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SENATE BILL NO. 759

Offered January 12, 2011

Prefiled December 7, 2010

A BILL to amend and reenact §§ 65.2-601, 65.2-603, and 65.2-708 of the Code of Virginia, relating to workers' compensation; coverage for compensable consequences of injury; burden of proof and limitations period.

 Patron—Reynolds

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 65.2-601, 65.2-603, and 65.2-708 of the Code of Virginia are amended and reenacted as follows:

§ 65.2-601. Time for filing claim.

~~The~~*Except as provided in § 65.2-708, the* right to compensation under this title shall be forever barred, unless a claim be filed with the Commission within two years after the accident. Death benefits payable under this title shall be payable only if: (i) death results from the accident, (ii) a claim for benefits under this title has been filed within two years after the accident, and (iii) the claim for such death benefits is filed within two years from the date of death.

§ 65.2-603. Duty to furnish medical attention, etc., and vocational rehabilitation; effect of refusal of employee to accept.

A. Pursuant to this section:

1. As long as necessary after an accident, the employer shall furnish or cause to be furnished, free of charge to the injured employee, a physician chosen by the injured employee from a panel of at least three physicians selected by the employer and such other necessary medical attention, *including medical treatment for a subsequent injury that is a compensable consequence of a primary injury.* Where such accident results in the amputation or loss of use of an arm, hand, leg, or foot or the enucleation of an eye or the loss of any natural teeth or loss of hearing, the employer shall furnish prosthetic or orthotic appliances, as well as wheelchairs, walkers, canes, or crutches, proper fitting and maintenance thereof, and training in the use thereof, as the nature of the injury may require. In awards entered for incapacity for work, under this title, upon determination by the treating physician and the Commission that the same is medically necessary, the Commission may require that the employer furnish and maintain bedside lifts, adjustable beds, and modification of the employee's principal home consisting of ramps, handrails, or any appliances prescribed by the treating physician and doorway alterations, provided that the aggregate cost of all such items and modifications required to be furnished on account of any one accident shall not exceed \$25,000. The employee shall accept the attending physician, unless otherwise ordered by the Commission, and in addition, such surgical and hospital service and supplies as may be deemed necessary by the attending physician or the Commission.

2. The employer shall repair, if repairable, or replace dentures, artificial limbs, or other prosthetic or orthotic devices damaged in an accident otherwise compensable under workers' compensation, and furnish proper fitting thereof.

3. The employer shall also furnish or cause to be furnished, at the direction of the Commission, reasonable and necessary vocational rehabilitation services; however, the employer shall not be required to furnish, or cause to be furnished, services under this subdivision to any injured employee not eligible for lawful employment.

Vocational rehabilitation services may include vocational evaluation, counseling, job coaching, job development, job placement, on-the-job training, education, and retraining. Those vocational rehabilitation services that involve the exercise of professional judgment as defined in § 54.1-3510 shall be provided by a certified rehabilitation provider pursuant to Article 2 (§ 54.1-3510 et seq.) of Chapter 35 of Title 54.1 or by a person licensed by the Boards of Counseling; Medicine; Nursing; Optometry; Psychology; or Social Work or, in accordance with subsection B of § 54.1-3513, by a person certified by the Commission on Rehabilitation Counselor Certification (CRCC) as a certified rehabilitation counselor (CRC) or a person certified by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists (CCWAVES) as a Certified Vocational Evaluation Specialist (CVE).

In the event a dispute arises, any party may request a hearing and seek the approval of the Commission for the proposed services. Such services shall take into account the employee's preinjury job and wage classifications; his age, aptitude, and level of education; the likelihood of success in the new vocation; and the relative costs and benefits to be derived from such services.

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59 4. *There shall exist a rebuttable presumption that a subsequent injury is a compensable consequence*
60 *of the primary injury if the subsequent injury is to a body part or system that sustained a primary injury*
61 *that (i) was accepted as compensable by the employer or (ii) the Commission found was compensable.*
62 *An employer may rebut this presumption by establishing by a preponderance of the evidence that the*
63 *subsequent injury is not causally connected to the primary injury because the injury is not a natural*
64 *consequence that flows from the primary injury or that the injury is the result of an independent*
65 *intervening cause attributable to the employee's own intentional conduct.*

66 B. The unjustified refusal of the employee to accept such medical service or vocational rehabilitation
67 services when provided by the employer shall bar the employee from further compensation until such
68 refusal ceases and no compensation shall at any time be paid for the period of suspension unless, in the
69 opinion of the Commission, the circumstances justified the refusal. In any such case the Commission
70 may order a change in the medical or hospital service or vocational rehabilitation services.

71 C. If in an emergency or on account of the employer's failure to provide the medical care during the
72 period herein specified, or for other good reasons, a physician other than provided by the employer is
73 called to treat the injured employee, during such period, the reasonable cost of such service shall be paid
74 by the employer if ordered so to do by the Commission.

75 D. As used in this section and in § 65.2-604, the terms "medical attention," "medical service,"
76 "medical care," and "medical report" shall be deemed to include chiropractic service or treatment and,
77 where appropriate, a chiropractic treatment report.

78 E. Whenever an employer furnishes an employee the names of three physicians pursuant to this
79 section, and the employer also assumes all or part of the cost of providing health care coverage for the
80 employee as a self-insured or under a group health insurance policy, health services plan, or health care
81 plan, upon the request of an employee, the employer shall also inform the employee whether each
82 physician named is eligible to receive payment under the employee's health care coverage provided by
83 the employer.

84 F. If the injured employee has an injury which may be treated within the scope of practice for a
85 chiropractor, then the employer or insurer may include chiropractors on the panel provided the injured
86 employee.

87 § 65.2-708. Review of award on change in condition.

88 A. Upon its own motion or upon the application of any party in interest, on the ground of a change
89 in condition, the Commission may review any award and on such review may make an award ending,
90 diminishing or increasing the compensation previously awarded, subject to the maximum or minimum
91 provided in this title, and shall immediately send to the parties a copy of the award. No application filed
92 by a party alleging a change in condition shall be docketed for hearing by the Commission unless any
93 medical reports upon which the party is relying are submitted to the Commission. No such review shall
94 affect such award as regards any moneys paid except pursuant to §§ 65.2-712, 65.2-1105, and
95 65.2-1205. No such review shall be made after ~~twenty-four~~ 24 months from the last day for which
96 compensation was paid, pursuant to an award under this title, except: (i) ~~thirty-six~~ 36 months from the
97 last day for which compensation was paid shall be allowed for the filing of claims payable under
98 § 65.2-503 and certain claims under subsection B of § 65.2-406 ~~or~~; (ii) ~~twenty-four~~ 24 months from the
99 day that the claimant undergoes any surgical procedure compensable under § 65.2-603 to repair or
100 replace a prosthesis or orthosis; *or (iii) 24 months after (a) the date of the employer's last payment of*
101 *indemnity compensation or (b) the last payment of any medical benefits, whichever occurs last, shall be*
102 *allowed for the filing of claims for medical treatment under subsection A of § 65.2-603 for a subsequent*
103 *injury that is a compensable consequence of a primary injury.*

104 B. In those cases where no compensation has been paid, the Commission may make an award under
105 § 65.2-503 within ~~thirty-six~~ 36 months from the date of the accident.

106 C. All wages paid, for a period not exceeding ~~twenty-four~~ 24 consecutive months, to an employee (i)
107 who is physically unable to return to his pre-injury work due to a compensable injury and (ii) who is
108 provided work within his capacity at a wage equal to or greater than his pre-injury wage, shall be
109 considered compensation.