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# New Hampshire Statutes

## CHAPTER 281-A: WORKERS' COMPENSATION

- Section 281-A:1 Title.
- Section 281-A:2 Definitions.
- Section 281-A:3 Election by Employer Not Subject to Law.
- Section 281-A:3-a Incarceration of Certain Persons.
- Section 281-A:4 Posting of Notice by Employer.
- Section 281-A:4-a Workers' Compensation Compliance Statement.
- Section 281-A:4-b Work Certificate for Contractors Before Beginning Their Work on Public Projects.
- Section 281-A:5 Securing Payment of Compensation.
- Section 281-A:5-a Self-Insurance for Private Employers.
- Section 281-A:5-b Private Employers; Annual Financial and Actuarial Reports.
- Section 281-A:5-c Jurisdiction Over Private Employer Self-Insured Programs.
- Section 281-A:5-d Regulation of Certain Third Party Administrators Serving Self-Insured Programs.
- Section 281-A:5-e Nonapplication of Chapter to Nonresident Employees; Reciprocity.
- Section 281-A:5-f Application of Chapter to Nonresident Employees and Employers.
- Section 281-A:6 Securing Payment of Compensation for Domestic.
- Section 281-A:7 Liability of Employer Failing to Comply.
- Section 281-A:8 Employees Presumed to Have Accepted.
- Section 281-A:9 Termination Notices.
- Section 281-A:10 Notice of Revocation.
- Section 281-A:11 Self-Insurance for Public Employers.
- Section 281-A:12 Injuries Outside the State.
- Section 281-A:13 Liability of Third Person.
- Section 281-A:14 Employee's Fault.
- Section 281-A:15 Computing Average Weekly Wages; After-Tax Earnings.
- Section 281-A:16 Determining Date of Injury for Occupational Disease and Cumulative Trauma.
- Section 281-A:17 Firefighter and Heart, Lung, or Cancer Disease.
- Section 281-A:18 Contractor's Liability for Subcontractors.
- Section 281-A:18-a Exclusion of Executive Officers and Members of Limited Liability Companies.
- Section 281-A:19 Notice of Injury.
- Section 281-A:20 Contents of Notice.
- Section 281-A:21 Service of Notice.
- Section 281-A:21-a Time Limitations for Filing Claim.
- Section 281-A:21-b Confidentiality of Workers' Compensation Claims.
- Section 281-A:22 Waiting Period.
- Section 281-A:23 Medical, Hospital, and Remedial Care.

- Section 281-A:23-a Managed Care Programs.
- Section 281-A:23-b Alternative Work Opportunities.
- Section 281-A:24 Payment for Reasonable Value of Services.
- Section 281-A:25 Vocational Rehabilitation.
- Section 281-A:25-a Reinstatement of Employee Sustaining Compensable Injuries.
- Section 281-A:26 Compensation for Death.
- Section 281-A:27 Payment for Death After Payment for Disability.
- Section 281-A:28 Compensation for Temporary Total Disability.
- Section 281-A:28-a Compensation for Permanent Total Disability.
- Section 281-A:29 Adjusted Total Disability Benefits.
- Section 281-A:30 Special Fund for Active Cases.
- Section 281-A:31 Compensation for Temporary Partial Disability.
- Section 281-A:31-a Compensation for Permanent Partial Disability.
- Section 281-A:32 Scheduled Permanent Impairment Award.
- Section 281-A:32-a First Responder's Critical Injury Benefit.
- Section 281-A:32-b Commission Established; Membership; Duties.
- Section 281-A:33 Double Compensation.
- Section 281-A:34 Maximum Benefits.
- Section 281-A:35 Voluntary Payments.
- Section 281-A:36 Savings or Insurance; Benefits to Injured Employee From Other Sources.
- Section 281-A:37 Lump Sum Payments.
- Section 281-A:38 Medical Examinations.
- Section 281-A:38-a Examination of Injured Employees Covered by Managed Care Programs.
- Section 281-A:39 Refusal to Submit to Examination.
- Section 281-A:40 Memorandum of Payment.
- Section 281-A:41 Payment Without Prejudice.
- Section 281-A:42 Failure to Make Payment of Compensation.
- Section 281-A:42-a Appeals Board; Composition; Compensation.
- Section 281-A:42-aa Compensation Appeals Advisory Board.
- Section 281-A:42-b Hearing Officers.
- Section 281-A:42-c Position Established for Assisting Unrepresented Injured Employees.
- Section 281-A:42-d Time Limitation for Petition for Hearing.
- Section 281-A:42-e Complaints Regarding Compensation Appeals Board Members.
- Section 281-A:43 Hearings and Awards.
- Section 281-A:44 Award of Fees and Interest.
- Section 281-A:45 Manner of Giving Notice of Hearing.
- Section 281-A:46 Payment Pending Determination of Coverage; Establishing Liability for Benefits.
- Section 281-A:47 Examination by Physician.
- Section 281-A:48 Review of Eligibility for Compensation.
- Section 281-A:49 Witnesses; Blanks.
- Section 281-A:50 Petition for Right to Appeal.

- Section 281-A:51 Preferences of Claims for Compensation.
- Section 281-A:52 Assignments; Exemption From Claims of Creditors; Attorneys' Fees.
- Section 281-A:53 Responsibility of Employer to Provide Vital Information.
- Section 281-A:53-a Responsibility of Employee.
- Section 281-A:54 Payment for Second Injuries From Special Fund.
- Section 281-A:55 Special Fund for Second Injuries.
- Section 281-A:55-a Reimbursement for Payment of Additional Compensation.
- Section 281-A:56 Penalty for False Representation.
- Section 281-A:57 General Penalty.
- Section 281-A:57-a Penalty Collection Powers.
- Section 281-A:58 Administration.
- Section 281-A:59 Administration Fund.
- Section 281-A:60 Rulemaking; Powers of the Commissioner.
- Section 281-A:61 Reports of the Commissioner.
- Section 281-A:62 Advisory Council.
- Section 281-A:63 Claims Adjusters.
- Section 281-A:64 Safety Provisions; Administrative Penalty.
- Section 281-A:64-a Safety Incentive Program; Certification of Loss Management Consultants.
- Section 281-A:64-b Manager of Safety, Training, and Injury Prevention.
- Section 281-A:65 Multi-Media Program and Manual Required.
- Section 281-A:66 Safety Inspections.
- Section 281-A:67 Safety Enhancement Program.
- Section 281-A:68 Certification Required.
- Section 281-A:69 Vocational Rehabilitation Provider Advisory Board; Rulemaking.
- Section 281-A:70 Fees.

**TITLE XXIII  
LABOR**

**CHAPTER 281-A  
WORKERS' COMPENSATION**

**Section 281-A:1**

**281-A:1 Title.** – This chapter shall be known as the "Workers' Compensation Law."

**Source.** 1988, 194:2, eff. July 1, 1989.

**Section 281-A:2**

**281-A:2 Definitions.** – Any word or phrase defined in this section shall have the same meaning throughout RSA 281-A, unless the context clearly requires otherwise:

I. "Call or volunteer firefighter" means a firefighter who is not regularly employed by a fire department of any city, town or precinct in the state but who answers for duty only to fire alarms and who has been appointed by the fire department with which the firefighter serves.

I-a. [Repealed.]

I-b. "Board" means the compensation appeals board established in RSA 281-A:42-a.

I-c. "Blood" means human blood, human blood components, and products made from human blood.

I-d. "Bloodborne disease" means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

I-e. "Critical exposure" means contact of an employee's ruptured or broken skin or mucous membrane with a person's blood or body fluids, other than tears, saliva, or perspiration, of a magnitude that can result in transmission of bloodborne disease.

II. "Commissioner" means the labor commissioner appointed as provided in RSA 273.

III. "Contractor" means a person or organization which contracts with another to have work performed of a kind which is a regular and recurrent part of the work of the trade, business, occupation or profession of such person or organization performing the work.

IV. "Subcontractor" means a person who contracts with a contractor to perform the work described in paragraph III.

IV-a. "Date of maximum medical improvement" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated, based upon reasonable medical probability.

V. "Dependent" means the employee's widow, widower, children, parents, persons in the direct line of ascent or descent, or next of kin, who were wholly or partially dependent, in fact, upon the earnings of the employee for support at the time of the injury. A common law wife or husband of the deceased and posthumous children shall fall within the meaning of this paragraph.

V-a. "Domestic", "domestic employee", or "domestic worker" means a person performing domestic services in a private residence of the employer, where the employer is an individual, family, local college club, or local chapter of a college fraternity or sorority and not an agency or other entity engaged in the business of providing domestic workers to the public and the person is not defined as an independent contractor under RSA 281-A:2, VI(b).

V-b. (a) "Domestic labor" or "domestic services" means the performance of such duties as housekeeping, childcare, gardening, handy person work, and serving as a companion or caregiver for children or others who are not physically or mentally infirm.

(b) "Domestic labor" or "domestic services" shall also include the services rendered by paid roommates or live-in companions who provide fellowship, care, and protection for persons who because of advanced age, or physical or mental infirmity cannot care for their own needs,

regardless of whether the paid roommate or companion is employed by an agency or entity other than the person using such services, but subject to the following limitations:

(1) The services may encompass housekeeping duties provided such services do not exceed 20 percent of the total hours worked; and

(2) The services do not include those relating to the care and protection of the aged and infirm that require and are performed by specially trained personnel such as registered or licensed practical nurses or similarly trained personnel.

VI. (a) "Employee", with respect to private employment, means any person in the service of an employer subject to the provisions of this chapter under any express or implied, oral or written contract of hire except a railroad employee engaged in interstate commerce whose rights are governed by the Federal Employers' Liability Act. If they elect to be personally covered by this chapter, "employee" includes persons who regularly operate businesses or practice their trades, professions, or occupations, whether individually, or in partnership, or association with other persons, whether or not they hire others as employees.

(b)(1) Subject to the preceding subparagraph, any person, other than a direct seller or qualified real estate broker or agent or real estate appraiser, or person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, who performs services for pay for an employer, is presumed to be an employee. This presumption may be rebutted by proof that an individual meets all of the following criteria:

(A) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(B) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer.

(C) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(D) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(E) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations.

(F) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(G) The person is not required to work exclusively for the employer.

(2) For the purposes of this subparagraph, "qualified real estate broker or agent" means a person who is a licensed real estate broker or licensed real estate salesman duly licensed pursuant to RSA 331-A and whose remuneration as such is directly related to sales or other output including performance of services, rather than to the number of hours worked.

(3) For the purposes of this subparagraph, "direct seller" means a person:

(A) Engaged in selling or soliciting the sale of consumer products, services or intangibles to any buyer on a buy-sell basis, deposit-commission basis or any similar basis for resale by the buyer or any other person in the home or other than in a permanent retail establishment; or engaged in selling or soliciting the sale of consumer products, services, or intangibles in the home or otherwise than in a permanent retail establishment; and

(B) Who receives substantially all remuneration as such in a direct relationship to sales or other output including the performance of services, rather than the number of hours worked and whose services are performed pursuant to a written contract with the person for whom the services are performed, which provides that the individual will not be treated as an employee for federal tax purposes. For purposes of this subparagraph a mortgage originator as defined by RSA 397-A:1, XVII who meets the conditions of this subparagraph shall be deemed a direct seller.

(4) For the purposes of this subparagraph, "real estate appraiser" means a person who is a real estate appraiser and whose remuneration as such is by way of a fee and is directly related to services or other work product rather than to the number of hours worked.

(c) A written agreement signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with each of the criteria in subparagraphs (b)(1)(A)-(G) is prima facie evidence that the criteria have been met. Nothing in this subparagraph shall require such an agreement to establish that the criteria have been met.

(d) If the commissioner finds that an employer has misrepresented the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2, 500; in addition, such employer may be assessed a civil penalty of \$100 per employee for each day of noncompliance. The fines [ may be assessed from the first day of the infraction but not to exceed one year. Notwithstanding any provision of law to the contrary, any person with control or responsibility over decisions to disburse funds and salaries and who knowingly violates the provisions of this subparagraph shall be held personally liable for payments of fines. All funds collected under this subparagraph shall be continually appropriated and deposited into a nonlapsing workers' compensation fraud fund dedicated to the investigation and compliance activities required by this section and related sections pertaining to labor and insurance law. The commissioner of labor shall appoint as many individuals as necessary to carry out the department's responsibilities under this section.

VII. (a) "Employee", with respect to public employment, means:

(1) Any person in the service of an employer, as defined in RSA 281-A:2, IX, including members of the general court, under any express or implied voluntary contract of hire and every elected or appointed official or officer of the state or any political subdivision or agency thereof while performing official duties.

(2) Any person who is a call firefighter or special police officer, volunteer or auxiliary member of a fire or police department, ambulance or rescue service, or the state police, whether paid or not paid. For the purposes of this chapter, such a person shall be deemed to be an employee of the political subdivision of the state in which the department is organized.

(3) Any person who is a regularly enrolled volunteer member or trainee of the emergency management corps of this state as established under the state emergency management act. For the purposes of this chapter, such a person shall be deemed to be an employee of the state.

(4) Any person who fights a forest or other type of fire and who is either voluntarily under the direction of those authorized to give direction in the fighting of fires or who is under statutory compulsion to fight fires pursuant to RSA 227-L:11 and 227-L:13, or RSA 154:7, 8, and 9. For the purposes of this chapter, such a person shall be deemed to be an employee of the state with respect to fires fought under the provisions of RSA 227-L and deemed to be an employee of the municipality in which the fire is fought with respect to fires fought under the provisions of RSA 154.

(5) Any person who assists in a search for or an attempted rescue or rescue of another pursuant to RSA 206:26, XII, after January 1, 1982, and who is voluntarily under the direction of those authorized to give direction in searching for or attempting to rescue or rescuing another. A person who assists in the search for or attempted rescue or rescue of another shall, solely for the purposes of this chapter and not otherwise, be deemed to be an employee of the state with respect to such activity. Any payments required to be made as a result of this paragraph shall be a charge against the general fund.

(6) In the absence of any mutual aid agreement or other similar written agreement that specifically addresses the issue of workers' compensation benefits, any person who acts as an agent to the department of health and human services or the department of safety by providing assistance in response to a specific public health or public safety incident. Such person shall be deemed an employee of the state for the purposes of this chapter. In order to be eligible for workers' compensation benefits under this chapter the person shall have been specifically designated in writing as an agent by the commissioner of the department of health and human services or the commissioner of the department of safety, or their respective designees, in accordance with the provisions of RSA 508:17-a. This subparagraph applies only to such designated agents who are not receiving compensation from either the department of health and human services or the department of safety, other than possible reimbursement for expenses actually incurred for such services, such as travel expenses, but who may be receiving



compensation from his or her regular employer or from any other source.

(7) Any member of the New Hampshire national guard while on state active duty.

(8) Any person who is officially designated by the governing body of a political subdivision as a volunteer in a New Hampshire citizen corps local council program that is organized, recruited, trained, supervised, and has been activated by an authorized political subdivision employee or official acting in his or her capacity as the emergency management director of the political subdivision.

(b) "Employee," with respect to public employment shall not include any inmate of a county or state correctional facility who is, under RSA 651, required or allowed to work or perform services for which no significant remuneration is provided, any volunteer not covered under RSA 281-A:2, VII(a)(2) through (8), who performs services for which no significant remuneration is provided, or any participant performing community service work under a court order or the provisions of a court diversion program, or any person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities. "Employee," with respect to public employment, shall include any person participating in a local welfare work program established under RSA 165:31; however, the local governing body may vote to make the provisions of this chapter not applicable to local welfare work program participants through guidelines adopted under RSA 165:1, II.

(c) The provisions of RSA 281-A:2, VI(b)(1) through (4) and (c) shall also apply to this paragraph.

VIII. "Employer," with respect to private employment, means:

(a) A person, partnership, association, corporation, or legal representative of a person, partnership, association or corporation who employs one or more persons whether in one or more trades, businesses, professions or occupations and whether in one or more locations. In determining the number of persons employed, there shall be included persons whose contract of employment was entered into outside the state if such persons are actually employed on work in this state. For the purpose of determining the number of persons employed, executive officers elected or appointed and empowered in accordance with the charter and bylaws of a corporation and limited liability company members and managers designated in accordance with a limited liability company agreement shall not be considered to be employees, except that any executive officers or limited liability company members and managers in excess of 3 shall be counted as employees and except that there shall be no such exclusion in determining employer status for the purposes of RSA 281-A:23-b (alternative work opportunities), RSA 281-A:25-a (reinstatement) and RSA 281-A:64 (safety).

(b) Any other employer who may elect to accept the provisions of this chapter in accordance with RSA 281-A:3.

(c) Except where the context specifically indicates otherwise, the term employer as used in paragraph VIII shall be deemed to include the employer's insurance carrier or any association or

group providing self-insurance to a number of employers.

IX. "Employer", with respect to public employment, means the state, any agency of the state, any county, city, town, school district, sewer district, drainage district, water district, public or quasi-public corporation, or any other political subdivision of any of these that has one or more employees subject to this chapter. Except where the context specifically indicates otherwise, the term employer as used in this paragraph shall be deemed to include the employer's insurance carrier or any association or group providing self-insurance to a number of employers.

X. "Farm" means the operation of farm premises, and includes the planting, cultivating, producing, growing and harvesting of farming commodities thereon; the raising of livestock and poultry thereon; and any work performed as an incident to or in conjunction with such farm operations. It does not include the operations and activities of employers identified as florists, flower shops, and greenhouses.

X-a. "Gainful employment" means employment which reasonably conforms with the employee's age, education, training, temperament and mental and physical capacity to adapt to other forms of labor than that to which the employee was accustomed.

X-b. "Homogeneous" means of a similar kind or nature, or possessing similar qualities and attributes. A group or association of homogeneous employers shall mean employers who have similar trades, businesses, occupations, professions or functions.

XI. "Injury" or "personal injury" as used in and covered by this chapter means accidental injury or death arising out of and in the course of employment, or any occupational disease or resulting death arising out of and in the course of employment, including disability due to radioactive properties or substances or exposure to ionizing radiation. "Injury" or "personal injury" shall not include diseases or death resulting from stress without physical manifestation. "Injury" or "personal injury" shall not include a mental injury if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or any similar action, taken in good faith by an employer. No compensation shall be allowed to an employee for injury proximately caused by the employee's willful intention to injure himself or injure another. Conditions of the aging process, including but not limited to heart and cardiovascular conditions, shall be compensable only if contributed to or aggravated or accelerated by the injury. Notwithstanding any law to the contrary, "injury" or "personal injury" shall not mean accidental injury, disease, or death resulting from participation in athletic/recreational activities, on or off premises, unless the employee reasonably expected, based on the employer's instruction or policy, that such participation was a condition of employment or was required for promotion, increased compensation, or continued employment.

XII. "Insurance carrier" shall include any corporation licensed to sell insurance in this state from which an employer has obtained a workers' compensation insurance policy in accordance with the provisions of this chapter.

XII-a. "Intoxication" means intoxication by alcohol or controlled drug as defined in RSA 318-B:1. This definition shall not include an employee's use of a controlled drug for which a prescription has been issued authorizing such drug to be dispensed to him, when the employee's use of the controlled drug is in accordance with the instructions for use of the controlled drug.

[Paragraph XII-b effective until June 30, 2015; see also paragraph XII-b set out below.]

XII-b. "Health care provider" as used in this chapter includes doctors, chiropractors, rehabilitation providers, health services as defined in RSA 151-C:2, XVIII, health care facilities as defined in RSA 151-C:2, XV-a, and health maintenance organizations as defined in RSA 151-C:2, XVI.

[Paragraph XII-b effective June 30, 2015; see also paragraph XII-b set out above.]

XII-b. "Health care provider" as used in this chapter includes doctors, chiropractors, rehabilitation providers, health services, health care facilities, and health maintenance organizations. For the purposes of this paragraph:

(a) "Health services" means clinically related diagnostic, treatment, or rehabilitative services, as well as preventive services, and includes, without limitation, alcohol, drug abuse, and mental health services.

(b) "Health care facility" means hospitals, ambulatory surgical facilities, specialty hospitals and licensed nursing homes including all services and property owned by such. Health care facilities shall include facilities which are publicly or privately owned or for-profit or not-for-profit, and which are licensed or required to be licensed in whole or in part by the state.

(c) "Health maintenance organization" means a public or private organization, organized under the laws of any state or the federal government which:

(1) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, x-ray, emergency and preventive services, and out-of-area coverage;

(2) Is compensated, except for co-payments, for the provision of the basic health care services listed in subparagraph (c)(1) to enrolled participants on a predetermined periodic basis without regard to the date on which health care services are provided; a predetermined periodic basis shall be fixed without regard to the frequency, extent, or kind of health care service actually provided; and

(3) Provides physician services primarily:

(A) Directly through physicians who are either employees or partners of such organization;

(B) Through arrangements with individual physicians or one or more groups of physicians organized in a group practice or individual basis; or

(C) A combination of (A) and (B), as provided herein.

XIII. "Occupational disease" means an injury arising out of and in the course of the employee's employment and due to causes and conditions characteristic of and peculiar to the particular trade, occupation or employment. It shall not include other diseases or death therefrom unless they are the direct result of an accidental injury arising out of or in the course of employment, nor shall it include either a disease which existed at commencement of the employment or a disease to which the last injurious exposure to its hazards occurred prior to August 31, 1947.

XIV. "Permanent physical or mental impairment", as used in RSA 281-A:54, means any permanent condition that is congenital or due to injury or disease and that is of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining employment if the employee should become unemployed.

XIV-a. "Rehabilitation provider" as used in this chapter includes any person certified as a vocational rehabilitation provider under RSA 281-A:68 or RSA 281-A:69 and who operates for the purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision.

XV. "Wages" means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, fuel or a similar advantage received from the employer and gratuities received in the course of employment from others than the employer; but "wages" shall not include any sum paid by the employer to the employee to cover any special expenses incurred by the employee because of the nature of the employment.

**Source.** 1988, 194:2. 1989, 204:2. 1990, 254:2-7. 1991, 376:2. 1992, 43:3. 1994, 3:25, 26, 1, 267:1, 272:1, 351:1. 1995, 49:1, 2, 205:2, 299:20, 301:1, 2. 1996, 213:1, 231:4. 1997, 163:1, 324:2. 1999, 214:1. 2001, 47:1. 2005, 191:1. 2007, 231:2, 362:6-9. 2008, 95:1, 2, eff. Jan. 1, 2009. 2010, 145:1, eff. June 14, 2010. 2012, 139:5, 6, eff. Aug. 6, 2012; 282:14, eff. June 30, 2015.

### **Section 281-A:3**

**281-A:3 Election by Employer Not Subject to Law.** – Any employer, not subject to the provisions of this chapter, may accept its provisions by purchasing valid workers' compensation insurance applicable to the employment. Such employer shall thereafter be liable to all employees in the same manner as subject employers during the period when such insurance remains in force. During such time, employees of such employer shall be subject to the provisions and limitations of RSA 281-A:8.

**Source.** 1988, 194:2, eff. July 1, 1989.

#### **Section 281-A:3-a**

**281-A:3-a Incarceration of Certain Persons.** – Notwithstanding any provision of law to the contrary, an employee who has become incarcerated pursuant to a conviction shall forfeit any right to workers' compensation indemnity benefits 30 days after incarceration for the remaining period of incarceration.

**Source.** 1997, 225:1, eff. Jan. 1, 1998.

#### **Section 281-A:4**

**281-A:4 Posting of Notice by Employer.** – Every employer subject to this chapter, or who elects to accept its provisions, shall keep posted in a conspicuous place upon the premises a notice that the employer is working under the provisions of RSA 281-A. If any employer fails to post such notice or to keep it posted, such employer shall be guilty of a violation for each day of such failure. This section shall not apply to employers who are subject to this chapter only because they employ domestics.

**Source.** 1988, 194:2, eff. July 1, 1989.

#### **Section 281-A:4-a**

##### **281-A:4-a Workers' Compensation Compliance Statement. –**

I. Within 30 days following a written request from the commissioner, any building or construction industry contractor, subcontractor, or independent contractor engaged in the nonresidential building or construction industry shall deliver to the commissioner a workers' compensation compliance statement. The workers' compensation compliance statement shall state the total number of employees employed during the entire prior policy term where such employee had a policy or a one-year period if no policy was in effect or partially in effect preceding the request and shall state the total number of hours the contractor, subcontractor, and independent contractor compensated such employees during such time period and which hours apply to the appropriate National Council on Compensation Insurance (NCCI) classification code applicable to the scope of work performed. Any contractor, subcontractor, or independent contractor who fails to comply with this section or who falsifies information on the statement may be fined up to \$1,000 for each week of noncompliance beginning on the date of such failure or falsification. The commissioner shall be entitled to all costs and fees directly associated with obtaining any information not properly made available under this section. All moneys collected as a fine under this section shall be forwarded to the state treasurer and deposited into the department of labor restricted fund established in RSA 273:1-b. The commissioner shall make available a form as may be needed to comply with this section.

II. Any person may request that the commissioner provide such person with a copy of a contractor's, subcontractor's, or independent contractor's workers' compensation compliance statement. The commissioner shall obtain and provide the requested compliance statement if the requesting person submits evidence beyond bid proposals to the commissioner of a contractor's, subcontractor's, or independent contractor's noncompliance with RSA 281-A even if the contractor, subcontractor, or independent contractor appears to be in compliance at the time of the request. The statement shall be maintained as a public record in accordance with RSA 91-A. No contractor, subcontractor, or independent contractor, however, shall be required to deliver to the commissioner a requested workers' compensation compliance statement more than twice in one calendar year.

**Source.** 1997, 324:1. 2007, 237:1, eff. Jan. 1, 2008. 2011, 224:53, eff. July 1, 2011.

#### **Section 281-A:4-b**

##### **281-A:4-b Work Certificate for Contractors Before Beginning Their Work on Public Projects.**

– The commissioner of labor shall provide a work certificate form to meet the requirements of the departments of transportation and administrative services, in accordance with RSA 228:4-b or RSA 21-I:80, VI, for contractors, subcontractors, and independent contractors to certify their compliance with RSA 281-A.

**Source.** 2007, 323:4, eff. Sept. 14, 2007.

#### **Section 281-A:5**

**281-A:5 Securing Payment of Compensation.** – An employer, or group or association of homogeneous employers, subject to this chapter shall secure compensation to employees in one of the following ways:

I. By insuring and keeping insured the payment of such compensation with a company licensed to write workers' compensation insurance in this state and filing with the commissioner, in a form prescribed by the commissioner, evidence of such coverage as the commissioner deems appropriate.

II. By insuring and keeping insured the payment of compensation to domestic employees with a company providing workers' compensation insurance in accordance with RSA 281-A:6.

III. By furnishing to the commissioner satisfactory proof of financial ability to pay compensation directly to an employee when due in the amounts and manner as provided in this chapter.

IV. In the case of employees of the state, compensation shall be made as provided in RSA 21-I:24 and RSA 21-I:25-a.

**Source.** 1988, 194:2. 1992, 43:4. 1994, 158:23, eff. May 23, 1994.

### **Section 281-A:5-a**

**281-A:5-a Self-Insurance for Private Employers.** – Any private employer as defined in RSA 281-A:2, VIII, or any group or association of homogeneous employers may, subject to RSA 281-A:5, III, and any rules adopted to enforce such section, self-insure for workers' compensation coverage provided that such employer or group or association of homogeneous employers shall:

- I. Establish and maintain appropriate loss reserves determined in accordance with sound actuarial principles.
- II. Maintain specific excess insurance.
- III. Make all contracts with administrators or service companies available for inspection by the commissioner upon reasonable notice.

**Source.** 1992, 43:5, eff. June 8, 1992.

### **Section 281-A:5-b**

#### **281-A:5-b Private Employers; Annual Financial and Actuarial Reports.** –

I. Every private employer as defined in RSA 281-A:2, VIII, or group or association of homogeneous employers self-insuring for workers' compensation coverage under RSA 281-A:5 and 281-A:5-a, shall annually, within 6 months of the end of the fiscal year or within such extension of time as the commissioner for good cause may grant, file a report with the commissioner, verified by the oath of a member of the board of trustees or by an administrative executive appointed by the board, showing its condition on the last day of the preceding fiscal year. The report shall contain a financial statement of the self-insured program, including its balance sheet and a statement of operations for the preceding year audited by an independent certified public accountant.

II. Every private employer as defined in RSA 281-A:2, VIII, or group or association of homogeneous employers self-insuring for workers' compensation coverage under RSA 281-A:5 and 281-A:5-a, shall annually, within 6 months of the end of the fiscal year or within such extension of time as the commissioner for good cause may grant, file with the commissioner a report prepared by an actuary who is a member of the Casualty Actuarial Society or the American Academy of Actuaries as to the actuarial soundness of the program. The report shall consist of, but shall not be limited to, the following:

(a) Adequacy of contribution rates in meeting the level of benefits required and changes, if any, needed in the contribution rates to achieve or preserve a level of funding deemed adequate to enable payment of the benefit amounts required, by each such employer or group or association of homogeneous employers.

(b) A determination of appropriate loss reserves.

(c) A description and explanation of actuarial assumptions.

(d) A statement by the actuary that the report is complete and accurate and that in his

opinion the techniques and assumptions used are reasonable and meet the requirements and intent of this section.

(e) Other factors or statements as may be reasonably required by the commissioner in order to determine the actuarial soundness of the plan.

**Source.** 1992, 43:5, eff. June 8, 1992.

#### **Section 281-A:5-c**

##### **281-A:5-c Jurisdiction Over Private Employer Self-Insured Programs. –**

I. Any private employer, or group or association of homogeneous employers self-insuring for workers' compensation coverage under RSA 281-A:5 and 281-A:5-a, is not an insurance company, reciprocal insurer or other insurer under the laws of this state, and administration of any activity securing compensation to employees thereunder shall not constitute doing an insurance business for any purposes under title XXXVII.

II. The department of labor shall have exclusive jurisdiction over any private employer or group or association of homogeneous employers self-insuring for workers' compensation coverage under RSA 281-A:5 and 281-A:5-a.

**Source.** 1992, 43:5, eff. June 8, 1992.

#### **Section 281-A:5-d**

##### **281-A:5-d Regulation of Certain Third Party Administrators Serving Self-Insured Programs. –**

I. For purposes of this section, "third party administrator" means any person contracting with an employer or group of employers authorized to self-insure in accordance with RSA 281-A:5-a and 281-A:11, to provide a combination of such services as solicitation of coverage, underwriting, collection of charges or premiums, and adjustment or settlement of claims, so as to confer upon such person effective responsibility for management and operation of the self-insurance program.

II. The commissioner shall have exclusive jurisdiction to regulate third party administrators, as defined in this section, to assure that such persons possess capability and financial qualifications sufficient to manage performance of the responsibilities imposed by this chapter upon self-insured employers or groups.

III. Any client company which knowingly does business with an unlicensed third party administrator may, after written notification, be fined up to \$1,000 per day for each day the violation continues. Any funds collected under this section shall be deposited in the department of labor restricted fund established in RSA 273:1-b.

**Source.** 1995, 161:1. 1996, 231:3. 1997, 343:1, eff. Jan. 1, 1998. 2011, 224:56, eff. July 1, 2011.



#### **Section 281-A:5-e**

**281-A:5-e Nonapplication of Chapter to Nonresident Employees; Reciprocity.** – [Repealed 2006, 122:2, eff. July 14, 2006.]

#### **Section 281-A:5-f**

**281-A:5-f Application of Chapter to Nonresident Employees and Employers.** – Notwithstanding any provision of law to the contrary, the provisions of this chapter shall apply to nonresident employees and employers doing business in New Hampshire.

**Source.** 2006, 122:1, eff. July 14, 2006.

#### **Section 281-A:6**

**281-A:6 Securing Payment of Compensation for Domestics.** – Notwithstanding any other provision of this chapter, of title XXXVII, or of any other law to the contrary, all insurance companies authorized to provide comprehensive personal liability, tenant's or homeowner's insurance in this state shall, in connection with such insurance, provide workers' compensation insurance covering domestics unless the employer has a separate policy of workers' compensation insurance covering domestics. Such insurance companies shall not be subject to RSA 281-A:9 or to the financial or other requirements with respect to workers' compensation insurance in addition to those requirements for writing comprehensive personal liability, tenant's or homeowner's insurance. Premium rates and policy forms or endorsements used by a company to provide workers' compensation insurance in accordance with the provisions of this section shall be subject to the approval of the insurance commissioner.

**Source.** 1988, 194:2, eff. July 1, 1989.

#### **Section 281-A:7**

##### **281-A:7 Liability of Employer Failing to Comply.** –

I. (a)(1) An employer subject to this chapter who fails to comply with the provisions of RSA 281-A:5 by not securing payment of compensation may be assessed a civil penalty of up to \$2,500; in addition, such an employer may be assessed a civil penalty of up to \$100 per employee for each day of noncompliance. The penalties shall be assessed from the first day of the infraction not to exceed one year. Notwithstanding any provision of law to the contrary, any person with control or responsibility over decisions to disburse funds and salaries and who knowingly failed to secure payment of workers' compensation under this chapter shall be held personally liable for the payment of penalties under this chapter.

(2) All funds collected under subparagraph I(a)(1) shall be deposited into the department of labor restricted fund established in RSA 273:1-b.

(b) An insurance carrier which insures an employer and fails to file with the commissioner a

notice of coverage within a reasonable period of time as prescribed by rule shall be assessed a civil penalty of up to \$50 for each day of noncompliance. The commissioner shall deposit all moneys collected under this subparagraph with the state treasurer for deposit into the general fund.

II. In addition to the assessment of civil penalties, the commissioner may also proceed in the superior court to restrain and prohibit an employer subject to this chapter from conducting business in this state for so long as the employer fails to comply with the provisions of RSA 281-A:5 or any other provision of this chapter or for failure to comply with orders issued by the department under this chapter. If the commissioner seeks a temporary injunction pending a hearing on the merits, the superior court shall issue such an injunction *ex parte* upon *prima facie* evidence offered in support of the petition.

III. An employee of an employer failing without sufficient cause as determined by the commissioner to comply with the provisions of RSA 281-A:5, or dependents of such employee if death ensues, may file an application with the commissioner for compensation in accordance with the terms of this chapter. The commissioner shall hear and determine such application for compensation in like manner as other claims. The employer shall pay the compensation so determined to the person entitled to it no later than 10 days, excluding Sundays and holidays, after receiving notice of the amount of compensation as fixed and determined by the commissioner. The commissioner shall file an abstract of the award in the office of the clerk of the superior court in any county in the state. The clerk of that court shall docket such abstract in the judgment docket of that court, and such abstract shall be a lien upon the property of the employer situated in the county for a period of 8 years from the date of the award. The commissioner shall instruct the sheriff of the county to levy execution as soon as possible thereafter, but no later than 8 years, in the same manner and with like effect as if the award were a judgment of the superior court.

IV. As an alternative to the procedure afforded in paragraph III, an employee of an employer failing to comply with the provisions of RSA 281-A:5, or dependents of that employee if death ensues, may pursue any available remedy at law, free of the waivers and immunities conferred by RSA 281-A:8.

V. Any agency or political subdivision of the state, before awarding any contract involving labor to a person who is an employer subject to this chapter, shall require that person to supply satisfactory proof that he or she has secured payment of compensation in accordance with the provisions of RSA 281-A:5 in connection with activities which the person proposes to undertake pursuant to the contract.

VI. Any employer, individual, or corporate officer required to secure payment of compensation under this chapter who purposely, as defined in RSA 626:2, II(a), fails to secure such payment shall be guilty of a class B felony.

**Source.** 1988, 194:2. 1990, 254:8, 9. 1996, 51:3. 2007, 296:1, 5. 2008, 378:2, eff. Jan. 1, 2009. 2011, 224:53, eff. July 1, 2011.

### **Section 281-A:8**

#### **281-A:8 Employees Presumed to Have Accepted. –**

I. An employee of an employer subject to this chapter shall be conclusively presumed to have accepted the provisions of this chapter and, on behalf of the employee or the employee's personal or legal representatives, to have waived all rights of action whether at common law or by statute or provided under the laws of any other state or otherwise:

(a) Against the employer or the employer's insurance carrier or an association or group providing self-insurance to a number of employers; and

(b) Except for intentional torts, against any officer, director, agent, servant or employee acting on behalf of the employer or the employer's insurance carrier or an association or group providing self-insurance to a number of employers.

II. The spouse of an employee entitled to benefits under this chapter, or any other person who might otherwise be entitled to recover damages on account of the employee's personal injury or death, shall have no direct action, either at common law or by statute or otherwise, to recover for such damages against any person identified in subparagraph I(a) or (b).

III. Nothing in this chapter shall derogate from any rights a former employee may have under common law or other statute to recover damages for wrongful termination of, or constructive discharge from, employment. However, if a former employee makes a claim under this chapter for compensation for injuries allegedly caused by such wrongful termination or constructive discharge, the employee shall be deemed to have elected the remedies of this chapter, and to have waived rights to recover damages for such wrongful termination or constructive discharge under common law or other statute. Similarly, if a former employee brings an action under common law or other statute to recover damages for such wrongful termination or constructive discharge, the employee shall be deemed to have waived claims under this chapter for compensation allegedly caused by such termination or discharge.

**Source.** 1988, 194:2. 1991, 376:3. 1993, 24:1. 2001, 47:2, eff. Aug. 10, 2001.

### **Section 281-A:9**

**281-A:9 Termination Notices. –** In all instances in which an insurance carrier is to cease providing workers' compensation insurance to an employer, whether by reason of cancellation or otherwise, such insurance carrier shall file a written termination notice with the commissioner and shall send a copy of the notice to the employer. Terminations shall take effect no sooner than the earliest of the following:

I. In case of termination for nonpayment of premium, 30 days after the date the termination notice is filed.

II. In case of termination for reasons other than nonpayment of premium, 45 days after the date the termination notice is filed.

III. In any case, the date on which the employer has obtained new coverage from another insurance carrier or on which the employer has qualified as a self-insurer under RSA 281-A:5, III.

**Source.** 1988, 194:2, eff. July 1, 1989.

#### **Section 281-A:10**

**281-A:10 Notice of Revocation.** – Revocation of coverage under RSA 281-A:3 by termination of workers' compensation insurance shall be effective 30 days after the filing of a termination notice with the commissioner.

**Source.** 1988, 194:2, eff. July 1, 1989.

#### **Section 281-A:11**

**281-A:11 Self-Insurance for Public Employers.** – Any public employer as defined in RSA 281-A:2, IX may, subject to RSA 281-A:5, III and the rules adopted to enforce that section, self-insure for workers' compensation coverage as follows:

I. If a public employer chooses to self-insure for workers' compensation coverage, the legislative body of that employer shall appropriate sufficient funds to implement a self-insurance program including, but not limited to, legal costs, benefits, and administrative costs.

II. The amount of appropriated funds shall be based on an actuarial determination of the amounts needed for self-insurance purposes. Any appropriated funds that are not encumbered under this section at the end of the fiscal year may be transferred to the general fund of the public employer.

III. Each year, as actuarially determined, the legislative body shall appropriate sufficient funds to create a financial reserve until all outstanding claims are disposed of. If additional funds are needed to increase the loss fund in any given year, the legislative body shall appropriate such funds as are necessary.

IV. Any income from investment of the loss fund may be returned annually to the general fund of the public employer or may be applied to the ensuing year's appropriation to the loss fund.

V. A public employer may also purchase from an insurance carrier such levels of insurance as it deems appropriate to provide coverage in excess of the amount in the loss fund.

VI. Any public employer self-insuring for workers' compensation coverage under this chapter is not an insurance company, reciprocal insurer or other insurer under the laws of this state, and administration of any activity of securing compensation to employees thereunder shall not constitute doing an insurance business for any purposes under title XXXVII.

VII. The department of labor shall have exclusive jurisdiction over any public employer or

group or association of public employers self-insuring for workers' compensation coverage under this chapter or RSA 5-B.

**Source.** 1988, 194:2. 1992, 43:6, eff. June 8, 1992.

#### **Section 281-A:12**

##### **281-A:12 Injuries Outside the State. –**

I. If an employee is injured while employed elsewhere than in this state, and is injured under circumstances that would have entitled the employee or a dependent to workers' compensation under this chapter had such employee been injured in this state, then such employee or dependents of such employee shall be entitled to workers' compensation as provided in this chapter:

(a) If the employee or the employee's dependents release the employer from all liability under any other law;

(b) If the employer is engaged in business in this state;

(c) If the contract of employment was made in this state; and

(d) If the contract of employment was not expressly for service exclusively outside of this state.

II. However, recovery of damages in an action at law or recovery of workers' compensation under the law of any other state shall bar recovery of workers' compensation under the law of this state.

**Source.** 1988, 194:2, eff. July 1, 1989.

#### **Section 281-A:13**

##### **281-A:13 Liability of Third Person. –**

I. (a) An injured employee, in addition to the benefits of this chapter, may obtain damages or benefits from or proceed at law or otherwise against another person to recover damages or benefits if:

(1) An injury for which compensation is payable under the provisions of this chapter has been sustained; and

(2) The circumstances of the injury create in another person a legal liability to pay damages in respect thereto, or a contractual obligation to pay benefits under the uninsured motorist provision of any motor vehicle insurance policy; and

(3) The action has not been barred under RSA 281-A:8.

(b) The employer, or the employer's insurance carrier, shall have a lien on the amount of damages or benefits recovered by the employee, less the expenses and costs of action, to the extent of the compensation, medical, hospital, or other remedial care already paid or agreed or awarded to be paid by the employer, or the employer's insurance carrier, under this chapter,

less the employer's or the employer's insurance carrier's pro rata share of expenses and costs of action as determined in paragraph IV.

II. (a) The administrator of an employee's estate may, in addition to damages or benefits obtained under this section payable to the employee's dependents, obtain damages or benefits from or proceed at law or otherwise against another person to recover damages or benefits if:

(1) The death of the employee has resulted under circumstances creating in another person a legal liability to pay damages in respect thereto, or a contractual obligation to pay benefits under the uninsured motorist provisions of any motor vehicle insurance policy;

(2) The action has not been barred under RSA 281-A:8; and

(3) Damages or benefits obtained under this section shall be in addition to the benefits of this chapter payable to the employee's dependents.

(b) The employer, or the employer's insurance carrier, shall have a lien on the amount of damages or benefits recovered which remain after deduction of such of the expenses itemized in RSA 556:14 as are not paid by the employer or the employer's insurance carrier, and after deduction of the distributive share of any person to whom nothing is payable under RSA 281-A:26, to the extent of the compensation, medical, hospital, or other remedial care and funeral expenses already paid or agreed or awarded to be paid by the employer, or the employer's insurance carrier, under this chapter.

III. (a) No settlement by an employee or, in case of death, by the administrator of the employee's estate, of the employee's or said administrator's claim for damages or benefits at law or otherwise against such third person shall be binding until approved by the commissioner or, if an action has been brought, by the court or arbitration proceeding in which such action is pending or to which the writ is returnable. The commissioner or the court or the arbitrator, as the case may be, shall make provisions for payment to the employer or the employer's insurance carrier of the amount of the lien after expenses and costs of action have been paid.

(b)(1) In any case in which the employee or, in case of death, the administrator of the employee's estate neglects to exercise the employee's right of action by failing to proceed at law or otherwise against such third person for a period of 9 months after the injury, the employer or the employer's insurance carrier may so proceed and shall be subrogated to the rights of the injured employee or, in case of death, to the rights of the administrator to recover against such third person.

(2) If the employer or the employer's insurance carrier recovers from such other person damages or benefits, after expenses and costs of action have been paid, in excess of the amount of the lien as defined in this section, then any such excess shall be paid to the injured employee or, in case of death, to the administrator of the employee's estate for distribution in accordance with the provisions of RSA 556:14.

(c) The procedure for approval of a settlement and for safeguarding the rights of the employee or, in case of death, the rights of the administrator of the employee's estate in such

cases shall be the same as is provided for protecting the rights of the employer or the employer's insurance carrier in case of a settlement made or an action at law or otherwise brought by the employee or the administrator of the employee's estate under this section.

IV. Whenever there is a recovery against a third person under paragraph I, II, or III, the commissioner, the arbitrator, or the superior court, as the case may be, shall order such division of expenses and costs of action, including attorneys' fees, between the employer or the employer's insurance carrier and the employee as justice may require.

V. Whenever the lien created by paragraph I, II, or III is in the state of New Hampshire by virtue of benefits paid to or on behalf of a state employee, the governor and council, upon petition by the injured employee, may, in their discretion, waive all or part of the lien.

VI. Any provision in any agreement which requires employers or the employer's insurance carrier to waive any rights of subrogation granted pursuant to this chapter is hereby prohibited.

**Source.** 1988, 194:2. 2004, 3:1, eff. Mar. 5, 2004.

#### **Section 281-A:14**

**281-A:14 Employee's Fault.** – The employer shall not be liable for any injury to a worker which is caused in whole or in part by the intoxication, as defined in RSA 281-A:2, XII-a, or by the serious and willful misconduct of the worker. The provision as to intoxication shall not apply, however, if the employer knew that the employee was intoxicated.

**Source.** 1988, 194:2. 1990, 254:10, eff. Jan. 1, 1991.

#### **Section 281-A:15**

##### **281-A:15 Computing Average Weekly Wages; After-Tax Earnings. –**

I. Except as provided in paragraphs II and III of this section and of RSA 281-A:32 and subject to RSA 281-A:28, 281-A:28-a and RSA 281-A:31-a, but including those persons under RSA 281-A:15, II-a, an average weekly wage shall be computed by using the method in subparagraph (a) or (b), or (c) that yields the result more favorable to the injured employee:

(a) By dividing the gross earnings of the injured employee in the service of the same employer during the preceding 26 weeks by that number of weeks; or

(b) By dividing the gross earnings of the injured employee in the service of the same employer during a period exceeding 26 weeks but not exceeding 52 weeks by the appropriate number of weeks.

(c) If, however, by reason of the shortness of time during which the employee has been in the employment of the employer or because of the nature or term of the employment, it is inequitable to compute the average weekly wage using the method in subparagraph (a) or (b), regard may be had to the rate of pay designated in the injured employee's agreement of employment or to the gross earnings of persons in the same grade employed at the same work

by the same employer or, if there are no persons so employed, by persons of the same grade employed in the same class of employment in the same locality.

II. Except as provided in paragraph III, the average weekly wage for any of the following injured while on duty shall be deemed to be the average weekly wage that entitles such employee to 100 percent of the state's average weekly wage as a maximum benefit:

(a) Any call firefighter or special police officer, volunteer or auxiliary member of a fire or police department or ambulance or rescue service of the state or any of its political subdivisions, whether paid or not paid.

(b) Any paid or not paid employee as defined by RSA 281-A:2, VII(a)(4) or (5).

(c) Any member of the general court injured in the performance of the duties as such a member.

(d) Any person who is not employed and who is acting as an agent to the department of health and human services or the department of safety as described in RSA 281-A:2, VII(a)(6).

II-a. Any person who is employed and who is on leave from such employment and who is acting as an agent to the department of health and human services or the department of safety as described in RSA 281-A:2, VII(a)(6) shall have his or her average weekly wage computed under paragraph I of this section.

III. Where the employee is employed as of the date of injury concurrently by 2 or more employers subject to this chapter and is disabled from any such employment, "average weekly wages" shall be computed on the basis of the weekly wages received by the employee from all such employers at the time of the injury. Notwithstanding paragraph II, if the computation of average weekly wage under this paragraph is more favorable to the injured employee, he shall be entitled to such amount. The employer in whose employment the employee was injured shall be liable in the first instance for payment of all benefits. Any additional compensation resulting from the increase in average weekly wages due to the employee's concurrent employment shall be reimbursed by the special fund created under RSA 281-A:55. The employer in whose employment the employee was injured shall be liable for all payments under RSA 281-A:23 and 25.

IV. For the purposes of calculating benefits under this chapter, "after-tax earnings" means the gross earnings of the employee determined under this section, reduced by the amount which would have been paid under the Federal Insurance Contributions Act, 26 U.S.C. sections 3101-3126 and income tax withholding, calculated on an annual basis using as the number of exemptions the lowest number of exemptions actually claimed by the employee during the 26-week period immediately preceding the date of injury, without excess itemized deductions.

V. The average weekly wage for national guard members shall be computed in accordance with this section, except that national guard members who are unemployed when called to state duty shall be compensated based upon their national guard rate of pay calculated in accordance with RSA 110-B:37.



**Source.** 1988, 194:2. 1989, 294:2, 3. 1990, 254:11. 1994, 3:2, 3. 1995, 301:3. 2002, 18:1. 2003, 269:1. 2005, 191:2-4. 2007, 231:3, eff. Aug. 24, 2007.

#### **Section 281-A:16**

##### **281-A:16 Determining Date of Injury for Occupational Disease and Cumulative Trauma. –**

For the purpose of determining the date of injury for an occupational disease, the date of injury shall be taken to be the last date of injurious exposure to the hazards of such disease or the date on which the employee first knew or reasonably should have known of the condition and its relationship to the employee's employment, whichever is the later. For an injury caused by cumulative trauma, the date of injury shall be the date of first medical treatment. For an injury or condition aggravated by cumulative trauma, the date of injury shall be the date of first medical treatment for the aggravation.

**Source.** 1988, 194:2. 2005, 128:1, eff. Aug. 14, 2005.

#### **Section 281-A:17**

##### **281-A:17 Firefighter and Heart, Lung, or Cancer Disease. –**

I. Notwithstanding the provisions of RSA 281-A:2, XI and XIII, 16 and 27, there shall exist a prima facie presumption that heart or lung disease in a regular, call, volunteer or retired member of a fire department is occupationally related. However:

(a) A call or volunteer firefighter shall have the benefit of this prima facie presumption only if there is on record reasonable medical evidence that such firefighter was free of such disease at the beginning of his or her employment. It shall be the duty of the employer of a call or volunteer firefighter to provide that reasonable medical evidence. If the employer fails to do so, the call or volunteer firefighter shall have the benefit of the prima facie presumption regardless of the absence of the reasonable medical evidence.

(b) A retired firefighter who agrees to submit to any physical examination requested by his city, town, or precinct shall have the benefit of the prima facie presumption only during the period of time of 5 years from the effective date of such firefighter's retirement.

(c) The benefits of RSA 281-A:17, I shall not continue in effect beyond one month after a call, volunteer or permanent firefighter reaches his or her sixty-fifth birthday.

II. Notwithstanding the provisions of RSA 281-A:2, XI and XIII, 16 and 27, there shall exist a prima facie presumption that cancer disease in a firefighter, whether a regular, call, volunteer, or retired member of a fire department, is occupationally related. In order to receive this occupational cancer disability benefit, the type of cancer involved must be a type which may be caused by exposure to heat, radiation, or a known or suspected carcinogen as defined by the International Agency for Research on Cancer. However:

(a) A call or volunteer firefighter shall have the benefit of this prima facie presumption only if there is on record reasonable medical evidence that such firefighter was free of such disease

at the beginning of his or her employment. It shall be the duty of the employer of call or volunteer firefighters to provide the required reasonable medical evidence. If the employer fails to do so, the call or volunteer firefighter shall have the benefit of the prima facie presumption regardless of the absence of said reasonable medical evidence.

(b) A retired firefighter who agrees to submit to any physical examination requested by his city, town, or precinct shall have the benefit of the prima facie presumption for a period of 20 years from the effective date of such firefighter's retirement.

**Source.** 1988, 194:2, eff. July 1, 1989.

### **Section 281-A:18**

**281-A:18 Contractor's Liability for Subcontractors.** – A contractor who subcontracts all or any part of a contract shall bear the liability of the subcontractor of that contract for the payment of compensation under this chapter to the employees of the subcontractor, unless the subcontractor has secured the payment of compensation as provided for in this chapter. Any contractor who shall become liable for compensation under this section may recover the amount of the compensation paid and necessary expenses from the subcontractor. For the purposes of this section, a contractor shall be defined as provided in RSA 281-A:2, III or as a person or organization which contracts with another to have work performed consisting of the removal, excavation or drilling of soil, rock or minerals, or the cutting or removal of timber from land and work done in connection with and in or about the area of such cutting or removal, other than the owner of the land containing such soil, rock or minerals or timber. For the purposes of this section, a subcontractor shall be defined as provided in RSA 281-A:2, IV and shall include a subcontractor of a contractor as defined in this section.

**Source.** 1988, 194:2, eff. July 1, 1989.

### **Section 281-A:18-a**

#### **281-A:18-a Exclusion of Executive Officers and Members of Limited Liability Companies. –**

I. Any corporation or limited liability company may elect to exclude up to 3 executive officers or members from the compulsive coverage requirements under this chapter.

II. The commissioner shall adopt rules under RSA 541-A relative to the filing of such an exclusion.

III. No exclusion shall be valid unless properly filed with the commissioner.

IV. Those executive officers and limited liability company members who elect to be excluded shall not be considered uninsured employees of a subcontractor under RSA 281-A:18.

**Source.** 1994, 267:2. 2007, 323:1. 2008, 1:1, eff. Jan. 4, 2008.

### **Section 281-A:19**

**281-A:19 Notice of Injury.** – Claims for benefits under this chapter shall be barred unless notice of injury is given to the employer within 2 years from the date of the injury; provided, however, that if the nature of the injury and its possible relationship to the employment are not known to the employee, the time for filing notice shall not begin to run until the earlier of the following:

I. The date the employee knows, or by reasonable diligence should know, of the nature of the injury and its possible relationship to the employment; or

II. In the event of death, the date any dependent knows, or by reasonable diligence should know, of the nature of the injury and its possible relationship to the employee's employment.

**Source.** 1988, 194:2, eff. July 1, 1989.

### **Section 281-A:20**

**281-A:20 Contents of Notice.** – Notice of injury in writing on a form prescribed by the commissioner shall apprise the employer of the injury and shall state the name and address of the worker injured and the date and place of the accident. The employee shall execute the notice in duplicate and sign both copies. The employer shall acknowledge receipt of the notice by signing on both the original and the duplicate, and the employee shall retain the duplicate.

**Source.** 1988, 194:2, eff. July 1, 1989.

### **Section 281-A:21**

**281-A:21 Service of Notice.** – The employee may serve the notice personally or send it by certified mail addressed to the employer at the employer's last known residence or place of business.

**Source.** 1988, 194:2, eff. July 1, 1989.

#### **Section 281-A:21-a**

**281-A:21-a Time Limitations for Filing Claim.** – Compensation for disability, rehabilitation, medical benefits, or death benefits under this chapter shall be barred unless a claim is filed within 3 years after the date of injury; provided, however, that if the nature of the injury and its possible relationship to the employment are not known to the employee, the time for filing a claim shall not begin to run until the earlier of the following:

I. The date the employee knows, or by reasonable diligence should know, of the nature of the injury and its possible relationship to the employment; or

II. In the event of death, the date any dependent knows, or by reasonable diligence should know, of the nature of the injury and its possible relationship to the employee's employment.

**Source.** 1990, 254:12, eff. Jan. 1, 1991.

#### **Section 281-A:21-b**

**281-A:21-b Confidentiality of Workers' Compensation Claims.** – Proceedings and records of the department of labor with respect to workers' compensation claims under RSA 281-A shall be exempt from RSA 91-A. Nothing in this section shall prohibit the department of labor from releasing information on a person's claim or claims to the person, the person's legal representative, attorney, health care providers, employer, the employer's workers' compensation insurer, the attorneys for the employer or employer's insurer, or state and federal agencies with relevant jurisdiction. Notwithstanding the provisions of this section, information relating to a person's claim or claims may be released to other parties only with the prior written permission of the claimant.

**Source.** 2005, 278:1, eff. Sept. 20, 2005.

#### **Section 281-A:22**

**281-A:22 Waiting Period.** – An employer subject to this chapter, or the employer's insurance carrier, shall pay workers' compensation to an employee sustaining a personal injury during a period of total or partial disability, but not for the first 3 days of disability unless the disability continues for 14 days or longer.

**Source.** 1988, 194:2. 1990, 254:13, eff. Jan. 1, 1991.

#### **Section 281-A:23**

##### **281-A:23 Medical, Hospital, and Remedial Care.** –

I. An employer subject to this chapter, or the employer's insurance carrier, shall furnish or cause to be furnished to an injured employee reasonable medical, surgical, and hospital services, remedial care, nursing, medicines, and mechanical and surgical aids for such period as the nature of the injury may require. The injured employee shall have the right to select his or her own physician.

II. The employer, or the employer's insurance carrier, shall pay the cost of artificial limbs, eyes, teeth, orthopedic appliances, and physical and surgical aids made necessary by such injury; shall pay the cost of replacement or repair when such is made necessary by wear and tear or by physical change in the person; and shall pay compensation for disability resulting from the replacement or repair, based on the employee's average wages at the time of the original injury. Notwithstanding RSA 281-A:48, I, a party may petition the commissioner for payment of such compensation at any time, if the disability results solely from the replacement or repair. If an employee by accident arising out of and in the course of the employment has suffered the loss of glasses, false teeth, an artificial member, or hearing aid, the employer or

the employer's insurance carrier shall pay the employee an amount equal to the value of the property so lost.

III. If any of the foregoing objects are in existence at the time of the injury and are damaged or destroyed as a result of an injury, the employer, or the employer's insurance carrier, shall pay the cost of repair or replacement.

IV. Health care providers shall not refer an injured worker for medical care or related services to any other health care provider, organization, association, corporation, partnership or group practice in which the referring health care provider or any member of its professional association or group practice has a financial or ownership interest unless the referral is ethically appropriate and medically indicated. The commissioner shall confirm in writing that an exception is authorized for the welfare of the specific injured worker. This paragraph shall not affect emergency situations, referrals from a specialist to a subspecialist, referrals from a health care provider to a specialist in another field, or referrals from a primary care practitioner to a specialist.

V. (a)(1) The act of the worker in applying for workers' compensation benefits constitutes authorization to any physician, hospital, chiropractor, or other medical vendor to supply all relevant information regarding the worker's occupational injury or illness to the insurer, the insurer's representative, the worker's employer, the worker's representative, the worker's employer's representative, and the department. Medical information relevant to a claim includes a past history of complaints of, or treatment of, a condition similar to that presented in the claim. Any party authorized to request medical information under this subparagraph shall include the following notice in their request for medical records in bold print in a font size at least 2 points larger than that used in the request:

"This request is strictly limited to medical information relevant to the occupational injury or illness that underlies the patient's workers' compensation claim, including any past history of complaints of, or treatment of, a condition similar to that presented in the claim."

(2) Any person who supplies information in accordance with this paragraph and with rules adopted by the commissioner shall be immune from any liability, civil or criminal, that might otherwise be incurred for such action. The physician may require evidence from the workers' representative in his or her representative capacity. This authorization shall be valid for the duration of the work-related injury or illness.

(3) The commissioner may assess a civil penalty of up to \$2,500 on any insurance carrier, self-insurer, or payor acting on behalf of such insurance carrier or self-insurer if any recipient of medical records receives a medical record which is clearly irrelevant to the workers' compensation claim and sends such record, or a copy of it, to another party not authorized to receive such record.

(b) The commissioner shall develop a form on which health care providers and health care facilities shall report medical, surgical or other remedial treatment. The report shall include, but

is not limited to, information relative to the up-to-date medical status of the employee, any medical information relating to the employee's ability to return to work, whether or not there are physical restrictions, what those restrictions are, the date of maximum medical improvement, and, where applicable, the percentage of permanent impairment in accordance with the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association and as set forth in RSA 281-A:32, and any other information to enable the employer or insurance carrier to determine the benefits, if any, that are due and payable. In addition to the report required under this section, the health care provider shall furnish a statement confirming that the treatment or services rendered were reasonable and necessary with respect to the bodily injury sustained. The statement shall read as follows: "I certify that the narrative descriptions of the principal and secondary diagnosis and the major procedures performed are accurate and complete to the best of my knowledge." The health care provider shall date and sign the statement.

(c) The commissioner may assess a civil penalty of up to \$2,500 on any health care provider who without sufficient cause, as determined by the commissioner, bills an injured employee or his or her employer for services covered by insurers or self-insurers under this chapter. There shall be no reimbursement for services rendered, unless the health care provider or health care facility giving medical, surgical, or other remedial treatment furnishes the report required in subparagraph (b) to the employer, insurance company, or claims adjusting company within 10 days of the first treatment. First aid treatment is excluded from the 10-day reporting requirement. Additionally, for good cause, a hearing officer may waive the 10-day reporting requirement and order remuneration paid. The employer, claims adjustment company, self-insurer or insurer shall pay the health care provider or health care facility within 30 days of receipt of a bill for services.

(d) Any employer, insurance carrier, injured employee, or attorney representing any such person, who receives any medical report, which includes, but is not limited to, information relative to the remedial treatment, care and attendance of the injured employee, shall file the report with the commissioner within 15 days after receipt of such report. Any medical report which has not been previously filed with the commissioner shall not be received in evidence in a contested case unless the party offering the report has furnished a copy thereof to the opposing party or his attorney at least 5 days prior to the hearing at which it is offered. The health care provider or health care facility shall also provide to the injured employee, or to his attorney, on demand, a copy of each medical report. The injured employee shall only be charged an amount reflecting the actual cost to the health care provider or health care facility in furnishing the copy. Each such health care provider or health care facility shall provide any additional information relating to the remedial treatment, care, and attendance of an injured employee that the commissioner may reasonably request as part of its investigation of a claim for benefits under this chapter. Failure to provide such reports may result in imposition by the

commissioner of a civil penalty of up to \$2,500.

(e) The commissioner may assess a civil penalty of up to \$2,500 on any insurance carrier, self-insurer, or payor acting on behalf of such insurance carrier or self-insurer, which without sufficient cause, as determined by the commissioner, fails, within 30 days after receipt of a medical bill:

(1) To make payment of such medical bill pursuant to this section; or

(2) To deny such payment, notifying the health care provider, employee, and labor department of such denial. This denial shall give a valid reason for the denial and shall advise the claimant of the right to petition the commissioner for a hearing.

VI. An employer subject to this chapter, or the employer's insurance carrier, may furnish or cause to be furnished, testing for the presence of a bloodborne disease when a critical exposure that arises out of and in the course of employment occurs. Such testing shall be provided without prejudice as to the issue of the causal relationship of any subsequently diagnosed bloodborne disease to the employee's work and without prejudice to the compensability of the bloodborne disease as an occupational disease or an accidental injury for the purposes of RSA 281-A.

VII. An injured employee shall have the right to select his or her own pharmacy or pharmacist for dispensing and filling prescriptions for medicines required under this chapter.

VIII. Pharmacies, including mail-order pharmacies, shall substitute generically equivalent drug products for all legend and non-legend prescriptions unless the prescribing practitioner handwrites "medically necessary" on each paper prescription, uses electronic indications when transmitted electronically, or gives instructions when transmitted orally that the brand name drug product is medically necessary; provided that in cases where the legend drug is less expensive, the legend drug shall be used. Prescription refills shall not require the reissuance of the "medically necessary" indication.

**Source.** 1988, 194:2. 1990, 254:14. 1994, 268:1. 1995, 205:1. 1996, 51:1. 2003, 269:3. 2005, 85:7, eff. June 7, 2005. 2010, 84:1, eff. July 1, 2010. 2013, 95:1, 131:1, eff. Jan. 1, 2014.

### **Section 281-A:23-a**

#### **281-A:23-a Managed Care Programs. –**

I. An employer, employer's insurance carrier or self-insurer that is subject to the provisions of this chapter may satisfy the requirements and provisions of RSA 281-A:23 and the employee's rights under that section by providing a managed care program which has been approved by the commissioner. A managed care program shall not be approved unless the commissioner finds that:

(a) The network or panel of health care providers is sufficiently comprehensive with respect to both geography and medical specialties, including reasonable access to treatment for injuries or personal injuries.

(b) The program provides for treatment and aids outside of the network or panel, if the necessary services or aids cannot be provided within the network or panel, or if emergency circumstances prohibit use of the network or panel, or in such other circumstances as the commissioner may find.

(c) The program includes a process for determining professional qualifications of health care providers in the network or panel.

(d) The program provides for acceptable quality assurance measures.

(e) The program includes both inpatient and outpatient case management and rehabilitation case management.

(f) The program provides an employee with reasonable access to a second medical opinion, inside or outside the program, regarding diagnosis or the proper course of treatment, and adequate methods for resolving conflicting medical opinion.

(g) The program maintains a business office in New Hampshire for its staff of resident injury management facilitators, case managers, and rehabilitation managers.

II. No managed care program shall limit the right to a hearing under RSA 281-A:43, I, shall require as a condition of employment that any person engage in any practice or conduct outside of the course of employment, except in connection with and as part of treatment for an injury, or shall vary the methods for calculating weekly payments for disability compensation under RSA 281-A:28 or 281-A:31 or for calculating scheduled permanent impairment awards under RSA 281-A:32.

III. In addition to approval by the commissioner as required under paragraph I, and except for approvals within the residual market made before June 30, 1995, approval of a managed care program shall require an affirmative vote of ratification of such approval by the advisory council on workers' compensation, established under RSA 281-A:62.

IV. A managed care program shall be deemed to have been approved by the commissioner unless, within 45 days after its filing with the commissioner, the commissioner makes a preliminary determination of noncompliance, specifying in writing the reasons why the program does not appear to conform to the requirements of paragraph I. The proponent of such program shall have the right to a hearing before the commissioner to contest the preliminary determination. A managed care program approved or deemed approved by the commissioner shall be submitted to the advisory council within 5 days of such approval or deemed approval and shall be deemed to have been ratified by the advisory council unless, at its first regularly-scheduled meeting held at least 19 days after approval or deemed approval by the commissioner, the council, by a majority vote of all its members qualified to vote on ratification, declines to ratify the plan, specifying in writing the reasons why the program does not appear to conform to the requirements of paragraph I. The proponent of such program shall have the right to a hearing before the council to contest the council's declination. Neither the commissioner nor the insurance commissioner shall be qualified to vote on ratification.



V. Every managed care program shall include a sufficient number of injury management facilitators, including resident injury management facilitators, who shall be qualified by reason of education, training and experience to manage the injured employee's medical, hospital and remedial care, vocational rehabilitation, modified duty, and return to work plans. An injury management facilitator shall work with the injured employee, employer, and medical, hospital and other providers to ensure that the injured employee receives effective, timely, and appropriate services in order to achieve maximum medical improvement and an expeditious return to work. Any person employed as an injury management facilitator by a managed care program shall be approved by the commissioner with ratification by the workers' compensation advisory council. The commissioner shall, in consultation with the advisory council, by rule determine the number of facilitators which shall be sufficient.

VI. (a) The commissioner shall monitor approved managed care programs and shall review the effectiveness of the various programs, cost savings achieved by such programs, and the appropriateness and timeliness of services delivered to the injured employee by such programs. The commissioner shall review each managed care program for purposes of determining the program's continued compliance with the standards for approval and delivery of service. Such review shall take place prior to the expiration of 3 years from the date the program's approval was ratified by the advisory council. Additional review shall take place at least once every 5 years thereafter, or whenever the commissioner determines that such review is required to ensure the program is in compliance with this section. Upon such review, if the commissioner determines after a hearing that a managed care program has failed to maintain compliance with the standards for approval, the commissioner shall withdraw approval of the plan and immediately notify the chairperson of the advisory council of such withdrawal. The commissioner's decision to withdraw approval of a managed care program shall be submitted to the advisory council within 5 days of such a decision and shall be deemed accepted by the advisory council unless, at its first regularly scheduled meeting held at least 19 days after the commissioner's decision, the council, by a majority vote of all its members qualified to vote on ratification, declines to ratify the decision, stating in writing the reasons why the program continues to comply with the requirements of this section and rules adopted pursuant to it. Neither the commissioner nor the insurance commissioner shall be qualified to vote on ratification.

(b) If the commissioner determines that a managed care program has failed to comply with the provisions of this section or the rules adopted to implement such section, but that such failure does not warrant withdrawal of approval of the program, the commissioner may, after notice to the managed care program and hearing, assess a civil penalty of not more than \$100 for each such failure, which shall be deposited into the department of labor restricted fund established in RSA 273:1-b. If a managed care program fails to pay such penalty, the commissioner shall recover the penalty in a civil action in the superior court of the county of

jurisdiction.

(c) The commissioner, with the approval of the workers' compensation advisory council and the governor and council, may enter into such contracts as may be necessary to analyze and study the effectiveness of managed care programs. The cost of any contracts entered into under this subparagraph shall be a charge against the workers' compensation administration fund, established under RSA 281-A:59.

**Source.** 1993, 311:1. 1994, 3:4. 1999, 210:1. 2000, 79:1, 2, eff. June 20, 2000. 2011, 224:62, eff. July 1, 2011.

#### **Section 281-A:23-b**

**281-A:23-b Alternative Work Opportunities.** – All employers with 5 or more employees shall develop temporary alternative work opportunities for injured employees. If the employee fails to accept temporary alternative work, the employer may petition the commissioner pursuant to RSA 281-A:48, to reduce or end compensation. Notwithstanding RSA 281-A:22, if an injured employee returns to temporary alternative work within 5 days of sustaining the injury, such employee shall be paid workers' compensation from the first date of the injury. The commissioner shall adopt rules under RSA 541-A relative to the administration of this section.

**Source.** 1994, 3:5. 1997, 343:2, eff. Jan. 1, 1998.

#### **Section 281-A:24**

##### **281-A:24 Payment for Reasonable Value of Services.** –

I. The employer or the employer's insurance carrier shall pay the full amount of the health care provider's bill unless the employer or employer's insurance carrier can show just cause as to why the total amount should not be paid. Effort shall be made to resolve any dispute as to the reasonable value of service prior to applying to the commissioner for resolution of such a dispute. Whenever an injured employee receives medical and hospital service or other remedial care under the provisions of this chapter and a dispute arises between the employer and the person, firm, or corporation rendering such service or care as to the reasonable value of the service or care, the commissioner shall have exclusive jurisdiction to determine the reasonable value of such service or care. Following the commissioner's determination, any interested party may petition for a hearing and all interested parties shall be entitled to notice and hearing if it is determined that all reasonable efforts to resolve the dispute have failed. The commissioner or the commissioner's authorized representative shall make a finding as to the reasonable value of such services or care rendered, and such findings shall be final.

II. If the commissioner finds that a health care provider, health care facility, or rehabilitation provider has required unnecessary treatment, hospitalization, rehabilitation services or office visits, or other excessive charges, the health care provider, health care facility, or rehabilitation

provider shall not receive payment under this chapter from a carrier, employer, or employee for the excessive fees or unnecessary treatment, hospitalization, rehabilitation services, or visits. In addition, the health care provider, health care facility, or rehabilitation provider shall be required to return to the carrier, self-insurer, employer or injured employee any such fees or charges already collected.

III, IV. [Repealed.]

V. The commissioner shall assess a civil penalty not to exceed \$2,500 for violations of this section which are willful or which demonstrate a pattern of improperly charging or overcharging employers or workers' compensation insurers.

**Source.** 1988, 194:2. 1990, 198:1, 254:15. 1995, 15:1. 1997, 343:3, 4, eff. July 1, 1997; 343:5, 11, I, eff. Jan. 1, 1998.

### **Section 281-A:25**

#### **281-A:25 Vocational Rehabilitation. –**

I. If, as a result of an injury covered by this chapter, an employee is unable to perform work for which he or she has previous training or experience, the employee shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore such employee to suitable employment. If such services are not voluntarily offered by the employer or the carrier and accepted by the employee, the commissioner, if necessary through informal hearing affording all parties an opportunity to be heard on the question, may refer the employee to a qualified physician or appropriate facility for evaluation of the practicability of, need for, and kind of service, treatment, or training necessary and appropriate to render the employee fit for a remunerative occupation.

II. Upon receipt of such findings and after affording all parties an opportunity to be heard thereon, the commissioner may order that the services and treatment recommended or such other rehabilitation treatment or service the commissioner may deem necessary be provided at the expense of the employer or its insurance carrier.

III. Vocational rehabilitation training, treatment or service shall not extend for a period of more than one year, except that in unusual cases by special order of the commissioner, after informal hearing, the period may be extended as is deemed to be reasonable and necessary to accomplish a successful result.

IV. If vocational rehabilitation requires residence at or near a facility or institution which is away from the employee's customary residence, the employer shall pay the reasonable cost of the employee's board, lodging, or travel, or any combination of these. In addition, the employer, or its insurance carrier, shall pay the reasonable cost for books, tools or other basic materials required in such rehabilitation process.

V. If an employee refuses to accept vocational rehabilitation ordered by the commissioner, the employee may lose compensation for each week of the refusal if the commissioner so

directs.

VI. To carry out the provisions of this section, there is hereby created within the workers' compensation division a staff of vocational and physical rehabilitation personnel whose positions shall be classified under RSA 21-I:42 et seq.

VII. A rehabilitation provider shall prepare an individualized written rehabilitation plan on all compensable workers' compensation claims which require 2 or more counseling sessions, vocational evaluations, training, work evaluation, work hardening, or placement. Prior to implementation of the plan, the plan shall be signed by the employer and employee and filed with the commissioner. The commissioner may, within 14 days of the filing of such plan, disallow any plan for rehabilitation that does not appear to be in the best interest of the employee or designed to return the employee back to work.

VIII. Each rehabilitation provider shall disclose in writing at the first meeting or written communication with the employee, any ownership, interest, or affiliation between the firm which employs the rehabilitation provider and the employer, insurance company, or claims adjusting company, including the nature and extent of the affiliation or interest. Each rehabilitation provider shall also disclose in writing to all parties any affiliation, business referral or other arrangement between the provider and any other party, including any attorney, any physician, or any chiropractor.

**Source.** 1988, 194:2. 1990, 254:16. 2002, 18:2, eff. May 31, 2002.

#### **Section 281-A:25-a**

##### **281-A:25-a Reinstatement of Employee Sustaining Compensable Injuries. –**

I. An employee of an employer who employs 5 or more employees, who has sustained an injury, shall be reinstated by the employer to the employee's former position of employment upon request for such reinstatement, if the position exists and is available and the employee is not disabled from performing the duties of such position, with reasonable accommodations for the employee's limitations. For the purposes of this section an employee's former position is "available" even if that position has been filled by a replacement while the injured employee was absent. If the former position has been eliminated, the employee shall be reinstated in any other existing position which is vacant and suitable with reasonable accommodations for the employee's limitations. A certificate by the employee's attending physician that the physician approves the employee's return to the employee's regular employment with reasonable accommodations for the employee's limitations, shall be prima facie evidence that the employee is able to perform such duties. Reinstatement under this section shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employees.

II. Notwithstanding paragraph I of this section:

(a) The right to reinstatement to the employee's former position under this section terminates when any one of the following events occurs:

(1) A medical determination by the attending physician or finding by the commissioner that the employee cannot return to the former position of employment.

(2) The employee accepts employment with another employer.

(3) Eighteen months from the date of injury.

(b) The right to reinstatement under this section shall not apply to:

(1) An employee hired on a temporary basis as a replacement for an injured employee.

(2) An employee whose employer employs 4 or fewer employees at the time of the employee's injury and at the time of the employee's demand for reinstatement.

(3) An employee employed on a construction project, when the project is completed.

III. The right to reinstatement shall not be forfeited if the employee refuses to return to the employee's regular or other offered employment without release to such employment by the employee's attending physician.

IV. The commissioner may assess employers in violation of this section all weekly wage benefits retroactive to the date the injured employee was eligible for reinstatement.

**Source.** 1994, 3:6, eff. Feb. 8, 1994.

### **Section 281-A:26**

**281-A:26 Compensation for Death.** – If death results from an injury, weekly compensation shall be paid to the dependents of the deceased employee in an amount provided by the compensation schedule in RSA 281-A:28 as follows:

I. In all cases in which compensation is payable to a widow or widower for the benefit of herself or himself and dependent children, the commissioner shall have the power to determine from time to time, in the commissioner's discretion, what portion of the compensation shall be applied for the benefit of any such children and may order the same paid to a guardian.

II. In the case of the remarriage of a widow or widower without dependent children, compensation payments shall cease.

III. In the case of the remarriage of a widow or widower who has dependent children, the unpaid balance of compensation which would otherwise become due shall be payable to the mother, father, or guardian, or such other person as the commissioner may order, for the use and benefit of such children during dependency.

IV. The employer shall pay burial expenses not to exceed \$10,000.

V. Any dependent, except a widow or a widower or children, who, at the time of the injury to the person covered under this chapter, is only partially dependent upon the injured person's earnings shall receive such proportion of the benefits provided for those wholly dependent as the amount of the wage contributed by the deceased to such partial dependent at the time of

the injury bore to the total support of the dependent.

VI. Compensation for a dependent child shall continue until the child becomes 18 years of age, or until the child becomes 25 years of age if such child is enrolled as a full-time student in an accredited educational institution. However, if the commissioner determines that the child is self-supporting or if the child marries or is legally adopted, compensation shall cease. A dependent child who is physically or mentally incapacitated shall continue to receive compensation as long as the incapacity continues. This paragraph shall have no effect on accidents or fatalities occurring prior to July 1, 1975, which shall be governed by the provisions of workers' compensation law prior to that date.

VII. Compensation payable to any dependent other than a widow, widower, or children shall cease when such dependent is married, is legally adopted, or is determined by the commissioner to be self-supporting.

**Source.** 1988, 194:2. 1990, 254:17. 2009, 78:1, eff. Jan. 1, 2010.

#### **Section 281-A:27**

**281-A:27 Payment for Death After Payment for Disability.** – The total amount of benefit in case of a death shall not exceed the balance remaining between the amounts paid for disability and the total compensation payable under this chapter.

**Source.** 1988, 194:2, eff. July 1, 1989.

#### **Section 281-A:28**

**281-A:28 Compensation for Temporary Total Disability.** – An employer subject to this chapter, or the employer's insurance carrier, shall pay workers' compensation to an employee sustaining a personal injury which is totally disabling, but temporary in nature, and the employee is unable to return to work, but has not achieved maximum medical improvement, but not for the first 3 days of disability unless the disability continues for 14 days or longer, as follows:

I. If an employee's average weekly wage is 30 percent or less of the state's average weekly wage, weekly compensation shall be the full amount of that employee's average weekly wage. However, the maximum allowable weekly compensation rate under this paragraph shall not exceed 90 percent of the employee's after tax earnings as determined by RSA 281-A:15.

II. If an employee's average weekly wage is over 30 percent of the state's average weekly wage, weekly compensation shall be 60 percent of that employee's average weekly wage or 30 percent of the state's average weekly wage, whichever is greater, but in no event shall weekly compensation exceed 150 percent of the state's average weekly wage rounded off to the nearest dollar as the commissioner determines for the year in which the injury occurred. In no event shall the maximum weekly compensation rate exceed 100 percent of the employee's

after tax weekly earnings as determined under RSA 281-A:15. For purposes of this section, the department of employment security shall establish the state's average weekly wage for the immediate preceding calendar year to be effective the following July 1.

III. Notwithstanding the provisions of RSA 281-A:26, 28, 29, and 32, the compensation of persons who regularly operate businesses or practice their trades, professions, or occupations as provided by RSA 281-A:2, VI shall be computed on the basis of 80 percent of their average weekly salary, but no more than 150 percent of the state's average weekly wage. The state's insurance commissioner is hereby authorized to review and approve an appropriate classification for the foregoing class of persons and a reasonable rate, if the commissioner chooses to do so.

**Source.** 1988, 194:2. 1990, 254:18, 19. 1994, 3:7, eff. Feb. 8, 1994.

#### **Section 281-A:28-a**

**281-A:28-a Compensation for Permanent Total Disability.** – In case of total disability where the employee is unable to engage in gainful employment and the employee has reached maximum medical improvement, permanent benefits shall be payable to the employee during the continuance of such total disability, as follows:

I. If an employee's average weekly wage is 30 percent or less of the state's average weekly wage, weekly compensation shall be the full amount of said employee's weekly compensation rate. However, the maximum allowable weekly compensation rate under this paragraph shall not exceed 90 percent of the employee's after tax earnings as determined pursuant to RSA 281-A:15.

II. If an employee's average weekly wage is over 30 percent of the state's average weekly wage, weekly compensation shall be 60 percent of the employee's average weekly wage or 30 percent of the state's average weekly wage, whichever is greater, but in no event shall weekly compensation exceed 150 percent of the state's average weekly wage rounded off to the nearest dollar as determined by the commissioner for the year in which the injury occurred. In no event shall the weekly compensation rate exceed 100 percent of the employee's after tax weekly earnings as determined pursuant to RSA 281-A:15. For the purposes of this section, the state's average weekly wage shall be established by the department of employment security for the immediately preceding calendar year to be effective the following July 1.

III. No compensation shall be payable under this section if the employee is engaged in, or is physically capable of engaging in, gainful employment.

**Source.** 1990, 254:20. 1994, 3:8, eff. Feb. 8, 1994.

### **Section 281-A:29**

**281-A:29 Adjusted Total Disability Benefits.** – For all compensable injuries occurring on or after July 1, 1963, for which total disability continues, except those injuries for which the employee is entitled to benefits under the federal Social Security Act, as amended, the injured employee shall be entitled to an adjustment in the weekly compensation rate effective July 1, 1975, based upon the following formula:

I. Determine the percentage of the injured employee's average weekly wage at the time of the injury to the state's average weekly wage as established by the department of employment security for the same corresponding year. In no event shall the percentage exceed 100 percent of the state's average weekly wage.

II. Determine the adjusted average weekly wage of the injured employee by applying the percentage determined in paragraph I against the state's current average weekly wage which is established annually on July 1 for the previous calendar year.

III. Determine the revised weekly rate of compensation by applying the adjusted average weekly wage to the current schedule of benefits under RSA 281-A:28.

IV. The injured employee shall be entitled to an adjustment in the weekly compensation rate at one year intervals on July 1 in each year with the initial review occurring on or after the third anniversary of the injury.

V. Every insurance carrier or self-insured employer shall be required to report each compensable injury case to the commissioner if total disability payments continue or are expected to continue for 6 months from the date of injury.

VI. Adjustments in weekly benefit rates shall only apply to the provisions of RSA 281-A:28 and shall not be retroactive from the anniversary date of such review, unless an employee entitled to such adjustment did not receive the amount due because of a mistake, misfortune, or lack of knowledge.

**Source.** 1988, 194:2, eff. July 1, 1989.

### **Section 281-A:30**

**281-A:30 Special Fund for Active Cases.** – With regard to payments made pursuant to RSA 281-A:29 for compensable injuries occurring on or before June 30, 1975, the carrier or self-insured employer shall in the first instance make the adjustment in the weekly compensation rate. Upon application, pursuant to rules adopted by the commissioner, the carrier or self-insured employer shall be reimbursed, not less than once a year, for such payments from the special fund established herein.

I. A special fund for active cases is hereby established in the state treasury for the sole purpose of making payments in accordance with this section. The commissioner shall administer the fund. The state treasurer shall be the custodian of the fund, and all moneys and securities in the fund shall be held in trust by the state treasurer and shall not constitute money



or property of the state.

II. The state treasurer is authorized to disburse moneys from the fund only upon written order of the commissioner. The state treasurer shall be required to give bond in an amount to be fixed and with surety approved by the commissioner conditioned upon the faithful performance of the treasurer's duty as custodian of the fund.

III. Each carrier and self-insurer shall, under rules adopted by the commissioner, make payments to the fund in an amount equal to that proportion of 175 percent of the total disbursements made from the fund during the preceding calendar year less the amount of the net assets in the fund as of December 31 of the preceding calendar year which the total compensation paid by such carriers or self-insurers bore to the total compensation paid by all employers' carriers and self-insurers during the fiscal year which ended within the preceding calendar year. An employer who has ceased to be a self-insurer shall continue to be liable for any assessments in the fund on account of any compensation the employer paid during such fiscal year.

IV. Where there has been default in the payment of compensation due to the insolvency of an insured employer and the employer's carrier or a self-insured employer, payment of any compensation remaining unpaid shall be made from the special fund. Such employer and carrier, or self-insured employer and surety, if any, shall be liable for payment into the fund of the amounts paid from it by the commissioner under the authority of this section; and, for the purposes of enforcing this liability, the commissioner, for the benefit of the fund, shall be subrogated to all of the rights of the person receiving such compensation.

V. The commissioner shall conserve the assets of the fund. In furtherance of this purpose, the attorney general shall appoint an employee of the department of justice to represent the fund in all proceedings brought to enforce claims against the fund.

VI. A single assessment shall be assessed by the commissioner against each carrier and self-insurer as soon as practicable after July 1, 1989, which shall be paid to the fund in order to carry out the purposes of this section. The commissioner shall establish the amount of the assessment to produce the minimum amount necessary to carry out the purposes of this section, but in no event shall the assessment exceed 1/2 of one percent of compensation (including medical benefits) paid during the previous calendar year.

VII. A carrier or self-insurer failing without sufficient cause to make payment under this section within the period specified by the commissioner shall be assessed a civil penalty of \$100 for each day that the payment is overdue, which shall be deposited into the department of labor restricted fund established in RSA 273:1-b.

**Source.** 1988, 194:2. 1996, 178:2, eff. Aug. 2, 1996. 2011, 224:63, eff. July 1, 2011.

### **Section 281-A:31**

**281-A:31 Compensation for Temporary Partial Disability.** – If the disability for work resulting from an injury is partial, and the employee is able to work but has not yet reached maximum medical improvement, the employer, or the employer's insurance carrier, during such disability, but not for the first 3 days of disability unless the disability continues for 14 days or longer, shall pay to the injured employee a weekly compensation equal to 60 percent of the difference between the employee's average weekly wage before the injury and the average weekly wage which he or she is able to earn thereafter; but in no instance shall the weekly compensation exceed the amount set forth by the compensation schedule in RSA 281-A:28. Payments shall not continue after the disability ends, nor longer than 262 weeks; and, if the partial disability begins after a period of total disability, the period of total disability shall be deducted from such total period of 262 weeks.

**Source.** 1988, 194:2. 1990, 254:21. 1994, 3:9, eff. Feb. 8, 1994.

### **Section 281-A:31-a**

**281-A:31-a Compensation for Permanent Partial Disability.** – Where the disability for work resulting from an injury is permanent but partial in nature, the employee has reached maximum medical improvement, is able to return to work, and there is an impairment in accordance with the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association as set forth in RSA 281-A:32, the employer, or insurance carrier, during such disability shall pay to the injured employee a weekly compensation equal to 60 percent of the difference between his average weekly wage before the injury and the average weekly wage which he is able to earn thereafter. However, in no instance shall the weekly compensation exceed the amounts set forth by the compensation schedule in RSA 281-A:28. Payments shall not continue after the disability ends, nor longer than 262 weeks; and if the partial disability begins after a period of total disability, the period of disability shall be deducted from such total period of 262 weeks.

**Source.** 1990, 254:22. 1994, 3:10, eff. Feb. 8, 1994.

### **Section 281-A:32**

#### **281-A:32 Scheduled Permanent Impairment Award. –**

I. Basic Award. Except when death results from injury, in addition to other benefits payable under this chapter, an award shall be paid to employees in amounts provided by RSA 281-A:28 for the number of weeks set forth in this section for permanent bodily loss or losses:

- (a) Total loss of arm 210
- (b) Total loss of hand 189
- (c) Total loss of thumb 76

- (d) Total loss of index finger 47
- (e) Total loss of middle finger 38
- (f) Total loss of ring finger 19
- (g) Total loss of little finger 9
- (h) Total loss of leg 140
- (i) Total loss of foot 98
- (j) Total loss of great toe 18
- (k) Total loss of toe, other 3
- (l) Total loss of vision--one eye 84
- (m) Total loss of vision--both eyes 300
- (n) Total loss of hearing in one ear 30
- (o) Total loss of binaural hearing 123

II. Phalanges. A loss in excess of the distal phalanx shall entitle the employee to the award for the loss of the entire digit. A loss of a distal phalanx shall result in half the award for the loss of the entire digit. A loss of less than one phalanx shall result in one quarter of the award for the loss of the entire digit.

III. Amputated Arm or Leg. The amputation of an arm or leg at or above the elbow or at or above the knee, respectively, shall entitle the employee to the award for the loss of the arm or leg. Otherwise, amputation of an arm or leg shall result in the award for the loss of a hand or foot.

IV. Two or More Digits. The loss of 2 or more digits, or the loss of one or more phalanges of such number of digits, of a hand or foot, shall entitle the employee to an award proportioned to the loss of use of the hand or foot occasioned by that loss; except that the income benefits for the loss of a hand or foot may not be exceeded.

V. Substantial Loss of Vision. The loss of 80 percent or more of the vision of an eye, uncorrected by an eye lens, entitles the employee to the award for the total loss of an eye.

VI. Total Loss of Use. An award for the permanent total loss of the use of a member shall be identical to that for the loss of the member, except that amputation of such member resulting from the original or subsequent injury shall not entitle the employee to a further award under this section.

VII. Partial Loss of Use. An award for the permanent partial loss of the use of a member shall be for a period proportional to the period during which an award is payable for the total loss or the loss of the use of the member. Such award shall be in the proportion that such partial loss bears to a total loss; provided, however, that if subsequent amputation of such member is related to the original or a subsequent injury and results in an increased loss of such member, an additional award shall accrue on the basis of the difference between the award for the newly established loss and the award for the original loss.

VIII. Subsequent Amputation. Upon amputation of a member resulting from an original or subsequent injury which has been preceded by the loss of a component or part of such

member, an additional award shall accrue on the basis of the difference between the award for the newly established loss and the award for the original loss.

IX. More Than One Permanent Loss. If an injury results in more than one permanent bodily loss specified in paragraphs I-VIII, or if the injury is to the spinal column or the spinal cord, or to the brain, or involves scarring, disfigurement, or other skin impairment resulting from a burn or burns, an award shall be made on the basis of a maximum of 350 weeks with the appropriate number of weeks to be determined in proportion to the maximum in accordance with the percent of the whole person specified for such bodily losses in the 5th edition of "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association. Injury to spinal column or spinal cord shall not be construed to permit an award under this section as a result of soft tissue injury, nor to permit such an award on the basis of more than one permanent loss, unless such injury results in loss of use of upper or lower extremities. For the purposes of this paragraph "injury to the brain" means cerebral or neurological impairment due to central nervous system injury as described in said American Medical Association Guide.

X. A Separate Right. Except when death results from an injury, the scheduled awards under this section accrue to the injured employee simply by virtue of the loss or loss of the use of a member of the body, there being conferred upon the employee a right which is separate and independent of the rights provided by RSA 281-A:28 and 281-A:31.

XI. Payment Due. Payment of the scheduled award becomes due upon prompt medical disclosure, after maximum medical improvement has been achieved, regarding the loss or loss of the use of the member of the body. For the purposes of determining disability rates, the average weekly wage used shall be the average weekly wage of the employee at the time of the injury. No later than 15 days following such disclosure the employer, or the employer's insurance carrier shall notify the commissioner as to whether it objects to the extent of the loss claimed by the employee, in which case it shall have 30 days to arrange for a medical examination, pursuant to RSA 281-A:38, and request a hearing and determination by the commissioner. Payment of the scheduled award shall be made in a single payment.

XII. Dispute Resolution. In the event of a dispute as to the amount of compensation or the percentage of permanent partial loss or both, the commissioner shall determine the award to be made on the basis of competent medical evidence.

XIII. Balance Paid to Estate. The balance of an unpaid weekly scheduled award shall, upon the death of the employee, be paid to the estate of the employee.

XIV. Rulemaking Required. In order to reduce litigation and establish more certainty and uniformity in the rating of permanent impairment, the commissioner shall adopt rules, under RSA 541-A, incorporating by reference the 5th edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" to determine the degree of permanent impairment and on which to base awards under this chapter.

**Source.** 1988, 194:2. 1989, 294:4. 1990, 254:23. 1993, 226:1. 2000, 125:1. 2001, 34:1, 124:1. 2003, 269:2. 2008, 270:6, 7, eff. June 26, 2008.

### **Section 281-A:32-a**

[RSA 281-A:32-a repealed by 2014, 242:2, I, effective June 30, 2016.]

#### **281-A:32-a First Responder's Critical Injury Benefit. –**

I. In addition to other payments made under RSA 281-A, a group II retirement system member may request additional compensation under this section. If the impairment to a group II retirement system member resulting from an injury is partial, with a determination by the department of labor that the employee has reached maximum medical improvement and that such maximum medical improvement is less than 100 percent, the governor may draw a warrant, with approval by the executive council, from funds not otherwise appropriated for payments in addition to benefits payable under this chapter for an award to be paid to such employees in amounts provided by RSA 281-A:28 for the number of weeks set forth in this section for permanent bodily loss or impairment:

- (a) Permanent loss or impairment of heart, lung, or brain 208
- (b) Permanent loss or impairment of other internal organs 104
- (c) Permanent loss or impairment of speech, touch, taste, or smell 104

II. Payments awarded under this section shall be subject to all other provisions of RSA 281-A. Total compensation payments for all additional compensation claims paid under this section shall not exceed \$125,000 per claimant. No payments shall be made after July 1, 2016. Benefits paid under this section for all claimants shall not exceed \$500,000.

**Source.** 2014, 242:1, eff. July 21, 2014.

### **Section 281-A:32-b**

**281-A:32-b Commission Established; Membership; Duties. –** [Repealed 2014, 242:2, II, eff. Nov. 1, 2014.]

### **Section 281-A:33**

**281-A:33 Double Compensation. –** Any employer who is liable for the compensation provided by any or all of RSA 281-A:26, 28, 31, or 32 shall, upon being found in violation of any provision of either or both RSA 277 and RSA 276-A, insofar as the latter chapter deals with prohibiting hazardous occupations for youth, and if there is recorded in the department a prior violation of the same kind or if the employer has failed to comply with written departmental

recommendations applicable to a first violation within the reasonable period allowed, become liable for twice the amount of such compensation; provided, however, that if payment of compensation is secured pursuant to RSA 281-A:5, I, an employer and employer's insurance carrier shall share equally the payment of compensation under this section.

**Source.** 1988, 194:2, eff. July 1, 1989.

#### **Section 281-A:34**

**281-A:34 Maximum Benefits.** – In no case, except as provided in RSA 281-A:31, 32, or 33, shall the weekly compensation payable under this chapter exceed the benefits set forth in RSA 281-A:28.

**Source.** 1988, 194:2, eff. July 1, 1989.

#### **Section 281-A:35**

**281-A:35 Voluntary Payments.** – Payments made by an employer, or the employer's insurance carrier, to an injured employee during the period of the employee's disability, or to the dependents of such employee, which, by the provisions of this chapter, were not due and payable when made, may, subject to the approval of the commissioner, be deducted from the amount to be paid as compensation; provided that, in a case of disability, such deduction shall be made by shortening the period during which compensation shall be paid and not by reducing the amount of the weekly payments under this chapter.

**Source.** 1988, 194:2, eff. July 1, 1989.

#### **Section 281-A:36**

**281-A:36 Savings or Insurance; Benefits to Injured Employee From Other Sources.** – No savings or insurance of the injured employee independent of this chapter shall be taken into consideration in determining the compensation to be paid under this chapter, nor shall benefits derived from any source other than the employer be considered in fixing the compensation under this chapter.

**Source.** 1988, 194:2, eff. July 1, 1989.

#### **Section 281-A:37**

**281-A:37 Lump Sum Payments.** –

I. Where there has been a determination of compensability by the employer, the employer's insurance carrier, the commissioner, the commissioner's designated representative or the board, in cases where there have been at least 12 months of continuous disability, or where the best interests of all concerned will be served, lump sum agreements may be approved by the

commissioner. Nothing in this section shall prohibit the employer or the employer's insurance carrier from making a determination of compensability at any time.

II. In no event shall the medical provisions of this chapter be lump summed. The costs of vocational rehabilitation services as provided in RSA 281-A:25 may be lump summed provided the lump sum agreement specifically sets forth the portion of the lump sum amount attributable to vocational rehabilitation services. Such sum shall be held in escrow by the employer or insurance carrier and shall be paid to the provider of the vocational rehabilitation services for services incurred by the claimant. Any lump sum agreement which proposes to include the costs of vocational rehabilitation services shall also specify the nature of the vocational rehabilitation services to be provided to the claimant and shall require the claimant to commence such vocational rehabilitation services within 6 months of the approval of the agreement. The employer and the insurance carrier shall not be liable for vocational rehabilitation services incurred if the claimant fails to commence use of vocational rehabilitation services within 6 months after approval of the lump sum agreement, unless the period is extended by the commissioner for good cause.

III. No lump sum agreement shall be approved under this section except after a hearing before the commissioner or the commissioner's designated representative.

IV. Any lump sum payment which does not comply with this section shall not be included in data filed with the insurance department for ratemaking purposes nor shall it affect the employer's experience modification factor.

**Source.** 1988, 194:2. 1993, 357:1. 1994, 3:11, eff. Feb. 8, 1994.

### **Section 281-A:38**

#### **281-A:38 Medical Examinations. –**

I. Any employee entitled to receive weekly payments or medical benefits under this chapter shall, if requested by the employer or ordered by the commissioner, submit himself or herself for examination by a duly qualified health care provider, in accordance with professional standards as established by the commissioner, and paid by the employer at a time and place reasonably convenient for the employee. The employee shall have the right to have a health care provider designated and paid by himself or herself present at such examination. This right, however, shall not be construed to deny to the employer's health care provider the right to visit the injured employee at all reasonable times and under all reasonable conditions, so long as the employee claims compensation under this chapter.

II. Any health care provider conducting independent medical examinations under this chapter shall be certified by the appropriate specialty board as recognized by the American Board of Medical Specialties or obtain the approval of the commissioner for those specialties not recognized by such board. The health care provider shall maintain a current practice in that area of specialty. The independent medical examination shall take place within a 50-mile radius

of the residence of the injured employee, unless, within the discretion of the commissioner, examination outside the 50-mile radius is necessary to obtain the services of a provider who specializes in the evaluation and treatment specific to the nature and extent of the employee's injury. If an employer or insurance carrier provides written notice to the injured employee regarding its request for an independent medical examination, such notice shall be given 10 days before the examination and shall include the following: "This medical examination is at the request of either the employer or insurance carrier. The examination is not for the purpose of treatment or advice about treatment but for a medical opinion about the employee's claim." The injured employee shall not be required to submit to more than 2 independent medical examinations per year, unless within the discretion of the commissioner, more than 2 examinations are necessary. An injured employee shall have the right to have a witness present during such examination. In the event that a witness is present, including but not limited to a witness taking notes or observing, on behalf of the injured employee, the witness shall not interfere in the examination in any way. The injured employee shall be required to sign an authorization, as prepared by the commissioner, to the effect that he or she understands that his or her medical history and condition or conditions will be discussed during said examination and that he or she waives any right to privacy that he or she may have under the circumstances of voluntarily allowing a witness to be present on his or her behalf.

**Source.** 1988, 194:2. 1994, 3:12. 1996, 231:1. 2005, 94:1, eff. Aug. 6, 2005. 2010, 227:1, eff. Jan. 1, 2011. 2013, 256:1, eff. Jan. 1, 2014.

#### **Section 281-A:38-a**

**281-A:38-a Examination of Injured Employees Covered by Managed Care Programs.** – If an injured employee who is covered by a managed care program established in accordance with RSA 281-A:23-a is dissatisfied with a determination made by such program relating to compensability, degree of disability or degree of impairment arising from an injury, the injured employee may apply to the commissioner for authorization to obtain an independent examination and report thereof by a duly qualified health care provider, in accordance with RSA 281-A:38, of the injured employee's choice. The commissioner shall grant one such authorization as a matter of course. Authorization for additional independent examination regarding the same injury may be granted only if the commissioner finds that exceptional circumstances exist which cast reasonable doubt on the accuracy of the report of the first independent examination. The health care provider conducting an independent examination authorized by the commissioner under this section shall be entitled to a reasonable fee therefor, which shall be paid by the employer or the employer's insurance carrier. Nothing in this section shall be construed to prevent an injured employee from obtaining an examination by a health care provider of the injured employee's choice, at the employee's expense.



**Source.** 1993, 311:2. 1996, 231:2, eff. Aug. 9, 1996.

#### **Section 281-A:39**

**281-A:39 Refusal to Submit to Examination.** – If the employee refuses to submit to an examination as provided in RSA 281-A:38 or obstructs that examination, the employee's right to weekly payments shall be suspended until such examination has taken place; and no compensation shall be payable during or for such period. If medical bills are in dispute and the employee refuses to submit to an examination as provided in RSA 281-A:38 or obstructs that examination, the employee's right to a hearing shall be suspended until such examination has taken place.

**Source.** 1988, 194:2. 2005, 94:2, eff. Aug. 6, 2005.

#### **Section 281-A:40**

**281-A:40 Memorandum of Payment.** – An employer or the employer's insurance carrier shall make payment of compensation in the amount and manner provided by this chapter. The employer shall file memoranda of such payments with the commissioner in accordance with rules adopted by the commissioner under RSA 281-A:60.

**Source.** 1988, 194:2, eff. July 1, 1989.

#### **Section 281-A:41**

**281-A:41 Payment Without Prejudice.** – No payment of any benefits under this chapter shall in any way prejudice the rights of an employer in any dispute regarding the question of whether or not an injury or occupational disease arose out of and in the course of an employee's service.

**Source.** 1988, 194:2, eff. July 1, 1989.

#### **Section 281-A:42**

##### **281-A:42 Failure to Make Payment of Compensation. –**

I. The commissioner may assess a civil penalty of up to \$2,500 on any insurance carrier or self-insurer who fails, without sufficient cause as determined by the commissioner, within 21 days after notice of a claim has been received by the insurance carrier or self-insurer or 21 days from the date that benefits are due:

(a) To make payment of compensation pursuant to RSA 281-A:28 and 281-A:31, and file a memorandum of such action with the commissioner; or

(b) To deny such compensation; to file a memorandum of such action with the commissioner; and to make a copy of the memorandum available to the claimant. The memorandum shall give a valid reason for the denial and shall advise the claimant of the right to petition the commissioner for a hearing.

(c) The memorandum described in subparagraphs (a) and (b) shall be on a form prescribed by the commissioner.

II. The insurance carrier or self-insurer shall be relieved of the obligation to meet the 21-day time limit of paragraph I:

(a) If the commissioner has granted an extension of time upon showing cause; or

(b) If and to the extent that an employer, except a self-insurer, has failed to comply with the requirements of RSA 281-A:53.

III. Upon failure of any insurance carrier or self-insurer to comply with either an order for payment of compensation or an assessment of a civil penalty, the commissioner shall recover either or both in a civil action in the superior court of the county of jurisdiction. Anyone owing a civil penalty under this section shall pay it to the commissioner, who shall deposit it into the department of labor restricted fund established in RSA 273:1-b.

IV. The commissioner shall submit to the insurance commissioner the record of an insurance carrier who consistently fails to comply with the provisions of this section. If the insurance commissioner should, upon investigation, find the carrier to be in substantial noncompliance, the commissioner shall order compliance. If the insurance carrier shall fail to comply, the insurance commissioner shall suspend or revoke such carrier's authorization to carry out the business of workers' compensation in this state. Likewise, the commissioner shall, as the commissioner deems necessary, suspend or revoke the self-insurer's permit of an employer or group self-insurer who consistently fails to comply with the provisions of this section and any rules adopted to enforce this section.

V. Any insurance carrier or self-insurer who fails to file a timely memorandum in accordance with this section and who makes late payment to the employee, shall pay interest to such employee at the same rate as for judgments under RSA 336:1, II from the date the payment was due until it is paid.

VI. In addition to paragraph V, any insurance carrier, self-insurer, or claims adjusting company who fails to file either the memorandum of payment of disability compensation or the memorandum of denial of compensation benefits in a timely manner shall be assessed a civil penalty of up to \$2,500.

**Source.** 1988, 194:2. 1990, 254:24-27. 2003, 99:1, eff. Aug. 5, 2003. 2011, 224:61, eff. July 1, 2011.

#### **Section 281-A:42-a**

##### **281-A:42-a Appeals Board; Composition; Compensation. –**

I. There is established a compensation appeals board. The board shall consist of a pool of 33 members, of which 11 members shall represent labor, 11 members shall represent employers or workers' compensation insurers and 11 members shall be attorneys who shall be neutral. Members of the board shall be appointed by the governor and council from a list of nominees

submitted by the commissioner. The commissioner shall submit at least 2 nominees for each vacancy to be filled. Any person appointed by the governor and council who is not qualified or who ceases to be qualified in the capacity in which such person is serving on the appeals board shall be replaced by the governor and council. Terms of board members shall be 3 years, except the initial appointments shall be staggered so that no more than 1/3 of the members' terms shall expire in the same year. Members of the board shall have at least 5 years' experience in the area of workers' compensation. As a condition to maintaining eligibility to hear appeals, board members shall have at least 10 hours annually of training and briefing in the area of workers' compensation and relevant disciplines. The commissioner, or designee, with the assistance of the attorney general's staff shall supervise and approve the training. The commissioner shall have the authority to suspend the eligibility of any member of the board who is not in compliance with such annual training requirements, and to reinstate such member's eligibility upon compliance. The commissioner may suspend from active participation any board member who fails to render a decision or order within 30 days of the hearing as required by RSA 281-A:43, I(b). The commissioner may rescind the suspension once the board member is in compliance with RSA 281-A:43, I(b). Appeals from a decision of the commissioner or the commissioner's representative shall be heard de novo by a 3-member panel, composed of an attorney who shall serve as chair, one member representing labor and one member representing employers or workers' compensation insurers. At least 2 like votes shall be necessary for a decision by the panel. The board shall hear appeals, in accordance with RSA 281-A:43, I(b), from the decisions of the commissioner made pursuant to RSA 281-A:43. No person who is an interested party or an employee of an interested party shall participate as a member of the panel. The board shall conduct its proceedings in such a manner as to ensure a fair and impartial hearing.

II. The board shall be an administratively attached agency under RSA 21-G:10, to the department of labor, but shall operate independently from the department.

III. Attorney members of the board shall receive \$200 per diem and all other members of the board shall each receive \$150 per diem for each day devoted to the work of the board and shall be reimbursed for necessary travel expenses.

IV. The commissioner shall appoint an administrator from existing full-time staff for the board who shall serve at the pleasure of the commissioner. The administrator shall perform all the administrative duties of the board, including but not limited to scheduling the docket, providing the liaison between the public and the board members, conducting the meetings of the board, and assigning committees to address regulatory, legislative and policy issues.

**Source.** 1990, 254:28. 1991, 376:4. 1992, 289:42. 1993, 271:1. 1996, 231:5. 1999, 210:2. 2001, 141:1. 2003, 115:2. 2005, 85:4. 2007, 69:1, eff. Aug. 10, 2007.

## **Section 281-A:42-aa**

### **281-A:42-aa Compensation Appeals Advisory Board. –**

I. There is hereby established a compensation appeals advisory board to advise the commissioner relative to candidates for the compensation appeals board, established in RSA 281-A:42-a. The board shall be composed of 5 members:

(a) One member representing labor, appointed by the commissioner from a list of nominees provided by the New Hampshire organized labor groups.

(b) One member representing business, appointed by the Business and Industry Association of New Hampshire and the New Hampshire Association of Chamber of Commerce Executives.

(c) An attorney representing plaintiffs, appointed by the New Hampshire Association for Justice.

(d) An attorney representing defendants, appointed by the New Hampshire Bar Association.

(e) One member representing insurance, appointed by the New Hampshire Adjusters Association.

II. The term of office for each member of the board shall be for 3 years; provided, however, that of the members initially appointed, one shall be appointed for a term of one year, 2 shall be appointed for 2 years, and 2 shall be appointed for 3 years. Three members shall constitute a quorum for conducting business. No member shall serve for more than 2 consecutive terms. Members of the board may be removed from office for cause pursuant to RSA 4:1. The board shall meet as required to carry out its responsibilities. There shall be no monetary compensation provided to members who serve on the board.

III. The commissioner of labor shall be the non-voting chair of the advisory board.

IV. The advisory board shall:

(a) Evaluate candidates for the compensation appeals board based upon the nominee's education, knowledge, and experience in the area of workers' compensation law.

(b) Submit names of qualified candidates to the commissioner.

(c) Receive complaints from the commissioner, pursuant to RSA 281-A:42-e, regarding current appeals board members.

(d) Distribute an anonymous questionnaire to participants who are involved in the appeals process.

V. The board shall develop procedures which the commissioner shall adopt by rule, under RSA 541-A, relative to the duties established under paragraph IV.

**Source.** 2003, 115:1, eff. Jan. 1, 2004. 2014, 21:1, eff. May 23, 2014.

## **Section 281-A:42-b**

**281-A:42-b Hearing Officers. –** The commissioner shall appoint as many individuals as necessary to carry out the department's responsibilities under this chapter. Such individuals

shall have experience in workers' compensation and shall hear workers' compensation cases before the commissioner. The commissioner shall set forth the job qualification necessary to insure that each hearing officer is qualified to hear workers' compensation cases. The salary shall be commensurate with the responsibilities and experience required. The commissioner shall, by rules adopted under RSA 541-A, strengthen the reporting structure and the role of a hearing officer; develop a code of ethics for hearings and hearing officers; develop and require at least 15 hours of continuing education on an annual basis for hearing officers; and require a minimum of an additional 15 hours of annual training and briefing with the attorney general's staff.

**Source.** 1990, 254:28, eff. July 1, 1990.

#### **Section 281-A:42-c**

**281-A:42-c Position Established for Assisting Unrepresented Injured Employees.** – There is hereby created within the department of labor the classified full-time position of dispute resolution coordinator. The coordinator shall assist unrepresented injured employees in understanding, asserting, and protecting their rights under this chapter. The coordinator shall meet with or otherwise exchange information with injured employees, investigate injured employees' claims or potential claims, and communicate with employers, insurance carriers, group funded self-insurers, and health care providers on behalf of injured employees, with the objective of resolving claims or potential claims promptly and amicably. However, assistance provided under this section shall not include representing claimants in hearings.

**Source.** 1993, 357:2. 1994, 3:13, eff. Feb. 8, 1994.

#### **Section 281-A:42-d**

**281-A:42-d Time Limitation for Petition for Hearing.** – Compensation for disability, rehabilitation, medical benefits, or death benefits under this chapter shall be barred unless the claimant petitions for a hearing under RSA 281-A:43 within 18 months after the claimant receives notice that the claim has been denied by the insurance carrier or self-insurer pursuant to RSA 281-A:42, I(b).

**Source.** 1994, 3:14, eff. Feb. 8, 1994.

#### **Section 281-A:42-e**

**281-A:42-e Complaints Regarding Compensation Appeals Board Members.** – Any participant involved in the appeals process who has a complaint concerning the conduct of any member of the compensation appeals board shall write to the commissioner of labor stating such complaint. The commissioner shall investigate the complaint and, if the commissioner determines the complaint is valid, take such corrective action as is warranted. The

commissioner shall make a list of the complaints filed against a member of the appeals board available to the advisory board, established in RSA 281-A:42-aa, when that appeals board member is being considered for nomination for a new term.

**Source.** 2003, 115:3, eff. Jan. 1, 2004.

### **Section 281-A:43**

#### **281-A:43 Hearings and Awards. –**

I. (a) In a controversy as to the responsibility of an employer or the employer's insurance carrier for the payment of compensation and other benefits under this chapter, any party at interest may petition the commissioner in writing for a hearing and award. The petition shall be sent to the commissioner at the department's offices in Concord and shall set forth the reasons for requesting the hearing and the questions in dispute which the applicant expects to be resolved. The commissioner or the commissioner's authorized representative shall schedule a hearing, either in Concord or at a location nearest the employee as determined by the commissioner, by fixing its time and place and giving notice at least 14 days prior to the date for which it is scheduled. The hearing date shall be set for a time not to exceed 6 weeks from the date the petition was received. In those instances where an expedited hearing is requested, the petition for hearing shall set forth the facts in sufficient detail to support the request for an expedited hearing. The commissioner, or his or her authorized agent shall, in his or her discretion, determine whether the need exists for an expedited hearing. Any requests for an expedited hearing shall be periodically reviewed by the commissioner to determine whether such requests are given proper attention. The commissioner shall also identify any overutilization by the requesting parties and responses given to such requests by the commissioner. An annual report of the expedited requests, responses, the number of continuances, the reasons for such continuances, the number of requests for hearing, and the time within which the hearings were held shall be made annually to the advisory council established in RSA 281-A:62. The notice may be given in hand or by certified mail, return receipt requested. Continuances of any hearing are discouraged; however, should a continuance be necessary, the parties requesting such continuance shall file with the department a written petition for such continuance at least 7 days prior to the hearing. Failure to file such a petition shall bar any right to a continuance. Thereafter, a continuance may only be granted upon the commissioner's finding that a compelling need exists so as to require a continuance. At such hearing, it shall be incumbent upon all parties to present all available evidence and the person conducting the hearing shall give full consideration to all evidence presented. In addition, the person conducting the hearing shall freely and comprehensively examine all witnesses to determine the merits of the matter. Also, the person conducting the hearing may recess the hearing to a date certain and direct the parties, or either of them, to provide such further information that may be necessary to decide the matter. No later than 30 days after the

hearing, the commissioner or the commissioner's authorized representative shall render a decision and shall forthwith notify the parties of it. When appropriate, the commissioner, or his or her authorized representative, may render a decision at the hearing. Unless excused for good cause shown, failure of any or all parties at interest to appear at a duly scheduled hearing or to petition for a continuance shall bar such parties from any further action concerning an adverse decision, a decision by default, or a dismissal of a petition for hearing and award.

(b) An appeal from a decision of the commissioner or the commissioner's authorized representative shall be taken to the board no later than 30 days from the date of such decision. Upon the filing of an appeal the board shall, within 6 weeks hold a full hearing on the appeal; but, in no case shall such an appeal suspend the operation of an award unless the hearing officer from which the appeal was taken shall so order. The board shall give notice of the scheduled hearing at least 14 days prior to the date for which it is scheduled. Continuances of any hearing are discouraged; however, should a continuance be necessary, the parties requesting such continuance shall file with the board a written petition for such continuance at least 7 days prior to the hearing. Failure to file such a petition shall bar any right to a continuance. Thereafter, a continuance may only be granted upon the commissioner's finding that a compelling need exists so as to require a continuance. The board shall make its decision or order setting forth its findings of fact and rulings of law within 30 days of the hearing.

(c) Any party in interest aggrieved by any order or decision of the board may appeal to the supreme court pursuant to RSA 541.

(d) Within 7 days of receipt of a notice of hearing under subparagraph I(a) or I(b), the insurance carrier or group-funded self insurance plan shall mail a copy of such notice to the affected employer. The commissioner may assess a civil penalty of up to \$2,500 on any insurance carrier or group-funded self insurance plan which fails, without sufficient cause as determined by the commissioner, to comply with the provisions of this subparagraph. All funds collected under this subparagraph shall be paid over to the state treasurer for deposit into the department of labor restricted fund established in RSA 273:1-b.

(e) If a request for cancellation or continuance of a hearing is filed less than 7 days prior to a scheduled hearing, the commissioner may impose an administrative penalty of up to \$500 upon the person filing the request if the commissioner determines that such person has repeatedly filed such requests in abusive disregard of the convenience of other parties or the orderly processes of the department. If such a penalty is imposed upon a person representing a party, the cost of the penalty shall not be passed on to the party represented. All funds collected under this subparagraph shall be paid over to the state treasurer for deposit into the department of labor restricted fund established in RSA 273:1-b.

II. A decision of the commissioner, the commissioner's authorized representative, or the board shall take effect and shall become final, in the absence of an appeal from it, 30 days from the date of the decision. Payment of weekly compensation and entitlement to medical and

vocational benefits, if necessary and so ordered by the commissioner or the board, shall begin or continue as soon as possible, but no later than 5 working days after the decision's effective date, and shall not be terminated except in accordance with the terms of the decision or of a final court determination. If the commissioner determines that the employer or carrier has failed to comply with any order, then the commissioner may assess a penalty not to exceed \$100 for each day of noncompliance, beginning on the date of notification of its assessment. Upon continued failure to comply with an order to make payment of the compensation or medical benefits, or to institute vocational rehabilitation, or to pay the penalty, or any combination thereof, the commissioner shall petition the superior court for an injunction to comply. The commissioner shall deposit into the department of labor restricted fund established in RSA 273:1-b any penalty collected under this section.

III. (a) The commissioner may conduct investigations and hold hearings to resolve disputes between an employer and the employer's workers' compensation carrier regarding whether persons engaged by the employer are employees or independent contractors for the purposes of determining whether an additional premium charge is to be paid by the employer for workers' compensation insurance.

(b) Any party in interest aggrieved by any order or decision of the commissioner under this paragraph may appeal to the superior court.

**Source.** 1988, 194:2. 1990, 254:29, 30. 1993, 357:3, 4. 1999, 210:3. 2005, 85:1, 2. 2007, 172:1, eff. June 18, 2007. 2011, 224:53, 57, eff. July 1, 2011.

#### **Section 281-A:44**

##### **281-A:44 Award of Fees and Interest. –**

I. (a) In any dispute over the amount of the benefit payable under this chapter which is appealed to the board or supreme court or both, the employee, if such employee prevails, shall be entitled to reasonable counsel fees and costs as approved by the board or court and interest on that portion of any award the payment of which is contested. For the purposes of this paragraph, to "prevail" means:

(1) If the employee is the appealing party, the employee shall have received an award for disability benefits, medical, hospital, and remedial care, a scheduled permanent impairment award, vocational rehabilitation, or reinstatement of the employee, which is greater in amount than awarded by the decision which is the subject of the appeal; or

(2) If the appeal is by the employer or insurance carrier, the appealed decision shall have been affirmed.

(b) If the insurance carrier appeals multiple issues and the employee prevails on some, but not all, of the issues appealed, the board or court shall apportion and award fees to the employee's attorney only for the reasonable fees apportioned to the issues which were affirmed.



II. Interest shall be calculated at the same rate as for judgments under RSA 336:1, II, and the state treasurer shall periodically transmit the applicable rate to the commissioner in the same manner provided for notice to the administrative office of the courts.

III. Interest on awards for disability indemnity benefits shall be computed:

(a) From the date of injury where compensability is in dispute in the first instance and benefits have not been paid; or

(b) From the date of termination or reduction of benefits where the extent of disability is in dispute or where benefits were terminated or reduced for some other reason.

IV. Interest on awards for a scheduled permanent impairment shall be computed from the date when payment is due under RSA 281-A:32, XI.

V. Interest on awards for medical, hospital, and remedial care shall be payable only on amounts which have been paid directly by the employee and not by a third party, in which case interest shall be computed from the date of such payment.

VI. No attorney representing a claimant shall contract for, charge for, or collect a fee for legal service rendered to the claimant at the department level unless the fee has been approved by the commissioner. In determining the amount of the allowable fee, the commissioner shall consider, among other things, the nature, length and complexity of the service performed, the usual and customary charge for work of the like kind and the benefit accruing to the claimant as a result of the legal service performed; provided, however, that when an insurance carrier, self insurer, or payor acting on behalf of such carrier or self insurer disputes the causal relationship of a medical bill to the claimant's injury, or whether a medical bill was required by the nature of the injury, and denies payment of such bill, is after a hearing, ordered to pay or reimburse the bill by the commissioner, the claimant shall be entitled to reimbursement of reasonable counsel fees and costs as approved by the commissioner. The claimant shall be entitled to reasonable fees and costs pending appeal. In the event that the medical bill is voluntarily accepted less than 7 business days prior to the date of the scheduled hearing, the claimant shall be entitled to reasonable counsel fees and costs as approved by the commissioner unless the carrier can prove a justifiable reason for the delay in accepting the bill.

**Source.** 1988, 194:2. 1990, 254:44. 1993, 105:1. 2001, 278:1. 2003, 99:2. 2005, 85:8, eff. June 7, 2005. 2010, 10:1, eff. Jan. 1, 2011.

#### **Section 281-A:45**

**281-A:45 Manner of Giving Notice of Hearing.** – A notice of a hearing under the provisions of this chapter may be given by giving notice in hand or by sending it by regular or certified mail return receipt requested addressed to the employee, the employer and the employer's insurance carrier, at each party's last known residence or place of business.

**Source.** 1988, 194:2. 2005, 85:6, eff. June 7, 2005.

### **Section 281-A:46**

#### **281-A:46 Payment Pending Determination of Coverage; Establishing Liability for Benefits. –**

I. If an employee's right to compensation, other benefits, or both, under this chapter is not in dispute either as to eligibility or amount, but a dispute arises between successive employers or between successive insurance carriers for the same employer regarding liability for benefits, the commissioner, following notice to all interested parties and hearing, shall enter an order setting forth the liability of an employer or insurance carrier for the payment of compensation, other benefits, or both, in the first instance. The employer or insurance carrier ruled liable shall immediately start payment pending final determination. The commissioner may make such orders for the deposit of security as may be necessary. When the issue of liability is finally determined, either the commissioner or the court in which the issue is finally resolved shall enter an order making such financial adjustment as may be appropriate in order to effectuate the decision.

II. Except as provided in RSA 281-A:54, if compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease, and any insurance carrier on the risk at the time such employee was last so exposed, shall alone be liable for that compensation without a right to contribution from any prior employer or insurance carrier.

III. Except as provided in RSA 281-A:54, if compensation is payable for an injury, other than an occupational disease, which aggravates a preexisting physical condition, the employer in whose employment the employee sustained the most recent injurious incident and any insurance carrier on the risk when such injurious incident occurred, shall alone be liable for any benefit allowable under this chapter without a right to contribution from any prior employer or insurance carrier.

**Source.** 1988, 194:2, eff. July 1, 1989.

### **Section 281-A:47**

#### **281-A:47 Examination by Physician. –**

I. When application is made to the commissioner, the commissioner may refer the injured employee to one or more duly licensed and impartial physicians or surgeons or may refer the injured employee to a medical facility for an examination, the results of which shall be reported to the commissioner. The physicians, surgeons, or medical facility shall receive a reasonable fee for services and reimbursement for necessary expenses, which shall be paid by the party requesting such an examination. However, in the event that an employee requesting such an examination prevails in the determination by the commissioner, the fee and expenses shall be paid by the employer.

II. If, in the judgment of the commissioner, additional expert medical evidence is required in any case, the commissioner may refer the injured employee to one or more duly licensed and

impartial physicians or surgeons or to a medical facility for an examination, the results of which shall be reported to the commissioner. The physicians, surgeons, or medical facility shall receive a reasonable fee for services plus reimbursement for necessary expenses. The state shall pay any fee or reimbursement on vouchers approved by the commissioner unless, in the commissioner's discretion, the commissioner determines that the employer should pay. The commissioner shall ordinarily accept as determinative the results of such a referral unless, after hearing, the commissioner specifically finds that the results do not accurately reflect the employee's condition.

**Source.** 1988, 194:2, eff. July 1, 1989.

### **Section 281-A:48**

#### **281-A:48 Review of Eligibility for Compensation. –**

I. Any party at interest with regard to an injury occurring after July 1, 1965, may petition the commissioner to review a denial or an award of compensation made pursuant to RSA 281-A:40 by filing a petition with the commissioner not later than the fourth anniversary of the date of such denial or the last payment of compensation under such award or pursuant to RSA 281-A:40, as the case may be, upon the ground of a change in conditions, mistake as to the nature or extent of the injury or disability, fraud, undue influence, or coercion. This section shall not apply to requests for extensions of medical and hospital benefits, or other remedial care, which shall be governed solely by those sections of this chapter relating thereto. This section shall not apply to lump sum agreements, except upon the grounds of fraud, undue influence, or coercion.

II. Upon the filing of a petition and after notice to all interested parties and hearing, the commissioner shall enter an order, stating the reasons therefor, either:

(a) Granting or denying an original award of compensation if none has previously been paid; or

(b) Ending, diminishing, or increasing the compensation previously paid or fixed by award, subject to the maximum or minimum provided in this chapter.

III. If a petitioner files for reducing or for ending compensation, the petitioner shall submit along with the petition medical evidence that the injured employee is physically able to perform his or her regular work or is able to engage in gainful employment. On the basis of such medical evidence, the commissioner may authorize suspension of further payments pending a hearing on the petition; otherwise, compensation shall continue on the basis of the existing award pending the hearing and any further order by the commissioner. All procedure on a petition under this section shall be the same as provided in this chapter for original hearings.

IV. A review under this section shall not affect an award with respect to money already paid.

V. Any party at interest who is dissatisfied with the decision of the commissioner under this

section may appeal to the compensation appeals board, established under RSA 281-A:42-a, in the same manner as provided in RSA 281-A:43.

**Source.** 1988, 194:2. 1993, 142:2. 1998, 73:1, eff. Jan. 1, 1999.

#### **Section 281-A:49**

**281-A:49 Witnesses; Blanks.** – All process and procedure under the provisions of this chapter shall be as summary and simple as reasonable. The commissioner shall have the power, so far as it is necessary for the determination of matters within the commissioner's jurisdiction, to subpoena witnesses, to administer oaths and to examine the books and records of parties to any proceedings under this chapter. The superior court shall, by proper proceedings, have power to enforce the attendance and testimony of witnesses and the production and examination of books, papers, and records before the commissioner.

**Source.** 1988, 194:2, eff. July 1, 1989.

#### **Section 281-A:50**

**281-A:50 Petition for Right to Appeal.** – Any person aggrieved by a decision of the commissioner who was prevented from appealing from such decision within 30 days through mistake, accident, or misfortune and not through the person's own neglect may petition the compensation appeals board, established under RSA 281-A:42-a, at any time within one year after the commissioner's decision to be allowed an appeal. Such petition shall set forth the petitioner's interest, the reason for appealing, and the cause of the delay.

**Source.** 1988, 194:2. 1993, 142:1, eff. Jan. 1, 1994.

#### **Section 281-A:51**

**281-A:51 Preferences of Claims for Compensation.** – All rights of compensation granted by the provisions of this chapter shall have the same preference or priority against the assets of the employer as is allowed by law for a claim by an employee against an employer for unpaid wages.

**Source.** 1988, 194:2, eff. July 1, 1989.

#### **Section 281-A:52**

**281-A:52 Assignments; Exemption From Claims of Creditors; Attorneys' Fees.** –

I. Claims for compensation under this chapter shall not be assignable, and the compensation and any claim for compensation shall be exempt from all claims of creditors except as provided in this section. Claims for payment by physicians, hospitals, and for other remedial care chargeable to the employee and rendered in connection with a compensated injury and claims

of attorneys for services rendered an employee in prosecuting a claim under this chapter, when approved by the superior court, may be enforced against the compensation award in such manner as the superior court may direct.

II. Claims for child support payments, pursuant to RSA 458-B, may be enforced against compensation awards.

**Source.** 1988, 194:2, eff. July 1, 1989.

### **Section 281-A:53**

#### **281-A:53 Responsibility of Employer to Provide Vital Information. –**

I. Every employer or self-insurer shall record in sufficient detail and shall report or cause to be reported to the commissioner any injury sustained by an employee in the course of employment as soon as possible, but no later than 5 days after the employer learns of the occurrence of such an injury. If an injury results in a disability extending beyond 3 days, the employer shall file with the commissioner a supplemental report giving notice of such disability as soon as possible after such waiting period, but no later than 7 days after the accidental injury. The employer shall supply a copy of either report to the nearest claims office of the employer's insurance carrier. A self-insurer need not file the supplemental report with the commissioner and may keep the insurance copy of the employer's first report as a file copy. If any employer fails without sufficient cause as determined by the commissioner to file a first report as set forth in this paragraph, the commissioner shall assess a civil penalty of up to \$2,500. If any employer fails to pay a civil penalty, the commissioner shall recover such penalty payment by a civil action in the superior court of the county of jurisdiction. Civil penalties owed under this section shall be paid to the commissioner, who shall deposit them into the department of labor restricted fund established in RSA 273:1-b.

II. Any employer who consistently fails to make available to the commissioner and to that employer's insurance carrier the information required by the carrier to make payment of disability compensation in a manner consistent with RSA 281-A:42 shall, after such employer has been given due notice of noncompliance and an opportunity to comply, be assessed by the commissioner a civil penalty of not more than \$100. If an employer fails to pay such penalty or to comply with the requirements of paragraph I, the commissioner shall recover the penalty and petition for an injunction in a civil action in the superior court of the county of jurisdiction.

III. On or after July 1, 2006, all "First Reports of Injury" shall be filed by the insurance carrier or self-insured employer electronically in a manner prescribed by the department. The commissioner may grant an insurance carrier or self-insured employer a variance if the carrier or self-insured employer documents to the satisfaction of the commissioner that compliance would cause the carrier or self-insured employer "undue hardship" which, for the purposes of this section, means significant difficulty or expense.

**Source.** 1988, 194:2. 1990, 254:31. 2005, 85:5, eff. June 7, 2005. 2011, 224:58, eff. July 1, 2011.

#### **Section 281-A:53-a**

##### **281-A:53-a Responsibility of Employee. –**

I. Any employee receiving workers' compensation benefits pursuant to this chapter has an affirmative duty to report any changes in his or her employment status or earnings, or both, to the carrier or self-insured.

II. Every carrier or self-insured shall notify any employee receiving benefits pursuant to this chapter of this duty on a form approved by the commissioner. Such form shall indicate that failure to report any change in employment status or earnings may subject the employee to civil or criminal penalties. The form shall further indicate that failure to complete and return the form to the carrier or self-insured within 30 days of the request may result in a suspension of the employee's compensation benefits.

III. In the event that the employee fails to return a completed form within 30 days of the carrier or self-insured's request, the carrier or self-insured may send a notice of intent to suspend compensation benefits to the employee and to the commissioner. If within 15 days of such notice the carrier, self-insured, or the commissioner has not received a completed form, the carrier or self-insured may petition the commissioner to suspend compensation benefits until such time as the form is filed. Upon receipt of a petition to suspend compensation, the commissioner may order compensation payments suspended until such time as the employee files the form. Upon receipt of the form, benefits shall be paid retroactive to the date of suspension.

IV. The carrier or self-insured shall send an employee receiving compensation benefits such a form not more than once every 3 months.

**Source.** 2000, 158:1, eff. Jan. 1, 2001.

#### **Section 281-A:54**

##### **281-A:54 Payment for Second Injuries From Special Fund. –**

I. If an employee who has a permanent physical or mental impairment, as defined in RSA 281-A:2, XIV, from any cause or origin incurs a subsequent disability by injury arising out of and in the course of such employee's employment on or after July 1, 1975, which results in compensation liability for a disability that is greater by reason of the combined effects of the preexisting impairment than that which would have resulted from the subsequent injury alone, the employer or the employer's insurance carrier shall in the first instance pay all awards of compensation provided by this chapter. However, the commissioner shall reimburse such employer or insurance carrier from the special fund created by RSA 281-A:55 for all compensation payments subsequent to those payable for the first 104 weeks of disability. Provided, however, that prior to the first 104 weeks of disability, the employer shall be

reimbursed 50 percent after the first \$10,000 paid on all compensation for temporary total, temporary partial, permanent partial, permanent total, medical, or rehabilitation benefits for all injuries occurring on or after January 1, 1991.

II. If the subsequent injury of such an employee occurring on or after July 1, 1975, shall result in the death of the employee and it shall be determined that the death would not have occurred except for such preexisting permanent physical or mental impairment, the employer or the employer's insurance carrier shall in the first instance pay the compensation prescribed by this chapter. However, the commissioner shall reimburse such employer or insurance carrier from the special fund created by RSA 281-A:55 for all compensation payable in excess of 104 weeks, provided, however, that prior to the 104 weeks, the employer shall be reimbursed 50 percent over and above the first \$10,000 of all compensation, medical, rehabilitation benefits, or funeral expenses which the employer was required to pay for all injuries occurring on or after January 1, 1991.

III. In order to qualify under this section for reimbursement from the special fund, an employer shall establish by written records, or by affidavit executed at the time of hire or retention in employment, that the employer had knowledge of the employee's permanent physical or mental impairment at the time that the employee was hired or at the time that the employee was retained in employment after the employer acquired such knowledge.

IV. The special fund shall not be bound as to any question of law or fact by reason of an award or an adjudication to which it was not a party or in relation to which it was not notified at least 3 weeks prior to the award or adjudication that it might be subject to liability for the injury or death.

V. An employer or insurance carrier shall notify the commissioner of any possible claim against the special fund as soon as practicable but in no event later than 100 weeks after the injury or death.

VI. Reimbursement for payments by an insurance carrier under this section shall be made periodically at the discretion of the commissioner by orders drawn on the state treasury to be charged against the special fund.

VII. No benefit shall be payable under this section for injuries or illnesses occurring prior to July 1, 1975; provided, however, that persons who incurred an injury or illness prior to July 1, 1975, which was of the type specified in former RSA 281:47 shall continue to be paid out of the special fund created by RSA 281-A:55.

VIII. Payments made by an employer or the employer's insurance carrier under RSA 281-A:25 and 281-A:32 shall be in lieu of payments under this section.

IX. Employers who incur costs for job modification for the purposes of retaining individuals, including those reinstated under RSA 281-A:25-a, for which a plan for modification has been approved by the commissioner shall be reimbursed 50 percent of the cost for such job modifications from the special fund for second injuries under RSA 281-A:55. Such

reimbursement shall not exceed \$5,000 per employer per year. Before reimbursement shall be authorized, the employer shall submit the plan for modification to the commissioner for approval.

X. An employer who reinstates an employee under RSA 281-A:25-a shall not be eligible for reimbursement from this fund should the employee become injured.

**Source.** 1988, 194:2. 1990, 254:32, 33. 1997, 343:6, 7, eff. Jan. 1, 1998.

### **Section 281-A:55**

#### **281-A:55 Special Fund for Second Injuries. –**

I. A special fund is hereby established in the state treasury for the purpose of making payments in accordance with RSA 281-A:15, III, RSA 281-A:54 and this section. The commissioner shall administer the fund. The state treasurer shall be the custodian of the fund, and all moneys and securities in the fund shall be held in trust by the state treasurer and shall not constitute money or property of the state.

II. The state treasurer is authorized to disburse moneys from the fund only upon written order of the commissioner. The state treasurer shall be required to give bond in an amount to be fixed and with securities approved by the commissioner conditioned upon the faithful performance of the treasurer's duty as custodian of the fund. The premium of the bond shall be paid out of the fund.

III. Each insurance carrier and self-insurer shall, pursuant to rules adopted by the commissioner, make payments to the fund in an amount equal to that proportion of 115 percent of the total obligation of the fund during the preceding 12 months, less the amount of the net assets in the fund as of March 31 of the current year, which the total workers' compensation benefits, including medical benefits, paid by each insurance carrier and self-insurer bore to the total workers' compensation benefits, including medical benefits, paid by all insurance carriers and self-insurers in the fiscal year ending in the preceding calendar year.

IV. The commissioner shall conserve the assets of the fund. In furtherance of this purpose, the attorney general shall appoint an employee of the department of justice to represent the fund in all proceedings brought to enforce claims against the fund.

V. An insurance carrier or self-insurer failing without sufficient cause to make payment under this section within the period specified by the commissioner shall be assessed a civil penalty of \$100 for each day that the payment is overdue, which shall be deposited into the department of labor restricted fund established in RSA 273:1-b.

**Source.** 1988, 194:2. 1989, 294:5. 2005, 85:3, eff. June 7, 2005. 2011, 224:64, eff. July 1, 2011.



### **Section 281-A:55-a**

#### **281-A:55-a Reimbursement for Payment of Additional Compensation. –**

I. When an employer or carrier has paid additional compensation to an employee pursuant to RSA 281-A:15, III as a result of the employee's increased average weekly wages earned in concurrent employment, reimbursement for such additional compensation shall be made to the employer or carrier from the special fund created by RSA 281-A:55.

II. An employer or carrier shall notify the labor commissioner of any possible claim against the special fund as soon as practicable, but in no event later than 100 weeks after the injury or death.

**Source.** 1989, 294:6, eff. July 1, 1989.

### **Section 281-A:56**

#### **281-A:56 Penalty for False Representation. –**

I. A person who makes a false statement or representation for the purpose of obtaining any benefit or payment under this chapter, whether for himself or herself or for any other person, and who does not believe the statement or representation to be true, shall be subject to prosecution and punishment for false swearing under RSA 641:2, unsworn falsification under RSA 641:3, or perjury under RSA 641:1, as the case may be, and, upon conviction, the court may order forfeit all of the person's rights to the compensation sought. In addition to any other remedy, the employer or insurance carrier providing the benefit or payment shall be entitled to restitution as authorized in RSA 651:63.

II. An employer or insurance carrier, or any employee, agent, or person acting on behalf of an employer or insurance carrier, who makes a false statement or representation in the course of reporting, investigating or adjusting a claim for any benefit or payment under this chapter and who does not believe the statement or representation to be true shall be subject to prosecution and punishment for false swearing under RSA 641:2, unsworn falsification under RSA 641:3, or perjury under RSA 641:1, as the case may be.

**Source.** 1988, 194:2. 1993, 239:2. 2000, 158:2, eff. Jan. 1, 2001.

### **Section 281-A:57**

**281-A:57 General Penalty.** – Except as otherwise provided, any person who violates any provision of this chapter or any order issued by the superior court or by the commissioner under this chapter shall be guilty of a violation if a natural person or guilty of a misdemeanor if any other person.

**Source.** 1988, 194:2, eff. July 1, 1989.

### **Section 281-A:57-a**

#### **281-A:57-a Penalty Collection Powers. –**

I. Notwithstanding the provisions of any other law, with respect to the collection of any fees, penalties, or interest administered by the department, the department of labor shall cause a certified copy of the notice and demand for payment of such fees, penalties, or interest to be filed in accordance with RSA 454-B:2 and such filing and service of the notice and demand shall constitute a lien upon the real estate, personal estate, property interest, right, or credit to which the notice and demand relates, or which may be subsequently discovered.

II. If the party liable for such fees, penalties, or interest neither resides in nor owns property in this state, then the notice and demand in paragraph I of this section shall be filed with the secretary of state and shall constitute a lien in the manner as provided in paragraph I.

III. Any lien filed pursuant to this section shall continue and shall be valid and binding until the liability for the sum, with interest, costs, and attorney's fees is satisfied or 6 years from the date such lien is filed, whichever is earlier.

IV. In the event the liability, interest, costs, and attorney's fees are not satisfied before the end of the original term of the lien, any lien filed pursuant to this section may be renewed for the same term as the original term of the lien by refiling according to the procedures set forth in paragraphs I-III.

V. A bankruptcy filing shall not affect the validity of any lien properly filed or renewed in accordance with this section.

VI. Upon neglect or refusal of any person or corporation to pay the fees, penalties, or interest assessed upon them, the department may distrain the personal estate, property interest, right, or credit of such person or corporation.

**Source.** 2008, 270:4, eff. June 26, 2008.

### **Section 281-A:58**

**281-A:58 Administration.** – The commissioner shall administer and enforce all provisions of this chapter except as otherwise provided in this chapter.

**Source.** 1988, 194:2, eff. July 1, 1989.

### **Section 281-A:59**

#### **281-A:59 Administration Fund. –**

I. An administration fund is hereby established in the state treasury for the sole purpose of paying all costs of administering this chapter. The commissioner shall administer the fund. The state treasurer shall be the custodian of the fund, and all moneys and securities in the fund shall be held in trust by the state treasurer and shall not constitute money or property of the state.

II. The state treasurer is authorized to disburse moneys from the fund upon written order of both the commissioner and the director, division of accounting services, department of administrative services, in accordance with a budget approved by the general court. The state treasurer shall give bond in an amount to be fixed and with securities approved by the commissioner conditioned upon the faithful performance of the treasurer's duty as custodian of the fund.

III. Each insurance carrier and self-insurer, including the state, shall make payments to the fund of its pro rata share of one fiscal year's costs to be appropriated out of the fund. The governor is authorized to draw a warrant for any sum payable by the state under this paragraph out of any money in the treasury not otherwise appropriated. The pro rata share shall be computed on the basis which the total workers' compensation benefits, including medical benefits, paid by each insurance carrier and self-insurer bore to the total workers' compensation benefits, including medical benefits, paid by all insurance carriers and self-insurers in the fiscal year ending in the preceding calendar year; provided, however, that no insurance carrier or self-insurer shall pay an assessment of less than \$100. The commissioner shall assess each insurance carrier and self-insurer as soon as possible after July 1 of each year. Total assessments shall not exceed the amount appropriated for the fund, which shall include the budget of the workers' compensation division of the department of labor for the fiscal year in which the assessment is made and all other costs of administering this chapter. The balance in the fund at the beginning of the new fiscal year shall proportionately reduce the assessments under this section. The commissioner shall have the authority to adopt rules, pursuant to RSA 541-A, relative to the manner in which such payments are to be made.

IV. The civil penalties collected under RSA 281-A:7, I(b), 23, 24, 42, 43, and 53 shall be forwarded to the state treasurer and deposited in the department of labor restricted fund established in RSA 273:1-b.

V. The commissioner shall conserve the assets of the fund. In furtherance of this purpose, the attorney general shall appoint an employee of the department of justice to represent the fund in all proceedings brought to enforce payment of assessments as provided in paragraph III.

VI. [Repealed.]

VII. An insurance carrier or self-insurer failing without sufficient cause to make payments under this section within the period specified by the commissioner shall be assessed a civil penalty of \$100 for each day that the payment is overdue.

**Source.** 1988, 194:2. 1990, 254:45. 1991, 355:64. 1996, 51:2, 178:1. 2007, 263:78, eff. July 1, 2007; 296:3, eff. Aug. 12, 2007. 2011, 224:8, 53, eff. July 1, 2011.

#### **Section 281-A:60**

##### **281-A:60 Rulemaking; Powers of the Commissioner. –**

I. The commissioner shall have the power to adopt rules under RSA 541-A relative to the

following:

- (a) Content and format of all forms necessary under this chapter.
- (b) Method of filing memoranda of payments under RSA 281-A:40 and method of filing forms required under RSA 281-A:53-a.
- (c) What constitutes substantial noncompliance with RSA 281-A:42.
- (d) Procedures for hearings and appeals held in accordance with this chapter.
- (e) Method of recordkeeping and filing of reports for employers.
- (f) A scale of legal fees under RSA 281-A:44.
- (g) Content and manner of supplying medical information required under RSA 281-A:23, V.
- (h), (i) [Repealed.]
- (j) Using the most recent edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" in accordance with RSA 281-A:32, XIV, and updating such rules as other editions of such guide are published.
- (k) Guidelines for employers' safety programs and procedures for filing such programs in accordance with RSA 281-A:64, II and procedures necessary to establish joint loss management committees as required under RSA 281-A:64, III.
- (l) Developing the multi-media education program required under RSA 281-A:65, I and procedures for using it to educate persons on the workers' compensation law and safety procedures.
- (m) Preparing and distributing of the manual required under RSA 281-A:65, II.
- (n) Establishing initial, minimum funding requirements necessary to seek authorization to self-insure under this chapter.
- (o) Procedures for safety inspections required under RSA 281-A:64, IV.
- (p) What constitutes a sufficient number of and an approval process for injury management facilitators as required under RSA 281-A:23-a, V.
- (q) What shall constitute temporary alternative work opportunities under RSA 281-A:23-b.
- (r) Licensing, bonding, and qualifications of third party administrators in accordance with RSA 281-A:5-d; establishment of fees not to exceed \$200 for issuance and renewal of licenses, both of which shall be deposited in the department of labor restricted fund established in RSA 273:1-b; assessment of civil penalties not to exceed \$2,500 for each violation of such rules, which sums shall be deposited in the department of labor restricted fund established in RSA 273:1-b.
- (s) Pre-approval of medical care benefits under RSA 281-A:23.
- (t) Adjusted total disability benefits under RSA 281-A:29.
- (u) Temporary partial disability benefits at a diminished earning capacity under RSA 281-A:31.
- (v) Applications to the special fund under RSA 281-A:30 and RSA 281-A:54.
- (w) Claims adjusters under RSA 281-A:63.

- (x) Employee incarceration under RSA 281-A:3-a.
- (y) Medical examinations under RSA 281-A:38.
- (z) Vocational rehabilitation under RSA 281-A:25.
- (aa) Lump sum and third-party settlements under RSA 281-A:37 and RSA 281-A:13.

II. The commissioner may employ such clerical or other assistants as deemed necessary for the proper performance of the commissioner's duties under this chapter.

**Source.** 1988, 194:2. 1990, 254:34. 1992, 43:7. 1994, 3:15-17. 1995, 161:3. 1997, 343:11, II. 2000, 158:3, eff. Jan. 1, 2001. 2011, 224:53, eff. July 1, 2011. 2012, 171:14, eff. Aug. 10, 2012.

### **Section 281-A:61**

#### **281-A:61 Reports of the Commissioner. –**

I. The commissioner shall make a report to the governor, by October 1 of each odd-numbered year, showing the work done during the preceding 2 fiscal years. The report shall include a properly classified statement of department expenses, statistical information relating to the number and character of industrial accidents during such 2 years and such other information and recommendations as the commissioner deems pertinent. The report shall be printed as part of the commissioner's biennial report.

II. The commissioner shall make a workplace safety and injury report, which shall be submitted with the report required under paragraph I, to the governor and the legislature. The report shall provide statistical information pertaining to the nature, character and severity of industrial accidents, injuries, and illnesses in New Hampshire and information pertaining to the department's and employers' efforts in the area of safety promotion and accident prevention. The statistical information related to workplace injuries shall be compiled from data gathered directly by the department through the required injury reports filed by employers. This report shall include, but not be limited to, the types and frequency of reported injuries; a breakdown and analysis of the types and size of industries, and the job classifications from which such injuries have been reported; the average length of disability; a report of employer compliance with RSA 281-A:64; the annual listing of best and worst performers as prepared by the commissioner under the provisions of RSA 281-A:64; a report of all departmental activities required under RSA 281-A:65; specific recommendations for improved workplace safety promotion and injury prevention; and any other such information and recommendations pertaining to workplace injuries and injury prevention as the commissioner deems appropriate. The report shall also include the same information for certified managed care programs and shall include information relative to the number of employees and the number of hearings of claimants participating in each certified managed care program.

**Source.** 1988, 194:2. 1994, 3:18, eff. Feb. 8, 1994.

## **Section 281-A:62**

### **281-A:62 Advisory Council. –**

I. There is hereby established an advisory council on workers' compensation. The advisory council shall consist of 9 members: the commissioner or a designee; the insurance commissioner or a designee; one member of the house of representatives, appointed by the speaker of the house; one member of the senate, appointed by the president of the senate; and 5 persons appointed by the governor and council, one representing the interests of management, who shall not have interests in the insurance field, one representing the interests of labor, one representing insurance interests of commercial workers' compensation carriers, one representing self-funded employers and one representing health care providers. The legislative members of the advisory council and the 5 members appointed by the governor and council shall be familiar with the workers' compensation laws of New Hampshire. Any person appointed by the governor and council who is not qualified or who ceases to be qualified in the capacity in which such person is serving on the advisory council shall be replaced by the governor and council. The advisory council shall discuss problems related to the administration of this chapter and shall discuss policy goals. The advisory council shall also ratify managed care programs established under RSA 281-A:23-a. The term of office of each member appointed by the governor and council shall be 3 years and until a successor is appointed and qualified. Vacancies shall be filled in the same manner and for the unexpired terms. Each member of the advisory council shall be reimbursed for necessary travel and other necessary expenses.

II. The council shall meet as necessary and shall annually review the performance of the workers' compensation system and issue a report of its findings and conclusions on or before January 1 of each year to the governor, the labor commissioner, the commissioner of insurance, the speaker of the house of representatives, the president of the senate, and appropriate committee chairs of both houses as to the status of the workers' compensation system. In performing its responsibilities, the council may:

- (a) Make recommendations relating to the adoption of rules and necessary legislation.
- (b) Develop recommendations regarding the method and form of statistical data collection.
- (c) Monitor the performance of the workers' compensation system and monitor the implementation of legislative directives.

III. The department of labor and other state agencies shall cooperate with the council and shall provide necessary information and staff support.

**Source.** 1988, 194:2. 1990, 254:35. 1993, 311:3. 1995, 15:2. 1996, 231:6, eff. Aug. 9, 1996.

## **Section 281-A:63**

### **281-A:63 Claims Adjusters. –**

I. Any insurance carrier, self-insured employer or employer group, or claims adjusting company handling workers' compensation claims in this state shall utilize a claims adjuster

licensed in New Hampshire and such claims adjuster shall maintain suitable facilities in this state.

II. Every 2 years, at least 60 days prior to the renewal date of their license, persons holding a license to adjust workers' compensation insurance claims shall certify to the department of insurance that they have completed courses of instruction, preapproved by the insurance department, providing a minimum of 20 hours, 10 hours of which shall inform the licensee of the current workers' compensation laws of this state, to enable the licensee to engage in the business of a workers' compensation adjuster fairly and without injury to the public and to adjust all claims in accordance with the workers' compensation laws of this state and 10 hours of which shall be in any other preapproved multi-line claims adjusters course of instruction.

**Source.** 1990, 254:36. 1997, 324:3, eff. June 23, 1997.

### **Section 281-A:64**

#### **281-A:64 Safety Provisions; Administrative Penalty. –**

I. Every employer shall provide employees with safe employment. Safe employment includes but is not limited to furnishing personal protective equipment, safety appliances and safeguards; ensuring that such equipment, appliances, and safeguards are used regularly; and adopting work methods and procedures which will protect the life, health, and safety of the employees. For the purposes of this section, "employer" shall include railroads, even if the employees of such railroads receive compensation for work injuries under federal law rather than RSA 281-A.

II. All employers with 15 or more employees shall prepare, with the assistance of the commissioner, a current written safety program and file this program with the commissioner. After a written safety program has been filed, the program shall be reviewed and updated by the employer at least every 2 years. Employer programs shall, in addition to the specific rules and regulations regarding worker safety, include the process of warnings, job suspension, and job termination for violations of the safety rules and regulations set forth in the program.

III. Every employer of 15 or more employees shall establish and administer a joint loss management committee composed of equal numbers of employer and employee representatives. Employee representatives shall be selected by the employees. If workers are represented by a union, the union shall select the employee representatives. The joint loss management committee shall meet regularly to develop and carry out workplace safety programs, alternative work programs that allow and encourage injured employees to return to work, and programs for continuing education of employers and employees on the subject of workplace safety. The committee shall perform all duties required in rules adopted pursuant to this section.

IV. Employers subject to the requirements of paragraph III, other than employers participating in the safety incentive program under RSA 281-A:64-a, shall be placed on a list for

early and periodic workplace inspections by the department's safety inspectors in accordance with rules adopted by the commissioner. Such employers shall comply with the directives of the department resulting from such inspections.

V. Notwithstanding paragraphs III and IV, an employer of 15 or more employees may satisfy the requirements of those paragraphs if such employer implements an equivalent loss management and safety program approved by the commissioner.

VI. The commissioner, in conjunction with the National Council of Compensation Insurance (NCCI), shall develop a list of the best and worst performers based on the experience modification factors promulgated by NCCI. The list shall include the top 10 lowest experience modification employers. The commissioner shall publicly recognize these low experience modification employers by presenting them with an award at the department's annual workers' compensation conference. The list of the top 10 highest and lowest experience modification employers shall be provided to the advisory council. The department shall review any specific claim against any employer listed in the top 10 highest experience modification list in conjunction with the safety program on file with the commissioner.

VII. In order to assist self-insurers in developing experience modification factors, self-insurers may submit the appropriate statistical information to the National Council of Compensation Insurance for calculating experience modifications.

VIII. The commissioner may assess an administrative penalty of up to \$250 a day on any employer not in compliance with the written safety program required under paragraph II of this section, the joint loss management committee required under paragraph III of this section, or the directives of the department under paragraph IV of this section. Each violation shall be subject to a separate administrative penalty. All penalties collected under this paragraph shall be deposited in the general fund.

IX. [Repealed.]

**Source.** 1990, 254:36. 1994, 3:19. 1997, 343:9, 10, eff. Jan. 1, 1998. 2010, 134:1, eff. July 14, 2010. 2012, 144:1, 2, 4, I, eff. Jan. 1, 2013.

#### **Section 281-A:64-a**

##### **281-A:64-a Safety Incentive Program; Certification of Loss Management Consultants. –**

I. To qualify for the incentive discount under this section, an eligible employer shall obtain and carry out a loss management program which shall be developed by a loss management consultant certified by the panel established in paragraph IV. A qualifying loss management program shall address safety improvements in the physical environment of the workplace and in the production process. Such a program shall also involve behavioral elements, including substantial employee involvement in a joint loss management committee, required under RSA 281-A:64, III and alternative work programs which allow and encourage injured employees to return to work, and continuing education of participating employers and employees.



II. To be eligible to participate in a program established pursuant to this section an employer shall:

(a) Be insured in the residual market, and have an annual workers' compensation insurance premium of \$2,500 or more.

(b) Participate in a managed care program approved under RSA 281-A:23-a.

(c) Participate, where otherwise eligible, in a retrospective rating plan, in which it is required that the employer's final rates for workers' compensation insurance are determined based on the employer's actual loss experience during the 3-year credit period.

III. Any participating employer meeting all eligibility requirements under this section and which has participated in a qualifying loss management program established under this section for at least 6 months shall be eligible for a workers' compensation insurance premium credit of 10 percent, phased out over a 3-year period. The credit shall be retroactive to the first day of participation in such qualifying loss management program.

IV. Pursuant to RSA 404-C:1, the insurance commissioner shall call upon the plan administrator of the New Hampshire workers' compensation insurance plan to file a safety incentive rate program incorporating the provisions of this section. Such rate plan shall also include provision for certifying loss management consultants by an independent panel of 3 persons knowledgeable in loss management matters, one each representing employers, employee groups, and workers' compensation insurers and selected by the insurance commissioner from among candidates recommended by each such constituent group. The commissioners of labor and insurance, or their designees, shall also serve on such certification panel.

**Source.** 1994, 3:20, eff. Feb. 8, 1994.

#### **Section 281-A:64-b**

**281-A:64-b Manager of Safety, Training, and Injury Prevention.** – There is created within the department of labor the classified full-time position of manager of safety, training, and injury prevention who shall be under the direction of the labor commissioner. The position shall be at labor grade 25. The manager shall be responsible for mandatory workplace safety programs and for the development of effective multi-media workplace safety programs which shall be available to all employers.

**Source.** 1994, 3:20. 2001, 158:99, eff. Dec. 28, 2001.

#### **Section 281-A:65**

**281-A:65 Multi-Media Program and Manual Required.** –

I. The commissioner shall develop a multi-media education program on safety in the workplace, which shall be used to educate persons providing or receiving workers'

compensation benefits regarding their rights, duties and responsibilities under this chapter.

II. The commissioner shall also publish and distribute a manual, which shall be approved by the advisory council. Such manual shall be written in informal and readily understandable language and shall contain an explanation of workers' compensation benefits, procedures regarding disputes, relevant rules, and such other information that the commissioner determines will inform employees, employers, insurance carriers, and those providing services pursuant to RSA 281-A of their rights, duties and responsibilities under this chapter. The manual shall be reviewed annually and updated as necessary. The manual shall not be construed as containing rules for the purposes of RSA 541-A.

III. The commissioner shall also provide toll-free telephone lines to enable employees and employers to contact the department for answers to questions they may have as to their rights, duties and responsibilities under this chapter.

IV. The commissioner shall keep informed regarding successful programs to improve workplace safety conducted in other states. Annually, the commissioner shall communicate with at least 10 employers who have generated the greatest number of compensable injuries in the preceding year, and shall request the opportunity to make a presentation to such employers, and their employees, regarding improvement in workplace safety.

**Source.** 1990, 254:36, eff. Jan. 1, 1991.

#### **Section 281-A:66**

**281-A:66 Safety Inspections.** – [Repealed 1994, 3:26, II, eff. Feb. 8, 1994.]

#### **Section 281-A:67**

**281-A:67 Safety Enhancement Program.** –

I. There is hereby established a safety enhancement program to be administered by the commissioner. Such program shall include regional training and safety seminars open to all interested employees and employers.

II. The commissioner may engage independent consultants and may make grants to independent organizations to assist in the conduct of the program described in paragraph I within the limits of the appropriation for the program.

**Source.** 1993, 357:5. 2007, 326:2, eff. Sept. 14, 2007.

### **Certification of Vocational Rehabilitation Providers**

#### **Section 281-A:68**

**281-A:68 Certification Required.** – After January 1, 1995, persons providing vocational rehabilitation services under RSA 281-A:25 as a vocational rehabilitation provider under this chapter shall be certified in accordance with this subdivision; except that state employees

providing vocational rehabilitation services as part of the state vocational rehabilitation program established under RSA 21-N and RSA 200-C shall be certified solely in accordance with RSA 21-I:42 and rules adopted pursuant to RSA 21-I:43.

**Source.** 1994, 272:2, eff. Jan. 1, 1995.

### **Section 281-A:69**

#### **281-A:69 Vocational Rehabilitation Provider Advisory Board; Rulemaking. –**

I. There is hereby established a vocational rehabilitation provider advisory board to advise the commissioner relative to certification procedures for vocational rehabilitation providers. The board shall be composed of 7 members: 5 members shall be vocational rehabilitation providers eligible for certification, appointed by the governor, one public member, appointed by the governor and the director of the division of workers' compensation, or designee.

II. The term of office for each member of the board appointed by the governor shall be for 3 years; provided, however, that of the members initially appointed, 2 shall be appointed for a term of one year, 2 shall be appointed for 2 years, and 2 shall be appointed for 3 years. Three members shall constitute a quorum for conducting business. No member shall serve for more than 2 consecutive terms. Members of the board may be removed from office for cause pursuant to RSA 4:1. The board shall meet as required to carry out its responsibilities. There shall be no monetary compensation provided to members who serve on the board.

III. The board shall develop procedures which the commissioner shall adopt by rule under RSA 541-A, relative to:

- (a) The application process for certificates.
- (b) Certification categories.
- (c) The reviewing and certification process.
- (d) Continuing education requirements.
- (e) Renewals of certificates.
- (f) Fees for initial certificates and renewals and for other services provided under this subdivision.
- (g) Grounds for disciplinary proceedings and for revocation and suspensions of certificates.
- (h) Content and format of all forms required under this subdivision.
- (i) Requirements for certification.
- (j) Any other matter necessary to the administration of this subdivision.

**Source.** 1994, 272:2, eff. Jan. 1, 1995.

### **Section 281-A:70**

**281-A:70 Fees. –** Any fees collected under this subdivision shall be forwarded to the state treasurer for deposit into the department of labor restricted fund established in RSA 273:1-b.

**Source.** 1994, 272:2, eff. Jan. 1, 1995. 2011, 224:53, eff. July 1, 2011.