

MINNESOTA ENACTS NEW WORKERS' COMPENSATION LEGISLATION

New Provisions include increase in minimum comp rate, new penalties against medical providers and extension of sunset for Covid presumption to end of 2021

By Chris Celichowski and Brian Thompson

The Minnesota Legislature recently passed workers' compensation legislation proposed by the Workers' Compensation Advisory Council (WCAC). The WCAC, a state board comprised of an equal number of representatives from labor and business, addresses issues and recommends legislation pertaining to workers' compensation. Gov. Tim Walz signed this legislation into law on April 26, 2021.

These amendments to the Minnesota Workers' Compensation Law (Minnesota Statutes, Chapter 176) make several substantive changes.

MINIMUM COMPENSATION RATE WILL INCREASE

The minimum weekly compensation rate is currently \$130 per week, or the employee's actual weekly wage, whichever is less. For dates of injury on or after October 1, 2021, the new minimum weekly compensation rate "shall be 20% of the maximum weekly compensation payable or the employee's actual weekly wage, whichever is less."

Comment: This will substantially increase of the minimum compensation rate, which has not changed since 2000. To see how this will change the minimum compensation rate, the current 2020 statutory maximum compensation rate is \$1166.88. Twenty percent of this amount is \$233.38. This represents an almost 80% increase in the minimum compensation rate. The statute still provides that if the employee's actual weekly wage is lower than the minimum, their compensation rate will be their actual weekly wage.

Effective Date: This applies to dates of injury from and after October 1, 2021.

MEDICAL PROVIDERS COULD FACE PENALTIES FOR IMPROPER COLLECTION OR ATTEMPTS TO COLLECT PAYMENT

Defining Violations Leading to Penalties

The law adds a new statutory provision, MS 176.136 subdivision 2a, allowing the Commissioner of the Department of Labor & Industry to "assess penalties, costs, and expenses against a health care provider who collects or attempts to collect payment from an employee" in violation of specified statutory provisions. A violation occurs only if the health care provider or provider's representative was informed that the treatment or service was for a claimed workers' compensation injury or that the bill should be submitted to a workers' compensation insurer. Once the health care provider has been provided with the information that the

treatment was for a work-related injury or that the bill should be submitted to workers' compensation insurer, *a violation occurs "each time"* the health care provider or person acting on the provider's behalf or direction, collects or attempt to collect payment from the employee for charges on a bill for medical treatment or services.

The statute defines an "attempt to collect payment" from an employee as

- "each contact" made by mail, telephone, text, email or "any other type of contact seeking payment;"
- engaging a collection agency or 3rd party to collect from the employee;
- filing a conciliation court claim;
- attaching the employee's tax refund; or
- submitting a report to a credit agency.

Notice Required Before Penalty Assessed and Penalty Amounts

The penalty, payable to the Assigned Risk Safety Account, for "each violation" of the above is a mandatory \$1,000, but increases to a mandatory \$2,000 for "each violation" of the above (except for the mail, etc. contacts) if the employee paid the health care provider as a result of the violation.

The amendment provides that the Commissioner is prohibited from assessing a penalty under this new provision unless the Commissioner has documentation that the health care provider or provider's representative was provided with a written notice that the attempted collection or collection from the employee is prohibited by the workers' compensation statute and penalties may be assessed for violation of the law.

- The written notice, which need only be provided once, may be provided by any agency or person, including the employee, self-insured employer, insurer TPA, or attorney.
- Written notice provided before the effective date of this amendment satisfies the notice requirement.
- The statute requires the Commissioner to post a model notice on the department's website, and a model notice is presumed sufficient notice once provided to the provider's billing office.

In Addition to Penalties, Providers May Have to Reimburse Costs

The amendment also provides that in addition to the aforementioned penalties, the Commissioner "has the authority to order" the provider to pay the employee reasonable reimbursement of costs and expenses incurred by the employee due to these violations and to take all reasonable action to restore the employee's credit rating if damaged as a result of the violation. The provider must:

- Reimburse the employee all amounts the employee paid to the health care provider resulting from each violation, with interest;
- Reimburse the employee a minimum lump sum payment of \$500 “for which no supporting documentation is required to be provided, in addition to costs or expenses documented by the employee over that amount”.

The statute provides a “nonexclusive” list of costs and expenses including *attorney fees*, lost wages, filing fees, court costs, courier fees, photocopying or fax charges, telephone and postage charges, computer or research costs, witness fees, records and travel expenses. These costs and expenses incurred as a result of a violation are payable whether or not the health care provider has been provided with the statutory notice above.

Comment: This new provision imposes a severe and potentially very costly regimen of penalties and reimbursement of costs on medical providers who initiate collection measures against injured workers for bills they have been advised are for a “claimed workers’ compensation injury” or should be submitted to a worker’s compensation carrier.

Various stakeholders in the workers’ compensation system may provide notice to the provider. DOLI must prepare a model notice provision. We anticipate a notice could include language such as the following:

Your facility provided treatment or services for a claimed workers’ compensation injury. Any bills for a claimed workers’ compensation injury should be submitted to a workers’ compensation insurer.

The new provision gives the Commissioner the authority to impose penalties. These penalties are payable to the State of Minnesota’s Assigned Risk Safety Account.

The statute also gives the Commissioner authority to order the health care provider to pay the employee a broadly defined (and potentially unlimited) list of costs and expenses (including attorney fees) incurred for these violations.

Effective Date: This new penalty regimen is effective for violations on or after August 1, 2021. *(Please note that that statute specifically provides that the notice may be provided before August 1, 2021.)*

ADOPTING THE PPS WEB PRICER SYSTEM

The law amends Minn. Stat. 176.1362 to specifically add and allow payment of medical bills using “the inpatient PPS Web Pricer” for patients discharged from inpatient treatment on or after 10/1/2017. The amendment provides that between 10/1/2017 and 10/1/2021 all payments for inpatient services, articles and supplies must use the most recent PC-Pricer program on Medicare’s website. Beginning October 1, 2021, payment for inpatient services, articles, and supplies must be calculated using the inpatient PPS Web Pricer available on Medicare’s website using the applicable dates of inpatient hospitalization. DOLI must publish

the link to the Pricer on its website. The amendment allows insurers doing post-payment audits to use the PC-Pricer or PPS Web Pricer.

Effective Date: Effective the day following final enactment (i.e., April 27, 2021).

PROVIDING GUIDANCE ON CALCULATING BILLS FOR MULTIPLE SURGICAL PROCEDURES

The law amends 176.1363, subdivisions 2 and 3 to provide further guidance on how to calculate payment for multiple surgical procedures embedded in a single bill.

Effective Date: Applies to services provided the day following final enactment (i.e., April 27, 2021).

CLARIFYING AND ADDING WHAT CONSTITUTES EMPLOYER AND INSURER “PROHIBITED CONDUCT”

Clarification of Current Statute

The law amends 176.194, subdivision 3 to clarify and add to the list of “prohibited conduct” by insurers, self-insured employers, group self-insurers, political subdivisions of the state, the administrator for state employee claims, and TPAs acting on their behalf that may subject them to penalties.

- It clarifies that these entities may be penalized for failing to pay or deny medical bills within 45 days after receipt of all information requested from medical providers “necessary to make a payment determination.”
- It clarifies that these entities must respond to a DOLI written request “about a matter related to benefits” and adds that these responses “must be substantive and address the question.”

New Prohibited Conduct

The amendment adds two new prohibited practices:

- “Providing fraudulent written information to the department or an employee pertaining to a worker’s compensation matter”; and
- “Failing to pay any claim, or otherwise correct behavior on a claim, for which a penalty assessed has been paid or has become a final word.”

Comment: This clarifies and expands the already lengthy list of prohibited conduct which could subject covered entities to penalties *in addition to* penalties that may be assessed by the Commissioner or OAH under other statutory provisions (e.g., Minn. Stats. 176.221 and 176.225).

Effective Date: Applies to prohibited conduct occurring on or after 7/1/2021.

PROMPT FIRST ACTION REPORTS

The bill makes technical changes to how MN DOLI compiles and publishes Promptly First Action Reports for insurers.

Effective Date: Effective the day following final enactment (i.e., April 27, 2021).

PROHIBITS SUBPOENAS OF DEPARTMENT EMPLOYEES WHO PROVIDE ASSISTANCE, BUT WITH SOME EXCEPTIONS

The bill adds a provision (subdivision 2b) to MS 176.351. This new provision prohibits subpoenas of DOLI employees to provide expert testimony or testify describing the nature of the assistance or advice provided under Chapter 176.

However, DOLI employees may be subpoenaed in the following situations:

- an enforcement proceeding brought by the commissioner;
- disputes in which the commissioner or the special compensation fund is a party; or
- QRCs, WRC-interns and job placement coordinators employed by DOLI-VRU who provide rehabilitation, job placement or job development under a rehabilitation plan.

Effective Date: Effective the day following final enactment (i.e., April 27, 2021).

EXTENDS SUNSET PROVISION FOR COVID-19 PRESUMPTION THROUGH THE END OF 2021

The bill extends the sunset provisions for the COVID 19 presumption (Minn. Stat. 176.011, subd. 15f) for certain health care workers and first responders from 5/1/2021 to cover COVID 19 dates of injury through 12/31/2021. The presumption does not apply to injuries occurring on or after 1/1/2022. After the sunset provision expires, workers in these occupations may still, of course, assert COVID 19 claims, but without the benefit of the presumption.

Effective Date: Effective the day following final enactment (i.e., April 27, 2021).

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