

1 **WORKERS' COMPENSATION AND OCCUPATIONAL SAFETY**

2 **RELATED AMENDMENTS**

3 2013 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Karen Mayne**

6 House Sponsor: _____

7

LONG TITLE

8 **General Description:**

9 This bill modifies the Workers' Compensation Act, Utah Occupational Disease Act, and
10 Utah Occupational Safety and Health Act to address issues related to health services
11 and reporting.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ amends definitions to include references to physician extenders;
- 15 ▶ grants rulemaking authority related to treatment protocols and determinations of
- 16 medical necessity;
- 17 ▶ authorizes contracts related to treatment protocols and determinations of medical
- 18 necessity;
- 19 ▶ addresses reporting requirements, including:
 - 20 • addressing reports by workers' compensation insurance carriers;
 - 21 • granting rulemaking authority;
 - 22 • addressing when civil assessments are imposed; and
 - 23 • removing certain criminal penalties; and
 - 24 • removing certain criminal penalties; and
- 25 ▶ makes technical and conforming amendments.

26 **Money Appropriated in this Bill:**

27 None



28 **Other Special Clauses:**

29 This bill takes effect on July 1, 2013.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **34A-2-111**, as last amended by Laws of Utah 2009, Chapter 220

33 **34A-2-407**, as last amended by Laws of Utah 2009, Chapters 288 and 347

34 **34A-3-108**, as last amended by Laws of Utah 2009, Chapter 288

35 **34A-6-301**, as last amended by Laws of Utah 2011, Chapter 297

36 ENACTS:

37 **34A-2-407.5**, Utah Code Annotated 1953



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

40 Section 1. Section **34A-2-111** is amended to read:

41 **34A-2-111. Managed health care programs -- Other safety programs.**

42 (1) As used in this section:

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

45 (ii) "Health care provider" includes:

46 (A) a hospital;

47 (B) a clinic;

48 (C) an emergency care center;

49 (D) a physician;

50 (E) a nurse;

51 [~~(F) a nurse practitioner;~~]

52 [~~(G) a physician's assistant;~~]

53 [~~(H)~~ (F) a paramedic; [~~or~~]

54 [~~(I)~~ (G) an emergency medical technician~~[-];~~ or

55 (H) a physician extender.

56 (b) "Physician" means any:

57 (i) health care provider licensed under:

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

- 59 [(ii)] (B) Title 58, Chapter 24b, Physical Therapy Practice Act;
- 60 [(iii)] (C) Title 58, Chapter 67, Utah Medical Practice Act;
- 61 [(iv)] (D) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
- 62 [(v)] (E) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;
- 63 [~~(vi)~~] ~~Title 58, Chapter 70a, Physician Assistant Act;~~
- 64 [(vii)] (F) Title 58, Chapter 71, Naturopathic Physician Practice Act;
- 65 [~~(viii)~~] (G) Title 58, Chapter 72, Acupuncture Licensing Act; and
- 66 [(ix)] (H) Title 58, Chapter 73, Chiropractic Physician Practice Act[-]; and
- 67 (ii) physician extender.
- 68 (c) "Physician extender" means:
- 69 (i) an individual licensed under Title 58, Chapter 31b, Nurse Practice Act, as an
- 70 advanced practice registered nurse, who is practicing as a nurse practitioner;
- 71 (ii) an individual licensed under Title 58, Chapter 70a, Physician Assistant Act; or
- 72 (iii) a licensed individual who is not a physician, but who performs medical activities
- 73 typically performed by a physician, as defined by rule by the commission made in accordance
- 74 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 75 [(e)] (d) "Preferred health care facility" means a facility:
- 76 (i) that is a health care facility as defined in Section 26-21-2; and
- 77 (ii) designated under a managed health care program.
- 78 [~~(d)~~] (e) "Preferred provider physician" means a physician designated under a managed
- 79 health care program.
- 80 [(e)] (f) "Self-insured employer" is as defined in Section 34A-2-201.5.
- 81 (2) (a) A self-insured employer and insurance carrier may adopt a managed health care
- 82 program to provide employees the benefits of this chapter or Chapter 3, Utah Occupational
- 83 Disease Act, beginning January 1, 1993. The plan shall comply with this Subsection (2).
- 84 (b) (i) A preferred provider program may be developed if the preferred provider
- 85 program allows a selection by the employee of more than one physician in the health care
- 86 specialty required for treating the specific problem of an industrial patient.
- 87 (ii) (A) Subject to the requirements of this section, if a preferred provider program is
- 88 developed by an insurance carrier or self-insured employer, an employee is required to use:
- 89 (I) preferred provider physicians; and

90 (II) preferred health care facilities.

91 (B) If a preferred provider program is not developed, an employee may have free
92 choice of health care providers.

93 (iii) The failure to do the following may, if the employee has been notified of the
94 preferred provider program, result in the employee being obligated for any charges in excess of
95 the preferred provider allowances:

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

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

98 (iv) Notwithstanding the requirements of Subsections (2)(b)(i) through (iii), a
99 self-insured employer or other employer may:

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

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

102 (II) operate a health care facility; and

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

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

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

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

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

112 (I) a preferred provider physician; or

113 (II) a preferred health care facility.

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

116 (I) health care providers;

117 (II) medical review organizations; or

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

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

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

123 (II) peer review;

124 (III) methods of utilization review;

125 (IV) use of case management;

126 (V) bill audit;

127 (VI) discounted purchasing; and

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

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

130 (Aa) scientifically based;

131 (Bb) peer reviewed; and

132 (Cc) consistent with standards for health care treatment protocol programs that the
133 commission shall establish by rules made in accordance with Title 63G, Chapter 3, Utah
134 Administrative Rulemaking Act, including the authority of the commission to approve a health
135 care treatment protocol program before it is used or disapprove a health care treatment protocol
136 program that does not comply with this Subsection (2)(c)(i)(B)(VII).

137 (ii) An insurance carrier may make any or all of the factors in Subsection (2)(c)(i) a
138 condition of insuring an entity in its insurance contract.

139 (3) (a) In addition to a managed health care program, an insurance carrier may require
140 an employer to establish a work place safety program if the employer:

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

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

145 (b) A workplace safety program may include:

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

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

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

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

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

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

153 (i) how managers, supervisors, and employees are responsible for implementing the
154 program;

155 (ii) how continued participation of management will be established, measured, and
156 maintained;

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

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

161 (v) how workplace accidents will be investigated and corrective action implemented;
162 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

192 **34A-2-407. Reporting of industrial injuries -- Regulation of health care providers**
193 **-- Funeral expenses.**

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

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

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

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

200 (ii) the employee's attorney.

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

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

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

208 (ii) the division.

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

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

211 (ii) in the case of an occupational hearing loss, the time period specified in Section
212 34A-2-506.

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

214 (a) an employer's ~~[or]~~ report filed with:
215 (i) the division; or
216 (ii) the employer's workers' compensation insurance carrier;
217 (b) a physician's injury report filed with:
218 (i) the division;
219 (ii) the employer; or
220 (iii) the employer's workers' compensation insurance carrier; ~~[or]~~
221 (c) a workers' compensation insurance carrier's report filed with the division; or
222 ~~[(b)]~~ (d) the payment of any medical or disability benefits by:
223 (i) the employer; or
224 (ii) the employer's workers' compensation insurance carrier.
225 (5) (a) ~~[In the form prescribed by the division, an]~~ An employer and the employer's
226 workers' compensation insurance carrier, if any, shall file a report ~~[with the division]~~ in
227 accordance with the rules made under Subsection (5)(b) of a:
228 (i) work-related fatality; or
229 (ii) work-related injury resulting in:
230 (A) medical treatment;
231 (B) loss of consciousness;
232 (C) loss of work;
233 (D) restriction of work; or
234 (E) transfer to another job.
235 (b) ~~[The]~~ An employer or the employer's workers' compensation insurance carrier, if
236 any, shall file ~~[the]~~ a report required by Subsection (5)(a) ~~[within seven days after:], and any~~
237 subsequent reports of a previously reported injury as may be required by the commission,
238 within the time limits and in the manner established by rule by the commission made after
239 consultation with the workers' compensation advisory council and in accordance with Title
240 63G, Chapter 3, Utah Administrative Rulemaking Act. A rule made under this Subsection
241 (5)(b) shall:
242 ~~[(i) the occurrence of a fatality or injury;]~~
243 ~~[(ii) the employer's first knowledge of a fatality or injury; or]~~
244 ~~[(iii) the employee's notification of a fatality or injury.]~~

245 ~~[(c) (i) An employer shall file a subsequent report with the division of a previously~~
246 ~~reported injury that later results in death.]~~

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

249 ~~[(A) the death; or]~~

250 ~~[(B) the employer's first knowledge or notification of the death.]~~

251 (i) be reasonable; and

252 (ii) take into consideration the practicality and cost of complying with the rule.

253 ~~[(d)]~~ (c) A report is not required to be filed under this Subsection (5) for a minor
254 injury, such as a cut or scratch that requires first aid treatment only, unless:

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

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

259 (6) An employer and its workers' compensation insurance carrier, if any, required to
260 file a report under Subsection (5) shall provide the employee with:

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

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

264 (7) An employer shall maintain a record in a manner prescribed by the commission by
265 rule of all:

266 (a) work-related fatalities; or

267 (b) work-related injuries resulting in:

268 (i) medical treatment;

269 (ii) loss of consciousness;

270 (iii) loss of work;

271 (iv) restriction of work; or

272 (v) transfer to another job.

273 (8) (a) Except as provided in Subsection (8)(b), an employer or a workers'
274 compensation insurance carrier who refuses or neglects to make a report, maintain a record, or
275 file a report ~~[with the division]~~ as required by this section is ~~[(i) guilty of a class C~~

276 ~~misdemeanor, and (ii)]~~ subject to a civil assessment:

277 ~~[(A)]~~ (i) imposed by the division, subject to the requirements of Title 63G, Chapter 4,
278 Administrative Procedures Act; and

279 ~~[(B)]~~ (ii) that may not exceed \$500.

280 (b) An employer or workers' compensation insurance carrier is not subject to the civil
281 assessment ~~[or guilty of a class C misdemeanor]~~ under this Subsection (8) if:

282 (i) the employer or workers' compensation insurance carrier submits a report later than
283 required by this section; and

284 (ii) the division finds that the employer or workers' compensation insurance carrier has
285 shown good cause for submitting a report later than required by this section.

286 (c) (i) A civil assessment collected under this Subsection (8) shall be deposited into the
287 Uninsured Employers' Fund created in Section 34A-2-704 to be used for a purpose specified in
288 Section 34A-2-704.

289 (ii) The administrator of the Uninsured Employers' Fund shall collect money required
290 to be deposited into the Uninsured Employers' Fund under this Subsection (8)(c) in accordance
291 with Section 34A-2-704.

292 (9) (a) A physician attending an injured employee shall comply with rules established
293 by the commission regarding:

294 (i) fees for physician's services;

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

297 (iii) reports to the division regarding:

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

299 (B) any other matter concerning industrial cases that the physician is treating~~[-]; and~~

300 (iv) rules made under Section 34A-2-407.5.

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

303 (c) A hospital providing services for an injured employee is not subject to the
304 requirements of Subsection (9)(a) except for rules made by the commission that are described
305 in Subsection (9)(a)(ii) or (iii) or Section 34A-2-407.5.

306 (d) The commission's schedule of fees may reasonably differentiate remuneration to be

307 paid to providers of health services based on:

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

309 (ii) the nature of the treatment necessary; and

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

311 (e) This Subsection (9) does not prohibit a contract with a provider of health services
312 relating to the pricing of goods and services.

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

314 (a) the division;

315 (b) the employee; and

316 (c) (i) the employer; or

317 (ii) the employer's workers' compensation insurance carrier.

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

320 (i) whether goods provided to or services rendered to an employee are compensable
321 pursuant to this chapter or Chapter 3, Utah Occupational Disease Act, including:

322 (A) medical, nurse, or hospital services;

323 (B) medicines; and

324 (C) artificial means, appliances, or prosthesis;

325 (ii) the reasonableness of the amounts charged or paid for a good or service described
326 in Subsection (11)(a)(i); and

327 (iii) collection issues related to a good or service described in Subsection (11)(a)(i).

328 (b) Except as provided in Subsection (11)(a), Subsection 34A-2-211(6), or Section
329 34A-2-212, a person may not maintain a cause of action in any forum within this state other
330 than the commission for collection or payment for goods or services described in Subsection
331 (11)(a) that are compensable under this chapter or Chapter 3, Utah Occupational Disease Act.

332 Section 3. Section **34A-2-407.5** is enacted to read:

333 **34A-2-407.5. Rules regarding treatment protocols and determinations of medical**
334 **necessity -- Contracts.**

335 (1) The commission may by rule, made in accordance with Title 63G, Chapter 3, Utah
336 Administrative Rulemaking Act, establish for purposes of health care goods and services
337 compensable under this chapter and Chapter 3, Utah Occupational Disease Act, health care

338 treatment protocols and determinations of medical necessity of goods and services.

339 (2) This section does not prohibit an insurer or employer from contracting with a
 340 provider of health services related to health care treatment protocols and determinations of
 341 medical necessity of goods and services.

342 Section 4. Section **34A-3-108** is amended to read:

343 **34A-3-108. Reporting of occupational diseases -- Regulation of health care**
 344 **providers.**

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

350 (2) (a) An employee who fails to notify the employee's employer or the division within
 351 180 days after the cause of action arises is barred from a claim of benefits arising from the
 352 occupational disease.

353 (b) The cause of action is considered to arise on the date the employee first:

354 (i) suffers disability from the occupational disease; and

355 (ii) knows, or in the exercise of reasonable diligence should have known, that the
 356 occupational disease is caused by employment.

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

358 (a) an employer's [~~or~~] report filed with the:

359 (i) division; or

360 (ii) workers' compensation insurance carrier;

361 (b) a physician's injury report filed with the:

362 (i) division;

363 (ii) employer; or

364 (iii) workers' compensation insurance carrier; [~~or~~]

365 (c) a workers' compensation insurance carrier's report to the division; or

366 [~~(b)~~] (d) the payment of any medical or disability benefit by the employer or the
 367 employer's workers' compensation insurance carrier.

368 (4) (a) [~~In the form prescribed by the division, an~~] An employer and the employer's

369 workers' compensation insurance carrier, if any, shall file a report [with the division] in
 370 accordance with the rules described in Subsection (4)(b) of any occupational disease resulting
 371 in:

- 372 (i) medical treatment;
- 373 (ii) loss of consciousness;
- 374 (iii) loss of work;
- 375 (iv) restriction of work; or
- 376 (v) transfer to another job.

377 (b) ~~[The report]~~ An employer or the employer's workers' compensation insurance
 378 carrier, if any, shall file a report required under Subsection (4)(a)[, shall be filed within seven
 379 days after:] and any subsequent reports of a previously reported occupational disease as may be
 380 required by the commission within the time limits and in the manner established by rule by the
 381 commission made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
 382 Act under Subsection 34A-2-403(5).

383 ~~[(i) the occurrence of an occupational disease;]~~

384 ~~[(ii) the employer's first knowledge of an occupational disease; or]~~

385 ~~[(iii) the employee's notification of an occupational disease.]~~

386 ~~[(c) An employer shall file a subsequent report with the division of a previously~~
 387 ~~reported occupational disease that later resulted in death. The subsequent report shall be filed~~
 388 ~~with the division within seven days following:]~~

389 ~~[(i) the death; or]~~

390 ~~[(ii) the employer's first knowledge or notification of the death.]~~

391 ~~[(d)]~~ (c) A report is not required ~~[for]~~:

392 (i) for a minor injury that requires first aid treatment only, unless a treating physician
 393 files, or is required to file, the Physician's Initial Report of Work Injury or Occupational
 394 Disease with the division;

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

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

399 (5) An employer or its workers' compensation insurance carrier, if any, shall provide

400 the employee with:

- 401 (a) a copy of the report submitted to the division; and
- 402 (b) a statement, as prepared by the division, of the employee's rights and
- 403 responsibilities related to the occupational disease.

404 (6) An employer shall maintain a record in a manner prescribed by the division of
405 occupational diseases resulting in:

- 406 (a) medical treatment;
- 407 (b) loss of consciousness;
- 408 (c) loss of work;
- 409 (d) restriction of work; or
- 410 (e) transfer to another job.

411 (7) An employer or a workers' compensation insurance carrier who refuses or neglects
412 to make a report, maintain a record, or file a report with the division as required by this section
413 is ~~[guilty of a class C misdemeanor and]~~ subject to citation ~~[under Section 34A-6-302 and a~~
414 ~~civil assessment as provided under Section 34A-6-307, unless the division finds that the~~
415 ~~employer has shown good cause for submitting a report later than required by this section]~~ and
416 civil assessment in accordance with Subsection 34A-2-407(8).

417 (8) (a) Except as provided in Subsection (8)(c), a physician, surgeon, or other health
418 care provider attending an occupationally diseased employee shall:

419 (i) comply with the rules, including the schedule of fees, for services as adopted by the
420 commission; ~~[and]~~

421 (ii) make reports to the division at any and all times as required as to the condition and
422 treatment of an occupationally diseased employee or as to any other matter concerning
423 industrial cases being treated~~[-]; and~~

424 (iii) comply with rules made under Section 34A-2-407.5.

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

427 (c) A hospital is not subject to the requirements of Subsection (8)(a) except a hospital
428 is subject to rules made by the commission under Subsections 34A-2-407(9)(a)(ii) and (iii) and
429 Section 34A-2-407.5.

430 (d) The commission's schedule of fees may reasonably differentiate remuneration to be

431 paid to providers of health services based on:

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

433 (ii) the nature of the treatment necessary; and

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

435 (e) This Subsection (8) does not prohibit a contract with a provider of health services
436 relating to the pricing of goods and services.

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

438 (a) division;

439 (b) employee; and

440 (c) employer or its workers' compensation insurance carrier.

441 (10) (a) A person subject to reporting under Subsection (8)(a)(ii) or Subsection

442 34A-2-407(9)(a)(iii) who refuses or neglects to make a report or comply with this section is

443 ~~[guilty of a class C misdemeanor for each offense, unless the division finds that there is good~~
444 ~~cause for submitting a late report]~~ subject to a civil assessment in accordance with Subsection

445 34A-2-407(8).

446 (11) (a) An application for a hearing to resolve a dispute regarding an occupational
447 disease claim shall be filed with the Division of Adjudication.

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

449 (i) (A) the employer; or

450 (B) the employer's workers' compensation insurance carrier;

451 (ii) the applicant; and

452 (iii) the attorneys for the parties.

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

455 (i) whether goods provided to or services rendered to an employee is compensable
456 pursuant to this chapter and Chapter 2, Workers' Compensation Act, including the following:

457 (A) medical, nurse, or hospital services;

458 (B) medicines; and

459 (C) artificial means, appliances, or prosthesis;

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

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

463 (b) Except as provided in Subsection (12)(a), Subsection 34A-2-211(6), or Section
464 34A-2-212, a person may not maintain a cause of action in any forum within this state other
465 than the commission for collection or payment of goods or services described in Subsection
466 (12)(a) that are compensable under this chapter or Chapter 2, Workers' Compensation Act.

467 Section 5. Section **34A-6-301** is amended to read:

468 **34A-6-301. Inspection and investigation of workplace, worker injury, illness, or**
469 **complaint -- Warrants -- Attendance of witnesses -- Recordkeeping by employers --**
470 **Employer and employee representatives -- Request for inspection -- Compilation and**
471 **publication of reports and information -- Rules.**

472 (1) (a) The division or its representatives, upon presenting appropriate credentials to
473 the owner, operator, or agent in charge, may:

474 (i) enter without delay at reasonable times any workplace where work is performed by
475 an employee of an employer;

476 (ii) inspect and investigate during regular working hours and at other reasonable times
477 in a reasonable manner[;] any workplace, worker injury, occupational disease, or complaint and
478 all pertinent methods, operations, processes, conditions, structures, machines, apparatus,
479 devices, equipment, and materials in the workplace; and

480 (iii) question privately any such employer, owner, operator, agent, or employee.

481 (b) The division, upon an employer's refusal to permit an inspection, may seek a
482 warrant pursuant to the Utah Rules of Criminal Procedure.

483 (2) (a) The division or its representatives may require the attendance and testimony of
484 witnesses and the production of evidence under oath.

485 (b) Witnesses shall receive fees and mileage in accordance with Section 78B-1-119.

486 (c) (i) If any person fails or refuses to obey an order of the division to appear, any
487 district court within the jurisdiction of which such person is found, or resides or transacts
488 business, upon the application by the division, shall have jurisdiction to issue to any person an
489 order requiring that person to:

490 (A) appear to produce evidence if, as, and when so ordered; and

491 (B) give testimony relating to the matter under investigation or in question.

492 (ii) Any failure to obey an order of the court described in this Subsection (2)(c) may be

493 punished by the court as a contempt.

494 (3) (a) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
495 Administrative Rulemaking Act, requiring employers:

496 (i) to keep records regarding activities related to this chapter considered necessary for
497 enforcement or for the development of information about the causes and prevention of
498 occupational accidents and diseases; and

499 (ii) through posting of notices or other means, to inform employees of their rights and
500 obligations under this chapter including applicable standards.

501 (b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
502 Administrative Rulemaking Act, requiring employers to keep records regarding any
503 work-related death and injury and any occupational disease as provided in this Subsection
504 (3)(b).

505 (i) Each employer shall investigate or cause to be investigated all work-related injuries
506 and occupational diseases and any sudden or unusual occurrence or change of conditions that
507 pose an unsafe or unhealthful exposure to employees.

508 (ii) Each employer shall, within eight hours of occurrence, notify the division of any:

509 (A) work-related fatality;

510 (B) disabling, serious, or significant injury; or

511 (C) occupational disease incident.

512 (iii) (A) Each employer shall file a report with the Division of Industrial Accidents
513 [~~within seven days after the occurrence of an injury or occupational disease~~] in accordance with
514 Sections 34A-2-407 and 34A-3-108, after the employer's first knowledge of the occurrence, or
515 after the employee's notification of the same, in the form prescribed by the Division of
516 Industrial Accidents, of any work-related fatality or any work-related injury or occupational
517 disease resulting in:

518 (I) medical treatment;

519 (II) loss of consciousness;

520 (III) loss of work;

521 (IV) restriction of work; or

522 (V) transfer to another job.

523 (B) (I) Each employer shall file a subsequent report with the Division of Industrial

524 Accidents of any previously reported injury or occupational disease that later resulted in death.

525 (II) The subsequent report shall be filed with the Division of Industrial Accidents
526 [~~within seven days following the death or the employer's first knowledge or notification of the~~
527 ~~death~~] in accordance with Sections 34A-2-407 and 34A-3-108.

528 (iv) A report is not required for minor injuries, such as cuts or scratches that require
529 first aid treatment only, unless a treating physician files, or is required to file, the Physician's
530 Initial Report of Work Injury or Occupational Disease with the Division of Industrial
531 Accidents.

532 (v) A report is not required:

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

535 (B) where the employer is not aware of an exposure occasioned by the employment
536 which results in a compensable occupational disease as defined by Section 34A-3-103.

537 (vi) Each employer shall provide the employee with:

538 (A) a copy of the report submitted to the Division of Industrial Accidents; and

539 (B) a statement, as prepared by the Division of Industrial Accidents, of the employee's
540 rights and responsibilities related to the industrial injury or occupational disease.

541 (vii) Each employer shall maintain a record in a manner prescribed by the commission
542 of all work-related fatalities or work-related injuries and of all occupational diseases resulting
543 in:

544 (A) medical treatment;

545 (B) loss of consciousness;

546 (C) loss of work;

547 (D) restriction of work; or

548 (E) transfer to another job.

549 (viii) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
550 Administrative Rulemaking Act, to implement this Subsection (3)(b) consistent with nationally
551 recognized rules or standards on the reporting and recording of work-related injuries and
552 occupational diseases.

553 (c) (i) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
554 Administrative Rulemaking Act, requiring employers to keep records regarding exposures to

555 potentially toxic materials or harmful physical agents required to be measured or monitored
556 under Section 34A-6-202.

557 (ii) (A) The rules made under Subsection (3)(c)(i) shall provide for employees or their
558 representatives:

559 (I) to observe the measuring or monitoring; and

560 (II) to have access to the records of the measuring or monitoring, and to records that
561 indicate their exposure to toxic materials or harmful agents.

562 (B) Each employer shall promptly notify employees being exposed to toxic materials or
563 harmful agents in concentrations that exceed prescribed levels and inform any such employee
564 of the corrective action being taken.

565 (4) Information obtained by the division shall be obtained with a minimum burden
566 upon employers, especially those operating small businesses.

567 (5) A representative of the employer and a representative authorized by employees
568 shall be given an opportunity to accompany the division's authorized representative during the
569 physical inspection of any workplace. If there is no authorized employee representative, the
570 division's authorized representative shall consult with a reasonable number of employees
571 concerning matters of health and safety in the workplace.

572 (6) (a) (i) (A) Any employee or representative of employees who believes that a
573 violation of an adopted safety or health standard exists that threatens physical harm, or that an
574 imminent danger exists, may request an inspection by giving notice to the division's authorized
575 representative of the violation or danger. The notice shall be:

576 (I) in writing, setting forth with reasonable particularity the grounds for notice; and

577 (II) signed by the employee or representative of employees.

578 (B) A copy of the notice shall be provided the employer or the employer's agent no
579 later than at the time of inspection.

580 (C) Upon request of the person giving notice, the person's name and the names of
581 individual employees referred to in the notice may not appear in the copy or on any record
582 published, released, or made available pursuant to Subsection (7).

583 (ii) (A) If upon receipt of the notice the division's authorized representative determines
584 there are reasonable grounds to believe that a violation or danger exists, the authorized
585 representative shall make a special inspection in accordance with this section as soon as

586 practicable to determine if a violation or danger exists.

587 (B) If the division's authorized representative determines there are no reasonable
588 grounds to believe that a violation or danger exists, the authorized representative shall notify
589 the employee or representative of the employees in writing of that determination.

590 (b) (i) Prior to or during any inspection of a workplace, any employee or representative
591 of employees employed in the workplace may notify the division or its representative of any
592 violation of a standard that they have reason to believe exists in the workplace.

593 (ii) The division shall:

594 (A) by rule, establish procedures for informal review of any refusal by a representative
595 of the division to issue a citation with respect to any alleged violation; and

596 (B) furnish the employees or representative of employees requesting review a written
597 statement of the reasons for the division's final disposition of the case.

598 (7) (a) The division may compile, analyze, and publish, either in summary or detailed
599 form, all reports or information obtained under this section, subject to the limitations set forth
600 in Section 34A-6-306.

601 (b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
602 Administrative Rulemaking Act, necessary to carry out its responsibilities under this chapter,
603 including rules for information obtained under this section, subject to the limitations set forth
604 in Section 34A-6-306.

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

610 Section 6. **Effective date.**

611 This bill takes effect on July 1, 2013.

Legislative Review Note
as of 1-29-13 10:46 AM

Office of Legislative Research and General Counsel