

By: Representatives Clarke, Banks, Buck,
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To: Insurance

HOUSE BILL NO. 880

1 AN ACT TO AMEND SECTION 71-3-15, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT UNDER THE WORKERS' COMPENSATION LAW, AN INJURED
3 EMPLOYEE SHALL HAVE THE RIGHT TO SELECT THE SPECIALISTS,
4 PRACTITIONERS OR HEALTH CARE PROVIDERS OF HIS CHOOSING WHO PROVIDE
5 THE TYPE OF TREATMENT THAT IS PRESCRIBED BY HIS CHOSEN PHYSICIAN;
6 AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** Section 71-3-15, Mississippi Code of 1972, is
9 amended as follows:

10 71-3-15. (1) The employer shall furnish such medical,
11 surgical, and other attendance or treatment, nurse and hospital
12 service, medicine, crutches, artificial members, and other
13 apparatus for such period as the nature of the injury or the
14 process of recovery may require. The injured employee shall have
15 the right to accept the services furnished by the employer or, in
16 his discretion, to select one (1) competent physician of his
17 choosing and to select such other specialists, practitioners or
18 health care providers of his choosing who provide the type of
19 treatment that is prescribed by his chosen physician * * *.
20 Referrals by the chosen physician shall be limited to one (1)
21 physician within a specialty or subspecialty area. Except in an
22 emergency requiring immediate medical attention, any additional
23 selection of physicians by the injured employee or further
24 referrals must be approved by the employer, if self-insured, or
25 the carrier, before obtaining the services of the physician at the
26 expense of the employer or carrier. If denied, the injured
27 employee may apply to the commission for approval of the
28 additional selection or referral, and if the commission determines
29 that the request is reasonable, the employee may be authorized to

30 obtain that treatment at the expense of the employer or carrier.
31 Approval by the employer or carrier does not require approval by
32 the commission. A physician to whom the employee is referred by
33 his employer shall not constitute the employee's selection, unless
34 the employee, in writing, accepts the employer's referral as his
35 own selection. If the employer desires, he may have the employee
36 examined by a physician other than of the employee's choosing for
37 the purpose of evaluating temporary or permanent disability or
38 medical treatment being rendered under such reasonable terms and
39 conditions as may be prescribed by the commission. If at any time
40 during that period, the employee unreasonably refuses to submit to
41 medical or surgical treatment, the commission shall, by order,
42 suspend the payment of further compensation during such time as
43 the refusal continues, and no compensation shall be paid at any
44 time during the period of the suspension; however, no claim for
45 medical or surgical treatment shall be valid and enforceable, as
46 against the employer, unless within twenty (20) days following the
47 first treatment, the physician or provider giving the
48 treatment * * * furnishes to the employer, if self-insured, or its
49 carrier, a preliminary report of the injury and treatment, on a
50 form or in a format approved by the commission. Later reports of
51 the injury and treatment must be submitted at least every thirty
52 (30) days thereafter until such time as a final report has been
53 made. Reports that are required to be filed under this subsection
54 shall be furnished by the medical provider to the employer or
55 carrier, and it shall be the responsibility of the employer or
56 carrier receiving those reports to promptly furnish copies to the
57 commission. The commission may, in its discretion, excuse the
58 failure to furnish the reports within the time prescribed in this
59 subsection if it finds good cause to do so, and may, upon request
60 of any party in interest, order or direct the employer or carrier
61 to pay the reasonable value of medical services rendered to the
62 employee.

63 (2) Whenever in the opinion of the commission a physician
64 has not correctly estimated the degree of permanent disability or
65 the extent of the temporary disability of an injured employee, the
66 commission shall have the power to cause the employee to be
67 examined by a physician selected by the commission, and to obtain
68 from the physician a report containing his estimate of the
69 disabilities. The commission shall have the power, in its
70 discretion, to charge the cost of the examination to the employer,
71 if he is a self-insurer, or to the insurance company that is
72 carrying the risk.

73 (3) In carrying out this section, the commission shall
74 establish an appropriate medical provider fee schedule, medical
75 cost containment system and utilization review that incorporates
76 one or more medical review panels to determine the reasonableness
77 of charges and the necessity for the services, and limitations on
78 fees to be charged by medical providers for testimony and copying
79 or completion of records and reports and other provisions that, at
80 the discretion of the commission, are necessary to encompass a
81 complete medical cost containment program. The commission may
82 contract with a private organization or organizations to establish
83 and implement such a medical cost containment system and fee
84 schedule, with the cost for administering such a system to be paid
85 out of the administrative expense fund as provided in this
86 chapter. All fees and other charges for that treatment or service
87 shall be limited to such charges as prevail in the same community
88 for similar treatment and shall be subject to regulation by the
89 commission. No medical bill shall be paid to any doctor until all
90 forms and reports required by the commission have been filed. Any
91 employee receiving treatment or service under the provisions of
92 this chapter may not be held responsible for any charge for that
93 treatment or service, and no doctor, hospital or other recognized
94 medical provider shall attempt to bill, charge or otherwise
95 collect from the employee any amount greater than or in excess of

96 the amount paid by the employer, if self-insured, or its workers'
97 compensation carrier. Any dispute over the amount charged for
98 service rendered under the provisions of this chapter, or over the
99 amount of reimbursement for services rendered under the provisions
100 of this chapter, shall be limited to and resolved between the
101 provider and the employer or carrier in accordance with the fee
102 dispute resolution procedures adopted by the commission.

103 (4) The liability of an employer for medical treatment
104 as * * * provided in this section shall not be affected by the
105 fact that his employee was injured through the fault or negligence
106 of a third party, not in the same employ, provided the injured
107 employee was engaged in the scope of his employment when injured.
108 The employer shall, however, have a cause of action against the
109 third party to recover any amounts paid by him for the medical
110 treatment.

111 (5) An injured worker who believes that his best interest
112 has been prejudiced by the findings of the physician designated by
113 the employer or carrier shall have the privilege of a medical
114 examination by a physician of his own choosing, at the expense of
115 the carrier or employer. The examination may be had at any time
116 after injury and before the closing of the case, provided that the
117 charge shall not exceed One Hundred Dollars (\$100.00) and shall be
118 paid by the carrier or employer if the previous medical findings
119 are upset, but paid by the employee if previous medical findings
120 are confirmed.

121 (6) Medical and surgical treatment as provided in this
122 section shall not be deemed to be privileged insofar as carrying
123 out the provisions of this chapter is concerned. All findings
124 pertaining to a second opinion medical examination at the instance
125 of the employer shall be reported as * * * required in this
126 section within fourteen (14) days of the examination, except that
127 copies thereof shall also be furnished by the employer or carrier
128 to the employee. All findings pertaining to an independent

129 medical examination by order of the commission shall be reported
130 as provided in the order for the examination.

131 (7) Any medical benefits paid by reason of any accident or
132 health insurance policy or plan paid for by the employer, which
133 were for expenses of medical treatment under this section, are,
134 upon notice to the carrier before payment by it, subject to
135 subrogation in favor of the accident or health insurance company
136 to the extent of its payment for medical treatment under this
137 section. Reimbursement to the accident or health insurance
138 company by the carrier or employer, to the extent of the
139 reimbursement, shall constitute payment by the employer or carrier
140 of medical expenses under this section. Under no circumstances
141 shall any subrogation be had by any insurance company against any
142 compensation benefits paid under this chapter.

143 **SECTION 2.** This act shall take effect and be in force from
144 and after July 1, 2004.