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## 2021 Minnesota Workers' Compensation Act Amendments

As occurs in most years, the Workers' Compensation Advisory Council proposed new legislation in 2021, amending the Minnesota Workers' Compensation Act. The legislation was advanced in both the House of Representatives and the Senate, and it was passed by both legislative houses. It was signed into law by Governor Walz on April 26, 2021. Here is a breakdown of the new legislation:

### **BENEFIT RATE CHANGE**

Minn. Stat. §176.101, Subd. 1(c): the minimum temporary total disability rate has been set at \$130 since October 1, 2000. Effective October 1, 2021, and every October 1 thereafter, the minimum rate will now be 20% of the maximum compensation rate or the employee's actual weekly wage, whichever is less. [By way of example, if we applied this to the 2020 maximum rate, the minimum compensation rate this year would have been \$233.38, or approximately \$100 more.] This section is effective for dates of injury after October 1, 2021.

### **PENALTIES FOR MEDICAL PROVIDERS**

Minn. Stat. §176.136 (dealing with medical fee review) adds Subd. 2(a). Generally, this is a provision whereby the Department of Labor and Industry (DOLI) can assess penalties, costs, and expenses against a healthcare provider who collects or attempts to collect payment from an employee in violation of: 176.136, Subd. 2; 176.135, Subd. 7; or 176.83, Subd. 5(c). [Each of those provisions states that it is prohibited for a provider to collect or attempt to collect certain charges from an employee, but there has never been a penalty associated with violations of those sections. This amendment changes that.]

The new subdivision indicates that a violation occurs only if the provider is informed that the treatment was for a workers' compensation injury or that the bill should be submitted to the workers' compensation insurer. Once the healthcare provider is on notice, a violation occurs each time the provider collects or attempts to collect payment from the employee. The subdivision defines what an "attempt to collect" means. For each violation, the penalty shall be \$1,000 to the assigned risk and safety account, except that a penalty shall be \$2,000 in the event that the employee actually paid for the service. Further, DOLI shall not assess a penalty unless it has documentation that the provider has been provided with written notice that the attempted collection or collection from the employee is prohibited by workers' compensation law and that penalties may be assessed for a violation of the law. This notice can be provided to the provider by any agency or person, including the employee, employer, insurer, or attorney. The DOLI is ordered to post on the website a model notice. [We assume that this will be used by plaintiff's attorneys when their clients are getting ongoing bills from providers. They will be able to make the providers cease and desist from that practice, or they will be penalized.] In addition to the penalties, the DOLI can order the provider to pay the employee reasonable reimbursement of costs and expenses related to one or more violations and to restore the employee's credit rating if it has been damaged. The provider will have to reimburse the employee for all amounts that the

employee paid to the provider together with interest; and for certain attempts to collect, the provider must reimburse the employee a minimum lump-sum payment of \$500 in addition to costs and expenses, which can include attorney's fees, lost wages, filing fees, court costs, courier fees, photocopying, telephone and postage charges, computer or research costs, witness fees, records, and travel expenses. Such costs and expenses can be awarded even if the healthcare provider has not been provided with the written notice described above. [Basically, the "written notice" is necessary if the DOLI orders a penalty payable to the assigned risk safety account, but is not necessary to order the provider to make reimbursement to the employee directly.] This section is effective for violations on or after August 1, 2021.

#### **FEE SCHEDULE FOR MEDICAL TREATMENT**

Minn. Stat. §176.1362, Subd. 1 (related to inpatient hospital payments) is modified by adding the PPS Web Pricer to the Medicare PC-Pricer program for purposes of establishing costs. Effective October 1, 2021, the PPS Web Pricer on Medicare's website must be used, and the DOLI must publish a link on its website. This section is effective April 27, 2021.

Minn. Stat. §176.1362, Subd. 6 is modified by also adding the PPS Web Pricer. This section is effective April 27, 2021.

Minn. Stat. §176.1363, Subd. 1 (related to ambulatory surgical center payments) is modified by removing language relating to the multiple surgical procedure reduction rule. This section is effective April 27, 2021.

Minn. Stat. §176.1363, Subd. 2 adjusts the payment for surgical procedures and ancillary services. This section is effective April 27, 2021.

Minn. Stat. §176.1363, Subd. 3 makes a technical change for payment of certain surgical services. This section is effective April 27, 2021.

#### **PROHIBITED PRACTICES BY INSURERS**

Minn. Stat. §176.194, Subd. 3 (related to prohibited practices by insurers) adds several clarifications. Subpart 3 is amended to indicate that it is prohibited conduct to fail to pay or deny medical bills within 45 days after the receipt of all information requested from medical providers that is necessary to make a payment determination.

Subpart 6 is amended to indicate that it is prohibited conduct to fail to respond to the DOLI within 30 calendar days after receipt of a written inquiry about a matter related to benefits. Responses must be substantive and address the question.

Subpart 10 is added to indicate that it is prohibited conduct to provide fraudulent written information to the DOLI or an employee pertaining to a workers' compensation matter. Subpart 11 is added to indicate that it is prohibited conduct to fail to pay a claim, or otherwise correct behavior on a claim, for which a penalty assessed has been paid or has become a final order.

This section is effective for prohibited conduct occurring on or after July 1, 2021.

#### **PENALTIES FOR PROHIBITED PRACTICES BY INSURERS**

Minn. Stat. §176.194, Subd. 4 is adjusted such that the penalties set forth are now applicable to the new section numbers in Minn. Stat. §176.194, Subd. 3 (summarized above). This section is effective for violations on or after July 1, 2021.

#### **PROMPT PAYMENT REPORT**

Minn. Stat. §176.223 (relating to the prompt payment report prepared by DOLI) sets forth clarifications for the preparation of the report. It notes that the five most recent annual reports must be published on the website. This section is effective April 27, 2021.

#### **TESTIMONIAL POWERS**

Minn. Stat. §176.351 (relating to testimonial powers) is amended by adding Subd. 2b. This new section indicates that any employee of the DOLI shall not be subject to a subpoena for purposes of providing expert testimony or describing the nature of assistance or advice provided under this chapter. The prohibition does not apply to testimony of a DOLI employee in a workers' compensation enforcement proceeding brought by the DOLI, a dispute in which the DOLI or special compensation fund is a party, or a QRC employed by the VRU who has provided rehabilitation services under a rehabilitation plan for an employee with a workers' compensation claim. This section is effective April 27, 2021.

### **COVID-19 PRESUMPTION EXTENDED**

Laws 2020, Chapter 72, Section 1 - the effective date is amended to read: this section is effective for employees who contract Covid-19 on or after the day following final enactment [April 8, 2020]. Minn. Stat. §176.011, Subd. 15 (f) now sunsets at 11:59 PM on December 31, 2021 (formerly May 1, 2021). Employees with dates of injury that occur on or after January 1, 2022, are not entitled to the presumption in Minn. Stat. §176.011, Subd. 15 (f), but are not precluded from claiming an occupational disease as provided in other paragraphs of Minn. Stat. §176.011, Subd. 15, or from claiming a personal injury under Minn. Stat. §176.011, Subd. 16. This section is effective April 27, 2021.

Click [here](#) is the for the specific statutory amendments.

If you have any questions regarding the statutory amendments, please do not hesitate to reach out to the [Workers' Compensation](#) practice group.

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