

SENATE BILL No. 259

By Committee on Ways and Means

2-17

1 AN ACT concerning workers compensation; providing for admission of a
2 healthcare provider's medical report as testimony of the healthcare
3 provider without necessity of other foundational evidence; amending
4 K.S.A. 2020 Supp. 44-516 and repealing the existing section.

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6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2020 Supp. 44-516 is hereby amended to read as
8 follows: 44-516. (a) In case of a dispute as to the injury, the director, in the
9 director's discretion, or upon request of either party, may employ one or
10 more neutral ~~health-care~~ *healthcare* providers, not exceeding three in
11 number, who shall be of good standing and ability. The ~~health-care~~
12 *healthcare* providers shall make such examinations of the injured
13 employee as the director may direct. The report of any such ~~health-care~~
14 *healthcare* provider shall be considered by the administrative law judge in
15 making the final determination.

16 (b) If at least two medical opinions based on competent medical
17 evidence disagree as to the percentage of functional impairment, such
18 matter may be referred by the administrative law judge to an independent
19 ~~health-care~~ *healthcare* provider who shall be agreed upon by the parties.
20 Where the parties cannot agree, an independent healthcare provider shall
21 be selected by the administrative law judge. The ~~health-care~~ *healthcare*
22 provider agreed to by the parties or selected by the administrative law
23 judge pursuant to this section shall issue an opinion regarding the
24 employee's functional impairment which shall be considered by the
25 administrative law judge in making the final determination.

26 (c) *The testimony of a treating or examining healthcare provider may*
27 *be submitted in evidence on the issues in controversy by a medical report*
28 *and shall be admissible without other foundational evidence, subject to*
29 *compliance with the following procedures:*

30 (1) *The party intending to submit a medical report in evidence shall*
31 *give notice at least 60 days prior to the hearing to all parties and shall*
32 *provide reasonable opportunity to all parties to obtain cross-examination*
33 *testimony of the healthcare provider by deposition. The notice shall*
34 *include a copy of the report and all the clinical and treatment records of*
35 *the healthcare provider, including copies of all records and reports*
36 *received by the healthcare provider from other healthcare providers;*

1 (2) *the party offering the report shall make the healthcare provider*
2 *available for cross-examination testimony by deposition not later than*
3 *seven days before the matter is set for hearing, and each cross-examiner*
4 *shall compensate the healthcare provider for the portion of testimony*
5 *obtained in an amount not to exceed a rate of reasonable compensation*
6 *taking into consideration the specialty practiced by the healthcare*
7 *provider. Cross-examination testimony shall not bind the cross-examining*
8 *party. Any testimony obtained by the offering party shall be at that party's*
9 *expense on a proportional basis, including the deposition fee of the*
10 *healthcare provider;*

11 (3) *upon request of any party, the party offering a medical report in*
12 *evidence shall also make available copies of diagnostic studies obtained*
13 *by or relied upon by the healthcare provider; and*

14 (4) *a party may, within ten days after receipt of a notice of intent to*
15 *submit a medical report in evidence, dispute whether a report meets the*
16 *requirements of a medical report as defined in subsection (d) by providing*
17 *written objections to the offering party stating the grounds for the dispute.*
18 *At the request of any party, the administrative law judge shall rule upon*
19 *such objections at the pretrial hearing and determine whether the report*
20 *meets the requirements and the admissibility of the report or portions*
21 *thereof. If no objections are filed the report shall be admissible, and any*
22 *objections to its admission are waived. Nothing in this subsection shall*
23 *prevent the parties from agreeing to admit medical reports or records by*
24 *consent.*

25 (d) *For purposes of subsection (c), "medical report" means the report*
26 *of a healthcare provider providing the healthcare provider's qualifications*
27 *and the patient's history, complaints, details of the findings of any*
28 *laboratory, x-ray and all other technical examinations, diagnosis,*
29 *prognosis, nature of disability and an estimate of the percentage of*
30 *functional impairment. An element or elements of a medical report may be*
31 *met by the healthcare provider's records.*

32 Sec. 2. K.S.A. 2020 Supp. 44-516 is hereby repealed.

33 Sec. 3. This act shall take effect and be in force from and after its
34 publication in the statute book.