

## SENATE BILL No. 230

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### DIGEST OF INTRODUCED BILL

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

**Synopsis:** Worker's compensation. Specifies the method of determining "pecuniary liability" and defines "percentile" for purposes of worker's compensation reimbursement for health services. Provides for worker's compensation health service reimbursement rate contracting. Specifies that costs incurred by the worker's compensation board in claim dispute resolution are paid by the nonprevailing party.

**Effective:** July 1, 2012.

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**Smith J**

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January 4, 2012, read first time and referred to Committee on Pensions and Labor.

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Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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# SENATE BILL No. 230



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 22-3-3-4.8, IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2012]: **Sec. 4.8. (a) An employer or the employer's insurance**  
4 **carrier, if any, may enter into an agreement with a medical service**  
5 **provider establishing reimbursement amounts for health services**  
6 **provided by the medical service provider.**

7 (b) **If an employer or the employer's insurance carrier does not**  
8 **enter into an agreement with a medical service provider as**  
9 **described in subsection (a), the employer or employer's insurance**  
10 **carrier shall reimburse the medical service provider for a health**  
11 **service in the amount of the employer's or employer's insurance**  
12 **carrier's pecuniary liability for the health service as determined**  
13 **under IC 22-3-6-4.**

14 SECTION 2. IC 22-3-3-5, AS AMENDED BY P.L.168-2011,  
15 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
16 JULY 1, 2012]: **Sec. 5. (a) The pecuniary liability of the employer for**  
17 **medical, surgical, hospital and nurse service herein required ~~shall be~~**



1 limited to such charges as prevail is determined as provided under  
 2 ~~IC 22-3-6-1(j)~~; **IC 22-3-6-4**, in the same community (as defined in  
 3 ~~IC 22-3-6-1(h)~~) for a like service or product to injured persons.

4 (b) The employee and the employee's estate do not have liability to  
 5 a health care provider for payment for services obtained under  
 6 IC 22-3-3-4.

7 (c) The right to order payment for all services provided under  
 8 IC 22-3-2 through IC 22-3-6 is solely with the board.

9 (d) All claims by a health care provider for payment for services are  
 10 against the employer and the employer's insurance carrier, if any, and  
 11 must be made with the board under IC 22-3-2 through IC 22-3-6. After  
 12 June 30, 2011, a health care provider must file an application for  
 13 adjustment of a claim for a health care provider's fee with the board not  
 14 later than two (2) years after the receipt of an initial written  
 15 communication from the employer, the employer's insurance carrier, if  
 16 any, or an agent acting on behalf of the employer after the health care  
 17 provider submits a bill for services. To offset a part of the board's  
 18 expenses related to the administration of health care provider  
 19 reimbursement disputes, a hospital or facility that is a medical service  
 20 provider (as defined in IC 22-3-6-1) shall pay a filing fee of sixty  
 21 dollars (\$60) in a balance billing case. The filing fee must accompany  
 22 each application filed with the board. If an employer, an employer's  
 23 insurance carrier, or an agent acting on behalf of the employer denies  
 24 or fails to pay any amount on a claim submitted by a hospital or facility  
 25 that is a medical service provider, a filing fee is not required to  
 26 accompany an application that is filed for the denied or unpaid claim.  
 27 A health care provider may combine up to ten (10) individual claims  
 28 into one (1) application whenever:

29 (1) all individual claims involve the same employer, insurance  
 30 carrier, or billing review service; and

31 (2) the amount of each individual claim does not exceed two  
 32 hundred dollars (\$200).

33 (e) The worker's compensation board may withhold the approval of  
 34 the fees of the attending physician in a case until the attending  
 35 physician files a report with the worker's compensation board on the  
 36 form prescribed by the board.

37 **(f) All costs incurred by the worker's compensation board in  
 38 resolution of an application for a claim adjustment must be paid by  
 39 the nonprevailing party.**

40 SECTION 3. IC 22-3-3-5.2 IS AMENDED TO READ AS  
 41 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5.2. (a) A billing  
 42 review service shall adhere to the following requirements to determine

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1 the pecuniary liability of an employer or an employer's insurance  
 2 carrier for a specific service or product covered under worker's  
 3 compensation:

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

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

13 (3) Billing review standards must be revised for prospective  
 14 future payments of medical service provider bills to provide for  
 15 payment of the charges at a rate not more than the charges made  
 16 by eighty percent (80%) of the medical service providers as  
 17 **determined under IC 22-3-6-4** during the prior six (6) months  
 18 within the same community. The data used to perform the analysis  
 19 and revision of the billing review standards may not be more than  
 20 two (2) years old and must be periodically updated by a  
 21 representative inflationary or deflationary factor. Reimbursement  
 22 for these charges may not exceed the actual charge invoiced by  
 23 the medical service provider.

24 (4) The billing review standard shall include the billing charges  
 25 of all hospitals in the applicable community for the service or  
 26 product.

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

34 (1) the name of the billing review service used to make the  
 35 reduction;

36 (2) the dollar amount of the reduction;

37 (3) the dollar amount of the medical service at the eightieth  
 38 percentile; and

39 (4) in the case of a CPT coding change, the basis upon which the  
 40 change was made;

41 not later than thirty (30) days after the date of the request.

42 (c) If after a hearing the worker's compensation board finds that a

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

9 SECTION 4. IC 22-3-6-1, AS AMENDED BY P.L.168-2011,  
 10 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 11 JULY 1, 2012]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the  
 12 context otherwise requires:

13 (a) "Employer" includes the state and any political subdivision, any  
 14 municipal corporation within the state, any individual or the legal  
 15 representative of a deceased individual, firm, association, limited  
 16 liability company, or corporation or the receiver or trustee of the same,  
 17 using the services of another for pay. A parent corporation and its  
 18 subsidiaries shall each be considered joint employers of the  
 19 corporation's, the parent's, or the subsidiaries' employees for purposes  
 20 of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of  
 21 employees shall each be considered joint employers of the employees  
 22 provided by the lessor to the lessee for purposes of IC 22-3-2-6 and  
 23 IC 22-3-3-31. If the employer is insured, the term includes the  
 24 employer's insurer so far as applicable. However, the inclusion of an  
 25 employer's insurer within this definition does not allow an employer's  
 26 insurer to avoid payment for services rendered to an employee with the  
 27 approval of the employer. The term also includes an employer that  
 28 provides on-the-job training under the federal School to Work  
 29 Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in  
 30 IC 22-3-2-2.5. The term does not include a nonprofit corporation that  
 31 is recognized as tax exempt under Section 501(c)(3) of the Internal  
 32 Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the  
 33 corporation enters into an independent contractor agreement with a  
 34 person for the performance of youth coaching services on a part-time  
 35 basis.

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

41 (1) An executive officer elected or appointed and empowered in  
 42 accordance with the charter and bylaws of a corporation, other

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1 than a municipal corporation or governmental subdivision or a  
 2 charitable, religious, educational, or other nonprofit corporation,  
 3 is an employee of the corporation under IC 22-3-2 through  
 4 IC 22-3-6. An officer of a corporation who is the sole officer of  
 5 the corporation is an employee of the corporation under IC 22-3-2  
 6 through IC 22-3-6, but may elect not to be an employee of the  
 7 corporation under IC 22-3-2 through IC 22-3-6. If an officer  
 8 makes this election, the officer must serve written notice of the  
 9 election on the corporation's insurance carrier and the board. An  
 10 officer of a corporation who is the sole officer of the corporation  
 11 may not be considered to be excluded as an employee under  
 12 IC 22-3-2 through IC 22-3-6 until the notice is received by the  
 13 insurance carrier and the board.

14 (2) An executive officer of a municipal corporation or other  
 15 governmental subdivision or of a charitable, religious,  
 16 educational, or other nonprofit corporation may, notwithstanding  
 17 any other provision of IC 22-3-2 through IC 22-3-6, be brought  
 18 within the coverage of its insurance contract by the corporation by  
 19 specifically including the executive officer in the contract of  
 20 insurance. The election to bring the executive officer within the  
 21 coverage shall continue for the period the contract of insurance is  
 22 in effect, and during this period, the executive officers thus  
 23 brought within the coverage of the insurance contract are  
 24 employees of the corporation under IC 22-3-2 through IC 22-3-6.

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

29 (4) An owner of a sole proprietorship may elect to include the  
 30 owner as an employee under IC 22-3-2 through IC 22-3-6 if the  
 31 owner is actually engaged in the proprietorship business. If the  
 32 owner makes this election, the owner must serve upon the owner's  
 33 insurance carrier and upon the board written notice of the  
 34 election. No owner of a sole proprietorship may be considered an  
 35 employee under IC 22-3-2 through IC 22-3-6 until the notice has  
 36 been received. If the owner of a sole proprietorship:

37 (A) is an independent contractor in the construction trades and  
 38 does not make the election provided under this subdivision,  
 39 the owner must obtain a certificate of exemption under  
 40 IC 22-3-2-14.5; or

41 (B) is an independent contractor and does not make the  
 42 election provided under this subdivision, the owner may obtain

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- 1 a certificate of exemption under IC 22-3-2-14.5.
- 2 (5) A partner in a partnership may elect to include the partner as
- 3 an employee under IC 22-3-2 through IC 22-3-6 if the partner is
- 4 actually engaged in the partnership business. If a partner makes
- 5 this election, the partner must serve upon the partner's insurance
- 6 carrier and upon the board written notice of the election. No
- 7 partner may be considered an employee under IC 22-3-2 through
- 8 IC 22-3-6 until the notice has been received. If a partner in a
- 9 partnership:
- 10 (A) is an independent contractor in the construction trades and
- 11 does not make the election provided under this subdivision,
- 12 the partner must obtain a certificate of exemption under
- 13 IC 22-3-2-14.5; or
- 14 (B) is an independent contractor and does not make the
- 15 election provided under this subdivision, the partner may
- 16 obtain a certificate of exemption under IC 22-3-2-14.5.
- 17 (6) Real estate professionals are not employees under IC 22-3-2
- 18 through IC 22-3-6 if:
- 19 (A) they are licensed real estate agents;
- 20 (B) substantially all their remuneration is directly related to
- 21 sales volume and not the number of hours worked; and
- 22 (C) they have written agreements with real estate brokers
- 23 stating that they are not to be treated as employees for tax
- 24 purposes.
- 25 (7) A person is an independent contractor in the construction
- 26 trades and not an employee under IC 22-3-2 through IC 22-3-6 if
- 27 the person is an independent contractor under the guidelines of
- 28 the United States Internal Revenue Service.
- 29 (8) An owner-operator that provides a motor vehicle and the
- 30 services of a driver under a written contract that is subject to
- 31 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 376 to a motor carrier
- 32 is not an employee of the motor carrier for purposes of IC 22-3-2
- 33 through IC 22-3-6. The owner-operator may elect to be covered
- 34 and have the owner-operator's drivers covered under a worker's
- 35 compensation insurance policy or authorized self-insurance that
- 36 insures the motor carrier if the owner-operator pays the premiums
- 37 as requested by the motor carrier. An election by an
- 38 owner-operator under this subdivision does not terminate the
- 39 independent contractor status of the owner-operator for any
- 40 purpose other than the purpose of this subdivision.
- 41 (9) A member or manager in a limited liability company may elect
- 42 to include the member or manager as an employee under

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1 IC 22-3-2 through IC 22-3-6 if the member or manager is actually  
2 engaged in the limited liability company business. If a member or  
3 manager makes this election, the member or manager must serve  
4 upon the member's or manager's insurance carrier and upon the  
5 board written notice of the election. A member or manager may  
6 not be considered an employee under IC 22-3-2 through IC 22-3-6  
7 until the notice has been received.

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

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

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

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

22 (2) If the employee is a minor who, at the time of the accident, is  
23 employed, required, suffered, or permitted to work in violation of  
24 IC 20-33-3-35, the amount of compensation and death benefits,  
25 as provided in IC 22-3-2 through IC 22-3-6, shall be double the  
26 amount which would otherwise be recoverable. The insurance  
27 carrier shall be liable on its policy for one-half (1/2) of the  
28 compensation or benefits that may be payable on account of the  
29 injury or death of the minor, and the employer shall be liable for  
30 the other one-half (1/2) of the compensation or benefits. If the  
31 employee is a minor who is not less than sixteen (16) years of age  
32 and who has not reached seventeen (17) years of age and who at  
33 the time of the accident is employed, suffered, or permitted to  
34 work at any occupation which is not prohibited by law, this  
35 subdivision does not apply.

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

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

9 (d) "Average weekly wages" means the earnings of the injured  
 10 employee in the employment in which the employee was working at the  
 11 time of the injury during the period of fifty-two (52) weeks  
 12 immediately preceding the date of injury, divided by fifty-two (52),  
 13 except as follows:

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

19 (2) Where the employment prior to the injury extended over a  
 20 period of less than fifty-two (52) weeks, the method of dividing  
 21 the earnings during that period by the number of weeks and parts  
 22 thereof during which the employee earned wages shall be  
 23 followed, if results just and fair to both parties will be obtained.  
 24 Where by reason of the shortness of the time during which the  
 25 employee has been in the employment of the employee's employer  
 26 or of the casual nature or terms of the employment it is  
 27 impracticable to compute the average weekly wages, as defined  
 28 in this subsection, regard shall be had to the average weekly  
 29 amount which during the fifty-two (52) weeks previous to the  
 30 injury was being earned by a person in the same grade employed  
 31 at the same work by the same employer or, if there is no person so  
 32 employed, by a person in the same grade employed in the same  
 33 class of employment in the same district.

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

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

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

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- 1 (B) forty (40) hours.  
 2 The result obtained is the amount of the average weekly wages for  
 3 the student employee.  
 4 (e) "Injury" and "personal injury" mean only injury by accident  
 5 arising out of and in the course of the employment and do not include  
 6 a disease in any form except as it results from the injury.  
 7 (f) "Billing review service" refers to a person or an entity that  
 8 reviews a medical service provider's bills or statements for the purpose  
 9 of determining pecuniary liability. The term includes an employer's  
 10 worker's compensation insurance carrier if the insurance carrier  
 11 performs such a review.  
 12 (g) "Billing review standard" means the data used by a billing  
 13 review service to determine pecuniary liability.  
 14 (h) "Community" means a geographic service area based on ZIP  
 15 code districts defined by the United States Postal Service according to  
 16 the following groupings:  
 17 (1) The geographic service area served by ZIP codes with the first  
 18 three (3) digits 463 and 464.  
 19 (2) The geographic service area served by ZIP codes with the first  
 20 three (3) digits 465 and 466.  
 21 (3) The geographic service area served by ZIP codes with the first  
 22 three (3) digits 467 and 468.  
 23 (4) The geographic service area served by ZIP codes with the first  
 24 three (3) digits 469 and 479.  
 25 (5) The geographic service area served by ZIP codes with the first  
 26 three (3) digits 460, 461 (except 46107), and 473.  
 27 (6) The geographic service area served by the 46107 ZIP code and  
 28 ZIP codes with the first three (3) digits 462.  
 29 (7) The geographic service area served by ZIP codes with the first  
 30 three (3) digits 470, 471, 472, 474, and 478.  
 31 (8) The geographic service area served by ZIP codes with the first  
 32 three (3) digits 475, 476, and 477.  
 33 (i) "Medical service provider" refers to a person or an entity that  
 34 provides medical services, treatment, or supplies to an employee under  
 35 IC 22-3-2 through IC 22-3-6.  
 36 (j) "Pecuniary liability" means the responsibility of an employer or  
 37 the employer's insurance carrier for the payment of the charges for each  
 38 specific service or product for human medical treatment provided  
 39 under IC 22-3-2 through IC 22-3-6 in a defined community. ~~equal to or~~  
 40 ~~less than the charges made by medical service providers at the eightieth~~  
 41 ~~percentile in the same community for like services or products.~~  
 42 (k) "Percentile" means the value of a variable below which a

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SECTION 5. IC 22-3-6-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 4. (a) The pecuniary liability for a specific service or product under IC 22-3-2 through IC 22-3-6 is determined in STEP THREE of the following:**

**STEP ONE: Determine the charges for the specific service or product charged by all medical service providers in the defined community that provide the specific service or product.**

**STEP TWO: Rank the charges determined under STEP ONE from least to greatest.**

**STEP THREE: Determine the eightieth percentile of the data arrangement determined in STEP TWO.**

**(b) A determination made under this section must be based on data obtained from a data collection organization that is annually certified by the department of insurance created by IC 27-1-1-1.**

**(c) The department of insurance created by IC 27-1-1-1 shall adopt rules under IC 4-22-2 to establish criteria for certification of a data collection organization as described in subsection (b).**

SECTION 6. IC 22-3-7-9, AS AMENDED BY P.L.168-2011, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 9. (a) As used in this chapter, "employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same, using the services of another for pay. A parent corporation and its subsidiaries shall each be considered joint employers of the corporation's, the parent's, or the subsidiaries' employees for purposes of sections 6 and 33 of this chapter. Both a lessor and a lessee of employees shall each be considered joint employers of the employees provided by the lessor to the lessee for purposes of sections 6 and 33 of this chapter. The term also includes an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth under section 2.5 of this chapter. If the employer is insured, the term includes the employer's insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer. The term does not include 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))**

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1 to the extent the corporation enters into an independent contractor  
2 agreement with a person for the performance of youth coaching  
3 services on a part-time basis.

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

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

14 (2) An owner of a sole proprietorship may elect to include the  
15 owner as an employee under this chapter if the owner is actually  
16 engaged in the proprietorship business. If the owner makes this  
17 election, the owner must serve upon the owner's insurance carrier  
18 and upon the board written notice of the election. No owner of a  
19 sole proprietorship may be considered an employee under this  
20 chapter unless the notice has been received. If the owner of a sole  
21 proprietorship:

22 (A) is an independent contractor in the construction trades and  
23 does not make the election provided under this subdivision,  
24 the owner must obtain a certificate of exemption under section  
25 34.5 of this chapter; or

26 (B) is an independent contractor and does not make the  
27 election provided under this subdivision, the owner may obtain  
28 a certificate of exemption under IC 22-3-2-14.5.

29 (3) A partner in a partnership may elect to include the partner as  
30 an employee under this chapter if the partner is actually engaged  
31 in the partnership business. If a partner makes this election, the  
32 partner must serve upon the partner's insurance carrier and upon  
33 the board written notice of the election. No partner may be  
34 considered an employee under this chapter until the notice has  
35 been received. If a partner in a partnership:

36 (A) is an independent contractor in the construction trades and  
37 does not make the election provided under this subdivision,  
38 the partner must obtain a certificate of exemption under  
39 section 34.5 of this chapter; or

40 (B) is an independent contractor and does not make the  
41 election provided under this subdivision, the partner may  
42 obtain a certificate of exemption under IC 22-3-2-14.5.

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- 1 (4) Real estate professionals are not employees under this chapter  
2 if:  
3 (A) they are licensed real estate agents;  
4 (B) substantially all their remuneration is directly related to  
5 sales volume and not the number of hours worked; and  
6 (C) they have written agreements with real estate brokers  
7 stating that they are not to be treated as employees for tax  
8 purposes.
- 9 (5) A person is an independent contractor in the construction  
10 trades and not an employee under this chapter if the person is an  
11 independent contractor under the guidelines of the United States  
12 Internal Revenue Service.
- 13 (6) An owner-operator that provides a motor vehicle and the  
14 services of a driver under a written contract that is subject to  
15 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 376, to a motor  
16 carrier is not an employee of the motor carrier for purposes of this  
17 chapter. The owner-operator may elect to be covered and have the  
18 owner-operator's drivers covered under a worker's compensation  
19 insurance policy or authorized self-insurance that insures the  
20 motor carrier if the owner-operator pays the premiums as  
21 requested by the motor carrier. An election by an owner-operator  
22 under this subdivision does not terminate the independent  
23 contractor status of the owner-operator for any purpose other than  
24 the purpose of this subdivision.
- 25 (7) An unpaid participant under the federal School to Work  
26 Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the  
27 extent set forth under section 2.5 of this chapter.
- 28 (8) A person who enters into an independent contractor agreement  
29 with a nonprofit corporation that is recognized as tax exempt  
30 under Section 501(c)(3) of the Internal Revenue Code (as defined  
31 in IC 6-3-1-11(a)) to perform youth coaching services on a  
32 part-time basis is not an employee for purposes of this chapter.
- 33 (9) An officer of a corporation who is the sole officer of the  
34 corporation is an employee of the corporation under this chapter.  
35 An officer of a corporation who is the sole officer of the  
36 corporation may elect not to be an employee of the corporation  
37 under this chapter. If an officer makes this election, the officer  
38 must serve written notice of the election on the corporation's  
39 insurance carrier and the board. An officer of a corporation who  
40 is the sole officer of the corporation may not be considered to be  
41 excluded as an employee under this chapter until the notice is  
42 received by the insurance carrier and the board.

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

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

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

39 (f) For the purposes of this chapter, no compensation shall be  
40 payable for or on account of any occupational diseases unless  
41 disablement, as defined in subsection (e), occurs within two (2) years  
42 after the last day of the last exposure to the hazards of the disease

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- 1 except for the following:
- 2 (1) In all cases of occupational diseases caused by the inhalation  
3 of silica dust or coal dust, no compensation shall be payable  
4 unless disablement, as defined in subsection (e), occurs within  
5 three (3) years after the last day of the last exposure to the hazards  
6 of the disease.
- 7 (2) In all cases of occupational disease caused by the exposure to  
8 radiation, no compensation shall be payable unless disablement,  
9 as defined in subsection (e), occurs within two (2) years from the  
10 date on which the employee had knowledge of the nature of the  
11 employee's occupational disease or, by exercise of reasonable  
12 diligence, should have known of the existence of such disease and  
13 its causal relationship to the employee's employment.
- 14 (3) In all cases of occupational diseases caused by the inhalation  
15 of asbestos dust, no compensation shall be payable unless  
16 disablement, as defined in subsection (e), occurs within three (3)  
17 years after the last day of the last exposure to the hazards of the  
18 disease if the last day of the last exposure was before July 1, 1985.
- 19 (4) In all cases of occupational disease caused by the inhalation  
20 of asbestos dust in which the last date of the last exposure occurs  
21 on or after July 1, 1985, and before July 1, 1988, no compensation  
22 shall be payable unless disablement, as defined in subsection (e),  
23 occurs within twenty (20) years after the last day of the last  
24 exposure.
- 25 (5) In all cases of occupational disease caused by the inhalation  
26 of asbestos dust in which the last date of the last exposure occurs  
27 on or after July 1, 1988, no compensation shall be payable unless  
28 disablement (as defined in subsection (e)) occurs within  
29 thirty-five (35) years after the last day of the last exposure.
- 30 (g) For the purposes of this chapter, no compensation shall be  
31 payable for or on account of death resulting from any occupational  
32 disease unless death occurs within two (2) years after the date of  
33 disablement. However, this subsection does not bar compensation for  
34 death:
- 35 (1) where death occurs during the pendency of a claim filed by an  
36 employee within two (2) years after the date of disablement and  
37 which claim has not resulted in a decision or has resulted in a  
38 decision which is in process of review or appeal; or
- 39 (2) where, by agreement filed or decision rendered, a  
40 compensable period of disability has been fixed and death occurs  
41 within two (2) years after the end of such fixed period, but in no  
42 event later than three hundred (300) weeks after the date of

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- 1           disablement.
- 2           (h) As used in this chapter, "billing review service" refers to a  
3 person or an entity that reviews a medical service provider's bills or  
4 statements for the purpose of determining pecuniary liability. The term  
5 includes an employer's worker's compensation insurance carrier if the  
6 insurance carrier performs such a review.
- 7           (i) As used in this chapter, "billing review standard" means the data  
8 used by a billing review service to determine pecuniary liability.
- 9           (j) As used in this chapter, "community" means a geographic service  
10 area based on ZIP code districts defined by the United States Postal  
11 Service according to the following groupings:
- 12           (1) The geographic service area served by ZIP codes with the first  
13 three (3) digits 463 and 464.
- 14           (2) The geographic service area served by ZIP codes with the first  
15 three (3) digits 465 and 466.
- 16           (3) The geographic service area served by ZIP codes with the first  
17 three (3) digits 467 and 468.
- 18           (4) The geographic service area served by ZIP codes with the first  
19 three (3) digits 469 and 479.
- 20           (5) The geographic service area served by ZIP codes with the first  
21 three (3) digits 460, 461 (except 46107), and 473.
- 22           (6) The geographic service area served by the 46107 ZIP code and  
23 ZIP codes with the first three (3) digits 462.
- 24           (7) The geographic service area served by ZIP codes with the first  
25 three (3) digits 470, 471, 472, 474, and 478.
- 26           (8) The geographic service area served by ZIP codes with the first  
27 three (3) digits 475, 476, and 477.
- 28           (k) As used in this chapter, "medical service provider" refers to a  
29 person or an entity that provides medical services, treatment, or  
30 supplies to an employee under this chapter.
- 31           (l) As used in this chapter, "pecuniary liability" means the  
32 responsibility of an employer or the employer's insurance carrier for the  
33 payment of the charges for each specific service or product for human  
34 medical treatment provided under this chapter in a defined community.  
35 ~~equal to or less than the charges made by medical service providers at~~  
36 ~~the eightieth percentile in the same community for like services or~~  
37 ~~products.~~
- 38           (m) As used in this chapter, "percentile" means the value of a  
39 **variable below which a certain percent of observations falls.**
- 40           SECTION 7. IC 22-3-7-9.1 IS ADDED TO THE INDIANA CODE  
41 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
42 1, 2012]: **Sec. 9.1. (a) The pecuniary liability for a specific service**

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1 or product under this chapter is determined in STEP THREE of  
2 the following:

3 **STEP ONE: Determine the charges for the specific service or**  
4 **product charged by all medical service providers in the**  
5 **defined community that provide the specific service or**  
6 **product.**

7 **STEP TWO: Rank the charges determined under STEP ONE**  
8 **from least to greatest.**

9 **STEP THREE: Determine the eightieth percentile of the data**  
10 **arrangement determined in STEP TWO.**

11 **(b) A determination made under this section must be based on**  
12 **data obtained from a data collection organization that is annually**  
13 **certified by the department of insurance created by IC 27-1-1-1.**

14 **(c) The department of insurance created by IC 27-1-1-1 shall**  
15 **adopt rules under IC 4-22-2 to establish criteria for certification of**  
16 **a data collection organization as described in subsection (b).**

17 SECTION 8. IC 22-3-7-17, AS AMENDED BY P.L.168-2011,  
18 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
19 JULY 1, 2012]: Sec. 17. (a) During the period of disablement, the  
20 employer shall furnish or cause to be furnished, free of charge to the  
21 employee, an attending physician for the treatment of the employee's  
22 occupational disease, and in addition thereto such surgical, hospital,  
23 and nursing services and supplies as the attending physician or the  
24 worker's compensation board may deem necessary. If the employee is  
25 requested or required by the employer to submit to treatment outside  
26 the county of employment, the employer shall also pay the reasonable  
27 expense of travel, food, and lodging necessary during the travel, but not  
28 to exceed the amount paid at the time of the travel by the state of  
29 Indiana to its employees. If the treatment or travel to or from the place  
30 of treatment causes a loss of working time to the employee, the  
31 employer shall reimburse the employee for the loss of wages using the  
32 basis of the employee's average daily wage.

33 (b) During the period of disablement resulting from the occupational  
34 disease, the employer shall furnish such physician, services, and  
35 supplies, and the worker's compensation board may, on proper  
36 application of either party, require that treatment by such physician and  
37 such services and supplies be furnished by or on behalf of the employer  
38 as the board may deem reasonably necessary. After an employee's  
39 occupational disease has been adjudicated by agreement or award on  
40 the basis of permanent partial impairment and within the statutory  
41 period for review in such case as provided in section 27(i) of this  
42 chapter, the employer may continue to furnish a physician or a surgeon

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1 and other medical services and supplies, and the board may, within  
 2 such statutory period for review as provided in section 27(i) of this  
 3 chapter, on a proper application of either party, require that treatment  
 4 by such physician or surgeon and such services and supplies be  
 5 furnished by and on behalf of the employer as the board may deem  
 6 necessary to limit or reduce the amount and extent of such impairment.  
 7 The refusal of the employee to accept such services and supplies when  
 8 so provided by or on behalf of the employer, shall bar the employee  
 9 from all compensation otherwise payable during the period of such  
 10 refusal and the employee's right to prosecute any proceeding under this  
 11 chapter shall be suspended and abated until such refusal ceases. The  
 12 employee must be served with a notice setting forth the consequences  
 13 of the refusal under this section. The notice must be in a form  
 14 prescribed by the worker's compensation board. No compensation for  
 15 permanent total impairment, permanent partial impairment, permanent  
 16 disfigurement, or death shall be paid or payable for that part or portion  
 17 of such impairment, disfigurement, or death which is the result of the  
 18 failure of such employee to accept such treatment, services, and  
 19 supplies, provided that an employer may at any time permit an  
 20 employee to have treatment for the employee's disease or injury by  
 21 spiritual means or prayer in lieu of such physician, services, and  
 22 supplies.

23 (c) Regardless of when it occurs, where a compensable occupational  
 24 disease results in the amputation of a body part, the enucleation of an  
 25 eye, or the loss of natural teeth, the employer shall furnish an  
 26 appropriate artificial member, braces, and prosthodontics. The cost of  
 27 repairs to or replacements for the artificial members, braces, or  
 28 prosthodontics that result from a compensable occupational disease  
 29 pursuant to a prior award and are required due to either medical  
 30 necessity or normal wear and tear, determined according to the  
 31 employee's individual use, but not abuse, of the artificial member,  
 32 braces, or prosthodontics, shall be paid from the second injury fund  
 33 upon order or award of the worker's compensation board. The  
 34 employee is not required to meet any other requirement for admission  
 35 to the second injury fund.

36 (d) If an emergency or because of the employer's failure to provide  
 37 such attending physician or such surgical, hospital, or nurse's services  
 38 and supplies or such treatment by spiritual means or prayer as specified  
 39 in this section, or for other good reason, a physician other than that  
 40 provided by the employer treats the diseased employee within the  
 41 period of disability, or necessary and proper surgical, hospital, or  
 42 nurse's services and supplies are procured within the period, the

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1 reasonable cost of such services and supplies shall, subject to approval  
2 of the worker's compensation board, be paid by the employer.

3 (e) An employer or employer's insurance carrier may not delay the  
4 provision of emergency medical care whenever emergency medical  
5 care is considered necessary in the professional judgment of the  
6 attending health care facility physician.

7 (f) This section may not be construed to prohibit an agreement  
8 between an employer and employees that has the approval of the board  
9 and that:

10 (1) binds the parties to medical care furnished by providers  
11 selected by agreement before or after disablement; or

12 (2) makes the findings of a provider chosen in this manner  
13 binding upon the parties.

14 **(g) An employer or the employer's insurance carrier, if any,  
15 may enter into an agreement with a medical service provider  
16 establishing reimbursement amounts for services provided by the  
17 medical service provider.**

18 **(h) If an employer or the employer's insurance carrier does not  
19 enter into an agreement with a medical service provider as  
20 described in subsection (g), the employer or employer's insurance  
21 carrier shall reimburse the medical service provider for a service  
22 in the amount of the employer's or employer's insurance carrier's  
23 pecuniary liability for the service determined under IC 22-3-7-9.1.**

24 ~~(g)~~ (i) The employee and the employee's estate do not have liability  
25 to a health care provider for payment for services obtained under this  
26 section. The right to order payment for all services provided under this  
27 chapter is solely with the board. All claims by a health care provider for  
28 payment for services are against the employer and the employer's  
29 insurance carrier, if any, and must be made with the board under this  
30 chapter. After June 30, 2011, a health care provider must file an  
31 application for adjustment of a claim for a health care provider's fee  
32 with the board not later than two (2) years after the receipt of an initial  
33 written communication from the employer, the employer's insurance  
34 carrier, if any, or an agent acting on behalf of the employer after the  
35 health care provider submits a bill for services. To offset a part of the  
36 board's expenses related to the administration of health care provider  
37 reimbursement disputes, a hospital or facility that is a medical service  
38 provider (as defined in IC 22-3-6-1) shall pay a filing fee of sixty  
39 dollars (\$60) in a balance billing case. The filing fee must accompany  
40 each application filed with the board. If an employer, employer's  
41 insurance carrier, or an agent acting on behalf of the employer denies  
42 or fails to pay any amount on a claim submitted by a hospital or facility

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1 that is a medical service provider, a filing fee is not required to  
2 accompany an application that is filed for the denied or unpaid claim.  
3 A health care provider may combine up to ten (10) individual claims  
4 into one (1) application whenever:

- 5 (1) all individual claims involve the same employer, insurance
- 6 carrier, or billing review service; and
- 7 (2) the amount of each individual claim does not exceed two
- 8 hundred dollars (\$200).

9 **(j) All costs incurred by the worker's compensation board in**  
10 **resolution of an application for adjustment of a claim must be paid**  
11 **by the nonprevailing party.**

12 SECTION 9. IC 22-3-7-17.2 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 17.2. (a) A billing  
14 review service shall adhere to the following requirements to determine  
15 the pecuniary liability of an employer or an employer's insurance  
16 carrier for a specific service or product covered under this chapter:

- 17 (1) The formation of a billing review standard, and any
- 18 subsequent analysis or revision of the standard, must use data that
- 19 is based on the medical service provider billing charges as
- 20 submitted to the employer and the employer's insurance carrier
- 21 from the same community. This subdivision does not apply when
- 22 a unique or specialized service or product does not have sufficient
- 23 comparative data to allow for a reasonable comparison.
- 24 (2) Data used to determine pecuniary liability must be compiled
- 25 on or before June 30 and December 31 of each year.
- 26 (3) Billing review standards must be revised for prospective
- 27 future payments of medical service provider bills to provide for
- 28 payment of the charges at a rate not more than the charges made
- 29 by eighty percent (80%) of the medical service providers as
- 30 **determined under IC 22-3-7-9.1** during the prior six (6) months
- 31 within the same community. The data used to perform the analysis
- 32 and revision of the billing review standards may not be more than
- 33 two (2) years old and must be periodically updated by a
- 34 representative inflationary or deflationary factor. Reimbursement
- 35 for these charges may not exceed the actual charge invoiced by
- 36 the medical service provider.
- 37 (4) The billing review standard shall include the billing charges
- 38 of all hospitals in the applicable community for the service or
- 39 product.

40 (b) A medical service provider may request an explanation from a  
41 billing review service if the medical service provider's bill has been  
42 reduced as a result of application of the eightieth percentile or of a

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1 Current Procedural Terminology (CPT) coding change. The request  
2 must be made not later than sixty (60) days after receipt of the notice  
3 of the reduction. If a request is made, the billing review service must  
4 provide:

- 5 (1) the name of the billing review service used to make the  
6 reduction;
- 7 (2) the dollar amount of the reduction;
- 8 (3) the dollar amount of the medical service at the eightieth  
9 percentile; and
- 10 (4) in the case of a CPT coding change, the basis upon which the  
11 change was made;  
12 not later than thirty (30) days after the date of the request.

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

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