



State of Tennessee
PUBLIC CHAPTER NO. 416

SENATE BILL NO. 932

By Norris

Substituted for: House Bill No. 1503

By Eldridge, Carr, Womick, Sanderson, McDaniel, Curtiss, Matlock, Moore, Hardaway, McManus, Johnnie Turner, McCormick, Alexander, Hall, Sargent, Harrison, Curtis Johnson, Fitzhugh, Shaw, Naifeh, Lois DeBerry, Larry Miller, Tindell, Coley, Armstrong, Brown, Don Miller, Maggart, Dennis, Wirgau, Casada, Matheny, Lundberg, Marsh, Dean

AN ACT to amend Tennessee Code Annotated, Title 50, Chapter 2; Title 50, Chapter 6 and Title 50, Chapter 7.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 50-7-207(a), is amended by adding the following language as a new subdivision (2) and by redesignating the existing subdivisions accordingly:

(2) Services performed by an individual who provides services as a leased-operator or an owner-operator of a motor vehicle or vehicles under contract to a common carrier conducting an interstate business while engaged in interstate commerce shall be deemed to be an excluded service for the purposes of this section, regardless of whether the common law relationship of master and servant exists, and regardless of whether the individual satisfies the requirements for included service as prescribed in subsection (a)(1); provided, that this subdivision does not apply to services performed under Section 50-7-207(b)(3) or (b)(4).

SECTION 2. Tennessee Code Annotated, Title 50, Chapter 2, Part 1, is amended by adding the following language as a new, appropriately designated section:

50-2-1__. This chapter shall not apply to any individual who provides services as a leased-operator or an owner-operator of a motor vehicle or vehicles under contract to a common carrier doing an interstate business while engaged in interstate commerce regardless of whether the common law relationship of master and servant exists; provided, that this chapter shall apply to those employees of the common carrier who do not provide services as a leased-operator or an owner-operator of a motor vehicle or vehicles under contract to a common carrier doing interstate business while engaged in interstate commerce.

SECTION 3. Tennessee Code Annotated, Section 50-6-206(a)(2)(A), is amended by deleting the subdivision in its entirety and by substituting instead the following:

Nothing in this section shall be construed to prohibit the parties from compromising and settling at any time the issue of future medical benefits; provided, the settlement agreement is approved by a trial court, or the commissioner or the commissioner's designee, and includes a provision confirming that the claimant has been advised of the consequences of the settlement, if any, with respect to Medicare and TennCare benefits and liabilities.

SECTION 4. Tennessee Code Annotated, Section 50-6-206(a)(2)(B), is amended by deleting the subdivision in its entirety.

SECTION 5. Tennessee Code Annotated, Section 50-6-206(a)(2)(D), is amended by deleting the subdivision in its entirety.

SECTION 6. Tennessee Code Annotated, Section 50-6-206(b), is amended by deleting the subsection in its entirety and by substituting instead the following:

Notwithstanding any other provision of this section, if there is a dispute between the parties as to whether a claim is compensable, or as to the amount of compensation due, the

parties may settle the matter without regard to whether the employee is receiving substantially the benefits provided by this chapter, provided, the settlement is determined by the court, or the commissioner or the commissioner's designee, to be in the best interest of the employee.

SECTION 7. Tennessee Code Annotated, Section 50-6-204(a), is amended by deleting subdivisions (1) and (2) in their entirety and by substituting instead the following:

(1)(A) The employer or the employer's agent shall furnish, free of charge to the employee, such medical and surgical treatment, medicine, medical and surgical supplies, crutches, artificial members, and other reasonable and necessary apparatus, including prescription eyeglasses and eye wear, such nursing services or psychological services as ordered by the attending physician and hospitalization, including such dental work made reasonably necessary by accident as defined in the chapter.

(B) No medical provider shall charge more than ten dollars (\$10.00) for the first twenty (20) pages or less, and twenty-five cents (25¢) per page for each page after the first twenty (20) pages, for any medical reports, medical records or documents pertaining to medical treatment or hospitalization of the employee that are furnished pursuant to this subsection (a).

(2)(A) It is the intent of the general assembly that the administration of the workers' compensation system proceed in a timely manner and that the parties and the department have reasonable access to the employee's medical records and medical providers that are pertinent to and necessary for the swift resolution of the employee's workers' compensation claim. Notwithstanding any law to the contrary, there shall be no implied covenant of confidentiality, prohibition against ex parte communications or privacy of medical records in the custody of authorized treating physicians with respect to case managers, employers, or insurance companies, or their attorneys, if these persons comply with subdivision (a)(2)(C); provided, however that the employee, or the employee's attorney, shall be provided copies, no later than ten (10) days in advance of a deposition of the authorized treating physician taken for any purpose or the appearance of the authorized treating physician for testimony, of any and all written memorandum or visual or recorded materials, including e-mails or other written materials:

(i) Provided to the employee's authorized treating physician by case managers, employers, insurance companies, or their attorneys; or

(ii) Received from the employee's authorized treating physician.

(B) For purposes of subdivision (a)(2)(C), "employer" means the employer, the employer's attorney, the employer's insurance carrier or third party administrator, a case manager as authorized by § 50-6-123, or any utilization review agent as authorized by § 50-6-124 during the employee's treatment for the claimed workers' compensation injury.

(C) To facilitate the timely resolution of workers' compensation claims and to facilitate the use of the benefit review process established by this chapter, there shall be reasonable access to any employee's medical information only by compliance with the following:

(i) An employee claiming workers' compensation benefits shall provide the employer or the division of workers' compensation with a signed, written medical authorization form as prescribed by the commissioner, provided, the form shall:

(a) Be addressed to a specific medical provider authorized by the employer pursuant to this section;

(b) Permit the release of information through communication, either orally or in writing, as authorized under this subdivision (a)(2)(C); and

(c) Plainly state in capitalized lettering on the face of the document the following language:

THIS MEDICAL AUTHORIZATION FORM ONLY PERMITS THE EMPLOYER OR THE DIVISION OF WORKERS' COMPENSATION

TO OBTAIN MEDICAL INFORMATION THROUGH ORAL OR WRITTEN COMMUNICATION, INCLUDING, BUT NOT LIMITED TO, CHARTS, FILES, RECORDS, AND REPORTS IN THE POSSESSION OF A MEDICAL PROVIDER AUTHORIZED BY THE EMPLOYER PURSUANT TO T.C.A. § 50-6-204 AND A MEDICAL PROVIDER THAT IS REIMBURSED BY THE EMPLOYER FOR THE EMPLOYEE'S TREATMENT;

(ii) An employee claiming workers' compensation benefits, or the employee's attorney, shall be entitled to obtain medical information, records, opinions, or reports from, or communicate in writing or in person with, any medical provider who has treated or provided medical care to the employee; provided, that the employee executes and provides the medical provider with a properly completed form as described in subdivision (a)(2)(C)(i).

(iii) Any medical provider authorized by the employer pursuant to this section and who has treated or provided medical care to an employee claiming workers' compensation benefits is permitted to communicate, orally or in writing, with the employer, or the employer's attorney, and shall honor any request by the employer for medical information, medical records, professional opinions, or medical reports pertaining to the claimed workers' compensation injury. Oral communication may be utilized, and includes, but is not limited to, a telephone conversation or an in-person meeting.

(iv) If an employee or employer files a request for assistance with the department, requesting the department to make a determination as to whether the claim is compensable or concerning an issue related to medical benefits or temporary disability benefits, the department may request, orally or in writing, medical information, records, opinions, or reports from the medical provider; provided, that:

(a) Any response by the medical provider to the department's request shall be in writing; and

(b) If the department receives documents or written responses to any request for information pursuant to this subdivision (a)(2)(C)(iv), then the department shall notify the employee, the employer and any attorney representing the employee or employer within fourteen (14) days of receipt of the document or written response that such persons may review or copy the documents or responses; provided, the requesting party shall pay the copying fee authorized by subdivision (a)(1)(B) prior to the department providing the requested copies; and

(v) If the department becomes involved in the appeal of a utilization review issue, then the department is authorized to communicate with the medical provider involved in the dispute either orally or in writing to permit the timely resolution of the issue and shall notify the employee, employer or any attorney representing the employee or employer that they may review or copy the documents or responses; provided, the requesting party shall pay the copying fee authorized by subdivision (a)(1)(B) prior to the department providing the requested copies.

(D) No relevant information developed in connection with authorized medical treatment or an examination provided pursuant to this section for which compensation is sought by the employee shall be considered a privileged communication, and no medical provider shall incur any liability as a result of providing medical information, records, opinions, or reports as described in subdivision (a)(2)(C); provided, the medical provider complies with subdivision (a)(2)(C).

SECTION 8. Tennessee Code Annotated, Section 50-6-102(12), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(12) "Injury" and "personal injury":

(A) Mean an injury by accident, arising out of and in the course of employment, that causes either disablement or death of the employee; provided, that:

(i) An injury is "accidental" only if the injury is caused by a specific incident, or set of incidents, arising out of and in the course of employment, and is identifiable by time and place of occurrence; and

(ii) The opinion of the physician, selected by the employee from the employer's designated panel of physicians pursuant to §§ 50-6-204(a)(4)(A) or (B), shall be presumed correct on the issue of causation but said presumption shall be rebutted by a preponderance of the evidence;

(B) Include a mental injury arising out of and in the course of employment; and

(C) Do not include:

(i) A disease in any form, except when the disease arises out of and in the course and scope of employment; or

(ii) Cumulative trauma conditions, hearing loss, carpal tunnel syndrome, or any other repetitive motion conditions unless such conditions arose primarily out of and in the course and scope of employment;

SECTION 9. Tennessee Code Annotated, Section 50-6-301, is amended by designating the existing language as subsection (a), and by adding the following language as a new subsection:

(b) Cumulative trauma conditions, hearing loss, carpal tunnel syndrome, and all other repetitive motion conditions shall not be considered an occupational disease unless such conditions arose primarily out of and in the course and scope of employment. The opinion of the physician, selected by the employee from the employer's designated panel of physicians pursuant to §§ 50-6-204(a)(4)(A) or (B), shall be presumed correct on the issue of causation but said presumption shall be rebutted by a preponderance of the evidence.

SECTION 10. This act shall take effect upon becoming a law, the public welfare requiring it. For purposes of Sections 1 and 2, this act shall apply to causes of action arising on or after the effective date of this act. For purposes of Sections 3 through 9, this act shall apply to injuries occurring on or after the effective date of this act.

SENATE BILL NO. 932

PASSED: May 20, 2011



RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 6 day of June 2011



BILL HASLAM, GOVERNOR