LEGISLATIVE GENERAL COUNSEL
₵ Approved for Filing: P. Owen ₵
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H.B. 150

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:

- clarifies language related to when an employer is an employer of a contractor, subcontractor, or their employees for purposes of workers' compensation;
- 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;
- 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;
- deletes out-of-date language;
- makes technical changes; and
- provides for legislative intent.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-2-103, as last amended by Chapter 71, Laws of Utah 2005

34A-2-111, as renumbered and amended by Chapter 375, Laws of Utah 1997

34A-2-407, as last amended by Chapter 113, Laws of Utah 2004

34A-2-413, as last amended by Chapter 261, Laws of Utah 2005

34A-2-801, as last amended by Chapter 67, Laws of Utah 2003

34A-3-108, as last amended by Chapter 205 and renumbered and amended by Chapter 375, Laws of Utah 1997

ENACTS:

34A-2-113, Utah Code Annotated 1953

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

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

34A-2-103. Employers enumerated and defined -- Regularly employed -- Statutory employers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

commission rules.

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

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

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

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

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

(A) an agricultural employer's:

(I) spouse;

(II) grandparent;

(III) parent;

(IV) sibling;

(V) child;

(VI) grandchild;

(VII) nephew; or

(VIII) niece;

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

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

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

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

(c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an

agricultural employer is not considered an employer of a nonimmediate family employee if:

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

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

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

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

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

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

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

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

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

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

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

(b) the rules of the commission.

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

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

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

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

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

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

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

(d) A director or officer of a corporation [~~may~~] is not [~~be~~] considered an employee under Subsection (7)(a) if the director or officer is excluded from coverage under Subsection 34A-2-104(4).

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

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

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

(A) the partnership, corporation, or sole proprietorship is customarily engaged in an

independently established trade, occupation, profession, or business; and

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

(f) (i) Notwithstanding the other provisions in this Subsection (7), if the conditions of Subsection (7)(f)(ii) are met, a contractor, all persons employed by the contractor, all subcontractors under the contractor, and all persons employed by any of these subcontractors, are all considered employees of the original employer for purposes of Section 34A-2-105.

(ii) Subsection (7)(f)(i) applies if the employer who procures work to be done in whole or in part by the contractor, the subcontractor, and all persons employed by the contractor or subcontractor:

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

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

(C) (I) obtains and relies on:

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

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

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

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

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

(IV) exercises supervision or control over the means by which the work is accomplished through the implementation of a written workplace accident and injury reduction program meeting the standards of Subsection 34A-2-111(3).

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

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

(1) As used in this section:

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

(ii) "Health care provider" includes:

(A) a hospital;

(B) a clinic;

(C) an emergency care center;

(D) a physician;

(E) a nurse;

(F) a nurse practitioner;

(G) a physicians' assistant;

(H) a paramedic; or

(I) an emergency medical technician.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) designated under a managed health care program.

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

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

[~~(1)~~] (2) (a) [~~Self-insured employers~~] A self-insured employer and [~~workers' compensation carriers~~] insurance carrier may adopt a managed health care program to provide employees the benefits of this chapter or Chapter 3, Utah Occupational Disease Act, beginning

January 1, 1993. The plan [~~may include one or more of the following:~~] shall comply with this Subsection (2).

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

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

(I) preferred provider physicians; and

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

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

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

(A) use a preferred health care facility; or

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

[~~(ii)~~] (iv) Notwithstanding the requirements of [~~Subsection (1)(a)(i)~~] Subsections (2)(b)(i) through (iii), a self-insured [~~entity~~] employer or other employer may:

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

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

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

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

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

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

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

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

(I) a preferred provider physician; or

(II) preferred health care facility.

[~~(b)~~] (c) (i) [~~Other~~] (A) An employer, insurance carrier, or self-insured employer may enter into contracts with [~~medical~~] the following for the purposes listed in Subsection (2)(c)(i)(B):

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

(II) medical review organizations; or

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

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

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

[~~(B)~~] (II) peer review;

[~~(C)~~] (III) methods of utilization review;

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

[~~(E)~~] (V) bill audit[~~.~~];

(VI) discounted purchasing; and

(VII) the establishment of a reasonable health care cost containment program including the implementation of medical treatment and quality care guidelines that are:

(Aa) scientifically based;

(Bb) peer reviewed; and

(Cc) consistent with standards for health care cost containment programs that the commission shall establish by rules made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, including the authority of the commission to approve a health care cost containment program before it is used or disapprove a health care cost containment program that does not comply with this Subsection (2)(c)(i)(B)(VII).

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

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

[~~(a) Title 58, Chapter 5a, Podiatric Physician Licensing Act;~~]

[~~(b) Title 58, Chapter 24a, Physical Therapist Practice Act;~~]

[~~(c) Title 58, Chapter 67, Utah Medical Practice Act;~~]

[~~(d) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;~~]

[~~(e) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;~~]

[~~(f) Title 58, Chapter 70, Physician Assistant Practice Act;~~]

[~~(g) Title 58, Chapter 71, Naturopathic Physician Practice Act;~~]

[~~(h) Title 58, Chapter 72, Acupuncture Licensing Act; and~~]

[~~(i) Title 58, Chapter 73, Chiropractic Physician Practice Act.~~]

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

[~~(4)~~] (3) (a) In addition to a managed health care [~~plans~~] program, an insurance carrier may require an employer to establish a work place safety program if the employer:

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

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

(b) A workplace safety program may include:

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

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

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

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

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

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

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

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

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

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

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

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

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

34A-2-113. Designated agent required.

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

(1) registered with the division; and

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

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

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

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

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

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

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

(ii) the employee's attorney.

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

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

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

(ii) the division.

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

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

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

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

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

(i) the division;

(ii) the employer; or

(iii) the employer's insurance carrier; or

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

(i) the employer; or

(ii) the employer's insurance carrier.

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

(i) work-related fatality; or

(ii) work-related injury resulting in:

(A) medical treatment;

(B) loss of consciousness;

(C) loss of work;

(D) restriction of work; or

(E) transfer to another job.

(b) The employer shall file the report required by Subsection (5)(a) within seven days after:

(i) the occurrence of a fatality or injury;

(ii) the employer's first knowledge of the fatality or injury; or

(iii) the employee's notification of the fatality or injury.

(c) (i) An employer shall file a subsequent report with the division of any previously

reported injury that later results in death.

(ii) The subsequent report required by this Subsection (5)(c) shall be filed with the division within seven days following:

(A) the death; or

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

(d) A report is not required to be filed under this Subsection (5) for minor injuries, such as cuts or scratches that require first-aid treatment only, unless:

(i) a treating physician files a report with the division in accordance with Subsection (9); or

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

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

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

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

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

(a) work-related fatalities; or

(b) work-related injuries resulting in:

(i) medical treatment;

(ii) loss of consciousness;

(iii) loss of work;

(iv) restriction of work; or

(v) transfer to another job.

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

(i) guilty of a class C misdemeanor; and

(ii) subject to a civil assessment:

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

(B) that may not exceed $500.

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

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

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

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

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

(i) fees for physician's services;

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

(iii) reports to the division regarding:

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

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

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

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

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

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

(ii) the nature of the treatment necessary; and

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

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

[~~(f) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, a physician may file with the Division of Adjudication an application for hearing to appeal a~~

~~decision or final order to the extent a decision or final order concerns the fees charged by the physician in accordance with this section.~~]

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

(a) the division;

(b) the employee; and

(c) (i) the employer; or

(ii) the employer's insurance carrier.

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

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

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

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

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

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

(A) medical, nurse, or hospital services;

(B) medicines; and

(C) artificial means, appliances, or prosthesis;

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

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

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

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

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

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

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

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

(ii) the employee is permanently totally disabled; and

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

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

(i) the employee is not gainfully employed;

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

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

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

(A) age;

(B) education;

(C) past work experience;

(D) medical capacity; and

(E) residual functional capacity.

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

(i) may be presented to the commission;

(ii) is not binding; and

(iii) creates no presumption of an entitlement under this chapter and Chapter 3, Utah Occupational Disease Act.

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

(a) compensation per week may not be more than 85% of the state average weekly wage at the time of the injury;

(b) compensation per week may not be less than the sum of $45 per week, plus $5 for a dependent spouse, plus $5 for each dependent child under the age of 18 years, up to a maximum of four dependent minor children, but not exceeding the maximum established in Subsection (2)(a) nor exceeding the average weekly wage of the employee at the time of the injury; and

(c) after the initial 312 weeks, the minimum weekly compensation rate under Subsection (2)(b) shall be 36% of the current state average weekly wage, rounded to the nearest dollar.

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

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

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

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

(d) After an employee has received compensation from the employee's employer, its insurance carrier, or the Employers' Reinsurance Fund for any combination of disabilities

amounting to 312 weeks of compensation at the applicable permanent total disability compensation rate, the Employers' Reinsurance Fund shall pay all remaining permanent total disability compensation.

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

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

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

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

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

(5) Notwithstanding the minimum rate established in Subsection (2), the compensation payable by the employer, its insurance carrier, or the Employers' Reinsurance Fund, after an employee has received compensation from the employer or the employer's insurance carrier for any combination of disabilities amounting to 312 weeks of compensation at the applicable total disability compensation rate, shall be reduced, to the extent allowable by law, by the dollar amount of 50% of the Social Security retirement benefits received by the employee during the same period.

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

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

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

(A) a reemployment plan as prepared by a qualified rehabilitation provider reasonably

designed to return the employee to gainful employment; or

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

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

(A) consider evidence regarding rehabilitation; and

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

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

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

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

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

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

(e) An employer or its insurance carrier may not be ordered to submit a reemployment plan. If the employer or its insurance carrier voluntarily submits a plan, the plan is subject to Subsections (6)(e)(i) through (iii).

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

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

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

(f) If a preponderance of the evidence shows that successful rehabilitation is not possible, the administrative law judge shall order that the employee be paid weekly permanent

total disability compensation benefits.

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

(i) with the death of the employee; or

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

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

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

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

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

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

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

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

(h) The administrative law judge may:

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

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

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

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

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

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

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

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

(c) The reexamination may include:

(i) the review of medical records;

(ii) employee submission to reasonable medical evaluations;

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

(iv) employee disclosure of Federal Income Tax Returns;

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

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

(d) The insurer or self-insured employer shall pay for the cost of a reexamination with

appropriate employee reimbursement pursuant to rule for reasonable travel allowance and per diem as well as reasonable expert witness fees incurred by the employee in supporting the employee's claim for permanent total disability benefits at the time of reexamination.

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

(f) (i) Should the reexamination of a permanent total disability finding reveal evidence that reasonably raises the issue of an employee's continued entitlement to permanent total disability compensation benefits, an insurer or self-insured employer may petition the Division of Adjudication for a rehearing on that issue. The petition shall be accompanied by documentation supporting the insurer's or self-insured employer's belief that the employee is no longer permanently totally disabled.

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

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

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

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

(12) If any provision of this section, or the application of any provision to any person

or circumstance, is held invalid, the remainder of this section shall be given effect without the invalid provision or application.

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

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

(1) (a) To contest an action of the employee's employer or its insurance carrier concerning a compensable industrial accident or occupational disease alleged by the employee, any of the following shall file an application for hearing with the Division of Adjudication:

(i) the employee; or

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

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

(i) the employer;

(ii) the insurance carrier; or

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

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

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

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

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

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

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

(i) as part of the motion for review; or

(ii) if requested by a party in interest who did not file a motion for review, within 20 days of the date the motion for review is filed with the Division of Adjudication.

(d) A case appealed to the Appeals Board shall be decided by the majority vote of the Appeals Board.

(4) All records on appeals shall be maintained by the Division of Adjudication. Those records shall include an appeal docket showing the receipt and disposition of the appeals on review.

(5) Upon appeal, the commissioner or Appeals Board shall make its decision in accordance with Section 34A-1-303.

(6) The commissioner or Appeals Board shall promptly notify the parties to any proceedings before it of its decision, including its findings and conclusions.

(7) The decision of the commissioner or Appeals Board is final unless within 30 days after the date the decision is issued further appeal is initiated under the provisions of this section or Title 63, Chapter 46b, Administrative Procedures Act.

(8) (a) Within 30 days after the date the decision of the commissioner or Appeals Board is issued, any aggrieved party may secure judicial review by commencing an action in the court of appeals against the commissioner or Appeals Board for the review of the decision of the commissioner or Appeals Board.

(b) In an action filed under Subsection (8)(a):

(i) any other party to the proceeding before the commissioner or Appeals Board shall be made a party; and

(ii) the commission shall be made a party.

(c) A party claiming to be aggrieved may seek judicial review only if the party has exhausted the party's remedies before the commission as provided by this section.

(d) At the request of the court of appeals, the commission shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter together

with the decision of the commissioner or Appeals Board.

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

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

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

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

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

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

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

(i) division;

(ii) employer; or

(iii) insurance carrier; or

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

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

(i) medical treatment;

(ii) loss of consciousness;

(iii) loss of work;

(iv) restriction of work; or

(v) transfer to another job.

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

(i) the occurrence of an occupational disease;

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

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

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

(i) the death; or

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

(d) A report is not required for:

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

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

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

(5) Each employer shall provide the employee with:

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

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

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

(a) medical treatment;

(b) loss of consciousness;

(c) loss of work;

(d) restriction of work; or

(e) transfer to another job.

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

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

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

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

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

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

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

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

(ii) the nature of the treatment necessary; and

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

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

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

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

(a) division;

(b) employee; and

(c) employer or its insurance carrier.

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

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

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

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

(ii) the applicant; and

(iii) the attorneys for the parties.

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

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

(A) medical, nurse, or hospital services;

(B) medicines; and

(C) artificial means, appliances, or prosthesis;

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

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

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

Section 8. **Legislative intent language.**

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

Legislative Review Note
as of 1-24-06 9:53 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note

Bill Number HB0150

Workers' Compensation Revisions

01-Feb-06
11:45 AM

State Impact

No fiscal impact.

Individual and Business Impact

The bill clarifies that hospitals are subject to Labor Commission rules. Any fiscal impact is dependent on the effect of those rules.

Office of the Legislative Fiscal Analyst