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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- WORKERS' COMPENSATION
COURT

Introduced By: Senators P Fogarty, McCaffrey, Ciccone, Lombardo, and Gee

Date Introduced: May 05, 2016

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-30-22 of the General Laws in Chapter 28-30 entitled "Workers'
2 Compensation Court" is hereby amended to read as follows:

3 **28-30-22. Medical advisory board.** -- (a) The chief judge of the workers' compensation
4 court, in consultation with the appropriate medical or professional association, shall appoint a
5 medical advisory board that shall serve at the chief judge's pleasure and consist of eleven (11)
6 members in the following specialties: one orthopedic surgeon; one neurologist; one physiatrist;
7 one chiropractor; one physical therapist; one internist; one psychiatrist or psychologist; and four
8 (4) ad hoc physician members appointed at the discretion of the chief judge. Members of the
9 board shall be reimbursed ~~three hundred dollars (\$300)~~ five hundred dollars (\$500) per day
10 served in the discharge of the board's duties, not to exceed six thousand dollars (\$6,000) per
11 member in any year. The chief judge shall designate the chairperson of the board.

12 (b) The chief judge is authorized, with the advice of the medical advisory board, to do
13 the following:

14 (1) (i) Adopt and review protocols and standards of treatment for compensable injury,
15 which shall address types, frequency, modality, duration, and termination of treatment, and types
16 and frequency of diagnostic procedures.

17 (ii) Within thirty (30) days of its establishment, the medical advisory board shall prepare
18 a recommended standard for the consideration and weighing by the court of medical evidence,

1 including, but not limited to, medical test results, objective clinical findings, subjective
2 complaints supported by tests for inconsistency, and purely subjective complaints, with the
3 purposes of assuring treatment and compensation for legitimate compensable injuries; reducing
4 litigation, inefficiency, and delay in court proceedings; and deterring false or exaggerated claims
5 of injury. The standards shall be applicable to proceedings before the workers' compensation
6 court, including specifically those to determine the nature and extent of injury and the
7 achievement of maximum medical improvement, and shall be effective in all proceedings when
8 adopted by the court.

9 (2) Approve and promulgate rules, regulations, and procedures concerning the
10 appointment and qualifications of comprehensive, independent health care review teams that
11 would be composed of any combination of one or more health care provider(s), rehabilitation
12 expert(s), physical therapist(s), occupational therapist(s), psychologist(s), and vocational
13 rehabilitation counselor(s).

14 (3) Approve and administer procedures to disqualify or disapprove medical service
15 providers and maintain the approved provider list.

16 (4) Appoint an administrator of the medical advisory board.

17 (5) Approve and promulgate rules, regulations, and procedures concerning the
18 appointment and qualifications of impartial medical examiners.

19 (6) Annually review the performance of each comprehensive, independent health care
20 review team and impartial medical examiner.

21 (c) The administrator of the medical advisory board is authorized and directed to
22 establish terms and conditions for comprehensive, independent health care review teams and
23 impartial medical examiners to apply for approval by the medical advisory board and to perform
24 any other duties as directed by the board.

25 (d) Any reference to an impartial medical examiner in chapters 29 -- 38 of this title shall
26 be deemed to include the impartial medical examiners and comprehensive, independent health
27 care review teams referred to in subsection (b) of this section.

28 (e) (1) Disqualification of medical care providers. - Every health care provider licensed
29 in the state of Rhode Island shall be presumed to be qualified to provide health care services for
30 injuries compensable under this title and may recover costs of treatment consistent with
31 established fee and cost schedules. The administrator of the medical advisory board is thereafter
32 authorized to disqualify and/or suspend any qualified provider based upon one or more of the
33 following:

34 (i) The violation of the protocols and standards of care established by the medical

1 advisory board;

2 (ii) The filing of affidavits that are untimely, inadequate, incomplete, or untruthful;

3 (iii) The provision of unnecessary and/or inappropriate treatment;

4 (iv) A pattern of violation and/or evasion of an approved fee schedule;

5 (v) The censure or discipline of the provider by the licensing body of the provider's
6 profession;

7 (vi) The billing of, or pursuing collection efforts against, the employee for treatment or
8 diagnostic tests causally related to an injury not deemed non-compensable by the workers'
9 compensation court.

10 (2) Upon disqualification or during suspension, the provider shall not be permitted to
11 recover any costs or fees for treatment provided under this title. The appropriate body with
12 professional disciplinary authority over the provider shall be notified of any such action. Appeal
13 of disqualification or suspension shall be to the medical advisory board, with final review by the
14 workers' compensation court.

15 (3) If unnecessary or inappropriate treatment is provided by an entity affiliated with the
16 treating physician, the administrator of the medical advisory board may increase the penalty for a
17 violation.

18 (4) This section shall not prevent the recovery of reasonable costs for immediate
19 emergency care rendered by a provider.

20 (f) As a guide to the interpretation and application of this section, the policy and intent of
21 this legislature is declared to be that every person who suffers a compensable injury with
22 resulting disability should be provided with high-quality medical care and the opportunity to
23 return to gainful employment as soon as possible with minimal dependence on compensation
24 awards.

25 SECTION 2. Sections 28-33-18.3, 28-33-39 and 28-33-41 of the General Laws in
26 Chapter 28-33 entitled "Workers' Compensation - Benefits" are hereby amended to read as
27 follows:

28 **28-33-18.3. Continuation of benefits -- Partial incapacity.** -- (a) (1) For all injuries
29 occurring on or after September 1, 1990, in those cases where the employee has received a notice
30 of intention to terminate partial incapacity benefits pursuant to § 28-33-18, the employee, or his
31 or her duly authorized representative, may file with the workers' compensation court a petition for
32 continuation of benefits on forms prescribed by the workers' compensation court. In any
33 proceeding before the workers' compensation court on a petition for continuation of partial
34 incapacity benefits, where the employee demonstrates by a fair preponderance of the evidence

1 that his or her partial incapacity poses a material hindrance to obtaining employment suitable to
2 his or her limitation, partial incapacity benefits shall continue. For injuries on and after July 1,
3 ~~2021~~ 2023, "material hindrance" is defined to include only compensable injuries causing a greater
4 than sixty-five percent (65%) degree of functional impairment and/or disability. Any period of
5 time for which the employee has received benefits for total incapacity shall not be included in the
6 calculation of the three hundred and twelve-week (312) period.

7 (2) The provisions of this subsection apply to all injuries from Sept. 1, 1990, to July 1,
8 ~~2021~~ 2023.

9 (b) (1) Where any employee's incapacity is partial and has extended for more than three
10 hundred and twelve (312) weeks and the employee has proved an entitlement to continued
11 benefits under subsection (a) of this section, payments made to these incapacitated employees
12 shall be increased annually on the tenth (10th) day of May thereafter so long as the employee
13 remains incapacitated. The increase shall be by an amount equal to the total percentage increase
14 in the annual Consumer Price Index, United States City Average for Urban Wage Earners and
15 Clerical Workers, as formulated and computed by the Bureau of Labor Statistics of the United
16 States Department of Labor for the period of March 1 to February 28 each year.

17 (2) "Index", as used in this section, refers to the Consumer Price Index, United States
18 City Average for Urban Wage Earners and Clerical Workers, as that index was formulated and
19 computed by the Bureau of Labor Statistics of the United States Department of Labor.

20 (3) The annual increase shall be based upon the percentage increase, if any, in the
21 Consumer Price Index for the month of a given year, over the index for February, the previous
22 year. Thereafter, increases shall be made on May 10 annually, based upon the percentage
23 increase, if any, in the Consumer Price Index for the period of March 1 to February 28.

24 (4) The computations in this section shall be made by the director of labor and training
25 and promulgated to insurers and employers making payments required by this section. Increases
26 shall be paid by insurers and employers without further order of the court. If payment payable
27 under this section is not mailed within fourteen (14) days after the employer or insurer has been
28 notified by publication in a newspaper of general circulation in the state it becomes due, there
29 shall be added to the unpaid payment an amount equal to twenty percent (20%) of it, to be paid at
30 the same time as, but in addition to, the payment.

31 (5) This section applies only to payment of weekly indemnity benefits to employees as
32 described in subdivision (1) of this subsection and does not apply to specific compensation
33 payments for loss of use or disfigurement or payment of dependency benefits or any other
34 benefits payable under the workers' compensation act.

1 (c) No petitions for commutation shall be allowed or entertained in those cases where an
2 employee is receiving benefits pursuant to this section.

3 **28-33-39. Transportation costs for medical examination.** -- The reasonable costs of
4 transportation to and from the office of any examiner requested by the employer or of any
5 impartial examiner appointed as provided in § 28-33-35 shall be charged to the employer and, if
6 paid for by the employee, he or she shall be reimbursed in full for this expenditure by his or her
7 employer, upon presentation of a receipt or other evidence of expenditure. [The reasonable cost of](#)
8 [transportation that occurs on or after July 1, 2016, is the rate equal to the per-mile rate allowed by](#)
9 [the Internal Revenue Service for use of a privately owned automobile for business miles driven,](#)
10 [as from time to time amended, for a private motor vehicle or the reasonable cost incurred for](#)
11 [transportation, from the employee's point of departure, whether from the employee's home or](#)
12 [place of employment, and return.](#)

13 **28-33-41. Rehabilitation of injured persons.** -- (a) (1) The department and the workers'
14 compensation court shall expedite the rehabilitation of and the return to remunerative
15 employment of all employees who are disabled and injured and who are subject to chapters 29 --
16 38 of this title.

17 (2) Rehabilitation means the prompt provision of appropriate services necessary to
18 restore an employee who is occupationally injured or diseased to his or her optimum physical,
19 mental, vocational, and economic usefulness. This may require medical, vocational, and/or
20 reemployment services to restore an employee who is occupationally disabled as nearly as
21 possible to his or her pre-injury status. As a procedure, rehabilitation may include three (3)
22 overlapping and interrelated components:

23 (i) (A) Medical restorative services. - Medical treatment and related services needed to
24 restore the employee who is occupationally disabled to a state of health as near as possible to that
25 which existed prior to the occupational injury or disease. These services may include, but are not
26 limited to, the following: medical, surgical, hospital, nursing services, attendant care, chiropractic
27 care, physical therapy, occupational therapy, medicines, prostheses, orthoses, other physical
28 rehabilitation services, including psychosocial services, and reasonable travel expenses incurred
29 in procuring the services.

30 (B) (I) Treatment by spiritual means. - Nothing in this chapter shall be construed to
31 require an employee who in good faith relies on or is treated by prayer or spiritual means by a
32 duly accredited practitioner of a well recognized church to undergo any medical or surgical
33 treatment, and weekly compensation benefits may not be suspended or terminated on the grounds
34 that the employee refuses to accept recommended medical or surgical benefits. The employee

1 shall submit to all physical examinations as required by chapters 29 -- 38 of this title.

2 (II) However, a private employer, insurer, self-insurer or group self-insurer may pay or
3 reimburse an employee for any costs associated with treatment by prayer or spiritual means.

4 (ii) Vocational restorative services. - Vocational services needed to return the employee
5 with a disability to his or her pre-injury employment or, if that is not possible, to a state of
6 employability in suitable alternative employment. These services may include, but are not limited
7 to, the following: psychological and vocational evaluations, counseling, and training.

8 (iii) Reemployment services. - Services used to return the employee who is
9 occupationally disabled to suitable, remunerative employment as adjudged by his or her
10 functional and vocational ability at that time.

11 (b) (1) Any employer or any injured employee with total disability or permanent partial
12 disability to whom the insurance carrier or certificated employer has paid compensation for a
13 period of three (3) months or more, and to whom compensation is still being paid, or his or her
14 employer or insurer may file a petition with the workers' compensation court requesting approval
15 of a rehabilitation program or may mutually agree to a rehabilitation program. Determinations
16 shall be rendered by the workers' compensation court in accordance with this section and as
17 provided in chapters 29 -- 38 of this title and the rules of practice of the Rhode Island workers'
18 compensation court.

19 (2) Action shall be taken as in the judgment of the workers' compensation court shall
20 seem practicable and likely to speed the recovery and rehabilitation of injured workers. However,
21 rehabilitative services shall be appropriate to the needs and capabilities of injured workers.

22 (c) Compensation payments shall not be diminished or terminated while the employee is
23 participating in a rehabilitation program approved by the workers' compensation court or agreed
24 to by the parties. Provided, that compensation payments shall be suspended while an injured
25 employee willfully refuses to participate in a rehabilitation program approved by the workers'
26 compensation court or agreed to by the parties. When the employee has completed an approved
27 rehabilitation program, the rehabilitation provider shall recommend, in the instance of vocational
28 rehabilitation, an earnings capacity, or in the instance of physical rehabilitation provided or
29 prescribed by a physician, a degree of functional impairment, and the employee shall be referred
30 to the court for an earnings capacity adjustment to benefits, unless the employee has returned to
31 gainful employment.

32 (d) The employer shall bear the expense of rehabilitative services agreed to or ordered
33 pursuant to this section. If those rehabilitative services require residence at or near or travel to a
34 rehabilitative facility, the employer shall pay the employee's reasonable expense for board,

1 lodging, and/or travel. The reasonable cost of transportation on or after July 1, 2016, is the rate
2 equal to the per-mile rate allowed by the Internal Revenue Service for use of a privately owned
3 automobile for business miles driven, as from time to time amended, for a private motor vehicle
4 or the reasonable cost incurred for transportation, from the employee's point of departure, whether
5 from the employee's home or place of employment, and return.

6 (e) Except for the provisions of this section, the provisions of § 28-33-8 shall remain in
7 full force and effect.

8 (f) For the purposes of this section, the director shall promulgate rules and regulations
9 pursuant to chapter 35 of title 42 for certifying rehabilitation providers, evaluators, and
10 counselors, and the director shall maintain a registry of those persons so certified. No plan of
11 rehabilitation requiring the services of a rehabilitation counselor shall be approved by the
12 workers' compensation court or agreed to by the parties unless the counselor is certified by the
13 director. Any requests for approval of a rehabilitation plan pending before the director prior to
14 September 1, 2000, will remain at the department for determination. All requests after this date
15 will be heard by the workers' compensation court.

16 SECTION 3. Section 28-53-7 of the General Laws in Chapter 28-53 entitled "Rhode
17 Island Uninsured Employers Fund" is hereby amended to read as follows:

18 **28-53-7. Payments to employees of uninsured employers.** -- (a) Where it is determined
19 that the employee was injured in the course of employment while working for an employer who
20 fails to maintain a policy of workers' compensation insurance as required by § 28-36-1 et seq., the
21 uninsured employers fund shall pay the benefits to which the injured employee would be entitled
22 pursuant to chapters 29 to 38 of this title subject to the limitations set forth herein.

23 (b) The workers' compensation court shall hear all petitions for payment from the fund
24 pursuant to § 28-30-1 et seq., provided, however, that the uninsured employers fund and the
25 employer shall be named as parties to any petition seeking payment of benefits from the fund.

26 (c) Where an employee is deemed to be entitled to benefits from the uninsured
27 employers fund, the fund shall pay benefits for disability and medical expenses as provided
28 pursuant to chapters 29 to 38 of this title except that the employee shall not be entitled to receive
29 benefits for loss of function and disfigurement pursuant to the provisions of § 28-33-19.

30 (d) The fund shall pay cost, counsel and witness fees, as provided in § 28-35-32, to any
31 employee who successfully prosecutes any petitions for compensation; petitions for medical
32 expenses; petitions to amend a pretrial order or memorandum of agreement; and all other
33 employee petitions; and to employees who successfully defend, in whole or in part, proceedings
34 seeking to reduce or terminate any and all workers' compensation benefits; provided, however,

1 that the attorney's fees awarded to counsel who represent the employee in petitions for lump sum
2 commutation filed pursuant to § 28-33-25, or in the settlement of disputed cases pursuant to § 28-
3 33-25.1, shall be limited to the maximum amount paid to counsel who serve as court-appointed
4 attorneys in workers' compensation proceedings as established by rule or order of the Rhode
5 Island supreme court.

6 (e) In the event that the uninsured employer makes payment of any monies to the
7 employee to compensate the employee for lost wages or medical expenses, the fund shall be
8 entitled to a credit for all such monies received by or on behalf of the employee against any future
9 benefits payable directly to the employee.

10 (f) This section shall apply to injuries that occur on or after ~~January~~ July 1, 2017.

11 SECTION 4. Chapter 42-16.1 of the General Laws entitled "Department of Labor and
12 Training" is hereby amended by adding thereto the following section:

13 **42-16.1-19. Cost of legal and audit fees.** – The director is hereby authorized and may in
14 their discretion recover the reasonable cost of legal services and audit fees for services provided
15 by in-house attorneys and/or other personnel of the department of labor and training or outside
16 auditors and incurred by the department in matters pertaining to fraud investigations and
17 examinations. Nothing in this section shall limit the power of the director to retain legal counsel
18 to recover the costs of such legal counsel and auditors pursuant to other provisions of the general
19 laws.

20 SECTION 5. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO LABOR AND LABOR RELATIONS -- WORKERS' COMPENSATION
COURT

1 This act would increase the daily reimbursement for members of the medical advisory
2 board from three hundred dollars (\$300) to five hundred dollars (\$500). It would postpone from
3 the years 2021 to the year 2023 the partial incapacity benefits deadline. The act would also extend
4 the commencement date of the payments to employees of uninsured employers statute from
5 January 1, 2017, to July 1, 2017. It would also change the mileage rate that employees who attend
6 medical examinations or rehabilitation are paid to the Internal Revenue Service allowable rate
7 and how the distance for the visit is calculated. This act would also authorize the director of labor
8 and training to recover the cost of legal services and fees incurred in fraud investigations and
9 examinations.

10 This act would take effect upon passage.

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