

**WORKERS' COMPENSATION ACT - MEDICAL
REPORTS**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill modifies the Workers' Compensation Act to address the mailing of medical reports.

Highlighted Provisions:

This bill:

- ▶ removes the requirement that a medical report be mailed by certified mail, return receipt requested;
- ▶ expands the list of persons required to receive a copy of a medical report; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-2-601, as last amended by Laws of Utah 2002, Chapter 303

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

Section 1. Section **34A-2-601** is amended to read:



28 **34A-2-601. Medical panel, director, or consultant -- Findings and reports --**
29 **Objections to report -- Hearing -- Expenses.**

30 (1) (a) The Division of Adjudication may refer the medical aspects of a case described
31 in this Subsection (1)(a) to a medical panel appointed by an administrative law judge:

32 (i) upon the filing of a claim for compensation arising out of and in the course of
33 employment for:

34 (A) disability by accident; or

35 (B) death by accident; and

36 (ii) if the employer or the employer's insurance carrier denies liability.

37 (b) An administrative law judge may appoint a medical panel [~~appointed by an~~
38 ~~administrative law judge~~] upon the filing of a claim for compensation based upon disability or
39 death due to an occupational disease.

40 (c) A medical panel appointed under this section shall consist of one or more
41 physicians specializing in the treatment of the disease or condition involved in the claim.

42 (d) As an alternative method of obtaining an impartial medical evaluation of the
43 medical aspects of a controverted case, the division may employ a medical director or one or
44 more medical consultants:

45 (i) on a full-time or part-time basis; and

46 (ii) for the purpose of:

47 (A) evaluating [~~the~~] medical evidence; and

48 (B) advising an administrative law judge with respect to the administrative law judge's
49 ultimate fact-finding responsibility.

50 (e) If all parties agree to the use of a medical director or one or more medical
51 consultants, the medical director or one or more medical consultants [~~shall be~~] is allowed to
52 function in the same manner and under the same procedures as required of a medical panel.

53 (2) (a) A medical panel, medical director, or medical consultant may do the following
54 to the extent the medical panel, medical director, or medical consultant determines that it is
55 necessary or desirable:

56 (i) conduct a study;

57 (ii) take an x-ray;

58 (iii) perform a test; or

59 (iv) if authorized by an administrative law judge, conduct a post-mortem examination.

60 (b) A medical panel, medical director, or medical consultant shall make:

61 (i) a report in writing to the administrative law judge in a form prescribed by the
62 Division of Adjudication; and

63 (ii) additional findings as the administrative law judge may require.

64 (c) In an occupational disease case, in addition to the requirements of Subsection
65 (2)(b), a medical panel, medical director, or medical consultant shall certify to the
66 administrative law judge:

67 (i) the extent, if any, of the disability of the claimant from performing work for
68 remuneration or profit;

69 (ii) whether the sole cause of the disability or death, in the opinion of the medical
70 panel, medical director, or medical consultant results from the occupational disease; and

71 (iii) (A) whether any other ~~[causes have]~~ cause aggravated, prolonged, accelerated, or
72 in any way contributed to the disability or death; and

73 (B) if another cause ~~[has]~~ contributed to the disability or death, the extent in percentage
74 to which the other cause ~~[has]~~ contributed to the disability or death.

75 (d) (i) ~~[The]~~ An administrative law judge shall promptly distribute full copies of a
76 report submitted to the administrative law judge under this Subsection (2) by ~~[certified]~~ mail
77 ~~[with return receipt requested]~~ to:

78 (A) the applicant;

79 (B) the employer; ~~[and]~~

80 (C) the employer's insurance carrier~~[-]~~; and

81 (D) an attorney employed by a person listed in Subsections (2)(d)(i)(A) through (C).

82 (ii) Within ~~§→ [15]~~ 20 ~~←§~~ days after the report described in Subsection (2)(d)(i) is
82a deposited in the

83 United States post office, the following may file with the administrative law judge a written
84 ~~[objections]~~ objection to the report:

85 (A) the applicant;

86 (B) the employer; or

87 (C) the employer's insurance carrier.

88 (iii) If no written ~~[objections are]~~ objection is filed within the period described in
89 Subsection (2)(d)(ii), the report is considered admitted in evidence.

90 (e) (i) [~~The~~] An administrative law judge may base the administrative law judge's
91 finding and decision on the report of:

- 92 (A) a medical panel;
- 93 (B) the medical director; or
- 94 (C) one or more medical consultants.

95 (ii) Notwithstanding Subsection (2)(e)(i), an administrative law judge is not bound by a
96 report described in Subsection (2)(e)(i) if other substantial conflicting evidence in the case
97 supports a contrary finding.

98 (f) (i) If [~~an~~] a written objection to a report is filed under Subsection (2)(d), the
99 administrative law judge may set the case for hearing to determine the facts and issues
100 involved.

101 (ii) At a hearing held pursuant to this Subsection (2)(f), any party may request the
102 administrative law judge to have any of the following present at the hearing for examination
103 and cross-examination:

- 104 (A) the chair of the medical panel;
- 105 (B) the medical director; or
- 106 (C) the one or more medical consultants.

107 (iii) For good cause shown, [~~the~~] an administrative law judge may order the following
108 to be present at the hearing for examination and cross-examination:

- 109 (A) a member of a medical panel, with or without the chair of the medical panel;
- 110 (B) the medical director; or
- 111 (C) a medical consultant.

112 (g) (i) [~~The~~] A written report of a medical panel, medical director, or one or more
113 medical consultants may be received as an exhibit at [~~the~~] a hearing described in Subsection
114 (2)(f).

115 (ii) Notwithstanding Subsection (2)(g)(i), a report received as an exhibit under
116 Subsection (2)(g)(i) may not be considered as evidence in the case except as far as the report is
117 sustained by the testimony admitted.

118 (h) For [~~any~~] a claim referred under Subsection (1) to a medical panel, medical
119 director, or medical consultant before July 1, 1997, the commission shall pay out of the
120 Employers' Reinsurance Fund established in Section 34A-2-702:

121 (i) expenses of [~~the~~] a study [~~and~~] or report of the medical panel, medical director, or
122 medical consultant; and

123 (ii) the expenses of the medical panel's, medical director's, or medical consultant's
124 appearance before [~~the~~] an administrative law judge.

125 (i) (i) For [~~any~~] a claim referred under Subsection (1) to a medical panel, medical
126 director, or medical consultant on or after July 1, 1997, the commission shall pay out of the
127 Uninsured Employers' Fund established in Section 34A-2-704 the expenses of:

128 (A) [~~the~~] a study [~~and~~] or report of the medical panel, medical director, or medical
129 consultant; and

130 (B) the medical panel's, medical director's, or medical consultant's appearance before
131 [~~the~~] an administrative law judge.

132 (ii) Notwithstanding Section 34A-2-704, the expenses described in Subsection (2)(i)(i)
133 shall be paid from the Uninsured Employers' Fund whether or not the employment relationship
134 during which the industrial accident or occupational disease occurred is localized in Utah as
135 described in Subsection 34A-2-704(20).

Legislative Review Note
as of 1-26-09 9:03 AM

Office of Legislative Research and General Counsel

S.B. 120 - Workers' Compensation Act - Medical Reports

Fiscal Note

2009 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations. Additionally, this will save the Labor Commission approximately \$3,000 per year in mailing costs.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	\$3,000	\$3,000
Total	\$0	\$0	\$0	\$0	\$3,000	\$3,000

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.