

## WEST VIRGINIA CODE: §23-4-3C

### §23-4-3c. Suspension or termination of providers of health care.

(a) The commission may suspend for up to three years or permanently terminate the right of any health care provider, including a provider of rehabilitation services within the meaning of section nine of this article, to obtain payment for services rendered to injured employees:

(1) If the commission finds that the health care provider is regularly providing to injured employees health care that is excessive, medically unreasonable or unethical, which shall include abusing the workers' compensation system in the treatment provided to injured employees or in its billing practices;

(2) If the commission finds that a health care provider is attempting to make any charge or charges against the injured employee or any other person, firm or corporation which would result in a total charge for any treatment rendered in excess of the maximum amount set by the commission, in violation of section three of this article;

(3) If the commission determines that the health care provider has had his or her license to practice suspended or terminated by the appropriate authority in this state or in another state;

(4) If the commission determines that the health care provider has been convicted of any crime in relation to his or her practice, or any felony; or

(5) If the commission determines that the health care provider has made medically unsupported recommendations regarding a percentage of disability or has prescribed medically unsupported treatment including medication. The rules promulgated under this section shall establish criteria for determining whether recommendations or treatment are medically unsupported.

The executive director shall consult with medical experts, including the health care advisory panel established pursuant to section three-b of this article, for purposes of determining whether a health care provider should be suspended or terminated pursuant to this section.

(b) Upon the determination by the executive director that there is probable cause to believe that a health care provider should be suspended or terminated pursuant to this section, the executive director shall provide the health care provider with written notice stating the nature of the charges against the health care provider and the time and place of a hearing. Upon issuance of the notice and due consideration of the executive director's fiduciary duties, the executive director may immediately suspend payment to the health care provider pending the final order of suspension or termination. The health care provider shall appear to show cause why the health care provider's right to receive payment under this chapter should not be suspended or terminated. At the hearing the health care provider shall be

afforded an opportunity to review the evidence, to cross-examine the witnesses, and present testimony and enter evidence in support of its position. The hearing shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. The hearing may be conducted by the executive director or a hearing officer appointed by the executive director. The executive director or hearing officer has the power to subpoena witnesses, papers, records, documents and other data and things in connection with the proceeding under this subsection and to administer oaths or affirmations in the hearing. If, after reviewing the record of the hearing, the executive director determines that the right of the health care provider to obtain payment under this article should be suspended for a specified period of time or should be permanently terminated, the executive director shall issue a final order suspending or terminating the right of the health care provider to obtain payment for services under this article. The order shall set forth findings of fact and conclusions of law in support of the decision. The order shall be mailed to the health care provider by certified mail, return receipt requested. Any appeal by the health care provider shall be brought in the circuit court of Kanawha County or in the county in which the provider's principal place of business is located. The scope of the court's review of the final order shall be as provided in section four, article five, chapter twenty-nine-a of this code. The provider may be suspended or terminated, based upon the final order of the executive director or hearing officer, pending final disposition of any appeal. The final order may be stayed by the circuit court after hearing, but shall not be stayed in or as a result of any ex parte proceeding. If the health care provider does not appeal the final order within thirty days, it is final.

(c) No payment shall be made to a health care provider or to an injured employee for services provided by a health care provider after the effective date of a final order terminating or suspending the health care provider: Provided, That nothing in this subsection shall prohibit payment by the executive director or self-insured employer to a suspended or terminated health care provider for medical services rendered where the medical services were rendered to an injured employee in an emergency situation. The suspended or terminated provider may not make any charge or charges for any services provided against the injured employee unless the injured employee, before any services are rendered, is given notice by the provider in writing that the provider does not participate in the workers' compensation program and that the injured employee will be solely responsible for all payments to the provider and unless the injured employee also signs a written consent, before any services are rendered, to make payment directly and to waive any right to reimbursement from the executive director or the self-insured employer. The written consent and waiver signed by the injured employee shall be filed by the provider with the executive director and shall be made a part of the claim file.

(d) The executive director shall notify each claimant, whose duly authorized treating physician or other health care provider has been suspended or terminated pursuant to this section, of the suspension or termination of the provider's rights to obtain payment under this chapter and shall assist the claimant in arranging for transfer of his or her care to another physician or provider.

(e) Each suspended or terminated provider shall post in the provider's public waiting area or areas a written notice, in the form required by the executive director, of the suspension or termination of the provider's rights to obtain payment under this chapter.

(f) A suspended provider may apply for reinstatement at the end of the term of suspension.

(g) The board of managers shall promulgate rules for the purpose of implementing this section.