

INTERIM STUDY PROPOSAL 2019-062

1
2 State of Arkansas
3 92nd General Assembly
4 Regular Session, 2019

A Bill

SENATE BILL 673

5
6 By: Senator Rapert

7 Filed with: Senate Committee on Public Health, Welfare, and Labor
8 pursuant to A.C.A. §10-3-217.

9 **For An Act To Be Entitled**

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

15
16
17 **Subtitle**

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

23
24
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

26
27 SECTION 1. Arkansas Code Title 11 is amended to add an additional
28 chapter to read as follows:

29
30 CHAPTER 16

31 UNIVERSAL WORKERS' COMPENSATION ACT

32
33 Subchapter 1 – General Provisions

34
35 11-16-101. Title.

36 This chapter shall be known and may be cited as the "Universal Workers'

1 Compensation Act".

2
3 11-16-102. Purpose and intent.

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

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

15
16 11-16-103. Applicability.

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

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

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

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

27
28 11-16-104. Full faith and credit.

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

35
36 11-16-105. Employee Retirement Income Security Act of 1974 – Plan.

1 (a) An employer seeking universal workers' compensation coverage for
2 employees under this chapter shall establish an employee welfare benefit plan
3 compliant with the Employee Retirement Income Security Act of 1974, 29 U.S.C.
4 § 1001 et seq., as it existed on January 1, 2019, and shall offer the
5 universal workers' compensation insurance policy as the primary plan under
6 the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et
7 seq., as it existed on January 1, 2019.

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

13 (c) The financial structure of the universal workers' compensation
14 plan under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §
15 1001 et seq., as it existed on January 1, 2019, that is mandated under this
16 chapter imposes a unique fiduciary relationship, including without
17 limitation:

18 (1) The progressive character of the premium;

19 (2) The limitation on universal workers' compensation carrier
20 fees and return;

21 (3) The retention of investment profits by the universal
22 workers' compensation coverage fund and the universal workers' compensation
23 administrative fund for the benefit of covered employees;

24 (4) The coverage and remittance process unrestrained by work-
25 relatedness adjudication; and

26 (5) The per capita return of fund balances to covered employees.

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

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

1 plan under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §
 2 1001 et seq., as it existed on January 1, 2019, to determine work-relatedness
 3 or adopt a certain scheme of substantive coverage relate to the universal
 4 workers' compensation plan under the Employee Retirement Income Security Act
 5 of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019, and
 6 shall be detrimental to the fiduciary relationship of the universal workers'
 7 compensation plan under the Employee Retirement Income Security Act of 1974,
 8 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019.

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

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

21
 22 11-16-106. Definitions.

23 As used in this chapter:

24 (1) "Accidental cause" means an unusual circumstance that is:
 25 (A) Unintended, unexpected, and unforeseeable;
 26 (B) Outside of the control of the person affected; and
 27 (C) Not associated with disease, illness, or a process of
 28 the body;

29 (2) "Acute injury" means an injury for which an urgent and
 30 immediate response is necessary to avoid serious harm;

31 (3) "Administrative fee" means a fee payable to the universal
 32 workers' compensation carrier;

33 (4) "Administrative return" means the amount payable to the
 34 universal workers' compensation carrier;

35 (5) "Authorized employer" means an employer that is certified by
 36 the State Insurance Department as authorized to purchase a universal workers'

1 compensation insurance policy, after approval by the State Insurance
2 Department of the employer's plan;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (19) "Covered employer" means an authorized employer that
4 maintains in full force and effect a universal workers' compensation
5 insurance policy issued under the terms and conditions of the universal
6 workers' compensation insurance policy;

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

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

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

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

14 (ii) Is considered unsafe;

15 (iii) Is unethical to administer;

16 (iv) Is contrary to law or regulation;

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

19 (vi) Is illegal to administer; or

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

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

23 (A) Circulatory and respiratory functions; or

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

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

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

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

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

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

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

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

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

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

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

13 (B) "Employer" includes:

14 (i) A receiver or trustee;

15 (ii) A parent company;

16 (iii) A subsidiary company;

17 (iv) An affiliated company; or

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

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

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

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

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

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

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

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

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

3 (A) Is diagnosable by an objective medical examination;
4 and

5 (B) Is harmful to the body;

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

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

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

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

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

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

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

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

27 (i) Supported by an objective medical examination;
28 and

29 (ii) Rendered by an authorized medical care
30 practitioner;

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

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

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

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

5 (48) "Objective medical examination" means a close and careful
6 study of the body utilizing objective evidence;

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

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

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

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

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

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

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

24 (A) Tobacco;

25 (B) An intoxicant; and

26 (C) Age;

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

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

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

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

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

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

1 (A) Total base premium;

2 (B) Total employer premium; and

3 (C) Total health risk premium;

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

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

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

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

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

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

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

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

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

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

29
30 11-16-107. Administrative fee – Administrative return.

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

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

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

9 (1) Five percent (5%); or

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

13
14 11-16-108. Authorized employer.

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

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

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

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

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

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

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

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

4 (c) An authorized employer shall provide universal workers'
5 compensation coverage for covered employees by incorporating a universal
6 workers' compensation insurance policy in a plan under the Employee
7 Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it
8 existed on January 1, 2019.

9
10 11-16-109. Universal workers' compensation carrier.

11 A universal workers' compensation carrier shall agree to:

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

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

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

19
20 Subchapter 2 - Compensation Provisions

21
22 11-16-201. Universal workers' compensation - Compensation rate.

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

27 (b)(1) A universal workers' compensation rate is seventy-five percent
28 (75%) of the covered employee's average weekly wage, subject to the
29 restrictions and limitations of subsections (c) and (d) of this section.

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

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

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

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

8
9 11-16-202. Universal workers' compensation – Claim for payment of
10 compensation.

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

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

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

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

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

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

8
9 11-16-203. Compensation for covered medical care – Definitions.

10 As used in this subchapter:

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

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

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

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

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

27
28 11-16-204. Compensation for covered medical care.

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

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

1 between the noncovered medical care amount and the covered medical care
2 amount.

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

4 (1) Only for covered medical care;

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

8 (3) Under the terms and conditions of the distinct universal
9 workers' compensation insurance policy providing the universal workers'
10 compensation coverage for the covered injury;

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

14 (5) Only to an authorized medical care practitioner;

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

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

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

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

23 (2) For medical care provided after termination of the covered
24 employee's employment with the covered employer, except as provided in § 11-
25 16-301(b)(1);

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

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

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

32 11-16-205. Noncovered medical care - Notice.

33 (a) If the covered employee and an authorized medical care
34 practitioner determine that noncovered medical care is preferred and the
35 practitioner determine that noncovered medical care is preferred and the

1 authorized medical care practitioner desires compensation under this chapter,
2 then the following apply:

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

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

9 (B) A detailed statement reporting the lesser of the
10 lowest Centers for Medicare and Medicaid Services fee schedule amount or the
11 lowest negotiated fee schedule amount accepted as satisfaction by the
12 authorized medical care practitioner from any remitter for the noncovered
13 medical care; and

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

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

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

25 (A) A copy of the request;

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

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

31 (D) A statement that contains the following language:

32 "If the covered employee allows the authorized medical care practitioner to
33 administer the noncovered medical care: (1) The universal workers'
34 compensation carrier shall not be liable for compensation over and above the
35 covered medical care amount for charges associated with noncovered medical
36 care; (2) The authorized medical care practitioner shall have the right to

1 balance bill the covered employee for noncovered medical care in an amount
2 equal to the difference between the noncovered medical care amount and the
3 covered medical care amount; and (3) The universal workers' compensation
4 carrier shall not be liable for compensation, except compensation for covered
5 medical care, where a covered injury is associated with noncovered medical
6 care”; and

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

9 (4)(A) If the noncovered medical care is administered after
10 notice to the covered employee under subdivision (a)(3) of this section, the
11 universal workers' compensation carrier shall pay the authorized medical care
12 practitioner the covered medical care amount:

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

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

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

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

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

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

1 “(1) The universal workers’ compensation carrier shall not be liable for
2 compensation to the authorized medical care practitioner for charges
3 associated with the noncovered medical care; (2) The authorized medical care
4 practitioner shall not bill the covered employee for the noncovered medical
5 care, if the authorized medical care practitioner knew or should have known
6 that the medical care administered was noncovered medical care and failed to
7 secure the covered employee’s informed consent accepting financial
8 responsibility for the noncovered medical care; and (3) The universal
9 workers’ compensation carrier shall not be liable for compensation, except
10 compensation for covered medical care, where a covered injury is associated
11 with noncovered medical care.”;

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

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

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

25 (2) The specific medical compensation plan shall include:
26 (A) A detailed description of the methodology;
27 (B) A cost-effectiveness analysis; and
28 (C) The projected improvement in medical care
29 effectiveness resulting from implementation.

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

32
33 11-16-206. Compensation for covered disability.

34 (a) Compensation for covered disability shall be paid:

35 (1) Only for covered disability;

36 (2) At the universal workers’ compensation rate;

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

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

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

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

12 (7) Either:

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

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

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

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

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

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

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

1 (5) After death of the covered employee.

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

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

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

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

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

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

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

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

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

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

34
35 11-16-207. Accommodation.

36 (a) As used in this section:

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

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

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

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

9 (A) The covered employee is deemed physically able to
10 perform some type of work by an authorized medical care practitioner;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (3) Pay accommodation wages.

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

16 (1) Determine the average weekly hours;

17 (2) Determine the accommodation hours; and

18 (3) Determine the accommodation hours' quotient.

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

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

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

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

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

34
35 11-16-208. Compensation for covered death.

36 (a) Compensation for covered death shall be paid:

1 (1) Only for covered death;

2 (2) At the universal workers' compensation rate;

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

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

9 (5) Under the terms and conditions of the distinct universal
10 workers' compensation insurance policy providing the universal workers'
11 compensation coverage for the covered death;

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

15 (7) Either:

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

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

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

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

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

35 (1) If the covered death is not the direct consequence of a
36 covered injury by accidental cause, the amount of all compensation paid and

1 payable for the covered death is restricted to and shall not exceed fifty-two
2 (52) times the national average weekly wage applicable to the date of the
3 covered injury;

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

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

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

20
21 11-16-209. Compensation for covered scheduled loss.

22 (a) As used in this section:

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

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

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

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

31 (1) Only for covered scheduled loss;

32 (2) At the universal workers' compensation rate;

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

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

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

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

10 (7) Either:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (15) Sight in both eyes, three hundred sixty-four weeks (364);

14 (16) Hearing in one (1) ear, seventy-eight (78) weeks; and

15 (17) Hearing in both ears, two hundred thirty-four (234) weeks.

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

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

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

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

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

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

35
36 Subchapter 3 – Additional Compensation Provisions

1
2 11-16-301. Terminated covered employee.

3 (a) As used in this section:

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

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

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

14 (1) Covered medical care:

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

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

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

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

24 (3) Covered death if:

25 (A) Either:

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

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

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

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

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

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

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

9
10 11-16-302. Other limitations on compensation.

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

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

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

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

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

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

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

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

33 (3) A covered employee is deemed by his or her employment to
34 have impliedly consented to reasonable and responsible testing by properly
35 trained medical or law enforcement personnel for the presence of any

1 prescription drugs that may cause or exacerbate injury in the employee's
2 body; and

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

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

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

13 (e) A universal workers' compensation carrier is not liable for
14 compensation, except covered medical care, if a covered injury is associated
15 with noncovered medical care that is not emergent medical care.

16
17 11-16-303. Lump sum payment.

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

24
25 11-16-304. Settlement agreement.

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

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

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

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

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

15
16 11-16-305. Physical disability requirement for covered disability -
17 Exceptions.

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

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

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

35 (3) Permanently physically unable to return to work for the
36 covered employer as a direct consequence of a covered injury by accidental

1 cause that would not have occurred but for the unsafe conduct of a co-
2 employee of the covered employee, then the covered employee shall be paid one
3 hundred fifty-six (156) weeks of additional compensation at the universal
4 workers' compensation rate.

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

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

14
15 11-16-306. Reimbursement of overpayments.

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

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

25 (1) Voluntary repayment;

26 (2) An offset against compensation in the future; and

27 (3) Collection proceedings.

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

33
34 11-16-307. Compensation from other sources.

35 (a)(1) As used in this section, "other coverage amount" means the
36 amount a covered employee receives or is eligible to receive for medical

1 care, disability, scheduled loss, or death associated with a covered injury
2 under this chapter as a named insured under an insurance policy or as a plan
3 participant under a self-insured plan providing coverage for the covered
4 employee outside of this chapter.

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

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

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

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

29 (A) Voluntary repayment;

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

32 (C) Collection proceedings.

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

35
36 Subchapter 4 – Universal Workers' Compensation Coverage

1
2 11-16-401. General limitation of universal workers' compensation
3 coverage.

4 Universal workers' compensation coverage shall not exist unless:

5 (1) This chapter establishes coverage;

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

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

10
11 11-16-402. Termination of universal workers' compensation coverage.

12 (a) If a covered employer fails to comply with the terms and
13 conditions of the distinct universal workers' compensation insurance policy
14 providing universal workers' compensation coverage and a universal workers'
15 compensation carrier elects to terminate the distinct universal workers'
16 compensation insurance policy for the failure to comply with the terms and
17 conditions of the distinct universal workers' compensation insurance policy,
18 the universal workers' compensation carrier shall terminate the distinct
19 universal workers' compensation insurance policy in conformity with the
20 requirements of the plan under the Employee Retirement Income Security Act of
21 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019.

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

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

31
32 11-16-403. Overlapping universal workers' compensation insurance
33 policy universal workers' compensation coverage provisions.

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

1 (1) A universal workers' compensation coverage fund of the
2 distinct universal workers' compensation insurance policy providing universal
3 workers' compensation coverage for the covered injury is liable for
4 compensation for covered disability under § 11-16-206, covered death under §
5 11-16-208, or covered scheduled loss under § 11-16-209, subject to specific
6 facts and circumstances exclusively applicable to the covered employer and
7 the terms and conditions of the distinct universal workers' compensation
8 insurance policy;

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

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

21
22 Subchapter 5 – Premium and Fund Provisions

23
24 11-16-501. Premium assessment – Payment.

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

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

33 (c) If a covered employee is receiving compensation for covered
34 disability, the universal workers' compensation carrier shall withhold from
35 all compensation for covered disability payable to the covered employee the

1 amount calculated, on a form and in the manner authorized by the State
2 Insurance Department, as follows:

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

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

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

11
12 11-16-502. Universal workers' compensation coverage funds – Universal
13 workers' compensation administrative funds.

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

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

18 (2) A universal workers' compensation administrative fund.

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

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

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

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

35 (A) All compensation;

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

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

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

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

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

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

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

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

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

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

35 (1) The universal workers' compensation carrier shall allocate
36 to the universal workers' compensation administrative fund of a distinct

1 universal workers' compensation insurance policy ten percent (10%) of the
2 total premium for the distinct universal workers' compensation insurance
3 policy, and the universal workers' compensation administrative fund shall be
4 liable for:

5 (A) All administrative fees;

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

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

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

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

18 (2) All liabilities anticipated by subdivision (e)(1) of this
19 section that are directly related to a distinct universal workers'
20 compensation insurance policy shall be paid from the universal workers'
21 compensation administrative fund of that distinct universal workers'
22 compensation insurance policy; and

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

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

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

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

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

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

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

17 (g) If the universal workers' compensation coverage fund and the
18 universal workers' compensation administrative fund of the distinct universal
19 workers' compensation insurance policy are fully depleted, the universal
20 workers' compensation carrier is liable for the coverage obligations under
21 the distinct universal workers' compensation insurance policy until all
22 coverage obligations under the distinct universal workers' compensation
23 insurance policy are fully discharged.

24
25 11-16-503. Final distribution of fund balances.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (1) Determining the administrative fee that would have been paid
19 if the final distribution authorization date were the anniversary date of the
20 distinct universal workers' compensation insurance policy under § 11-16-
21 502(f);

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

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

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

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

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

33
34 11-16-504. Interim distribution of universal workers' compensation
35 coverage fund balances.

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

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

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

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

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

22 (iii) The covered employer is prepared to administer
 23 allocation of the interim distribution to covered employees under § 11-16-
 24 505.

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

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

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

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

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

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

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

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

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

18 (c) Upon distribution of the interim distribution amount under
19 subsection (b) of this section, the universal workers' compensation carrier
20 shall not have the right to file a petition for interim distribution for the
21 same distinct universal workers' compensation insurance policy for a period
22 of twelve (12) months from the date of distribution.

23
24 11-16-505. Allocation of distribution of universal workers'
25 compensation coverage fund balance.

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

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

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

4
5 Subchapter 6 – State Insurance Department Provisions

6
7 11-16-601. Specific limitation of policy periods.

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

11
12 11-16-602. Premium tax assessment – Collection and remittance.

13 The State Insurance Department shall:

14 (1) Assess and collect all premium tax under this chapter; and

15 (2) Remit all premium tax collected under this chapter.

16
17 11-16-603. State Insurance Department – Additional authority.

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

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

22 (c) The department shall:

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

24 (2) Certify an authorized employer;

25 (3) Certify a universal workers' compensation insurance policy;

26 (4) Authorize any interim distribution from or final
27 distribution of any universal workers' compensation coverage fund balances;
28 and

29 (5) Issue a report assessing the financial viability, stability,
30 and security of each distinct universal workers' compensation insurance
31 policy.

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

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

36 (1) The medium of notice or response;

1 (2) The required date of delivery by the person or entity
2 delivering the notice or response; and

3 (3) The required date of receipt by the person, organization, or
4 entity receiving the notice or response.

5
6 11-16-604. Premium tax for the State Insurance Department.

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

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

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

21
22 Subchapter 7 – University of Arkansas for Medical Sciences Provisions

23
24 11-16-701. Creation – Center for Effective Medicine.

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

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

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

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

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

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

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

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

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

7
8 11-16-702. Powers and duties.

9 (a) The Center for Effective Medicine shall:

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

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

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

20
21 11-16-703. Premium tax for the Center for Effective Medicine.

22 A premium tax of one percent (1%) of the total premium shall be
23 assessed and collected by the State Insurance Department for the Center for
24 Effective Medicine and the premium tax revenue collected by the department
25 under this section shall be remitted to the center and allocated pursuant to
26 § 11-16-705.

27
28 11-16-704. Clinical Effectiveness Panel.

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

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

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

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

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

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

7 (A) Medical care deemed effective; or

8 (B) Medical care deemed ineffective.

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

12 (A) Confirmable risk of harm to patients;

13 (B) Confirmable probability of benefit to patients; and

14 (C) Cost of the clinical intervention.

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

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

24 (c) The Clinical Effectiveness Panel shall consist of:

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

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

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

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

34 (3) Selection, appointment, reappointment, removal, and
35 replacement of members of the Clinical Effectiveness Panel shall be approved
36 by the Governor and confirmed by the Senate Committee on Public Health,

1 Welfare, and Labor and according to the bylaws of the Clinical Effectiveness
2 Panel.

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

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

8
9 11-16-705. Center for Effective Medicine – Funding and allocation.

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

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

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

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

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

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

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

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

35 (c) The State of Arkansas shall have no funding obligation of any kind
36 or character regarding the center or the Clinical Effectiveness Panel except

1 assessment, collection, allocation, and remittance of premium tax revenue
2 under § 11-16-703 and this section.

3
4 11-16-706. Clinical Effectiveness Panel – Questions for determination.

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

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

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

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

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

25
26 11-16-707. Clinical Effectiveness Panel – Determination.

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

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

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

35 (3) The medical care has scientific support that is less than
36 compelling, and the medical care does not have clinically meaningful efficacy

1 based upon the frequency and magnitude of clinical efficacy. The medical
2 care is deemed ineffective;

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

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

10
11 Subchapter 8 – Penalties and Lien Priority

12
13 11-16-801. Monetary penalties for employee failure to disclose.

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

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

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

23 (b) A covered employee who fails to disclose as required by
24 subdivision (a)(1) of this section shall be penalized the amount equal to two
25 (2) times the premium underpayment, the difference between the premium paid
26 and the premium that would have been paid if the appropriate total health
27 risk premium had been assessed, from the date of the initial failure to
28 disclose to the date of discovery, and the universal workers' compensation
29 carrier shall apply penalty payments contemplated by this section to the
30 universal workers' compensation coverage funds of each distinct universal
31 workers' compensation insurance policy pro rata.

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

34 (1) Voluntary repayment; and

35 (2) Collection proceedings.

1 11-16-802. Monetary penalties for employer failure to disclose.

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

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

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

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

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

24 (1) Voluntary repayment;

25 (2) Collection proceedings; and

26 (3) Termination of the policy under § 11-16-402.

27
28 Subchapter 9 – Recovery, satisfaction and reimbursement – Supplemental
29 Premium

30
31 11-16-901. Recovery, satisfaction, and reimbursement.

32 (a) As used in this section:

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

1 the universal workers' compensation carrier under a universal workers'
2 compensation insurance policy and a recovery amount;

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

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

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

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

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

23 (2) Maintain a claim or action against a third party for the
24 occurrence if the injury or death is a covered injury or covered death under
25 this chapter:

26 (A) In any court;

27 (B) In any administrative tribunal; or

28 (C) Before any official or group constituted for such
29 purpose; and

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

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

35 (1) Be provided reasonable notice of a claim or action against a
36 third party for an occurrence if the injury or death is a covered injury or

1 covered death under a universal workers' compensation insurance policy issued
2 by the universal workers' compensation carrier;

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

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

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

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

21 (e)(1) When the covered employee initiates a claim or action of any
22 kind or character against the covered employer and the claim or action is for
23 an occurrence where the injury or death is a covered injury or covered death
24 under this chapter and the claim or action is separate and apart from this
25 chapter, the covered employer shall have the right to assert any and all
26 defenses, including affirmative defenses, related to the claim or action.

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

34 (3) Any reimbursement under subdivision (e)(2) of this section
35 shall be under the terms and conditions of the distinct universal workers'

1 compensation insurance policy providing coverage for the covered injury or
2 covered death.

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

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

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

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

24
25 11-16-902. Supplemental premium.

26 (a) As used in this section:

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

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

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

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

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

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

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

7 (b) If a covered employee earns supplemental wages:

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

12 (2) The universal workers' compensation carrier shall:

13 (A) Calculate the total supplemental premium;

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

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

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

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

26 (1) Voluntary payment;

27 (2) Collection proceedings; and

28 (3) A lien against wages.

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

33
34 11-16-903. Failure to report supplemental wages.

35 (a) If a universal workers' compensation carrier discovers that a
36 covered employee has received and failed to timely report any or all

1 supplemental wages to the universal workers' compensation carrier as
2 unreported supplemental wages, then the following rebuttable presumptions
3 shall vest:

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

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

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

14 (b) The universal workers' compensation carrier shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (C) No supplemental wages were received.

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

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

26 (2) The appeal process shall determine whether actual unreported
27 supplemental wages were earned, and if no actual unreported supplemental
28 wages were earned there shall not be a determination of the total
29 supplemental premium.

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

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

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

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

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

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

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

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

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

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

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

23 (A) Voluntary payment;

24 (B) Collection proceedings; and

25 (C) A lien against wages.

26 (g) The universal workers' compensation carrier shall allocate the
27 total supplemental premium to the universal workers' compensation coverage
28 fund of each distinct universal workers' compensation insurance policy
29 period.

30
31 Subchapter 10 – Arkansas State Medical Board Provisions

32
33 11-16-1001. Arkansas State Medical Board.

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

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

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

9
10 11-16-1002. Rules.

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

13
14 11-16-1003. Purpose.

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

17
18 11-16-1004. Confirmation after provision of covered medical care.

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

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

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

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

34 (b) If the medical care practitioner is confirmed as an authorized
35 medical care practitioner by the Arkansas State Medical Board before the
36 expiration of the Arkansas State Medical Board period, the universal workers'

1 compensation claim shall be processed under the terms and conditions of
2 distinct universal workers' compensation insurance policy providing universal
3 workers' compensation coverage for the covered injury.

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

8
9 Subchapter 11 – Statute of Limitations Provisions

10
11 11-16-1101. Statute of limitations – Administrative review.

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

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

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

22
23 SECTION 2. Arkansas Code Title 19, Chapter 5, Subchapter 12, is
24 amended to add an additional section to read as follows:

25 19-5-1264. Center for Effective Medicine Fund.

26 (a) There is established on the books of the Treasurer of State, the
27 Auditor of State, and the Chief Fiscal Officer of the State a fund to be
28 known as the "Center for Effective Medicine Fund".

29 (b) The fund shall consist of those special revenues specified in §
30 11-16-705 and any other funds made available by the General Assembly from
31 time to time.

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

34
35 SECTION 3. Arkansas Code § 25-19-105(b)(7), concerning the exemptions
36 to the Freedom of Information Act of 1967, is amended to read as follows:

1 (7) Unpublished memoranda, working papers, and correspondence of
2 the Governor, members of the General Assembly, Supreme Court Justices, Court
3 of Appeals Judges, the Clinical Effectiveness Panel established under § 11-
4 16-701 et seq., and the Attorney General;

5
6 SECTION 4. DO NOT CODIFY. Rules.

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

9 (b)(1) When adopting the initial rules to implement this act, the
10 final rule shall be filed with the Secretary of State for adoption under §
11 25-15-204(f):

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

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

15 (2) The department shall file the proposed rule with the
16 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
17 2020, so that the Legislative Council may consider the rule for approval
18 before January 1, 2020.

19
20 SECTION 5. Federal approval – Intent.

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

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

27 (c) No additional universal workers' compensation insurance policy
28 shall be issued until the General Assembly grants authority to universal
29 workers' compensation carriers to issue universal workers' compensation
30 insurance policies to an authorized employer.

31
32 SECTION 6. DO NOT CODIFY. Expiration.

33 Unless the State Insurance Department verifies that a universal
34 workers' compensation insurance policy is issued by a universal workers'
35 compensation carrier, after approval by all appropriate federal regulatory
36 authorities for issuance in this state with authority to provide universal

1 workers' compensation coverage as established under this act, this act shall
2 expire on December on December 31, 2025.

3
4 SECTION 7. DO NOT CODIFY. The Clinical Effectiveness Panel shall be
5 initially composed of the following nine (9) members:

6 (1) Herman Ellis, MD MPH;

7 (2) Arthur T. Evans, MD MPH;

8 (3) William E. Golden, MD MACP;

9 (4) Nortin M. Hadler, MD MACP MACR FACOEM, Chair;

10 (5) Nancy M. P. King, JD;

11 (6) Robert B. Leflar, JD MPH;

12 (7) Robert A. McNutt, MD;

13 (8) Marjorie M. Shultz, JD; and

14 (9) John L. Zeller, MD PhD.

15
16 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the
17 General Assembly of the State of Arkansas that there is a need for federal
18 approval; that Section 5 of this act mandates the state seek federal approval
19 to implement; and that Section 5 of this act is immediately necessary because
20 the state needs time to seek federal approval. Therefore, an emergency is
21 declared to exist, and Section 5 of this act being immediately necessary for
22 the preservation of the public peace, health, and safety shall become
23 effective on:

24 (1) The date of its approval by the Governor;

25 (2) If the bill is neither approved nor vetoed by the Governor,
26 the expiration of the period of time during which the Governor may veto the
27 bill; or

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

30
31
32 Referred requested by the Arkansas Senate

33 Prepared by: ANS/VJF

