

SB0147S01 compared with SB0147

~~{deleted text}~~ shows text that was in SB0147 but was deleted in SB0147S01.

inserted text shows text that was not in SB0147 but was inserted into SB0147S01.

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Senator Karen Mayne proposes the following substitute bill:

WORKERS' COMPENSATION AND OCCUPATIONAL SAFETY

RELATED AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ amends definitions~~{to include references to physician extenders}~~;
- ▶ grants rulemaking authority related to treatment protocols and determinations of medical necessity;
- ▶ authorizes contracts related to treatment protocols~~{and determinations of medical~~

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necessity};

- ▶ addresses reporting requirements, including:
 - addressing reports by workers' compensation insurance carriers;
 - granting rulemaking authority;
 - addressing when civil assessments are imposed; and
 - removing certain criminal penalties; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2013.

Utah Code Sections Affected:

AMENDS:

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

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

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

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

ENACTS:

34A-2-407.5, Utah Code Annotated 1953

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

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

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

(1) As used in this section:

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

(ii) "Health care provider" includes:

(A) a hospital;

(B) a clinic;

(C) an emergency care center;

(D) a physician;

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(E) a nurse;

~~(F) a nurse practitioner;~~

~~(G) a physician's assistant;~~

~~(H) ~~(E)~~ a paramedic; ~~(F)~~ or ~~(F)~~~~

~~(I) ~~(G)~~ an emergency medical technician~~(F)~~. ~~(F)~~ or~~

~~(H) a physician extender.~~

(b) "Physician" means any~~(F)~~

~~(i)~~ health care provider licensed under:

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

~~(ii) ~~(B)~~ Title 58, Chapter 24b, Physical Therapy Practice Act;~~

~~(iii) ~~(C)~~ Title 58, Chapter 67, Utah Medical Practice Act;~~

~~(iv) ~~(D)~~ Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;~~

~~(v) ~~(E)~~ Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;~~

~~(vi) Title 58, Chapter 70a, Physician Assistant Act;~~

~~(vii) ~~(F)~~ Title 58, Chapter 71, Naturopathic Physician Practice Act;~~

~~(viii) ~~(G)~~ Title 58, Chapter 72, Acupuncture Licensing Act; ~~and~~~~

~~(ix) ~~(H)~~ Title 58, Chapter 73, Chiropractic Physician Practice Act~~[-]~~; ~~and~~~~

~~(ii) physician extender.~~

~~(c) "Physician extender" means:~~

~~(i) ~~an individual licensed under~~ ~~x~~ Title 58, Chapter 31b, Nurse Practice Act, as an advanced practice registered nurse~~, who is practicing as a nurse practitioner.~~~~

~~(ii) ~~an individual licensed under Title 58, Chapter 70a, Physician Assistant Act; or~~~~

~~(iii) ~~a licensed individual who is not a physician, but who performs medical activities typically performed by a physician, as defined by rule by the commission made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~~~

~~(c) ~~(d)~~ "Preferred health care facility" means a facility:~~

~~(i) that is a health care facility as defined in Section 26-21-2; and~~

~~(ii) designated under a managed health care program.~~

~~(d) ~~(e)~~ "Preferred provider physician" means a physician designated under a managed health care program.~~

~~(e) ~~(f)~~ "Self-insured employer" is as defined in Section 34A-2-201.5.~~

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(2) (a) A self-insured employer and insurance carrier may adopt a managed health care program to provide employees the benefits of this chapter or Chapter 3, Utah Occupational Disease Act, beginning January 1, 1993. The plan shall comply with this Subsection (2).

(b) (i) A preferred provider program may be developed if the preferred provider program allows a selection by the employee of more than one physician in the health care specialty required for treating the specific problem of an industrial patient.

(ii) (A) Subject to the requirements of this section, if a preferred provider program is developed by an insurance carrier or self-insured employer, an employee is required to use:

(I) preferred provider physicians; and

(II) preferred health care facilities.

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

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

(A) use a preferred health care facility; or

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

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

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

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

(II) operate a health care facility; and

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

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

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

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

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

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(I) a preferred provider physician; or

(II) a preferred health care facility.

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

(I) health care providers;

(II) medical review organizations; or

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

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

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

(II) peer review;

(III) methods of utilization review;

(IV) use of case management;

(V) bill audit;

(VI) discounted purchasing; and

(VII) the establishment of a reasonable health care treatment protocol program including the implementation of medical treatment and quality care guidelines that are:

(Aa) scientifically based;

(Bb) peer reviewed; and

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

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

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

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

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

(b) A workplace safety program may include:

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

(A) promotes safe and healthful working conditions; and

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

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

(c) A written workplace accident and injury reduction program permitted under Subsection (3)(b)(i) should describe:

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

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

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

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

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

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

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

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

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

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

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executed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) the employee's attorney.

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

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

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

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

- (i) 180 days of the day on which the injury occurs; or
- (ii) in the case of an occupational hearing loss, the time period specified in Section

34A-2-506.

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

(a) an employer's ~~or~~ report filed with:

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

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

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

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

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

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

(5) (a) ~~[In the form prescribed by the division, an]~~ An employer and the employer's workers' compensation insurance carrier, if any, shall file a report [with the division] in accordance with the rules made under Subsection (5)(b) of a:

- (i) work-related fatality; or
- (ii) work-related injury resulting in:
 - (A) medical treatment;
 - (B) loss of consciousness;
 - (C) loss of work;
 - (D) restriction of work; or
 - (E) transfer to another job.

(b) ~~[The]~~ An employer or the employer's workers' compensation insurance carrier, if

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any, shall file ~~[the]~~ a report required by Subsection (5)(a) ~~[within seven days after:]~~, and any subsequent reports of a previously reported injury as may be required by the commission, within the time limits and in the manner established by rule by the commission made after consultation with the workers' compensation advisory council and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. A rule made under this Subsection (5)(b) shall:

~~[(i) the occurrence of a fatality or injury;]~~

~~[(ii) the employer's first knowledge of a fatality or injury; or]~~

~~[(iii) the employee's notification of a fatality or injury.]~~

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

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

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

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

(i) be reasonable; and

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

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

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

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

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

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

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

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

(a) work-related fatalities; or

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(b) work-related injuries resulting in:

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

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

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

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

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

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

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

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

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

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

(i) fees for physician's services;

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

(iii) reports to the division regarding:

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- (A) the condition and treatment of an injured employee; or
- (B) any other matter concerning industrial cases that the physician is treating[-]; and
- (iv) rules made under Section 34A-2-407.5.

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

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

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

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

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

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

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

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

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

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

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

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

(b) Except as provided in Subsection (11)(a), Subsection 34A-2-211(6), or Section

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

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

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

(1) The commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish for purposes of health care goods and services compensable under this chapter and Chapter 3, Utah Occupational Disease Act, **reasonable health care treatment protocols** ~~and~~, **that include** determinations of medical necessity ~~of goods~~, and ~~services~~.

~~— (2) This section does not prohibit~~ medical treatment and quality care guidelines that are:

(a) scientifically based;

(b) peer reviewed; and

(c) consistent with any general standards for health care treatment protocols that the commission establishes by rule.

(2) Notwithstanding Subsection (1), the commission may authorize an insurer or employer to use all or part of reasonable health care treatment protocols, that include determinations of medical necessity, and medical treatment and quality care guidelines that are:

(a) scientifically based;

(b) peer reviewed; and

(c) consistent with any general standards for health care treatment protocols that the commission shall establish by rule.

(3) Nothing in this section shall be construed to prevent:

(a) an insurer or employer from contracting with a provider of health services ~~related to health care treatment protocols and determinations of medical necessity of goods and services~~ as permitted by Subsection 34A-2-111(2)(c)(i)(B)(VII);

(b) the commission from adjudicating disputes arising under the terms of this section;

or

(c) a provider of health services from bringing to the commission a dispute arising

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under protocols, guidelines, or other terms of this section.

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

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

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

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

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

(i) suffers disability from the occupational disease; and

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

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

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

(i) division; or

(ii) workers' compensation insurance carrier;

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

(i) division;

(ii) employer; or

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

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

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

(4) (a) ~~[In the form prescribed by the division, an]~~ An employer and the employer's workers' compensation insurance carrier, if any, shall file a report [with the division] in accordance with the rules described in Subsection (4)(b) of any occupational disease resulting in:

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

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

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

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

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

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

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

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

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

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

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

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

(5) An employer or its workers' compensation insurance carrier, if any, shall provide the employee with:

- (a) a copy of the report submitted to the division; and
- (b) a statement, as prepared by the division, of the employee's rights and

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responsibilities related to the occupational disease.

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

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

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

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

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

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

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

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

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

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

- (i) the severity of the employee's condition;
- (ii) the nature of the treatment necessary; and

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

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

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

(a) division;

(b) employee; and

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

(10) (a) A person subject to reporting under Subsection (8)(a)(ii) or Subsection 34A-2-407(9)(a)(iii) who refuses or neglects to make a report or comply with this section is ~~[guilty of a class C misdemeanor for each offense, unless the division finds that there is good cause for submitting a late report]~~ subject to a civil assessment in accordance with Subsection 34A-2-407(8).

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

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

(i) (A) the employer; or

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

(ii) the applicant; and

(iii) the attorneys for the parties.

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

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

(A) medical, nurse, or hospital services;

(B) medicines; and

(C) artificial means, appliances, or prosthesis;

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

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

(b) Except as provided in Subsection (12)(a), Subsection 34A-2-211(6), or Section 34A-2-212, a person may not maintain a cause of action in any forum within this state other

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than the commission for collection or payment of goods or services described in Subsection (12)(a) that are compensable under this chapter or Chapter 2, Workers' Compensation Act.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Any failure to obey an order of the court described in this Subsection (2)(c) may be punished by the court as a contempt.

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

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

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

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

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

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

(A) work-related fatality;

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

(C) occupational disease incident.

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

(I) medical treatment;

(II) loss of consciousness;

(III) loss of work;

(IV) restriction of work; or

(V) transfer to another job.

(B) (I) Each employer shall file a subsequent report with the Division of Industrial Accidents of any previously reported injury or occupational disease that later resulted in death.

(II) The subsequent report shall be filed with the Division of Industrial Accidents [~~within seven days following the death or the employer's first knowledge or notification of the~~

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~~death~~ in accordance with Sections 34A-2-407 and 34A-3-108.

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

(v) A report is not required:

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

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

(vi) Each employer shall provide the employee with:

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

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

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

(A) medical treatment;

(B) loss of consciousness;

(C) loss of work;

(D) restriction of work; or

(E) transfer to another job.

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

(c) (i) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring employers to keep records regarding exposures to potentially toxic materials or harmful physical agents required to be measured or monitored under Section 34A-6-202.

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

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representatives:

(I) to observe the measuring or monitoring; and

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

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

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

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

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

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

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

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

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

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

(B) If the division's authorized representative determines there are no reasonable grounds to believe that a violation or danger exists, the authorized representative shall notify

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the employee or representative of the employees in writing of that determination.

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

(ii) The division shall:

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

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

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

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

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

Section 6. **Effective date.**

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~~