

CHAPTER 326

AN ACT concerning the electronic filing of certain workers' compensation reports and the confidentiality of workers' compensation records and revising various parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. R.S.34:15-96 is amended to read as follows:

First report of accident.

34:15-96. First report of accident. Every employer who has made provisions for payment of obligations to an injured employee as required by article 5 of this chapter (R.S.34:15-70 et seq.) shall, upon the happening of any accident or the occurrence of any compensable occupational disease in its establishment, promptly furnish the insurance carrier, or the third party administrator, if applicable, with information necessary to enable it to carry out the intent of this chapter. Within three weeks after learning of an accident, or obtaining knowledge of the occurrence of a compensable occupational disease, every insurance carrier, third party administrator, statutory non-insured employer, including the State, county, municipality or school district, and duly authorized self-insured employer not utilizing a third party administrator shall file a report designated as "first notice of accident" in electronic data interchange media with the Division of Workers' Compensation through the Compensation Rating and Inspection Bureau in a format prescribed by the Compensation Rating and Inspection Bureau with a report sent to the employer. The reports, if filed through interim vendors, shall not be used for any purpose other than formatting and transmitting this information to the Compensation Rating and Inspection Bureau and the Division of Workers' Compensation. For purposes of this section, "interim vendor" means a software supplier, network service provider, programming consultants or an insurance support organization, except that an insurance support organization may disclose the information to prevent the misrepresentation or nondisclosure of information which is material to an insurance claim.

If the employer disagrees with the report, the employer may prepare and sign an amended report and file it with the insurance carrier, or third party administrator, if applicable. Any resultant change shall be filed by the insurance carrier, or third party administrator, if applicable, with the Division of Workers' Compensation through the Compensation Rating and Inspection Bureau as provided for in this section.

The Compensation Rating and Inspection Bureau shall make provisions to insure that information received pursuant to this section shall be readily available to the Division of Workers' Compensation or any person authorized by the Commissioner of Labor pursuant to R.S.34:15-99.

2. R.S.34:15-98 is amended to read as follows:

Final report of accident.

34:15-98. Final report of accident. Not more than 26 weeks after an insurance carrier, third party administrator, self-insured employer or statutory non-insured employer learns that an employee has recovered so as to be able to resume work or has reached maximum medical improvement prior to resumption of work, the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer shall prepare a final report, and take the steps necessary to have it copied to the employee. The report shall be transmitted to the Division of Workers' Compensation through the Compensation Rating and Inspection Bureau in the manner prescribed in R.S.34:15-96. This report shall be fully prepared before presentation to the employee. It shall be unlawful to present any injured employee with a blank report to be later filled out and filed with the Compensation Rating and Inspection Bureau.

If the employee disagrees with the report, the employee may forward written objections directly to the Division of Workers' Compensation with a copy to the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer, if applicable. Any resultant change to the final report shall be filed by the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer with the Division of Workers' Compensation through the Compensation Rating and Inspection Bureau in the manner

prescribed in R.S.34:15-96.

The report shall be retained by the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer for 10 years. Any written objections forwarded by an employee to the Division of Workers' Compensation pursuant to this section shall be retained by the division for 10 years.

The Compensation Rating and Inspection Bureau shall insure that information received pursuant to this section shall be readily available to the Division of Workers' Compensation or any person authorized by the Commissioner of Labor pursuant to R.S.34:15-99.

3. R.S.34:15-99 is amended to read as follows:

Report not public.

34:15-99. Report not public. The reports of accidents filed with, or transmitted or forwarded to, the Division of Workers' Compensation or the Compensation Rating and Inspection Bureau, shall not be made public, and shall not be open to inspection unless, in the opinion of the Commissioner of Labor, some public interest shall so require, and such reports shall not be used as evidence against any employer in any suit or action at law brought by an employee for the recovery of damages.

4. Section 1 of P.L.1966, c.164 (C.34:15-128) is amended to read as follows:

C.34:15-128 Limited right to inspect, copy records.

1. a. Notwithstanding any other provision of the chapter to which this act is a supplement or of any other law, no records maintained by the Division of Workers' Compensation or the Compensation Rating and Inspection Bureau shall be disclosed to any person who seeks disclosure of the records for the purpose of selling or furnishing for a consideration to others information from those records or reports or abstracts of workers' compensation records or work-injury records pertaining to any claimant. No information shall be disclosed from those records to any person not in the division, unless:

(1) The information is provided in a manner which makes it impossible to identify any claimant;

(2) The records are opened for the exclusive purpose of permitting a claimant, employer, insurance carrier or authorized agent of the claimant, employer or insurance carrier to conduct an investigation by or on behalf of the claimant, employer or insurance carrier in connection with any pending workers' compensation case to which the claimant, employer or insurance carrier is a party, and the party seeking access to the records certifies to the division that the information from the records will be used only for purposes directly related to the case;

(3) The records are opened for the exclusive purpose of permitting a third party directly involved in a workers' compensation case, including any workers' compensation lienholders, or an authorized agent of the third party, to conduct an investigation by or on behalf of the third party in connection with the case, and the party seeking access to the records certifies to the division that the information from the records will be used only for purposes directly related to the case;

(4) The records are subpoenaed by the Commissioner of Banking and Insurance pursuant to section 10 of P.L.1983, c.320 (C.17:33A-10) or by a court of competent jurisdiction in a civil or criminal proceeding;

(5) The division provides the information to another governmental agency pursuant to law, for a duly recognized purpose of that agency, which agency shall not subsequently disclose any of the information to any person, organization, entity or governmental agency not entitled to receive the information from the Compensation Rating and Inspection Bureau or the Division of Workers' Compensation pursuant to the workers' compensation law, R.S. 34:15-1 et seq.; or

(6) The information is information about the claimant requested by the claimant, in which case the division shall disclose the information and the claimant shall not be charged fees in excess of the cost of providing copies of the information.

b. Notwithstanding any other provision of law, no information from records maintained by the Compensation Rating and Inspection Bureau pertaining to any work injury or illness or workers' compensation claim shall be disclosed to any business or other member of the public unless the bureau discloses the information in a manner which makes it impossible to identify the claimant.

c. Notwithstanding any other provision of law, no information provided by the division to any other governmental agency pursuant to subsection a. of this section shall be disclosed by the agency to any business or other member of the public unless the information is disclosed to the business or other member of the public in a manner which makes it impossible to identify the claimant.

d. Notwithstanding the restrictions on disclosure set forth under subsections a. through c. of this section, a claimant may authorize the release of records of the claimant to a specific person not otherwise authorized to receive the records, by submitting written authorization for the release to the division specifically directing the division to release workers' compensation records to that person. However, no such authorization directing disclosure of records to a prospective employer shall be valid, nor shall an authorization permitting disclosure of records in connection with assessing fitness or capability for employment be valid, and no disclosure of records shall be made with respect thereto, unless requested pursuant to and consistent with the federal "Americans with Disabilities Act of 1990," 42 U.S.C. s.12101 et seq. and the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.). It shall be unlawful for any person to consider for the purpose of assessing eligibility for a benefit, or as the basis for an employment-related action, an individual's failure to provide authorization under this subsection.

C.34:15-128.1 Short title.

5. Sections 6 through 9 of this act shall be known and may be cited as the "Workers' Compensation Medical Information Confidentiality Act."

C.34:15-128.2 Definitions relative to "Workers' Compensation Medical Information Confidentiality Act."

6. For the purposes of section 1 of P.L.1966, c.164 (C.34:15-128) and sections 6 through 9 of this amendatory and supplementary act:

"Disclose" means to release, transfer, open for inspection, make available for copying or otherwise divulge information to any person other than the individual who is the subject of the information.

"Division" means the Division of Workers' Compensation.

"Medical information" means information, whether oral or recorded in any form or medium, that is created or received by a health care provider regarding an individual which is or may be used in connection with a workers' compensation case, or that is provided to the employer or its workers' compensation insurer or their agents in connection with the case, and relates to an individual's past, present or future physical or mental health or condition, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual.

"Workers' compensation case" or "case" means any case in which an individual seeks workers' compensation benefits, whether or not the individual files a formal claim with the division.

C.34:15-128.3 Disclosure of medical information.

7. a. In any case of an individual seeking workers' compensation from an employer, it shall be unlawful for the employer, the workers' compensation insurance carrier of the employer, a health care provider treating or evaluating the individual in connection with the case, or a third party in the case, or their agents, to disclose any medical information regarding the individual to any person other than a participant in that workers' compensation case, a reinsurer, the health care provider, medical and non-medical experts retained in connection with the case, the division, or the Compensation Rating and Inspection Bureau, except under the following circumstances:

(1) The information is disclosed in a manner that makes it impossible to ascertain the identity of the individual;

(2) The information is collected, used or disclosed to or from an insurance support organization, provided that the information is used only to perform the insurance functions of claims settlement, detection and prevention of fraud, or detection and prevention of a misrepresentation or nondisclosure which is material to an insurance claim;

(3) Records containing the information are subpoenaed by the Commissioner of Banking and Insurance pursuant to section 10 of P.L.1983, c.320 (C.17:33A-10) or by a court of competent jurisdiction in a civil or criminal proceeding; or

(4) The information is disclosed to another employer or insurance carrier of that employer for the sole purpose of determining the credit to be given to the other employer or carrier pursuant to subsection d. of R.S.34:15-12 if the individual seeks compensation from the other employer or insurance carrier.

b. The Commissioner of Banking and Insurance shall have the power to examine and investigate the affairs of every insurance support organization that receives information pursuant to this section in order to determine whether the insurance support organization has been or is engaged in any conduct in violation of sections 6 through 9 of this amendatory and supplementary act.

C.34:15-128.4 Withholding information unlawful; certain circumstances.

8. Except for medical or non-medical evaluations performed for the purposes of evaluating the permanency of an employee's disability requested by the employer or its insurance carrier, in any case of an individual seeking workers' compensation from an employer, it shall be unlawful for the employer, the workers' compensation insurance carrier of the employer, a health care provider treating or evaluating the individual in connection with the case, or a third party in the case, or their agents, to withhold from the individual any medical information they have regarding that individual which is requested by the individual, and if an individual requests the medical information, the individual shall not be charged fees in excess of the cost of providing copies of the information.

C.34:15-128.5 Violations, fine, penalty.

9. Any person who violates any provision of section 7 or 8 of this amendatory and supplementary act shall be subject to a fine of not less than \$100 nor more than \$1,000 or imprisonment for not more than 60 days or both.

Repealer.

10. R.S.34:15-97 is repealed.

11. This act shall take effect on the 180th day following enactment.

Approved January 5, 2002.