

Senator Karen Mayne proposes the following substitute bill:

**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;
- ▶ beginning January 1, 2014, requires a health benefit plan to pay for medical benefits otherwise covered by the health benefit 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;



- 26 ▶ provides that a health benefit plan may, at its option, provide notice to the Labor
27 Commission of the health benefit plan's payment of a medical claim that is being
28 adjudicated under workers' compensation;
- 29 ▶ if the Labor Commission issues a final order or approves a settlement agreement
30 that finds the medical claim is compensable as a workers' compensation claim,
31 requires the workers' compensation carrier to reimburse:
- 32 • the health benefit plan for the compensable medical claims plus 8% per annum
33 interest unless in settlement negotiations the health insurer agrees to waive any
34 part of the compensation; and
- 35 • the employee for out-of-pocket expenses associated with the compensable
36 medical claim plus 8% per annum interest;
- 37 ▶ prohibits a health care provider who received payment from a health benefit plan
38 from seeking additional reimbursement for the same medical claim from the
39 workers' compensation carrier if a final order or settlement agreement of the Labor
40 Commission determines that the claim is compensable as a workers' compensation
41 claim;
- 42 ▶ prohibits a health benefit plan from using automatic recovery or seeking
43 reimbursement from a health care provider for a medical claim paid by the health
44 benefit plan if the health benefit plan is reimbursed by a workers' compensation
45 carrier;
- 46 ▶ if a workers' compensation carrier is required to reimburse a health benefit plan for
47 a medical claim paid by the health benefit plan, the workers' compensation carrier
48 may not seek reimbursement from a health care provider for the payment to the
49 health benefit plan;
- 50 ▶ assesses a penalty on a workers' compensation carrier if the workers' compensation
51 carrier does not reimburse a health benefit plan or employee within a certain period
52 of time after an order issued by the Labor Commission is final;
- 53 ▶ requires the Labor Commission to report to the Utah Insurance Department if a
54 workers' compensation carrier fails to reimburse a health benefit plan or employee
55 within a certain period of time;
- 56 ▶ deposits the penalties collected by the Labor Commission into the Uninsured

57 Employers' Fund; and
58 ▶ makes technical changes.

59 **Money Appropriated in this Bill:**

60 None

61 **Other Special Clauses:**

62 This bill takes effect on January 1, 2014.

63 **Utah Code Sections Affected:**

64 AMENDS:

65 **34A-2-704**, as last amended by Laws of Utah 2012, Chapter 369

66 ENACTS:

67 **31A-22-619.6**, Utah Code Annotated 1953

68 **34A-2-213**, Utah Code Annotated 1953



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

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

72 **31A-22-619.6. Coordination of benefits with workers' compensation claim --**

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

74 (1) As used in this section:

75 (a) "Employee" means an employee, worker, or operative as defined in Section
76 34A-2-104.

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

78 (c) "Health benefit plan":

79 (i) is as defined in Section 31A-1-301; and

80 (ii) includes:

81 (A) a health maintenance organization;

82 (B) a third party administrator that offers, sells, manages, or administers a health
83 benefit plan; and

84 (C) the Public Employees' Benefit and Insurance Program created in Section
85 49-20-103.

86 (d) "Workers' compensation carrier" means any of the entities an employer may use to
87 provide workers' compensation benefits for its employees under Section 34A-2-201.

88 (e) "Workers' compensation claim" means a claim for compensation for medical
89 benefits under Title 34A, Chapter 2, Workers' Compensation Act, or Title 34A, Chapter 3,
90 Utah Occupational Disease Act.

91 (2) (a) For medical claims incurred on or after January 1, 2014, an employee's health
92 benefit plan may not delay or deny payment of benefits due to the employee under the terms of
93 a health benefit plan by claiming that treatment for the employee's injury or disease is the
94 responsibility of the employer's workers' compensation carrier if:

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

98 (ii) the health benefit plan received a notice from the Labor Commission that an
99 application for hearing was filed in accordance with Subsection (2)(a)(i).

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

102 (3) A health benefit plan that receives a medical claim from the employee or a health
103 care provider and a notice from the Labor Commission in accordance with Subsection (2):

104 (a) shall pay the medical claim directly to the health care provider in the dollar amount
105 paid under the limits, terms, and conditions of the employee's health benefit plan; and

106 (b) may send a notice to the Labor Commission or the attorney for the injured worker
107 informing the parties that the health benefit plan paid a claim under the provisions of this
108 section.

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

113 (5) (a) A health care provider who receives payment for a medical claim from a health
114 benefit plan under the provisions of Subsection (3) may not request additional payment for the
115 medical claim from the workers' compensation carrier if the final order or terms of the
116 settlement agreement under Section 34A-2-801 determine that the medical claim was
117 compensable by the workers' compensation carrier.

118 (b) A health benefit plan that is reimbursed under the provisions of Subsection

119 34A-2-213(3) for a medical claim may not seek reimbursement or autorecovery from the health
120 care provider for any difference between the amount of the claim paid by the health benefit
121 plan and the reimbursement to the health benefit plan by the workers' compensation carrier
122 under Subsection 34A-2-213(3).

123 (c) If a final order of the Labor Commission or the terms of a settlement agreement
124 under Section 34A-2-801 determines that a medical claim is compensable by the workers'
125 compensation carrier, the workers' compensation carrier may not seek reimbursement or
126 autorecovery from a health care provider for any part of the medical claim that is the
127 responsibility of the workers' compensation carrier under the order or settlement agreement.

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

129 **34A-2-213. Coordination of benefits with health benefit plan -- Timely payment of**
130 **claims.**

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

132 (i) a health benefit plan paid medical claims under Section 31A-22-619.6; and

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

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

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

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

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

144 (b) The Labor Commission shall prepare and provide notice to an injured employee of
145 the employee's right to payment by the employee's health benefit plan under Section
146 31A-22-619.6. The notice provided under this Subsection (2) shall include the process the
147 employee shall follow to obtain payment from a health benefit plan for a medical claim that is
148 the subject of an application for hearing under Section 34A-2-801.

149 (3) (a) The Labor Commission shall, within three business days after the date on which

150 the order or approval of the terms of a settlement agreement is signed by the administrative law
151 judge under Section 34A-2-801, send a copy of the order or terms of the settlement agreement
152 to:

153 (i) a health benefit plan that made payments under Section 31A-22-619.6;

154 (ii) the workers' compensation carrier; and

155 (iii) the injured worker.

156 (b) The workers' compensation carrier shall, within 15 business days after the day on
157 which the Labor Commission's order or settlement agreement is final under the provisions of
158 Section 34A-2-801, pay:

159 (i) the health benefit plan, in the amount the plan paid to the health care provider for
160 medical claims that are compensable under the order or the terms of the settlement agreement,
161 plus interest accrued at the rate of 8% per annum from the date the health benefit plan paid the
162 medical claims until the date the workers' compensation carrier reimburses the health benefit
163 plan, unless, in settlement negotiations, the health benefit plan agreed to waive, in whole or in
164 part, reimbursement for medical claims paid, interest accrued, or both; and

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

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

168 (B) interest accrued at the rate of 8% per annum from the date the employee paid the
169 expenses described in Subsection (3)(b)(ii)(A) until the date the workers' compensation carrier
170 reimburses the employee.

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

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

175 (i) the amount of \$500 for failure to pay the amount required by Subsections (3)(b)(i)

176 and (ii) within the period of time required by Subsections (3)(b)(i) and (ii); and

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

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

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

180 (b) deposit any penalties collected under this Subsection (4) into the Uninsured

181 Employers' Fund created in Section 34A-2-704; and

182 (c) notify the Utah Insurance Department of the workers' compensation carrier's failure
183 to pay the health benefit plan or the employee in accordance with this section.

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

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

188 (a) establish procedures for:

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

190 (ii) providing notice as required by this section; and

191 (b) enforce the provisions of this section.

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

193 **34A-2-704. Uninsured Employers' Fund.**

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

197 (i) that person's employer:

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

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

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

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

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

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

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

210 (2) (a) Money for the Uninsured Employers' Fund shall be deposited into the Uninsured
211 Employers' Fund in accordance with this chapter [~~and~~], Subsection 59-9-101(2), and

212 Subsection 34A-2-213(3).

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

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

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

218 (3) Reasonable costs of administering the Uninsured Employers' Fund or other fees
219 required to be paid by the Uninsured Employers' Fund may be paid from the Uninsured
220 Employers' Fund.

221 (4) The state treasurer shall:

222 (a) receive workers' compensation premium assessments from the State Tax
223 Commission; and

224 (b) invest the Uninsured Employers' Fund to ensure maximum investment return for
225 both long and short term investments in accordance with Section 51-7-12.5.

226 (5) (a) The administrator may employ, retain, or appoint counsel to represent the
227 Uninsured Employers' Fund in a proceeding brought to enforce a claim against or on behalf of
228 the Uninsured Employers' Fund.

229 (b) If requested by the commission, the following shall aid in the representation of the
230 Uninsured Employers' Fund:

231 (i) the attorney general; or

232 (ii) the city attorney, or county attorney of the locality in which:

233 (A) an investigation, hearing, or trial under this chapter or Chapter 3, Utah

234 Occupational Disease Act, is pending;

235 (B) the employee resides; or

236 (C) an employer:

237 (I) resides; or

238 (II) is doing business.

239 (c) (i) Notwithstanding Title 63A, Chapter 3, Part 5, Office of State Debt Collection,
240 the administrator shall provide for the collection of money required to be deposited in the
241 Uninsured Employers' Fund under this chapter and Chapter 3, Utah Occupational Disease Act.

242 (ii) To comply with Subsection (5)(c)(i), the administrator may:

243 (A) take appropriate action, including docketing an award in a manner consistent with
244 Section 34A-2-212; and

245 (B) employ counsel and other personnel necessary to collect the money described in
246 Subsection (5)(c)(i).

247 (6) To the extent of the compensation and other benefits paid or payable to or on behalf
248 of an employee or the employee's dependents from the Uninsured Employers' Fund, the
249 Uninsured Employers' Fund, by subrogation, has the rights, powers, and benefits of the
250 employee or the employee's dependents against the employer failing to make the compensation
251 payments.

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

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

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

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

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

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

265 (iii) an insolvent insurance carrier.

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

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

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

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

272 (9) When an injury or death for which compensation is payable from the Uninsured
273 Employers' Fund has been caused by the wrongful act or neglect of another person not in the

274 same employment, the Uninsured Employers' Fund has the same rights as allowed under
275 Section 34A-2-106.

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

278 (a) adjusting its own claims; or

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

282 (11) (a) For the purpose of maintaining the Uninsured Employers' Fund, an
283 administrative law judge, upon rendering a decision with respect to a claim for workers'
284 compensation benefits in which an employer that meets a condition listed in Subsection
285 (1)(a)(i)(B) is duly joined as a party, shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

310 (D) other expenses authorized by this section.

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

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

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

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

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

322 (d) (i) A self-insured employer may not be assessed in any year an amount greater than
323 2% of that self-insured employer's manual premium for the preceding calendar year.

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

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

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

335 (15) (a) The following shall notify the division of any information indicating that any

336 of the following may be insolvent or in a financial condition hazardous to its employees or the
337 public:

338 (i) a self-insured employer; or

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

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

343 (i) that self-insured employer; or

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

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

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

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

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

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

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

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

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

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

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

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

370 (19) The Uninsured Employers' Fund:

371 (a) shall be:

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

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

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

376 (I) reasonable costs of administering the Uninsured Employers' Fund; or

377 (II) fees required to be paid by the Uninsured Employers' Fund; and

378 (ii) expended according to processes that can be verified by audit; and

379 (b) may not be used for:

380 (i) administrative costs unrelated to the Uninsured Employers' Fund; or

381 (ii) an activity of the commission other than an activity described in Subsection (19)(a).

382 (20) (a) For purposes of Subsection (1), an employment relationship is localized in the
383 state if:

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

385 and

386 (B) (I) the contract for hire is entered into in the state; or

387 (II) the employee regularly performs work duties in the state for the employer who is
388 liable for the benefits; or

389 (ii) the employee is:

390 (A) a resident of the state; and

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

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

395 Section 4. **Effective date.**

396 This bill takes effect on January 1, 2014.