

Senator Karen Mayne proposes the following substitute bill:

WORKERS' COMPENSATION HEALTH CARE AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill amends provisions of the Workers' Compensation Act related to health care providers.

Highlighted Provisions:

This bill:

- ▶ modifies the membership of the workers' compensation advisory council;
- ▶ amends a required report to the Business and Labor Interim Committee;
- ▶ authorizes the Labor Commission to use funds from the Industrial Accident

Restricted Account for specific purposes;

▶ addresses the rate at which certain workers' compensation carriers and self-insured employers must reimburse a hospital for covered medical services; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 34A-2-107, as last amended by Laws of Utah 2017, Chapters 18 and 363

27 34A-2-407, as last amended by Laws of Utah 2016, Chapter 242

28 34A-2-705, as last amended by Laws of Utah 2011, Chapter 328

29

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

31 Section 1. Section 34A-2-107 is amended to read:

32 **34A-2-107. Appointment of workers' compensation advisory council --**

33 **Composition -- Terms of members -- Duties -- Compensation.**

34 (1) The commissioner shall appoint a workers' compensation advisory council
35 composed of:

36 (a) the following voting members:

37 (i) five employer representatives; and

38 (ii) five employee representatives; and

39 (b) the following nonvoting members:

40 (i) a representative of the workers' compensation insurance carrier that provides
41 workers' compensation insurance under Section 31A-22-1001;

42 (ii) a representative of a workers' compensation insurance carrier different from the
43 workers' compensation insurance carrier listed in Subsection (1)(b)(i);

44 (iii) a representative of health care providers;

45 (iv) the Utah insurance commissioner or the insurance commissioner's designee; [~~and~~]

46 (v) the commissioner or the commissioner's designee[-]; and

47 (vi) a representative of hospitals.

48 (2) Employers and employees shall consider nominating members of groups who
49 historically may have been excluded from the council, such as women, minorities, and
50 individuals with disabilities.

51 (3) (a) Except as required by Subsection (3)(b), as terms of current council members
52 expire, the commissioner shall appoint each new member or reappointed member to a two-year
53 term beginning July 1 and ending June 30.

54 (b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at
55 the time of appointment or reappointment, adjust the length of terms to ensure that the terms of
56 council members are staggered so that approximately half of the council is appointed every two

57 years.

58 (4) (a) When a vacancy occurs in the membership for any reason, the replacement shall
59 be appointed for the unexpired term.

60 (b) The commissioner shall terminate the term of a council member who ceases to be
61 representative as designated by the member's original appointment.

62 (5) The council shall confer at least quarterly for the purpose of advising the
63 commission, the division, and the Legislature on:

64 (a) the Utah workers' compensation and occupational disease laws;

65 (b) the administration of the laws described in Subsection (5)(a); and

66 (c) rules related to the laws described in Subsection (5)(a).

67 (6) Regarding workers' compensation, rehabilitation, and reemployment of employees
68 who acquire a disability because of an industrial injury or occupational disease the council
69 shall:

70 (a) offer advice on issues requested by:

71 (i) the commission;

72 (ii) the division; and

73 (iii) the Legislature; and

74 (b) make recommendations to:

75 (i) the commission; and

76 (ii) the division.

77 ~~[(7) The council shall study how hospital costs may be reduced for purposes of medical~~
78 ~~benefits for workers' compensation. By no later than November 30, 2017, the council shall~~
79 ~~submit, in accordance with Section 68-3-14, a written report to the Business and Labor Interim~~
80 ~~Committee containing the council's recommendations.]~~

81 (7) (a) The council shall:

82 (i) study how to reduce hospital costs for purposes of medical benefits for workers'
83 compensation;

84 (ii) study hospital billing and payment trends under Subsection 34A-2-407(11)(c);

85 (iii) study hospital fee schedules used in other states; and

86 (iv) collect information from third-party hospital review companies in the state or
87 region, to identify an average reimbursement rate that represents the approximate rate at which

88 a workers' compensation insurance carrier or self-insured employer should expect to reimburse
89 a hospital for billed hospital fees for covered medical services in the state.

90 (b) In accordance with Section 68-3-14, the council shall submit a written report to the
91 Business and Labor Interim Committee no later than September 1, 2019, 2020, and 2021. The
92 council's written report shall include:

93 (i) recommendations on how to reduce hospital costs for purposes of medical benefits
94 for workers' compensation;

95 (ii) aggregate data on hospital billing and payment trends under Subsection
96 34A-2-407(11)(c);

97 (iii) the results of the council's study of hospital fee schedules from other states; and

98 (iv) the approximate rate at which a workers' compensation insurance carrier or
99 self-insured employer should expect to reimburse a hospital for billed hospital fees for covered
100 medical services, calculated in accordance with Subsection (7)(a)(iv).

101 (c) For each report described in Subsection (7)(b), the commission may contract with a
102 third-party expert to assist with the council's duties described in Subsections (7)(a) and (b).

103 (8) The commissioner or the commissioner's designee shall serve as the chair of the
104 council and call the necessary meetings.

105 (9) The commission shall provide staff support to the council.

106 (10) A member may not receive compensation or benefits for the member's service, but
107 may receive per diem and travel expenses in accordance with:

108 (a) Section 63A-3-106;

109 (b) Section 63A-3-107; and

110 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
111 63A-3-107.

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

113 **34A-2-407. Reporting of industrial injuries -- Regulation of health care**
114 **providers.**

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

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

118 (b) If the employee is unable to provide the notification required by Subsection (2)(a),

119 the following may provide notification of the injury to the employee's employer:

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

121 (ii) the employee's attorney.

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

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

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

129 (ii) the division.

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

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

132 (ii) in the case of an occupational hearing loss, the time period specified in Section

133 [34A-2-506](#).

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

135 (a) an employer's report filed with:

136 (i) the division; or

137 (ii) the employer's workers' compensation insurance carrier;

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

139 (i) the division;

140 (ii) the employer; or

141 (iii) the employer's workers' compensation insurance carrier;

142 (c) a workers' compensation insurance carrier's report filed with the division; or

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

144 (i) the employer; or

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

146 (5) (a) An employer and the employer's workers' compensation insurance carrier, if
147 any, shall file a report in accordance with the rules made under Subsection (5)(b) of a:

148 (i) work-related fatality; or

149 (ii) work-related injury resulting in:

- 150 (A) medical treatment;
- 151 (B) loss of consciousness;
- 152 (C) loss of work;
- 153 (D) restriction of work; or
- 154 (E) transfer to another job.

155 (b) An employer or the employer's workers' compensation insurance carrier, if any,
156 shall file a report required by Subsection (5)(a), and any subsequent reports of a previously
157 reported injury as may be required by the commission, within the time limits and in the manner
158 established by rule by the commission made after consultation with the workers' compensation
159 advisory council and in accordance with Title 63G, Chapter 3, Utah Administrative
160 Rulemaking Act. A rule made under this Subsection (5)(b) shall:

- 161 (i) be reasonable; and
- 162 (ii) take into consideration the practicality and cost of complying with the rule.
- 163 (c) A report is not required to be filed under this Subsection (5) for a minor injury, such
164 as a cut or scratch that requires first aid treatment only, unless:

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

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

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

- 171 (a) a copy of the report submitted to the division; and
- 172 (b) a statement, as prepared by the division, of the employee's rights and
173 responsibilities related to the industrial injury.

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

- 176 (a) work-related fatalities; or
- 177 (b) work-related injuries resulting in:
 - 178 (i) medical treatment;
 - 179 (ii) loss of consciousness;
 - 180 (iii) loss of work;

181 (iv) restriction of work; or

182 (v) transfer to another job.

183 (8) (a) Except as provided in Subsection (8)(b), an employer or a workers'

184 compensation insurance carrier who refuses or neglects to make a report, maintain a record, or

185 file a report as required by this section is subject to a civil assessment:

186 (i) imposed by the division, subject to the requirements of Title 63G, Chapter 4,

187 Administrative Procedures Act; and

188 (ii) that may not exceed \$500.

189 (b) An employer or workers' compensation insurance carrier is not subject to the civil
190 assessment under this Subsection (8) if:

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

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

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

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

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

203 (i) fees for physician's services;

204 (ii) disclosure of medical records of the employee medically relevant to the employee's
205 industrial accident or occupational disease claim;

206 (iii) reports to the division regarding:

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

208 (B) any other matter concerning industrial cases that the physician is treating; and

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

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

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

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

- 217 (i) the severity of the employee's condition;
- 218 (ii) the nature of the treatment necessary; and
- 219 (iii) the facilities or equipment specially required to deliver that treatment.

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

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

- 223 (a) the division;
- 224 (b) the employee; and
- 225 (c) (i) the employer; or
- 226 (ii) the employer's workers' compensation insurance carrier.

227 (11) (a) As used in this Subsection (11):

228 (i) "Balance billing" means charging a person, on whose behalf a workers'
229 compensation insurance carrier or self-insured employer is obligated to pay medical benefits
230 under this chapter or Chapter 3, Utah Occupational Disease Act, for the difference between
231 what the workers' compensation insurance carrier or self-insured employer reimburses the
232 hospital for covered medical services and what the hospital charges for those covered medical
233 services.

234 (ii) "Covered medical services" means medical services provided by a hospital that are
235 covered by workers' compensation medical benefits under this chapter or Chapter 3, Utah
236 Occupational Disease Act.

237 (iii) "Health benefit plan" means the same as that term is defined in Section
238 [31A-22-619.6](#).

239 (iv) "Self-insured employer" means the same as that term is defined in Section
240 [34A-2-201.5](#).

241 (b) Subject to Subsection (11)(d), a workers' compensation insurance carrier or
242 self-insured employer may contract, either in writing or by mutual oral agreement, with a

243 hospital to establish reimbursement rates.

244 (c) Subject to Subsection (11)(d), for the time period beginning on May ~~[10, 2016]~~ 8,
 245 2018, and ending on July 1, ~~[2018]~~ ~~↔~~ [2022] 2021 ~~↔~~, a workers' compensation insurance
 245a carrier or

246 self-insured employer that is reimbursing a hospital ~~[that has not entered into a contract~~
 247 ~~described in Subsection (11)(b) shall reimburse the hospital]~~ for covered medical services ~~[at~~
 248 ~~85% of the billed hospital fees for the covered medical services.]~~ shall reimburse the hospital:

249 (i) in accordance with a contract described in Subsection (11)(b); or

250 (ii) ~~↔~~ (A) if the hospital is located in a county of the first, second, or third class, as
 250a classified in Section 17-50-501, ~~↔~~ at ~~↔~~ [77%] 75% ~~↔~~ of the billed hospital fees for the
 250b covered medical services ~~↔~~ [;] ; or

250c (B) if the hospital is located in a county of the fourth, fifth, or sixth class, as classified
 250d in Section 17-50-501, at 85% of the billed hospital fees for the covered medical services. ~~↔~~

251 (d) A hospital may not engage in balance billing.

252 (e) Covered services paid under a health benefit plan are subject to coordination of
 253 benefits in accordance with Sections [31A-22-619.6](#) and [34A-2-213](#).

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

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

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

259 (B) medicines; and

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

261 (ii) except for amounts charged or paid under Subsection (11), the reasonableness of
 262 the amounts charged or paid for a good or service described in Subsection (12)(a)(i); and

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

264 (b) Except as provided in Subsection (12)(a), Subsection [34A-2-211\(6\)](#), or Section
 265 [34A-2-212](#), a person may not maintain a cause of action in any forum within this state other
 266 than the commission for collection or payment for goods or services described in Subsection
 267 (12)(a) that are compensable under this chapter or Chapter 3, Utah Occupational Disease Act.

268 Section 3. Section [34A-2-705](#) is amended to read:

269 **[34A-2-705. Industrial Accident Restricted Account.](#)**

270 (1) As used in this section:

271 (a) "Account" means the Industrial Accident Restricted Account created by this
 272 section.

273 (b) "Advisory council" means the state workers' compensation advisory council created

274 under Section 34A-2-107.

275 (2) There is created in the General Fund a restricted account known as the "Industrial
276 Accident Restricted Account."

277 (3) (a) The account is funded from:

278 (i) .5% of the premium income remitted to the state treasurer and credited to the
279 account pursuant to Subsection 59-9-101(2)(c)(iv); and

280 (ii) amounts deposited under Section 34A-2-1003.

281 (b) If the balance in the account exceeds \$500,000 at the close of a fiscal year, the
282 excess shall be transferred to the Uninsured Employers' Fund created under Section 34A-2-704.

283 (4) (a) From money appropriated by the Legislature from the account to the
284 commission and subject to the requirements of this section, the commission may fund:

285 (i) the activities of the Division of Industrial Accidents described in Section
286 34A-1-202;

287 (ii) the activities of the Division of Adjudication described in Section 34A-1-202;

288 [and]

289 (iii) the activities of the commission described in Section 34A-2-1005[-]; and

290 (iv) the activities of the commission described in Subsection 34A-2-107(7)(c), up to
291 \$50,000 for each of the three reports described in Subsection 34A-2-107(7)(b).

292 (b) The money deposited in the account may not be used for a purpose other than a
293 purpose described in this Subsection (4), including an administrative cost or another activity of
294 the commission unrelated to the account.

295 (5) (a) Each year before the public hearing required by Subsection 59-9-101(2)(d)(i),
296 the commission shall report to the advisory council regarding:

297 (i) the commission's budget request to the governor for the next fiscal year related to:

298 (A) the Division of Industrial Accidents; and

299 (B) the Division of Adjudication;

300 (ii) the expenditures of the commission for the fiscal year in which the commission is
301 reporting related to:

302 (A) the Division of Industrial Accidents; and

303 (B) the Division of Adjudication;

304 (iii) revenues generated from the premium assessment under Section 59-9-101 on an

305 admitted insurer writing workers' compensation insurance in this state and on a self-insured
306 employer under Section 34A-2-202; and

307 (iv) money deposited under Section 34A-2-1003.

308 (b) The commission shall annually report to the governor and the Legislature
309 regarding:

310 (i) the use of the money appropriated to the commission under this section;

311 (ii) revenues generated from the premium assessment under Section 59-9-101 on an
312 admitted insurer writing workers' compensation insurance in this state and on a self-insured
313 employer under Section 34A-2-202; and

314 (iii) money deposited under Section 34A-2-1003.