

MEDICAL PANEL GOVERNMENTAL IMMUNITY

AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends provisions related to medical panels appointed under the Workers' Compensation Act.

Highlighted Provisions:

This bill:

▶ establishes that a member of a medical panel acting within the scope of duties of a medical panel member is considered an employee of the state for purposes of indemnification under the Governmental Immunity Act of Utah; and

▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-2-601, as last amended by Laws of Utah 2013, Chapter 428

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

Section 1. Section **34A-2-601** is amended to read:



28 **34A-2-601. Medical panel, director, or consultant -- Findings and reports --**
29 **Objections to report -- Hearing -- Expenses.**

30 (1) (a) The Division of Adjudication may refer the medical aspects of a case described
31 in this Subsection (1)(a) to a medical panel appointed by an administrative law judge:

32 (i) upon the filing of a claim for compensation arising out of and in the course of
33 employment for:

34 (A) disability by accident; or

35 (B) death by accident; and

36 (ii) if the employer or the employer's insurance carrier denies liability.

37 (b) An administrative law judge may appoint a medical panel upon the filing of a claim
38 for compensation based upon disability or death due to an occupational disease.

39 (c) A medical panel appointed under this section shall consist of one or more
40 physicians specializing in the treatment of the disease or condition involved in the claim.

41 (d) A member of a medical panel appointed under this section, when acting within the
42 scope of duties of a medical panel member, is considered an employee of this state for purposes
43 of indemnification under Title 63G, Chapter 7, Governmental Immunity Act of Utah.

44 ~~(d)~~ (e) As an alternative method of obtaining an impartial medical evaluation of the
45 medical aspects of a controverted case, the division may employ a medical director or one or
46 more medical consultants:

47 (i) on a full-time or part-time basis; and

48 (ii) for the purpose of:

49 (A) evaluating medical evidence; and

50 (B) advising an administrative law judge with respect to the administrative law judge's
51 ultimate fact-finding responsibility.

52 ~~(e)~~ (f) If all parties agree to the use of a medical director or one or more medical
53 consultants, the medical director or one or more medical consultants is allowed to function in
54 the same manner and under the same procedures as required of a medical panel.

55 (2) (a) A medical panel, medical director, or medical consultant may do the following
56 to the extent the medical panel, medical director, or medical consultant determines that it is
57 necessary or desirable:

58 (i) conduct a study;

- 59 (ii) take an x-ray;
- 60 (iii) perform a test; or
- 61 (iv) if authorized by an administrative law judge, conduct a post-mortem examination.
- 62 (b) A medical panel, medical director, or medical consultant shall make:
- 63 (i) a report in writing to the administrative law judge in a form prescribed by the
- 64 Division of Adjudication; and
- 65 (ii) additional findings as the administrative law judge may require.
- 66 (c) In an occupational disease case, in addition to the requirements of Subsection
- 67 (2)(b), a medical panel, medical director, or medical consultant shall certify to the
- 68 administrative law judge:
- 69 (i) the extent, if any, of the disability of the claimant from performing work for
- 70 remuneration or profit;
- 71 (ii) whether the sole cause of the disability or death, in the opinion of the medical
- 72 panel, medical director, or medical consultant results from the occupational disease; and
- 73 (iii) (A) whether any other cause aggravated, prolonged, accelerated, or in any way
- 74 contributed to the disability or death; and
- 75 (B) if another cause contributed to the disability or death, the extent in percentage to
- 76 which the other cause contributed to the disability or death.
- 77 (d) (i) An administrative law judge shall promptly distribute full copies of a report
- 78 submitted to the administrative law judge under this Subsection (2) by mail to:
- 79 (A) the applicant;
- 80 (B) the employer;
- 81 (C) the employer's insurance carrier; and
- 82 (D) an attorney employed by a person listed in Subsections (2)(d)(i)(A) through (C).
- 83 (ii) Within 20 days after the day on which the report described in Subsection (2)(d)(i) is
- 84 deposited in the United States post office, the following may file with the administrative law
- 85 judge a written objection to the report:
- 86 (A) the applicant;
- 87 (B) the employer; or
- 88 (C) the employer's insurance carrier.
- 89 (iii) If no written objection is filed within the period described in Subsection (2)(d)(ii),

90 the report is considered admitted in evidence.

91 (e) (i) An administrative law judge may base the administrative law judge's finding and
92 decision on the report of:

93 (A) a medical panel;

94 (B) the medical director; or

95 (C) one or more medical consultants.

96 (ii) Notwithstanding Subsection (2)(e)(i), an administrative law judge is not bound by a
97 report described in Subsection (2)(e)(i) if other substantial conflicting evidence in the case
98 supports a contrary finding.

99 (f) (i) If a written objection to a report is filed under Subsection (2)(d), the
100 administrative law judge may set the case for hearing to determine the facts and issues
101 involved.

102 (ii) At a hearing held pursuant to this Subsection (2)(f), any party may request the
103 administrative law judge to have any of the following present at the hearing for examination
104 and cross-examination:

105 (A) the chair of the medical panel;

106 (B) the medical director; or

107 (C) the one or more medical consultants.

108 (iii) For good cause shown, an administrative law judge may order the following to be
109 present at the hearing for examination and cross-examination:

110 (A) a member of a medical panel, with or without the chair of the medical panel;

111 (B) the medical director; or

112 (C) a medical consultant.

113 (g) (i) A written report of a medical panel, medical director, or one or more medical
114 consultants may be received as an exhibit at a hearing described in Subsection (2)(f).

115 (ii) Notwithstanding Subsection (2)(g)(i), a report received as an exhibit under
116 Subsection (2)(g)(i) may not be considered as evidence in the case except as far as the report is
117 sustained by the testimony admitted.

118 (h) For a claim referred under Subsection (1) to a medical panel, medical director, or
119 medical consultant before July 1, 1997, the commission shall pay out of the Employers'
120 Reinsurance Fund established in Section [34A-2-702](#):

121 (i) expenses of a study or report of the medical panel, medical director, or medical
122 consultant; and

123 (ii) the expenses of the medical panel's, medical director's, or medical consultant's
124 appearance before an administrative law judge.

125 (i) (i) For a claim referred under Subsection (1) to a medical panel, medical director, or
126 medical consultant on or after July 1, 1997, the commission shall pay out of the Uninsured
127 Employers' Fund established in Section 34A-2-704 the expenses of:

128 (A) a study or report of the medical panel, medical director, or medical consultant; and

129 (B) the medical panel's, medical director's, or medical consultant's appearance before
130 an administrative law judge.

131 (ii) Notwithstanding Section 34A-2-704, the expenses described in Subsection (2)(i)(i)
132 shall be paid from the Uninsured Employers' Fund whether or not the employment relationship
133 during which the industrial accident or occupational disease occurred is localized in Utah as
134 described in Subsection 34A-2-704(20).

135 (3) (a) The commission may employ a qualified physician as medical panel director
136 who, in addition to the other duties outlined in this section for a medical director, is responsible
137 for:

138 (i) assisting the commission in creating and enforcing standards for medical panels and
139 medical consultants;

140 (ii) training members of medical panels or medical consultants;

141 (iii) increasing the number of physicians who participate on medical panels;

142 (iv) ensuring medical panels include appropriate specialists; and

143 (v) monitoring the quality of medical panel and medical consultant reports.

144 (b) The commission shall pay the expenses of employing a medical panel director
145 described in this Subsection (3) out of the Uninsured Employers' Fund established in Section
146 34A-2-704.