

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

SENATE BILL 673

By: Senator Rapert

For An Act To Be Entitled

AN ACT TO AUTHORIZE A LIMITED PROGRAM OF AN OPTIONAL SYSTEM TO ALLOW AN EMPLOYER TO SECURE COVERAGE FOR INJURY OR DEATH OF AN EMPLOYEE WITHOUT REGARD TO WORK-RELATEDNESS; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO AUTHORIZE A LIMITED PROGRAM OF AN OPTIONAL SYSTEM TO ALLOW AN EMPLOYER TO SECURE COVERAGE FOR INJURY OR DEATH OF AN EMPLOYEE WITHOUT REGARD TO WORK-RELATEDNESS; AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 11 is amended to add an additional chapter to read as follows:

CHAPTER 16

UNIVERSAL WORKERS' COMPENSATION ACT

Subchapter 1 – General Provisions

11-16-101. Title.

This chapter shall be known and may be cited as the "Universal Workers' Compensation Act".



11-16-102. Purpose and intent.

(a) The purpose of this chapter is to establish a statutory alternative authorizing and encouraging employers to secure coverage for compensation for injury or death of employees without regard to work-relatedness under the authority granted to the General Assembly by Arkansas Constitution, Article 5, § 32.

(b) To accomplish the purpose described in subsection (a) of this section, it is the intent of the General Assembly that this chapter provide a comprehensive plan design for employees within a plan under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019, to be unencumbered by state laws that impact the plan design and financing of this chapter.

11-16-103. Applicability.

(a) This chapter is not mandatory but is an alternative for an employer.

(b) An authorized employer shall have the right to choose to secure:

(1) Universal workers' compensation coverage for employees under this chapter in lieu of workers' compensation, health, disability, accident, and life coverage under any other state law or rule of this state; and

(2) Universal workers' compensation coverage for employees under this chapter in lieu of workers' compensation, health, disability, accident, and life coverage under any state law, rule, or regulation of any other state.

11-16-104. Full faith and credit.

If an employer secures universal workers' compensation coverage for employees under this chapter, this chapter supersedes any law of any state, unless this chapter is amended by specific reference by the General Assembly, and shall be entitled to and granted full faith and credit by all states, subject to an act of the United States Congress in specific conflict with this chapter.

11-16-105. Employee Retirement Income Security Act of 1974 – Plan.

(a) An employer seeking universal workers' compensation coverage for employees under this chapter shall establish an employee welfare benefit plan

compliant with the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019, and shall offer the universal workers' compensation insurance policy as the primary plan under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019.

(b) The universal workers' compensation plan under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019, provides coverage for injury to a covered employee as a consolidated benefit without regard to work-relatedness and with unitary administration of the remedial compensation.

(c) The financial structure of the universal workers' compensation plan under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019, that is mandated under this chapter imposes a unique fiduciary relationship, including without limitation:

- (1) The progressive character of the premium;
- (2) The limitation on universal workers' compensation carrier fees and return;
- (3) The retention of investment profits by the universal workers' compensation coverage fund and the universal workers' compensation administrative fund for the benefit of covered employees;
- (4) The coverage and remittance process unrestrained by work-relatedness adjudication; and
- (5) The per capita return of fund balances to covered employees.

(d) The fiduciary relationship described in subsection (c) of this section protects and serves the covered employees, both individually and collectively, and the covered employer.

(e) Because of the unique financial structure of the universal workers' compensation plan under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019, a state law imposing workers' compensation, health, disability, accident, and life coverage requirements upon the universal workers' compensation plan under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019, that force the universal workers' compensation plan under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019, to determine work-relatedness

or adopt a certain scheme of substantive coverage relate to the universal workers' compensation plan under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019, and shall be detrimental to the fiduciary relationship of the universal workers' compensation plan under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019.

(f) A universal workers' compensation plan under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019, that is established to provide universal workers' compensation under this chapter shall designate the United States District Court for the Western District of Arkansas as the designated forum in a forum selection clause.

(g) A universal workers' compensation plan under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019, that is established to provide universal workers' compensation under this chapter may designate a specific office of the United States District Court for the Western District of Arkansas as the designated forum in a forum selection clause.

11-16-106. Definitions.

As used in this chapter:

- (1) "Accidental cause" means an unusual circumstance that is:
 - (A) Unintended, unexpected, and unforeseeable;
 - (B) Outside of the control of the person affected; and
 - (C) Not associated with disease, illness, or a process of the body;
- (2) "Acute injury" means an injury for which an urgent and immediate response is necessary to avoid serious harm;
- (3) "Administrative fee" means a fee payable to the universal workers' compensation carrier;
- (4) "Administrative return" means the amount payable to the universal workers' compensation carrier;
- (5) "Authorized employer" means an employer that is certified by the State Insurance Department as authorized to purchase a universal workers' compensation insurance policy, after approval by the State Insurance Department of the employer's plan;

(6) "Authorized medical care practitioner" means a medical care practitioner licensed by the Arkansas State Medical Board;

(7) "Base premium" means the amount equal to the product of the covered employee's wages from the covered employer multiplied by the base premium percentage for the covered employer;

(8) "Base premium percentage" means a percentage of not less than two percent (2%) applied uniformly to the wages of any and all covered employees of a covered employer to determine a base premium;

(9) "Beneficiary" means a covered employee's spouse or child or another person or entity designated, on a form and in the manner authorized by the State Insurance Department, to receive compensation for covered death payable under this chapter;

(10) "Body" means the human anatomy and physiology;

(11) "Care" means services associated with the body;

(12) "Clinical Effectiveness Panel determination" means a decision by the Clinical Effectiveness Panel determining the status of medical care as either effective or ineffective;

(13) "Co-employee" means an individual who has a status under this chapter that grants a conclusive presumption between each employee of an employer and all other employees of the employer during any distinct period the employees are employed by the employer;

(14) "Compensation" means the amount payable to or for the benefit of a covered employee under this chapter;

(15) "Coverage" means the financial responsibility to respond to an occurrence;

(16) "Covered death" means death that is the direct consequence of a covered injury;

(17)(A) "Covered disability" means disability that is the direct consequence of a covered injury.

(B) "Covered disability" does not mean disability resulting from any mental or emotional condition unless the mental or emotional condition is directly related to a covered injury of the physical structure of the body;

(18) "Covered employee" means an employee of the covered employer;

(19) "Covered employer" means an authorized employer that

maintains in full force and effect a universal workers' compensation insurance policy issued under the terms and conditions of the universal workers' compensation insurance policy;

(20) "Covered injury" means an injury of a covered employee;

(21)(A) "Covered medical care" means medical care that is undertaken as a direct consequence of a covered injury.

(B) "Covered medical care" does not include medical care that:

(i) Is ineffective medical care under a Clinical Effectiveness Panel determination;

(ii) Is considered unsafe;

(iii) Is unethical to administer;

(iv) Is contrary to law or regulation;

(v) Extends term of life without a reasonable probability of providing quality of life;

(vi) Is illegal to administer; or

(vii) Poses a risk of harm greater than the probability of benefit to the body;

(22) "Death" means the irreversible cessation of:

(A) Circulatory and respiratory functions; or

(B) All functions of the entire brain, including the brain stem;

(23) "Direct consequence" means a result that is uninterrupted by other factors, conditions, or circumstances;

(24) "Disability" means a limitation of the function of the body that is:

(A) Sufficient to render the covered employee physically unable to perform any type of work; and

(B) Established by objective evidence after an objective medical examination;

(25) "Distinct period" means a period that is distinguishable from other periods by definition or by facts and circumstances distinguishing the period from other periods;

(26) "Distinct universal workers' compensation insurance policy" means a universal workers' compensation insurance policy issued to a specific authorized employer for a specific policy period;

(27) "Emergent medical care" means medical care administered in response to an acute injury;

(28)(A) "Employee" means an individual in the service of an employer under a contract of employment, written or oral, expressed or implied, at will or otherwise.

(B) "Employee" does not include an independent contractor;

(29)(A) "Employer" means an individual, partnership, limited liability company, association, corporation, or other entity that provides any employment.

(B) "Employer" includes:

(i) A receiver or trustee;

(ii) A parent company;

(iii) A subsidiary company;

(iv) An affiliated company; or

(v) A legal representative of the individual, partnership, limited liability company, association, corporation, or other entity that provides any employment;

(30) "Employer premium" means the amount equal to the product of a covered employee's base premium multiplied by a factor of three (3);

(31) "Employment" means an activity for which work is satisfied by wages;

(32) "Final distribution" means distribution of the entire fund balance of a universal workers' compensation fund and fully and finally dissolving the fund;

(33) "Final fund balance" means a fund balance remaining in a fund after all obligations have been discharged;

(34) "Fund balance" means the amount in a fund remaining after subtracting total liabilities from total assets;

(35) "Health risk percentage" means the sum of all specific health risk percentages applicable to a covered employee;

(36) "Health risk premium" means the amount equal to the product of the covered employee's wages multiplied by the health risk percentage;

(37) "Injury" means an interruption of the normal structure and function of the body that:

(A) Is diagnosable by an objective medical examination;

and

(B) Is harmful to the body;

(38) "Interim distribution" means distribution of a portion of a universal workers' compensation coverage fund balance and not the entire universal workers' compensation coverage fund balance;

(39) "Interim distribution amount" means the amount the universal workers' compensation carrier endorses for interim distribution;

(40) "Intoxicant" means a substance, whether legal or illegal, that hinders a person's normal ability to act, respond, or reason;

(41) "Medical care" means curative, therapeutic, or ancillary care necessary to safely and effectively diagnose or treat injury;

(42)(A) "Medical care practitioner" means a professional licensed in any state to administer medical care.

(B) "Medical care practitioner" includes a licensed medical doctor, an osteopath, an optometrist, an optician, a chiropractor, a dentist, a podiatrist, a cosmetologist, a psychologist, a social worker, a physical therapist, an occupational therapist, and others licensed to administer medical care that are not directly regulated by the board;

(43)(A) "Medical opinion" means a formal expression of judgment or advice by a medical care practitioner stated with a reasonable degree of medical certainty.

(B) Greater evidentiary weight is given to medical opinions that are:

(i) Supported by an objective medical examination;

and

(ii) Rendered by an authorized medical care

practitioner;

(44) "National average weekly wage" means the national average weekly wage published by the United States Department of Labor, Division of Longshore and Harbor Workers' Compensation;

(45) "Necessary" means something so important that it shall be done or supplied to avoid serious negative consequences;

(46) "Noncovered medical care" means medical care that is not covered medical care;

(47) "Objective evidence" means quantifiable information that is verifiable by analytical process, procedure, observation, or evaluation;

(48) "Objective medical examination" means a close and careful

study of the body utilizing objective evidence;

(49) "Occurrence" means an event that caused injury or death;

(50) "Period" means a length of time;

(51) "Policy period" means the distinct period between the exact hour and date of the universal workers' compensation insurance policy's inception and the exact hour and date of the universal workers' compensation insurance policy's expiration;

(52) "Prorated administrative fee" means the administrative fee payable to the universal workers' compensation carrier from the final distribution of the distinct universal workers' compensation insurance policy universal workers' compensation administrative fund;

(53) "Quality of life" means the ability to sustain normal functions of the body, considering age and the general condition of the body;

(54) "Serious harm" means an injury resulting in disability or death;

(55) "Specific health risk" means a specific factor, as designated by the State Insurance Department, that increases the risk of injury, including without limitation:

(A) Tobacco;

(B) An intoxicant; and

(C) Age;

(56) "Specific health risk percentage" means the percentage of a covered employee's wages assigned to each specific health risk, under rules promulgated by the State Insurance Department;

(57) "Term of life" means the period from birth to death;

(58) "Total base premium" means the sum of all base premiums;

(59) "Total employer premium" means the sum of all employer premiums;

(60) "Total health risk premium" means the sum of all health risk premiums;

(61) "Total premium" means the sum of the:

(A) Total base premium;

(B) Total employer premium; and

(C) Total health risk premium;

(62) "Universal Workers' Compensation Act applicable rate" means the rate to use for universal workers' compensation benefits;

(63) "Universal workers' compensation carrier" means any company authorized by the State Insurance Department to issue a universal workers' compensation insurance policy;

(64) "Universal workers' compensation claim" means a request for compensation under a universal workers' compensation insurance policy;

(65) "Universal workers' compensation coverage" means coverage under a universal workers' compensation insurance policy;

(66) "Universal workers' compensation insurance policy" means an insurance policy certified by the State Insurance Department as compliant with this chapter;

(67) "Universal workers' compensation rate" means the fixed weekly rate paid to a covered employee who is unable to work as a result of a covered injury or covered disability;

(68) "Unsafe conduct" means a personal act or series of personal acts generally recognized to substantially increase the likelihood of injury resulting in serious harm;

(69) "Wages" means the amount earned for work by an employee, including any amount earned but deferred for payment at a later date;

(70) "Weekly wage period" means a single period of seven (7) consecutive days for which wages are payable for work performed by a covered employee for the covered employer; and

(71) "Work" means performance, usually labor or service, involving physical or mental effort.

11-16-107. Administrative fee – Administrative return.

(a) An administrative fee is payable to the universal workers' compensation carrier in the amount equal to the product of ten percent (10%) of the total premium for the distinct universal workers' compensation insurance policy multiplied by the Universal Workers' Compensation Act applicable rate.

(b) An administrative return is the amount payable to the universal workers' compensation carrier from the final distribution of the distinct universal workers' compensation insurance policy's universal workers' compensation administrative fund that shall equal the final fund balance of the distinct universal workers' compensation insurance policy universal workers' compensation administrative fund.

(c) The Universal Workers' Compensation Act applicable rate is the greater of:

- (1) Five percent (5%); or
- (2) The applicable federal rate used by the Internal Revenue Service using the annual long-term one-hundred-thirty-percent (130%) applicable federal rate that is valid for the designated date of payment.

11-16-108. Authorized employer.

(a) An authorized employer is authorized to purchase a universal workers' compensation insurance policy, after approval by the State Insurance Department, to:

(1) Contract for universal workers' compensation coverage and require participation of all employees as a condition of employment, including without limitation employees of a parent, subsidiary, or affiliated company;

(2) Provide all payroll services, including without limitation accounting, check or card issuance, check or card mailing, electronic payment transfer, payment clearing, and payment reconciliation within this state;

(3)(A) Prefund payroll liabilities for covered employees, twenty-four (24) hours before issuance of payroll remittances by check, card, electronic funds transfer, or other means, into an account or accounts holding the funds in this state in a bank or banks authorized by this state to transact banking business in this state.

(B) The funds shall be held in the account until the final remittance has cleared;

(4) Manage employment and personnel functions for all covered employees through an office in this state; and

(5) Finalize the hiring process for covered employees within this state.

(b) An authorized employer may contract for services required by this section with a service provider authorized by the department to provide the services.

(c) An authorized employer shall provide universal workers' compensation coverage for covered employees by incorporating a universal workers' compensation insurance policy in a plan under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it

existed on January 1, 2019.

11-16-109. Universal workers' compensation carrier.

A universal workers' compensation carrier shall agree to:

(1) Administer the universal workers' compensation insurance policy within this state;

(2) Process and adjudicate universal workers' compensation insurance policy compensation within this state; and

(3) Maintain cash balances for compensation in an account or accounts within this state in a bank or banks authorized by the State of Arkansas to transact banking business within this state.

Subchapter 2 – Compensation Provisions

11-16-201. Universal workers' compensation – Compensation rate.

(a) The universal workers' compensation rate is the fixed weekly rate that shall remain unchanged for the covered injury and shall be applied to determine compensation for a covered injury, except compensation for medical care.

(b)(1) A universal workers' compensation rate is seventy-five percent (75%) of the covered employee's average weekly wage, subject to the restrictions and limitations of subsections (c) and (d) of this section.

(2) A covered employee's average weekly wage is the quotient of total wages paid to the covered employee by the covered employer during the fifty-two (52) weekly wage periods immediately preceding the date of a covered injury divided by the total number of weekly wage periods the covered employee was employed by the covered employer during the fifty-two (52) weekly wage periods immediately preceding the date of a covered injury.

(3) After calculating the universal workers' compensation rate, the result shall be rounded to the nearest cent.

(c) The universal workers' compensation rate shall be restricted to and shall not exceed two (2) times the national average weekly wage applicable to the date of the covered injury.

(d) The universal workers' compensation rate shall not be less than seventy-five dollars (\$75.00) per week.

11-16-202. Universal workers' compensation – Claim for payment of compensation.

(a) An authorized medical care practitioner shall submit any universal workers' compensation claim to the universal workers' compensation carrier under the terms and conditions of the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered injury.

(b) A covered employee shall submit a universal workers' compensation claim under the terms and conditions of the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered injury.

(c)(1) A beneficiary or beneficiaries of a deceased covered employee shall submit a universal workers' compensation claim for covered death under the terms and conditions of the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered injury.

(2) If the covered employee failed to declare a beneficiary or beneficiaries, the personal representative of the estate of the covered employee shall submit the universal workers' compensation claim for covered death under the terms and conditions of the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered injury.

(d) A universal workers' compensation carrier is entitled to all documents, reports, and information of any kind or character deemed necessary to appropriately evaluate, process, and adjudicate a universal workers' compensation claim under the terms and conditions of the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered injury.

(e) A universal workers' compensation claim is deemed a submitted universal workers' compensation claim on the date all documents, reports, and information of any kind or character necessary to appropriately evaluate, process, and adjudicate the universal workers' compensation claim under the terms and conditions of the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered injury are received by the universal workers' compensation carrier.

11-16-203. Compensation for covered medical care – Definitions.As used in this subchapter:

(1) "Balance billing" means billing a covered employee for any amount for covered medical care that exceeds compensation for covered medical care paid by the universal workers' compensation carrier under a universal workers' compensation insurance policy;

(2) "Centers for Medicare and Medicaid Services fee schedule amount" means the payment amount for specific medical care under an applicable fee schedule published by the Centers for Medicare and Medicaid Services; and

(3) "Negotiated fee schedule amount" means the payment amount agreed to by the authorized medical care practitioner for specific medical care under a fee schedule available to the universal workers' compensation carrier:

(A) Under a contract between the universal workers' compensation carrier and the authorized medical care practitioner; or

(B) Under a contract between the universal workers' compensation carrier and a third party.

11-16-204. Compensation for covered medical care.

(a) An authorized medical care practitioner shall not require any payment from a covered employee for covered medical care and is prohibited from balance billing a covered employee for any covered medical care provided.

(b) If an authorized medical care practitioner is paid a covered medical care amount under § 11-16-205(a) of this section, the authorized medical care practitioner does have the authority to balance bill a covered employee for noncovered medical care in an amount equal to the difference between the noncovered medical care amount and the covered medical care amount.

(c) Compensation for covered medical care shall be paid:

(1) Only for covered medical care;

(2) From the universal workers' compensation coverage fund of the distinct universal workers' compensation insurance policy providing the universal workers' compensation coverage for the covered injury;

(3) Under the terms and conditions of the distinct universal

workers' compensation insurance policy providing the universal workers' compensation coverage for the covered injury;

(4) Under procedures compliant with the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019;

(5) Only to an authorized medical care practitioner;

(6) By electronic transfer if secure electronic transfer is possible and appropriate; and

(7) At the lesser of the lowest of the Centers for Medicare and Medicaid Services fee schedule amount or the lowest negotiated fee schedule amount.

(d) Compensation for medical care shall not be paid:

(1) To any medical care practitioner other than an authorized medical care practitioner;

(2) For medical care provided after termination of the covered employee's employment with the covered employer, except as provided in § 11-16-301(b)(1);

(3) For care provided after death of the covered employee;

(4) For noncovered medical care, except payment of the covered medical care amount under § 11-16-205(a); or

(5) Unless a universal workers' compensation claim for covered medical care is submitted within one hundred twenty (120) days after the date of service.

11-16-205. Noncovered medical care – Notice.

(a) If the covered employee and an authorized medical care practitioner determine that noncovered medical care is preferred and the authorized medical care practitioner desires compensation under this chapter, then the following apply:

(1) The authorized medical care practitioner shall, before administering the noncovered medical care, submit a request to the universal workers' compensation carrier, on a form and in the manner authorized by the State Insurance Department, including the following:

(A) A detailed description of the preferred course of noncovered medical care for the covered injury;

(B) A detailed statement reporting the lesser of the

lowest Centers for Medicare and Medicaid Services fee schedule amount or the lowest negotiated fee schedule amount accepted as satisfaction by the authorized medical care practitioner from any remitter for the noncovered medical care; and

(C) A confirmation by the authorized medical practitioner that the covered employee has been advised that the medical care requested is noncovered medical care;

(2) The universal workers' compensation carrier shall determine the most cost-effective course of covered medical care appropriate for the covered injury and the total amount of the covered medical care at the lesser of the lowest Centers for Medicare and Medicaid Services fee schedule amount or the lowest negotiated fee schedule amount;

(3) The universal workers' compensation carrier shall notify the covered employee of the request, on a form and in the manner authorized by the department, including:

(A) A copy of the request;

(B) A detailed description of the course of medical care for both the noncovered medical care requested and the appropriate covered medical care;

(C) The noncovered medical care amount and the covered medical care amount;

(D) A statement that contains the following language: "If the covered employee allows the authorized medical care practitioner to administer the noncovered medical care: (1) The universal workers' compensation carrier shall not be liable for compensation over and above the covered medical care amount for charges associated with noncovered medical care; (2) The authorized medical care practitioner shall have the right to balance bill the covered employee for noncovered medical care in an amount equal to the difference between the noncovered medical care amount and the covered medical care amount; and (3) The universal workers' compensation carrier shall not be liable for compensation, except compensation for covered medical care, where a covered injury is associated with noncovered medical care"; and

(E) The name and contact information for a person available to respond to any questions regarding the request;

(4)(A) If the noncovered medical care is administered after

notice to the covered employee under subdivision (a)(3) of this section, the universal workers' compensation carrier shall pay the authorized medical care practitioner the covered medical care amount:

(i) Under procedures compliant with Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as existed on January 1, 2019; and

(ii) Only if the authorized medical care practitioner submitted the universal workers' compensation claim to the universal workers' compensation carrier within sixty (60) days of the date of service.

(B) The authorized medical care practitioner shall have the right to balance bill the covered employee under § 11-16-204.

(C) The universal workers' compensation carrier shall notify the covered employee that:

“(1) The universal workers' compensation carrier shall not be liable for compensation over and above the covered medical care amount for charges associated with noncovered medical care; (2) The authorized medical care practitioner shall have the right to balance bill the covered employee for noncovered medical care in an amount equal to the difference between the noncovered medical care amount and the covered medical care amount; and (3) The universal workers' compensation carrier shall not be liable for compensation, except compensation for covered medical care, where a covered injury is associated with noncovered medical care.”;

(5) If noncovered medical care is not emergent medical care and is administered prior to notice to the covered employee under subdivision (a)(3) of this section, the universal workers' compensation carrier shall notify the covered employee that:

“(1) The universal workers' compensation carrier shall not be liable for compensation to the authorized medical care practitioner for charges associated with the noncovered medical care; (2) The authorized medical care practitioner shall not bill the covered employee for the noncovered medical care, if the authorized medical care practitioner knew or should have known that the medical care administered was noncovered medical care and failed to secure the covered employee's informed consent accepting financial responsibility for the noncovered medical care; and (3) The universal workers' compensation carrier shall not be liable for compensation, except

compensation for covered medical care, where a covered injury is associated with noncovered medical care.”;

(6) If the noncovered medical care is emergent medical care, the universal workers’ compensation carrier shall pay the covered medical care amount to the authorized medical care practitioner within twenty-one (21) days after receipt of a valid universal workers’ compensation claim; and

(7) Payments to an authorized medical care practitioner for noncovered medical care under this subsection shall not exceed the covered medical care amount.

(b)(1) Before issuing a universal workers’ compensation insurance policy, a universal workers’ compensation carrier shall secure approval from the department of a specific plan for payment of additional compensation to authorized medical care practitioners for covered medical care as an addition to the Centers for Medicare and Medicaid Services fee schedule amount or negotiated fee schedule amount payable.

(2) The specific medical compensation plan shall include:

(A) A detailed description of the methodology;

(B) A cost-effectiveness analysis; and

(C) The projected improvement in medical care effectiveness resulting from implementation.

(3) The specific medical compensation plan is proprietary to the universal workers’ compensation carrier.

11-16-206. Compensation for covered disability.

(a) Compensation for covered disability shall be paid:

(1) Only for covered disability;

(2) At the universal workers’ compensation rate;

(3) Only to the covered employee, the legal guardian of the covered employee, or the attorney-in-fact of the covered employee;

(4) From the universal workers’ compensation coverage fund of the distinct universal workers’ compensation insurance policy providing universal workers’ compensation coverage for the covered injury;

(5) Under the terms and conditions of the distinct universal workers’ compensation insurance policy providing the universal workers’ compensation coverage for the covered injury;

(6) Under procedures compliant with the Employee Retirement

Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019; and

(7) Either:

(A) In a lump sum for the portion of the compensation for covered disability payable before the date the universal workers' compensation claim is approved by the universal workers' compensation carrier under the terms and conditions of the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered injury; or

(B) In biweekly installments for the portion of the compensation for covered disability payable on or after the date the universal workers' compensation claim is accepted by the universal workers' compensation carrier under the terms and conditions of the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered injury.

(b) Compensation for covered disability shall not be payable:

(1) At any time or under any circumstances for the first fourteen (14) days of covered disability for each distinct period of covered disability measured from the date the covered disability is deemed established to the date the covered employee is deemed physically able to perform some type of work;

(2) After termination of the covered employee's employment with the covered employer, except as provided in § 11-16-301(b)(2);

(3) During any period the covered employee is engaged in work;

(4) During any distinct period the covered employee is deemed physically able to perform some type of work by an authorized medical care practitioner; or

(5) After death of the covered employee.

(c) Compensation for covered disability is subject to the following aggregate limits, as applicable:

(1) If covered disability is not the direct consequence of a covered injury by accidental cause:

(A) The total number of all weeks of compensation for covered disability is limited to and shall not exceed one hundred fifty-six (156) weeks and shall be further limited by subdivision (c)(1)(B) of this section; and

(B) The amount of all compensation for covered disability for the covered injury is limited to and shall not exceed two hundred thirty-four (234) times the national average weekly wage applicable to the date of the covered injury;

(2) If covered disability is the direct consequence of a covered injury by accidental cause:

(A) The total number of all weeks of compensation for covered disability is limited to and shall not exceed five hundred twenty (520) weeks and shall be further limited by subdivision (c)(2)(B) of this section; and

(B) The amount of all compensation for covered disability is limited to and shall not exceed seven hundred eighty (780) times the national average weekly wage applicable to the date of the covered injury; or

(3) If covered disability is the direct consequence of a covered injury by accidental cause that would not have occurred but for the unsafe conduct of a co-employee of the covered employee:

(A) The total number of all weeks of compensation for covered disability is limited to and shall not exceed two thousand six hundred (2,600) weeks and shall be further limited by subdivision (c)(3)(B) of this section; and

(B) The amount of all compensation for covered disability is limited to and shall not exceed three thousand nine hundred (3900) times the national average weekly wage applicable to the date of the covered injury.

11-16-207. Accommodation.

(a) As used in this section:

(1) "Accommodation compensation factor" means one (1);

(2) "Accommodation hours" means the number of weekly hours prescribed under the temporary accommodation or modified temporary accommodation;

(3) "Accommodation hours' quotient" means the amount resulting from dividing the accommodation hours by the average weekly hours;

(4) "Accommodation period" means a distinct period, subject to subsection (b) of this section, if:

(A) The covered employee is deemed physically able to

perform some type of work by an authorized medical care practitioner;

(B) The authorized medical practitioner has prescribed temporary physical restrictions for the covered employee that require a modification of the covered employee's work duties or work hours, or both, as temporary accommodation;

(C) The temporary accommodation is necessary for the covered employee to return to work for the covered employer;

(D) The release to return to work immediately follows a distinct period of covered disability; and

(E) The covered employee was paid compensation for covered disability during the distinct period of covered disability;

(5) "Accommodation wages" means wages paid to a covered employee for all accommodation hours, except accommodation hours the covered employee fails to work as scheduled;

(6) "Average weekly hours" means the average number of hours the covered employee worked for the covered employer during the fifty-two (52) weekly wage periods immediately preceding the date of the covered injury;

(7) "Modified temporary accommodation" means the modification of temporary physical restrictions by the authorized medical care practitioner that may affect the covered employee's duties or work hours; and

(8) "Work release date" means the date the covered employee is deemed physically able to perform some type of work by an authorized medical care practitioner.

(b) The accommodation period runs from the work release date and shall not exceed ninety (90) days for any covered injury.

(c) During the accommodation period, the temporary accommodation is subject to modified temporary accommodation.

(d) All rights and duties established under this section are expressly conditioned upon the covered employee's presenting a timely request for temporary accommodation or modified temporary accommodation to the covered employer and a timely notice of the request for temporary accommodation or modified temporary accommodation to the universal workers' compensation carrier, under the rules promulgated by the State Insurance Department.

(e) For a distinct period within the accommodation period that the covered employer provides accommodation hours, the covered employer shall:

(1) Schedule the covered employee for the accommodation hours;

(2) Notify the covered employee of the schedule for the accommodation hours; and

(3) Pay accommodation wages.

(f) Upon receipt of notice of a request for temporary accommodation or modified temporary accommodation under subsection (d) of this section, the universal workers' compensation carrier shall:

(1) Determine the average weekly hours;

(2) Determine the accommodation hours; and

(3) Determine the accommodation hours' quotient.

(g) If the covered employer pays accommodation wages and the accommodation hours' quotient is less than one (1), the universal workers' compensation carrier shall:

(1) Subtract the accommodation hours' quotient from the accommodation compensation factor;

(2) Multiply the accommodation compensation factor by the universal workers' compensation rate, accommodation compensation; and

(3) Pay the accommodation compensation to the covered employee biweekly, adjusted for partial weeks.

(h) For any distinct period within the accommodation period that the covered employer does not provide accommodation hours, the covered employer shall pay the covered employee the amount equal to one hundred twenty-five percent (125%) of the covered employee's universal workers' compensation rate for each week the covered employer does not provide accommodation hours, adjusted for partial weeks.

11-16-208. Compensation for covered death.

(a) Compensation for covered death shall be paid:

(1) Only for covered death;

(2) At the universal workers' compensation rate;

(3) To the covered employee's designated beneficiary or beneficiaries or, alternatively, to the probate estate of the covered employee;

(4) From the universal workers' compensation coverage fund of the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered death;

(5) Under the terms and conditions of the distinct universal

workers' compensation insurance policy providing the universal workers' compensation coverage for the covered death;

(6) Under procedures compliant with the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019; and

(7) Either:

(A) In a lump sum for the portion of the compensation payable before the date the universal workers' compensation claim is accepted by the universal workers' compensation carrier under the terms and conditions of the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered death; or

(B) In biweekly installments for the portion of the compensation payable on or after the date the universal workers' compensation claim is accepted by the universal workers' compensation carrier under the terms and conditions of the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered death.

(b) If the covered employee failed to designate a beneficiary or the designation is invalid for any reason, compensation for covered death shall be paid to the probate estate of the covered employee.

(c) Compensation for covered death shall not be payable after termination of the covered employee's employment with the covered employer, except as provided in § 11-16-301(b)(3).

(d) Compensation for covered death is subject to restrictions and limitations as follows:

(1) If the covered death is not the direct consequence of a covered injury by accidental cause, the amount of all compensation paid and payable for the covered death is restricted to and shall not exceed fifty-two (52) times the national average weekly wage applicable to the date of the covered injury;

(2) If the covered death is the direct consequence of a covered injury by accidental cause, the amount of all compensation paid and payable for the covered death is restricted to and shall not exceed one hundred fifty-six (156) times the national average weekly wage applicable to the date of the covered injury; or

(3) If a covered death is the direct consequence of a covered

injury by accidental cause that would not have occurred but for the unsafe conduct of a co-employee of the covered employee, the amount of all compensation paid and payable for the covered death is restricted to and shall not exceed one thousand three hundred (1,300) times the national average weekly wage applicable to the date of the covered injury.

(e) The universal workers' compensation carrier shall not approve payment of compensation for covered death without confirmation of date of death and cause of death under the terms and conditions of the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered injury.

11-16-209. Compensation for covered scheduled loss.

(a) As used in this section:

(1) "Covered scheduled loss" means a scheduled loss that is the direct consequence of a covered injury by accidental cause;

(2) "Scheduled loss" means the permanent total loss of a scheduled member or scheduled members by amputation or permanent total loss of use; and

(3) "Scheduled member" means a part of the body explicitly designated in subsection (e) of this section.

(b) Compensation for covered scheduled loss shall be paid:

(1) Only for covered scheduled loss;

(2) At the universal workers' compensation rate;

(3) Only to the covered employee, the legal guardian of the covered employee, or the attorney-in-fact of the covered employee;

(4) From the universal workers' compensation coverage fund of the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered scheduled loss;

(5) Under the terms and conditions of the distinct universal workers' compensation insurance policy providing the universal workers' compensation coverage for the covered scheduled loss;

(6) Under procedures compliant with the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019; and

(7) Either:

(A) In a lump sum for the portion of the compensation

payable before the date the universal workers' compensation claim is accepted by the universal workers' compensation carrier under the terms and conditions of the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered scheduled loss; or

(B) In biweekly installments for the portion of the compensation payable on or after the date the universal workers' compensation claim is accepted by the universal workers' compensation carrier under the terms and conditions of the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered scheduled loss.

(c) Compensation for covered scheduled loss shall not be payable after death of the covered employee.

(d) Compensation for covered scheduled loss shall not be payable after termination of the covered employee's employment with the covered employer, except as provided in § 11-16-301(b)(4).

(e) Specific scheduled members and the maximum number of weeks of compensation for covered scheduled loss of the scheduled member shall be as follows:

(1) Arm at the elbow, or between the elbow and shoulder, three hundred sixty-four (364) weeks;

(2) Arm between the elbow and wrist, two hundred sixty (260) weeks;

(3) Leg at the knee, or between the knee and the hip, two hundred sixty (260) weeks;

(4) Leg between the knee and the ankle, one hundred fifty-six (156) weeks;

(5) Hand, two hundred sixty (260) weeks;

(6) Thumb, one hundred four (104) weeks;

(7) First finger, eighty-three (83) weeks;

(8) Second finger, sixty-two (62) weeks;

(9) Third finger, forty-two (42) weeks;

(10) Fourth finger, twenty-one (21) weeks;

(11) Foot, one hundred fifty-six (156) weeks;

(12) Great toe, sixty-two (62) weeks;

(13) Toe other than great toe, twenty-one (21) weeks;

(14) Sight in one eye, one hundred thirty (130) weeks;

- (15) Sight in both eyes, three hundred sixty-four weeks (364);
- (16) Hearing in one (1) ear, seventy-eight (78) weeks; and
- (17) Hearing in both ears, two hundred thirty-four (234) weeks.

(f)(1) Compensation for covered scheduled loss of the first phalange will be one-half (1/2) of the compensation for the amputation of the entire digit.

(2) Compensation for covered scheduled loss of more than one (1) phalange of a digit is the same as for amputation of the entire digit.

(3) Compensation for covered scheduled loss of two (2) or more digits or one (1) or more phalanges of two (2) or more digits of a hand or a foot shall not exceed the compensation for scheduled loss of a hand or a foot.

(g)(1) Permanent total loss of the vision of an eye is the same as enucleation of an eye.

(2) In all cases of permanent total loss of vision, the availability of corrective lenses shall be considered in evaluating the extent of loss of vision.

(h) Compensation for covered scheduled loss is subject to restrictions and limitations, as the amount of all compensation paid and payable to a covered employee for all covered scheduled loss is restricted to and shall not exceed five hundred twenty (520) times the national average weekly wage applicable to the date of the covered injury.

Subchapter 3 – Additional Compensation Provisions

11-16-301. Terminated covered employee.

(a) As used in this section:

(1) "Terminated covered employee" means an individual whose employment with a covered employer has ended by virtue of resignation, retirement, discharge, layoff, dismissal, operation of law, or other separation and who is therefore no longer a covered employee; and

(2) "Terminated covered employer" means a covered employer of a terminated covered employee.

(b) A terminated covered employee shall not have universal workers' compensation coverage under any distinct universal workers' compensation insurance policy issued to the terminated covered employer, except

compensation coverage for:

(1) Covered medical care:

(A) Related to covered disability under subdivision (b)(2) of this section;

(B) Only during the distinct period that compensation for covered disability is payable under § 11-16-204; and

(C) Payable under § 11-16-204 and not in direct conflict with this section;

(2) Covered disability payable under § 11-16-206, if the covered injury occurred during the period that the terminated covered employee was a covered employee of the terminated covered employer;

(3) Covered death if:

(A) Either:

(i) The covered death occurred during the period that the terminated covered employee was a covered employee of the terminated covered employer; or

(ii)(a) The covered injury occurred after the period that the terminated covered employee was a covered employee of the terminated covered employer;

(b) The covered death is related to covered disability under subdivision (b)(2) of this section; and

(c) The covered death occurred during the distinct period that compensation for covered disability is payable pursuant to section § 11-16-206; and

(B) Payable under § 11-16-206 and not in direct conflict with subdivision (b)(3)(A)(ii)(b) of this section;

(4) Covered scheduled loss payable under § 11-16-209, if the covered injury occurred during the period that the terminated covered employee was a covered employee of the terminated covered employer; and

(5) Provisions of this chapter that are not in direct conflict with subdivisions (b)(1)(C) and (b)(3)(B) of this section are applicable to this section.

11-16-302. Other limitations on compensation.

(a) A universal workers' compensation carrier is not liable for compensation, except compensation for covered medical care, if:

(1) The covered employee's use of an intoxicant contributes to or exacerbates the effect of a covered injury;

(2) The presence of an intoxicant will create a rebuttable presumption that the covered injury is an intoxication impact injury;

(3) A covered employee is deemed by his or her employment to have impliedly consented to reasonable and responsible testing by properly trained medical or law enforcement personnel for the presence of any intoxicant in the covered employee's body; and

(4) The presumption established under subdivision (a)(2) of this section may be rebutted by clear and convincing evidence establishing that the covered injury is not an intoxication impact injury.

(b) A universal workers' compensation carrier is not liable for compensation, except covered medical care, if:

(1) The covered employee's use of prescription drugs in contravention of a physician's orders contributes to the cause or exacerbates the effect of the covered injury as a prescription contravention-impact injury;

(2) The presence of prescription drugs in contravention of a physician's orders creates a rebuttable presumption that the covered injury is a prescription contravention-impact injury;

(3) A covered employee is deemed by his or her employment to have impliedly consented to reasonable and responsible testing by properly trained medical or law enforcement personnel for the presence of any prescription drugs that may cause or exacerbate injury in the employee's body; and

(4) The presumption established under subdivision (b)(2) of this section may be rebutted by clear and convincing evidence establishing that the covered injury is not a prescription contravention-impact injury.

(c) A universal workers' compensation carrier is not liable for compensation, except covered medical care, if a covered injury is deemed intentionally self-inflicted.

(d) A universal workers' compensation carrier is not liable for compensation, except covered medical care, if the covered injury is associated with the covered employee's voluntary participation in a crime classified as a felony.

(e) A universal workers' compensation carrier is not liable for

compensation, except covered medical care, if a covered injury is associated with noncovered medical care that is not emergent medical care.

11-16-303. Lump sum payment.

A universal workers' compensation carrier, at its discretion, has the right to satisfy periodic payments contemplated by this chapter in a lump sum payment after applying a discount rate equal to the Universal Workers' Compensation Act applicable rate under the terms and conditions of the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered injury.

11-16-304. Settlement agreement.

(a) As used in this section, "designated Employee Retirement Income Security Act of 1974 plan fiduciary" means a fiduciary of a plan under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019, who is assigned the specific authority and responsibility for reviewing and approving settlement agreements contemplated by this section.

(b) A universal workers' compensation carrier and a covered employee have the right to satisfy a universal workers' compensation claim by the covered employee through a settlement agreement.

(c) A universal workers' compensation carrier and a terminated covered employee have the right to satisfy a universal workers' compensation claim by the terminated covered employee through a settlement agreement.

(d) A universal workers' compensation carrier and a beneficiary or beneficiaries of a covered employee have the right to satisfy a universal workers' compensation claim by the beneficiary or beneficiaries of a covered employee through a settlement agreement.

(e) A settlement agreement contemplated by this section is contingent upon approval by the covered employer and the designated Employee Retirement Income Security Act of 1974 plan fiduciary, and the universal workers' compensation carrier shall secure written approval of the settlement agreement from the covered employer and the designated Employee Retirement Income Security Act of 1974 plan fiduciary before remitting any payment under the settlement agreement.

11-16-305. Physical disability requirement for covered disability – Exceptions.

(a) If a covered employee receiving compensation for covered disability is deemed physically able to perform some type of work by an authorized medical care practitioner and objective evidence establishes that the covered employee is permanently unable to return to work for the covered employer, the covered employee may be entitled to additional compensation if the covered employee is:

(1) Permanently unable to return to work for the covered employer as a direct consequence of schizophrenia, bipolar disorder, or major depressive disorder, as described in the Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders, that is severe, chronic and continuous despite treatment, then the covered employee shall be paid twenty-six (26) weeks of additional compensation at the universal workers' compensation rate;

(2) Permanently physically unable to return to work for the covered employer as a direct consequence of a covered injury by accidental cause, then the covered employee shall be paid fifty-two (52) weeks of additional compensation at the universal workers' compensation rate; or

(3) Permanently physically unable to return to work for the covered employer as a direct consequence of a covered injury by accidental cause that would not have occurred but for the unsafe conduct of a co-employee of the covered employee, then the covered employee shall be paid one hundred fifty-six (156) weeks of additional compensation at the universal workers' compensation rate.

(b) Compensation under subsection (a) of this section is not compensation for covered disability.

(c) Additional compensation under subdivisions (a)(1)–(a)(3) of this section shall be requested on a form and in the manner authorized by the State Insurance Department within the twenty-one-day period following the date the universal workers' compensation carrier provides notice to the covered employee on a form and in the manner authorized by the department that the covered employee is deemed physically able to perform some type of work by an authorized medical care practitioner.

11-16-306. Reimbursement of overpayments.

(a) If the universal workers' compensation carrier pays any compensation to or for the benefit of a covered employee over and above the amount required by the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered injury as overpayment, the universal workers' compensation carrier shall have the right to reimbursement of the overpayment from the person, organization, or entity receiving the overpayment.

(b) The universal workers' compensation carrier shall have the right to satisfy the reimbursement through:

- (1) Voluntary repayment;
- (2) An offset against compensation in the future; and
- (3) Collection proceedings.

(c) The universal workers' compensation carrier shall account for any reimbursement contemplated under this chapter in the universal workers' compensation coverage fund of the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered injury.

11-16-307. Compensation from other sources.

(a)(1) As used in this section, "other coverage amount" means the amount a covered employee receives or is eligible to receive for medical care, disability, scheduled loss, or death associated with a covered injury under this chapter as a named insured under an insurance policy or as a plan participant under a self-insured plan providing coverage for the covered employee outside of this chapter.

(2) A universal workers' compensation carrier providing universal workers' compensation coverage for the covered injury shall establish a credit equal to the other coverage amount as other coverage amount credit, and the other coverage amount credit shall be applied to any compensation, except compensation for covered medical care, payable by the universal workers' compensation carrier for the covered injury until the other coverage amount credit is satisfied in full.

(3) The other coverage amount shall not include the amount a covered employee receives or is eligible to receive from an insurance policy or self-insured plan if more than fifty percent (50%) of the premium or premium equivalent is paid by the covered employee.

(b) A covered employee shall disclose immediately and under no circumstance more than twenty-one (21) days after an occurrence contemplated by this section, on a form and in a manner authorized by the State Insurance Department, the identity, address, or phone number of any person, organization, or entity responsible for a payment of any kind or character associated with a covered injury under this chapter.

(c)(1) If the covered employee fails to disclose under subsection (b) of this section and the universal workers' compensation carrier subsequently remits compensation without applying the other coverage amount credit, the universal workers' compensation carrier is entitled to reimbursement of the other coverage amount that should have applied to the compensation remitted, and the universal workers' compensation carrier shall have the right to satisfy the reimbursement from the covered employee through:

(A) Voluntary repayment;

(B) An offset against future compensation, except compensation for medical care; and

(C) Collection proceedings.

(2) This subsection does not apply if a covered employee is unable to disclose due to severe physical or mental incapacity.

Subchapter 4 – Universal Workers' Compensation Coverage

11-16-401. General limitation of universal workers' compensation coverage.

Universal workers' compensation coverage shall not exist unless:

(1) This chapter establishes coverage;

(2) A distinct universal workers' compensation insurance policy provides universal workers' compensation coverage; and

(3) An employee is a covered employee under the distinct universal workers' compensation insurance policy.

11-16-402. Termination of universal workers' compensation coverage.

(a) If a covered employer fails to comply with the terms and conditions of the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage and a universal workers' compensation carrier elects to terminate the distinct universal workers'

compensation insurance policy for the failure to comply with the terms and conditions of the distinct universal workers' compensation insurance policy, the universal workers' compensation carrier shall terminate the distinct universal workers' compensation insurance policy in conformity with the requirements of the plan under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019.

(b) If a covered employer fails to pay the total premium under the terms and conditions of the distinct universal workers' compensation insurance policy, the universal workers' compensation carrier shall have a lien on the assets of the covered employer held in this state and the universal workers' compensation carrier may immediately proceed with collection action against the covered employer and pursue any and all available legal remedies.

(c) A notice of termination issued under this section shall be copied to the State Insurance Department.

11-16-403. Overlapping universal workers' compensation insurance policy universal workers' compensation coverage provisions.

If a covered employee is employed by two (2) or more covered employers on the date of a covered injury, the following apply:

(1) A universal workers' compensation coverage fund of the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered injury is liable for compensation for covered disability under § 11-16-206, covered death under § 11-16-208, or covered scheduled loss under § 11-16-209, subject to specific facts and circumstances exclusively applicable to the covered employer and the terms and conditions of the distinct universal workers' compensation insurance policy;

(2) A universal workers' compensation coverage fund of the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered injury is liable only for its share of compensation for covered medical care as determined by dividing the compensation for covered disability payable under the distinct universal workers' compensation insurance policy by the total compensation for covered disability payable by the two (2) or more distinct universal workers' compensation insurance policies; and

(3) The universal workers' compensation carrier shall pay compensation contemplated by this section from a distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered injury.

Subchapter 5 – Premium and Fund Provisions

11-16-501. Premium assessment – Payment.

(a) The total premium for each distinct universal workers' compensation insurance policy shall be paid by the covered employer under the terms and conditions of the distinct universal workers' compensation insurance policy.

(b) The covered employer shall withhold from the wages of a covered employee the amount equal to the sum of the base premium and the health risk premium as satisfaction of the covered employee's contribution to the total premium.

(c) If a covered employee is receiving compensation for covered disability, the universal workers' compensation carrier shall withhold from all compensation for covered disability payable to the covered employee the amount calculated, on a form and in the manner authorized by the State Insurance Department, as follows:

(1) The amount from multiplying the base premium percentage by the compensation for covered disability payable as the covered disability base premium;

(2) The amount from multiplying the health risk percentage by the compensation for covered disability payable, as covered disability health risk premium; and

(3) Adding the covered disability base premium to the covered disability health risk premium.

11-16-502. Universal workers' compensation coverage funds – Universal workers' compensation administrative funds.

(a) For each distinct universal workers' compensation insurance policy, the universal workers' compensation carrier shall establish two (2) funds:

(1) A universal workers' compensation coverage fund; and

(2) A universal workers' compensation administrative fund.

(b) All investment income earned on assets held in the universal workers' compensation coverage fund and the universal workers' compensation administrative fund shall be retained by the specific fund and allocated to the fund balance.

(c) For each distinct universal workers' compensation insurance policy, the universal workers' compensation carrier shall account for the universal workers' compensation coverage fund and the universal workers' compensation administrative fund independently and report fund balances to the State Insurance Department on a form and in the manner authorized by the department.

(d) For each distinct universal workers' compensation insurance policy:

(1) The universal workers' compensation carrier shall allocate to the universal workers' compensation coverage fund ninety percent (90%) of the total premium, and the universal workers' compensation coverage fund is liable for:

(A) All compensation;

(B) All costs and expenses necessary to stabilize, secure, and protect the universal workers' compensation coverage fund; and

(C) All costs and expenses necessary to process, adjudicate, adjust, satisfy, resolve, and discharge all coverage obligations under the distinct universal workers' compensation insurance policy;

(2) All liability anticipated by subdivision (d)(1) of this section shall be paid from the universal workers' compensation coverage fund and shall not be paid from the universal workers' compensation administrative fund unless and until all assets of the universal workers' compensation coverage fund have been fully depleted; and

(3) If liability anticipated by subdivision (d)(1) of this section is shared by more than one (1) distinct universal workers' compensation insurance policy as shared liability, the shared liability is allocated by:

(A) Determining the total premium for each distinct universal workers' compensation insurance policy that shares liability;

(B) Determining the aggregate total premium for all distinct universal workers' compensation insurance policies that share

liability;

(C) Dividing the total premium for each distinct universal workers' compensation insurance policy that shares liability by the aggregate total premium for all distinct universal workers' compensation insurance policies that share liability, expressed as a percentage for each distinct universal workers' compensation insurance policy that shares liability;

(D) Multiplying the percentage for each distinct universal workers' compensation insurance policy that shares liability by the total amount of shared liability as distinct universal workers' compensation coverage fund proportional share; and

(E) Allocating the distinct universal workers' compensation coverage fund proportional share of the shared liability to the universal workers' compensation coverage fund of each distinct universal workers' compensation insurance policy that shares liability.

(e) For each distinct universal workers' compensation insurance policy:

(1) The universal workers' compensation carrier shall allocate to the universal workers' compensation administrative fund of a distinct universal workers' compensation insurance policy ten percent (10%) of the total premium for the distinct universal workers' compensation insurance policy, and the universal workers' compensation administrative fund shall be liable for:

(A) All administrative fees;

(B) Administrative returns to the universal workers' compensation carrier;

(C) All costs and expenses related to and associated with issuing the distinct universal workers' compensation insurance policy;

(D) All costs and expenses related to and associated with protecting, supporting and promoting this chapter; and

(E) If the universal workers' compensation coverage fund of the distinct universal workers' compensation insurance policy is fully depleted, all coverage obligations under the distinct universal workers' compensation insurance policy providing universal workers' compensation coverage until the coverage obligations are fully discharged or the universal workers' compensation administrative fund is fully depleted;

(2) All liabilities anticipated by subdivision (e)(1) of this

section that are directly related to a distinct universal workers' compensation insurance policy shall be paid from the universal workers' compensation administrative fund of that distinct universal workers' compensation insurance policy; and

(3) If liability anticipated by subdivision (e)(1) of this section is shared by more than one (1) distinct universal workers' compensation insurance policy as shared liability, the shared liability shall be allocated by:

(A) Determining the total premium for each distinct universal workers' compensation insurance policy that shares liability;

(B) Determining the aggregate total premium for all distinct universal workers' compensation insurance policies that share liability;

(C) Dividing the total premium for each distinct universal workers' compensation insurance policy that shares liability by the aggregate total premium for all distinct universal workers' compensation insurance policies that share liability, expressed as a percentage for each distinct universal workers' compensation insurance policy that shares liability;

(D) Multiplying the percentage for each distinct universal workers' compensation insurance policy that shares liability by the total amount of shared liability as the distinct universal workers' compensation coverage fund proportional share; and

(E) Allocating the distinct universal workers' compensation coverage fund proportional share of the shared liability to the universal workers' compensation coverage fund of each distinct universal workers' compensation insurance policy that shares liability.

(f) An administrative fee shall be paid from the distinct universal workers' compensation insurance policy universal workers' compensation administrative fund to the universal workers' compensation carrier annually on each anniversary date of the distinct universal workers' compensation insurance policy, from inception of the distinct universal workers' compensation insurance policy until final distribution of the distinct universal workers' compensation insurance policy universal workers' compensation administrative fund.

(g) If the universal workers' compensation coverage fund and the universal workers' compensation administrative fund of the distinct universal

workers' compensation insurance policy are fully depleted, the universal workers' compensation carrier is liable for the coverage obligations under the distinct universal workers' compensation insurance policy until all coverage obligations under the distinct universal workers' compensation insurance policy are fully discharged.

11-16-503. Final distribution of fund balances.

(a)(1)(A) A universal workers' compensation carrier shall have the right to file a petition with the State Insurance Department, on a form and in the manner authorized by the department, requesting approval and authorization of final distribution of the universal workers' compensation coverage fund and the universal workers' compensation administrative fund of a distinct universal workers' compensation insurance policy as a petition for final distribution.

(B) The petition for final distribution shall include information sufficient to establish that all coverage obligations under the distinct universal workers' compensation insurance policy have been discharged.

(C) Within the twenty-one (21) days following the filing of the petition for final distribution by the universal workers' compensation carrier, the department shall determine if the universal workers' compensation carrier has established that:

(i) All coverage obligations of the universal workers' compensation coverage fund have been discharged;

(ii) All obligations of the universal workers' compensation administrative fund have been discharged; and

(iii) A final fund balance remains in the universal workers' compensation coverage fund or the universal workers' compensation administrative fund, or both.

(D) If the department determines that the universal workers' compensation carrier:

(i) Failed to establish one (1) or more of the elements required by subdivision (a)(1)(C) of this section, the department shall, on a form and in the manner authorized by the department, deny the petition for final distribution and provide the universal workers' compensation carrier a detailed explanation outlining the basis for the

denial; or

(ii) Has established all of the elements required by subdivision (a)(1)(C) of this section, the department shall, on a form and in the manner authorized by the department, approve the petition for final distribution and establish a date certain for final distribution that shall be the final distribution authorization date.

(2) If the department denies the petition for final distribution under subdivision (a)(1)(D)(i) of this section, the universal workers' compensation carrier shall not have the right to file a petition for final distribution for the same distinct universal workers' compensation insurance policy for a period of at least twenty-one (21) days following the denial.

(3) The department shall not unreasonably deny a petition for final distribution filed under subdivision (a)(1) of this section.

(b) Upon approval of final distribution under subdivision (a)(1)(D)(ii) of this section, the department shall direct the universal workers' compensation carrier to:

(1) Withdraw the final fund balance of the distinct universal workers' compensation insurance policy universal workers' compensation coverage fund, if any, on the final distribution authorization date;

(2) Distribute the final fund balance of the universal workers' compensation coverage fund for the distinct universal workers' compensation insurance policy to the covered employer for allocation to covered employees under § 11-16-505;

(3) Withdraw the fund balance of the distinct universal workers' compensation insurance policy universal workers' compensation administrative fund, if any, on the final distribution authorization date;

(4) Distribute the prorated administrative fee to the universal workers' compensation carrier;

(5) Distribute the administrative return to the universal workers' compensation carrier; and

(6) Report the distributions to the department, on a form and in the manner authorized by the department.

(c) The prorated administrative fee shall be calculated by:

(1) Determining the administrative fee that would have been paid if the final distribution authorization date were the anniversary date of the distinct universal workers' compensation insurance policy under § 11-16-

502(f);

(2) Determining the portion of the administrative fee that is unearned by:

(A) Dividing the administrative fee by three hundred sixty-five (365) or the daily rate;

(B) Determining the number of days between the final distribution authorization date and the anniversary date or the remaining days; and

(C) Multiplying the daily rate by the remaining days to calculate the unearned administrative fee; and

(3) Subtracting the unearned administrative fee from the annual administrative fee.

11-16-504. Interim distribution of universal workers' compensation coverage fund balances.

(a)(1)(A) The universal workers' compensation carrier shall have the right to file a petition with the State Insurance Department, on a form and in the manner authorized by the department, requesting approval and authorization of an interim distribution from the universal workers' compensation coverage fund of a distinct universal workers' compensation insurance policy as a petition for interim distribution.

(B) The petition for interim distribution shall include the interim distribution amount and proof sufficient to establish that the assets of the universal workers' compensation coverage fund are sufficient to satisfy liabilities, including contingent liabilities, after accounting for the interim distribution amount.

(C) Within the twenty-one (21) days following the filing of the petition for interim distribution by the universal workers' compensation carrier, the department shall determine if the universal workers' compensation carrier has established that:

(i) The universal workers' compensation coverage fund has sufficient assets to satisfy liabilities, including contingent liabilities, after accounting for the interim distribution amount;

(ii) The financial viability, stability, and security of the universal workers' compensation coverage fund shall not be adversely affected by the interim distribution; and

(iii) The covered employer is prepared to administer allocation of the interim distribution to covered employees under § 11-16-505.

(D) If the department determines that the universal workers' compensation carrier:

(i) Failed to establish one (1) or more of the elements required by subdivision (a)(1)(C) of this section, the department shall, on a form and in the manner authorized by the department, deny the petition for interim distribution and provide the universal workers' compensation carrier a detailed explanation outlining the basis for the denial; or

(ii) Has established the elements required by subdivision (a)(1)(C) of this section, the department shall approve the petition for interim distribution and establish a date certain for interim distribution that shall be the interim distribution authorization date.

(2) If the department denies the petition for interim distribution under subdivision (a)(1)(D)(i) of this section, the universal workers' compensation carrier shall not have the right to file a petition for interim distribution for the same distinct universal workers' compensation insurance policy for a period of at least twenty-one (21) days following the denial.

(3) The department shall not unreasonably deny a petition for interim distribution filed under subdivision (a)(1) of this section.

(b) Upon approval of the interim distribution under subdivision (a)(1)(D)(ii) of this section, the department shall direct the universal workers' compensation carrier to:

(1) Withdraw the interim distribution amount on the interim distribution authorization date;

(2) Distribute the interim distribution amount to the covered employer for allocation to covered employees under § 11-16-505; and

(3) Report the distribution to the department, on a form and in the manner authorized by the department.

(c) Upon distribution of the interim distribution amount under subsection (b) of this section, the universal workers' compensation carrier shall not have the right to file a petition for interim distribution for the same distinct universal workers' compensation insurance policy for a period

of twelve (12) months from the date of distribution.

11-16-505. Allocation of distribution of universal workers' compensation coverage fund balance.

(a) As used in this section, "qualified covered employee" means an employee who has been a covered employee for not less than the twelve (12) consecutive months immediately preceding the date of any distribution of a universal workers' compensation coverage fund balance.

(b) Distributions of universal workers' compensation coverage fund balances shall be allocated by the covered employer to each qualified covered employee per capita as the qualified covered employee's share, subject to adjustments to account for length of employment, under the rules promulgated by the State Insurance Department.

(c) The qualified covered employee's share shall be allocated exclusively to allowable health-related benefits under the rules promulgated by the department.

Subchapter 6 – State Insurance Department Provisions

11-16-601. Specific limitation of policy periods.

The State Insurance Department shall not allow a universal workers' compensation insurance policy to be issued for a policy period greater than one (1) year.

11-16-602. Premium tax assessment – Collection and remittance.

The State Insurance Department shall:

- (1) Assess and collect all premium tax under this chapter; and
- (2) Remit all premium tax collected under this chapter.

11-16-603. State Insurance Department – Additional authority.

(a) The State Insurance Department shall establish procedures for approval of distinct medical compensation plans.

(b) The department shall designate specific health risks and assign a specific health risk percentage for each specific health risk designated.

(c) The department shall:

- (1) Authorize a universal workers' compensation carrier;

- (2) Certify an authorized employer;
- (3) Certify a universal workers' compensation insurance policy;
- (4) Authorize any interim distribution from or final distribution of any universal workers' compensation coverage fund balances; and
- (5) Issue a report assessing the financial viability, stability, and security of each distinct universal workers' compensation insurance policy.

(d) The department shall publish forms and, for each form, instructions that describe the timely and accurate completion of the form.

(e) The department shall direct the manner of notice and response under this chapter, including without limitation:

- (1) The medium of notice or response;
- (2) The required date of delivery by the person or entity delivering the notice or response; and
- (3) The required date of receipt by the person, organization, or entity receiving the notice or response.

11-16-604. Premium tax for the State Insurance Department.

(a) The premium tax assessed and collected for the State Insurance Department and remitted to the State Insurance Department shall be one percent (1%) of the total premium.

(b) The State Insurance Department shall allocate and retain, from the premium tax revenue remitted to the State Insurance Department under subsection (a) of this section, the amount necessary to satisfy the current budget of the State Insurance Department.

(c) Any premium tax revenue remitted to the State Insurance Department under subsection (a) of this section in excess of the amount allocated and retained under subsection (b) of this section shall be allocated and remitted to the Department of Finance and Administration under the Arkansas Medical Marijuana Amendment of 2016, Arkansas Constitution, Amendment 98, and shall be distributed as provided in § 17 of the Arkansas Medical Marijuana Amendment of 2016, Arkansas Constitution, Amendment 98.

Subchapter 7 – University of Arkansas for Medical Sciences Provisions

11-16-701. Creation – Center for Effective Medicine.

(a) There is established the Center for Effective Medicine within the University of Arkansas for Medical Sciences as a not-for-profit entity for the purpose of promoting clinical efficacy in medicine.

(b) The center shall be composed of a board of directors consisting of three (3) members as follows:

(1) The Chancellor of the University of Arkansas for Medical Sciences;

(2) The Chair of the Clinical Effectiveness Panel; and

(3) An independent member to be appointed by the Governor.

(c) As its first order of business, the center shall adopt bylaws establishing organizational, procedural, and operational rules, protocols, and processes by which it will be governed.

(d) The initial bylaws of the center shall be approved by the Governor and confirmed by the Senate Committee on Public Health, Welfare, and Labor.

(e) Any amendments to the bylaws of the center shall be approved by the Governor and confirmed by the committee.

(f) The independent member of the center shall serve as the Chair of the Board of Directors of the Center for Effective Medicine.

11-16-702. Powers and duties.

(a) The Center for Effective Medicine shall:

(1) Publish the unofficial Clinical Effectiveness Panel determinations generally within twenty-four (24) hours after the Clinical Effectiveness Panel determination is rendered, through the media options deemed most effective by the center; and

(2) Publish the official Clinical Effectiveness Panel determinations specifically to authorized medical care practitioners, within seven (7) days after the Clinical Effectiveness Panel determination is rendered, through the media options deemed most effective by the center.

(b) A Clinical Effectiveness Panel determination shall be cited by date and reference number.

11-16-703. Premium tax for the Center for Effective Medicine.

A premium tax of one percent (1%) of the total premium shall be assessed and collected by the State Insurance Department for the Center for

Effective Medicine and the premium tax revenue collected by the department under this section shall be remitted to the center and allocated pursuant to § 11-16-705.

11-16-704. Clinical Effectiveness Panel.

(a)(1) The Center for Effective Medicine shall establish a panel of nine (9) members that shall be known as the "Clinical Effectiveness Panel".

(2) Each member of the Clinical Effectiveness Panel shall:

(A) Have provided at least thirty (30) years of exemplary service to his or her profession;

(B) Not have engaged in any activity that has ceded his or her credibility or objectivity; and

(C) Not participate in any activity that may cede his or her credibility or objectivity.

(b)(1) A Clinical Effectiveness Panel determination shall not determine a specific medical care intervention for specific covered employees on a case-by-case basis but shall determine, for purposes of this chapter, whether a form, type, or subtype of intervention that is medical care is:

(A) Medical care deemed effective; or

(B) Medical care deemed ineffective.

(2) The Clinical Effectiveness Panel shall render Clinical Effectiveness Panel determinations after reviewing validated science and considering assessment criteria, including without limitation:

(A) Confirmable risk of harm to patients;

(B) Confirmable probability of benefit to patients; and

(C) Cost of the clinical intervention.

(3) Clinical Effectiveness Panel determinations shall be guaranteed a rebuttable presumption in favor of the Clinical Effectiveness Panel determinations in all claims, matters, or proceedings under, resulting from, or related to this chapter, and the presumption is subject to rebuttal by clear and convincing evidence to the contrary.

(4) Notwithstanding any other law to the contrary, the Clinical Effectiveness Panel shall be entitled to the same exemption from the Freedom of Information Act of 1967, § 25-19-101 et seq., afforded to Justices of the Supreme Court under § 25-19-105(b)(7).

(c) The Clinical Effectiveness Panel shall consist of:

(1) Six (6) physicians of national prestige; and

(2) Three (3) attorneys of national prestige.

(d)(1) As its first order of business, the Clinical Effectiveness Panel shall adopt bylaws establishing organizational, procedural, and operational rules, protocols, and processes by which it will be governed.

(2) Before issuing the first Clinical Effectiveness Panel determination, the initial bylaws of the Clinical Effectiveness Panel shall be approved by the Governor and confirmed by the Senate Committee on Public Health, Welfare, and Labor.

(3) Selection, appointment, reappointment, removal, and replacement of members of the Clinical Effectiveness Panel shall be approved by the Governor and confirmed by the Senate Committee on Public Health, Welfare, and Labor and according to the bylaws of the Clinical Effectiveness Panel.

(4) Any amendments to the bylaws of the Clinical Effectiveness Panel shall be approved by the Governor and confirmed by the Senate Committee on Public Health, Welfare, and Labor.

(5) The initial term for each Clinical Effectiveness Panel member shall be seven (7) years.

11-16-705. Center for Effective Medicine – Funding and allocation.

(a) The Center for Effective Medicine shall solicit funding from private sources for operation of the Clinical Effectiveness Panel through a public-private partnership.

(b) The public-private partnership authorized by subsection (a) of this section shall first apply all funds received to funding for the Clinical Effectiveness Panel until the Clinical Effectiveness Panel is adequately and appropriately funded and then to funding for the center.

(c) The center shall allocate and remit premium tax revenue collected and remitted to the center under § 11-16-703 as follows:

(1) If annual premium tax revenue is less than five million dollars (\$5,000,000), the center shall allocate and remit all premium tax revenue to funding for the Clinical Effectiveness Panel; and

(2) If the center premium tax revenue is greater than five million dollars (\$5,000,000), the center shall allocate and remit premium tax revenue as follows:

(A) First, five million dollars (\$5,000,000) or the current Clinical Effectiveness Panel budget established by the center, whichever is greater, to funding for the Clinical Effectiveness Panel;

(B) To funding for operations and administration under the current center budget; and

(C) The balance shall be allocated and remitted to the Department of Finance and Administration under the Arkansas Medical Marijuana Amendment of 2016, Arkansas Constitution, Amendment 98, and shall be distributed as provided in § 17 of the Arkansas Medical Marijuana Amendment of 2016, Arkansas Constitution, Amendment 98.

(c) The State of Arkansas shall have no funding obligation of any kind or character regarding the center or the Clinical Effectiveness Panel except assessment, collection, allocation, and remittance of premium tax revenue under § 11-16-703 and this section.

11-16-706. Clinical Effectiveness Panel – Questions for determination.

(a) The Clinical Effectiveness Panel shall have the authority to certify a question on its own motion for determination of the Clinical Effectiveness Panel.

(b) A universal workers' compensation carrier shall have the right to certify a question to the Clinical Effectiveness Panel, on a form and in the manner prescribed by the Clinical Effectiveness Panel, for determination of the Clinical Effectiveness Panel.

(c) The State Insurance Department shall have the right to certify a question to the Clinical Effectiveness Panel, on a form and in the manner prescribed by the Clinical Effectiveness Panel, for determination of the Clinical Effectiveness Panel.

(d) The Department of Human Services shall have the right to certify a question to the Clinical Effectiveness Panel, on a form and in the manner prescribed by the Clinical Effectiveness Panel, for determination of the Clinical Effectiveness Panel.

(e) All other questions for determination of the Clinical Effectiveness Panel shall be submitted to the Clinical Effectiveness Panel, on a form and in the manner prescribed by the Clinical Effectiveness Panel, and the Clinical Effectiveness Panel shall certify the questions approved by a majority vote of the members of the Clinical Effectiveness Panel.

11-16-707. Clinical Effectiveness Panel – Determination.

All determinations of the Clinical Effectiveness Panel shall conclude one (1) of the following:

(1) The medical care has robust scientific support demonstrating clinically meaningful efficacy. The medical care is deemed effective;

(2) The medical care has scientific support that is less than compelling, but the medical care has clinically meaningful efficacy based upon the frequency and magnitude of clinical efficacy. The medical care is deemed effective;

(3) The medical care has scientific support that is less than compelling, and the medical care does not have clinically meaningful efficacy based upon the frequency and magnitude of clinical efficacy. The medical care is deemed ineffective;

(4) The medical care has been studied, and despite any degree of general acceptance or theoretical promise, no clinically meaningful efficacy has been demonstrated. The medical care is deemed ineffective; or

(5) The medical care has been studied, and despite any degree of general acceptance or theoretical promise, the findings indicate that the risk for clinical harm outweighs the likelihood of clinical benefit. The medical care is deemed ineffective.

Subchapter 8 – Penalties and Lien Priority

11-16-801. Monetary penalties for employee failure to disclose.

(a)(1) A covered employee shall honestly, accurately, and completely disclose a specific health risk.

(2) If the covered employee fails to disclose a specific health risk, it shall be presumed that the initial failure to disclose occurred on the date of the first response to questions regarding the specific health risk.

(3) Evidence necessary to rebut the presumption established under subdivision (a)(2) of this section shall be clear and convincing evidence.

(b) A covered employee who fails to disclose as required by subdivision (a)(1) of this section shall be penalized the amount equal to two

(2) times the premium underpayment, the difference between the premium paid and the premium that would have been paid if the appropriate total health risk premium had been assessed, from the date of the initial failure to disclose to the date of discovery, and the universal workers' compensation carrier shall apply penalty payments contemplated by this section to the universal workers' compensation coverage funds of each distinct universal workers' compensation insurance policy pro rata.

(c) The universal workers' compensation carrier shall have the right to satisfy the penalty through:

(1) Voluntary repayment; and

(2) Collection proceedings.

11-16-802. Monetary penalties for employer failure to disclose.

(a)(1) A covered employer shall honestly, accurately, and completely respond to any and all questions regarding employment status and wages.

(2) If a failure to disclose is discovered, it shall be presumed that the initial failure to disclose occurred on the date the first distinct universal workers' compensation insurance policy was issued to the covered employer.

(3) Evidence necessary to rebut the presumption established under subdivision (a)(2) of this section shall be clear and convincing evidence.

(b) A covered employer that fails to disclose as required by subdivision (a)(1) of this section shall be penalized the amount equal to two (2) times the premium underpayment, the difference between the employer premium paid and the employer premium that would have been paid if the appropriate employer premium had been assessed, from the date of the initial failure to disclose to the date of discovery or underpayment period, and the universal workers' compensation carrier shall allocate the penalty contemplated by this section to the universal workers' compensation coverage fund of each distinct universal workers' compensation insurance policy affected after reconciling the underpayment period to the distinct universal workers' compensation insurance policy periods.

(c) The universal workers' compensation carrier shall have the right to satisfy the penalty through:

(1) Voluntary repayment;

- (2) Collection proceedings; and
- (3) Termination of the policy under § 11-16-402.

Subchapter 9 – Recovery, satisfaction and reimbursement – Supplemental
Premium

11-16-901. Recovery, satisfaction, and reimbursement.

(a) As used in this section:

(1) "Current satisfaction amount" means the total of all compensation paid by a universal workers' compensation carrier under any universal workers' compensation insurance policy associated with an occurrence if the occurrence occasioned both the payment of compensation by the universal workers' compensation carrier under a universal workers' compensation insurance policy and a recovery amount;

(2) "Future satisfaction amount" means the total of all compensation in the future associated with an occurrence if the occurrence occasioned both the payment of compensation by the universal workers' compensation carrier under a universal workers' compensation insurance policy and a recovery amount;

(3) "Recovery amount" means the amount of payment or award, of any kind or character, from any claim or action for an occurrence if the injury or death is a covered injury or covered death under this chapter after deducting reasonable cost of collection, except payment or award where the covered employee is a named insured under an insurance policy or a plan participant of a self-insured plan insuring the occurrence; and

(4) "Third party" means a person, organization, or entity of any kind or character other than the covered employer or universal workers' compensation carrier of the covered employee.

(b) Compensation paid under this chapter for covered injury shall not affect the right of a covered employee, beneficiary of a covered employee, or representative of a covered employee to:

(1) Initiate a claim or action against a third party for an occurrence if the injury or death is a covered injury or covered death under this chapter;

(2) Maintain a claim or action against a third party for the occurrence if the injury or death is a covered injury or covered death under

this chapter:

- (A) In any court;
- (B) In any administrative tribunal; or
- (C) Before any official or group constituted for such

purpose; and

(3) Resolve by trial, mediation, settlement, or otherwise a claim or action against a third party for an occurrence if the injury or death is a covered injury or covered death under this chapter.

(c) A universal workers' compensation carrier providing universal workers' compensation coverage for the covered employee shall:

(1) Be provided reasonable notice of a claim or action against a third party for an occurrence if the injury or death is a covered injury or covered death under a universal workers' compensation insurance policy issued by the universal workers' compensation carrier;

(2) Be granted the opportunity to join in a claim or action against the third party for an occurrence if the injury or death is a covered injury or covered death under a universal workers' compensation insurance policy issued by the universal workers' compensation carrier; and

(3) Have a lien on any recovery amount for an amount equal to the total of the current satisfaction amount plus the future satisfaction amount if the recovery amount is associated with a covered injury or covered death under a universal workers' compensation insurance policy issued by the universal workers' compensation carrier.

(d)(1) A universal workers' compensation carrier liable for compensation under this chapter shall have the right to initiate and maintain any claim or action contemplated by subsection (b) of this section against any third party for an occurrence if the injury or death is a covered injury or covered death under a universal workers' compensation insurance policy issued by the universal workers' compensation carrier.

(2) However, the covered employee shall be entitled to reasonable notice and opportunity to join in the claim or action against the third party.

(e)(1) When the covered employee initiates a claim or action of any kind or character against the covered employer and the claim or action is for an occurrence where the injury or death is a covered injury or covered death under this chapter and the claim or action is separate and apart from this

chapter, the covered employer shall have the right to assert any and all defenses, including affirmative defenses, related to the claim or action.

(2) If the occurrence was not the result of intentional disregard for the safety of the covered employee by the covered employer and the covered employer pays a recovery amount, the covered employer shall have the right to request reimbursement for the recovery amount from the universal workers' compensation carrier under the distinct universal workers' compensation insurance policy providing coverage for the covered injury or covered death.

(3) Any reimbursement under subdivision (e)(2) of this section shall be under the terms and conditions of the distinct universal workers' compensation insurance policy providing coverage for the covered injury or covered death.

(f)(1) The universal workers' compensation carrier shall be paid from the recovery amount an amount equal to the current satisfaction amount.

(2) If the current satisfaction amount is less than the recovery amount, the universal workers' compensation carrier shall establish a credit in an amount equal to the difference between the recovery amount and the current satisfaction amount.

(3) The universal workers' compensation carrier shall apply the credit contemplated by subdivision (f)(2) of this section to the future satisfaction amount until the credit is satisfied in full.

(g) The purpose and intent of this section is to protect, promote, and secure the reimbursement of the universal workers' compensation coverage fund of the distinct universal workers' compensation insurance policy providing coverage for the covered employee for compensation under this chapter, both currently paid and payable in the future, for an occurrence if the injury or death is a covered injury under this chapter, to the full extent that the covered employee receives any payment of any kind or character associated with the occurrence if the injury or death is a covered injury or covered death under this chapter, after deducting reasonable costs of collection, and without consideration of any other factors, including without limitation any determination related to whether the covered employee is "made whole" for the injury or death by a payment or award outside of this chapter.

11-16-902. Supplemental premium.

(a) As used in this section:

(1) "Supplemental wages" means all wages paid or payable to a covered employee from any person, organization, or entity other than a covered employer; and

(2) "Total supplemental premium" means an additional premium payable to the universal workers' compensation carrier that is calculated by:

(A) Multiplying the supplemental wages by the base premium percentage as the supplemental base premium;

(B) Multiplying the supplemental wages by the health risk percentage as the supplemental health risk premium;

(C) Adding the supplemental health risk premium to the supplemental base premium as the supplemental combined premium;

(D) Multiplying the supplemental wages by 10 percent (10%) as the supplemental premium fee; and

(E) Adding the supplemental premium fee to the supplemental combined premium.

(b) If a covered employee earns supplemental wages:

(1) The covered employee shall, within ten (10) days of receipt of the supplemental wages, report the supplemental wages to the universal workers' compensation carrier on a form and in the manner authorized by the State Insurance Department;

(2) The universal workers' compensation carrier shall:

(A) Calculate the total supplemental premium;

(B) Provide notice to the covered employee of the amount of the total supplemental premium on a form and in the manner authorized by the department; and

(C) Establish a payment schedule for paying the total supplement premium on a form and in the manner authorized by the department; and

(3) The covered employee shall pay the total supplemental premium when due and payable under the established payment schedule.

(c) If the covered employee fails to pay the total supplemental premium when due and payable under the established payment schedule, the universal workers' compensation carrier shall have the right to collect the total supplemental premium through:

(1) Voluntary payment;

(2) Collection proceedings; and

(3) A lien against wages.

(d) The universal workers' compensation carrier shall allocate the total supplemental premium to the universal workers' compensation coverage fund of each distinct universal workers' compensation insurance policy by policy period.

11-16-903. Failure to report supplemental wages.

(a) If a universal workers' compensation carrier discovers that a covered employee has received and failed to timely report any or all supplemental wages to the universal workers' compensation carrier as unreported supplemental wages, then the following rebuttable presumptions shall vest:

(1) The covered employee's weekly unreported supplemental wages equal the covered employee's average weekly wage as estimated unreported weekly supplemental wages;

(2) The covered employee earned estimated unreported weekly supplemental wages from the first day the covered employee was provided universal workers' compensation coverage under any universal workers' compensation insurance policy to the day the unreported supplemental wages are discovered as estimated unreported supplemental wages period; and

(3) The universal workers' compensation carrier is entitled to a total supplemental premium.

(b) The universal workers' compensation carrier shall:

(1) Provide notice to the covered employee of the covered employee's failure to timely report supplemental wages, including the date the unreported supplemental wages were discovered by the universal workers' compensation carrier, on a form and in the manner authorized by the State Insurance Department;

(2) Calculate the estimated unreported total supplemental premium on a form and in the manner authorized by the department by:

(A) Multiplying the covered employee's average weekly wage by the base premium percentage as estimated weekly unreported base premium;

(B) Multiplying the covered employee's average weekly wage by the health risk percentage as estimated weekly unreported health risk premium;

(C) Adding the estimated weekly unreported base premium to the estimated weekly unreported health risk premium as the estimated weekly unreported combined premium;

(D) Determining the number of days in the estimated unreported supplemental wages period as the estimated unreported supplemental wages days;

(E) Dividing the estimated unreported supplemental wages days by seven (7) as the estimated unreported supplemental wages weeks;

(F) Multiplying the estimated weekly unreported combined premium by two (2) as estimated weekly unreported supplemental premium; and

(G) Multiplying the estimated weekly unreported supplemental premium by the estimated unreported supplemental wages weeks as estimated unreported total supplemental premium; and

(3) Provide notice to the covered employee of the amount of the estimated unreported total supplemental premium on a form and in the manner authorized by the department.

(c)(1) The covered employee shall provide a response to the notice contemplated by subdivision (b)(1) of this section to the universal workers' compensation carrier within twenty-one (21) days from the date of receipt of the notice, on a form and in the manner authorized by the department.

(2) The notice contemplated by subdivision (b)(3) of this section shall provide the covered employee the following options:

(A) The estimated unreported total supplemental premium is correct and should be deemed the total supplemental premium;

(B) The estimated unreported total supplemental premium is incorrect and should not be deemed the total supplemental premium; or

(C) No supplemental wages were received.

(3) If the covered employee chooses the option under subdivision (c)(2)(A) of this section, the covered employee's choice shall be the determination of the total supplemental premium.

(d)(1) If the covered employee chooses the option under subdivision (c)(2)(B) or subdivision (c)(2)(C) of this section, the choice shall be deemed an appeal under the covered employer's plan under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019.

(2) The appeal process shall determine whether actual unreported

supplemental wages were earned, and if no actual unreported supplemental wages were earned there shall not be a determination of the total supplemental premium.

(3) If actual unreported supplemental wages were earned, the appeals process shall determine the total supplemental premium by:

(A) Determining the amount of the actual unreported supplemental wages as actual unreported supplemental wages amount;

(B) Multiplying the actual unreported supplemental wages amount by the base premium percentage as unreported supplemental base premium;

(C) Multiplying the actual unreported supplemental wages by the health risk percentage as unreported supplemental health risk premium;

(D) Adding the unreported supplemental health risk premium to the unreported supplemental base premium as unreported supplemental combined premium; and

(E) Multiplying the unreported supplemental combined premium by two (2).

(e) If the appeals process under subsection (d) of this section determines that actual unreported supplemental wages were earned, the total supplemental premium calculated pursuant to subdivision (d)(3) of this section shall be the determination of the total supplemental premium.

(f) Upon the determination of the total supplemental premium under subdivision (c)(3) or subsection (e) of this section:

(1) The universal workers' compensation carrier shall establish a payment schedule for paying the total supplemental premium on a form and in the manner authorized by the department;

(2) The covered employee shall pay the total supplemental premium when due and payable under the established payment schedule; and

(3) If the covered employee fails to pay the total supplemental premium when due and payable under the established payment schedule, the universal workers' compensation carrier shall have the right to collect the total supplemental premium through:

(A) Voluntary payment;

(B) Collection proceedings; and

(C) A lien against wages.

(g) The universal workers' compensation carrier shall allocate the

total supplemental premium to the universal workers' compensation coverage fund of each distinct universal workers' compensation insurance policy period.

Subchapter 10 – Arkansas State Medical Board Provisions

11-16-1001. Arkansas State Medical Board.

(a) The Arkansas State Medical Board shall confirm medical care practitioners as authorized medical care practitioners.

(b) The board shall provide reciprocity if the medical care practitioner seeking confirmation as an authorized medical care practitioner is not directly regulated by the board.

(c) The board shall establish a fee schedule for application, review, and confirmation of medical care practitioners as authorized medical care practitioners that is consistent with and under no circumstances no more costly than the board's fee schedule applied to medical care practitioners directly regulated by the board.

11-16-1002. Rules.

The Arkansas State Medical Board shall promulgate rules necessary to implement this subchapter.

11-16-1003. Purpose.

The purpose of this subchapter is to ensure a single repository for all authorized medical practitioners under this chapter.

11-16-1004. Confirmation after provision of covered medical care.

(a) If a medical care practitioner provides medical care for a covered injury during any period that the medical care practitioner is not deemed an authorized medical care practitioner and the medical care practitioner desires compensation for covered medical care:

(1) The medical care practitioner shall apply for confirmation as an authorized medical care practitioner within forty-five (45) days after the date of service;

(2) The medical care practitioner shall submit the universal workers' compensation claim within sixty (60) days after the date of service;

and

(3) The universal workers' compensation claim shall be suspended for a period not to exceed one hundred twenty (120) days from the date of service as the Arkansas State Medical Board period pending confirmation of the medical care practitioner as an authorize medical care practitioner by the Arkansas State Medical Board.

(b) If the medical care practitioner is confirmed as an authorized medical care practitioner by the Arkansas State Medical Board before the expiration of the Arkansas State Medical Board period, the universal workers' compensation claim shall be processed under the terms and conditions of distinct universal workers' compensation insurance policy providing universal workers' compensation coverage for the covered injury.

(c) If the medical care practitioner is not confirmed as an authorized medical care practitioner by the Arkansas State Medical Board before the expiration of the Arkansas State Medical Board period, the universal workers' compensation claim shall be denied.

Subchapter 11 – Statute of Limitations Provisions

11-16-1101. Statute of limitations – Administrative review.

(a) As used in this section, "precipitating event" means the occurrence that is the basis for a universal workers' compensation claim.

(b) An action of any kind or character under this chapter shall be commenced within two (2) years from the date of the precipitating event, without regard to the date discovered, or it shall be barred.

(c) The universal workers' compensation carrier shall incorporate the administrative review process under the covered employer's plan under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019, into the universal workers' compensation insurance policy issued to the covered employer.

SECTION 2. Arkansas Code Title 19, Chapter 5, Subchapter 12, is amended to add an additional section to read as follows:

19-5-1264. Center for Effective Medicine Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be

known as the "Center for Effective Medicine Fund".

(b) The fund shall consist of those special revenues specified in § 11-16-705 and any other funds made available by the General Assembly from time to time.

(c) The fund shall be used to provide public-private partnership financing of various projects authorized by the General Assembly.

SECTION 3. Arkansas Code § 25-19-105(b)(7), concerning the exemptions to the Freedom of Information Act of 1967, is amended to read as follows:

(7) Unpublished memoranda, working papers, and correspondence of the Governor, members of the General Assembly, Supreme Court Justices, Court of Appeals Judges, the Clinical Effectiveness Panel established under § 11-16-701 et seq., and the Attorney General;

SECTION 4. DO NOT CODIFY. Rules.

(a) The State Insurance Department shall promulgate rules necessary to implement this chapter.

(b)(1) When adopting the initial rules to implement this act, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

(A) On or before January 1, 2020; or

(B) If approval under § 10-3-309 has not occurred by January 1, 2020, as soon as practicable after approval under § 10-3-309.

(2) The department shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so that the Legislative Council may consider the rule for approval before January 1, 2020.

SECTION 5. Federal approval – Intent.

(a) The state shall seek a federal waiver for regulatory authority to regulate issuance of a universal workers' compensation insurance policy under this chapter.

(b) The universal workers' compensation insurance policy issued under this chapter shall be to one (1) company with no more than five hundred (500) employees.

(c) No additional universal workers' compensation insurance policy

shall be issued until the General Assembly grants authority to universal workers' compensation carriers to issue universal workers' compensation insurance policies to an authorized employer.

SECTION 6. DO NOT CODIFY. Expiration.

Unless the State Insurance Department verifies that a universal workers' compensation insurance policy is issued by a universal workers' compensation carrier, after approval by all appropriate federal regulatory authorities for issuance in this state with authority to provide universal workers' compensation coverage as established under this act, this act shall expire on December on December 31, 2025.

SECTION 7. DO NOT CODIFY. The Clinical Effectiveness Panel shall be initially composed of the following nine (9) members:

- (1) Herman Ellis, MD MPH;
- (2) Arthur T. Evans, MD MPH;
- (3) William E. Golden, MD MACP;
- (4) Nortin M. Hadler, MD MACP MACR FACOEM, Chair;
- (5) Nancy M. P. King, JD;
- (6) Robert B. Leflar, JD MPH;
- (7) Robert A. McNutt, MD;
- (8) Marjorie M. Shultz, JD; and
- (9) John L. Zeller, MD PhD.

SECTION 8. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that there is a need for federal approval; that Section 5 of this act mandates the state seek federal approval to implement; and that Section 5 of this act is immediately necessary because the state needs time to seek federal approval. Therefore, an emergency is declared to exist, and Section 5 of this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

- (1) The date of its approval by the Governor;
- (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.