

**WORKERS' COMPENSATION ACCESS TO
MEDICAL RECORDS**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Jeff Alexander

LONG TITLE

General Description:

This bill amends the Workers' Compensation Laws to clarify that the Labor Commission has rulemaking authority regarding a physician's disclosure of medical records relevant to an employee's industrial accident or occupational disease claim.

Highlighted Provisions:

This bill:

- ▶ requires an injured employee and a physician to comply with commission rules regarding disclosure of medical records relevant to the employee's industrial accident or occupational disease; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-2-407, as last amended by Chapter 67, Laws of Utah 2003

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

Section 1. Section **34A-2-407** is amended to read:



28 **34A-2-407. Reporting of industrial injuries -- Regulation of health care**
29 **providers.**

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

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

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

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

36 (ii) the employee's attorney.

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

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

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

43 (ii) the division.

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

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

46 (ii) in the case of an occupational hearing loss, the time period specified in Section
47 34A-2-506.

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

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

50 (i) the division;

51 (ii) the employer; or

52 (iii) the employer's insurance carrier; or

53 (b) the payment of any medical or disability benefits by:

54 (i) the employer; or

55 (ii) the employer's insurance carrier.

56 (5) (a) In the form prescribed by the division, each employer shall file a report with the
57 division of any:

58 (i) work-related fatality; or

- 59 (ii) work-related injury resulting in:
- 60 (A) medical treatment;
- 61 (B) loss of consciousness;
- 62 (C) loss of work;
- 63 (D) restriction of work; or
- 64 (E) transfer to another job.
- 65 (b) The employer shall file the report required by Subsection (5)(a) within seven days
- 66 after:
- 67 (i) the occurrence of a fatality or injury;
- 68 (ii) the employer's first knowledge of the fatality or injury; or
- 69 (iii) the employee's notification of the fatality or injury.
- 70 (c) (i) An employer shall file a subsequent report with the division of any previously
- 71 reported injury that later results in death.
- 72 (ii) The subsequent report required by this Subsection (5)(c) shall be filed with the
- 73 division within seven days following:
- 74 (A) the death; or
- 75 (B) the employer's first knowledge or notification of the death.
- 76 (d) A report is not required to be filed under this Subsection (5) for minor injuries,
- 77 such as cuts or scratches that require first-aid treatment only, unless:
- 78 (i) a treating physician files a report with the division in accordance with Subsection
- 79 (9); or
- 80 (ii) a treating physician is required to file a report with the division in accordance with
- 81 Subsection (9).
- 82 (6) An employer required to file a report under Subsection (5) shall provide the
- 83 employee with:
- 84 (a) a copy of the report submitted to the division; and
- 85 (b) a statement, as prepared by the division, of the employee's rights and
- 86 responsibilities related to the industrial injury.
- 87 (7) Each employer shall maintain a record in a manner prescribed by the division of all:
- 88 (a) work-related fatalities; or
- 89 (b) work-related injuries resulting in:

- 90 (i) medical treatment;
- 91 (ii) loss of consciousness;
- 92 (iii) loss of work;
- 93 (iv) restriction of work; or
- 94 (v) transfer to another job.

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

- 98 (i) guilty of a class C misdemeanor; and
- 99 (ii) subject to a civil assessment:
 - 100 (A) imposed by the division, subject to the requirements of Title 63, Chapter 46b,
 - 101 Administrative Procedures Act; and
 - 102 (B) that may not exceed \$500.

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

- 105 (i) the employer submits a report later than required by this section; and
- 106 (ii) the division finds that the employer has shown good cause for submitting a report
 107 later than required by this section.

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

110 (9) (a) Except as provided in Subsection (9)(c), a physician attending an injured
 111 employee shall ~~[-(i)]~~ comply with ~~[all the]~~ rules ~~[-, including the schedule of]~~ established by the
 112 commission regarding:

- 113 (i) fees[-] for [the] physician's services [as adopted by the commission; and (ii) make];
- 114 (ii) disclosure of medical records of the employee relevant to the employee's industrial
 115 accident, or occupational disease claim; and

116 (iii) reports to the division [at any and all times as required as to] regarding:

- 117 (A) the condition and treatment of an injured employee; or
- 118 (B) any other matter concerning industrial cases that the physician is treating.

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

- 121 (c) A hospital is not subject to the requirements of Subsection (9)(a).
- 122 (d) The commission's schedule of fees may reasonably differentiate remuneration to be
123 paid to providers of health services based on:
- 124 (i) the severity of the employee's condition;
- 125 (ii) the nature of the treatment necessary; and
- 126 (iii) the facilities or equipment specially required to deliver that treatment.
- 127 (e) This Subsection (9) does not modify contracts with providers of health services
128 relating to the pricing of goods and services existing on May 1, 1995.
- 129 (f) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, a
130 physician may file with the Division of Adjudication an application for hearing to appeal a
131 decision or final order to the extent a decision or final order concerns the fees charged by the
132 physician in accordance with this section.
- 133 (10) A copy of the initial report filed under Subsection (9)(a)(iii) shall be furnished to:
- 134 (a) the division;
- 135 (b) the employee; and
- 136 (c) (i) the employer; or
- 137 (ii) the employer's insurance carrier.
- 138 (11) (a) Except as provided in Subsection (11)(b), a physician, excluding any hospital,
139 who fails to comply with ~~[this section]~~ Subsection (9)(a)(iii) is guilty of a class C misdemeanor
140 for each offense.
- 141 (b) A physician is not guilty of a class C misdemeanor under this Subsection (11), if:
- 142 (i) the physician files a late report; and
- 143 (ii) the division finds that there is good cause for submitting a late report.
- 144 (12) (a) Subject to appellate review under Section 34A-1-303, the commission has
145 exclusive jurisdiction to hear and determine whether the treatment or services rendered to an
146 employee by a physician are:
- 147 (i) reasonably related to industrial injuries or occupational diseases; and
- 148 (ii) compensable pursuant to this chapter or Chapter 3, Utah Occupational Disease Act.
- 149 (b) Except as provided in Subsection (12)(a), Subsection 34A-2-211(7), or Section
150 34A-2-212, a person may not maintain a cause of action in any forum within this state other
151 than the commission for collection or payment of a physician's billing for treatment or services

152 that are compensable under this chapter or Chapter 3, Utah Occupational Disease Act.

Legislative Review Note
as of 12-16-03 1:59 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel