AN ACT relating to workers' compensation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 342.020 is amended to read as follows:

(1) (a) In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability [for the length of time set forth in this section], or as may be required for the cure and treatment of an occupational disease.

(2) In claims resulting in an award of permanent total disability or resulting from an injury described in subsection (9) of this section,

(b) The employer's obligation to pay the benefits specified in this section shall continue for so long as the employee is disabled regardless of the duration of the employee's income benefits.

(3) (a) In all permanent partial disability claims not involving an injury described in subsection (9) of this section, the employer's obligation to pay the benefits specified in this section shall continue for seven hundred eighty (780) weeks from the date of injury or date of last exposure.

(b) In all permanent partial disability claims not involving an injury described in subsection (9) of this section, the commissioner shall, in writing, advise the employee of the right to file an application for the continuation of benefits as described in this section. This notice shall be made to the employee seven hundred fifty-four (754) weeks from the date of injury or last exposure.

(c) An employee shall receive a continuation of benefits as described in this section for additional time beyond the period provided in paragraph (a) of this subsection as long as continued medical treatment is reasonably necessary and related to the work
injury or occupational disease if:

1. An application is filed within seventy-five (75) days prior to the termination of the seven hundred eighty (780) week period;

2. The employee demonstrates that continued medical treatment is reasonably necessary and related to the work injury or occupational disease; and

3. An administrative law judge determines and orders that continued benefits are reasonably necessary and related to the work injury or occupational disease for additional time beyond the original seven hundred eighty (780) week period provided in paragraph (a) of this subsection.

(d) If the administrative law judge determines that medical benefits are not reasonably necessary or not related to the work injury or occupational disease, or if an employee fails to make proper application for continued benefits within the time period provided in paragraph (c) of this subsection, any future medical treatment shall be deemed to be unrelated to the work injury and the employer’s obligation to pay medical benefits shall cease permanently.

(c) In the absence of designation of a managed health care system by the employer, the employee may select medical providers to treat his injury or occupational disease. Even if the employer has designated a managed health care system, the injured employee may elect to continue treating with a physician who provided emergency medical care or treatment to the employee. The employer, insurer, or payment obligor acting on behalf of the employer, shall make all payments for services rendered to an employee directly to the provider of the services within thirty (30) days of receipt of a statement for services. The commissioner shall promulgate administrative regulations establishing conditions under which the thirty (30) day period for payment may be tolled. The provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated and every
forty-five (45) days thereafter, if appropriate, as long as medical services are
rendered. Except as provided in subsection (4) of this section, in no event
shall a medical fee exceed the limitations of an adopted medical fee schedule
or other limitations contained in KRS 342.035, whichever is lower. The
commissioner may promulgate administrative regulations establishing the
form and content of a statement for services and procedures by which disputes
relative to the necessity, effectiveness, frequency, and cost of services may be
resolved.

(2) Notwithstanding any provision of the Kentucky Revised Statutes to the
contrary, medical services and treatment provided under this chapter shall not be
subject to copayments or deductibles.

(3) Employers may provide medical services through a managed health care
system. The managed health care system shall file with the Department of Workers'
Claims a plan for the rendition of health care services for work-related injuries and
occupational diseases to be approved by the commissioner pursuant to
administrative regulations promulgated by the commissioner.

(4) All managed health care systems rendering medical services under this chapter
shall include the following features in plans for workers' compensation medical
care:

(a) Copayments or deductibles shall not be required for medical services rendered
in connection with a work-related injury or occupational disease;
(b) The employee shall be allowed choice of provider within the plan;
(c) The managed health care system shall provide an informal procedure for the
expeditious resolution of disputes concerning rendition of medical services;
(d) The employee shall be allowed to obtain a second opinion, at the employer's
expense, from an outside physician if a managed health care system physician
recommends surgery;
(e) The employee may obtain medical services from providers outside the managed health care system, at the employer's expense, when treatment is unavailable through the managed health care system;

(f) The managed health care system shall establish procedures for utilization review of medical services to assure that a course of treatment is reasonably necessary; diagnostic procedures are not unnecessarily duplicated; the frequency, scope, and duration of treatment is appropriate; pharmaceuticals are not unnecessarily prescribed; and that ongoing and proposed treatment is not experimental, cost ineffective, or harmful to the employee;[ and]

(g) Statements for services shall be audited regularly to ensure that charges are not duplicated and do not exceed those authorized in the applicable fee schedules;[ and]

(h) A schedule of fees for all medical services to be provided under this chapter, which shall not be subject to the limitations on medical fees contained in this chapter;[ and]

(i) Restrictions on provider selection imposed by a managed health care system authorized by this chapter shall not apply to emergency medical care.

(5)(8) Except for emergency medical care, medical services rendered pursuant to this chapter shall be under the supervision of a single treating physician or physicians' group having the authority to make referrals, as reasonably necessary, to appropriate facilities and specialists. The employee may change his designated physician one (1) time and thereafter shall show reasonable cause in order to change physicians.

(6)(9) When a compensable injury or occupational disease results in the amputation or partial amputation of an arm, hand, leg, or foot, or the loss of hearing, or the enucleation of an eye or loss of teeth, or permanent total or permanent partial paralysis, the employer shall pay for, in addition to the other medical, surgical, and hospital treatment enumerated in subsection (1) and this subsection, a modern
artificial member and, where required, proper braces as may reasonably be required
at the time of the injury and thereafter during disability.

(7) Upon motion of the employer, with sufficient notice to the employee for a
response to be filed, if it is shown to the satisfaction of the administrative law judge
by affidavits or testimony that, because of the physician selected by the employee to
treat the injury or disease, or because of the hospital selected by the employee in
which treatment is being rendered, that the employee is not receiving proper
medical treatment and the recovery is being substantially affected or delayed; or that
the funds for medical expenses are being spent without reasonable benefit to the
employee; or that because of the physician selected by the employee or because of
the type of medical treatment being received by the employee that the employer will
substantially be prejudiced in any compensation proceedings resulting from the
employee's injury or disease; then the administrative law judge may allow the
employer to select a physician to treat the employee and the hospital or hospitals in
which the employee is treated for the injury or disease. No action shall be brought
against any employer subject to this chapter by any person to recover damages for
malpractice or improper treatment received by any employee from any physician,
hospital, or attendant thereof.

(8) An employee who reports an injury alleged to be work-related or files an
application for adjustment of a claim shall execute a waiver and consent of any
physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect
to any condition or complaint reasonably related to the condition for which the
employee claims compensation. Notwithstanding any other provision in the
Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist,
hospital, or health care provider shall, within a reasonable time after written request
by the employee, employer, workers' compensation insurer, special fund, uninsured
employers' fund, or the administrative law judge, provide the requesting party with
any information or written material reasonably related to any injury or disease for which the employee claims compensation.

(9) When a provider of medical services or treatment, required by this chapter, makes referrals for medical services or treatment by this chapter, to a provider or entity in which the provider making the referral has an investment interest, the referring provider shall disclose that investment interest to the employee, the commissioner, and the employer's insurer or the party responsible for paying for the medical services or treatment, within thirty (30) days from the date the referral was made.

(10) (a) Except as provided in paragraphs (b) and (c) of this subsection, the employer, insurer, or payment obligor shall not be liable for urine drug screenings of patients in excess of:

1. One (1) per year for a patient considered to be low-risk;
2. Two (2) per year for a patient considered to be moderate-risk; and
3. Four (4) per year for patients considered to be high-risk;

based upon the screening performed by the treating medical provider and other pertinent factors.

(b) The employer, insurer, or payment obligor may be liable for urine drug screening at each office visit for patients that have exhibited aberrant behavior documented by multiple lost prescriptions, multiple requests for early refills of prescriptions, multiple providers prescribing or dispensing opioids or opioid substitutes as evidenced by the electronic monitoring system established in KRS 218A.202 or a similar system, unauthorized dosage escalation, or apparent intoxication.

(c) The employer, insurer, or payment obligor may request additional urine drug screenings which shall not count toward the maximum number of drug screenings enumerated in paragraph (a) of this subsection.
(d) The commissioner shall promulgate administrative regulations related to urine
drug screenings as part of the practice parameters or treatment guidelines
required under KRS 342.035.

(l)(14) (a) As used in this subsection, "practice of pharmacy" has the same meaning
as in KRS 315.010.

(b) In addition to all other compensation that may be reimbursed to a pharmacist
under this chapter, the employer, insurer, or payment obligor shall be liable
for the reimbursement of a pharmacist for a service or procedure at a rate not
less than that provided to other nonphysician practitioners if the service or
procedure:

1. Is within the scope of the practice of pharmacy;

2. Would otherwise be compensable under this chapter if the service or
   procedure were provided by a:

   a. Physician;

   b. Advanced practice registered nurse; or

   c. Physician assistant; and

3. Is performed by the pharmacist in strict compliance with laws and
   administrative regulations related to the pharmacist's license.

Section 2. KRS 342.990 is amended to read as follows:

(1) The commissioner shall initiate enforcement of civil and criminal penalties imposed
   in this section.

(2) When the commissioner receives information that he or she deems sufficient to
determine that a violation of this chapter has occurred, he or she shall seek civil
penalties pursuant to subsections (3) to (7) of this section, criminal penalties
pursuant to subsections (8) and (9) of this section, or both.

(3) The commissioner shall initiate enforcement of a civil penalty by simultaneously
citing the appropriate party for the offense and stating the civil penalty to be paid.
(4) If, within fifteen (15) working days from the receipt of the citation, a cited party fails to notify the commissioner that he or she intends to contest the citation, then the citation shall be deemed final.

(5) If a cited party notifies the commissioner that he or she intends to challenge a citation issued under this section, the commissioner shall cause the matter to be heard as soon as practicable by an administrative law judge and in accordance with the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney representing the commissioner to prove the offense stated in the citation by a preponderance of the evidence. The parties shall stipulate to uncontested facts and issues prior to the hearing before the administrative law judge. The administrative law judge shall issue a ruling within sixty (60) days following the hearing.

(6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit Court in conformity with KRS 13B.140.

(7) The following civil penalties shall be applicable for violations of particular provisions of this chapter:

(a) Any employer, insurer, or payment obligor subject to this chapter who fails to make a report required by KRS 342.038 within fifteen (15) days from the date it was due, shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense;

(b) Any employer, insurer, or payment obligor acting on behalf of an employer who fails to make timely payment of a statement for services under KRS 342.020(4) without having reasonable grounds to delay payment may be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense;

(c) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.340, 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each
offense. With respect to employers who fail to maintain workers' compensation insurance coverage on their employees, each employee of the employer and each day of violation shall constitute a separate offense. With respect to KRS 342.040, any employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be fined for failure to notify the commissioner of a failure to make payments when due if a report indicating the reason payment of income benefits did not commence within twenty-one (21) days of the date the employer was notified of an alleged work-related injury or disease is not filed with the commissioner within twenty-one (21) days of the date the employer received notice, and if the employee has not returned to work within that period of time. The date of notice indicated in the report filed with the department pursuant to KRS 342.038(1), shall raise a rebuttable presumption of the date on which the employer received notice;

(d) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000) for each offense. With respect to KRS 342.395, each required notice of rejection form executed by an employee or potential employee of an employer shall constitute a separate offense;

(e) Any person who fails to comply with the data reporting provisions of administrative regulations promulgated by the commissioner pursuant to KRS 342.039, or with utilization review and medical bill audit administrative regulations promulgated pursuant to KRS 342.035(5), shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each violation;

(f) Except as provided in paragraph (g) of this subsection, a person who violates
any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less than or equal to three hundred dollars ($300) shall be fined per occurrence not more than one thousand dollars ($1,000) per individual nor five thousand dollars ($5,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater;

(g) Any person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) exceeds three hundred dollars ($300) shall be fined per occurrence not more than five thousand dollars ($5,000) per individual nor ten thousand dollars ($10,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater;

(h) Any person who violates the employee leasing provision of this chapter shall be fined not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) for each violation;

(i) Any violation of the provisions of this chapter relating to self-insureds shall constitute grounds for decertification of such self-insured, a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) per occurrence, or both; and

(j) Actions to collect the civil penalties imposed under this subsection shall be instituted in the Franklin District Court and the Franklin Circuit Court.

(8) The commissioner shall initiate enforcement of a criminal penalty by causing a complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to act on the violation within twenty (20) days following the filing of the complaint, the commissioner shall certify the inaction by the local prosecutor to the Attorney General who shall initiate proceedings to prosecute the violation. The provisions of KRS 15.715 shall not apply to this section.
(9) The following criminal penalties shall be applicable for violations of particular provisions of this chapter:

(a) Any person who violates KRS 342.020(9)(12), 342.035(2), 342.040, 342.400, 342.420, or 342.630, shall, for each offense, be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or imprisoned for not less than thirty (30) days nor more than one hundred eighty (180) days, or both;

(b) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000), or imprisoned for not less than thirty (30) days nor more than one hundred and eighty (180) days, or both;

(c) Any corporation, partnership, sole proprietorship, or other form of business entity and any officer, general partner, agent, or representative of the foregoing who knowingly utilizes or participates in any employee leasing arrangement or mechanism as defined in KRS 342.615 for the purpose of depriving one (1) or more insurers of premium otherwise properly payable or for the purpose of depriving the Commonwealth of any tax or assessment due and owing and based upon said premium shall upon conviction thereof be subject to a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000), or imprisonment for not more than one hundred eighty (180) days, or both, for each offense; and

(d) Notwithstanding any other provisions of this chapter to the contrary, when any employer, insurance carrier, or individual self-insured fails to comply with this chapter for which a penalty is provided in subparagraphs (7), (8), and (9) above, such person, if the person is an owner in the case of a sole proprietorship, a partner in the case of a partnership, a principal in the case of
a limited liability company, or a corporate officer in the case of a corporation, who knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be personally and individually liable, both jointly and severally, for the penalties imposed in the above cited subparagraphs. Neither the dissolution nor withdrawal of the corporation, partnership, or other entity from the state, nor the cessation of holding status as a proprietor, partner, principal, or officer shall discharge the foregoing liability of any person.

(10) Fines paid pursuant to KRS 342.267 and subsections (7) and (9) of this section shall be paid into the self-insurance fund established in KRS 342.920.

(11) In addition to the penalties provided in this section, the commissioner and any administrative law judge or court of jurisdiction may order restitution of a benefit secured through conduct proscribed by this chapter.