

**Hall of the House of Representatives**  
83rd General Assembly - Regular Session, 2001  
**Amendment Form**

\*\*\*\*\*

**Subtitle of House Bill No. 2521**

"AN ACT TO AMEND THE BURDEN OF PROOF IN ESTABLISHING AN  
OCCUPATIONAL DISEASE UNDER THE WORKERS' COMPENSATION LAWS."

\*\*\*\*\*

**Amendment No. 1 to House Bill No. 2521.**

Amend House Bill No. 2521 as originally introduced:

Page 1, line 30, delete "direct"

AND

Insert additional sections immediately following Section 1 to read as follows:

"SECTION 2. Arkansas Code Title 11, Chapter 9, Subchapter 1, is amended by adding an additional section to read as follows:

11-9-117. The Workers' Compensation Commission shall be empowered to enact medical diagnostic and treatment guidelines regarding occupational carpal tunnel syndrome, pursuant to its rulemaking authority, upon the joint recommendation of the Arkansas AFL-CIO and the Arkansas State Chamber of Commerce.

SECTION 3. Arkansas Code Title 11, Chapter 9, Subchapter 1, is amended by adding an additional section to read as follows:

11-9-118. (a) No hospital, physician, or other health care provider shall bill or attempt to collect any fee or any portion of a fee for services rendered to an employee due to a work-related injury or report to any credit reporting agency any failure of the employee to make the payment, when a claim for compensation has been filed under this chapter and the hospital, physician, or health care provider has received actual notice given in writing by the employee or the employee's representative. Actual notice shall be deemed received by the hospital, physician, or health care provider five (5) days after mailing by certified mail by the employee or his representative to the hospital, physician, or health care provider.

(b) The notice shall include:

- (1) The name of the employer;
- (2) The name of the insurer, if known;
- (3) The name of the employee receiving the services;
- (4) The general nature of the injury, if known; and
- (5) Where a claim has been filed, the claim number, if known.

(c) When an injury or bill is found to be noncompensable under this chapter, the hospital, physician, or other health care provider shall be entitled to pursue the employee for any unpaid portion of the fee or other charges for authorized services provided to the employee. Any applicable statute of limitations for an action for the fees or other charges shall be tolled from the time notice is given to the hospital, physician, or other health care provider until a determination of noncompensability in regard to the injury which is the basis of the services is made, or in the event there is an appeal to the Workers' Compensation Commission, the Arkansas Court of Appeals, or the Arkansas Supreme Court, until a final determination of noncompensability is rendered and all appeal deadlines have passed.

(d) This section shall not avoid, modify, or amend any other section or subsection of this chapter including but not limited to the prohibition against "balanced billing" contained in § 11-9-508(d)(3) and any rules and regulations adopted thereunder.

(e) An order by the commission, pursuant to this section, shall stay all proceedings for collection.

SECTION 4. Arkansas Code 11-9-705 is amended by adding an additional subsection to read as follows: is amended to read as follows:

(d) Expert testimony shall not be allowed unless it satisfies the requirements of Rule 702 of the Federal Rules of Evidence with annotations and amendments, i.e., Daubert v. Merrell-Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), and Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999).

SECTION 5. Arkansas Code 11-9-715 is amended to read as follows:  
11-9-715. Fees for legal services.

(a)(1)(A) Fees for legal services rendered in respect of a claim shall not be valid unless approved by the Workers' Compensation Commission.

(B) ~~The Attorney's fees shall not exceed thirty percent (30%) of the first one thousand dollars (\$1,000) of compensation, or part thereof, twenty percent (20%) of all sums in excess of one thousand dollars (\$1,000), but less than three thousand dollars (\$3,000) of compensation, and ten percent (10%) of all sums in excess of three thousand dollars (\$3,000) be~~ twenty-five percent (25%) of compensation for indemnity benefits payable to the injured employee or dependents of a deceased employee. Attorney's fees shall not be awarded on medical benefits or services except as provided in subsection (a)(4) of this section.

(2)(A) Whenever the commission finds that a claim against the Treasurer of State, as custodian of the Second Injury Trust Fund or as custodian of the Death and Permanent Total Disability Trust Fund, has been controverted, in whole or in part, the commission shall direct that fees for legal services be paid from the fund, in addition to compensation awarded, and the fees shall be allowed only on the amount of compensation controverted and awarded from the fund.

(B)(i) In all other cases whenever the commission finds that a claim has been controverted, in whole or in part, the commission shall direct that fees for legal services be paid to the attorney for the claimant as follows: One-half (1/2) by the employer or carrier in addition to compensation awarded; and one-half (1/2) by the injured employee or dependents of a deceased employee out of compensation payable to them.

(ii) The fees shall be allowed only on the amount of

compensation for indemnity benefits controverted and awarded.

(iii) However, the commission shall not find a claim has been controverted if the claimant or his representative has withheld from the respondent during the period of time allotted for the respondent to determine its position any medical information in his possession which substantiates the claim.

(C)(i) Whenever the commission finds a claim has not been controverted but further finds that bona fide legal services have been rendered in respect to the claim, then the commission shall direct the payment of the fees by the injured employee or dependents of a deceased employee out of the compensation awarded.

(ii) In determining the amount of fees, when a claim is not controverted, the commission shall use its discretion in awarding an attorney's fee not to exceed twenty-five percent (25%) and in so doing shall take into consideration the nature, length, and complexity of the services performed, and the benefits resulting to the compensation beneficiaries.

(3) In any case where attorney's fees are allowed by the commission, the limitations expressed in the first sentence herein shall apply.

~~(4) In determining the amount of fees, the commission shall take into consideration the nature, length, and complexity of the services performed, and the benefits resulting to the compensation beneficiaries.~~

(4) Medical providers may voluntarily contract with the attorney for the claimant to recover disputed bills and the attorney may charge a reasonable fee to the medical provider as a cost of collection.

(b)(1) In addition to the fees provided in subdivision (a)(1) of this section, if the claimant prevails on appeal, the attorney for the claimant shall be entitled to an additional fee at the full commission and appellate court levels, the additional fee to be paid equally by the employer or carrier and by the injured employee or dependents of a deceased employee, as provided above and set by the commission or appellate court.

(2) The maximum fees allowable pursuant to this subsection shall be the sum of ~~two hundred fifty dollars (\$250)~~ five hundred dollars (\$500) on appeals to the full Commission from a decision of the administrative law judge, and the sum of ~~five hundred dollars (\$500)~~ one thousand dollars (\$1,000) on appeals to the Arkansas Court of Appeals or Supreme Court from a decision of the commission.

(3) In determining the amount of fees, the commission and the court shall take into consideration the nature, length, and complexity of the services performed, and the benefits resulting to the compensation beneficiary.

(c)(1) The fee for legal services rendered by the claimant's attorney in connection with a change of physician requested by the injured employee, controverted by the employer or carrier, and awarded by the commission shall be two hundred dollars (\$200).

(2) No additional fee shall be payable with respect to uncontroverted charges incurred in connection with treatment by the new physician.

(d)(1) No fees for legal services rendered by the claimant's attorney with respect to the preliminary conference procedure shall be awarded by the commission.

(2) However, the claimant's attorney or other representative may

charge a reasonable fee to the claimant for representation in connection with the conference.

(3) Unless compensability of a claim is controverted by the employer or carrier, fees for legal services by the claimant's attorney with respect to disability for loss of wage earning capacity shall be payable only for amounts awarded at a contested hearing which exceed the amount, if any, which the employer or carrier agreed in writing to accept at the preliminary conference.

~~(e) Fees for legal services rendered by the claimant's attorney with respect to medical expenses of a repeated and continuing course of treatment controverted by the employer or carrier shall be payable only in connection with such controverted expenses incurred during a two year period beginning with the first date on which such expenses were incurred.~~

~~(f)~~(e) The amendments made by this act of 2001 regarding attorney's fees contained in this section shall be effective with respect to benefits payable in connection with disability or death due to injuries occurring on or after ~~July 1, 1986~~ July 1, 2001."

The Amendment was read \_\_\_\_\_  
By: Representative French  
LH/RRS  
RRS628

\_\_\_\_\_  
Chief Clerk