

**WORKERS' COMPENSATION ACT - MEDICAL
REPORTS**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Michael T. Morley

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

34A-2-601. Medical panel, director, or consultant -- Findings and reports --

30 **Objections to report -- Hearing -- Expenses.**

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

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

35 (A) disability by accident; or

36 (B) death by accident; and

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

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

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

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

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

47 (ii) for the purpose of:

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

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

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

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

57 (i) conduct a study;

58 (ii) take an x-ray;
59 (iii) perform a test; or
60 (iv) if authorized by an administrative law judge, conduct a post-mortem examination.
61 (b) A medical panel, medical director, or medical consultant shall make:
62 (i) a report in writing to the administrative law judge in a form prescribed by the
63 Division of Adjudication; and
64 (ii) additional findings as the administrative law judge may require.
65 (c) In an occupational disease case, in addition to the requirements of Subsection
66 (2)(b), a medical panel, medical director, or medical consultant shall certify to the
67 administrative law judge:
68 (i) the extent, if any, of the disability of the claimant from performing work for
69 remuneration or profit;
70 (ii) whether the sole cause of the disability or death, in the opinion of the medical
71 panel, medical director, or medical consultant results from the occupational disease; and
72 (iii) (A) whether any other ~~causes have~~ cause aggravated, prolonged, accelerated, or
73 in any way contributed to the disability or death; and
74 (B) if another cause ~~has~~ contributed to the disability or death, the extent in
75 percentage to which the other cause ~~has~~ contributed to the disability or death.
76 (d) (i) ~~The~~ An administrative law judge shall promptly distribute full copies of a
77 report submitted to the administrative law judge under this Subsection (2) by ~~certified~~ mail
78 ~~[with return receipt requested]~~ to:
79 (A) the applicant;
80 (B) the employer; ~~and~~
81 (C) the employer's insurance carrier~~[-];~~ and
82 (D) an attorney employed by a person listed in Subsections (2)(d)(i)(A) through (C).
83 (ii) Within ~~[15]~~ 20 days after the report described in Subsection (2)(d)(i) is deposited
84 in the United States post office, the following may file with the administrative law judge a
85 written ~~[objections]~~ objection to the report:

86 (A) the applicant;

87 (B) the employer; or

88 (C) the employer's insurance carrier.

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

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

93 (A) a medical panel;

94 (B) the medical director; or

95 (C) one or more medical consultants.

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

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

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

105 (A) the chair of the medical panel;

106 (B) the medical director; or

107 (C) the one or more medical consultants.

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

110 (A) a member of a medical panel, with or without the chair of the medical panel;

111 (B) the medical director; or

112 (C) a medical consultant.

113 (g) (i) [~~The~~] A written report of a medical panel, medical director, or one or more

114 medical consultants may be received as an exhibit at ~~[the]~~ a hearing described in Subsection
115 (2)(f).

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

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

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

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

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

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

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

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