

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:

- ▶ 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:

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

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

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

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

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



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

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

31 (a) the following voting members:

32 (i) five employer representatives; and

33 (ii) five employee representatives; and

34 (b) the following nonvoting members:

35 (i) a representative of the workers' compensation insurance carrier that provides
36 workers' compensation insurance under Section [31A-22-1001](#);

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

39 (iii) a representative of health care providers;

40 (iv) the Utah insurance commissioner or the insurance commissioner's designee; and

41 (v) the commissioner or the commissioner's designee.

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

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

48 (b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at
49 the time of appointment or reappointment, adjust the length of terms to ensure that the terms of
50 council members are staggered so that approximately half of the council is appointed every two
51 years.

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

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

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

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

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

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

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

64 (a) offer advice on issues requested by:

65 (i) the commission;

66 (ii) the division; and

67 (iii) the Legislature; and

68 (b) make recommendations to:

69 (i) the commission; and

70 (ii) the division.

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

75 [~~(8)~~] (7) The commissioner or the commissioner's designee shall serve as the chair of
76 the council and call the necessary meetings.

77 [~~(9)~~] (8) The commission shall provide staff support to the council.

78 [~~(10)~~] (9) A member may not receive compensation or benefits for the member's
79 service, but may receive per diem and travel expenses in accordance with:

80 (a) Section ~~63A-3-106~~;

81 (b) Section ~~63A-3-107~~; and

82 (c) rules made by the Division of Finance pursuant to Sections ~~63A-3-106~~ and
83 ~~63A-3-107~~.

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

85 **~~34A-2-407. Reporting of industrial injuries -- Regulation of health care~~**
86 **~~providers.~~**

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

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

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

- 92 (i) the employee's next of kin; or
- 93 (ii) the employee's attorney.

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

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

- 100 (i) the employee's employer in accordance with Subsection (2); or
- 101 (ii) the division.

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

- 103 (i) 180 days of the day on which the injury occurs; or
- 104 (ii) in the case of an occupational hearing loss, the time period specified in Section
105 [34A-2-506](#).

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

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

- 108 (i) the division; or
- 109 (ii) the employer's workers' compensation insurance carrier;

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

- 111 (i) the division;
- 112 (ii) the employer; or
- 113 (iii) the employer's workers' compensation insurance carrier;

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

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

- 116 (i) the employer; or
- 117 (ii) the employer's workers' compensation insurance carrier.

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

- 120 (i) work-related fatality; or

121 (ii) work-related injury resulting in:

122 (A) medical treatment;

123 (B) loss of consciousness;

124 (C) loss of work;

125 (D) restriction of work; or

126 (E) transfer to another job.

127 (b) An employer or the employer's workers' compensation insurance carrier, if any,

128 shall file a report required by Subsection (5)(a), and any subsequent reports of a previously

129 reported injury as may be required by the commission, within the time limits and in the manner

130 established by rule by the commission made after consultation with the workers' compensation

131 advisory council and in accordance with Title 63G, Chapter 3, Utah Administrative

132 Rulemaking Act. A rule made under this Subsection (5)(b) shall:

133 (i) be reasonable; and

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

135 (c) A report is not required to be filed under this Subsection (5) for a minor injury, such

136 as a cut or scratch that requires first aid treatment only, unless:

137 (i) a treating physician files a report with the division in accordance with Subsection

138 (9); or

139 (ii) a treating physician is required to file a report with the division in accordance with

140 Subsection (9).

141 (6) An employer and its workers' compensation insurance carrier, if any, required to

142 file a report under Subsection (5) shall provide the employee with:

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

144 (b) a statement, as prepared by the division, of the employee's rights and

145 responsibilities related to the industrial injury.

146 (7) An employer shall maintain a record in a manner prescribed by the commission by

147 rule of all:

148 (a) work-related fatalities; or

149 (b) work-related injuries resulting in:

150 (i) medical treatment;

151 (ii) loss of consciousness;

- 152 (iii) loss of work;
- 153 (iv) restriction of work; or
- 154 (v) transfer to another job.

155 (8) (a) Except as provided in Subsection (8)(b), an employer or a workers'
156 compensation insurance carrier who refuses or neglects to make a report, maintain a record, or
157 file a report as required by this section is subject to a civil assessment:

158 (i) imposed by the division, subject to the requirements of Title 63G, Chapter 4,
159 Administrative Procedures Act; and

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

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

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

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

167 (c) (i) A civil assessment collected under this Subsection (8) shall be deposited into the
168 Uninsured Employers' Fund created in Section [34A-2-704](#) to be used for a purpose specified in
169 Section [34A-2-704](#).

170 (ii) The administrator of the Uninsured Employers' Fund shall collect money required
171 to be deposited into the Uninsured Employers' Fund under this Subsection (8)(c) in accordance
172 with Section [34A-2-704](#).

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

175 (i) fees for physician's services;

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

178 (iii) reports to the division regarding:

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

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

181 (iv) rules made under Section [34A-2-407.5](#).

182 (b) A physician who is associated with, employed by, or bills through a hospital is

183 subject to Subsection (9)(a).

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

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

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

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

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

- 195 (a) the division;
- 196 (b) the employee; and
- 197 (c) (i) the employer; or
- 198 (ii) the employer's workers' compensation insurance carrier.

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

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

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

209 (iii) "Health benefit plan" means the same as that term is defined in Section
210 [31A-22-619.6](#).

211 (iv) "Self-insured employer" means the same as that term is defined in Section
212 [34A-2-201.5](#).

213 (b) Subject to Subsection (11)(d), a workers' compensation insurance carrier or

214 self-insured employer may contract, either in writing or by mutual oral agreement, with a
215 hospital to establish reimbursement rates.

216 (c) Subject to Subsection (11)(d), [~~for the time period beginning on May 10, 2016, and~~
217 ~~ending on July 1, 2018,~~] a workers' compensation insurance carrier or self-insured employer
218 that is reimbursing a hospital that has not entered into a contract described in Subsection
219 (11)(b) shall reimburse the hospital for covered medical services at 85% of the billed hospital
220 fees for the covered medical services.

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

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

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

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

- 228 (A) medical, nurse, or hospital services;
- 229 (B) medicines; and
- 230 (C) artificial means, appliances, or prosthesis;

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

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

234 (b) Except as provided in Subsection (12)(a), Subsection [34A-2-211\(6\)](#), or Section
235 [34A-2-212](#), a person may not maintain a cause of action in any forum within this state other
236 than the commission for collection or payment for goods or services described in Subsection
237 (12)(a) that are compensable under this chapter or Chapter 3, Utah Occupational Disease Act.