

WORKERS' COMPENSATION REVISIONS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies provisions related to the Workers' Compensation Act and the Utah Occupational Disease Act.

Highlighted Provisions:

This bill:

- ▶ addresses when an employer of a contractor, subcontractor, or their employees is protected by the exclusive remedy of workers' compensation;
- ▶ defines terms related to managed health care programs and provides for consistent use of terms;
- ▶ expands the persons with whom and purposes for which contracts may be made in a managed health care workers' compensation setting;
- ▶ addresses workplace accident and injury reduction programs;
- ▶ expands requirements for a workers' compensation carrier's designated agent;
- ▶ gives the commission the exclusive jurisdiction and authority to determine the reasonableness and to adjudicate the collection of certain amounts related to workers' compensation benefits;
- ▶ addresses treatment of hospital services for purposes of workers' compensation;
- ▶ addresses reporting requirements;
- ▶ addresses contracts with providers of health services relating to the pricing of goods and services;
- ▶ clarifies burden of proof in permanent total disability claims;
- ▶ addresses who may file an application for a hearing;

- 30 ▶ deletes out-of-date language;
- 31 ▶ makes technical changes; and
- 32 ▶ provides for legislative intent.

33 **Monies Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

- 39 **34A-2-103**, as last amended by Chapter 71, Laws of Utah 2005
- 40 **34A-2-111**, as renumbered and amended by Chapter 375, Laws of Utah 1997
- 41 **34A-2-407**, as last amended by Chapter 113, Laws of Utah 2004
- 42 **34A-2-413**, as last amended by Chapter 261, Laws of Utah 2005
- 43 **34A-2-801**, as last amended by Chapter 67, Laws of Utah 2003
- 44 **34A-3-108**, as last amended by Chapter 205 and renumbered and amended by Chapter
- 45 375, Laws of Utah 1997

46 ENACTS:

- 47 **34A-2-113**, Utah Code Annotated 1953

48 **Uncodified Material Affected:**

49 ENACTS UNCODIFIED MATERIAL



51 *Be it enacted by the Legislature of the state of Utah:*

52 Section 1. Section **34A-2-103** is amended to read:

53 **34A-2-103. Employers enumerated and defined -- Regularly employed --**

54 **Statutory employers.**

55 (1) (a) The state, and each county, city, town, and school district in the state are
56 considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.

57 (b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah

58 Occupational Disease Act prescribed in Sections 34A-2-105 and 34A-3-102, the state is
59 considered to be a single employer and includes any office, department, agency, authority,
60 commission, board, institution, hospital, college, university, or other instrumentality of the
61 state.

62 (2) (a) Except as provided in Subsection (4), each person, including each public utility
63 and each independent contractor, who regularly employs one or more workers or operatives in
64 the same business, or in or about the same establishment, under any contract of hire, express or
65 implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah
66 Occupational Disease Act.

67 (b) As used in this Subsection (2):

68 [(a)] (i) "Independent contractor" means any person engaged in the performance of any
69 work for another who, while so engaged, is:

70 [(i)] (A) independent of the employer in all that pertains to the execution of the work;

71 [(ii)] (B) not subject to the routine rule or control of the employer;

72 [(iii)] (C) engaged only in the performance of a definite job or piece of work; and

73 [(iv)] (D) subordinate to the employer only in effecting a result in accordance with the
74 employer's design.

75 [(b)] (ii) "Regularly" includes all employments in the usual course of the trade,
76 business, profession, or occupation of the employer, whether continuous throughout the year or
77 for only a portion of the year.

78 (3) (a) The client company in an employee leasing arrangement under Title 58, Chapter
79 59, Professional Employer Organization Registration Act, is considered the employer of leased
80 employees and shall secure workers' compensation benefits for them by complying with
81 Subsection 34A-2-201(1) or (2) and commission rules.

82 (b) [~~Insurance carriers~~] An insurance carrier may underwrite workers' compensation
83 secured in accordance with Subsection (3)(a) showing the leasing company as the named
84 insured and each client company as an additional insured by means of individual endorsements.

85 (c) Endorsements shall be filed with the division as directed by commission rule.

86 (d) The division shall promptly inform the Division of Occupation and Professional
87 Licensing within the Department of Commerce if the division has reason to believe that an
88 employee leasing company is not in compliance with Subsection 34A-2-201(1) or (2) and
89 commission rules.

90 (4) A domestic employer who does not employ one employee or more than one
91 employee at least 40 hours per week is not considered an employer under this chapter and
92 Chapter 3, Utah Occupational Disease Act.

93 (5) (a) As used in this Subsection (5):

94 (i) (A) "agricultural employer" means a person who employs agricultural labor as
95 defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in
96 Subsection 35A-4-206(3); and

97 (B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a
98 member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural
99 employer is a corporation, partnership, or other business entity, "agricultural employer" means
100 an officer, director, or partner of the business entity;

101 (ii) "employer's immediate family" means:

102 (A) an agricultural employer's:

103 (I) spouse;

104 (II) grandparent;

105 (III) parent;

106 (IV) sibling;

107 (V) child;

108 (VI) grandchild;

109 (VII) nephew; or

110 (VIII) niece;

111 (B) a spouse of any person provided in Subsection (5)(a)(ii)(A)(II) through (VIII); or

112 (C) an individual who is similar to those listed in Subsections (5)(a)(ii)(A) or (B) as
113 defined by rules of the commission; and

114 (iii) "nonimmediate family" means a person who is not a member of the employer's
115 immediate family.

116 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
117 agricultural employer is not considered an employer of a member of the employer's immediate
118 family.

119 (c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
120 agricultural employer is not considered an employer of a nonimmediate family employee if:

121 (i) for the previous calendar year the agricultural employer's total annual payroll for all
122 nonimmediate family employees was less than \$8,000; or

123 (ii) (A) for the previous calendar year the agricultural employer's total annual payroll
124 for all nonimmediate family employees was equal to or greater than \$8,000 but less than
125 \$50,000; and

126 (B) the agricultural employer maintains insurance that covers job-related injuries of the
127 employer's nonimmediate family employees in at least the following amounts:

128 (I) \$300,000 liability insurance, as defined in Section 31A-1-301; and

129 (II) \$5,000 for health care benefits similar to benefits under health care insurance as
130 defined in Section 31A-1-301.

131 (d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
132 agricultural employer is considered an employer of a nonimmediate family employee if:

133 (i) for the previous calendar year the agricultural employer's total annual payroll for all
134 nonimmediate family employees is equal to or greater than \$50,000; or

135 (ii) (A) for the previous year the agricultural employer's total payroll for nonimmediate
136 family employees was equal to or exceeds \$8,000 but is less than \$50,000; and

137 (B) the agricultural employer fails to maintain the insurance required under Subsection
138 (5)(c)(ii)(B).

139 (6) An employer of agricultural laborers or domestic servants who is not considered an
140 employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under
141 this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

142 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and

143 (b) the rules of the commission.

144 (7) (a) If any person who is an employer procures any work to be done wholly or in
145 part for the employer by a contractor over whose work the employer retains supervision or
146 control, and this work is a part or process in the trade or business of the employer, the
147 contractor, all persons employed by the contractor, all subcontractors under the contractor, and
148 all persons employed by any of these subcontractors, are considered employees of the original
149 employer for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.

150 (b) Any person who is engaged in constructing, improving, repairing, or remodelling a
151 residence that the person owns or is in the process of acquiring as the person's personal
152 residence may not be considered an employee or employer solely by operation of Subsection
153 (7)(a).

154 (c) A partner in a partnership or an owner of a sole proprietorship [~~may~~] is not [~~be~~]
155 considered an employee under Subsection (7)(a) if the employer who procures work to be done
156 by the partnership or sole proprietorship obtains and relies on either:

157 (i) a valid certification of the partnership's or sole proprietorship's compliance with
158 Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of
159 workers' compensation benefits pursuant to Section 34A-2-201; or

160 (ii) if a partnership or sole proprietorship with no employees other than a partner of the
161 partnership or owner of the sole proprietorship, a workers' compensation policy issued by an
162 insurer pursuant to Subsection 31A-21-104(8) stating that:

163 (A) the partnership or sole proprietorship is customarily engaged in an independently
164 established trade, occupation, profession, or business; and

165 (B) the partner or owner personally waives the partner's or owner's entitlement to the
166 benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the
167 partnership or sole proprietorship.

168 (d) A director or officer of a corporation [~~may~~] is not [~~be~~] considered an employee
169 under Subsection (7)(a) if the director or officer is excluded from coverage under Subsection

170 34A-2-104(4).

171 (e) A contractor or subcontractor is not an employee of the employer under Subsection
172 (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains
173 and relies on either:

174 (i) a valid certification of the contractor's or subcontractor's compliance with Section
175 34A-2-201; or

176 (ii) if a partnership, corporation, or sole proprietorship with no employees other than a
177 partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a
178 workers' compensation policy issued by an insurer pursuant to Subsection 31A-21-104(8)
179 stating that:

180 (A) the partnership, corporation, or sole proprietorship is customarily engaged in an
181 independently established trade, occupation, profession, or business; and

182 (B) the partner, corporate officer, or owner personally waives the partner's, corporate
183 officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah
184 Occupational Disease Act, in the operation of the partnership's, corporation's, or sole
185 proprietorship's enterprise under a contract of hire for services.

186 (f) (i) For purposes of this Subsection (7)(f), "eligible employer" means a person who:

187 (A) is an employer; and

188 (B) procures work to be done wholly or in part for the employer by a contractor,
189 including:

190 (I) all persons employed by the contractor;

191 (II) all subcontractors under the contractor; and

192 (III) all persons employed by any of these subcontractors.

193 (ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of
194 Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of
195 Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor
196 or subcontractor described in Subsection (7)(f)(i)(B).

197 (iii) Subsection (7)(f)(ii) applies if the eligible employer:

198 (A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an
199 original employer under Subsection (7)(a) because the contractor or subcontractor fails to
200 comply with Section 34A-2-201;

201 (B) (I) secures the payment of workers' compensation benefits for the contractor or
202 subcontractor pursuant to Section 34A-2-201;

203 (II) procures work to be done that is part or process of the trade or business of the
204 eligible employer; and

205 (III) does the following with regards to a written workplace accident and injury
206 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

207 (Aa) adopts the workplace accident and injury reduction program;

208 (Bb) posts the workplace accident and injury reduction program at the work site at
209 which the eligible employer procures work; and

210 (Cc) enforces the workplace accident and injury reduction program according to the
211 terms of the workplace accident and injury reduction program; or

212 (C) (I) obtains and relies on:

213 (Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);

214 (Bb) a workers' compensation policy described in Subsection (7)(c)(ii) or (7)(e)(ii); or

215 (Cc) proof that a director or officer is excluded from coverage under Subsection
216 34A-2-104(4);

217 (II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits
218 if the contractor or subcontractor fails to comply with Section 34A-2-201;

219 (III) procures work to be done that is part or process in the trade or business of the
220 eligible employer; and

221 (IV) does the following with regards to a written workplace accident and injury
222 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

223 (Aa) adopts the workplace accident and injury reduction program;

224 (Bb) posts the workplace accident and injury reduction program at the work site at
225 which the eligible employer procures work; and

226 (Cc) enforces the workplace accident and injury reduction program according to the
227 terms of the workplace accident and injury reduction program.

228 Section 2. Section **34A-2-111** is amended to read:

229 **34A-2-111. Managed health care programs -- Other safety programs.**

230 (1) As used in this section:

231 (a) (i) "Health care provider" means a person who furnishes treatment or care to
232 persons who have suffered bodily injury.

233 (ii) "Health care provider" includes:

234 (A) a hospital;

235 (B) a clinic;

236 (C) an emergency care center;

237 (D) a physician;

238 (E) a nurse;

239 (F) a nurse practitioner;

240 (G) a physicians' assistant;

241 (H) a paramedic; or

242 (I) an emergency medical technician.

243 (b) "Physician" means any health care provider licensed under:

244 (i) Title 58, Chapter 5a, Podiatric Physician Licensing Act;

245 (ii) Title 58, Chapter 24a, Physical Therapist Practice Act;

246 (iii) Title 58, Chapter 67, Utah Medical Practice Act;

247 (iv) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

248 (v) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;

249 (vi) Title 58, Chapter 70a, Physician Assistant Act;

250 (vii) Title 58, Chapter 71, Naturopathic Physician Practice Act;

251 (viii) Title 58, Chapter 72, Acupuncture Licensing Act; and

252 (ix) Title 58, Chapter 73, Chiropractic Physician Practice Act.

253 (c) "Preferred health care facility" means a facility:

254 (i) that is a health care facility as defined in Section 26-21-2; and

255 (ii) designated under a managed health care program.

256 (d) "Preferred provider physician" means a physician designated under a managed
 257 health care program.

258 (e) "Self-insured employer" is as defined in Section 34A-2-201.5.

259 ~~[(+)]~~ (2) (a) [Self-insured employers] A self-insured employer and [workers'
 260 compensation carriers] insurance carrier may adopt a managed health care program to provide
 261 employees the benefits of this chapter or Chapter 3, Utah Occupational Disease Act, beginning
 262 January 1, 1993. The plan [may include one or more of the following:] shall comply with this
 263 Subsection (2).

264 ~~[(a)]~~ (b) (i) A preferred provider program may be developed [so long as] if the
 265 preferred provider program allows a selection by the employee of more than one physician in
 266 the health care specialty required for treating the specific problem of an industrial patient. [H]

267 (ii) (A) Subject to the requirements of this section, if a preferred provider program is
 268 developed by an [employer,] insurance carrier[;] or self-insured [entity] employer, [employees
 269 are] an employee is required to use:

270 (I) preferred provider physicians; and

271 (II) [medical] preferred health care facilities.

272 (B) If a preferred provider program is not developed, an [industrial claimant] employee
 273 may have free choice of health care providers. [Failure of an industrial claimant to use a
 274 preferred health care facility as defined in Section 26-21-2 as part of a preferred provider
 275 program, or failure to initially receive treatment from a preferred physician,]

276 (iii) The failure to do the following may, if the [claimant] employee has been notified
 277 of the preferred provider program, result in the [claimant] employee being obligated for any
 278 charges in excess of the preferred provider allowances[;]:

279 (A) use a preferred health care facility; or

280 (B) initially receive treatment from a preferred provider physician.

281 ~~[(ii)]~~ (iv) Notwithstanding the requirements of [Subsection (1)(a)(i)] Subsections

282 (2)(b)(i) through (iii), a self-insured [~~entity~~] employer or other employer may:

283 (A) (I) (Aa) have its own health care facility on or near its worksite or premises; and

284 (Bb) continue to contract with other health care providers; or

285 ~~(B)~~ (II) operate a health care facility; and

286 (B) require employees to first seek treatment at the provided health care or contracted
287 facility.

288 ~~(iii)~~ (v) An employee [~~of an employer using~~] subject to a preferred provider program
289 or employed by an employer having its own health care facility may procure the services of any
290 qualified [~~practitioner~~] health care provider:

291 (A) for emergency treatment, if a physician employed in the preferred provider
292 program or at the health care facility is not available for any reason;

293 (B) for conditions the employee in good faith believes are nonindustrial; or

294 (C) when an employee living in a rural area would be unduly burdened by traveling to:

295 (I) a preferred provider physician; or

296 (II) preferred health care facility.

297 ~~(b)~~ (c) (i) [~~Other~~] (A) An employer, insurance carrier, or self-insured employer may
298 enter into contracts with [~~medical~~] the following for the purposes listed in Subsection

299 (2)(c)(i)(B):

300 (I) health care providers [~~or~~];

301 (II) medical review organizations; or

302 (III) vendors of medical goods, services, and supplies including medicines.

303 (B) A contract described in Subsection (1)(c)(i)(A) may be made for the following
304 purposes:

305 ~~(A)~~ (I) insurance carriers or self-insured employers may form groups in contracting
306 for managed health care services with [~~medical~~] health care providers;

307 ~~(B)~~ (II) peer review;

308 ~~(C)~~ (III) methods of utilization review;

309 ~~(D)~~ (IV) use of case management; [~~and~~]

310 ~~[(E)]~~ (V) bill audit[-];
311 (VI) discounted purchasing; and
312 (VII) the establishment of a reasonable health care treatment protocol program
313 including the implementation of medical treatment and quality care guidelines that are:
314 (Aa) scientifically based;
315 (Bb) peer reviewed; and
316 (Cc) consistent with standards for health care treatment protocol programs that the
317 commission shall establish by rules made in accordance with Title 63, Chapter 46a, Utah
318 Administrative Rulemaking Act, including the authority of the commission to approve a health
319 care treatment protocol program before it is used or disapprove a health care treatment protocol
320 program that does not comply with this Subsection (2)(c)(i)(B)(VII).

321 (ii) ~~[Insurance carriers]~~ An insurance carrier may make any or all of the factors in
322 Subsection ~~[(1)(b)]~~ (2)(c)(i) a condition of insuring ~~[entities in their]~~ an entity in its insurance
323 contract.

324 ~~[(2) As used in Subsection (1), "physician" means any health care provider licensed~~
325 ~~under:]~~

326 ~~[(a) Title 58, Chapter 5a, Podiatric Physician Licensing Act;]~~
327 ~~[(b) Title 58, Chapter 24a, Physical Therapist Practice Act;]~~
328 ~~[(c) Title 58, Chapter 67, Utah Medical Practice Act;]~~
329 ~~[(d) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;]~~
330 ~~[(e) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;]~~
331 ~~[(f) Title 58, Chapter 70, Physician Assistant Practice Act;]~~
332 ~~[(g) Title 58, Chapter 71, Naturopathic Physician Practice Act;]~~
333 ~~[(h) Title 58, Chapter 72, Acupuncture Licensing Act; and]~~
334 ~~[(i) Title 58, Chapter 73, Chiropractic Physician Practice Act.]~~

335 ~~[(3) Each workers' compensation insurance carrier writing insurance in this state shall~~
336 ~~maintain a designated agent in this state registered with the division.]~~

337 ~~[(4)]~~ (3) (a) In addition to a managed health care ~~[plans]~~ program, an insurance carrier

338 may require an employer to establish a work place safety program if the employer:

339 (i) has an experience modification factor of 1.00 or higher, as determined by the
340 National Council on Compensation Insurance; or

341 (ii) is determined by the insurance carrier to have a three-year loss ratio of 100% or
342 higher.

343 (b) A workplace safety program may include:

344 (i) a written workplace accident and injury reduction program that:

345 (A) promotes safe and healthful working conditions~~[-which]; and~~

346 (B) is based on clearly stated goals and objectives for meeting those goals; and

347 (ii) a documented review of the workplace accident and injury reduction program each
348 calendar year delineating how procedures set forth in the program are met.

349 ~~[(5)]~~ (c) A written workplace accident and injury reduction program permitted under
350 Subsection ~~[(4)]~~ (3)(b)(i) should describe:

351 ~~[(a)]~~ (i) how managers, supervisors, and employees are responsible for implementing
352 the program;

353 ~~[(b)]~~ (ii) how continued participation of management will be established, measured,
354 and maintained;

355 ~~[(c)]~~ (iii) the methods used to identify, analyze, and control new or existing hazards,
356 conditions, and operations;

357 ~~[(d)]~~ (iv) how the program will be communicated to all employees so that the
358 employees are informed of work-related hazards and controls;

359 ~~[(e)]~~ (v) how workplace accidents will be investigated and corrective action
360 implemented; and

361 ~~[(f)]~~ (vi) how safe work practices and rules will be enforced.

362 (d) For the purposes of a workplace accident and injury reduction program of an
363 eligible employer described in Subsection 34A-2-103(7)(f), the workplace accident and injury
364 reduction program shall:

365 (i) include the provisions described in Subsections (3)(b) and (c), except that the

366 employer shall conduct a documented review of the workplace accident and injury reduction
367 program at least semiannually delineating how procedures set forth in the workplace accident
368 and injury reduction program are met; and

369 (ii) require a written agreement between the employer and all contractors and
370 subcontractors on a project that states that:

371 (A) the employer has the right to control the manner or method by which the work is
372 executed;

373 (B) if a contractor, subcontractor, or any employee of a contractor or subcontractor
374 violates the workplace accident and injury reduction program, the employer maintains the right
375 to:

376 (I) terminate the contract with the contractor or subcontractor;

377 (II) remove the contractor or subcontractor from the work site; or

378 (III) require that the contractor or subcontractor not permit an employee that violates
379 the workplace accident and injury reduction program to work on the project for which the
380 employer is procuring work; and

381 (C) the contractor or subcontractor shall provide safe and appropriate equipment
382 subject to the right of the employer to:

383 (I) inspect on a regular basis the equipment of a contractor or subcontractor; and

384 (II) require that the contractor or subcontractor repair, replace, or remove equipment
385 the employer determines not to be safe or appropriate.

386 ~~[(6)]~~ (4) The premiums charged to any employer who fails or refuses to establish a
387 workplace safety program pursuant to Subsection ~~[(4)]~~ (3)(b)(i) or (ii) may be increased by 5%
388 over any existing current rates and premium modifications charged that employer.

389 Section 3. Section **34A-2-113** is enacted to read:

390 **34A-2-113. Designated agent required.**

391 Each workers' compensation insurance carrier writing insurance in this state shall
392 maintain a designated agent in this state that is:

393 (1) registered with the division; and

394 (2) authorized to receive on behalf of the workers' compensation insurance carrier all
395 notices or orders provided for under this chapter or Chapter 3, Utah Occupational Disease Act.

396 Section 4. Section **34A-2-407** is amended to read:

397 **34A-2-407. Reporting of industrial injuries -- Regulation of health care providers**
398 **-- Funeral expenses.**

399 (1) As used in this section, "physician" is as defined in Section 34A-2-111.

400 (2) (a) Any employee sustaining an injury arising out of and in the course of
401 employment shall provide notification to the employee's employer promptly of the injury.

402 (b) If the employee is unable to provide the notification required by Subsection (2)(a),
403 the following may provide notification of the injury to the employee's employer:

404 (i) the employee's next-of-kin; or

405 (ii) the employee's attorney.

406 (c) An employee claiming benefits under this chapter, or Chapter 3, Utah Occupational
407 Disease Act, shall comply with rules adopted by the commission regarding disclosure of
408 medical records of the employee medically relevant to the industrial accident or occupational
409 disease claim.

410 (3) (a) An employee is barred for any claim of benefits arising from an injury if the
411 employee fails to notify within the time period described in Subsection (3)(b):

412 (i) the employee's employer in accordance with Subsection (2); or

413 (ii) the division.

414 (b) The notice required by Subsection (3)(a) shall be made within:

415 (i) 180 days of the day on which the injury occurs; or

416 (ii) in the case of an occupational hearing loss, the time period specified in Section
417 34A-2-506.

418 (4) The following constitute notification of injury required by Subsection (2):

419 (a) an employer's or physician's injury report filed with:

420 (i) the division;

421 (ii) the employer; or

- 422 (iii) the employer's insurance carrier; or
- 423 (b) the payment of any medical or disability benefits by:
 - 424 (i) the employer; or
 - 425 (ii) the employer's insurance carrier.
- 426 (5) (a) In the form prescribed by the division, each employer shall file a report with the
- 427 division of any:
 - 428 (i) work-related fatality; or
 - 429 (ii) work-related injury resulting in:
 - 430 (A) medical treatment;
 - 431 (B) loss of consciousness;
 - 432 (C) loss of work;
 - 433 (D) restriction of work; or
 - 434 (E) transfer to another job.
- 435 (b) The employer shall file the report required by Subsection (5)(a) within seven days
- 436 after:
 - 437 (i) the occurrence of a fatality or injury;
 - 438 (ii) the employer's first knowledge of the fatality or injury; or
 - 439 (iii) the employee's notification of the fatality or injury.
- 440 (c) (i) An employer shall file a subsequent report with the division of any previously
- 441 reported injury that later results in death.
 - 442 (ii) The subsequent report required by this Subsection (5)(c) shall be filed with the
 - 443 division within seven days following:
 - 444 (A) the death; or
 - 445 (B) the employer's first knowledge or notification of the death.
 - 446 (d) A report is not required to be filed under this Subsection (5) for minor injuries,
 - 447 such as cuts or scratches that require first-aid treatment only, unless:
 - 448 (i) a treating physician files a report with the division in accordance with Subsection
 - 449 (9); or

450 (ii) a treating physician is required to file a report with the division in accordance with
451 Subsection (9).

452 (6) An employer required to file a report under Subsection (5) shall provide the
453 employee with:

454 (a) a copy of the report submitted to the division; and

455 (b) a statement, as prepared by the division, of the employee's rights and
456 responsibilities related to the industrial injury.

457 (7) Each employer shall maintain a record in a manner prescribed by the division of all:

458 (a) work-related fatalities; or

459 (b) work-related injuries resulting in:

460 (i) medical treatment;

461 (ii) loss of consciousness;

462 (iii) loss of work;

463 (iv) restriction of work; or

464 (v) transfer to another job.

465 (8) (a) Except as provided in Subsection (8)(b), an employer who refuses or neglects to
466 make reports, to maintain records, or to file reports with the division as required by this section
467 is:

468 (i) guilty of a class C misdemeanor; and

469 (ii) subject to a civil assessment:

470 (A) imposed by the division, subject to the requirements of Title 63, Chapter 46b,
471 Administrative Procedures Act; and

472 (B) that may not exceed \$500.

473 (b) An employer is not subject to the civil assessment or guilty of a class C
474 misdemeanor under this Subsection (8) if:

475 (i) the employer submits a report later than required by this section; and

476 (ii) the division finds that the employer has shown good cause for submitting a report
477 later than required by this section.

478 (c) A civil assessment collected under this Subsection (8) shall be deposited into the
479 Uninsured Employers' Fund created in Section 34A-2-704.

480 (9) (a) ~~[Except as provided in Subsection (9)(c), a]~~ A physician attending an injured
481 employee shall comply with rules established by the commission regarding:

482 (i) fees for physician's services;

483 (ii) disclosure of medical records of the employee medically relevant to the employee's
484 industrial accident~~[-]~~ or occupational disease claim; and

485 (iii) reports to the division regarding:

486 (A) the condition and treatment of an injured employee; or

487 (B) any other matter concerning industrial cases that the physician is treating.

488 (b) A physician who is associated with, employed by, or bills through a hospital is
489 subject to Subsection (9)(a).

490 (c) A hospital providing services for an injured employee is not subject to the
491 requirements of Subsection (9)(a)~~[-]~~ except for rules made by the commission that are
492 described in Subsection (9)(a)(ii) or (iii).

493 (d) The commission's schedule of fees may reasonably differentiate remuneration to be
494 paid to providers of health services based on:

495 (i) the severity of the employee's condition;

496 (ii) the nature of the treatment necessary; and

497 (iii) the facilities or equipment specially required to deliver that treatment.

498 (e) This Subsection (9) does not ~~[modify contracts with providers]~~ prohibit a contract
499 with a provider of health services relating to the pricing of goods and services ~~[existing on May~~
500 ~~1, 1995]~~.

501 ~~[(f) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, a~~
502 ~~physician may file with the Division of Adjudication an application for hearing to appeal a~~
503 ~~decision or final order to the extent a decision or final order concerns the fees charged by the~~
504 ~~physician in accordance with this section.]~~

505 (10) A copy of the initial report filed under Subsection (9)(a)(iii) shall be furnished to:

506 (a) the division;

507 (b) the employee; and

508 (c) (i) the employer; or

509 (ii) the employer's insurance carrier.

510 (11) (a) Except as provided in Subsection (11)(b), a ~~[physician, excluding any~~
511 ~~hospital,]~~ person subject to Subsection (9)(a)(iii) who fails to comply with Subsection
512 (9)(a)(iii) is guilty of a class C misdemeanor for each offense.

513 (b) A ~~[physician]~~ person subject to Subsection (9)(a)(iii) is not guilty of a class C
514 misdemeanor under this Subsection (11), if:

515 (i) the ~~[physician]~~ person files a late report; and

516 (ii) the division finds that there is good cause for submitting a late report.

517 (12) (a) Subject to appellate review under Section 34A-1-303, the commission has
518 exclusive jurisdiction to hear and determine:

519 (i) whether ~~[the treatment]~~ goods provided to or services rendered to an employee ~~[by a~~
520 ~~physician are: (i) reasonably related to industrial injuries or occupational diseases; and (ii)]~~ are
521 compensable pursuant to this chapter or Chapter 3, Utah Occupational Disease Act[-].
522 including:

523 (A) medical, nurse, or hospital services;

524 (B) medicines; and

525 (C) artificial means, appliances, or prosthesis;

526 (ii) the reasonableness of the amounts charged or paid for a good or service described
527 in Subsection (12)(a)(i); and

528 (iii) collection issues related to a good or service described in Subsection (12)(a)(i).

529 (b) Except as provided in Subsection (12)(a), Subsection 34A-2-211(7), or Section
530 34A-2-212, a person may not maintain a cause of action in any forum within this state other
531 than the commission for collection or payment ~~[of a physician's billing for treatment]~~ for goods
532 or services described in Subsection (12)(a) that are compensable under this chapter or Chapter
533 3, Utah Occupational Disease Act.

534 Section 5. Section **34A-2-413** is amended to read:

535 **34A-2-413. Permanent total disability -- Amount of payments -- Rehabilitation.**

536 (1) (a) In cases of permanent total disability resulting from an industrial accident or
537 occupational disease, the employee shall receive compensation as outlined in this section.

538 (b) To establish entitlement to permanent total disability compensation, the employee
539 ~~[has the burden of proof to show]~~ must prove by a preponderance of evidence that:

540 (i) the employee sustained a significant impairment or combination of impairments as a
541 result of the industrial accident or occupational disease that gives rise to the permanent total
542 disability entitlement;

543 (ii) the employee is permanently totally disabled; and

544 (iii) the industrial accident or occupational disease was the direct cause of the
545 employee's permanent total disability.

546 (c) To ~~[find]~~ establish that an employee is permanently totally disabled~~[, the~~
547 ~~commission shall conclude]~~ the employee must prove by a preponderance of the evidence that:

548 (i) the employee is not gainfully employed;

549 (ii) the employee has an impairment or combination of impairments that limit the
550 employee's ability to do basic work activities;

551 (iii) the industrial or occupationally caused impairment or combination of impairments
552 prevent the employee from performing the essential functions of the work activities for which
553 the employee has been qualified until the time of the industrial accident or occupational disease
554 that is the basis for the employee's permanent total disability claim; and

555 (iv) the employee cannot perform other work reasonably available, taking into
556 consideration the employee's:

557 (A) age;

558 (B) education;

559 (C) past work experience;

560 (D) medical capacity; and

561 (E) residual functional capacity.

562 (d) Evidence of an employee's entitlement to disability benefits other than those
563 provided under this chapter and Chapter 3, Utah Occupational Disease Act, if relevant:

- 564 (i) may be presented to the commission;
- 565 (ii) is not binding; and
- 566 (iii) creates no presumption of an entitlement under this chapter and Chapter 3, Utah
567 Occupational Disease Act.

568 (2) For permanent total disability compensation during the initial 312-week
569 entitlement, compensation shall be 66-2/3% of the employee's average weekly wage at the time
570 of the injury, limited as follows:

- 571 (a) compensation per week may not be more than 85% of the state average weekly
572 wage at the time of the injury;
- 573 (b) compensation per week may not be less than the sum of \$45 per week, plus \$5 for a
574 dependent spouse, plus \$5 for each dependent child under the age of 18 years, up to a
575 maximum of four dependent minor children, but not exceeding the maximum established in
576 Subsection (2)(a) nor exceeding the average weekly wage of the employee at the time of the
577 injury; and
- 578 (c) after the initial 312 weeks, the minimum weekly compensation rate under
579 Subsection (2)(b) shall be 36% of the current state average weekly wage, rounded to the nearest
580 dollar.

581 (3) This Subsection (3) applies to claims resulting from an accident or disease arising
582 out of and in the course of the employee's employment on or before June 30, 1994.

583 (a) The employer or its insurance carrier is liable for the initial 312 weeks of permanent
584 total disability compensation except as outlined in Section 34A-2-703 as in effect on the date
585 of injury.

586 (b) The employer or its insurance carrier may not be required to pay compensation for
587 any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410
588 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation
589 payable over the initial 312 weeks at the applicable permanent total disability compensation

590 rate under Subsection (2).

591 (c) Any overpayment of this compensation shall be reimbursed to the employer or its
592 insurance carrier by the Employers' Reinsurance Fund and shall be paid out of the Employers'
593 Reinsurance Fund's liability to the employee.

594 (d) After an employee has received compensation from the employee's employer, its
595 insurance carrier, or the Employers' Reinsurance Fund for any combination of disabilities
596 amounting to 312 weeks of compensation at the applicable permanent total disability
597 compensation rate, the Employers' Reinsurance Fund shall pay all remaining permanent total
598 disability compensation.

599 (e) Employers' Reinsurance Fund payments shall commence immediately after the
600 employer or its insurance carrier has satisfied its liability under this Subsection (3) or Section
601 34A-2-703.

602 (4) This Subsection (4) applies to claims resulting from an accident or disease arising
603 out of and in the course of the employee's employment on or after July 1, 1994.

604 (a) The employer or its insurance carrier is liable for permanent total disability
605 compensation.

606 (b) The employer or its insurance carrier may not be required to pay compensation for
607 any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410
608 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation
609 payable over the initial 312 weeks at the applicable permanent total disability compensation
610 rate under Subsection (2).

611 (c) Any overpayment of this compensation shall be recouped by the employer or its
612 insurance carrier by reasonably offsetting the overpayment against future liability paid before
613 or after the initial 312 weeks.

614 (5) Notwithstanding the minimum rate established in Subsection (2), the compensation
615 payable by the employer, its insurance carrier, or the Employers' Reinsurance Fund, after an
616 employee has received compensation from the employer or the employer's insurance carrier for
617 any combination of disabilities amounting to 312 weeks of compensation at the applicable total

618 disability compensation rate, shall be reduced, to the extent allowable by law, by the dollar
619 amount of 50% of the Social Security retirement benefits received by the employee during the
620 same period.

621 (6) (a) A finding by the commission of permanent total disability is not final, unless
622 otherwise agreed to by the parties, until:

623 (i) an administrative law judge reviews a summary of reemployment activities
624 undertaken pursuant to Chapter 8, Utah Injured Worker Reemployment Act;

625 (ii) the employer or its insurance carrier submits to the administrative law judge:

626 (A) a reemployment plan as prepared by a qualified rehabilitation provider reasonably
627 designed to return the employee to gainful employment; or

628 (B) notice that the employer or its insurance carrier will not submit a plan; and

629 (iii) the administrative law judge, after notice to the parties, holds a hearing, unless
630 otherwise stipulated, to:

631 (A) consider evidence regarding rehabilitation; and

632 (B) review any reemployment plan submitted by the employer or its insurance carrier
633 under Subsection (6)(a)(ii).

634 (b) Before commencing the procedure required by Subsection (6)(a), the administrative
635 law judge shall order:

636 (i) the initiation of permanent total disability compensation payments to provide for the
637 employee's subsistence; and

638 (ii) the payment of any undisputed disability or medical benefits due the employee.

639 (c) Notwithstanding Subsection (6)(a), an order for payment of benefits described in
640 Subsection (6)(b) is considered a final order for purposes of Section 34A-2-212.

641 (d) The employer or its insurance carrier shall be given credit for any disability
642 payments made under Subsection (6)(b) against its ultimate disability compensation liability
643 under this chapter or Chapter 3, Utah Occupational Disease Act.

644 (e) An employer or its insurance carrier may not be ordered to submit a reemployment
645 plan. If the employer or its insurance carrier voluntarily submits a plan, the plan is subject to

646 Subsections (6)(e)(i) through (iii).

647 (i) The plan may include retraining, education, medical and disability compensation
648 benefits, job placement services, or incentives calculated to facilitate reemployment funded by
649 the employer or its insurance carrier.

650 (ii) The plan shall include payment of reasonable disability compensation to provide
651 for the employee's subsistence during the rehabilitation process.

652 (iii) The employer or its insurance carrier shall diligently pursue the reemployment
653 plan. The employer's or insurance carrier's failure to diligently pursue the reemployment plan
654 shall be cause for the administrative law judge on the administrative law judge's own motion to
655 make a final decision of permanent total disability.

656 (f) If a preponderance of the evidence shows that successful rehabilitation is not
657 possible, the administrative law judge shall order that the employee be paid weekly permanent
658 total disability compensation benefits.

659 (7) (a) The period of benefits commences on the date the employee became
660 permanently totally disabled, as determined by a final order of the commission based on the
661 facts and evidence, and ends:

662 (i) with the death of the employee; or

663 (ii) when the employee is capable of returning to regular, steady work.

664 (b) An employer or its insurance carrier may provide or locate for a permanently totally
665 disabled employee reasonable, medically appropriate, part-time work in a job earning at least
666 minimum wage provided that employment may not be required to the extent that it would
667 disqualify the employee from Social Security disability benefits.

668 (c) An employee shall fully cooperate in the placement and employment process and
669 accept the reasonable, medically appropriate, part-time work.

670 (d) In a consecutive four-week period when an employee's gross income from the work
671 provided under Subsection (7)(b) exceeds \$500, the employer or insurance carrier may reduce
672 the employee's permanent total disability compensation by 50% of the employee's income in
673 excess of \$500.

674 (e) If a work opportunity is not provided by the employer or its insurance carrier, a
675 permanently totally disabled employee may obtain medically appropriate, part-time work
676 subject to the offset provisions contained in Subsection (7)(d).

677 (f) (i) The commission shall establish rules regarding the part-time work and offset.

678 (ii) The adjudication of disputes arising under this Subsection (7) is governed by Part
679 8, Adjudication.

680 (g) The employer or its insurance carrier shall have the burden of proof to show that
681 medically appropriate part-time work is available.

682 (h) The administrative law judge may:

683 (i) excuse an employee from participation in any job that would require the employee
684 to undertake work exceeding the employee's medical capacity and residual functional capacity
685 or for good cause; or

686 (ii) allow the employer or its insurance carrier to reduce permanent total disability
687 benefits as provided in Subsection (7)(d) when reasonable, medically appropriate, part-time
688 employment has been offered but the employee has failed to fully cooperate.

689 (8) When an employee has been rehabilitated or the employee's rehabilitation is
690 possible but the employee has some loss of bodily function, the award shall be for permanent
691 partial disability.

692 (9) As determined by an administrative law judge, an employee is not entitled to
693 disability compensation, unless the employee fully cooperates with any evaluation or
694 reemployment plan under this chapter or Chapter 3, Utah Occupational Disease Act. The
695 administrative law judge shall dismiss without prejudice the claim for benefits of an employee
696 if the administrative law judge finds that the employee fails to fully cooperate, unless the
697 administrative law judge states specific findings on the record justifying dismissal with
698 prejudice.

699 (10) (a) The loss or permanent and complete loss of the use of both hands, both arms,
700 both feet, both legs, both eyes, or any combination of two such body members constitutes total
701 and permanent disability, to be compensated according to this section.

702 (b) A finding of permanent total disability pursuant to Subsection (10)(a) is final.

703 (11) (a) An insurer or self-insured employer may periodically reexamine a permanent
704 total disability claim, except those based on Subsection (10), for which the insurer or
705 self-insured employer had or has payment responsibility to determine whether the worker
706 remains permanently totally disabled.

707 (b) Reexamination may be conducted no more than once every three years after an
708 award is final, unless good cause is shown by the employer or its insurance carrier to allow
709 more frequent reexaminations.

710 (c) The reexamination may include:

711 (i) the review of medical records;

712 (ii) employee submission to reasonable medical evaluations;

713 (iii) employee submission to reasonable rehabilitation evaluations and retraining
714 efforts;

715 (iv) employee disclosure of Federal Income Tax Returns;

716 (v) employee certification of compliance with Section 34A-2-110; and

717 (vi) employee completion of sworn affidavits or questionnaires approved by the
718 division.

719 (d) The insurer or self-insured employer shall pay for the cost of a reexamination with
720 appropriate employee reimbursement pursuant to rule for reasonable travel allowance and per
721 diem as well as reasonable expert witness fees incurred by the employee in supporting the
722 employee's claim for permanent total disability benefits at the time of reexamination.

723 (e) If an employee fails to fully cooperate in the reasonable reexamination of a
724 permanent total disability finding, an administrative law judge may order the suspension of the
725 employee's permanent total disability benefits until the employee cooperates with the
726 reexamination.

727 (f) (i) Should the reexamination of a permanent total disability finding reveal evidence
728 that reasonably raises the issue of an employee's continued entitlement to permanent total
729 disability compensation benefits, an insurer or self-insured employer may petition the Division

730 of Adjudication for a rehearing on that issue. The petition shall be accompanied by
731 documentation supporting the insurer's or self-insured employer's belief that the employee is no
732 longer permanently totally disabled.

733 (ii) If the petition under Subsection (11)(f)(i) demonstrates good cause, as determined
734 by the Division of Adjudication, an administrative law judge shall adjudicate the issue at a
735 hearing.

736 (iii) Evidence of an employee's participation in medically appropriate, part-time work
737 may not be the sole basis for termination of an employee's permanent total disability
738 entitlement, but the evidence of the employee's participation in medically appropriate, part-time
739 work under Subsection (7) may be considered in the reexamination or hearing with other
740 evidence relating to the employee's status and condition.

741 (g) In accordance with Section 34A-1-309, the administrative law judge may award
742 reasonable attorneys fees to an attorney retained by an employee to represent the employee's
743 interests with respect to reexamination of the permanent total disability finding, except if the
744 employee does not prevail, the attorneys fees shall be set at \$1,000. The attorneys fees shall be
745 paid by the employer or its insurance carrier in addition to the permanent total disability
746 compensation benefits due.

747 (h) During the period of reexamination or adjudication if the employee fully
748 cooperates, each insurer, self-insured employer, or the Employers' Reinsurance Fund shall
749 continue to pay the permanent total disability compensation benefits due the employee.

750 (12) If any provision of this section, or the application of any provision to any person
751 or circumstance, is held invalid, the remainder of this section shall be given effect without the
752 invalid provision or application.

753 Section 6. Section **34A-2-801** is amended to read:

754 **34A-2-801. Initiating adjudicative proceedings -- Procedure for review of**
755 **administrative action.**

756 (1) (a) To contest an action of the employee's employer or its insurance carrier
757 concerning a compensable industrial accident or occupational disease alleged by the employee,

758 any of the following shall file an application for hearing with the Division of Adjudication:

759 (i) the employee; or

760 (ii) a representative of the employee, the qualifications of whom are defined in rule by
761 the commission.

762 (b) To appeal the imposition of a penalty or other administrative act imposed by the
763 division on the employer or its insurance carrier for failure to comply with this chapter or
764 Chapter 3, Utah Occupational Disease Act, any of the following shall file an application for
765 hearing with the Division of Adjudication:

766 (i) the employer;

767 (ii) the insurance carrier; or

768 (iii) a representative of either the employer or the insurance carrier, the qualifications
769 of whom are defined in rule by the commission.

770 (c) A ~~[physician, as defined in Section 34A-2-111,]~~ person providing goods or services
771 described in Subsections 34A-2-407(12) and 34A-3-108(12) may file an application for hearing
772 in accordance with Section 34A-2-407 or 34A-3-108.

773 (d) An attorney may file an application for hearing in accordance with Section
774 34A-1-309.

775 (2) Unless a party in interest appeals the decision of an administrative law judge in
776 accordance with Subsection (3), the decision of an administrative law judge on an application
777 for hearing filed under Subsection (1) is a final order of the commission 30 days after the date
778 the decision is issued.

779 (3) (a) A party in interest may appeal the decision of an administrative law judge by
780 filing a motion for review with the Division of Adjudication within 30 days of the date the
781 decision is issued.

782 (b) Unless a party in interest to the appeal requests under Subsection (3)(c) that the
783 appeal be heard by the Appeals Board, the commissioner shall hear the review.

784 (c) A party in interest may request that an appeal be heard by the Appeals Board by
785 filing the request with the Division of Adjudication:

- 786 (i) as part of the motion for review; or
787 (ii) if requested by a party in interest who did not file a motion for review, within 20
788 days of the date the motion for review is filed with the Division of Adjudication.
- 789 (d) A case appealed to the Appeals Board shall be decided by the majority vote of the
790 Appeals Board.
- 791 (4) All records on appeals shall be maintained by the Division of Adjudication. Those
792 records shall include an appeal docket showing the receipt and disposition of the appeals on
793 review.
- 794 (5) Upon appeal, the commissioner or Appeals Board shall make its decision in
795 accordance with Section 34A-1-303.
- 796 (6) The commissioner or Appeals Board shall promptly notify the parties to any
797 proceedings before it of its decision, including its findings and conclusions.
- 798 (7) The decision of the commissioner or Appeals Board is final unless within 30 days
799 after the date the decision is issued further appeal is initiated under the provisions of this
800 section or Title 63, Chapter 46b, Administrative Procedures Act.
- 801 (8) (a) Within 30 days after the date the decision of the commissioner or Appeals
802 Board is issued, any aggrieved party may secure judicial review by commencing an action in
803 the court of appeals against the commissioner or Appeals Board for the review of the decision
804 of the commissioner or Appeals Board.
- 805 (b) In an action filed under Subsection (8)(a):
- 806 (i) any other party to the proceeding before the commissioner or Appeals Board shall
807 be made a party; and
- 808 (ii) the commission shall be made a party.
- 809 (c) A party claiming to be aggrieved may seek judicial review only if the party has
810 exhausted the party's remedies before the commission as provided by this section.
- 811 (d) At the request of the court of appeals, the commission shall certify and file with the
812 court all documents and papers and a transcript of all testimony taken in the matter together
813 with the decision of the commissioner or Appeals Board.

814 Section 7. Section **34A-3-108** is amended to read:

815 **34A-3-108. Reporting of occupational diseases -- Regulation of health care**
816 **providers.**

817 (1) Any employee sustaining an occupational disease, as defined in this chapter, arising
818 out of and in the course of employment shall provide notification to the employee's employer
819 promptly of the occupational disease. If the employee is unable to provide notification, the
820 employee's next-of-kin or attorney may provide notification of the occupational disease to the
821 employee's employer.

822 (2) (a) Any employee who fails to notify the employee's employer or the division
823 within 180 days after the cause of action arises is barred from any claim of benefits arising
824 from the occupational disease.

825 (b) The cause of action is considered to arise on the date the employee first suffered
826 disability from the occupational disease and knew, or in the exercise of reasonable diligence
827 should have known, that the occupational disease was caused by employment.

828 (3) The following constitute notification of an occupational disease:

829 (a) an employer's or physician's injury report filed with the:

830 (i) division;

831 (ii) employer; or

832 (iii) insurance carrier; or

833 (b) the payment of any medical or disability benefits by the employer or the employer's
834 insurance carrier.

835 (4) (a) In the form prescribed by the division, each employer shall file a report with the
836 division of any occupational disease resulting in:

837 (i) medical treatment;

838 (ii) loss of consciousness;

839 (iii) loss of work;

840 (iv) restriction of work; or

841 (v) transfer to another job.

842 (b) The report required under Subsection (4)(a), shall be filed within seven days after:

843 (i) the occurrence of an occupational disease;

844 (ii) the employer's first knowledge of the occupational disease; or

845 (iii) the employee's notification of the occupational disease.

846 (c) Each employer shall file a subsequent report with the division of any previously
847 reported occupational disease that later resulted in death. The subsequent report shall be filed
848 with the division within seven days following:

849 (i) the death; or

850 (ii) the employer's first knowledge or notification of the death.

851 (d) A report is not required for:

852 (i) minor injuries that require first-aid treatment only, unless a treating physician files,
853 or is required to file, the Physician's Initial Report of Work Injury or Occupational Disease with
854 the division;

855 (ii) occupational diseases that manifest after the employee is no longer employed by the
856 employer with which the exposure occurred; or

857 (iii) when the employer is not aware of an exposure occasioned by the employment that
858 results in an occupational disease as defined by Section 34A-3-103.

859 (5) Each employer shall provide the employee with:

860 (a) a copy of the report submitted to the division; and

861 (b) a statement, as prepared by the division, of the employee's rights and
862 responsibilities related to the occupational disease.

863 (6) Each employer shall maintain a record in a manner prescribed by the division of all
864 occupational diseases resulting in:

865 (a) medical treatment;

866 (b) loss of consciousness;

867 (c) loss of work;

868 (d) restriction of work; or

869 (e) transfer to another job.

870 (7) Any employer who refuses or neglects to make reports, to maintain records, or to
871 file reports with the division as required by this section is guilty of a class C misdemeanor and
872 subject to citation under Section 34A-6-302 and a civil assessment as provided under Section
873 34A-6-307, unless the division finds that the employer has shown good cause for submitting a
874 report later than required by this section.

875 (8) (a) Except as provided in Subsection (8)(c), all physicians, surgeons, and other
876 health providers attending occupationally diseased employees shall:

877 (i) comply with all the rules, including the schedule of fees, for their services as
878 adopted by the commission; and

879 (ii) make reports to the division at any and all times as required as to the condition and
880 treatment of an occupationally diseased employee or as to any other matter concerning
881 industrial cases they are treating.

882 (b) A physician, as defined in [~~Subsection~~] Section 34A-2-111[(2)], who is associated
883 with, employed by, or bills through a hospital is subject to Subsection (8)(a).

884 (c) A hospital is not subject to the requirements of Subsection (8)(a) except a hospital
885 is subject to rules made by the commission under Subsections 34A-2-407(9)(a)(ii) and (iii).

886 (d) The commission's schedule of fees may reasonably differentiate remuneration to be
887 paid to providers of health services based on:

888 (i) the severity of the employee's condition;

889 (ii) the nature of the treatment necessary; and

890 (iii) the facilities or equipment specially required to deliver that treatment.

891 (e) This Subsection (8) does not [~~modify contracts with providers~~] prohibit a contract
892 with a provider of health services relating to the pricing of goods and services [~~existing on May~~
893 ~~1, 1995~~].

894 [~~In accordance with Title 63, Chapter 46b, Administrative Procedures Act, a~~
895 ~~physician, surgeon, or other health provider may file an application for hearing with the~~
896 ~~Division of Adjudication to contest a decision or final order to the extent it concerns the fees~~
897 ~~charged by the physician, surgeon, or other health provider.~~]

898 (9) A copy of the physician's initial report shall be furnished to the:

899 (a) division;

900 (b) employee; and

901 (c) employer or its insurance carrier.

902 (10) Any ~~[physician, surgeon, or other health provider, excluding any hospital,]~~ person
903 subject to reporting under Subsection (8)(a)(ii) or Subsection 34A-2-407(9)(a)(iii) who refuses
904 or neglects to make any report or comply with this section is guilty of a class C misdemeanor
905 for each offense, unless the division finds that there is good cause for submitting a late report.

906 (11) (a) Applications for a hearing to resolve disputes regarding occupational disease
907 claims shall be filed with the Division of Adjudication.

908 (b) After the filing, a copy shall be forwarded by mail to:

909 (i) the employer or to the employer's insurance carrier;

910 (ii) the applicant; and

911 (iii) the attorneys for the parties.

912 (12) (a) Subject to appellate review under Section 34A-1-303, the commission has
913 exclusive jurisdiction to hear and determine:

914 (i) whether [the treatment] goods provided to or services rendered to [employees by
915 physicians, surgeons, or other health providers are: (i) reasonably related to industrial injuries
916 or occupational diseases; and (ii)] an employee is compensable pursuant to this chapter and
917 Chapter 2, Workers' Compensation Act[-], including the following:

918 (A) medical, nurse, or hospital services;

919 (B) medicines; and

920 (C) artificial means, appliances, or prosthesis;

921 (ii) the reasonableness of the amounts charged or paid for a good or service described
922 in Subsection (12)(a)(i); and

923 (iii) collection issues related to a good or service described in Subsection (12)(a)(i).

924 (b) Except as provided in Subsection (12)(a), Subsection 34A-2-211(7), or Section
925 34A-2-212, a person may not maintain a cause of action in any forum within this state other

926 than the commission for collection or payment of [~~a physician's, surgeon's, or other health~~
927 ~~provider's billing for treatment~~] goods or services described in Subsection (12)(a) that are
928 compensable under this chapter or Chapter 2, Workers' Compensation Act.

929 Section 8. **Legislative intent language.**

930 It is the intent of the Legislature that the amendments to Section 34A-2-413 in this bill
931 be interpreted as merely clarifying an existing principle that the employee bears the burden of
932 proving that the employee is permanently totally disabled based on those factors listed as
933 matters on which the commission is to make a conclusion in Subsection 34A-2-413(1)(c), as
934 enacted before the amendments of this bill.