

**WORKERS' COMPENSATION COORDINATION OF
BENEFITS AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: _____

LONG TITLE

General Description:

This bill amends the Insurance Code and the Utah Labor Code to coordinate the benefits paid by workers' compensation and a group health insurance plan.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a group health insurance plan to pay for medical benefits otherwise covered by the group health plan in certain circumstances while a workers' compensation claim is pending;
- ▶ preserves an employer's authority to require an employee to use employer sponsored managed care or office place wellness centers; and
- ▶ makes technical amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-2-111, as last amended by Laws of Utah 2009, Chapter 220



28 ENACTS:

29 31A-22-619.6, Utah Code Annotated 1953

30 34A-2-213, Utah Code Annotated 1953

31

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

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

34 **31A-22-619.6. Coordination of benefits with workers' compensation claim --**
35 **Health insurer's duty to pay -- Lien.**

36 (1) As used in this section:

37 (a) "Employee" means as employee, worker, or operative as defined in Section
38 34A-2-104.

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

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

41 (i) a health maintenance organization; and

42 (ii) a third party administrator that offers, sells, manages, or administers a health
43 insurance policy or health maintenance organization contract that is subject to this title.

44 (d) "Workers' compensation claim" means a claim for compensation or benefits filed
45 by an employee under Title 34A, Chapter 2, Workers' Compensation Act, or Title 34A,
46 Chapter 3, Utah Occupational Disease Act.

47 (2) An employee's health insurer may not delay or deny payment of benefits due to the
48 employee under the terms of a health benefit plan or group health, medical, or hospitalization
49 plan by claiming that treatment for the employee's injury or disease is the responsibility of the
50 employer's workers' compensation insurer if:

51 (a) the employee has filed a workers' compensation claim; and

52 (b) (i) the particular workers' compensation claim has not been paid within 120 days
53 after the employee filed the claim with the employer's workers' compensation carrier; or

54 (ii) the employee has filed an application for hearing regarding the workers'
55 compensation claim with the Division of Adjudication under Section 34A-2-801.

56 (3) A health insurer who receives a medical claim from the employee or a health care
57 provider in accordance with Subsection (2) shall pay the medical claim directly to the health
58 care provider in an amount that is the lesser of:

59 (a) the dollar amount paid under the limits, terms, and conditions of the employee's
60 health insurance policy; or

61 (b) the dollar amount of the medical benefits that should be paid by the employer in
62 accordance with a settlement agreement or order under the provisions of Title 34A, Chapter 2,
63 Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act.

64 (4) If the claims for medical services paid pursuant to Subsection (3) are determined to
65 be compensable under Title 34A, Chapter 2, Workers' Compensation Act, or Title 34A,
66 Chapter 3, Utah Occupational Disease Act, the workers' compensation insurer, or self-insured
67 employer shall reimburse the health insurer, in accordance with Section 34A-2-213, the lesser
68 of:

69 (a) the dollar amount paid under the limits, terms, and conditions of the employee's
70 health insurance policy; or

71 (b) the dollar amount of the medical benefits that should be paid by the employer in
72 accordance with a settlement agreement or order under the provisions of Title 34A, Chapter 2,
73 Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act.

74 (5) An employer may enforce the managed care requirements of Section 34A-2-111
75 without violating the provisions of this section.

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

77 **34A-2-111. Managed health care programs -- Other safety programs.**

78 (1) As used in this section:

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

81 (ii) "Health care provider" includes:

82 (A) a hospital;

83 (B) a clinic;

84 (C) an emergency care center;

85 (D) a physician;

86 (E) a nurse;

87 (F) a nurse practitioner;

88 (G) a physician's assistant;

89 (H) a paramedic; or

- 90 (I) an emergency medical technician.
- 91 (b) "Physician" means any health care provider licensed under:
 - 92 (i) Title 58, Chapter 5a, Podiatric Physician Licensing Act;
 - 93 (ii) Title 58, Chapter 24b, Physical Therapy Practice Act;
 - 94 (iii) Title 58, Chapter 67, Utah Medical Practice Act;
 - 95 (iv) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
 - 96 (v) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;
 - 97 (vi) Title 58, Chapter 70a, Physician Assistant Act;
 - 98 (vii) Title 58, Chapter 71, Naturopathic Physician Practice Act;
 - 99 (viii) Title 58, Chapter 72, Acupuncture Licensing Act; and
 - 100 (ix) Title 58, Chapter 73, Chiropractic Physician Practice Act.
- 101 (c) "Preferred health care facility" means a facility:
 - 102 (i) that is a health care facility as defined in Section 26-21-2; and
 - 103 (ii) designated under a managed health care program.
- 104 (d) "Preferred provider physician" means a physician designated under a managed
- 105 health care program.
- 106 (e) "Self-insured employer" is as defined in Section 34A-2-201.5.
- 107 (2) (a) A self-insured employer and insurance carrier may adopt a managed health care
- 108 program to provide employees the benefits of this chapter or Chapter 3, Utah Occupational
- 109 Disease Act, beginning January 1, 1993. The plan shall comply with this Subsection (2).
- 110 (b) (i) A preferred provider program may be developed if the preferred provider
- 111 program allows a selection by the employee of more than one physician in the health care
- 112 specialty required for treating the specific problem of an industrial patient.
- 113 (ii) (A) Subject to the requirements of this section, if a preferred provider program is
- 114 developed by an insurance carrier or self-insured employer, an employee is required to use:
 - 115 (I) preferred provider physicians; and
 - 116 (II) preferred health care facilities.
- 117 (B) If a preferred provider program is not developed, an employee may have free
- 118 choice of health care providers.
- 119 (iii) The failure to do the following may, if the employee has been notified of the
- 120 preferred provider program, result in the employee being obligated for any charges in excess of

121 the preferred provider allowances:

122 (A) use a preferred health care facility; or

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

124 (iv) Notwithstanding the requirements of Subsections (2)(b)(i) through (iii), a

125 self-insured employer or other employer may:

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

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

128 (II) operate a health care facility; and

129 (B) notwithstanding the provisions of Section 31A-22-619.6, require employees to first
130 seek treatment at the provided health care or contracted facility.

131 (v) An employee subject to a preferred provider program or employed by an employer
132 having its own health care facility may procure the services of any qualified health care
133 provider:

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

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

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

138 (I) a preferred provider physician; or

139 (II) preferred health care facility.

140 (c) (i) (A) An employer, insurance carrier, or self-insured employer may enter into
141 contracts with the following for the purposes listed in Subsection (2)(c)(i)(B):

142 (I) health care providers;

143 (II) medical review organizations; or

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

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

147 (I) insurance carriers or self-insured employers may form groups in contracting for
148 managed health care services with health care providers;

149 (II) peer review;

150 (III) methods of utilization review;

151 (IV) use of case management;

152 (V) bill audit;

153 (VI) discounted purchasing; and

154 (VII) the establishment of a reasonable health care treatment protocol program

155 including the implementation of medical treatment and quality care guidelines that are:

156 (Aa) scientifically based;

157 (Bb) peer reviewed; and

158 (Cc) consistent with standards for health care treatment protocol programs that the

159 commission shall establish by rules made in accordance with Title 63G, Chapter 3, Utah

160 Administrative Rulemaking Act, including the authority of the commission to approve a health

161 care treatment protocol program before it is used or disapprove a health care treatment protocol

162 program that does not comply with this Subsection (2)(c)(i)(B)(VII).

163 (ii) An insurance carrier may make any or all of the factors in Subsection (2)(c)(i) a

164 condition of insuring an entity in its insurance contract.

165 (3) (a) In addition to a managed health care program, an insurance carrier may require

166 an employer to establish a work place safety program if the employer:

167 (i) has an experience modification factor of 1.00 or higher, as determined by the

168 National Council on Compensation Insurance; or

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

170 higher.

171 (b) A workplace safety program may include:

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

173 (A) promotes safe and healthful working conditions; and

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

175 (ii) a documented review of the workplace accident and injury reduction program each

176 calendar year delineating how procedures set forth in the program are met.

177 (c) A written workplace accident and injury reduction program permitted under

178 Subsection (3)(b)(i) should describe:

179 (i) how managers, supervisors, and employees are responsible for implementing the

180 program;

181 (ii) how continued participation of management will be established, measured, and

182 maintained;

183 (iii) the methods used to identify, analyze, and control new or existing hazards,
184 conditions, and operations;

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

187 (v) how workplace accidents will be investigated and corrective action implemented;
188 and

189 (vi) how safe work practices and rules will be enforced.

190 (d) For the purposes of a workplace accident and injury reduction program of an
191 eligible employer described in Subsection 34A-2-103(7)(f), the workplace accident and injury
192 reduction program shall:

193 (i) include the provisions described in Subsections (3)(b) and (c), except that the
194 employer shall conduct a documented review of the workplace accident and injury reduction
195 program at least semiannually delineating how procedures set forth in the workplace accident
196 and injury reduction program are met; and

197 (ii) require a written agreement between the employer and all contractors and
198 subcontractors on a project that states that:

199 (A) the employer has the right to control the manner or method by which the work is
200 executed;

201 (B) if a contractor, subcontractor, or any employee of a contractor or subcontractor
202 violates the workplace accident and injury reduction program, the employer maintains the right
203 to:

204 (I) terminate the contract with the contractor or subcontractor;

205 (II) remove the contractor or subcontractor from the work site; or

206 (III) require that the contractor or subcontractor not permit an employee that violates
207 the workplace accident and injury reduction program to work on the project for which the
208 employer is procuring work; and

209 (C) the contractor or subcontractor shall provide safe and appropriate equipment
210 subject to the right of the employer to:

211 (I) inspect on a regular basis the equipment of a contractor or subcontractor; and

212 (II) require that the contractor or subcontractor repair, replace, or remove equipment
213 the employer determines not to be safe or appropriate.

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

217 Section 3. Section **34A-2-213** is enacted to read:

218 **34A-2-213. Payment under health benefit plan not defense.**

219 (1) (a) If an employer or a workers' compensation insurer denies the compensability of
220 all or any portion of a claim submitted for medical services, the workers' compensation insurer
221 or the self-insured employer shall send notice of the denial to each provider of medical services
222 and to the injured employee.

223 (b) The commissioner shall approve the form of the notice required by Subsection
224 (1)(a).

225 (2) The workers' compensation insurer, or self-insured employer shall directly
226 reimburse each health insurer who made a payment under Section 31A-22-619.6:

227 (a) if a settlement agreement or order determines that the claims for medical services
228 paid pursuant to Section 31A-22-619.6 are compensable under this chapter or Chapter 3, Utah
229 Occupational Disease Act; and

230 (b) in an amount that is the lesser of:

231 (i) the dollar amount paid under the limits, terms, and conditions of the employee's
232 health insurance policy; or

233 (ii) the dollar amount of the medical benefits that an employer is required to pay under
234 the provisions of a settlement agreement or order under this chapter or Chapter 3, Utah
235 Occupational Disease Act.

Legislative Review Note
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Office of Legislative Research and General Counsel