

State of Arizona  
Senate  
Fifty-third Legislature  
Second Regular Session  
2018

# SENATE BILL 1111

AN ACT

AMENDING SECTIONS 23-908 AND 23-1062.02, ARIZONA REVISED STATUTES;  
RELATING TO WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-908, Arizona Revised Statutes, is amended to  
3 read:

4 23-908. Injury reports by employer and physician; schedule of  
5 fees; violation; classification

6 A. Every employer that is affected by this chapter, and every  
7 physician who attends an injured employee of ~~such~~ THAT employer, shall  
8 file with the commission and the employer's insurance carrier from time to  
9 time a full and complete report of every known injury to the employee  
10 arising out of or in the course of employment and resulting in loss of  
11 life or injury. ~~Such a~~ THE report shall be furnished to the commission  
12 and the insurance carrier at times and in the form and detail the  
13 commission prescribes, and the report shall make special answers to all  
14 questions required by the commission under its rules.

15 B. The commission shall fix a schedule of fees to be charged by  
16 physicians, physical therapists or occupational therapists attending  
17 injured employees and, subject to subsection C of this section, for  
18 prescription medicines required to treat an injured employee under this  
19 chapter. NOTWITHSTANDING SUBSECTION C OF THIS SECTION, THE SCHEDULE OF  
20 FEES MAY INCLUDE OTHER REIMBURSEMENT GUIDELINES FOR MEDICATIONS DISPENSED  
21 IN SETTINGS THAT ARE NOT ACCESSIBLE TO THE GENERAL PUBLIC. The commission  
22 shall annually review the schedule of fees.

23 C. If a schedule of fees for prescription medicines adopted  
24 pursuant to subsection B of this section includes provisions regarding the  
25 use of generic equivalent drugs or interchangeable biological products,  
26 those provisions shall comply with section 32-1963.01, subsections A, B  
27 and D through L. If the commission considers the adoption of fee schedule  
28 provisions that involve specific prices, values or reimbursements for  
29 prescription drugs, the commission shall base the adoption on studies or  
30 practices that are validated and accepted in the industry, including the  
31 applicability of formulas that use average wholesale price, plus a  
32 dispensing fee, and that have been made publicly available for at least  
33 one hundred eighty days before any hearing conducted by the commission.

34 D. Notwithstanding section 12-2235, information obtained by any  
35 physician or surgeon examining or treating an injured person shall not be  
36 considered a privileged communication, ~~if~~ if that information is requested  
37 by interested parties for a proper understanding of the case and a  
38 determination of the rights involved. Hospital records of an employee  
39 concerning an industrial claim shall not be considered privileged if  
40 requested by an interested party in order to determine the rights  
41 involved. Medical information from any source pertaining to conditions  
42 unrelated to the pending industrial claim shall remain privileged.

43 E. When an accident occurs to an employee, the employee shall  
44 forthwith report the accident and the injury resulting ~~therefrom~~ FROM THE  
45 ACCIDENT to the employer, and any physician employed by the injured

1 employee shall forthwith report the accident and the injury resulting  
2 ~~therefrom~~ FROM THE ACCIDENT to the employer, the insurance carrier and the  
3 commission.

4 F. ~~When~~ IF an accident occurs to an employee, the employer may  
5 designate in writing a physician chosen by the employer, who shall be  
6 permitted by the employee, or any person in charge of the employee, to  
7 make one examination of the injured employee in order to ascertain the  
8 character and extent of the injury occasioned by the accident. The  
9 physician so chosen shall forthwith report to the employer, the insurance  
10 carrier and the commission the character and extent of the injury as the  
11 physician ascertains. If the accident is not reported by the employee or  
12 the employee's physician forthwith, as required, or if the injured  
13 employee or those in charge of the employee refuse to permit the  
14 employer's physician to make the examination, and the injured employee is  
15 a party to the refusal, no compensation shall be paid for the injury  
16 claimed to have resulted from the accident. The commission may relieve  
17 the injured person or that person's dependents from the loss or forfeiture  
18 of compensation if it believes after investigation that the circumstances  
19 attending the failure on the part of the employee or physician to report  
20 the accident and injury are such as to have excused them.

21 G. Within ten days after receiving notice of an accident, the  
22 employer shall inform the insurance carrier and the commission on ~~such~~ THE  
23 forms and in ~~such~~ THE manner as ~~may be~~ prescribed by the commission.

24 H. Immediately on notice to the employer of an accident resulting  
25 in an injury to an employee, the employer shall provide the employee with  
26 the name and address of the employer's insurance carrier, the policy  
27 number and the expiration date.

28 I. Any person failing or refusing to comply with this section is  
29 guilty of a petty offense.

30 Sec. 2. Section 23-1062.02, Arizona Revised Statutes, is amended to  
31 read:

32 23-1062.02. Use of controlled substances; prescription of  
33 schedule II controlled substances; reports;  
34 treatment plans; monitoring program inquiries;  
35 preauthorizations; definitions

36 A. A PHYSICIAN WHO PRESCRIBES A SCHEDULE II CONTROLLED SUBSTANCE TO  
37 AN EMPLOYEE SHALL COMPLY WITH TITLE 32, CHAPTER 32, ARTICLE 4, INCLUDING  
38 THE PROVISIONS IN THAT ARTICLE RELATING TO PATIENTS WITH TRAUMATIC  
39 INJURIES.

40 ~~A.~~ B. A physician shall include in the report required under  
41 commission rule THE FOLLOWING information pertaining to the ~~following~~:

42 ~~1. The off-label use of a narcotic, opium-based controlled~~  
43 ~~substance or schedule II controlled substance by a claimant.~~

44 ~~2. The use of a narcotic or opium-based controlled substance or the~~  
45 ~~prescription of a combination of narcotics or opium-based controlled~~

1 ~~substances at or exceeding a one hundred twenty milligram morphine~~  
2 ~~equivalent dose per day.~~

3 ~~3. The prescription of a long-acting or controlled release opioid~~  
4 ~~for acute pain.~~

5 ~~B. The information required pursuant to subsection A of this~~  
6 ~~section shall include the USE OF A NARCOTIC OR OPIUM-BASED CONTROLLED~~  
7 ~~SUBSTANCE THAT IS LISTED IN SCHEDULE II OR THE PRESCRIPTION OF ANY OPIOID~~  
8 ~~MEDICATION:~~

9 1. Justification for THE use of the controlled substance, ~~and~~  
10 INCLUDING DOCUMENTATION OF THE FOLLOWING:

11 (a) THAT A PHYSICAL EXAMINATION OF THE EMPLOYEE WAS CONDUCTED.

12 (b) THAT A SUBSTANCE USE RISK ASSESSMENT OF THE EMPLOYEE WAS  
13 CONDUCTED.

14 (c) THAT THE EMPLOYEE GAVE INFORMED CONSENT FOR ANY OPIOID  
15 TREATMENT.

16 2. A treatment plan ~~that includes a description of~~ DESCRIBING THE  
17 measures that the physician will implement to monitor and prevent the  
18 development of abuse, dependence, addiction or diversion by the employee.  
19 The physician shall include in the treatment plan ALL OF THE FOLLOWING:

20 (a) A medication agreement. ~~, a plan for subsequent~~

21 (b) THE FREQUENCY OF FACE-TO-FACE follow-up visits ~~and~~ TO  
22 REEVALUATE THE EMPLOYEE'S CONTINUED USE OF OPIOIDS.

23 (c) Random drug testing. ~~and~~

24 (d) Documentation that the medication regime is providing relief  
25 that is demonstrated by clinically meaningful improvement in function.

26 (e) CRITERIA AND PROCEDURES FOR TAPERING AND DISCONTINUING OPIOID  
27 PRESCRIPTION OR ADMINISTRATION AS PART OF THE TREATMENT.

28 (f) CRITERIA AND PROCEDURES FOR OFFERING OR REFERRING THE EMPLOYEE  
29 FOR TREATMENT FOR DEPENDENCE ON OR ADDICTION TO OPIOIDS.

30 C. If the drug test of the employee reveals inconsistent results,  
31 the physician within five business days shall provide a written report to  
32 the carrier, self-insured employer or commission setting forth a treatment  
33 plan to address the inconsistent drug test results.

34 ~~C. D. Within two business days of writing or dispensing an initial~~  
35 ~~prescription order for at least a thirty-day supply of an opioid~~  
36 ~~medication for the employee, a physician shall submit an inquiry to the~~  
37 ~~Arizona state board of pharmacy requesting the employee's prescription~~  
38 ~~information that is compiled under the controlled substances prescription~~  
39 ~~monitoring program prescribed in title 36, chapter 28. BEFORE PRESCRIBING~~

40 AN OPIOID ANALGESIC OR BENZODIAZEPINE CONTROLLED SUBSTANCE THAT IS LISTED  
41 IN SCHEDULE II, III OR IV FOR AN EMPLOYEE AND AT LEAST QUARTERLY WHILE  
42 THAT PRESCRIPTION REMAINS A PART OF THE TREATMENT, THE PHYSICIAN SHALL  
43 OBTAIN A PATIENT UTILIZATION REPORT REGARDING THE EMPLOYEE FROM THE  
44 CONTROLLED SUBSTANCES PRESCRIPTION MONITORING PROGRAM'S CENTRAL DATABASE  
45 TRACKING SYSTEM AS REQUIRED BY SECTION 36-2606. The physician shall

1 report the results to the carrier, self-insured employer or commission as  
2 soon as reasonably practicable but ~~no~~ NOT later than thirty days ~~from~~  
3 AFTER the date of the inquiry. Thereafter, the carrier, self-insured  
4 employer or commission may request ~~no~~ NOT more than once every two months  
5 that the physician ~~perform additional inquiries to~~ OBTAIN A PATIENT  
6 UTILIZATION REPORT REGARDING THE EMPLOYEE FROM the ~~Arizona state board of~~  
7 ~~pharmacy~~ CONTROLLED SUBSTANCES PRESCRIPTION MONITORING PROGRAM'S CENTRAL  
8 DATABASE TRACKING SYSTEM.

9 ~~D.~~ E. If the ~~result of an inquiry to~~ PATIENT UTILIZATION REPORT  
10 FROM the ~~Arizona state board of pharmacy~~ CONTROLLED SUBSTANCES  
11 PRESCRIPTION MONITORING PROGRAM'S CENTRAL DATABASE TRACKING SYSTEM reveals  
12 that the employee is receiving opioids from another undisclosed health  
13 care provider, the physician shall within five business days report the  
14 results to the carrier, self-insured employer or commission.

15 ~~E.~~ F. If the physician does not comply with this section:

16 1. The carrier, self-insured employer or commission is not  
17 responsible for payment for the physician's services until the physician  
18 complies with this section.

19 2. Except for a self-insured employer that provides medical care  
20 pursuant to section 23-1070, ~~an~~ THE employer, carrier or commission may  
21 request a change of physician after making a written request to the  
22 physician to comply with this section and the request identifies the area  
23 of noncompliance. If a change of physician is ordered and the order  
24 becomes final, the employee shall select a physician ~~whose practice~~  
25 ~~includes pain management and~~ who agrees to comply with this section. If  
26 other medical providers are not available in the employee's area of  
27 residence, the employer, carrier or commission shall pay in advance for  
28 the employee's reasonable travel expenses, including the cost of  
29 transportation, food, lodging and loss of pay, if applicable.

30 ~~F.~~ G. If medically necessary, the carrier, self-insured employer  
31 or commission shall provide drug rehabilitation and detoxification  
32 treatment for an employee who becomes dependent on or addicted to opioids  
33 that are prescribed for a work-related injury. In the event of a medical  
34 conflict regarding the necessity for drug rehabilitation and  
35 detoxification, the carrier, self-insured employer or commission shall  
36 continue to provide the opioids until a determination is made after a  
37 hearing by an administrative law judge.

38 ~~G.~~ H. If the employee resides out of state, the carrier,  
39 self-insured employer or commission ~~may~~ IS not ~~be~~ responsible for  
40 providing medications that are subject to this section if the out-of-state  
41 physician fails to comply with this section. If the other state has a  
42 controlled substances monitoring program, the physician shall submit an  
43 inquiry to the database as prescribed by subsection ~~E~~ D of this section.

44 ~~H. This section does not apply to medications administered to the~~  
45 ~~employee while the employee is receiving inpatient hospital treatment.~~

1 I. A carrier, A self-insured employer or THE commission may require  
2 physician compliance with this section notwithstanding the existence of a  
3 prior award addressing medical maintenance benefits for medications. A  
4 carrier or self-insured employer is not liable for bad faith or unfair  
5 claims processing for any act taken in compliance of and consistent with  
6 this section OR ANY ACT REASONABLY NECESSARY TO MONITOR OR ASSESS THE  
7 APPROPRIATENESS AND EFFECTIVENESS OF AN EMPLOYEE'S OPIOID USE.

8 J. For the purposes of this section:

9 1. "Clinically meaningful improvement in function" means ~~any~~ BOTH  
10 of the following:

11 ~~(a) A clinically documented improvement in range of motion.~~

12 ~~(b)~~ (a) An increase A SIGNIFICANT IMPROVEMENT in the performance  
13 of activities of daily living OR A REDUCTION IN WORK RESTRICTIONS.

14 ~~(c) A return to gainful employment.~~

15 (b) A REDUCTION IN DEPENDENCY ON CONTINUED MEDICAL TREATMENT.

16 2. "Inconsistent results" means:

17 (a) The employee's reported medications, including the parent drugs  
18 or metabolites, are not detected.

19 (b) Controlled substances are detected that are not reported by the  
20 employee.

21 ~~3. "Off-label use" means use of a prescription medication by a~~  
22 ~~physician to treat a condition other than the use for which the drug was~~  
23 ~~approved by the United States food and drug administration.~~

24 3. "SUBSTANCE USE RISK ASSESSMENT" MEANS AN EVALUATION OF AN  
25 EMPLOYEE'S UNIQUE LIKELIHOOD FOR ADDICTION, MISUSE, DIVERSION OR ANOTHER  
26 ADVERSE CONSEQUENCE RESULTING FROM THE EMPLOYEE BEING PRESCRIBED OR  
27 RECEIVING TREATMENT WITH OPIOIDS.

28 4. "TRAUMATIC INJURY" AS USED IN TITLE 32, CHAPTER 32, ARTICLE 4  
29 MEANS PHYSICAL INJURY THAT CREATES A REASONABLE RISK OF DEATH OR THAT  
30 CAUSES SERIOUS OR PERMANENT DISFIGUREMENT, SERIOUS IMPAIRMENT OF HEALTH OR  
31 LOSS OR PROTRACTED IMPAIRMENT OF THE FUNCTION OF ANY BODILY ORGAN OR LIMB.

32 Sec. 3. Industrial commission of Arizona; review of  
33 medication reimbursement guidelines; delayed repeal

34 A. On or before July 1, 2019, as part of the industrial commission  
35 of Arizona's annual review of the schedule of fees pursuant to section  
36 23-908, Arizona Revised Statutes, as amended by this act, the industrial  
37 commission of Arizona shall review information and data, consult with  
38 physician, employee and business and industry stakeholders and hold at  
39 least one public hearing in considering whether to adopt additional  
40 reimbursement guidelines for medications dispensed in settings that are  
41 not accessible to the general public.

42 B. This section is repealed from and after June 30, 2020.