

**WORKERS' COMPENSATION COORDINATION OF
BENEFITS AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill amends the Insurance Code and the Utah Labor Code regarding payment of medical claims when an employee is injured.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a health insurance plan to pay for medical benefits otherwise covered by the health plan if an application for hearing is filed with the Labor Commission and while a workers' compensation claim is being adjudicated;
- ▶ includes the Public Employees' Benefit and Insurance Program as a health insurer subject to paying medical claims for an injured worker while a workers' compensation claim is being adjudicated;
- ▶ requires the Labor Commission to notify:
 - an injured employee of the employee's right to health insurance coverage while a workers' compensation claim is pending; and
 - a health insurer of an employee's application for hearing;
- ▶ provides that a health insurer may, at its option, provide notice to the Labor Commission of the health insurer's payment of a medical claim that is being adjudicated under workers' compensation;



28 ▶ if the Labor Commission issues a final order or approves a settlement agreement
29 that finds the medical claim is compensable as a workers' compensation claim,
30 requires the workers' compensation carrier to reimburse:

31 • the health insurer for the compensable medical claims plus 8% per annum
32 interest; and

33 • the employee for out-of-pocket expenses associated with the compensable
34 medical claim plus 8% per annum interest;

35 ▶ prohibits a health care provider who received payment from a health insurer from
36 seeking additional reimbursement for the same medical claim from the workers'
37 compensation carrier if a final order or settlement agreement of the Labor
38 Commission determines that the claim is compensable as a workers' compensation
39 claim;

40 ▶ prohibits a health insurer from using automatic recovery or seeking reimbursement
41 from a health care provider for a medical claim paid by the health insurer if the
42 health insurer is reimbursed by a workers' compensation carrier;

43 ▶ if a workers' compensation carrier is required to reimburse a health insurer for a
44 medical claim paid by the health insurer, the workers' compensation carrier may not
45 seek reimbursement from a health care provider for the payment to the health
46 insurer;

47 ▶ assesses a penalty on a workers' compensation carrier if the workers' compensation
48 carrier does not reimburse a health insurer or employee within a certain period of
49 time after an order issued by the Labor Commission is final;

50 ▶ requires the Labor Commission to report to the Utah Insurance Department if a
51 workers' compensation carrier fails to reimburse a health insurer or employee within
52 a certain period of time;

53 ▶ deposits the penalties collected by the Labor Commission into the Uninsured
54 Employers' Fund; and

55 ▶ makes technical changes.

56 **Money Appropriated in this Bill:**

57 None

58 **Other Special Clauses:**

59 This bill takes effect on July 1, 2013.

60 **Utah Code Sections Affected:**

61 AMENDS:

62 **34A-2-704**, as last amended by Laws of Utah 2012, Chapter 369

63 ENACTS:

64 **31A-22-619.6**, Utah Code Annotated 1953

65 **34A-2-213**, Utah Code Annotated 1953



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

68 Section 1. Section **31A-22-619.6** is enacted to read:

69 **31A-22-619.6. Coordination of benefits with workers' compensation claim --**

70 **Health insurer's duty to pay.**

71 (1) As used in this section:

72 (a) "Employee" means an employee, worker, or operative as defined in Section

73 34A-2-104.

74 (b) "Employer" is as enumerated and defined in Section 34A-2-103.

75 (c) "Health insurer" is an "insurer" as defined in Section 31A-1-301, and includes:

76 (i) a health maintenance organization;

77 (ii) a third party administrator that offers, sells, manages, or administers a health

78 insurance policy; and

79 (iii) the Public Employees' Benefit and Insurance Program created in Section

80 49-20-103.

81 (d) "Workers' compensation carrier" means any of the entities an employer may use to

82 provide workers' compensation benefits for its employees under Section 34A-2-201.

83 (e) "Workers' compensation claim" means a claim for compensation for medical

84 benefits under Title 34A, Chapter 2, Workers' Compensation Act, or Title 34A, Chapter 3,

85 Utah Occupational Disease Act.

86 (2) (a) For medical claims incurred on or after July 1, 2013, an employee's health

87 insurer may not delay or deny payment of benefits due to the employee under the terms of a

88 health insurance plan by claiming that treatment for the employee's injury or disease is the

89 responsibility of the employer's workers' compensation carrier if:

90 (i) the employee or a health care provider on behalf of an employee files an application
91 for hearing regarding the workers' compensation claim with the Division of Adjudication under
92 Section 34A-2-801; and

93 (ii) the health insurer received a notice from the Labor Commission that an application
94 for hearing was filed in accordance with Subsection (2)(a)(i).

95 (b) The Labor Commission shall provide the notice required by Subsection (2)(a)(ii) in
96 accordance with Subsection 34A-2-213(2).

97 (3) A health insurer who receives a medical claim from the employee or a health care
98 provider and a notice from the Labor Commission in accordance with Subsection (2):

99 (a) shall pay the medical claim directly to the health care provider in the dollar amount
100 paid under the limits, terms, and conditions of the employee's health insurance policy; and

101 (b) may send a notice to the Labor Commission or the attorney for the injured worker
102 informing the parties that the health insurer has paid a claim under the provisions of this
103 section.

104 (4) If the claims for medical services paid pursuant to Subsection (3) are determined to
105 be compensable by the workers' compensation carrier in a final order or under the terms of a
106 settlement agreement under Section 34A-2-801, the workers' compensation carrier shall pay the
107 health insurer and employee in accordance with Subsection 34A-2-213(3)(b).

108 (5) (a) A health care provider who receives payment for a medical claim from a health
109 insurer under the provisions of Subsection (3) may not request additional payment for the
110 medical claim from the workers' compensation carrier if the final order or terms of the
111 settlement agreement under Section 34A-2-801 determine that the medical claim was
112 compensable by the workers' compensation carrier.

113 (b) A health insurer who is reimbursed under the provisions of Subsection
114 34A-2-213(3) for a medical claim may not seek reimbursement or autorecovery from the health
115 care provider for any difference between the amount of the claim paid by the health insurer and
116 the reimbursement to the health insurer by the workers' compensation carrier under Subsection
117 34A-2-213(3).

118 (c) If a final order of the Labor Commission or the terms of a settlement agreement
119 under Section 34A-2-801 determines that a medical claim is compensable by the workers'
120 compensation carrier, the workers' compensation carrier may not seek reimbursement or

121 autorecovery from a health care provider for any part of the medical claim that is the
122 responsibility of the workers' compensation carrier under the order or settlement agreement.

123 Section 2. Section **34A-2-213** is enacted to read:

124 **34A-2-213. Coordination of benefits with health insurance plan -- Timely**
125 **payment of claims.**

126 (1) (a) This section applies if:

127 (i) a health insurer paid medical claims under Section 31A-22-619.6; and

128 (ii) the Labor Commission issued an order or approved the terms of a settlement
129 agreement under Section 34A-2-801, which:

130 (A) found that the medical claims are compensable under Title 34A, Chapter 2,
131 Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act; and

132 (B) is final under Section 34A-2-801.

133 (b) For purposes of this section, "workers' compensation carrier" means any of the
134 entities an employer may use to provide workers' compensation benefits for its employees
135 under Section 34A-2-201.

136 (2) (a) The Labor Commission shall provide a health insurer with notice that an
137 application for hearing has been filed in accordance with Subsection 31A-22-619.6(2)(a)(i) if
138 either the employee or a health care provider requests that the commission send the notice.

139 (b) The Labor Commission shall prepare and provide notice to an injured employee of
140 the employee's right to payment by the employee's group health plan under Section
141 31A-22-619.6. The notice provided under this Subsection (2) shall include the process the
142 employee shall follow to obtain payment from a health insurer for a medical claim that is the
143 subject of an application for hearing under Section 34A-2-801.

144 (3) (a) The Labor Commission shall, within three business days after the date on which
145 the order or approval of the terms of a settlement agreement is signed by the administrative law
146 judge under Section 34A-2-801, send a copy of the order or terms of the settlement agreement
147 to:

148 (i) a health insurer who made payments under Section 31A-22-619.6;

149 (ii) the workers' compensation carrier; and

150 (iii) the injured worker.

151 (b) The workers' compensation carrier shall, within 15 business days after the day on

152 which the Labor Commission's order or settlement agreement is final under the provisions of
153 Section 34A-2-801, pay:

154 (i) the health insurer, in the amount the insurer paid to the health care provider for
155 medical claims compensable under the order or the terms of the settlement agreement, plus
156 interest accrued at the rate of 8% per annum from the date the health insurer paid the medical
157 claim until the date the workers' compensation carrier reimburses the health insurer; and

158 (ii) the employee, in the amount of:

159 (A) any co-payments, coinsurance, deductibles, or other out-of-pocket expenses paid or
160 incurred by the employee; and

161 (B) interest accrued at the rate of 8% per annum from the date the employee paid the
162 expenses described in Subsection (3)(b)(ii)(A) until the date the workers' compensation carrier
163 pays the employee.

164 (4) If the Labor Commission determines that a workers' compensation carrier did not
165 make the payment required by Subsection (3) within the time period required in Subsection (3),
166 the commissioner shall:

167 (a) assess and collect a penalty from the workers' compensation carrier in:

168 (i) the amount of \$500 for failure to pay the amount required by Subsections (3)(b)(i)
169 and (ii) within the period of time required by Subsections (3)(b)(i) and (ii); and

170 (ii) an additional amount of \$500 for each calendar month:

171 (A) that accrues after the penalty is assessed under Subsection (4)(a)(i); and

172 (B) for which the amount required by Subsections (3)(b)(i) and (ii) are not paid;

173 (b) deposit any penalties collected under this Subsection (4) into the Uninsured
174 Employers' Fund created in Section 34A-2-704; and

175 (c) notify the Utah Insurance Department of the workers' compensation carrier's failure
176 to pay the health care provider in accordance with this section.

177 (5) The penalty imposed by Subsection (4) is in addition to any action taken or penalty
178 imposed by the Utah Insurance Department under Title 31A, Insurance Code.

179 (6) The commission may adopt administrative rules in accordance with Title 63G,
180 Chapter 3, Utah Administrative Rulemaking Act, to:

181 (a) establish procedures for:

182 (i) assessing and collecting penalties under Subsection (4); and

183 (ii) providing notice as required by this section; and
184 (b) enforce the provisions of this section.

185 Section 3. Section **34A-2-704** is amended to read:

186 **34A-2-704. Uninsured Employers' Fund.**

187 (1) (a) There is created an Uninsured Employers' Fund. The Uninsured Employers'
188 Fund has the purpose of assisting in the payment of workers' compensation benefits to a person
189 entitled to the benefits, if:

190 (i) that person's employer:

191 (A) is individually, jointly, or severally liable to pay the benefits; and

192 (B) (I) becomes or is insolvent;

193 (II) appoints or has appointed a receiver; or

194 (III) otherwise does not have sufficient funds, insurance, sureties, or other security to
195 cover workers' compensation liabilities; and

196 (ii) the employment relationship between that person and the person's employer is
197 localized within the state as provided in Subsection (20).

198 (b) The Uninsured Employers' Fund succeeds to money previously held in the Default
199 Indemnity Fund.

200 (c) If it becomes necessary to pay benefits, the Uninsured Employers' Fund is liable for
201 the obligations of the employer set forth in this chapter and Chapter 3, Utah Occupational
202 Disease Act, with the exception of a penalty on those obligations.

203 (2) (a) Money for the Uninsured Employers' Fund shall be deposited into the Uninsured
204 Employers' Fund in accordance with this chapter [~~and~~], Subsection 59-9-101(2), and
205 Subsection 34A-2-213(3).

206 (b) The commissioner shall appoint an administrator of the Uninsured Employers'
207 Fund.

208 (c) (i) The state treasurer is the custodian of the Uninsured Employers' Fund.

209 (ii) The administrator shall make provisions for and direct distribution from the
210 Uninsured Employers' Fund.

211 (3) Reasonable costs of administering the Uninsured Employers' Fund or other fees
212 required to be paid by the Uninsured Employers' Fund may be paid from the Uninsured
213 Employers' Fund.

214 (4) The state treasurer shall:
215 (a) receive workers' compensation premium assessments from the State Tax
216 Commission; and
217 (b) invest the Uninsured Employers' Fund to ensure maximum investment return for
218 both long and short term investments in accordance with Section 51-7-12.5.
219 (5) (a) The administrator may employ, retain, or appoint counsel to represent the
220 Uninsured Employers' Fund in a proceeding brought to enforce a claim against or on behalf of
221 the Uninsured Employers' Fund.
222 (b) If requested by the commission, the following shall aid in the representation of the
223 Uninsured Employers' Fund:
224 (i) the attorney general; or
225 (ii) the city attorney, or county attorney of the locality in which:
226 (A) an investigation, hearing, or trial under this chapter or Chapter 3, Utah
227 Occupational Disease Act, is pending;
228 (B) the employee resides; or
229 (C) an employer:
230 (I) resides; or
231 (II) is doing business.
232 (c) (i) Notwithstanding Title 63A, Chapter 3, Part 5, Office of State Debt Collection,
233 the administrator shall provide for the collection of money required to be deposited in the
234 Uninsured Employers' Fund under this chapter and Chapter 3, Utah Occupational Disease Act.
235 (ii) To comply with Subsection (5)(c)(i), the administrator may:
236 (A) take appropriate action, including docketing an award in a manner consistent with
237 Section 34A-2-212; and
238 (B) employ counsel and other personnel necessary to collect the money described in
239 Subsection (5)(c)(i).
240 (6) To the extent of the compensation and other benefits paid or payable to or on behalf
241 of an employee or the employee's dependents from the Uninsured Employers' Fund, the
242 Uninsured Employers' Fund, by subrogation, has the rights, powers, and benefits of the
243 employee or the employee's dependents against the employer failing to make the compensation
244 payments.

245 (7) (a) The receiver, trustee, liquidator, or statutory successor of an employer meeting a
246 condition listed in Subsection (1)(a)(i)(B) is bound by a settlement of a covered claim by the
247 Uninsured Employers' Fund.

248 (b) A court with jurisdiction shall grant a payment made under this section a priority
249 equal to that to which the claimant would have been entitled in the absence of this section
250 against the assets of the employer meeting a condition listed in Subsection (1)(a)(i)(B).

251 (c) The expenses of the Uninsured Employers' Fund in handling a claim shall be
252 accorded the same priority as the liquidator's expenses.

253 (8) (a) The administrator shall periodically file the information described in Subsection
254 (8)(b) with the receiver, trustee, or liquidator of:

255 (i) an employer that meets a condition listed in Subsection (1)(a)(i)(B);

256 (ii) a public agency insurance mutual, as defined in Section 31A-1-103, that meets a
257 condition listed in Subsection (1)(a)(i)(B); or

258 (iii) an insolvent insurance carrier.

259 (b) The information required to be filed under Subsection (8)(a) is:

260 (i) a statement of the covered claims paid by the Uninsured Employers' Fund; and

261 (ii) an estimate of anticipated claims against the Uninsured Employers' Fund.

262 (c) A filing under this Subsection (8) preserves the rights of the Uninsured Employers'
263 Fund for claims against the assets of the employer that meets a condition listed in Subsection
264 (1)(a)(i)(B).

265 (9) When an injury or death for which compensation is payable from the Uninsured
266 Employers' Fund has been caused by the wrongful act or neglect of another person not in the
267 same employment, the Uninsured Employers' Fund has the same rights as allowed under
268 Section 34A-2-106.

269 (10) The Uninsured Employers' Fund, subject to approval of the administrator, shall
270 discharge its obligations by:

271 (a) adjusting its own claims; or

272 (b) contracting with an adjusting company, risk management company, insurance
273 company, or other company that has expertise and capabilities in adjusting and paying workers'
274 compensation claims.

275 (11) (a) For the purpose of maintaining the Uninsured Employers' Fund, an

276 administrative law judge, upon rendering a decision with respect to a claim for workers'
277 compensation benefits in which an employer that meets a condition listed in Subsection
278 (1)(a)(i)(B) is duly joined as a party, shall:

279 (i) order the employer that meets a condition listed in Subsection (1)(a)(i)(B) to
280 reimburse the Uninsured Employers' Fund for the benefits paid to or on behalf of an injured
281 employee by the Uninsured Employers' Fund along with interest, costs, and attorney fees; and

282 (ii) impose a penalty against the employer that meets a condition listed in Subsection
283 (1)(a)(i)(B):

284 (A) of 15% of the value of the total award in connection with the claim; and

285 (B) that shall be deposited into the Uninsured Employers' Fund.

286 (b) An award under this Subsection (11) shall be collected by the administrator in
287 accordance with Subsection (5)(c).

288 (12) The state, the commission, and the state treasurer, with respect to payment of
289 compensation benefits, expenses, fees, or disbursement properly chargeable against the
290 Uninsured Employers' Fund:

291 (a) are liable only to the assets in the Uninsured Employers' Fund; and

292 (b) are not otherwise in any way liable for the making of a payment.

293 (13) The commission may make reasonable rules for the processing and payment of a
294 claim for compensation from the Uninsured Employers' Fund.

295 (14) (a) (i) If it becomes necessary for the Uninsured Employers' Fund to pay benefits
296 under this section to an employee described in Subsection (14)(a)(ii), the Uninsured Employers'
297 Fund may assess all other self-insured employers amounts necessary to pay:

298 (A) the obligations of the Uninsured Employers' Fund subsequent to a condition listed
299 in Subsection (1)(a)(i)(B) occurring;

300 (B) the expenses of handling covered a claim subsequent to a condition listed in
301 Subsection (1)(a)(i)(B) occurring;

302 (C) the cost of an examination under Subsection (15); and

303 (D) other expenses authorized by this section.

304 (ii) This Subsection (14) applies to benefits paid to an employee of:

305 (A) a self-insured employer, as defined in Section 34A-2-201.5, that meets a condition
306 listed in Subsection (1)(a)(i)(B); or

307 (B) if the self-insured employer that meets a condition described in Subsection
308 (1)(a)(i)(B) is a public agency insurance mutual, a member of the public agency insurance
309 mutual.

310 (b) The assessments of a self-insured employer shall be in the proportion that the
311 manual premium of the self-insured employer for the preceding calendar year bears to the
312 manual premium of all self-insured employers for the preceding calendar year.

313 (c) A self-insured employer shall be notified of the self-insured employer's assessment
314 not later than 30 days before the day on which the assessment is due.

315 (d) (i) A self-insured employer may not be assessed in any year an amount greater than
316 2% of that self-insured employer's manual premium for the preceding calendar year.

317 (ii) If the maximum assessment does not provide in a year an amount sufficient to
318 make all necessary payments from the Uninsured Employers' Fund for one or more self-insured
319 employers that meet a condition listed in Subsection (1)(a)(i)(B), the unpaid portion shall be
320 paid as soon as money becomes available.

321 (e) A self-insured employer is liable under this section for a period not to exceed three
322 years after the day on which the Uninsured Employers' Fund first pays benefits to an employee
323 described in Subsection (14)(a)(ii) for the self-insured employer that meets a condition listed in
324 Subsection (1)(a)(i)(B).

325 (f) This Subsection (14) does not apply to a claim made against a self-insured employer
326 that meets a condition listed in Subsection (1)(a)(i)(B) if the condition listed in Subsection
327 (1)(a)(i)(B) occurred before July 1, 1986.

328 (15) (a) The following shall notify the division of any information indicating that any
329 of the following may be insolvent or in a financial condition hazardous to its employees or the
330 public:

331 (i) a self-insured employer; or

332 (ii) if the self-insured employer is a public agency insurance mutual, a member of the
333 public agency insurance mutual.

334 (b) Upon receipt of the notification described in Subsection (15)(a) and with good
335 cause appearing, the division may order an examination of:

336 (i) that self-insured employer; or

337 (ii) if the self-insured employer is a public agency insurance mutual, a member of the

338 public agency mutual.

339 (c) The cost of the examination ordered under Subsection (15)(b) shall be assessed
340 against all self-insured employers as provided in Subsection (14).

341 (d) The results of the examination ordered under Subsection (15)(b) shall be kept
342 confidential.

343 (16) (a) In a claim against an employer by the Uninsured Employers' Fund, or by or on
344 behalf of the employee to whom or to whose dependents compensation and other benefits are
345 paid or payable from the Uninsured Employers' Fund, the burden of proof is on the employer or
346 other party in interest objecting to the claim.

347 (b) A claim described in Subsection (16)(a) is presumed to be valid up to the full
348 amount of workers' compensation benefits claimed by the employee or the employee's
349 dependents.

350 (c) This Subsection (16) applies whether the claim is filed in court or in an adjudicative
351 proceeding under the authority of the commission.

352 (17) A partner in a partnership or an owner of a sole proprietorship may not recover
353 compensation or other benefits from the Uninsured Employers' Fund if:

354 (a) the person is not included as an employee under Subsection 34A-2-104(3); or

355 (b) the person is included as an employee under Subsection 34A-2-104(3), but:

356 (i) the person's employer fails to insure or otherwise provide adequate payment of
357 direct compensation; and

358 (ii) the failure described in Subsection (17)(b)(i) is attributable to an act or omission
359 over which the person had or shared control or responsibility.

360 (18) A director or officer of a corporation may not recover compensation or other
361 benefits from the Uninsured Employers' Fund if the director or officer is excluded from
362 coverage under Subsection 34A-2-104(4).

363 (19) The Uninsured Employers' Fund:

364 (a) shall be:

365 (i) used in accordance with this section only for:

366 (A) the purpose of assisting in the payment of workers' compensation benefits in
367 accordance with Subsection (1); and

368 (B) in accordance with Subsection (3), payment of:

369 (I) reasonable costs of administering the Uninsured Employers' Fund; or
 370 (II) fees required to be paid by the Uninsured Employers' Fund; and
 371 (ii) expended according to processes that can be verified by audit; and
 372 (b) may not be used for:
 373 (i) administrative costs unrelated to the Uninsured Employers' Fund; or
 374 (ii) an activity of the commission other than an activity described in Subsection (19)(a).
 375 (20) (a) For purposes of Subsection (1), an employment relationship is localized in the
 376 state if:

377 (i) (A) the employer who is liable for the benefits has a business premise in the state;
 378 and

379 (B) (I) the contract for hire is entered into in the state; or
 380 (II) the employee regularly performs work duties in the state for the employer who is
 381 liable for the benefits; or

382 (ii) the employee is:

383 (A) a resident of the state; and

384 (B) regularly performs work duties in the state for the employer who is liable for the
 385 benefits.

386 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 387 commission shall by rule define what constitutes regularly performing work duties in the state.

388 Section 4. **Effective date.**

389 This bill takes effect on July 1, 2013.

Legislative Review Note
 as of 2-1-13 4:16 PM

Office of Legislative Research and General Counsel