

## SB0059S01 compared with SB0059

~~text~~ shows text that was in SB0059 but was deleted in SB0059S01.

inserted text shows text that was not in SB0059 but was inserted into SB0059S01.

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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: \_\_\_\_\_

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#### 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 ~~insurance~~ 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;

## SB0059S01 compared with SB0059

- ▶ 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;
- ▶ provides that a health ~~{insurer}~~benefit plan may, at its option, provide notice to the Labor Commission of the health ~~{insurer's}~~benefit plan's payment of a medical claim that is being adjudicated under workers' compensation;
- ▶ if the Labor Commission issues a final order or approves a settlement agreement that finds the medical claim is compensable as a workers' compensation claim, requires the workers' compensation carrier to reimburse:
  - the health ~~{insurer}~~benefit plan for the compensable medical claims plus 8% per annum interest unless in settlement negotiations the health insurer agrees to waive any part of the compensation; and
  - the employee for out-of-pocket expenses associated with the compensable medical claim plus 8% per annum interest;
- ▶ prohibits a health care provider who received payment from a health ~~{insurer}~~benefit plan from seeking additional reimbursement for the same medical claim from the workers' compensation carrier if a final order or settlement agreement of the Labor Commission determines that the claim is compensable as a workers' compensation claim;
- ▶ prohibits a health ~~{insurer}~~benefit plan from using automatic recovery or seeking reimbursement from a health care provider for a medical claim paid by the health ~~{insurer}~~benefit plan if the health ~~{insurer}~~benefit plan is reimbursed by a workers' compensation carrier;
- ▶ if a workers' compensation carrier is required to reimburse a health ~~{insurer}~~benefit plan for a medical claim paid by the health ~~{insurer}~~benefit plan, the workers' compensation carrier may not seek reimbursement from a health care provider for the payment to the health ~~{insurer}~~benefit plan;

## SB0059S01 compared with SB0059

- ▶ assesses a penalty on a workers' compensation carrier if the workers' compensation carrier does not reimburse a health ~~{insurer}~~benefit plan or employee within a certain period of time after an order issued by the Labor Commission is final;
- ▶ requires the Labor Commission to report to the Utah Insurance Department if a workers' compensation carrier fails to reimburse a health ~~{insurer}~~benefit plan or employee within a certain period of time;
- ▶ deposits the penalties collected by the Labor Commission into the Uninsured Employers' Fund; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill takes effect on ~~{July}~~January 1, ~~{2013}~~2014.

### Utah Code Sections Affected:

AMENDS:

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

ENACTS:

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

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

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

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

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

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

(1) As used in this section:

(a) "Employee" means an employee, worker, or operative as defined in Section

34A-2-104.

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

(c) "Health ~~{insurer}~~benefit plan":

(i) is ~~{an "insurer"}~~ as defined in Section 31A-1-301 ~~{,};~~ and

(ii) includes:

## SB0059S01 compared with SB0059

~~(fi)A~~ a health maintenance organization;

~~(fi)B~~ a third party administrator that offers, sells, manages, or administers a health ~~insurance policy~~ benefit plan; and

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

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

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

(2) (a) For medical claims incurred on or after ~~July~~ January 1, ~~2013~~ 2014, an employee's health ~~insurer~~ benefit plan may not delay or deny payment of benefits due to the employee under the terms of a health ~~insurance~~ benefit plan by claiming that treatment for the employee's injury or disease is the responsibility of the employer's workers' compensation carrier if:

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

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

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

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

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

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

## SB0059S01 compared with SB0059

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

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

(b) A health ~~insurer who~~benefit plan that is reimbursed under the provisions of Subsection 34A-2-213(3) for a medical claim may not seek reimbursement or autorecovery from the health care provider for any difference between the amount of the claim paid by the health ~~insurer~~benefit plan and the reimbursement to the health ~~insurer~~benefit plan by the workers' compensation carrier under Subsection 34A-2-213(3).

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

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

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

(1) (a) This section applies if:

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

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

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

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

(b) For purposes of this section, "workers' compensation carrier" means any of the entities an employer may use to provide workers' compensation benefits for its employees

## SB0059S01 compared with SB0059

under Section 34A-2-201.

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

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

(3) (a) The Labor Commission shall, within three business days after the date on which the order or approval of the terms of a settlement agreement is signed by the administrative law judge under Section 34A-2-801, send a copy of the order or terms of the settlement agreement to:

(i) a health ~~{insurer who}~~benefit plan that made payments under Section 31A-22-619.6;

(ii) the workers' compensation carrier; and

(iii) the injured worker.

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

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

(ii) the employee, in the amount of:

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

## **SB0059S01 compared with SB0059**

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

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

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

(i) the amount of \$500 for failure to pay the amount required by Subsections (3)(b)(i) and (ii) within the period of time required by Subsections (3)(b)(i) and (ii); and

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

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

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

(b) deposit any penalties collected under this Subsection (4) into the Uninsured Employers' Fund created in Section 34A-2-704; and

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

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

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

(a) establish procedures for:

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

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

(b) enforce the provisions of this section.

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

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

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

(i) that person's employer:

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

## SB0059S01 compared with SB0059

(B) (I) becomes or is insolvent;  
(II) appoints or has appointed a receiver; or  
(III) otherwise does not have sufficient funds, insurance, sureties, or other security to cover workers' compensation liabilities; and

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

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

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

(2) (a) Money for the Uninsured Employers' Fund shall be deposited into the Uninsured Employers' Fund in accordance with this chapter ~~[and]~~, Subsection 59-9-101(2), and Subsection 34A-2-213(3).

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

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

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

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

(4) The state treasurer shall:

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

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

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

(b) If requested by the commission, the following shall aid in the representation of the



## SB0059S01 compared with SB0059

Uninsured Employers' Fund:

- (i) the attorney general; or
- (ii) the city attorney, or county attorney of the locality in which:
  - (A) an investigation, hearing, or trial under this chapter or Chapter 3, Utah

Occupational Disease Act, is pending;

- (B) the employee resides; or
- (C) an employer:
  - (I) resides; or
  - (II) is doing business.

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

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

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

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

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

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

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

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

(8) (a) The administrator shall periodically file the information described in Subsection

## **SB0059S01 compared with SB0059**

(8)(b) with the receiver, trustee, or liquidator of:

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

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

(iii) an insolvent insurance carrier.

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

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

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

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

(9) When an injury or death for which compensation is payable from the Uninsured Employers' Fund has been caused by the wrongful act or neglect of another person not in the same employment, the Uninsured Employers' Fund has the same rights as allowed under Section 34A-2-106.

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

(a) adjusting its own claims; or

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

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

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

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

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

## **SB0059S01 compared with SB0059**

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

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

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

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

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

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

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

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

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

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

(D) other expenses authorized by this section.

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

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

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

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

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

(d) (i) A self-insured employer may not be assessed in any year an amount greater than

## **SB0059S01 compared with SB0059**

2% of that self-insured employer's manual premium for the preceding calendar year.

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

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

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

(15) (a) The following shall notify the division of any information indicating that any of the following may be insolvent or in a financial condition hazardous to its employees or the public:

(i) a self-insured employer; or

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

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

(i) that self-insured employer; or

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

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

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

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

## SB0059S01 compared with SB0059

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

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

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

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

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

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

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

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

(19) The Uninsured Employers' Fund:

(a) shall be:

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

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

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

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

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

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

(b) may not be used for:

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

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

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

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

## SB0059S01 compared with SB0059

and

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

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

(ii) the employee is:

(A) a resident of the state; and

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

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

Section 4. **Effective date.**

This bill takes effect on ~~July~~ January 1, ~~2013~~ 2014.

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**Legislative Review Note**

~~as of 2-1-13 4:16 PM~~

~~Office of Legislative Research and General Counsel~~