

Senate Engrossed House Bill

~~injury reports; medical treatment~~
(now: workers' compensation; injuries; medical-only loss)

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HOUSE BILL 2120

AN ACT

AMENDING SECTIONS 23-908 AND 23-963.01, 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; notification; public meeting; violation;
6 classification

7 A. Every employer that is affected by this chapter, and every
8 physician who attends an injured employee of that employer, shall file
9 with the commission and the employer's insurance carrier from time to time
10 a full and complete report of every known injury to the employee arising
11 out of or in the course of employment and resulting in loss of life or
12 injury **REQUIRING MEDICAL TREATMENT**. The report shall be furnished to the
13 commission and the insurance carrier at times and in the form and detail
14 the commission prescribes, and the report shall make special answers to
15 all questions required by the commission under its rules. **FOR THE**
16 **PURPOSES OF THIS SUBSECTION, MEDICAL TREATMENT DOES NOT INCLUDE ANY**
17 **ONETIME, SHORT-TERM TREATMENT BY NONMEDICAL STAFF THAT REQUIRES LITTLE**
18 **TECHNOLOGY OR TRAINING TO ADMINISTER, INCLUDING TREATMENT OF MINOR**
19 **SCRATCHES, CUTS, BURNS AND SPLINTERS AND OTHER ISSUES THAT ORDINARILY DO**
20 **NOT REQUIRE MEDICAL CARE.**

21 B. The commission shall fix a schedule of fees to be charged by
22 physicians, physical therapists or occupational therapists attending
23 injured employees and, subject to subsection C of this section, for
24 prescription medicines required to treat an injured employee under this
25 chapter. Notwithstanding subsection C of this section, the schedule of
26 fees may include other reimbursement guidelines for medications dispensed
27 in settings that are not accessible to the general public. The commission
28 shall annually review the schedule of fees. For the purposes of this
29 subsection, settings that are not accessible to the general public do not
30 include mail order pharmacies delivering pharmaceutical services to
31 workers' compensation claimants, if both of the following apply:

32 1. The pharmacy does not limit or restrict access to claimants with
33 an affiliation to a medical provider or other entity.

34 2. Any medical provider or other entity referring a claimant to the
35 pharmacy does not receive or accept any rebate, refund, commission,
36 preference or other consideration as compensation for the referral.

37 C. If a schedule of fees for prescription medicines adopted
38 pursuant to subsection B of this section includes provisions regarding the
39 use of generic equivalent drugs or interchangeable biological products,
40 those provisions shall comply with section 32-1963.01, subsections A, B
41 and D through L. If the commission considers the adoption of fee schedule
42 provisions that involve specific prices, values or reimbursements for
43 prescription drugs, the commission shall base the adoption on studies or
44 practices that are validated and accepted in the industry, including the
45 applicability of formulas that use average wholesale price, plus a

1 dispensing fee, and that have been made publicly available for at least
2 one hundred eighty days before any hearing conducted by the commission.
3 Before the commission takes final action on the schedule of fees pursuant
4 to this subsection and subsection B of this section, except during a
5 public health emergency, the commission shall:

6 1. Prominently post on its publicly accessible website the proposed
7 schedule of fees at least thirty days before conducting a public hearing
8 on that proposed schedule of fees.

9 2. Hold at least one meeting that all interested parties may
10 jointly attend and interactively participate in after posting the proposed
11 schedule of fees but before conducting the hearing on the proposed
12 schedule of fees.

13 3. At least seven business days in advance, prominently post on its
14 publicly accessible website the final proposed schedule of fees to be
15 acted on for adoption.

16 D. Notwithstanding section 12-2235, information obtained by any
17 physician or surgeon examining or treating an injured person shall not be
18 considered a privileged communication if that information is requested by
19 interested parties for a proper understanding of the case and a
20 determination of the rights involved. Hospital records of an employee
21 concerning an industrial claim shall not be considered privileged if
22 requested by an interested party in order to determine the rights
23 involved. Medical information from any source pertaining to conditions
24 unrelated to the pending industrial claim shall remain privileged.

25 E. When an accident occurs to an employee, the employee shall
26 forthwith report the accident and the injury resulting from the accident
27 to the employer, and any physician employed by the injured employee shall
28 forthwith report the accident and the injury resulting from the accident
29 to the employer, the insurance carrier and the commission.

30 F. If an accident occurs to an employee, the employer may designate
31 in writing a physician chosen by the employer, who shall be allowed by the
32 employee, or any person in charge of the employee, to make one examination
33 of the injured employee in order to ascertain the character and extent of
34 the injury occasioned by the accident. The physician so chosen shall
35 forthwith report to the employer, the insurance carrier and the commission
36 the character and extent of the injury as the physician ascertains. If
37 the accident is not reported by the employee or the employee's physician
38 forthwith, as required, or if the injured employee or those in charge of
39 the employee refuse to allow the employer's physician to make the
40 examination, and the injured employee is a party to the refusal, no
41 compensation shall be paid for the injury claimed to have resulted from
42 the accident. The commission may relieve the injured person or that
43 person's dependents from the loss or forfeiture of compensation if it
44 believes after investigation that the circumstances attending the failure

1 on the part of the employee or physician to report the accident and injury
2 are such as to have excused them.

3 G. Within ten days after receiving notice of an accident, the
4 employer shall inform the insurance carrier and the commission on the
5 forms and in the manner as prescribed by the commission.

6 H. Immediately on notice to the employer of an accident resulting
7 in an injury to an employee, the employer shall provide the employee with
8 the name and address of the employer's insurance carrier, the policy
9 number and the expiration date.

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

12 J. Subsection B of this section does not prohibit:

13 1. A health care provider or pharmacy from entering into a separate
14 contract or network that governs fees, in which case reimbursement shall
15 be made according to the applicable contracted charge or negotiated rate.

16 2. An employer from directing medical, surgical or hospital care
17 pursuant to section 23-1070.

18 Sec. 2. Section 23-963.01, Arizona Revised Statutes, is amended to
19 read:

20 23-963.01. Policies with deductible coverage; medical-only
21 loss

22 A. Notwithstanding ~~the provisions of~~ section 23-963, an insurance
23 carrier authorized to transact workers' compensation insurance in this
24 state may offer deductible coverage to employers. Deductible coverage
25 shall be effected by attaching a benefits deductible endorsement to the
26 policy. The endorsement shall specify whether loss adjustment expenses
27 are to be treated as advancements within the deductible to be reimbursed
28 by the employer. The policyholder exercising the deductible option shall
29 choose only one deductible amount. Premium reductions for deductibles
30 shall be determined before ~~application of~~ APPLYING any experience
31 modification, premium surcharge or premium discount. If an insurance
32 carrier offers deductible coverage to an employer, the employer shall
33 submit a certified copy of the employer's most recent financial statement
34 to the insurance carrier to justify the deductible amount the employer
35 chooses. The insurance carrier shall retain a copy of the financial
36 statement for three years.

37 B. Any compensable claim for benefits shall be paid by the
38 carrier. The employer shall reimburse the carrier for any deductible
39 amounts paid by the carrier. The employer is liable for reimbursement up
40 to the limit of the chosen deductible. The payment or nonpayment of
41 deductible amounts by the insured employer to the carrier shall be treated
42 under the policy in the same manner as payment or nonpayment of premiums.

1 C. The nonpayment of deductible amounts by the insured employer to
2 the carrier under subsection B of this section shall not relieve the
3 insurance carrier from ~~payment of~~ PAYING compensation for injuries or
4 death sustained by an employee during the period of time the agreement,
5 contract or policy was in effect. No agreements, contracts or policies
6 providing deductible amounts for workers' compensation coverage shall be
7 terminated retroactively for nonpayment of deductible amounts.

8 D. Losses subject to the deductible shall be reported and recorded
9 as losses for purposes of calculating rates for a policyholder on the same
10 basis as losses under policies providing first dollar coverage.

11 E. NOTWITHSTANDING ANY OTHER LAW, FOR ANY CLAIM INVOLVING
12 MEDICAL-ONLY LOSS, ANY EXPERIENCE RATING ADJUSTMENT AS DETERMINED BY A
13 NATIONAL NONPROFIT INSURANCE RATING ORGANIZATION SHALL BE APPLIED TO
14 REDUCE THE IMPACT OF THE LOSS IN THE EMPLOYER'S EXPERIENCE MODIFICATION
15 CALCULATION. FOR THE PURPOSES OF THIS SUBSECTION, "MEDICAL-ONLY LOSS"
16 MEANS LOSS THAT HAS NO INDEMNITY VALUE REFLECTING LOST WAGES.