AN ACT concerning workers compensation; relating to selection of healthcare provider; unauthorized medical treatment; per diem benefits for injured workers for medical treatment; amending K.S.A. 2018 Supp. 44-510h and 44-515 and repealing the existing sections.

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

Section 1. K.S.A. 2018 Supp. 44-510h is hereby amended to read as follows: 44-510h. (a) It shall be the duty of the employer to provide and pay for the services of a healthcare provider selected by the employee, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses and an amount per day or part thereof to defray the employee's expenses computed in accordance with subsection (a) of K.S.A. 44-515(a), and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

(b) (1) If the director finds, upon application of an injured employee any party, that the services of the healthcare provider furnished as provided in subsection (a) and rendered on behalf of the injured employee are not satisfactory, the director may authorize the appointment of some other healthcare provider. In any such case, the employer shall submit the names of two healthcare providers who, if possible given the availability of local healthcare providers, are not associated in practice together. The injured employee may select one from the list who shall be the authorized treating healthcare provider. If the injured employee is unable to obtain satisfactory services from any of the healthcare providers provider submitted by the employer and selected by the employee under this paragraph, either party or both parties may request the director to select a treating healthcare provider.

(2) Without application or approval, and in addition to the services of a healthcare provider selected in accordance with subsection (a) or (b)(1), an employee may consult a healthcare provider of the employee's choice for the purpose of examination, diagnosis or treatment, but the employer shall only be liable for the fees and charges of such healthcare provider up
to a total amount of $500 to $1,500. The amount allowed for such examination, diagnosis or treatment shall not be used to obtain a functional impairment rating. Any medical opinion obtained in violation of this prohibition shall not be admissible in any claim proceedings under the workers compensation act.

(c) An injured employee whose injury or disability has been established under the workers compensation act may rely, if done in good faith, solely or partially on treatment by prayer or spiritual means in accordance with the tenets of practice of a church or religious denomination without suffering a loss of benefits subject to the following conditions:

(1) The employer or the employer's insurance carrier agrees thereto in writing either before or after the injury;

(2) the employee submits to all physical examinations required by the workers compensation act;

(3) the cost of such treatment shall be paid by the employee unless the employer or insurance carrier agrees to make such payment;

(4) the injured employee shall be entitled only to benefits that would reasonably have been expected had such employee undergone medical or surgical treatment; and

(5) the employer or insurance carrier that made an agreement under paragraph (1) or (3) of this subsection may withdraw from the agreement on 10 days' written notice.

(d) In any employment to which the workers compensation act applies, the employer shall be liable to each employee who is employed as a duly authorized law enforcement officer, firefighter, driver of an ambulance as defined in subsection (b) of K.S.A. 65-6112, and amendments thereto, an ambulance attendant as defined in subsection (d) of K.S.A. 65-6112, and amendments thereto, or a member of a regional emergency medical response team as provided in K.S.A. 48-928, and amendments thereto, including any person who is serving on a volunteer basis in such capacity, for all reasonable and necessary preventive medical care and treatment for hepatitis to which such employee is exposed under circumstances arising out of and in the course of employment.

(e) It is presumed that the employer's obligation to provide the services of a healthcare provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses and an amount per day or part thereof to defray the employee's expenses computed in accordance with subsection (a) of K.S.A. 44-515(a), and
amendments thereto, shall terminate upon the employee reaching maximum medical improvement. Such presumption may be overcome with medical evidence that it is more probably true than not that additional medical treatment will be necessary after such time as the employee reaches maximum medical improvement. The term "medical treatment" as used in this subsection—(e) means only that treatment provided or prescribed by a licensed healthcare provider and shall not include home exercise programs or over-the-counter medications.

Sec. 2. K.S.A. 2018 Supp. 44-515 is hereby amended to read as follows: 44-515. (a) After an employee sustains an injury, the employee shall, upon request of the employer, submit to an examination at any reasonable time and place by any one or more reputable healthcare providers, selected by the employer, and shall so submit to an examination thereafter at intervals during the pendency of such employee's claim for compensation, upon the request of the employer, but the employee shall not be required to submit to an examination oftener than twice in any one month, unless required to do so in accordance with such orders as may be made by the director. All benefits shall be suspended to an employee who refuses to submit to such examination or examinations until such time as the employee complies with the employer's request. The suspension of benefits shall occur even if the employer is under preliminary order to provide such benefits. Any employee so submitting to an examination or such employee's authorized representative shall upon written request be entitled to receive and shall have delivered to such employee a copy of the healthcare provider's report of such examination within a reasonable amount of time after such examination, which report shall be identical to the report submitted to the employer. If the employee is notified to submit to an examination before any healthcare provider in any town or city other than the residence of the employee at the time that the employee received an injury, the employee shall not be required to submit to an examination until such employee has been furnished with sufficient funds to pay for transportation to and from the place of examination at the rate prescribed for compensation of state officers and employees under K.S.A. 75-3203a, and amendments thereto, for each mile actually and necessarily traveled to and from the place of examination, any turnpike or other tolls and any parking fees actually and necessarily incurred, if a private conveyance is used, or actual transportation cost if a a private conveyance is not used, and which mileage allowance shall not be subject to the restrictions relating to the use of vehicles prescribed by K.S.A. 75-3203 and 75-3203a, and amendments thereto, and in addition the sum of $15 amount prescribed for members of the legislature under K.S.A. 46-137a(b), and amendments thereto, per day for each—in full—day or part thereof that the employee was required to be away from such employee's residence or
place of employment to defray such employee's board and lodging and living expenses. The employee shall not be liable for any fees or charge of any healthcare provider selected by the employer for making any examination of the employee. The employer or the insurance carrier of the employer of any employee making claim for compensation under the workers compensation act shall be entitled to a copy of the report of any healthcare provider who has examined or treated the employee in regard to such claim upon written request to the employee or the employee's attorney within a reasonable amount of time after such examination or treatment, which report shall be identical to the report submitted to the employee or the employee's attorney.  

(b) If the employee requests, such employee shall be entitled to have healthcare providers of such employee's own selection present at the time to participate in such examination.  

(c) Unless a report is furnished as provided in subsection (a) and unless there is a reasonable opportunity thereafter for the healthcare providers selected by the employee to participate in the examination in the presence of the healthcare providers selected by the employer, the healthcare providers selected by the employer or employee shall not be permitted afterwards to give evidence of the condition of the employee at the time such examination was made.  

(d) Except as provided in this section, there shall be no disqualification or privilege preventing the furnishing of reports by or the testimony of any healthcare provider who actually makes an examination or treats an injured employee, prior to or after an injury.  

(e) Any healthcare provider's opinion, whether the provider is a treating healthcare provider or is an examining healthcare provider, regarding a claimant's need for medical treatment, inability to work, prognosis, diagnosis and disability rating shall be considered and given appropriate weight by the trier of fact together with consideration of all other evidence.

Sec. 3. K.S.A. 2018 Supp. 44-510h and 44-515 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.