

1 SB389
2 95172-1
3 By Senators Little (Z), Figures, Sanders, and Lindsey
4 RFD: Judiciary
5 First Read: 19-FEB-08

SYNOPSIS: Under the existing workers' compensation law, expenses for medical and surgical treatment and vocational rehabilitation are reviewed by an ombudsman.

This bill would provide that if an employer refuses to provide the medical benefits, the employee shall receive additional compensation and would provide further for review of disputes by an ombudsman and for judicial review of disputes.

A BILL
TO BE ENTITLED
AN ACT

To amend Section 25-5-77, Code of Alabama 1975, relating to the review by an ombudsman of expenses for medical and surgical treatment and vocational rehabilitation under the workers' compensation statutes, to provide that if an employer refuses to provide the medical benefits, the employee shall receive additional compensation and would provide further for

1 review of disputes by an ombudsman and for judicial review of
2 disputes.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 25-5-77, Code of Alabama 1975, is
5 amended to read as follows:

6 "§25-5-77.

7 "(a) In addition to the compensation provided in
8 this article and Article 4 of this chapter, the employer,
9 where applicable, shall pay the actual cost of the repair,
10 refitting, or replacement of artificial members damaged as the
11 result of an accident arising out of and in the course of
12 employment, and the employer, except as otherwise provided in
13 this amendatory act, shall pay an amount not to exceed the
14 prevailing rate or maximum schedule of fees as established
15 herein of reasonably necessary medical and surgical treatment
16 and attention, physical rehabilitation, medicine, medical and
17 surgical supplies, crutches, artificial members, and other
18 apparatus reasonably necessary to materially assist the
19 employee in the return to work or other activities of daily
20 living and/or to improve the employee's quality of life which
21 are necessitated as the result of an accident arising out of
22 and in the course of the employment, as may be obtained by the
23 injured employee or, in case of death, obtained during the
24 period occurring between the time of the injury and the
25 employee's death therefrom. If the employee is dissatisfied
26 with the initial treating physician ~~selected by the employer~~
27 ~~and if further treatment is required~~, the employee may so

1 advise the employer, and the employee shall be entitled to
2 select a second physician from a panel or list of four
3 qualified physicians in the employee's local labor market
4 selected by the employer. If surgery is required and if the
5 employee is dissatisfied with the designated surgeon, he or
6 she may so advise the employer, and the employee shall be
7 entitled to select a second surgeon in the employee's local
8 labor market from a panel or list of four qualified surgeons
9 selected by the employer. If four physicians or surgeons are
10 not available to be listed, the employer shall include on the
11 list as many physicians or surgeons in the employee's local
12 labor market as are available. The four physicians or surgeons
13 selected by the employer hereunder shall not be from or
14 members of the same firm, partnership, or professional
15 corporation and they shall be qualified by speciality to treat
16 the employee's conditions. The total liability of the employer
17 shall, unless otherwise provided in this chapter, not exceed
18 the prevailing rate or the maximum schedule of fees as
19 established herein. Notwithstanding the foregoing, in
20 ascertaining the prevailing rate of reimbursement or payment
21 with regard to participating hospitals and ambulatory surgical
22 centers or outpatient rehabilitation centers licensed by the
23 State of Alabama, as well as diagnostic facilities accredited
24 by the Commission on Accreditation of Rehabilitation
25 Facilities, the prevailing rate shall be negotiated with each
26 individual hospital, ambulatory surgical center, licensed
27 outpatient rehabilitation facility, or diagnostic facility

1 based on that institution's treatment of comparable type cases
2 for the 12-month period immediately preceding August 1, 1992.
3 These rates shall be updated every 12 months thereafter.
4 Initial rates shall be established within six months of August
5 1, 1992. For those non-participating hospitals the prevailing
6 rate shall be determined by a committee. In the first year
7 following August 1, 1992, the committee shall be composed of
8 five members. The director shall appoint one member from the
9 Department of Industrial Relations and two members from the
10 community in which the non-participating hospital is located.
11 The non-participating hospital shall appoint two members. This
12 committee shall by a majority vote establish the maximum rates
13 of reimbursement or payment for the non-participating
14 hospital, and the hospital shall be bound for one year by the
15 determined rates of reimbursement or payment for workers'
16 compensation cases. If, following the first year after the
17 rates were established by this committee, the hospital is
18 again non-participating, then another committee shall be
19 appointed. This second committee shall have three members
20 selected by the non-participating hospital and two members
21 selected by the director. The committee composition shall
22 alternate as above described each year the hospital is
23 non-participating. The total liability of the employer shall
24 not exceed the rates established by the committee. This
25 committee, in determining the rates of reimbursement or
26 payments to the hospital, may consider such factors as the
27 size, staffing, and medical equipment of the hospital, and any

1 other factors which the committee may consider relevant. If an
2 insurer of the employee or a benefit association has paid or
3 is liable for the employee's medical, surgical, and hospital
4 service or for a part thereof, or if the employee is entitled
5 to the same or a part thereof, from any source whatever by
6 virtue of any agreement or understanding or law, state or
7 federal, without any loss of benefit to the employee, the
8 employer shall not be required to pay any part of the expense.
9 If the benefits are insufficient to pay all the employee's
10 expense, the employer shall be liable for the deficiency only.
11 All cases of dispute as to the necessity and value of the
12 services shall be determined by the tribunal having
13 jurisdiction of the claim of the injured employee for
14 compensation.

15 " (b) If requested to do so by the employer, the
16 injured employee shall submit to examination by the ~~employer's~~
17 treating physician at all reasonable times, but the employee
18 shall have the right to have a physician or other assistant of
19 his or her own selection present at the examination, in which
20 case the employee shall be liable to the physician or other
21 assistant of his or her own selection for his or her services.
22 The employer shall pay for the services of the physician
23 making the examination at the instance of the employer. If a
24 dispute arises as to the injury, or as to the extent of the
25 disability therefrom, the court may, at the instance of either
26 party or of its own motion, appoint a neutral physician of
27 good standing and ability to make an examination of the

1 injured employee and to report his or her findings to the
2 court, the expense of which examination shall be borne ~~equally~~
3 ~~by the parties~~ by the employer. Upon motion of the injured
4 employee only, the court may order that the neutral physician
5 appointed by the court shall become the employee's treating
6 physician, with the employer to pay for such treatment by the
7 physician as shall be reasonably necessary. If the injured
8 employee refuses to comply with reasonable request for
9 examination, or refuses to accept the medical service or
10 physical rehabilitation, which the employer elects to furnish
11 under this chapter, the employee's right to compensation shall
12 be suspended and no compensation shall be payable for the
13 period of the refusal. If the employer fails or refuses to
14 provide the medical, surgical, or rehabilitation benefits
15 prescribed in subsection (a), then during the refusal, the
16 employee shall be entitled to receive compensation at a rate
17 equal to double the employee's entitlement for temporary total
18 disability benefit and the compensation period shall not be
19 credited against the employer's obligation to otherwise pay
20 temporary total disability, permanent partial disability, or
21 permanent total disability benefits. A physician whose
22 services are furnished or paid for by the employer, or a
23 physician of the injured employee who treats or makes or is
24 present at any examination of an injured employee may be
25 required to testify as to any knowledge obtained by him or her
26 in the course of the treatment or examination as the treatment
27 or examination related to the injury or the disability arising

1 therefrom. The physician shall, upon written request of the
2 injured employee or his or her employer and without consent of
3 or notice to the employee or employer not making the request,
4 furnish the injured employee or his or her employer a written
5 statement of his or her professional opinion as to the extent
6 of the injury and disability. Nothing in this section shall be
7 construed to authorize a physician to verbally disclose
8 information concerning the employee to the employer. In all
9 death claims where the cause of death is obscure or is
10 disputed, any interested party may require an autopsy, the
11 cost of which is to be borne by the party demanding the
12 autopsy. The term "physicians" shall include medical doctor,
13 surgeon, and chiropractor. A hospital, medical clinic,
14 rehabilitation service, or other person or entity providing
15 treatment to an employee or providing facilities at which the
16 employee receives treatment shall, upon the written request of
17 the employee or of the employer, furnish, at a reasonable
18 cost, the employee or the employer a copy of the records,
19 including X-rays and laboratory reports, relating to the
20 treatment of the injured employee. The copy may be furnished
21 without the consent of or notice to the employee or employer
22 not making the request. A physician, hospital, medical clinic,
23 rehabilitation service, or other person or entity providing
24 written statement of professional opinion or copies of records
25 pursuant to this subsection shall not be liable to any person
26 for a claim arising out of the release of medical information
27 concerning the employee.

1 "(c) If the employer so elects, the employee shall
2 submit to and undergo vocational rehabilitation at the
3 employer's expense through a vocational rehabilitation
4 specialist, who shall be qualified to render competent
5 vocational rehabilitation service. If an employee who is
6 unable in the opinion of the treating physician to return to
7 his or her former employment shall request vocational
8 rehabilitation and if both a vocational rehabilitation
9 specialist and a treating physician, the cost of whose service
10 is the obligation of the employer under this section, shall
11 express their opinions in writing that in the judgment of each
12 of them vocational rehabilitation is reasonably calculated to
13 restore the employee to gainful employment and is in the best
14 interest of the employee, the cost of the rehabilitation shall
15 be borne by the employer. The cost, where rehabilitation
16 requires residence at or near a facility or institution away
17 from the employee's customary residence, shall include
18 reasonable charges for the employee's necessary board,
19 lodging, and travel.

20 "(d) If an employee refuses, without the consent of
21 the court, to accept vocational rehabilitation at the
22 employer's request, the refusal shall result in loss of
23 compensation for the period of refusal.

24 "(e) All disputes with regard to vocational
25 rehabilitation may be submitted to the court for resolution.

1 "(f) The employer shall pay mileage costs to and
2 from medical and rehabilitation providers at the same rate as
3 provided by law for official state travel.

4 "(g) In a compensable workers' compensation claim,
5 the injured employee shall not be liable for payment of any
6 authorized and compensable medical expenses associated with
7 the workers' compensation claim.

8 "(h) All undisputed medical reimbursements or
9 payments shall be made within 25 working days of receipt of
10 claims in the form specified in Section 25-5-3. There shall be
11 added to any undisputed medical invoice which is not paid
12 within 25 working days an amount equal to 10 percent of the
13 unpaid balance.

14 "If the employer or insurer responsible for payment
15 of the claim fails to add the additional 10 percent to the
16 claim as required by this section, the person, firm,
17 corporation, or partnership providing the medical service for
18 which payment has been delayed beyond the period specified in
19 this section may file a written complaint stating that fact
20 with the director. Upon investigation, if the director
21 determines that the facts stated in the complaint are true,
22 then in that event the director shall order the employer or
23 insurer to pay to the provider the amount of the claim and any
24 applicable penalty, and in addition may assess a civil
25 monetary penalty in amount not to exceed \$500 against the
26 employer or insurer, payment of which shall be made to the
27 director within 30 days of the notice of assessment.

1 "If the employer or insurer responsible for payment
2 of the claim disputes the actual cost of providing the medical
3 treatment specified in subsection (a), then the employer or
4 insurer may submit the dispute for review by an ombudsman of
5 medical services. If after review by an ombudsman of medical
6 services, the dispute is unresolved, the employer or insurer
7 responsible for payment of the claim or the health care
8 provider may petition the court for relief.

9 "Nothing in this subsection shall be construed to
10 limit or affect the right of the employee to receive medical
11 treatment, without interference or interruption from an
12 authorized treating physician.

13 ~~"(i) Any party, including a health care provider, is~~
14 ~~entitled to a review by an ombudsman of medical services that~~
15 ~~are provided or for which authorization of payment is sought~~
16 ~~if any party or the health care provider has any of the~~
17 ~~following:~~

18 ~~"(1) Been denied payment or had the charge reduced~~
19 ~~for medical services rendered.~~

20 ~~"(2) Been denied authorization for the payment of~~
21 ~~services requested or performed when authorization is~~
22 ~~required.~~

23 ~~"(3) Been ordered by the director to refund payments~~
24 ~~received for the provision of medical services.~~

25 ~~"(4) A party to a medical dispute that remains~~
26 ~~unresolved after a review of medical services as provided by~~
27 ~~this section may petition the court for relief.~~

1 ~~"(5) In any review under this subsection of medical~~
2 ~~services provided by a physician, any party to a dispute may~~
3 ~~request that the ombudsman consult with an independent medical~~
4 ~~expert for the purpose of obtaining advice and consultation on~~
5 ~~the resolution of any issue involving medical practice. If~~
6 ~~such a request is made, the ombudsman shall select an~~
7 ~~independent medical expert from among a list of at least three~~
8 ~~names provided by the Workers' Compensation Medical Services~~
9 ~~Board in a medical specialty appropriate to the issues raised~~
10 ~~in the dispute and shall secure a written opinion from the~~
11 ~~independent medical expert. In rendering a decision or~~
12 ~~recommendation, the ombudsman shall give full consideration to~~
13 ~~the opinion of the independent medical expert but shall not be~~
14 ~~bound by that opinion. The independent medical expert shall be~~
15 ~~compensated at a rate set by the Workers' Compensation Medical~~
16 ~~Services Board and approved by the director.~~

17 "(i) If an employee successfully petitions a court
18 of competent jurisdiction to secure rights or benefits arising
19 from an order or judgment issued pursuant to this section, the
20 employee or his or her attorney, or both, shall be entitled to
21 an award of reasonable attorney's fees and the reimbursement
22 of all costs necessarily related to the prosecution of the
23 petition from the employer in an amount determined by the
24 court.

25 "(j) Where there is a dispute between employers or
26 between insurance providers, or both, as to the responsibility
27 of the injured employee's medical treatment, any interested

1 party may petition the tribunal having jurisdiction of the
2 claim of the injured employee for compensation. The court may,
3 without further inquiry, enter an interlocutory order
4 requiring apportionment of the disputed charges for medical
5 treatment among the disputing employers or insurance
6 providers, or both. The apportionment shall be whatever ratio
7 the court, in its discretion, deems to be appropriate. At such
8 time that the court may make a final determination as to the
9 dispute between the employers or the insurance providers, or
10 both, the court shall order the responsible party to reimburse
11 those parties which were not responsible for the charges
12 previously paid. In no event shall the injured employee be
13 deprived of reasonably necessary medical treatment or have
14 such treatment delayed because of such a dispute."

15 Section 2. This act shall become effective
16 immediately following its passage and approval by the
17 Governor, or its otherwise becoming law.