

Workers' compensation laws: significant changes in 1993

Managed health care plans, reducing fraud, and improving workplace safety received the most attention from State legislatures; seven States made changes to allow deductibles to be written into workers' compensation insurance policies

Charles A. Berreth

During 1993, many changes to workers' compensation laws focused on implementing managed health care plans, reducing fraud, and improving safety in the workplace. A managed health care plan was introduced into the workers' compensation program of 12 States,¹ the issue of fraud was addressed in varying degrees in 13 States,² and legislation was passed to improve workplace safety in 11 States.³

Missouri established a competitive fund, operational in March of 1995. The State Mutual Insurance Company will be funded by the sale of bonds and by a \$5 million loan from the Workers' Compensation Administrative Fund. The focus will be on employers with premiums of \$10,000 or less.

Arizona, Arkansas, Idaho, Montana, Ohio, Oklahoma, and Pennsylvania passed legislation allowing, and in some instances requiring, deductibles to be written into workers' compensation insurance policies.

California is increasing its weekly maximum payment for temporary and permanent total disability in three annual steps: from \$336 to \$406 per week in July 1994; to \$448 in July 1995; and to \$490 in July 1996. Maximum benefits for death also will increase from \$95,000 to \$115,000 in July 1994, and to \$125,000 in July 1996 for single dependents; and from \$115,000 to \$135,000 in July 1994, and to \$145,000 in July 1996 for multiple dependents. A new category of cases was established for claimants with three or more dependents start-

ing in July 1994, with a benefit maximum of \$160,000.

Connecticut reduced compensation benefits payable for total disability, partial disability, and death from 80 percent of the employee's spendable earnings to 75 percent, and also reduced maximum weekly compensation benefits from 150 percent of the State's average weekly wage to 100 percent.

Florida reduced temporary total disability payments from 260 weeks to 104 weeks.

Nebraska is increasing its weekly maximum benefit payment for total and partial disability from \$265 to \$310, in June of 1994; to \$350 in January of 1995; and in January of 1996 and each January thereafter, the payment will be 100 percent of the State's average weekly wage.

Washington is increasing its monthly maximum benefit payment for death, and temporary total and permanent total disability from 100 percent of the State's average monthly wage to 105 percent in July 1993; 110 percent in July 1994; 115 percent in July 1995; and 120 percent in July 1996.

Wisconsin is raising the maximum weekly benefit for permanent total disability from \$450 to \$466 per week in January 1994, and to \$479 in January 1995. In the same months, maximum weekly benefits for partial disability will increase from \$152 to \$158, then to \$165.

The following States increased maximum benefits for funeral and burial expenses: Arkansas, from \$3,000 to \$6,000; Idaho, \$3,000 to \$6,000; Oklahoma, \$3,000 to \$5,000; and Pennsylvania, \$1,500 to \$3,000.

Following is a summary of legislation enacted by individual States.

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Alaska

Independent taxicab drivers now are exempt from workers' compensation coverage.

Arizona

The tax rate on workers' compensation premiums may be no more than necessary to cover the actual expenses of the Industrial Commission, but cannot exceed 3 percent of all premiums collected by insurers.

Insurance carriers are authorized to offer deductible coverage to employers. All compensation is paid by the carrier, who is then reimbursed by the employer for the amount of the deductible. Premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount. Losses subject to the deductible must be reported and recorded as losses for purposes of ratemaking and application of the experience rating plan on the same basis as losses under policies providing first-dollar coverage.

Arkansas

To assure deduction of child support obligations, beneficiaries of workers' compensation must disclose the details of any pending child support orders.

Compensable injury is defined as "an accidental injury causing internal or external physical harm to the body, or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which, requires medical services or results in disability or death." An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence.

Some nonspecific injuries may be compensable, including carpal tunnel syndrome, long-term back injuries, hearing loss, mental illness, and heart and cardiovascular conditions. To be a "compensable injury," the burden of proof shall be by a preponderance of evidence, and the resultant condition is compensable only if the alleged injury is the major cause of the disability or the need for treatment.

A compensable injury does not include assaults at the workplace caused by non-employment-related hostility; horseplay, except for innocent victims; recreational or social activities for the employee's personal pleasure; injuries before and after the workday and before hire and after termination; and injury substantially caused by the use of alcohol, illegal drugs, or prescription drugs used contrary to physician's instructions.

The law's fraud provisions were expanded: a fraud offense is penalized as a Class D felony instead of a misdemeanor, and includes falsification by employers and insurers to avoid payments. A fraud investigation unit was established with authority to subpoena witnesses. Both carriers and employers are obliged to report suspected violations to the new unit.

The maximum penalty for discriminating against those who file claims is now \$10,000 (previously, \$100), payable to the second injury fund by the employer; The 6-month imprisonment penalty was dropped. The prevailing party—employee or employer—is now entitled to recover costs and legal fees. It is now illegal to require an employee to contribute to the cost of a safety program.

A mental injury or illness is not compensable unless caused by physical injury to the employee's body and is so diagnosed by a licensed psychiatrist or psychologist according to criteria in the Diagnostic and Statistical Manual of Mental Disorders. The physical injury limitation does not apply to the victim of a crime of violence. Mental illness benefits are limited to 26 weeks. If death results from the mental injury within 1 year, the injury is compensable.

Heart attacks and related injuries are not compensable unless the work being performed was extraordinary and unusual, compared with the employee's regular work. Physical or mental stress is not to be considered in determining compensability.

Maximum penalty for not securing the payment of compensation was increased to \$10,000 (previously, \$500); the 1-year imprisonment penalty was dropped. The Workers' Compensation Commission also may fine employers up to \$1,000 per day for violations, payable to the State's Death and Permanent Total Disability Trust Fund. Employers who fail to secure compensation or pay resulting fines are subject to court orders enjoining them from operating until violations cease. The new law avails employers of the hearing procedures set forth in the law when they contest being charged with the above violations.

A repository agency for occupational safety and health information about the Arkansas work force was established to promote safety through publications and other educational programs. Specific educational material will be directed to extra-hazardous employers—those whose injury frequencies substantially exceed what may be expected in the employer's particular business or industry—as a means of improving the safety record of these employers. Also, when an injury or death is substantially caused by the employer's failure to comply with Arkansas safety laws and regulations, the employer will receive the extra-hazardous designation,

unless the injured employee violated the employer's safety rules.

Insurance carriers licensed by the State must provide accident prevention services approved by a newly created health and safety division within the Workers' Compensation Commission, or face the same civil penalties imposed on employers. Insurers, and safety consultants are immune from liability for any allegations that an accident was caused or could have been prevented by the accident prevention plan. For a death or disability occurring on or after January 1, 1997, the maximum weekly benefit is 85 percent of the State's average weekly wage if overall workers' compensation rates in Arkansas decrease at least 10 percent July 1993 through 1996. Employers now are responsible for 72 weeks of rehabilitation costs, up from 60 weeks.

Any employer who, without reasonable cause, refuses an injured employee's return to work is liable to pay that employee the difference between benefits received and the average weekly wages lost during the period of refusal, not to exceed 1 year. An employee who waives rehabilitation or refuses to participate in or cooperate for reasonable cause with either an offered rehabilitation program or job placement assistance is not entitled to permanent partial disability benefits in excess of the percentage of permanent physical impairment established by the physical findings of an objective party.

Simultaneous payment of temporary partial workers' compensation benefits and unemployment benefits are unlawful. Further, if a claim for temporary total disability is contested, and later is determined to be compensable during a period in which the employee received unemployment benefits, the employee is entitled to retroactive disability compensation in excess of the unemployment benefits.

Chiropractic, optometric, and podiatric services, ambulatory devices, eyeglasses, contact lenses, and hearing aids were added to the list of medical services furnished to injured employees.

A managed health care system will be introduced by July 1, 1994, including procedures for certification of managed care entities, peer review, and dispute resolution; prohibitions against certain excess medical provider billing practices; and establishment of medical fee schedules.

Under the new managed care system, the employer may choose the initial primary treating physician from those associated with certified medical care entities. The employee has a one-time right to change to a certified managed care entity directly or through referral for specialized treatment by his or her regular physician. If not a member of a certified managed care system, the regular physi-

cian must abide by managed care rules. Employees now have direct access to optometrists and ophthalmologists within the framework of the managed care system.

Claimants permanently and totally disabled may have to certify their condition annually or lose benefits; such certification must include a statement that the claimant is not gainfully employed, and the claimant must prove an inability to earn meaningful wages because of a compensable injury.

All permanent disability benefits now are offset by pensions after age 65. Also, before July 1, 1994, the Workers' Compensation Commission will adopt an impairment rating guide which will exclude pain as a factor.

Maximum reimbursable funeral expenses were increased from \$3,000 to \$6,000.

Payments for replacement medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus required as a result of a compensable injury do not constitute payment of compensation and thus begin to toll the statute of limitations for filing a claim. A latent injury or condition will not delay or toll the application of the statute of limitations, except for occupational diseases.

Undisputed medical bills must be paid within 30 days, subject to a penalty of up to 36 percent of any benefit found to be intentionally withheld.

Employers for workers' compensation insurance must be offered policy deductibles in \$100 increments up to \$500, and \$500 increments thereafter, up to a maximum of \$2,500, per compensable injury.

Benefits previously received from group health and disability plans for the same injury must be fully disclosed by the claimant and will be deducted from workers' compensation payments.

Reasonable expenses, including attorney fees, may be imposed on any party taking action to obtain or controvert benefits for other than proper reasons, such as harassment, delay, or to needlessly increase the cost of litigation. Sanctions are provided against those who fail to appear at adjudication proceedings without good reason.

California

To control losses, insurers are required to maintain or provide certified occupational safety and health consultation services. Licensed rating organizations must establish a knowledgeable policyholder ombudsman and, beginning in 1995, insurers will be required to provide explanations of rating laws to new policyholders.

Insurance premium rates are reduced by a minimum of 7 percent from the premium rates in effect on July 1, 1993.

The State's occupational safety and health plan is required to create an inspection program targeting high hazard employers, and to identify categories of risks and control losses from workplace accidents and illnesses. The plan authorizes consultation services to employers upon request; by using these consultation services, employers may shield themselves from penalties for violations.

Physicians are prohibited from referring claimants to clinics in which the physician or physician's immediate family have a financial interest; penalties include fines up to \$15,000 for each violation and appropriate disciplinary action. A physician is permitted to make such a referral if the physician's regular practice is located outside a metropolitan area and there is no alternative provider within either 25 miles or 40 minutes, and if the financial interest is disclosed to the patient.

Mandatory rehabilitation payments now are generally capped at \$16,000; and rehabilitation maintenance allowances are limited to 52 weeks. Within the overall cap is a ceiling of \$4,500 for counseling, evaluation, and job placement services, which are subject to a fee schedule.

Rehabilitation referrals are not allowed to facilities with which the rehabilitation specialist or insurer has a proprietary or contractual interest. If the employer notifies a rehabilitation-qualified injured worker that modified or alternative work is unavailable, the rehabilitation representative and the employee must jointly develop a vocational rehabilitation plan. Rehabilitation issues now may be submitted to arbitration.

Group self-insurance is now authorized.

In disputes involving an employee's permanent medical condition, special procedures are established for obtaining a comprehensive medical examination if the employee is not represented by an attorney. If an additional comprehensive medical evaluation is obtained to determine medical issues, the use of the treating physician would be emphasized and her or his findings are rebuttably presumed to be correct. The physician's medical evaluation, paid for by the employer, must render opinions on all medical issues necessary to determine an injured worker's eligibility for compensation. Furthermore, the legislation establishes a procedure for disallowing physicians reports containing opinions based on conjecture, not supported by adequate evidence, or indicating bias.

If necessary, in medical examinations, qualified language interpreters must be provided and paid for by the employer.

Prior to a compensable injury and at least once a year, an employee may designate a health care organization or a personal physi-

cian as the treating physician should he or she become injured. The employee must be given a choice from at least two health care organizations, one of which must accept payment from the employer on a fee-for-service basis; at least three health care organizations must be offered if one organization is owned or controlled by the employer's workers' compensation insurer. An employee enrolled in a health care organization has the right to at least one change of physician upon request, and must be given a choice of physicians affiliated with the health care organization.

Maximum weekly payments for temporary and permanent total disability were increased in three annual steps: from \$336 to \$406 per week on July 1, 1994; to \$448 on July 1, 1995; and to \$490 on July 1, 1996. On these same dates, increases for weekly permanent partial disability payments occur as follows: disabilities between 15 percent and 24 percent—\$148, \$154, and \$160, respectively; disabilities between 25 percent and 69 percent—\$158, \$164, and \$170; and disabilities between 70 percent and 100 percent—\$168, \$198, and \$230.

The maximum life pension benefit increased to \$95 per week (previously, \$64) on July 1, 1994; \$124 on July 1, 1995; and \$154 on July 1, 1996.

Maximum death benefits increased from \$95,000 to \$115,000 on July 1, 1994, and to \$125,000 on July 1, 1996, for single dependents; and for multiple dependents, from \$115,000 to \$135,000 on July 1, 1994, and to \$145,000 on July 1, 1996. A new category of cases would be established for three or more dependents starting July 1, 1994, and the benefit would be a maximum of \$160,000.

The Workers' Compensation Health Care Provider Organization Act was enacted to authorize, certify, regulate, and set standards for workers' compensation health care provider organizations, effective August 1, 1994. Such health care organizations must provide access to chiropractic services for work-related injuries when requested by the employee.

The Division of Workers' Compensation must revise its medical fee schedule by 1995 and, by 1996, the schedule must include services provided by health care facilities and pharmacies.

The Workers' Compensation Appeals Board now is allowed to order an offending party to pay reasonable expenses, including attorney's fees and costs, incurred by another because of actions that are frivolous or intended to cause unnecessary delay. Additionally, the Board may impose a sanction of up to \$2,500 for such offenses.

A new program for targeting employers with the highest incidence of preventable occupational diseases was included in the leg-

isolation; these employers will be inspected on a priority basis. By January 1, 1995, the Occupational Safety and Health Standards Board is required to adopt standards for workplace ergonomics to minimize the harm of repetitive motion.

Special conditions were enacted for establishing the validity of a workers' compensation claim for injury for cases in which the claim is subsequent to notice of termination or layoff. Additionally, new and higher standards of causation were decreed for all psychiatric injury cases; such injuries are to be ruled not compensable if they result substantially from lawful, nondiscriminatory, and good faith personnel actions.

Existing antifraud workers' compensation laws were strengthened by adding new and additional fraud prevention authority, including a provision that allows an interested person to bring a civil action in the name of the State against anyone who knowingly employs brokers to procure clients or patients. One-half of the fees collected by an attorney in connection with the use of such a broker will be recovered and used in the investigation and prosecution of fraud; the remaining one-half goes to the existing Workers' Compensation Fraud Account.

Persons convicted of fraud are specifically prohibited from collecting disability benefits associated with the fraudulent claim. Employees, insurers, and agents are protected from discriminatory and retaliatory acts if they legally assist in investigation or prosecution activities in furtherance of the new antifraud procedures.

Large employers and groups of employers in the construction industry now can establish, under a collective bargaining agreement, alternatives to the current workers' compensation system in which management and labor agree to a limited list of providers of medical treatment and evaluation and vocational rehabilitation, as well as to an alternative mechanism to resolve disputes.

Colorado

Members of limited liability companies—those who hold at least 10 percent of the company—are permitted to reject workers' compensation coverage in the same manner as currently allowed for corporate officers. Legislation further provides that any working general partner or sole proprietor of a business, who is actively engaged in the business, may elect to be included in workers' compensation coverage by endorsement as an employee of the insured, even if the insured does not employ any other person under a contract of hire.

Procedures were enacted to facilitate actions against employers who do not maintain required workers' compensation insurance,

including the use of injunctive relief.

When requested by the insured employer, insurers are required to issue policies with deductible provisions, subject to regulations that will allow denial of a deductible policy if the employer does not have the financial ability to pay for the selected plan.

The surcharge rates assessed for the Subsequent Injury Fund and Major Medical Insurance Fund were combined into a single rate to be assessed on insurers and self-insurers. The Subsequent Injury Fund was closed to new injury cases on July 1, 1993; it will be closed to new occupational disease cases on April 1, 1994. Also, effective April 1, 1994, the current \$10,000 cap is removed on liability of the last employer of an employee disabled by certain long-term occupational diseases, such as silicosis. The Subsequent Injury Fund's portfolio of claims will be transferred to a private insurer. However, the Fund's solvency surcharge must continue to be paid in addition to the combined workers' compensation insurance surcharge until the solvency surcharge is no longer required.

The definition of "employee" now excludes independent contractors from workers' compensation benefits.

Connecticut

The definition of "employee" now excludes nonresidents injured in the State during the course of employment, unless the person (a) works for an employer who has a place of employment or a business facility located in the State at which such person spends at least 50 percent of his or her employment time, or (b) works for an employer pursuant to an employment contract for work which will be performed primarily in Connecticut.

Any partner in a business is deemed to have accepted the provisions relative to the definition of an "employer," and shall insure for full liability, unless the partnership elects to be excluded from the provisions.

An injury is not compensable if the result of an employee's voluntary participation in a social or recreational activity. A mental or emotional impairment resulting from a personnel action, including a transfer, promotion, demotion, or termination is not compensable, nor is a mental or emotional impairment not caused by a job-related physical injury or occupational disease. Also, an employee may not be entitled to compensation when electing to obtain medical care from a provider not listed on the employer's medical care plan.

An annual schedule will establish fees for services rendered by approved physicians, surgeons, podiatrists, optometrists, or dentists who do not participate in an employer's managed health care plan. Payment will constitute payment in full, and the practitioner

may not recover any additional amount from the claimant. Annual increases in total medical fees are limited to the annual percentage increase in the Bureau of Labor Statistics Consumer Price Index for all Urban Workers and calls for annual published guidelines for maximum fees payable for legal services.

By July 1, 1994, practice protocols must be developed for reasonable and appropriate treatment of claimants based on diagnosis of injury or illness and utilization review procedures for reasonable and appropriate treatment.

Compensation benefits for total disability, partial disability, and death were reduced 5 percent, to 75 percent of the employee's average weekly wage after Federal and State taxes. Further, the maximum weekly compensation benefit was reduced from 150 percent to 100 percent of the State's average weekly wage. For determining benefits, an employee's average weekly wage will be calculated on a 52 calendar week, instead of 26 weeks, period of employment.

Workers' compensation benefits now are subject to an offset for Social Security benefits.

The attorney general is allowed to bring a civil action to enjoin an employer from conducting business if the employer willfully and repeatedly fails to comply with the requirements of the workers' compensation law.

An employer with 25 or more employees and an employer whose rate of work-related injury and illness exceeds the average incidence rate of all industries, are required to have a safety and health committee to promote health and safety on the job.

Florida

The State legislature passed a broad reform bill. An employee assistance and ombudsman office was created within the Division of Workers' Compensation to conduct informal dispute resolution conferences in which employers and employees must participate; an ombudsman may be assigned to assist an injured employee in resolving a dispute and applying for benefits. If the parties fail to agree, the employee may petition for benefits.

Compensation may be paid for 120 days without affecting the insurer's right to controvert.

The conditions for a physical impairment qualifying as permanent are subject to new limitations and the requirement for employer knowledge of an injury were revised. A preferred workers program was established to help permanently disabled workers return to work. Second injury claim reimbursements to employers now are subject to a \$10,000 deductible provision.

The duration of temporary total disability benefits were reduced from 260 weeks to 104 weeks; once the employee reaches the maximum number of weeks, benefits cease and the injured worker's permanent impairment must be determined. Permanent impairment benefits are paid weekly at 50 percent of the employee's average weekly temporary total benefit for a duration of 3 weeks for each percentage of impairment.

Supplemental benefits are paid to claimants with an impairment rating of 20 or more, who attempted to but have not returned to work, or who have returned to a job paying less than 80 percent of their pre-employment wages.

Employers with more than 50 employees are required to make available work that is appropriate to the employee's physical limitations within a 100 mile radius of the employee's residence. Such work must be available within 30 days of notification by the carrier of the claimant's maximum medical improvement and physical limitations. Failure by the employee to make a good faith effort to find such work could result in a fine of \$250 for each \$5,000 of premiums or payroll, up to an aggregate fine of \$2,000.

Chiropractic care is limited, attendant care is allowed, and medical providers must be authorized by the Division of Workers' Compensation. Failure to cooperate with an independent medical examination may result in penalties. In disputes involving medical utilization and reimbursements, expert medical advisors, certified by the Division, may be consulted. Payment of witness fees now are permitted.

Revised medical fee schedules provide for hospital charges to be reimbursed at 75 percent of usual and customary charges. After maximum medical improvement is reached, a \$10 patient copayment is required for all medical services.

Effective January 1, 1997, all medical services and supplies will be delivered solely through managed care networks. Until then a premium credit not to exceed 10 percent is authorized for employers who use managed care.

Attorney fee reimbursements were reduced and limited, and fines for continuing frivolous cases were authorized. A code of judicial conduct for compensation judges was adopted.

A self-insurance fund guaranty association was created, which includes commercial self-insurance funds, assessable mutual insurers, and group self-insurance funds. A self-funded joint underwriting association with three separate sub-plans was formed. The first sub-plan includes employers whose annual premium does not exceed \$2,500 and who have not incurred any lost time claims or medical-only claims exceeding 50 percent

of their premium for 2 years; the second includes insurers who are employers identified as high risk solely because of the nature of their business, and for whom no voluntary market exists; the third includes all other employers within the plan.

To minimize fraud, penalties were initiated for illegal activities and criminal violations of the workers' compensation law, ranging from a first degree misdemeanor to a third degree felony. Certain State agencies were given authority to enforce compliance with coverage requirements.

Contractors now must provide proof of workers' compensation coverage in order to obtain a building permit.

The law now includes provisions for approved safety and drug-free workplace programs.

Georgia

An insurer is required to grant a 5-percent reduction in the premium of each workers' compensation policy issued or renewed on or after July 1, 1993, if the employer has established and maintained a drug-free workplace in compliance with certain requirements.

Agreements with employees to provide a substitute system of compensation require the approval of the Workers' Compensation Board and the Insurance Commissioner. The substitute coverage must provide benefits that are at least equal to the State program. Once approved, the substitute system preserves the employer's immunity from civil suits for compensable injuries.

Hawaii

The definition of "employment" was expanded to include "service performed by an individual for a corporation if the individual owns at least 50 percent of the corporation." An employer is forbidden from requiring an employee to incorporate as a condition of employment.

The legislation provides workers' compensation coverage to off-duty police officers who are injured while engaged in the kind of law enforcement activities they would have been performing while on duty.

The maximum fine for employers who violate reporting requirements was increased to \$5,000 (previously, \$1,000), and imprisonment was eliminated as a penalty.

Idaho

The tax on workers' compensation insurance premiums was increased from 1.3 percent to 2.5 percent.

Optional deductibles in workers' compensation insurance contracts now are permitted, with the approval of the Department of Insurance after it determines that certain

standards have been met. The maximum allowance for funeral and burial expenses was increased to \$6,000 (previously \$3,000).

Indiana

Volunteers listed on an organization's roster now may be covered by the medical treatment provisions of workers' compensation.

Iowa

Workers' compensation coverage of volunteer ambulance drivers and emergency medical technician trainees now is authorized if their employer agrees.

Kansas

The Workers' Compensation Director is authorized to establish a system to monitor, report, and investigate workers' compensation fraud or abuse, and further allow persons suffering economic loss due to such fraud to recover the loss.

All insurance companies, self-insurers, and group-funded self-insurance plans providing workers' compensation coverage are required to maintain and provide safety programs, and to note the availability of accident prevention services on the front page of each policy.

The minimum amount of annual payroll that an employer is required to have to be exempt from the workers' compensation law doubled, from \$10,000 to \$20,000.

The allowance for burial expenses was increased to \$3,300 (previously \$3,200).

The compensation allowance for loss of an arm was increased to 225 weeks (from 210 weeks), and now includes the shoulder joint, shoulder girdle, shoulder musculature, or any other shoulder structures.

The limits for reimbursement of attorney fees was revised according to the following schedule: 25 percent of the total compensation recovered and paid if the compensation is less than \$10,000; 20 percent of the total compensation recovered and paid if it is more than \$10,000 but less than \$20,000; and 15 percent of the total compensation recovered and paid if it is more than \$20,000.

Louisiana

The minimum combined net worth requirement for self-insurance funds was increased to \$1 million, from \$500,000, effective January 1, 1994.

The Department of Labor and the Department of Insurance were authorized to conduct a 2-year pilot program for 24-hour health insurance coverage.

A 12-member advisory board and an antifraud fund were created to prevent fraudulent insurance acts, including workers' compensation fraud.

Persons unlawfully discharged in violation of discrimination prohibitions to protect employees who file claims are allowed to recover court and attorney's fees. Claimants are responsible for employer costs associated with frivolous claims.

Willful misrepresentation by an employer that workers' compensation insurance has been provided is now a criminal offense instead of a misdemeanor, and the maximum fine for such violation is now \$10,000 (previously, \$1,000) and imprisonment of 10 years (previously, 6 months).

Penalties for willful misrepresentation to obtain or obstruct benefit payments also increased. Violators with claims valued at less than \$2,500 may be fined up to \$500 and imprisoned for 6 months; violators with claims valued between \$2,500 and \$10,000 may be fined up to \$5,000 or imprisoned up to 5 years; and violators with claims valued at \$10,000 or more may be fined up to \$10,000 or imprisoned up to 10 years. (The prior maximum criminal penalty was \$500 and 1-year imprisonment.) In addition, civil penalties increased from between \$100 and \$500 to between \$500 and \$5,000. Employees found guilty of misrepresentation forfeit compensation.

Maine

The definition of "occupational disease" now includes any abnormal condition or disorder resulting from an occupational injury.

Forest firefighters now are offered workers' compensation coverage.

For purposes of coverage, the definition of "aquaculture" was broadened to include the production of cultured fish, shellfish, seaweed, or other marine plants for human and animal consumption.

An amendment extends the exemption from liability of a landowner if the landowner applies for and receives a predetermination of the independent status of the contractor at the time the landowner enters into contract with the contractor for wood harvesting. The landowner will be relieved of liability only if the contract states that the contractor will not hire employees without first providing the required certificate of insurance to the landowner.

Maryland

A health maintenance organization that pays a health care provider may not use medicare, medicaid, or workers' compensation payments as part of any methodology used to determine a payment at the usual, customary, and reasonable rate.

The termination date of competitive rating for workers' compensation insurance was delayed 4 years—from June 30, 1993, to June 30, 1997.

Minnesota

An insurer shall not include wages paid for work performed in an adjacent State in the determination of a workers' compensation premium if the employer paid a premium to an exclusive State fund of the adjacent State on the wages earned there. Further, a business entity that provides personnel supply arrangements or agreements for the purpose of temporarily supporting or supplementing a client's work force may be exempt from the registration requirements which provide for insurance for lessors of employees if the arrangements or agreements do not involve the lease-back of the client's employees.

Mississippi

Under expanded authority of the Workers' Compensation Commission, a penalty of up to \$10,000 may be now assessed against anyone, including an attorney, who appeals a claim without reasonable grounds.

Missouri

To be compensable, an injury or occupational disease must be clearly work-related and a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering factor, or where there is gradual deterioration of the body caused by aging, unless such deterioration was an incident of employment. For an occupational disease, the enactment provides that in cases involving a repetitive motion injury, prior employers are liable for benefits if the employee worked for the current employer for less than 3 months, and evidence shows that the injury occurred at the prior employer's facility.

Insurance carriers must establish a program to provide, upon request, comprehensive safety engineering and management services to employers.

Certain fraudulent activities relating to workers' compensation are subject to an administrative penalty of up to \$10,000, or double the value of the fraud, whichever is greater. Additionally, new rules prohibit certain false billing practices by health care providers.

The Department of Insurance is required to establish a certification program for managed care organizations.

New rules specify that lost worktime benefits are paid after the loss of 3 regularly scheduled workdays.

Employers must notify injured employees when compensation benefits are terminated, and give reason for such termination. If the employee disputes the termination, he or she may request a hearing and must be

given a decision within 30 days. Reasonable costs of recovery will be awarded to the prevailing party.

Minimum thresholds are established for access to the Second Injury Fund—50 weeks of compensation for an injury to the whole body, and a permanent partial disability rating of 15 percent for a major extremity injury involving a preexisting disability.

The surcharge for support of the Second Injury Fund is changed in the following manner: after January 1, 1994, the surcharge will be set at a percentage of premiums equal to 110 percent of the amount expended from the Fund in the previous calendar year, less what was contained in the Fund at the end of the previous calendar year. Notice must be given in advance of each annual setting of the surcharge.

A temporary provision (which expires August 28, 1996) allows an employer to pursue through the Second Injury Fund that portion of a claim not associated with the employee's current employment, but which is attributable to an occupational disease or cumulative trauma disorder that can be medically proven occurred as a consequence of current employment.

Group insurance policies now are permitted.

New procedures enable a closed claim to be reactivated for medical procedures involving life threatening operations or prosthetics.

A State mutual insurance company will be created by March 1995, capitalized by the sale of bonds and by a loan of \$5 million from the Workers' Compensation Administrative Fund. Although the company can write workers' compensation insurance for any employer, it must focus on employers with premiums of \$10,000 or less.

A new residual market plan guaranteed insurance coverage and quality loss prevention and control services for participating employers. All insurers authorized to write workers' compensation insurance in the State will participate in the plan, and all participating employers will be equitably apportioned among the insurers. Only employers with less than \$250,000 in annual premiums will be eligible; those with premiums higher than \$250,000 must negotiate a retrospective rating plan. Rates for the residual market must be filed at least 75 days prior to their effective date.

The definition of "employee" was changed to exclude individuals who are owner/operators of a common carrier motor vehicle and act as independent contractors.

For accidents involving less than \$500 in total medical costs and no lost worktime, the employer must notify the employee of his or her rights, but the accidents are not to be reported to the insurer or used against the

employer's experience modifications. (The State permits insurers to offer deductible clauses in workers' compensation policies, the amounts of which are credited against the employer's experience, unless the employer and insurer agree otherwise.)

Sports officials and contest workers in interscholastic activities are excluded from workers' compensation coverage.

Administrative law judges are allowed to appoint a qualified impartial physician to examine an injured employee, and submit as evidence the complete medical report on issues in controversy. Also, new procedures governing the deposing of medical witnesses are initiated.

Montana

An amendment provides that workers are not covered if injured while participating in a recreational activity which is not part of their assigned duties, or while serving as volunteers at a recreational facility. Also excluded from coverage are those employed by an enrolled tribal member within an Indian reservation.

Disputes concerning benefits paid by the Uninsured Employers' Fund must now be appealed to mediation within 90 days.

The Department of Labor and Industry is allowed to issue subpoenas for books, records, and other employer documents. Wages paid to spouses of sole proprietors or partners are now excluded from the uninsured employer penalty.

A mechanism is provided for placing a lien on the property of an uninsured employer to satisfy unpaid penalties and claims.

The National Council on Compensation Insurance is recognized as an agent for insurers.

The Occupational Disease Act was amended to provide that the party requesting a postmortem examination pays for it when an occupational disease causes death. The Act was further amended to clarify liability in situations in which there is more than one insurer and only one employer at the time of injurious exposure. In such situations, liability rests with the insurer providing coverage at the earliest date between the time the disease was first diagnosed, or the time the employee knew or should have known that the condition was the result of an occupational disease.

A person convicted of "theft" in obtaining illegal benefits is subject to a fine equal to ten times the false benefit payment, up to \$50,000. To further prevent fraud and abuse in the workers' compensation and unemployment insurance programs, new provisions require the Department of Social and Rehabilitative Services and the Department

of Revenue to provide certain information to the Department of Labor and Industry. A fraud office in the Department of Justice was created to investigate and prosecute cases on referral from the State's fund new prevention and detection unit. Criminal proceedings may be instituted against persons who obtain or assist another in obtaining fraudulent disability benefits.

Workers' compensation rates and rating plans must be developed without regard to any deductible paid on medical losses.

Coverage was extended to inmates employed in a federally certified prison industries program operated by a private company. Also, temporary total and medical benefits were extended to certain employed inmates participating in pre-release center programs.

The term "temporary partial disability" was redefined to emphasize the partial loss of wages during the period prior to maximum recovery and return to work.

Benefits may be suspended if an injured worker fails to keep scheduled medical appointments; once given a medical examination and released to return to work, the worker forfeits the right to any suspended benefits.

An insurer's liability for temporary partial disability must be the difference between the injured worker's average weekly wage at the time of the injury and the actual weekly wages earned during the period the claimant is temporarily partially disabled, not to exceed the injured worker's temporary total disability benefit rate. Temporary partial disability benefits were limited to 26 weeks. A temporary totally disabled worker qualifies for benefits if a modified work position is no longer available and the worker continues to be disabled.

Optional deductible coverage clauses may now be written into workers' compensation policies. The insurer pays the entire amount of the claim and then is reimbursed by the employer for the deductible. If not reimbursed, the insurer may consider the matter as a nonpayment of premium under the policy.

A medical provider is forbidden to refer an injured worker for treatment or diagnosis to a facility owned wholly or in part by the provider, unless the worker is informed of the ownership and is given names of alternate facilities, if any. Also, a medical provider is prohibited from failing to document, under oath, the services or treatment given for which compensation is claimed. Violators of these requirements may be penalized from \$200 to \$500 for each offense.

Persons, including but not limited to insurers or employers, cannot be held liable for civil damages resulting from reporting in good faith information believed to prove a workers' compensation violation.

Augmenting temporary total disability benefits with sick leave pursuant to a collective bargaining agreement does not disqualify a worker from receiving benefits, nor does the use of vacation leave affect a worker's eligibility for benefits.

Group purchase of workers' compensation insurance for each member of a group is permitted if certified by the Department of Labor and Industry.

Insurers are required to notify employers within 14 days of the re-opening of a claim. An insurer may suspend total disability benefits if the claimant is also receiving Social Security benefits; the suspension is for a period sufficient to recover any resulting overpayment. However, a claimant and insurer are not prevented from agreeing to a repayment plan.

The Montana Safety Culture Act requires employers to establish safety training programs for employees, including temporary employees and employees of temporary services contractors.

Out-of-state construction industry employers are required to obtain workers' compensation coverage for nonresident employees who are hired, paid, and supervised in Montana.

The term "disability" is newly defined to allow factors such as age, education, and work history to be combined with medical conditions in measuring a worker's ability to engage in gainful employment. The new provisions also expanded the definitions of types of medical treatment and distinguished between primary and secondary medical services.

Secondary medical services (such as spas and hot tubs) need now be furnished by employers only after clear demonstration of their cost-effectiveness. Palliative care—treatment designed to reduce or ease symptoms without curing the underlying cause—does not have to be furnished except under certain conditions now specified in the law. In addition to fee schedules, the Department of Labor and Industry is required to establish utilization and treatment standards in consultation with new medical advisory committees.

Claimant co-payment now is required after the first visit. A claimant's co-payment will be 20 percent of the cost of each subsequent visit to a provider (up to \$10), and \$25 for each subsequent visit to a hospital emergency department for treatment—unless the employee uses the managed care or preferred provider organization requested by the insurer.

To promote the use of managed care and preferred provider organizations, insurers are authorized to contract for medical services with managed care organizations certified by the State's Department of Labor and

Industry to provide medical services to claimants. To be certified, an organization must be independently owned and operated by an insurer or self-insurer. Home care and chiropractors are included as part of the managed care system.

Unless authorized to do so by the insurer, physicians who are not members of a managed care organization can not provide treatment in situations involving total loss of wages, permanent impairment, referrals for specialized evaluation or treatment, and specialized diagnostic tests, such as magnetic resonance imaging (MRI) tests.

Underinsured employers are defined as those who knowingly misrepresent their employees' work descriptions in order to pay lower premiums. An underinsured employer may be required to pay up to double the premium that would have been paid for each employee improperly classified, up to \$200, or up to \$50,000 for all such violations.

Nebraska

Proceeds or interest from payments or lump-sum settlements under the workers' compensation law, or any law of another State providing workers' compensation benefits, are prohibited from being assignable, subject to garnishment, or held liable for debts, except as provided for legal services.

An insurer, risk management pool, or self-insurer is permitted to use a managed care plan certified by the Workers' Compensation Court to provide medical care. Under such plans, which now may be exempt from medical fee schedules, an employee can retain his or her own physician only if the physician agrees to refer the employee to the managed care plan for other services and agrees to comply with all rules, terms, and conditions of the plan. However, the plan must allow an injured employee to select a physician who has maintained the employee's medical records prior to the injury or has a documented history of treatment of the employee.

The Court is authorized to develop and implement an independent medical examining system to create, maintain, and periodically validate a list of health care providers to serve as independent medical examiners, and to establish a fee schedule for services rendered by independent medical examiners.

Individual providers of medical services and counselors are included under the law's rehabilitation provisions certified by the Workers' Compensation Court. If the employee and employer cannot agree on the choice of a vocational rehabilitation counselor, the Court will select one from a directory established for this purpose. It shall be a rebuttable presumption that any vocational rehabilitation plan developed by a counselor

and approved by the Court is an appropriate form of rehabilitation. The fee for the evaluation and plan shall be paid by the employer or insurer, for which the Court may establish a fee schedule.

An injured employee is entitled to temporary disability compensation while undergoing rehabilitation, whether voluntarily offered by the employer or ordered by the Court.

Employers are required to establish a safety committee which must adopt and maintain an effective written injury prevention program. Discharge of or discrimination against an employee for taking a complaint to the committee or to a governmental agency is prohibited.

A workplace safety consultation program was created to permit the State's Department of Labor to conduct workplace inspections and consultations to determine whether employers are complying with Federal safety standards. Anyone who ignores a recommendation to correct a hazard identified as serious or imminent will be referred to the Federal Occupational Safety and Health Administration. The program will be funded by imposing a 0.25-percent premium tax on insurers and self-insured employers.

The maximum weekly compensation benefits payable for total and partial disability increased to \$310 (previously \$265), effective June 1, 1994, and to \$350, effective January 1, 1995. Commencing January 1, 1996, and each January 1 thereafter, the maximum weekly benefits shall be 100 percent of the State's average weekly wage.

Access to the assigned risk pool is now denied to employers who do not establish a safety committee.

The term "intoxication" is redefined to include, but is not limited to, being under the influence of a controlled substance not prescribed by a physician.

Nevada

A new enactment gives effect, under certain circumstances, to an employer's previous experience in another State, if 3 years or longer, to determine the rates as a new business in Nevada; and eliminates the monetary exemption of certain contractors from the provisions of the industrial insurance law for employees who are hired outside of Nevada to work temporarily in the State.

Employee leasing companies now are required to obtain a certificate of industrial insurance.

Associations of public or private employees are authorized to self-insure.

The State Industrial Insurance System is permitted to enter into contracts with managed medical care organizations to provide comprehensive medical and health care ser-

VICES to injured employees whose employers are insured by the State system.

New workers' compensation laws provide for civil and criminal punishments against violators.

Health care providers generally are prohibited from referring an injured employee to a facility or service in which the provider has a financial interest.

New Hampshire

The exclusive remedy provision for workers' compensation is amended to mandate that benefits collected under the State's law are the exclusive remedy for a person injured in New Hampshire, thus waiving all rights of action in any other State.

A new program assists unrepresented injured employees in understanding, asserting, and protecting their rights under the workers' compensation law, but the assistance does not include representing claimants in hearings.

Within 7 days of receiving a notice of a hearing, an insurer must mail a copy of the notice to the employer; noncompliance may result in a \$2,500 fine. If a request for cancellation or continuance of a hearing is filed less than 7 days prior to a scheduled hearing, an administrative penalty of up to \$500 may be imposed.

After payment of a second claim for benefits from injuries incurred at any single work site during a policy year, the insurer is required to conduct a safety inspection of the site within 60 days, and submit a report within the next 30 days. If the employer fails to follow the report's recommendations within an additional 30-day period, a safety enhancement surcharge of up to 10 percent of the employer's annual workers' compensation premium will be imposed.

Units were established in the Department of Insurance to investigate allegations of insurance fraud and to identify factors driving up the cost of workers' compensation.

Employers, carriers, and self-insurers are authorized to provide a managed care program, and injured employees in such programs who are dissatisfied with a medical decision are allowed to request an independent examination by a provider of his or her choice.

New York

New legislation sets forth circumstances under which executive officers of a corporation are covered by workers' compensation.

North Carolina

The Commissioner of Insurance and the State's Rate Bureau must develop a proposal for loss control and accident prevention con-

sultation services to be provided by insurers.

Cadets of the Civil Air Patrol are eligible for workers' compensation coverage while on State-approved missions which are not covered by the Federal Tort Claims Act.

North Dakota

The verification procedures for temporary total disability claims were revised to provide that a doctor may not certify past disability unless the doctor has examined the employee within the previous 60 days and filed the necessary reports.

If a dispute occurs over the recommendation of the managed care administrator, the employee, employer, or medical provider may request binding dispute resolution. An appeal requested by a medical provider concerning payment for treatment already provided or a request for diagnostic tests or treatment can not be reviewed by any court; an appeal by an employee can be reviewed by a court only if medical treatment has been denied; an appeal by an employer may be reviewed by a court only if medical treatment has been awarded to the employee. The appeal can be reversed only if the court finds that there has been an abuse of discretion by the dispute resolution panel.

Reasonable maximum hourly rates and maximum fees will be established for claimants' attorneys. Previously, the law required only that an hourly rate be set by the Bureau of Workers' Compensation. The Bureau is required to pay attorneys' fees only when the employee has prevailed (1) in binding dispute resolution, (2) after reconsideration of an informal decision, (3) after an administrative hearing, or (4) after the dispute has been referred to binding arbitration. If there has been "constructive denial" (that is, failure to issue an administrative order) of a claim, the Bureau pays attorneys' fees only for representation during the period from the denial until it issues an informal decision or administrative order. The time for "constructive denial" of a claim was reduced to 60 days (previously, 90 days).

According to new rules governing duplicate benefits, if an employee applies for benefits for the same injury from another State, all future benefits in North Dakota will be suspended pending resolution of the application. The new rules also provide for reimbursement and suspension of compensation in parallel situations.

Authorization was approved for establishing a State workers' compensation insurance company, which may be organized as a stock or mutual company, a risk pool, a reciprocal exchange, a risk retention or purchasing group, or a reinsurer with the limited purpose of offering extraterritorial coverage or other States' insurance.

The definition of "wages" is simplified by limiting the term to payments reportable by employers to the Internal Revenue Service as earned income which is lost as a result of a compensable injury. "Seasonal employment" is now defined as an occupation that has periods of 45 consecutive days without wages. Newspaper carriers who work as independent contractors are excluded from employee coverage.

Employers can receive a 5-percent premium discount for implementing or maintaining a pre-approved risk management program.

The law specifies a formula for determining the average weekly wage of the self-employed.

References to "intoxication" as a reason for denying benefits were replaced by "impairment caused by use of alcohol or illegal use of a controlled substance." A rebuttable presumption is created based on the use of levels set by the U. S. Department of Transportation in determining that impairment was caused by the ingested substances. Employees must now undergo testing in situations where an employer or doctor has reasonable grounds for suspecting a connection between the injury and the use of alcohol or an illegal substance. Employees who refuse to be tested forfeit benefits related to that injury. Benefits are reinstated when an employee successfully completes treatment in a licensed addiction facility, the cost of which is not paid by the Workers' Compensation Bureau.

Employers can request binding arbitration following the issuance of an administrative order with the consent of the nonrequesting party.

Employers are required to display at the workplace proof of workers' compensation insurance and a toll-free telephone number for reporting unsafe working conditions and fraud; violators are subject to a \$250 fine.

Ohio

New legislation states that an "employment intentional tort" is an act committed by an employer in which the employer deliberately and intentionally injures, or causes an occupational disease or the death of an employee. An action for an employment intentional tort must be brought within 1 year of the employee's death or the date the employee should have reasonably known of the injury, condition, or disease. An employer is only liable if clear and convincing evidence shows that the employer deliberately committed all offenses contained in the definition.

An office within the Bureau of Workers' Compensation was created to oversee the establishment of a managed health care plan, which will be contracted out for a 3-year period beginning July 1, 1994; the Bureau will

assume operation of the program after 3 to 6 years. The plan must permit injured employees to use a nonprogram health care provider in areas outside or within the State if qualified health plans are not available. An advisory council was created to develop standards for health care plans to qualify under the managed care program.

The Bureau was directed to conduct loss prevention programs and courses for employers, and to establish and administer cooperative programs with employers of individual safety equipment. Discounts on premium rates are permitted for employers who have not incurred a compensable injury for 1 year or have successfully completed a loss prevention program.

A program is available to every employer insured by the State insurance fund whereby the employer may pay the first \$1,000 of a medical only claim and thus lower experience rated premiums. Employers insured by the State fund may enter into final workers' compensation settlements with employees, subject to approval; similar arrangements are permitted for self-insuring employers.

Benefits will be suspended if an employee refuses to submit to a medical examination or release medical information.

Oklahoma

Members of "limited liability" companies are included in the definition of "employee," but are excluded from coverage if they own at least 10 percent of the companies' capital. "Permanent impairment" was redefined to provide that evaluations of such impairments include an apportionment of injury causation.

Independent contractors are not liable for injuries to employees of subcontractors, if the independent contractor accepted as proof, in good faith, a valid workers' compensation policy or a certificate of noncoverage. However, the independent contractor is liable for injuries if an employee-employer relationship is found to have existed.

A pilot program was established to integrate management of an employer's workers' compensation and group health insurance claims. Workers' compensation benefits, rights, or coverage will not be affected by the program.

An amendment declares that a claimant shall not be pronounced permanently and totally disabled until he or she has been evaluated through vocational rehabilitation services to determine whether return to gainful employment is practical. Also, temporary total disability benefits will be paid to an injured employee while he or she participates in a retraining or job placement program. Employees who unreasonably refuse vocational rehabilitation will have their benefits limited to partial disability payments during

the period of refusal. Attorney fees will not be awarded or deducted from such benefits and tuition will be paid by the employer.

All evaluations of industrial deafness are required to include an apportionment of injury causation.

Permanent disability payments will be 70 percent of the employee's average weekly wages, paid for the period prescribed by the following schedule: for each of the first 9 percent of disability, 80 percent of the number of weeks of compensation provided previous to the amendment; for each percent of the next 11 percent, the identical number of weeks provided previously; for each percent of the next 30 percent, 120 percent of the number of weeks provided previously; and for each remaining percent of disability, the identical number of weeks provided previously.

Maximum benefits for funeral expenses increased to \$5,000 (previously \$3,000).

Employees convicted of a misdemeanor or felony and incarcerated at least 90 days must forfeit all temporary total disability benefits on motion of the employer or court; any permanent total or temporary partial benefits for which the prisoner is eligible will be credited to the Oklahoma Department of Corrections to cover the costs of incarceration.

The law now provides a rebuttable presumption that an injury or occupational disease caused by repeated trauma is not work-related unless notice is given within 180 days of the employee's separation from employment.

Optional deductibles are required for each workers' compensation insurance policy issued, in amounts ranging from \$500 to \$2,500 (in \$500 increments), with the employer choosing only one amount. The Insurance Commissioner shall not approve any policy which permits any part of the deductible to be passed on to the injured worker. Insurers are to pay medical bills in full, and must be reimbursed by employers within 60 days.

An advisory committee was created to provide guidance on workers' compensation health care practices and make recommendations; a worker safety policy council, including safety experts, was created to formulate reforms to lower the number of injuries and reduce costs. Further, employers of 25 or more workers are required to provide safety classes at least quarterly and allow announced safety inspections by the Oklahoma Department of Labor.

Workers' compensation fraud as a felony is now punishable by a fine of up to \$5,000 and up to 5 years' imprisonment. The amendment describes acts of fraud in detail. Insurance policies and claim forms must contain a warning statement concerning the nature of fraud and its punishment as a felony.

Recipients of temporary disability benefits are required to promptly report to the employer or insurer any change in income, employment status, or other material fact.

Oregon

A company which leases workers is required to purchase workers' compensation insurance for its employees, unless such employees are covered by the client's policy. Insurance coverage paid for by a leasing company shall be based on each client's individual experience rating. Insurers are permitted to charge a leasing company a reasonable fee for the extra expenses attributable to segregating client experience ratings for leasing company insurance.

A pilot program is initiated under which participating employers may meet the requirement for coverage by workers' compensation and nonwork-related connected health care by providing coverage through a combined policy or self-funded plan. Participation in the pilot program is through authorization by the Department of Insurance.

If no claims for workers' compensation have been filed or accepted at the time a worker or his or her survivors recover damages from a third person or noncomplying employer, the amount of damages will be offset against compensation due the worker.

Pennsylvania

Workers compensation payment will not be made in cases where the employee's injury or death is caused by intoxication or illegal use of drugs.

Subcontractors must present proof of workers' compensation insurance to a contractor. Prior to issuing a building permit to a contractor, a municipality shall require proof that the contractor either has workers' compensation insurance or an affidavit stating that the contractor does not employ other individuals and is not required to carry workers' compensation insurance.

An employer must submit an application to the Department of Labor and Industry and pay a \$500 fee to be exempt from liability for workers' compensation.

Self-insurance regulations now require employers to post a bond or other types of security; failure to comply makes an employer guilty of a third-degree misdemeanor and subject to restitution of damages.

Questions concerning treatment provided to an injured employee may be subject to a utilization review requested by an employee, employer, or insurer. The Department of Labor and Industry may authorize utilization review organizations to perform the reviews.

The maximum benefit for burial allowance was increased to \$3,000 (previously \$1,500).

Limitations for coverage of professional athletes were established and conditions set forth under which benefits will be paid.

Employers now are permitted to initiate compensation payments without admitting liability where compensability is uncertain, and allow a referee to ask for a peer review opinion about the necessity or frequency of treatment.

Insurers must offer, upon request, one of three deductible plans between \$1,000 and \$2,500; insurers are permitted to negotiate a larger deductible, with approval.

Rhode Island

For purposes of coverage, the term "employee leasing company" was defined. Another change provided that coaches and trainers of professional ice hockey players who are covered by laws of other States are exempt in Rhode Island.

South Dakota

Disability payments may be changed if earnings have substantially changed since the injury; previously, benefits could be changed only if the employee's condition had changed.

Overtime pay is included in determining an employee's earnings. Employees with a temporary partial disability who have not received a bona fide job offer can receive temporary total disability benefits. Permanent total disability benefits now are offset by Social Security retirement benefits to the extent that the total benefits received are greater than 150 percent of the permanent total disability benefits.

Lump sums are allowed for permanent total disability payments in cases of exceptional financial need, or if necessary to pay attorney's fees. Attorney's fees were limited to 25 percent for settlements, 30 percent for cases heard by a court, and 35 percent if the case goes to the State Supreme Court.

Effective January 1, 1995, insurers and self-insurers will be required to provide medical and health services under a managed care plan, for which utilization review standards will be developed. Insurers and self-insurers, rather than the South Dakota Department of Labor, are required to pay for impartial medical examinations.

Tennessee

The Commissioner of Commerce and Insurance is authorized to implement an assigned risk plan for insurers who are entitled to, but unable to procure, coverage through ordinary methods.

Utah

Provisions were repealed which differentiated between alien and resident dependents of deceased workers.

Insurance carriers may underwrite workers' compensation insurance for companies leasing employees. A board was created to license and regulate leasing companies (which are required to maintain workers' compensation insurance for employees). It is unlawful for the leasing company to misrepresent any self-funded medical program offered to employees.

Certain changes were made to tighten fraud provisions.

Utah's liability to provide workers' compensation coverage to prisoners employed in work programs was limited, and coverage was extended to members of the Utah National Guard while serving on active duty in the State.

Virginia

Civil penalties for employers who violate certain workers' compensation requirements were increased from between \$50 and \$1,000 to between \$500 and \$5,000. Also, maximum fines were increased to \$500 (previously, \$250) for employers not filing a required report, and if the failure to file is willful, an additional civil penalty of between \$500 and \$5,000 may be assessed.

An employer may obtain no more than one examination per medical specialty of an employee without prior authorization.

Records about workers' compensation and unemployment insurance claimants shall be exchanged as a method of detecting fraud in both programs.

Workers' compensation coverage is provided to firefighters and law enforcement officers injured in an off-duty capacity or outside of an assigned shift or work location, or during any law enforcement or rescue activity. Elective coverage is extended to volunteer fire companies and volunteer lifesaving and rescue squads.

All licensed workers' compensation insurers shall participate in the Virginia Workers' Compensation Insurance Plan, which provides assigned risk policies to applicants who are unable to procure insurance through ordinary methods.

Knowingly using a false, fictitious, or fraudulent statement to obtain benefits, or aid another person to obtain benefits is punishable as a Class I misdemeanor. Physicians and attorneys who engage in such practices may have their licenses suspended or revoked.

Washington

Payment of compensation is required for

time lost from work while attending a medical examination.

When a claimant receiving temporary total disability benefits returns to work, any health and welfare benefits the employee was receiving at the time of injury shall be resumed at the pre-injury level.

The maximum monthly benefit for death, temporary total, and permanent total disability compensation increased from 100 percent of the State's average monthly wage to the following: 105 percent after July 1, 1993; 110 percent July 1, 1994; 115 percent July 1, 1995, and 120 percent July 1, 1996.

The specified amounts of schedule award payments for permanent partial disabilities increased 32 percent. After July 1, 1994, these benefits will be further adjusted to reflect changes in consumer prices. Cases in which multiple injuries produce total bodily impairment, or for total compensation for unspecified permanent partial disabilities, benefits increased to \$118,800 (previously \$90,000) on July 1, 1993, and then will be indexed beginning July 1994. The amount of payments are governed by the schedule in effect on the date of injury.

An amendment stipulates that the sum of the percentages of total fault attributable to at-fault entities must equal 100 percent. It also revises the method for determining the proportional share of costs and attorney's fees recovered from the third party by the Department of Labor and Industries and by self-insurers.

Chiropractic treatment is authorized for injured workers.

West Virginia

For black lung disease, new legislation provides guidelines for obtaining additional evidence when available ventilatory blood gas test results conflict, calls for standardizing blood gas tests conducted at different altitudes, and sets a 3-year statute of limitations for filing a new claim or pursuing a previously filed claim for occupational pneumoconiosis if the claimant received a final decision stating that he or she now has no evidence of the disease.

A council was created to ensure the effective, efficient, and financially stable operation of the unemployment and workers' compensation systems. New requirements encourage voluntary compliance with occupational safety and health laws, regulations, and standards, and promote more effective workplace health and safety programs.

A person incarcerated in a penitentiary or jail for more than 3 days will not be entitled to temporary total disability benefits. However, the person will be eligible for payment of medical expenses.

New language clarifies that "mental-

mental" claims are not compensable.

Health care providers charging more than established maximums are subject to penalties. Physicians or other persons practicing medicine can not refer patients to a supplier of mechanical appliances owned in whole or in part by the practitioner, unless they meet certain disclosure rules.

In any claim in which a claimant aggregates permanent partial disability awards in the amount of 85 percent or more after this provision becomes effective, the claimant is entitled to a permanent disability award, unless the evidence establishes that the claimant is not permanently and totally disabled.

New rules set penalties for claimants who fraudulently attempt to secure more compensation than they are entitled to.

A claimant must be reimbursed for the expenses of an examination if a closed claim is reopened and an additional award made. The Commissioner has jurisdiction over permanent total disability claims and can reopen a claim.

Legislation provided for coordinating payments for permanent total disability with Social Security benefits, or with payments under a self-insurance plan, a wage continuation plan, or a disability plan provided by an employer.

A claimant who terminates active employment and is receiving full old-age retirement benefits under the Social Security Act cannot be awarded permanent total disability benefits. Further, such claimant can be evaluated only for the purpose of receiving a permanent partial disability award premised solely upon the claimant's impairments.

Wisconsin

Legislation raised the maximum weekly benefit for permanent total disability from \$450 to \$466 per week on January 1, 1994, and to \$479 on January 1, 1995. Maximum weekly benefits for permanent partial disability will increase from \$152 to \$158 per week on January 1, 1994; and to \$164 on January 1, 1995.

If an injury causes a disability to an employee's dominant hand, the period for which permanent partial disability benefits are payable is increased by 25 percent. For multiple injuries to the dominant hand, the 25-percent increase is based on the period specified in the disability schedule.

For cases in which compensation is claimed for loss of earnings capacity, if requested by the employer or insurer, the employee must submit to an examination by a vocational expert provided and paid for by the employer or insurer.

For medical examinations, the law waived the 100-mile limit where the employee has sought and claimed reimburse-

ment for treatment from a practitioner whose office was more than 100 miles from the worker's residence at the time treatment was given. In such cases, the employer or insurer may compel the worker to obtain a medical examination in the same metropolitan area where the employee's treatment practitioner is located. Employees having difficulty speaking or understanding English now can have a translator present at medical examinations, provided and paid for by the employer or insurer.

If an employer has a one-time minor lapse in coverage which has been quickly restored, and no compensable injury occurred during the lapse, a graduated penalty of \$100 per day would be imposed, instead of \$750 per day. The Workers' Compensation Division now has authority to waive other uninsured employer penalties and requirements in special circumstances. An uninsured employer who refuses to pay a penalty for failure to insure becomes subject to a lien on real or personal property and garnishment of financial assets.

Employees must provide an itemized statement of any claim for medical expenses or incidental compensation at least 15 days prior to a hearing or risk exclusion of the evidence at the hearing.

The expiration date of the health service fee dispute resolution procedure was extended to July 1, 1966. The Division of Workers' Compensation must develop a

hospital cost data base for use in disputes between hospitals and insurers over the reasonableness of radiology services.

Insurers are not required to investigate allegedly false claims. Insurers with evidence of fraudulent claims must report the information to the State unless the reporting would impede the insurer's ability to defend the claim; credible cases will be referred to the appropriate district attorney for prosecution. If the fraudulent benefit claimed is \$500 or less, the violation is a Class A misdemeanor; if the fraudulent benefit is more than \$500, the violation is a Class E felony.

Wyoming

Certain offenses by employers and employees are punishable as felonies if the amount of money involved exceeds \$500. (A felony carries a penalty of up to \$10,000 and imprisonment up to 10 years). Also, employers who knowingly fail to establish payroll accounts or furnish payroll reports now may be punished: the first conviction is a misdemeanor, subsequent convictions are felonies.

The Workers' Compensation Division was granted permission to investigate employees, employers, and health care providers suspected of violating the law, and to request through the attorney general that uncooperative parties be subpoenaed.

The 1992 statutory amendments were corrected; they had erroneously eliminated

workers' compensation coverage of certain government employees in hazardous jobs.

Coverage definitions were expanded to include penal system probationers or parolees performing work pursuant to a court order; eliminate mandatory coverage for specified employers; and modify the basis for determining employer contributions on behalf of covered volunteers.

Temporary total disability benefits are suspended for recipients who fail to keep scheduled medical and therapy appointments.

A medical commission was created to advise on the usefulness of medical cost containment measures; it consists of seven licensed physicians and four representatives of health care provider groups. Commission members will hear medically contested cases involving permanent disability benefits. □

Footnotes

¹ Arkansas, California, Louisiana, Missouri, Montana, Nebraska, Nevada, New Hampshire, Ohio, Oklahoma, South Dakota, and West Virginia.

² Arkansas, California, Kansas, Louisiana, Missouri, Montana, Nevada, New Hampshire, Ohio, Oklahoma, South Dakota, Utah, and Virginia.

³ Arkansas, California, Connecticut, Kansas, Missouri, Montana, Nebraska, North Carolina, Ohio, Oklahoma, and West Virginia.