT concerning workers compensation; pertaining to disability ben-
10 efits; pertaining to medical benefits; pertaining to notice requirements;
11 amending K.S.A. 44-510c, 44-510d, 44-510e, 44-510f, 44-510j and 44-
12 520 and K.S.A. 2009 Supp. 44-510h and repealing the existing sections.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 44-510c is hereby amended to read as follows: 44-
16 510c. Where death does not result from the injury, compensation shall
17 be paid as provided in K.S.A. 44-510h and 44-510i and amendments
18 thereto and as follows:

19 (a) (1) Where permanent total disability results from the injury,
20 weekly payments shall be made during the period of permanent total
21 disability in a sum equal to ~~66 2/3%~~ 75% of the average gross weekly wage
22 of the injured employee, computed as provided in K.S.A. 44-511 and
23 amendments thereto, but in no case less than \$25 per week nor more
24 than the dollar amount nearest to ~~75%~~ 100% of the state's average weekly
25 wage, determined as provided in K.S.A. 44-511 and amendments thereto,
26 per week. The payment of compensation for permanent total disability
27 shall continue for the duration of such disability, subject to review and
28 modification as provided in K.S.A. 44-528 and amendments thereto.

29 (2) Permanent total disability exists when the employee, on account
30 of the injury, has been rendered completely and permanently incapable
31 of engaging in any type of substantial and gainful employment. Loss of
32 both eyes, both hands, both arms, both feet, or both legs, or any combi-
33 nation thereof, in the absence of proof to the contrary, shall constitute a
34 permanent total disability. Substantially total paralysis, or incurable im-
35 becility or insanity, resulting from injury independent of all other causes,
36 shall constitute permanent total disability. In all other cases permanent
37 total disability shall be determined in accordance with the facts.

38 (b) (1) Where temporary total disability results from the injury, ~~no~~
39 ~~compensation shall be paid during the first week of disability, except that~~
40 ~~provided in K.S.A. 44-510h and 44-510i and amendments thereto, unless~~
41 ~~the temporary total disability exists for three consecutive weeks, in which~~
42 ~~case compensation shall be paid for the first week of such disability.~~
43 ~~Thereafter~~ weekly payments shall be made during such temporary total

1 disability, in a sum equal to ~~66-2/3%~~ 75% of the average gross weekly
2 wage of the injured employee, computed as provided in K.S.A. 44-511
3 and amendments thereto, but in no case less than \$25 per week nor more
4 than the dollar amount nearest to ~~75%~~ 100% of the state's average weekly
5 wage, determined as provided in K.S.A. 44-511 and amendments thereto,
6 per week.

7 (2) Temporary total disability exists when the employee, on account
8 of the injury, has been rendered completely and temporarily incapable of
9 engaging in any type of substantial and gainful employment. A release
10 issued by a health care provider with temporary medical limitations for
11 an employee may or may not be determinative of the employee's actual
12 ability to be engaged in any type of substantial and gainful employment,
13 except that temporary total disability compensation shall not be awarded
14 unless the opinion of the authorized treating health care provider is shown
15 to be based on an assessment of the employee's actual job duties with the
16 employer, with or without accommodation.

17 (3) Where no award has been entered, a return by the employee to
18 any type of substantial and gainful employment or, subject to the provi-
19 sions of subsection (b)(2), a release by a treating health care provider or
20 examining health care provider, who is not regularly employed or retained
21 by the employer, to return to any type of substantial and gainful employ-
22 ment, shall suspend the employee's right to the payment of temporary
23 total disability compensation, but shall not affect any right the employee
24 may have to compensation for partial disability in accordance with K.S.A.
25 44-510d and 44-510e and amendments thereto.

26 (c) When any permanent total disability or temporary total disability
27 is followed by partial disability, compensation shall be paid as provided
28 in K.S.A. 44-510d and 44-510e and amendments thereto.

29 Sec. 2. K.S.A. 44-510d is hereby amended to read as follows: 44-
30 510d. (a) Where disability, partial in character but permanent in quality,
31 results from the injury, ~~the injured employee shall be entitled to the~~
32 ~~compensation provided in K.S.A. 44-510h and 44-510i and amendments~~
33 ~~thereto, but shall not be entitled to any other or further compensation~~
34 ~~for or during the first week following the injury unless such disability~~
35 ~~exists for three consecutive weeks, in which event compensation shall be~~
36 ~~paid for the first week. Thereafter~~ compensation shall be paid for tem-
37 porary total loss of use and as provided in the following schedule, ~~66-2/~~
38 ~~3%~~ 75% of the average gross weekly wages to be computed as provided
39 in K.S.A. 44-511 and amendments thereto, except that in no case shall
40 the weekly compensation be more than the maximum as provided for in
41 K.S.A. 44-510c and amendments thereto. If there is an award of per-
42 manent disability as a result of the injury there shall be a presumption
43 that disability existed immediately after the injury and compensation is to

- 1 be paid, *in addition to compensation for temporary total disability under*
2 *K.S.A. 44-510c, and amendments thereto*, for not to exceed the number
3 of weeks allowed in the following schedule:
- 4 (1) For loss of a thumb, 60 weeks.
 - 5 (2) For the loss of a first finger, commonly called the index finger,
6 37 weeks.
 - 7 (3) For the loss of a second finger, 30 weeks.
 - 8 (4) For the loss of a third finger, 20 weeks.
 - 9 (5) For the loss of a fourth finger, commonly called the little finger,
10 15 weeks.
 - 11 (6) Loss of the first phalange of the thumb or of any finger shall be
12 considered to be equal to the loss of $\frac{1}{2}$ of such thumb or finger, and the
13 compensation shall be $\frac{1}{2}$ of the amount specified above. The loss of the
14 first phalange and any part of the second phalange of any finger, which
15 includes the loss of any part of the bone of such second phalange, shall
16 be considered to be equal to the loss of $\frac{2}{3}$ of such finger and the com-
17 pensation shall be $\frac{2}{3}$ of the amount specified above. The loss of the first
18 phalange and any part of the second phalange of a thumb which includes
19 the loss of any part of the bone of such second phalange, shall be consid-
20 ered to be equal to the loss of the entire thumb. The loss of the first and
21 second phalanges and any part of the third proximal phalange of any
22 finger, shall be considered as the loss of the entire finger. Amputation
23 through the joint shall be considered a loss to the next higher schedule.
 - 24 (7) For the loss of a great toe, 30 weeks.
 - 25 (8) For the loss of any toe other than the great toe, 10 weeks.
 - 26 (9) The loss of the first phalange of any toe shall be considered to be
27 equal to the loss of $\frac{1}{2}$ of such toe and the compensation shall be $\frac{1}{2}$ of
28 the amount above specified.
 - 29 (10) The loss of more than one phalange of a toe shall be considered
30 to be equal to the loss of the entire toe.
 - 31 (11) For the loss of a hand, 150 weeks.
 - 32 (12) For the loss of a forearm, 200 weeks.
 - 33 (13) For the loss of an arm, excluding the shoulder joint, shoulder
34 girdle, shoulder musculature or any other shoulder structures, 210 weeks,
35 and for the loss of an arm, including the shoulder joint, shoulder girdle,
36 shoulder musculature or any other shoulder structures, 225 weeks.
 - 37 (14) For the loss of a foot, 125 weeks.
 - 38 (15) For the loss of a lower leg, 190 weeks.
 - 39 (16) For the loss of a leg, 200 weeks.
 - 40 (17) For the loss of an eye, or the complete loss of the sight thereof,
41 120 weeks.
 - 42 (18) Amputation or severance below the wrist shall be considered as
43 the loss of a hand. Amputation at the wrist and below the elbow shall be

1 considered as the loss of the forearm. Amputation at or above the elbow
2 shall be considered loss of the arm. Amputation below the ankle shall be
3 considered loss of the foot. Amputation at the ankle and below the knee
4 shall be considered as loss of the lower leg. Amputation at or above the
5 knee shall be considered as loss of the leg.

6 (19) For the complete loss of hearing of both ears, 110 weeks.

7 (20) For the complete loss of hearing of one ear, 30 weeks.

8 (21) Permanent loss of the use of a finger, thumb, hand, shoulder,
9 arm, forearm, toe, foot, leg or lower leg or the permanent loss of the sight
10 of an eye or the hearing of an ear, shall be equivalent to the loss thereof.
11 For the permanent partial loss of the use of a finger, thumb, hand, shoul-
12 der, arm, toe, foot or leg, or the sight of an eye or the hearing of an ear,
13 compensation shall be paid as provided for in K.S.A. 44-510c and amend-
14 ments thereto, per week during that proportion of the number of weeks
15 in the foregoing schedule provided for the loss of such finger, thumb,
16 hand, shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing
17 of an ear, which partial loss thereof bears to the total loss of a finger,
18 thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye or the
19 hearing of an ear; but in no event shall the compensation payable here-
20 under for such partial loss exceed the compensation payable under the
21 schedule for the total loss of such finger, thumb, hand, arm, toe, foot or
22 leg, or the sight of an eye or the hearing of an ear, exclusive of the healing
23 period. As used in this paragraph (21), "shoulder" means the shoulder
24 joint, shoulder girdle, shoulder musculature or any other shoulder
25 structures.

26 (22) For traumatic hernia, compensation shall be limited to the com-
27 pensation under K.S.A. 44-510h and 44-510i and amendments thereto,
28 compensation for temporary total disability during such period of time as
29 such employee is actually unable to work on account of such hernia, and,
30 in the event such hernia is inoperable, weekly compensation during 12
31 weeks, except that, in the event that such hernia is operable, the unrea-
32 sonable refusal of the employee to submit to an operation for surgical
33 repair of such hernia shall deprive such employee of any benefits under
34 the workers compensation act.

35 (23) Loss of a scheduled member shall be based upon permanent
36 impairment of function to the scheduled member as determined using
37 the fourth edition of the American Medical Association Guides to the
38 Evaluation of Permanent Impairment, if the impairment is contained
39 therein.

40 (b) ~~Whenever the employee is entitled to compensation for a specific~~
41 ~~injury under the foregoing schedule, the same shall be exclusive of all~~
42 ~~other compensation except the benefits provided in K.S.A. 44-510h and~~
43 ~~44-510i and amendments thereto, and no additional compensation shall~~

1 ~~be allowable or payable for any temporary or permanent, partial or total~~
2 ~~disability, except that the director, in proper cases, may allow additional~~
3 ~~compensation during the actual healing period, following amputation.~~
4 ~~The healing period shall not be more than 10% of the total period allowed~~
5 ~~for the scheduled injury in question nor in any event for longer than 15~~
6 ~~weeks. The return of the employee to the employee's usual occupation~~
7 ~~shall terminate the healing period~~ *suffers permanent disability to two or*
8 *more body parts under the foregoing schedule, the employee shall be com-*
9 *pensated for the resulting permanent partial general disability under*
10 *K.S.A 44-510e, and amendments thereto, or the resulting permanent total*
11 *disability under K.S.A. 44-510c, and amendments thereto, as determined*
12 *in accordance with the facts.*

13 *(c) If, due to permanent disability to a body part under the foregoing*
14 *schedule, the employee is not engaging in any work for wages equal to at*
15 *least 90 % of the average gross weekly wage that the employee was earning*
16 *at the time of the injury, the employee shall be compensated for the re-*
17 *sulting permanent partial general disability under K.S.A 44-510e, and*
18 *amendments thereto, or the resulting permanent total disability under*
19 *K.S.A. 44-510c, and amendments thereto, as determined in accordance*
20 *with the facts.*

21 Sec. 3. K.S.A. 44-510e is hereby amended to read as follows: 44-
22 510e. (a) If the employer and the employee are unable to agree upon the
23 amount of compensation to be paid in the case of injury not covered by
24 the schedule in K.S.A. 44-510d and amendments thereto, the amount of
25 compensation shall be settled according to the provisions of the workers
26 compensation act as in other cases of disagreement, except that in case
27 of temporary or permanent partial general disability not covered by such
28 schedule, the employee shall receive weekly compensation as determined
29 in this subsection during such period of temporary or permanent partial
30 general disability not exceeding a maximum of 415 weeks. Weekly com-
31 pensation for temporary partial general disability shall be ~~66 2/3%~~ 75%
32 of the difference between the average gross weekly wage that the em-
33 ployee was earning prior to such injury as provided in the workers com-
34 pensation act and the amount the employee is actually earning after such
35 injury in any type of employment, except that in no case shall such weekly
36 compensation exceed the maximum as provided for in K.S.A. 44-510c and
37 amendments thereto. Permanent partial general disability exists when the
38 employee is disabled in a manner which is partial in character and per-
39 manent in quality and which is not covered by the schedule in K.S.A. 44-
40 510d and amendments thereto. The extent of permanent partial general
41 disability shall be the extent, expressed as a percentage, to which the
42 employee, in the opinion of the physician, has lost the ability to perform
43 the work tasks that the employee performed in any substantial gainful

1 employment during the fifteen-year period preceding the accident, av-
2 eraged together with the difference between the average weekly wage
3 the worker was earning at the time of the injury and the average weekly
4 wage the worker is earning after the injury. In any event, the extent of
5 permanent partial general disability shall not be less than the percentage
6 of functional impairment. Functional impairment means the extent, ex-
7 pressed as a percentage, of the loss of a portion of the total physiological
8 capabilities of the human body as established by competent medical ev-
9 idence and based on the fourth edition of the American Medical Asso-
10 ciation Guides to the Evaluation of Permanent Impairment, if the im-
11 pairment is contained therein. An employee shall not be entitled to
12 receive permanent partial general disability compensation in excess of the
13 percentage of functional impairment as long as the employee is engaging
14 in any work for wages equal to 90% or more of the average gross weekly
15 wage that the employee was earning at the time of the injury. If the
16 employer and the employee are unable to agree upon the employee's
17 functional impairment and if at least two medical opinions based on com-
18 petent medical evidence disagree as to the percentage of functional im-
19 pairment, such matter may be referred by the administrative law judge
20 to an independent health care provider who shall be selected by the ad-
21 ministrative law judge from a list of health care providers maintained by
22 the director. The health care provider selected by the director pursuant
23 to this section shall issue an opinion regarding the employee's functional
24 impairment which shall be considered by the administrative law judge in
25 making the final determination. The amount of weekly compensation for
26 permanent partial general disability shall be determined as follows:

27 (1) Find the payment rate which shall be the lesser of (A) the amount
28 determined by multiplying the average gross weekly wage of the worker
29 prior to such injury by ~~66 2/3%~~ 75% or (B) the maximum provided in
30 K.S.A. 44-510c and amendments thereto;

31 (2) ~~find the number of disability weeks payable by subtracting from~~
32 ~~415 weeks the total number of weeks of temporary total disability com-~~
33 ~~penensation was paid, excluding the first 15 weeks of temporary total disa-~~
34 ~~bility compensation that was paid, and multiplying the remainder multiply~~
35 ~~415 weeks~~ by the percentage of permanent partial general disability as
36 determined under this subsection (a); and

37 (3) multiply the number of disability weeks determined in paragraph
38 (2) of this subsection (a) by the payment rate determined in paragraph
39 (1) of this subsection (a).

40 The resulting award shall be paid for the number of disability weeks at
41 the full payment rate until fully paid or modified. If there is an award of
42 permanent disability as a result of the compensable injury, there shall be
43 a presumption that disability existed immediately after such injury. In any

1 case of permanent partial disability under this section, the employee shall
2 be paid compensation for not to exceed 415 weeks following the date of
3 such injury, subject to review and modification as provided in K.S.A. 44-
4 528 and amendments thereto.

5 (b) If an employee has received an injury for which compensation is
6 being paid, and the employee's death is caused by other and independent
7 causes, any payment of compensation already due the employee at the
8 time of death and then unpaid shall be paid to the employee's dependents
9 directly or to the employee's legal representatives if the employee left no
10 dependent, but the liability of the employer for the payments of com-
11 pensation not yet due at the time of the death of such employee shall
12 cease and be abrogated by the employee's death.

13 (c) The total amount of compensation that may be allowed or
14 awarded an injured employee for all injuries received in any one accident
15 shall in no event exceed the compensation which would be payable under
16 the workers compensation act for 100% permanent total disability re-
17 sulting from such accident.

18 (d) Where a minor employee or a minor employee's dependents are
19 entitled to compensation under the workers compensation act, such com-
20 pensation shall be exclusive of all other remedies or causes of action for
21 such injury or death, and no claim or cause of action against the employer
22 shall inure or accrue to or exist in favor of the parent or parents of such
23 minor employee on account of any damage resulting to such parent or
24 parents on account of the loss of earnings or loss of service of such minor
25 employee.

26 (e) In any case of injury to or death of an employee, where the em-
27 ployee or the employee's dependents are entitled to compensation under
28 the workers compensation act, such compensation shall be exclusive of
29 all other remedies or causes of action for such injury or death, and no
30 claim or action shall inure, accrue to or exist in favor of the surviving
31 spouse or any relative or next of kin of such employee against such em-
32 ployer on account of any damage resulting to such surviving spouse or
33 any relative or next of kin on account of the loss of earnings, services, or
34 society of such employee or on any other account resulting from or grow-
35 ing out of the injury or death of such employee.

36 Sec. 4. K.S.A. 44-510f is hereby amended to read as follows: 44-510f.

37 (a) (1) Notwithstanding any provision of the workers compensation act to
38 the contrary, the maximum compensation benefits payable by an em-
39 ployer shall not exceed the following:

40 ~~(1) For permanent total disability, including temporary total, tem-~~
41 ~~porary partial, permanent partial and temporary partial disability pay-~~
42 ~~ments paid or due, \$125,000 for an injury or any aggravation thereof;~~

43 ~~—(2) for temporary total disability, including any prior permanent total,~~

1 ~~permanent partial or temporary partial disability payments paid or due,~~
2 ~~\$100,000 for an injury or any aggravation thereof;~~

3 ~~—(3)— subject to the provisions of subsection (a)(4), for permanent or~~
4 ~~temporary partial disability, including any prior temporary total, perma-~~
5 ~~nent total, temporary partial, or permanent partial disability payments~~
6 ~~paid or due, \$100,000 for an injury or any aggravation thereof; and~~

7 ~~—(4)— for permanent partial disability, where functional impairment only~~
8 ~~is awarded, \$50,000 for an injury or aggravation thereof~~

9 (A) *For temporary total disability or temporary partial disability,*
10 *\$200,000 for an injury or any aggravation thereof;*

11 (B) *for permanent partial disability, including any temporary partial*
12 *disability payments paid or due, \$200,000 for an injury or any aggrava-*
13 *tion thereof.*

14 (2) *The secretary of labor shall annually adjust the caps on all benefits*
15 *contained within the workers compensation act, including, but not limited*
16 *to, those caps contained in subsections (a)(1)(A) and (a)(1)(B) in an*
17 *amount equal to the midwest cost of living adjustment. The secretary shall*
18 *determine the amount of increase in each cap based upon the consumer*
19 *price increase for urban wage earners and clerical workers in the midwest*
20 *as published by the United States bureau of labor statistics. The secretary*
21 *of labor shall make the cost of living adjustments to the caps annually on*
22 *July 1 of each succeeding year.*

23 (3) *The secretary of labor shall publish notice of the cap increases*
24 *provided by subsection (a) no later than the second issue of the Kansas*
25 *register published in August of each year.*

26 (b) If an employer shall voluntarily pay unearned wages to an em-
27 ployee in addition to and in excess of any amount of disability benefits to
28 which the employee is entitled under the workers compensation act, the
29 excess amount paid shall be allowed as a credit to the employer in any
30 final lump-sum settlement, or may be withheld from the employee's
31 wages in weekly amounts the same as the weekly amount or amounts paid
32 in excess of compensation due, but not until and unless the employee's
33 average gross weekly wage for the calendar year exceeds 125% of the
34 state's average weekly wage, determined as provided in K.S.A. 44-511
35 and amendments thereto. The provisions of this subsection shall not apply
36 to any employer who pays any such unearned wages to an employee pur-
37 suant to an agreement between the employer and employee or labor
38 organization to which the employee belongs.

39 Sec. 5. K.S.A. 2009 Supp. 44-510h is hereby amended to read as
40 follows: 44-510h. (a) It shall be the duty of the employer to provide the
41 services of a health care provider, and such medical, surgical and hospital
42 treatment, including nursing, medicines, medical and surgical supplies,
43 ambulance, crutches, apparatus and transportation to and from the home

1 of the injured employee to a place outside the community in which such
2 employee resides, and within such community if the director, in the di-
3 rector's discretion, so orders, including transportation expenses computed
4 in accordance with subsection (a) of K.S.A. 44-515 and amendments
5 thereto, as may be reasonably necessary to cure and relieve the employee
6 from the effects of the injury.

7 (b) ~~(1) If the director finds, upon application of an injured employee,~~
8 ~~that the services of the health care provider furnished as provided in~~
9 ~~subsection (a) and rendered on behalf of the injured employee are not~~
10 ~~satisfactory, the director may authorize the appointment of some other~~
11 ~~health care provider. In any such case, the employer shall submit the~~
12 ~~names of three health care providers who, if possible given the availability~~
13 ~~of local health care providers, are not associated in practice together. The~~
14 ~~injured employee may select one from the list who shall be the authorized~~
15 ~~treating health care provider. If the injured employee is unable to obtain~~
16 ~~satisfactory services from any of the health care providers submitted by~~
17 ~~the employer under this paragraph, either party or both parties may re-~~
18 ~~quest the director to select a treating health care provider.~~

19 ~~(2) Without application or approval, an employee may consult a~~
20 ~~health care provider of the employee's choice for the purpose of exami-~~
21 ~~nation, diagnosis or treatment, but the employer shall only be liable for~~
22 ~~the fees and charges of such health care provider up to a total amount of~~
23 ~~\$500. The amount allowed for such examination, diagnosis or treatment~~
24 ~~shall not be used to obtain a functional impairment rating. Any medical~~
25 ~~opinion obtained in violation of this prohibition shall not be admissible~~
26 ~~in any claim proceedings under the workers compensation act. An injured~~
27 ~~employee may designate a licensed health care provider to provide med-~~
28 ~~ical and surgical treatment reasonably necessary to cure and relieve the~~
29 ~~employee from the effects of the injury. Unless a clear and legitimate~~
30 ~~dispute exists as to the liability of the employer or the employer's insur-~~
31 ~~ance company to provide medical care for the injured worker, the em-~~
32 ~~ployer or the employer's insurance company shall, upon request, provide~~
33 ~~written verification to the designated treating health care provider treat-~~
34 ~~ing the injured worker pursuant to a prescription, order or referral by~~
35 ~~the treating health care provider that the reasonable cost of such medical~~
36 ~~treatment will be promptly paid by the employer or its insurance~~
37 ~~company.~~

38 (c) An injured employee whose injury or disability has been estab-
39 lished under the workers compensation act may rely, if done in good faith,
40 solely or partially on treatment by prayer or spiritual means in accordance
41 with the tenets of practice of a church or religious denomination without
42 suffering a loss of benefits subject to the following conditions:

43 (1) The employer or the employer's insurance carrier agrees thereto

- 1 in writing either before or after the injury;
- 2 (2) the employee submits to all physical examinations required by the
3 workers compensation act;
- 4 (3) the cost of such treatment shall be paid by the employee unless
5 the employer or insurance carrier agrees to make such payment;
- 6 (4) the injured employee shall be entitled only to benefits that would
7 reasonably have been expected had such employee undergone medical
8 or surgical treatment; and
- 9 (5) the employer or insurance carrier that made an agreement under
10 paragraph (1) or (3) of this subsection may withdraw from the agreement
11 on 10 days' written notice.
- 12 (d) In any employment to which the workers compensation act ap-
13 plies, the employer shall be liable to each employee who is employed as
14 a duly authorized law enforcement officer, firefighter, driver of an am-
15 bulance as defined in subsection (b) of K.S.A. 65-6112, and amendments
16 thereto, an ambulance attendant as defined in subsection (d) of K.S.A.
17 65-6112, and amendments thereto, or a member of a regional emergency
18 medical response team as provided in K.S.A. 48-928, and amendments
19 thereto, including any person who is serving on a volunteer basis in such
20 capacity, for all reasonable and necessary preventive medical care and
21 treatment for hepatitis to which such employee is exposed under circum-
22 stances arising out of and in the course of employment.
- 23 Sec. 6. K.S.A. 44-510j is hereby amended to read as follows: 44-510j.
24 When an employer's insurance carrier or a self-insured employer disputes
25 all or a portion of a bill for services rendered for the care and treatment
26 of an employee under this act, the following procedures apply:
- 27 (a) (1) The employer or carrier shall notify the service provider
28 within 30 days of receipt of the bill of the specific reason for refusing
29 payment or adjusting the bill. Such notice shall inform the service pro-
30 vider that additional information may be submitted with the bill and re-
31 consideration of the bill may be requested. The provider shall send any
32 request for reconsideration within 30 days of receiving written notice of
33 the bill dispute. If the employer or carrier continues to dispute all or a
34 portion of the bill after receiving additional information from the pro-
35 vider, the employer, carrier or provider may apply for an informal hearing
36 before the director.
- 37 (2) If a provider sends a bill to such employer or carrier and receives
38 no response within 30 days as allowed in subsection (a) and if a provider
39 sends a second bill and receives no response within 60 days of the date
40 the provider sent the first bill, *the provider's bill shall not be deemed to*
41 *be in dispute. If the employer or the employer's insurance company gives*
42 *notice of a specific reason for refusing to pay or adjust the bill,* the pro-
43 vider may apply for an informal hearing before the director.

1 (3) Payments shall not be delayed beyond 60 days for any amounts
2 not in dispute. Acceptance by any provider of a payment amount which
3 is less than the full amount charged for the services shall not affect the
4 right to have a review of the claim for the outstanding or remaining
5 amounts.

6 (b) The application for informal hearing shall include copies of the
7 disputed bills, all correspondence concerning the bills and any additional
8 written information the party deems appropriate. When anyone applies
9 for an informal hearing before the director, copies of the application shall
10 be sent to all parties to the dispute and the employee. Within 20 days of
11 receiving the application for informal hearing, the other parties to the
12 dispute shall send any additional written information deemed relevant to
13 the dispute to the director.

14 (c) The director or the director's designee shall hold the informal
15 hearing to hear and determine all disputes as to such bills and interest
16 due thereon. Evidence in the informal hearing shall be limited to the
17 written submissions of the parties. The informal hearing may be held by
18 electronic means. Any employer, carrier or provider may personally ap-
19 pear in or be represented at the hearing. If the parties are unable to reach
20 a settlement regarding the dispute, the officer hearing the dispute shall
21 enter an order so stating.

22 (d) After the entry of the order indicating that the parties have not
23 settled the dispute after the informal hearing, the director shall schedule
24 a formal hearing.

25 (1) Prior to the date of the formal hearing, the director may conduct
26 a utilization review concerning the disputed bill. The director shall de-
27 velop and implement, or contract with a qualified entity to develop and
28 implement, utilization review procedures relating to the services ren-
29 dered by providers and facilities, which services are paid for in whole or
30 in part pursuant to the workers compensation act. The director may con-
31 tract with one or more private foundations or organizations to provide
32 utilization review of service providers pursuant to the workers compen-
33 sation act. Such utilization review shall result in a report to the director
34 indicating whether a provider improperly utilized or otherwise rendered
35 or ordered unjustified treatment or services or that the fees for such
36 treatment or services were excessive and a statement of the basis for the
37 report's conclusions. After receiving the utilization review report, the di-
38 rector also may order a peer review. A copy of such reports shall be
39 provided to all parties to the dispute at least 20 days prior to the formal
40 hearing. No person shall be subject to civil liability for libel, slander or
41 any other relevant tort cause of action by virtue of performing a peer or
42 utilization review under contract with the director.

43 (2) The formal hearing shall be conducted by hearing officers, the

1 medical administrator or both as appointed by the director. During the
2 formal hearing parties to the dispute shall have the right to appear or be
3 represented and may produce witnesses, including expert witnesses, and
4 such other relevant evidence as may be otherwise allowed under the
5 workers compensation act. If the director finds that a provider or facility
6 has made excessive charges or provided or ordered unjustified treatment,
7 services, hospitalization or visits, the provider or facility may, subject to
8 the director's order, receive payment pursuant to this section from the
9 carrier, employer or employee for the excessive fees or unjustified treat-
10 ment, services, hospitalization or visits and such provider may be ordered
11 to repay any fees or charges collected therefor. If it is determined after
12 the formal hearing that a provider improperly utilized or otherwise ren-
13 dered or ordered unjustified treatment or services or that the fees for
14 such treatment or services were excessive, the director may provide a
15 report to the licensing board of the service provider with full documen-
16 tation of any such determination, except that no such report shall be
17 provided until after judicial review if the order is appealed. *If the director*
18 *finds that the employer or the employer's insurance company refused to*
19 *pay or adjust a bill without any legitimate dispute as to the employer's or*
20 *the employer's insurance company's liability therefor, the director may*
21 *order payment of a monetary penalty pursuant to K.S.A. 44-5,120 (g)(1),*
22 *and amendments thereto.* Any decision rendered under this section may
23 be reviewed by the workers compensation board. A party must file a
24 notice of appeal within 10 days of the issuance of any decision under this
25 section. The record on appeal shall be limited only to the evidence pre-
26 sented to the hearing officer. The decision of the director shall be af-
27 firmed unless the board determines that the decision was not supported
28 by substantial competent evidence.

29 (e) By accepting payment pursuant to this section for treatment or
30 services rendered to an injured employee, the provider shall be deemed
31 to consent to submitting all necessary records to substantiate the nature
32 and necessity of the service or charge and other information concerning
33 such treatment to utilization review under this section. Such health care
34 provider shall comply with any decision of the director pursuant to this
35 section.

36 (f) Except as provided in K.S.A. 60-437 and amendments thereto and
37 this section, findings and records which relate to utilization and peer
38 review conducted pursuant to this section shall be privileged and shall
39 not be subject to discovery, subpoena or other means of legal compulsion
40 for release to any person or entity and shall not be admissible in evidence
41 in any judicial or administrative proceeding, except those proceedings
42 authorized pursuant to this section. In any proceedings where there is an
43 application by an employee, employer, insurance carrier or the workers

1 compensation fund for a hearing pursuant to K.S.A. 44-534a, and amend-
2 ments thereto, for a change of medical benefits which has been filed after
3 a health care provider, employer, insurance carrier or the workers com-
4 pensation fund has made application to the medical services section of
5 the division for the resolution of a dispute or matter pursuant to the
6 provisions of this section, all reports, information, statements, memo-
7 randa, proceedings, findings and records which relate to utilization and
8 peer review including the records of contract reviewers and findings and
9 records of the medical services section of the division shall be admissible
10 at the hearing before the administrative law judge on the issue of the
11 medical benefits to which an employee is entitled.

12 (g) A provider may not improperly overcharge or charge for services
13 which were not provided for the purpose of obtaining additional payment.
14 Any dispute regarding such actions shall be resolved in the same manner
15 as other bill disputes as provided by this section. Any violation of the
16 provisions of this section or K.S.A. 44-510i, and amendments thereto,
17 which is willful or which demonstrates a pattern of improperly charging
18 or overcharging for services rendered pursuant to this act constitutes
19 grounds for the director to impose a civil fine not to exceed \$5,000. Any
20 civil fine imposed under this section shall be subject to review by the
21 board. All moneys received for civil fines imposed under this section shall
22 be deposited in the state treasury to the credit of the workers compen-
23 sation fund.

24 (h) Any health care provider, nurse, physical therapist, any entity pro-
25 viding medical, physical or vocational rehabilitation services or providing
26 reeducation or training pursuant to K.S.A. 44-510g and amendments
27 thereto, medical supply establishment, surgical supply establishment, am-
28 bulance service or hospital which accept the terms of the workers com-
29 pensation act by providing services or material thereunder shall be bound
30 by the fees approved by the director and no injured employee or de-
31 pendent of a deceased employee shall be liable for any charges above the
32 amounts approved by the director. If the employer has knowledge of the
33 injury and refuses or neglects to reasonably provide the services of a
34 health care provider required by this act, the employee may provide the
35 same for such employee, and the employer shall be liable for such ex-
36 penses subject to the regulations adopted by the director. No action shall
37 be filed in any court by a health care provider or other provider of services
38 under this act for the payment of an amount for medical services or
39 materials provided under the workers compensation act and no other
40 action to obtain or attempt to obtain or collect such payment shall be
41 taken by a health care provider or other provider of services under this
42 act, including employing any collection service, until after final adjudi-
43 cation of any claim for compensation for which an application for hearing

1 is filed with the director under K.S.A. 44-534 and amendments thereto.
2 In the case of any such action filed in a court prior to the date an appli-
3 cation is filed under K.S.A. 44-534 and amendments thereto, no judgment
4 may be entered in any such cause and the action shall be stayed until
5 after the final adjudication of the claim. In the case of an action stayed
6 hereunder, any award of compensation shall require any amounts payable
7 for medical services or materials to be paid directly to the provider thereof
8 plus an amount of interest at the rate provided by statute for judgments.
9 No period of time under any statute of limitation, which applies to a cause
10 of action barred under this subsection, shall commence or continue to
11 run until final adjudication of the claim under the workers compensation
12 act.

13 (i) As used in this section, unless the context or the specific provisions
14 clearly require otherwise, “carrier” means a self-insured employer, an
15 insurance company or a qualified group-funded workers compensation
16 pool and “provider” means any health care provider, vocational rehabil-
17 itation service provider or any facility providing health care services or
18 vocational rehabilitation services, or both, including any hospital.

19 Sec. 7. K.S.A. 44-520 is hereby amended to read as follows: 44-520.

20 (a) Except as otherwise provided in this section, proceedings for com-
21 pensation under the workers compensation act shall not be maintainable
22 unless notice of the accident, stating the time and place and particulars
23 thereof, and the name and address of the person injured, is given to the
24 employer within 10 days after the date of the accident, except that actual
25 knowledge of the accident by the employer or the employer’s duly au-
26 thorized agent shall render the giving of such notice unnecessary. The
27 ~~ten-day~~ 10 day notice provided in this section shall not bar any proceeding
28 for compensation under the workers compensation act if the claimant
29 shows that a failure to notify under this section was due to just cause,
30 except that in no event shall such a proceeding for compensation be main-
31 tained unless the notice required by this section is given to the employer
32 within 75 days after the date of the accident unless ~~(a)~~: (1) Actual knowl-
33 edge of the accident by the employer or the employer’s duly authorized
34 agent renders the giving of such notice unnecessary as provided in this
35 section, ~~(b)~~; (2) the employer was unavailable to receive such notice as
36 provided in this section, ~~or (c)~~; or (3) the employee was physically unable
37 to give such notice.

38 (b) *Except as otherwise provided in this section, no defense to com-*
39 *pensability of an injury shall be maintainable unless notice of the defense,*
40 *stating the particulars thereof, is given to the injured employee within 10*
41 *days after the employer receives notice of the accident. The 10 day notice*
42 *provided in this section shall not bar any defense to compensability if the*
43 *employer shows that a failure to notify under this section was due to just*

1 *cause, except that in no event shall a defense to compensability be main-*
2 *tained unless the notice required by this section is given to the employee*
3 *within 75 days after the date the employer receives notice of the accident.*
4 Sec. 8. K.S.A. 44-510c, 44-510d, 44-510e, 44-510f, 44-510j and 44-
5 520 and K.S.A. 2009 Supp. 44-510h are hereby repealed.
6 Sec. 9. This act shall take effect and be in force from and after its
7 publication in the Kansas register.