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# HOUSE BILL No. 1485

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-3.

**Synopsis:** Worker's compensation. Sets limitations on the pecuniary liability for a medical services facility for purposes of the worker's compensation law. Prohibits a medical service facility from collecting payment for medical care. Requires the worker's compensation board to annually approve the most recent Medicare fee schedule, not later than December 31 each year, to determine the pecuniary liability of a medical services facility. Allows a medical services facility to request an explanation from a billing review service if the medical services facility's bill has been reduced as a result of the application of a Medicare coding change. Requires an employer required to carry worker's compensation insurance to pay an annual \$2 filing fee. Makes a technical correction. Removes an outdated reference.

**Effective:** July 1, 2011.

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**Lehman**

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January 20, 2011, read first time and referred to Committee on Employment, Labor and Pensions.

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First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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## HOUSE BILL No. 1485

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 22-3-3-5 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2011]: Sec. 5. The pecuniary liability of the  
3 employer for medical, surgical, hospital, and nurse service herein  
4 required shall be limited to:

- 5 (1) such charges as prevail as provided under ~~IC 22-3-6-1(j)~~;
- 6 **IC 22-3-6-1(k)(1)**, in the same community (as defined in
- 7 IC 22-3-6-1(h)) for a like service or product to injured persons; **or**
- 8 **(2) medical services, treatment, or supplies furnished by a**
- 9 **medical services facility as provided under IC 22-3-6-1(k)(2).**

10 The employee and the employee's estate do not have liability to a health  
11 care provider for payment for services obtained under IC 22-3-3-4. The  
12 right to order payment for all services provided under IC 22-3-2  
13 through IC 22-3-6 is solely with the board. All claims by a health care  
14 provider for payment for services are against the employer and the  
15 employer's insurance carrier, if any, and must be made with the board  
16 under IC 22-3-2 through IC 22-3-6. The worker's compensation board  
17 may withhold the approval of the fees of the attending physician in a



1 case until the attending physician files a report with the worker's  
2 compensation board on the form prescribed by the board.

3 SECTION 2. IC 22-3-3-5.1 IS AMENDED TO READ AS  
4 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5.1. (a) A:

5 (1) medical service provider or a medical service provider's agent,  
6 servant, employee, assignee, employer, or independent contractor  
7 on behalf of the medical service provider; or

8 (2) **medical services facility or a medical services facility**  
9 **provider's agent, servant, employee, assignee, employer, or**  
10 **independent contractor on behalf of the medical services**  
11 **facility provider;**

12 may not knowingly collect or attempt to collect the payment of a charge  
13 for medical services or products covered under IC 22 from an employee  
14 or the employee's estate or family members.

15 (b) If after a hearing, the worker's compensation board finds that a  
16 medical service provider **or a medical services facility** has violated  
17 this section, the worker's compensation board may assess a civil  
18 penalty against the medical service provider in an amount that is at  
19 least one hundred dollars (\$100) but less than one thousand dollars  
20 (\$1,000) for each violation.

21 (c) The worker's compensation board may not assess a civil penalty  
22 against a medical service provider **or a medical services facility** for  
23 a violation of this section that is the result of a good faith error.

24 SECTION 3. IC 22-3-3-5.2 IS AMENDED TO READ AS  
25 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5.2. (a) **The worker's**  
26 **compensation board shall annually approve the most recent**  
27 **Medicare fee schedule, not later than December 31 each year, to**  
28 **determine the pecuniary liability of a medical services facility.**

29 (a) (b) **This subsection does not apply for charges for medical**  
30 **services, treatment, or supplies provided by a medical services**  
31 **facility.** A billing review service shall adhere to the following  
32 requirements to determine the pecuniary liability of an employer or an  
33 employer's insurance carrier for a specific service or product covered  
34 under worker's compensation **provided by a medical service**  
35 **provider:**

36 (1) The formation of a billing review standard, and any  
37 subsequent analysis or revision of the standard, must use data that  
38 is based on the medical service provider billing charges as  
39 submitted to the employer and the employer's insurance carrier  
40 from the same community. This subdivision does not apply when  
41 a unique or specialized service or product does not have sufficient  
42 comparative data to allow for a reasonable comparison.

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- 1 (2) Data used to determine pecuniary liability must be compiled
- 2 on or before June 30 and December 31 of each year.
- 3 (3) Billing review standards must be revised for prospective
- 4 future payments of medical service provider bills to provide for
- 5 payment of the charges at a rate not more than the charges made
- 6 by eighty percent (80%) of the medical service providers during
- 7 the prior six (6) months within the same community. The data
- 8 used to perform the analysis and revision of the billing review
- 9 standards may not be more than two (2) years old and must be
- 10 periodically updated by a representative inflationary or
- 11 deflationary factor. Reimbursement for these charges may not
- 12 exceed the actual charge invoiced by the medical service
- 13 provider.
- 14 (4) The billing review standard shall include the billing charges
- 15 of all hospitals in the applicable community for the service or
- 16 product.

17 **(c) This subsection applies for charges for medical services,**  
 18 **treatment, or supplies provided by a medical services facility. The**  
 19 **pecuniary liability of an employer or an employer's insurance**  
 20 **carrier for a specific service, treatment, or supply covered under**  
 21 **worker's compensation is equal to one hundred fifty percent**  
 22 **(150%) of the amount determined using the Medicare program**  
 23 **reimbursement methodologies, models, and values or weights,**  
 24 **including Medicare's coding, billing, and reporting payment**  
 25 **policies approved by the workers' compensation board and in**  
 26 **effect on the date a service is provided.**

27 ~~(b)~~ **(d)** A medical service provider **or medical services facility** may  
 28 request an explanation from a billing review service if the medical  
 29 service provider's **or medical services facility's** bill has been reduced  
 30 as a result of application of the eightieth percentile or of a Current  
 31 Procedural Terminology (CPT) **or Medicare** coding change. The  
 32 request must be made not later than sixty (60) days after receipt of the  
 33 notice of the reduction. If a request is made, the billing review service  
 34 must provide:

- 35 (1) the name of the billing review service used to make the
- 36 reduction;
- 37 (2) the dollar amount of the reduction;
- 38 (3) the dollar amount of the medical service at the eightieth
- 39 percentile; and
- 40 (4) in the case of a CPT **or Medicare** coding change, the basis
- 41 upon which the change was made;
- 42 not later than thirty (30) days after the date of the request.

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1           ~~(c)~~ (e) If, after a hearing, the worker's compensation board finds that  
 2 a billing review service used a billing review standard that did not  
 3 comply with subsection ~~(a)(1)~~ **(b)(1)** through ~~(a)(4)~~ **(b)(4)** in  
 4 determining the pecuniary liability of an employer or an employer's  
 5 insurance carrier for a health care provider's charge for services or  
 6 products covered under worker's compensation, the worker's  
 7 compensation board may assess a civil penalty against the billing  
 8 review service in an amount not less than one hundred dollars (\$100)  
 9 and not more than one thousand dollars (\$1,000).

10           **(f) Requests for reimbursement for medical services, treatment,**  
 11 **or supplies provided to an employee by a medical services facility**  
 12 **filed within thirty (30) days after the approval of the most recent**  
 13 **Medicare fee schedule by the worker's compensation board as set**  
 14 **forth in subsection (a) that were paid at the previous fee schedule**  
 15 **must be resubmitted by the medical services facility in order to be**  
 16 **recalculated in accordance with the current schedule of**  
 17 **reimbursement.**

18           SECTION 4. IC 22-3-5-2 IS AMENDED TO READ AS FOLLOWS  
 19 [EFFECTIVE JULY 1, 2011]: Sec. 2. An employer required to carry  
 20 insurance under IC 22-3-2-5 and section 1 of this chapter shall file with  
 21 the worker's compensation board, in the form prescribed by it, within  
 22 ten (10) days after the termination of the employer's insurance by  
 23 expiration or cancellation, evidence of the employer's compliance with  
 24 section 1 of this chapter and other provisions relating to the insurance  
 25 under IC 22-3-2 through IC 22-3-6 and shall pay a filing fee in the  
 26 amount of ~~ten dollars (\$10) before July 1, 1992; and five two dollars~~  
 27 ~~(\$5) on and after July 1, 1992 and before July 1, 1995: (\$2).~~ Proof of  
 28 renewal of an existing insurance policy may be filed every three (3)  
 29 years, but the filing fee for the policy shall be paid annually. An  
 30 employer coming under the compensation provisions of IC 22-3-2  
 31 through IC 22-3-6 shall in a like manner file like evidence of  
 32 compliance on the employer's part.

33           SECTION 5. IC 22-3-6-1, AS AMENDED BY P.L.180-2009,  
 34 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 35 JULY 1, 2011]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the  
 36 context otherwise requires:

37           (a) "Employer" includes the state and any political subdivision, any  
 38 municipal corporation within the state, any individual or the legal  
 39 representative of a deceased individual, firm, association, limited  
 40 liability company, or corporation or the receiver or trustee of the same,  
 41 using the services of another for pay. A parent corporation and its  
 42 subsidiaries shall each be considered joint employers of the

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1 corporation's, the parent's, or the subsidiaries' employees for purposes  
 2 of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of  
 3 employees shall each be considered joint employers of the employees  
 4 provided by the lessor to the lessee for purposes of IC 22-3-2-6 and  
 5 IC 22-3-3-31. If the employer is insured, the term includes the  
 6 employer's insurer so far as applicable. However, the inclusion of an  
 7 employer's insurer within this definition does not allow an employer's  
 8 insurer to avoid payment for services rendered to an employee with the  
 9 approval of the employer. The term also includes an employer that  
 10 provides on-the-job training under the federal School to Work  
 11 Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in  
 12 IC 22-3-2-2.5. The term does not include a nonprofit corporation that  
 13 is recognized as tax exempt under Section 501(c)(3) of the Internal  
 14 Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the  
 15 corporation enters into an independent contractor agreement with a  
 16 person for the performance of youth coaching services on a part-time  
 17 basis.

18 (b) "Employee" means every person, including a minor, in the  
 19 service of another, under any contract of hire or apprenticeship, written  
 20 or implied, except one whose employment is both casual and not in the  
 21 usual course of the trade, business, occupation, or profession of the  
 22 employer.

23 (1) An executive officer elected or appointed and empowered in  
 24 accordance with the charter and bylaws of a corporation, other  
 25 than a municipal corporation or governmental subdivision or a  
 26 charitable, religious, educational, or other nonprofit corporation,  
 27 is an employee of the corporation under IC 22-3-2 through  
 28 IC 22-3-6. An officer of a corporation who is the sole officer of  
 29 the corporation is an employee of the corporation under IC 22-3-2  
 30 through IC 22-3-6, but may elect not to be an employee of the  
 31 corporation under IC 22-3-2 through IC 22-3-6. If an officer  
 32 makes this election, the officer must serve written notice of the  
 33 election on the corporation's insurance carrier and the board. An  
 34 officer of a corporation who is the sole officer of the corporation  
 35 may not be considered to be excluded as an employee under  
 36 IC 22-3-2 through IC 22-3-6 until the notice is received by the  
 37 insurance carrier and the board.

38 (2) An executive officer of a municipal corporation or other  
 39 governmental subdivision or of a charitable, religious,  
 40 educational, or other nonprofit corporation may, notwithstanding  
 41 any other provision of IC 22-3-2 through IC 22-3-6, be brought  
 42 within the coverage of its insurance contract by the corporation by

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specifically including the executive officer in the contract of insurance. The election to bring the executive officer within the coverage shall continue for the period the contract of insurance is in effect, and during this period, the executive officers thus brought within the coverage of the insurance contract are employees of the corporation under IC 22-3-2 through IC 22-3-6.

(3) Any reference to an employee who has been injured, when the employee is dead, also includes the employee's legal representatives, dependents, and other persons to whom compensation may be payable.

(4) An owner of a sole proprietorship may elect to include the owner as an employee under IC 22-3-2 through IC 22-3-6 if the owner is actually engaged in the proprietorship business. If the owner makes this election, the owner must serve upon the owner's insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If the owner of a sole proprietorship is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(5) A partner in a partnership may elect to include the partner as an employee under IC 22-3-2 through IC 22-3-6 if the partner is actually engaged in the partnership business. If a partner makes this election, the partner must serve upon the partner's insurance carrier and upon the board written notice of the election. No partner may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(6) Real estate professionals are not employees under IC 22-3-2 through IC 22-3-6 if:

- (A) they are licensed real estate agents;
- (B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and
- (C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(7) A person is an independent contractor in the construction trades and not an employee under IC 22-3-2 through IC 22-3-6 if

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1 the person is an independent contractor under the guidelines of  
2 the United States Internal Revenue Service.

3 (8) An owner-operator that provides a motor vehicle and the  
4 services of a driver under a written contract that is subject to  
5 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 376 to a motor carrier  
6 is not an employee of the motor carrier for purposes of IC 22-3-2  
7 through IC 22-3-6. The owner-operator may elect to be covered  
8 and have the owner-operator's drivers covered under a worker's  
9 compensation insurance policy or authorized self-insurance that  
10 insures the motor carrier if the owner-operator pays the premiums  
11 as requested by the motor carrier. An election by an  
12 owner-operator under this subdivision does not terminate the  
13 independent contractor status of the owner-operator for any  
14 purpose other than the purpose of this subdivision.

15 (9) A member or manager in a limited liability company may elect  
16 to include the member or manager as an employee under  
17 IC 22-3-2 through IC 22-3-6 if the member or manager is actually  
18 engaged in the limited liability company business. If a member or  
19 manager makes this election, the member or manager must serve  
20 upon the member's or manager's insurance carrier and upon the  
21 board written notice of the election. A member or manager may  
22 not be considered an employee under IC 22-3-2 through IC 22-3-6  
23 until the notice has been received.

24 (10) An unpaid participant under the federal School to Work  
25 Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the  
26 extent set forth in IC 22-3-2-2.5.

27 (11) A person who enters into an independent contractor  
28 agreement with a nonprofit corporation that is recognized as tax  
29 exempt under Section 501(c)(3) of the Internal Revenue Code (as  
30 defined in IC 6-3-1-11(a)) to perform youth coaching services on  
31 a part-time basis is not an employee for purposes of IC 22-3-2  
32 through IC 22-3-6.

33 (c) "Minor" means an individual who has not reached seventeen  
34 (17) years of age.

35 (1) Unless otherwise provided in this subsection, a minor  
36 employee shall be considered as being of full age for all purposes  
37 of IC 22-3-2 through IC 22-3-6.

38 (2) If the employee is a minor who, at the time of the accident, is  
39 employed, required, suffered, or permitted to work in violation of  
40 IC 20-33-3-35, the amount of compensation and death benefits,  
41 as provided in IC 22-3-2 through IC 22-3-6, shall be double the  
42 amount which would otherwise be recoverable. The insurance

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1 carrier shall be liable on its policy for one-half (1/2) of the  
 2 compensation or benefits that may be payable on account of the  
 3 injury or death of the minor, and the employer shall be liable for  
 4 the other one-half (1/2) of the compensation or benefits. If the  
 5 employee is a minor who is not less than sixteen (16) years of age  
 6 and who has not reached seventeen (17) years of age and who at  
 7 the time of the accident is employed, suffered, or permitted to  
 8 work at any occupation which is not prohibited by law, this  
 9 subdivision does not apply.

10 (3) A minor employee who, at the time of the accident, is a  
 11 student performing services for an employer as part of an  
 12 approved program under IC 20-37-2-7 shall be considered a  
 13 full-time employee for the purpose of computing compensation  
 14 for permanent impairment under IC 22-3-3-10. The average  
 15 weekly wages for such a student shall be calculated as provided  
 16 in subsection (d)(4).

17 (4) The rights and remedies granted in this subsection to a minor  
 18 under IC 22-3-2 through IC 22-3-6 on account of personal injury  
 19 or death by accident shall exclude all rights and remedies of the  
 20 minor, the minor's parents, or the minor's personal  
 21 representatives, dependents, or next of kin at common law,  
 22 statutory or otherwise, on account of the injury or death. This  
 23 subsection does not apply to minors who have reached seventeen  
 24 (17) years of age.

25 (d) "Average weekly wages" means the earnings of the injured  
 26 employee in the employment in which the employee was working at the  
 27 time of the injury during the period of fifty-two (52) weeks  
 28 immediately preceding the date of injury, divided by fifty-two (52),  
 29 except as follows:

30 (1) If the injured employee lost seven (7) or more calendar days  
 31 during this period, although not in the same week, then the  
 32 earnings for the remainder of the fifty-two (52) weeks shall be  
 33 divided by the number of weeks and parts thereof remaining after  
 34 the time lost has been deducted.

35 (2) Where the employment prior to the injury extended over a  
 36 period of less than fifty-two (52) weeks, the method of dividing  
 37 the earnings during that period by the number of weeks and parts  
 38 thereof during which the employee earned wages shall be  
 39 followed, if results just and fair to both parties will be obtained.  
 40 Where by reason of the shortness of the time during which the  
 41 employee has been in the employment of the employee's employer  
 42 or of the casual nature or terms of the employment it is

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1 impracticable to compute the average weekly wages, as defined  
 2 in this subsection, regard shall be had to the average weekly  
 3 amount which during the fifty-two (52) weeks previous to the  
 4 injury was being earned by a person in the same grade employed  
 5 at the same work by the same employer or, if there is no person so  
 6 employed, by a person in the same grade employed in the same  
 7 class of employment in the same district.

8 (3) Wherever allowances of any character made to an employee  
 9 in lieu of wages are a specified part of the wage contract, they  
 10 shall be deemed a part of the employee's earnings.

11 (4) In computing the average weekly wages to be used in  
 12 calculating an award for permanent impairment under  
 13 IC 22-3-3-10 for a student employee in an approved training  
 14 program under IC 20-37-2-7, the following formula shall be used.  
 15 Calculate the product of:

16 (A) the student employee's hourly wage rate; multiplied by

17 (B) forty (40) hours.

18 The result obtained is the amount of the average weekly wages for  
 19 the student employee.

20 (e) "Injury" and "personal injury" mean only injury by accident  
 21 arising out of and in the course of the employment and do not include  
 22 a disease in any form except as it results from the injury.

23 (f) "Billing review service" refers to a person or an entity that  
 24 reviews a medical service provider's **or a medical services facility's**  
 25 bills or statements for the purpose of determining pecuniary liability.  
 26 The term includes an employer's worker's compensation insurance  
 27 carrier if the insurance carrier performs such a review.

28 (g) "Billing review standard" means the data used by a billing  
 29 review service to determine pecuniary liability.

30 (h) "Community" means a geographic service area based on ZIP  
 31 code districts defined by the United States Postal Service according to  
 32 the following groupings:

33 (1) The geographic service area served by ZIP codes with the first  
 34 three (3) digits 463 and 464.

35 (2) The geographic service area served by ZIP codes with the first  
 36 three (3) digits 465 and 466.

37 (3) The geographic service area served by ZIP codes with the first  
 38 three (3) digits 467 and 468.

39 (4) The geographic service area served by ZIP codes with the first  
 40 three (3) digits 469 and 479.

41 (5) The geographic service area served by ZIP codes with the first  
 42 three (3) digits 460, 461 (except 46107), and 473.

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1 (6) The geographic service area served by the 46107 ZIP code and  
 2 ZIP codes with the first three (3) digits 462.  
 3 (7) The geographic service area served by ZIP codes with the first  
 4 three (3) digits 470, 471, 472, 474, and 478.  
 5 (8) The geographic service area served by ZIP codes with the first  
 6 three (3) digits 475, 476, and 477.  
 7 (i) "Medical service provider" refers to a person or an entity that  
 8 provides medical services, treatment, or supplies to an employee under  
 9 IC 22-3-2 through IC 22-3-6. **The term does not include a medical**  
 10 **services facility.**  
 11 (j) "Medical services facility" means a hospital, clinic, surgery  
 12 center, nursing home, rehabilitation center, or other health care  
 13 facility that provides medical services, treatment, or supplies under  
 14 IC 22-3-2 through IC 22-3-6.  
 15 (j)(k) "Pecuniary liability" means the responsibility of an employer  
 16 or the employer's insurance carrier for the payment of the charges for  
 17 each specific service or product for human medical treatment provided  
 18 under IC 22-3-2 through IC 22-3-6:  
 19 (1) in a defined community, **that are** equal to or less than the  
 20 charges made by medical service providers at the eightieth  
 21 percentile in the same community for like services or products;  
 22 **and**  
 23 (2) **for purposes of coding, billing, reporting, and**  
 24 **reimbursement of medical services, treatment, or supplies, a**  
 25 **medical services facility shall apply the Medicare program**  
 26 **reimbursement methodologies, models, and values or weights,**  
 27 **including Medicare's coding, billing, and reporting payment**  
 28 **policies approved by the workers' compensation board and in**  
 29 **effect on the date a service is provided.**  
 30 SECTION 6. IC 22-3-7-9, AS AMENDED BY P.L.180-2009,  
 31 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 32 JULY 1, 2011]: Sec. 9. (a) As used in this chapter, "employer" includes  
 33 the state and any political subdivision, any municipal corporation  
 34 within the state, any individual or the legal representative of a deceased  
 35 individual, firm, association, limited liability company, or corporation  
 36 or the receiver or trustee of the same, using the services of another for  
 37 pay. A parent corporation and its subsidiaries shall each be considered  
 38 joint employers of the corporation's, the parent's, or the subsidiaries'  
 39 employees for purposes of sections 6 and 33 of this chapter. Both a  
 40 lessor and a lessee of employees shall each be considered joint  
 41 employers of the employees provided by the lessor to the lessee for  
 42 purposes of sections 6 and 33 of this chapter. The term also includes an

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1 employer that provides on-the-job training under the federal School to  
 2 Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth  
 3 under section 2.5 of this chapter. If the employer is insured, the term  
 4 includes the employer's insurer so far as applicable. However, the  
 5 inclusion of an employer's insurer within this definition does not allow  
 6 an employer's insurer to avoid payment for services rendered to an  
 7 employee with the approval of the employer. The term does not include  
 8 a nonprofit corporation that is recognized as tax exempt under Section  
 9 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a))  
 10 to the extent the corporation enters into an independent contractor  
 11 agreement with a person for the performance of youth coaching  
 12 services on a part-time basis.

13 (b) As used in this chapter, "employee" means every person,  
 14 including a minor, in the service of another, under any contract of hire  
 15 or apprenticeship written or implied, except one whose employment is  
 16 both casual and not in the usual course of the trade, business,  
 17 occupation, or profession of the employer. For purposes of this chapter  
 18 the following apply:

19 (1) Any reference to an employee who has suffered disablement,  
 20 when the employee is dead, also includes the employee's legal  
 21 representative, dependents, and other persons to whom  
 22 compensation may be payable.

23 (2) An owner of a sole proprietorship may elect to include the  
 24 owner as an employee under this chapter if the owner is actually  
 25 engaged in the proprietorship business. If the owner makes this  
 26 election, the owner must serve upon the owner's insurance carrier  
 27 and upon the board written notice of the election. No owner of a  
 28 sole proprietorship may be considered an employee under this  
 29 chapter unless the notice has been received. If the owner of a sole  
 30 proprietorship is an independent contractor in the construction  
 31 trades and does not make the election provided under this  
 32 subdivision, the owner must obtain ~~an affidavit~~ **a certificate** of  
 33 exemption under section 34.5 of this chapter.

34 (3) A partner in a partnership may elect to include the partner as  
 35 an employee under this chapter if the partner is actually engaged  
 36 in the partnership business. If a partner makes this election, the  
 37 partner must serve upon the partner's insurance carrier and upon  
 38 the board written notice of the election. No partner may be  
 39 considered an employee under this chapter until the notice has  
 40 been received. If a partner in a partnership is an independent  
 41 contractor in the construction trades and does not make the  
 42 election provided under this subdivision, the partner must obtain

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~~an affidavit~~ a certificate of exemption under section 34.5 of this chapter.

(4) Real estate professionals are not employees under this chapter if:

- (A) they are licensed real estate agents;
- (B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and
- (C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(5) A person is an independent contractor in the construction trades and not an employee under this chapter if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(6) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 376, to a motor carrier is not an employee of the motor carrier for purposes of this chapter. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(7) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth under section 2.5 of this chapter.

(8) A person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis is not an employee for purposes of this chapter.

(9) An officer of a corporation who is the sole officer of the corporation is an employee of the corporation under this chapter. An officer of a corporation who is the sole officer of the corporation may elect not to be an employee of the corporation under this chapter. If an officer makes this election, the officer must serve written notice of the election on the corporation's insurance carrier and the board. An officer of a corporation who is the sole officer of the corporation may not be considered to be

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1 excluded as an employee under this chapter until the notice is  
2 received by the insurance carrier and the board.

3 (c) As used in this chapter, "minor" means an individual who has  
4 not reached seventeen (17) years of age. A minor employee shall be  
5 considered as being of full age for all purposes of this chapter.  
6 However, if the employee is a minor who, at the time of the last  
7 exposure, is employed, required, suffered, or permitted to work in  
8 violation of the child labor laws of this state, the amount of  
9 compensation and death benefits, as provided in this chapter, shall be  
10 double the amount which would otherwise be recoverable. The  
11 insurance carrier shall be liable on its policy for one-half (1/2) of the  
12 compensation or benefits that may be payable on account of the  
13 disability or death of the minor, and the employer shall be wholly liable  
14 for the other one-half (1/2) of the compensation or benefits. If the  
15 employee is a minor who is not less than sixteen (16) years of age and  
16 who has not reached seventeen (17) years of age, and who at the time  
17 of the last exposure is employed, suffered, or permitted to work at any  
18 occupation which is not prohibited by law, the provisions of this  
19 subsection prescribing double the amount otherwise recoverable do not  
20 apply. The rights and remedies granted to a minor under this chapter on  
21 account of disease shall exclude all rights and remedies of the minor,  
22 the minor's parents, the minor's personal representatives, dependents,  
23 or next of kin at common law, statutory or otherwise, on account of any  
24 disease.

25 (d) This chapter does not apply to casual laborers as defined in  
26 subsection (b), nor to farm or agricultural employees, nor to household  
27 employees, nor to railroad employees engaged in train service as  
28 engineers, firemen, conductors, brakemen, flagmen, baggagemen, or  
29 foremen in charge of yard engines and helpers assigned thereto, nor to  
30 their employers with respect to these employees. Also, this chapter  
31 does not apply to employees or their employers with respect to  
32 employments in which the laws of the United States provide for  
33 compensation or liability for injury to the health, disability, or death by  
34 reason of diseases suffered by these employees.

35 (e) As used in this chapter, "disablement" means the event of  
36 becoming disabled from earning full wages at the work in which the  
37 employee was engaged when last exposed to the hazards of the  
38 occupational disease by the employer from whom the employee claims  
39 compensation or equal wages in other suitable employment, and  
40 "disability" means the state of being so incapacitated.

41 (f) For the purposes of this chapter, no compensation shall be  
42 payable for or on account of any occupational diseases unless

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1       disablement, as defined in subsection (e), occurs within two (2) years  
2       after the last day of the last exposure to the hazards of the disease  
3       except for the following:

4           (1) In all cases of occupational diseases caused by the inhalation  
5           of silica dust or coal dust, no compensation shall be payable  
6           unless disablement, as defined in subsection (e), occurs within  
7           three (3) years after the last day of the last exposure to the hazards  
8           of the disease.

9           (2) In all cases of occupational disease caused by the exposure to  
10          radiation, no compensation shall be payable unless disablement,  
11          as defined in subsection (e), occurs within two (2) years from the  
12          date on which the employee had knowledge of the nature of the  
13          employee's occupational disease or, by exercise of reasonable  
14          diligence, should have known of the existence of such disease and  
15          its causal relationship to the employee's employment.

16          (3) In all cases of occupational diseases caused by the inhalation  
17          of asbestos dust, no compensation shall be payable unless  
18          disablement, as defined in subsection (e), occurs within three (3)  
19          years after the last day of the last exposure to the hazards of the  
20          disease if the last day of the last exposure was before July 1, 1985.

21          (4) In all cases of occupational disease caused by the inhalation  
22          of asbestos dust in which the last date of the last exposure occurs  
23          on or after July 1, 1985, and before July 1, 1988, no compensation  
24          shall be payable unless disablement, as defined in subsection (e),  
25          occurs within twenty (20) years after the last day of the last  
26          exposure.

27          (5) In all cases of occupational disease caused by the inhalation  
28          of asbestos dust in which the last date of the last exposure occurs  
29          on or after July 1, 1988, no compensation shall be payable unless  
30          disablement (as defined in subsection (e)) occurs within  
31          thirty-five (35) years after the last day of the last exposure.

32          (g) For the purposes of this chapter, no compensation shall be  
33          payable for or on account of death resulting from any occupational  
34          disease unless death occurs within two (2) years after the date of  
35          disablement. However, this subsection does not bar compensation for  
36          death:

37           (1) where death occurs during the pendency of a claim filed by an  
38           employee within two (2) years after the date of disablement and  
39           which claim has not resulted in a decision or has resulted in a  
40           decision which is in process of review or appeal; or

41           (2) where, by agreement filed or decision rendered, a  
42           compensable period of disability has been fixed and death occurs

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1 within two (2) years after the end of such fixed period, but in no  
 2 event later than three hundred (300) weeks after the date of  
 3 disablement.

4 (h) As used in this chapter, "billing review service" refers to a  
 5 person or an entity that reviews a medical service provider's **or a**  
 6 **medical services facility's** bills or statements for the purpose of  
 7 determining pecuniary liability. The term includes an employer's  
 8 worker's compensation insurance carrier if the insurance carrier  
 9 performs such a review.

10 (i) As used in this chapter, "billing review standard" means the data  
 11 used by a billing review service to determine pecuniary liability.

12 (j) As used in this chapter, "community" means a geographic service  
 13 area based on ZIP code districts defined by the United States Postal  
 14 Service according to the following groupings:

15 (1) The geographic service area served by ZIP codes with the first  
 16 three (3) digits 463 and 464.

17 (2) The geographic service area served by ZIP codes with the first  
 18 three (3) digits 465 and 466.

19 (3) The geographic service area served by ZIP codes with the first  
 20 three (3) digits 467 and 468.

21 (4) The geographic service area served by ZIP codes with the first  
 22 three (3) digits 469 and 479.

23 (5) The geographic service area served by ZIP codes with the first  
 24 three (3) digits 460, 461 (except 46107), and 473.

25 (6) The geographic service area served by the 46107 ZIP code and  
 26 ZIP codes with the first three (3) digits 462.

27 (7) The geographic service area served by ZIP codes with the first  
 28 three (3) digits 470, 471, 472, 474, and 478.

29 (8) The geographic service area served by ZIP codes with the first  
 30 three (3) digits 475, 476, and 477.

31 (k) As used in this chapter, "medical service provider" refers to a  
 32 person or an entity that provides medical services, treatment, or  
 33 supplies to an employee under this chapter. **The term does not include**  
 34 **a medical services facility.**

35 (l) **As used in this chapter, "medical services facility" means a**  
 36 **hospital, clinic, surgery center, nursing home, rehabilitation center,**  
 37 **or other health care facility that provides medical services,**  
 38 **treatment, or supplies under this chapter.**

39 (†) (m) As used in this chapter, "pecuniary liability" means the  
 40 responsibility of an employer or the employer's insurance carrier for the  
 41 payment of the charges for each specific service or product for human  
 42 medical treatment provided under this chapter:

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1 (1) in a defined community, **that are** equal to or less than the  
 2 charges made by medical service providers at the eightieth  
 3 percentile in the same community for like services or products;  
 4 **and**  
 5 **(2) for purposes of coding, billing, reporting, and**  
 6 **reimbursement of medical services, treatment, or supplies, a**  
 7 **medical services facility shall apply the Medicare program**  
 8 **reimbursement methodologies, models, and values or weights,**  
 9 **including Medicare's coding, billing, and reporting payment**  
 10 **policies approved by the workers' compensation board and in**  
 11 **effect on the date a service is provided.**

12 SECTION 7. IC 22-3-7-17.1 IS AMENDED TO READ AS  
 13 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 17.1. (a) A:

14 (1) medical service provider or a medical service provider's agent,  
 15 servant, employee, assignee, employer, or independent contractor  
 16 on behalf of the medical service provider; **or**

17 **(2) medical services facility or a medical services facility's**  
 18 **agent, servant, employee, assignee, employer, or independent**  
 19 **contractor on behalf of the medical services facility;**

20 may not knowingly collect or attempt to collect the payment of a charge  
 21 for medical services or products covered under IC 22 from an employee  
 22 or the employee's estate or family members.

23 (b) If after a hearing, the worker's compensation board finds that a  
 24 medical service provider **or a medical services facility** has violated  
 25 this section, the worker's compensation board may assess a civil  
 26 penalty against the medical service provider **or the medical services**  
 27 **facility** in an amount that is at least one hundred dollars (\$100) but less  
 28 than one thousand dollars (\$1,000) for each violation.

29 (c) The worker's compensation board may not assess a civil penalty  
 30 against a medical service provider **or a medical services facility** for  
 31 a violation of this section that is the result of a good faith error.

32 SECTION 8. IC 22-3-7-17.2 IS AMENDED TO READ AS  
 33 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 17.2. **(a) The worker's**  
 34 **compensation board shall annually approve the most recent**  
 35 **Medicare fee schedule, not later than December 31 each year, to**  
 36 **determine the pecuniary liability of a medical services facility.**

37 ~~(a)~~ **(b) This subsection does not apply for charges for medical**  
 38 **services, treatment, or supplies provided by a medical services**  
 39 **facility.** A billing review service shall adhere to the following  
 40 requirements to determine the pecuniary liability of an employer or an  
 41 employer's insurance carrier for a specific service or product covered  
 42 under this chapter **provided by a medical service provider:**

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1 (1) The formation of a billing review standard, and any  
 2 subsequent analysis or revision of the standard, must use data that  
 3 is based on the medical service provider billing charges as  
 4 submitted to the employer and the employer's insurance carrier  
 5 from the same community. This subdivision does not apply when  
 6 a unique or specialized service or product does not have sufficient  
 7 comparative data to allow for a reasonable comparison.

8 (2) Data used to determine pecuniary liability must be compiled  
 9 on or before June 30 and December 31 of each year.

10 (3) Billing review standards must be revised for prospective  
 11 future payments of medical service provider bills to provide for  
 12 payment of the charges at a rate not more than the charges made  
 13 by eighty percent (80%) of the medical service providers during  
 14 the prior six (6) months within the same community. The data  
 15 used to perform the analysis and revision of the billing review  
 16 standards may not be more than two (2) years old and must be  
 17 periodically updated by a representative inflationary or  
 18 deflationary factor. Reimbursement for these charges may not  
 19 exceed the actual charge invoiced by the medical service  
 20 provider.

21 (4) The billing review standard shall include the billing charges  
 22 of all hospitals in the applicable community for the service or  
 23 product.

24 **(c) This subsection applies for charges for medical services,**  
 25 **treatment, or supplies provided by a medical services facility. The**  
 26 **pecuniary liability of an employer or an employer's insurance**  
 27 **carrier for a specific service, treatment, or supply covered under**  
 28 **worker's compensation is equal to one hundred fifty percent**  
 29 **(150%) of the amount determined using the Medicare program**  
 30 **reimbursement methodologies, models, and values or weights,**  
 31 **including Medicare's coding, billing, and reporting payment**  
 32 **policies approved by the workers' compensation board and in**  
 33 **effect on the date a service is provided.**

34 ~~(b)~~ **(d) A medical service provider or a medical services facility**  
 35 **may request an explanation from a billing review service if the medical**  
 36 **service provider's or the medical services facility's bill has been**  
 37 **reduced as a result of application of the eightieth percentile or of a**  
 38 **Current Procedural Terminology (CPT) or Medicare coding change.**  
 39 **The request must be made not later than sixty (60) days after receipt of**  
 40 **the notice of the reduction. If a request is made, the billing review**  
 41 **service must provide:**

42 (1) the name of the billing review service used to make the

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- 1 reduction;
- 2 (2) the dollar amount of the reduction;
- 3 (3) the dollar amount of the medical service at the eightieth
- 4 percentile; and
- 5 (4) in the case of a CPT **or Medicare** coding change, the basis
- 6 upon which the change was made;
- 7 not later than thirty (30) days after the date of the request.

8 ~~(c)~~ **(e)** If, after a hearing, the worker's compensation board finds that  
 9 a billing review service used a billing review standard that did not  
 10 comply with subsection ~~(a)(1)~~ **(b)(1)** through ~~(a)(4)~~ **(b)(4)** in  
 11 determining the pecuniary liability of an employer or an employer's  
 12 insurance carrier for a health care provider's charge for services or  
 13 products covered under occupational disease compensation, the  
 14 worker's compensation board may assess a civil penalty against the  
 15 billing review service in an amount not less than one hundred dollars  
 16 (\$100) and not more than one thousand dollars (\$1,000).

17 **(f) Requests for reimbursement for medical services, treatment,**  
 18 **or supplies provided to an employee by a medical services facility**  
 19 **filed within thirty (30) days after the approval of the most recent**  
 20 **Medicare fee schedule by the worker's compensation board as set**  
 21 **forth in subsection (a) that were paid at the previous fee schedule**  
 22 **must be resubmitted by the medical services facility in order to be**  
 23 **recalculated in accordance with the current schedule of**  
 24 **reimbursement.**

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