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State of Minnesota HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1359

03/07/2013 Authored by Mahoney and Kieffer

The bill was read for the first time and referred to the Committee on Rules and Legislative Administration

03/13/2013 Adoption of Report: Pass and re-referred to the Committee on Labor, Workplace and Regulated Industries

1.1 A bill for an act
1.2 relating to workers' compensation; making various policy and housekeeping
1.3 changes; amending Minnesota Statutes 2012, sections 176.102, subdivision 3a;
1.4 176.106, subdivision 1; 176.129, subdivision 13; 176.138; 176.183, subdivision
1.5 4; 176.245; 176.521.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2012, section 176.102, subdivision 3a, is amended to read:

1.8 Subd. 3a. **Disciplinary actions.** The panel has authority to discipline qualified
1.9 rehabilitation consultants and vendors and may impose a penalty of up to \$3,000 per
1.10 violation, payable to the commissioner for deposit in the assigned risk safety account, and
1.11 may suspend or revoke certification. Complaints against registered qualified rehabilitation
1.12 consultants and vendors shall be made to the commissioner who ~~shall~~ may investigate
1.13 all complaints. If the investigation indicates a violation of this chapter or rules adopted
1.14 under this chapter, the commissioner may initiate a contested case proceeding under the
1.15 provisions of chapter 14. In these cases, the rehabilitation review panel shall make the
1.16 final decision following receipt of the report of an administrative law judge. The decision
1.17 of the panel is appealable to the Workers' Compensation Court of Appeals in the manner
1.18 provided by section 176.421. The panel shall continuously study rehabilitation services
1.19 and delivery, develop and recommend rehabilitation rules to the commissioner, and assist
1.20 the commissioner in accomplishing public education.

1.21 The commissioner may appoint alternates for one-year terms to serve as a member
1.22 when a member is unavailable. The number of alternates shall not exceed one labor
1.23 member, one employer or insurer member, and one member representing a licensed or
1.24 registered health care provider, chiropractic, or rehabilitation.

2.1 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.2 Sec. 2. Minnesota Statutes 2012, section 176.106, subdivision 1, is amended to read:

2.3 Subdivision 1. **Scope.** All determinations by the commissioner or compensation
2.4 judge pursuant to section 176.102, 176.103, 176.135, or 176.136 shall be in accordance
2.5 with the procedures contained in this section. For medical disputes under sections 176.135
2.6 and 176.136, the commissioner shall have jurisdiction to hold an administrative conference
2.7 and issue decisions and orders under this section if the amount in dispute at the time the
2.8 medical request is filed is \$7,500 or less. The \$7,500 limit does not apply if the medical
2.9 issue to be determined is whether a charge for a service, article, or supply is excessive
2.10 under section 176.136, subdivision 1, 1a, 1b, or 1c, and corresponding Minnesota Rules.

2.11 **EFFECTIVE DATE.** This section is effective the day following final enactment
2.12 and applies to medical disputes filed on or after that date.

2.13 Sec. 3. Minnesota Statutes 2012, section 176.129, subdivision 13, is amended to read:

2.14 Subd. 13. **Employer reports.** (a) All employers and insurers shall make reports to
2.15 the commissioner as required for the proper administration of this section and Minnesota
2.16 Statutes 1990, section 176.131, and Minnesota Statutes 1994, section 176.132. Employers
2.17 and insurers may not be reimbursed from the special compensation fund for any
2.18 periods unless the employer or insurer is up to date with all past due and currently due
2.19 assessments, penalties, and reports to the special compensation fund under this section.
2.20 The commissioner may allow an offset of the reimbursements due an employer or insurer
2.21 pursuant to Minnesota Statutes 1990, section 176.131, and Minnesota Statutes 1994,
2.22 section 176.132, against the assessment due under the section or against any other debt
2.23 owed to the special compensation fund by the employer or insurer.

2.24 (b) The special compensation fund shall not reimburse an insolvent insurer for
2.25 subsequent injury or supplementary benefits after a declaration of bankruptcy or order of
2.26 liquidation or insolvency is issued for the insurer, even if the benefits were paid before the
2.27 declaration or order. This does not limit the claim distribution or set-off authority of a
2.28 court, trustee, or liquidator under federal bankruptcy law or under chapter 60B or a similar
2.29 law in another jurisdiction. For purposes of this paragraph, subsequent injury benefits are
2.30 the benefits paid pursuant to Minnesota Statutes 1990, section 176.131, and supplementary
2.31 benefits are the benefits paid pursuant to Minnesota Statutes 1994, section 176.132.

EFFECTIVE DATE. This section is effective the day following final enactment and applies to claims for reimbursement filed with the special compensation fund on or after that date.

Sec. 4. Minnesota Statutes 2012, section 176.138, is amended to read:

176.138 MEDICAL DATA; ACCESS.

(a) Notwithstanding any other state laws related to the privacy of medical data or any private agreements to the contrary, the release in writing, by telephone discussion, or otherwise of medical data related to a current claim for compensation under this chapter to the employee, employer, or insurer who are parties to the claim, or to the Department of Labor and Industry, shall not require prior approval of any party to the claim. This section does not preclude the release of medical data under section 175.10 or 176.231, subdivision 9. Requests for pertinent data shall be made, and the date of discussions with medical providers about medical data shall be confirmed, in writing to the person or organization that collected or currently possesses the data. Written medical data that exists at the time the request is made shall be provided by the collector or possessor within seven working days of receiving the request. Nonwritten medical data may be provided, but is not required to be provided, by the collector or possessor. In all cases of a request for the data or discussion with a medical provider about the data, except when it is the employee who is making the request, the employee shall be sent written notification of the request by the party requesting the data at the same time the request is made or a written confirmation of the discussion. This data shall be treated as private data by the party who requests or receives the data and the party receiving the data shall provide the employee or the employee's attorney with a copy of all data requested by the requester.

(b) Medical data which is not directly related to a current injury or disability shall not be released without prior authorization of the employee.

(c) The commissioner may impose a penalty of up to \$600 payable to the commissioner for deposit in the assigned risk safety account against a party who does not timely release data as required in this section. A party who does not treat this data as private pursuant to this section is guilty of a misdemeanor. This paragraph applies only to written medical data which exists at the time the request is made.

(d) Workers' compensation insurers and self-insured employers may, for the sole purpose of identifying duplicate billings submitted to more than one insurer, disclose to health insurers, including all insurers writing insurance described in section 60A.06, subdivision 1, clause (5)(a), nonprofit health service plan corporations subject to chapter 62C, health maintenance organizations subject to chapter 62D, and joint self-insurance

employee health plans subject to chapter 62H, computerized information about dates, coded items, and charges for medical treatment of employees and other medical billing information submitted to them by an employee, employer, health care provider, or other insurer in connection with a current claim for compensation under this chapter, without prior approval of any party to the claim. The data may not be used by the health insurer for any other purpose whatsoever and must be destroyed after verification that there has been no duplicative billing. Any person who is the subject of the data which is used in a manner not allowed by this paragraph has a cause of action for actual damages and punitive damages for a minimum of \$5,000.

(e) Medical data collected, stored, used, or disseminated by or filed with the commissioner in connection with a claim for workers' compensation benefits governed by this chapter does not constitute genetic information for the purposes of section 13.386.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 5. Minnesota Statutes 2012, section 176.183, subdivision 4, is amended to read:

Subd. 4. **Notice by commissioner; rights of parties.** (a) If the commissioner authorizes the special compensation fund to commence payment without the issuance of a temporary order, the commissioner shall serve by ~~certified~~ first class mail notice upon the employer and other interested parties of the intention to commence payment. This notice shall be served at least ten calendar days before commencing payment and shall be mailed to the last known address of the ~~parties~~ employer. The notice shall include a statement that failure of the employer to respond within ten calendar days of the date of service will be deemed acceptance by the employer of the proposed action by the ~~commissioner~~ special compensation fund and will be deemed a waiver of defenses the employer has to a ~~subrogation or indemnity action by the commissioner~~ the special compensation fund's action to recover amounts specified under subdivision 2. At any time prior to final determination of liability, the employer may appear as a party and present defenses the employer has, whether or not an appearance by the employer has previously been made in the matter. The ~~commissioner~~ special compensation fund has a cause of action against the employer to recover ~~compensation paid by the special fund under this section~~ amounts specified under subdivision 2.

(b) The commissioner shall notify the employer by first class mail if the special compensation fund intends to enter into a settlement agreement with the employee for the payment of benefits under this section. This notice shall be sent by first class mail to the last known address of the employer at least 15 calendar days before executing the settlement agreement, and shall include:

(1) a copy of the proposed settlement agreement;

(2) a statement that within 15 calendar days the employer must notify the special compensation fund in writing of its objection to the proposed settlement; and

(3) a statement that if the special compensation fund does not receive the employer's written objection within 15 calendar days, the employer must be deemed to have waived all defenses to the special compensation fund's claim for amounts specified under subdivision 2.

(c) If a settlement agreement is approved by the commissioner or compensation judge after the commissioner has provided notice to the employer under paragraph (b), and if the employer did not provide timely written notification to the special compensation fund of the employer's objection, then the employer must be deemed to have waived all defenses to the special compensation fund's claim for amounts specified under subdivision 2.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 6. Minnesota Statutes 2012, section 176.245, is amended to read:

176.245 RECEIPTS FOR PAYMENT OF COMPENSATION, FILING.

An employer shall promptly file with the division receipts for payment of compensation as may be required by the rules of the division.

The commissioner of the Department of Labor and Industry shall periodically check its records to determine whether these receipts have been promptly filed, and if not, shall require the employer to do so. The commissioner may determine, ~~using statistical methodology similar to Six Sigma,~~ the most efficient manner of reviewing or auditing the records filed under this chapter, including using sampling methodology, to determine compliance with this chapter.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 7. Minnesota Statutes 2012, section 176.521, is amended to read:

176.521 SETTLEMENT OF CLAIMS.

Subdivision 1. **Validity.** (a) An agreement between an employee or an employee's dependent and the employer or insurer to settle any claim, ~~which is not upon appeal before the court of appeals,~~ for compensation under this chapter is valid where it has been executed in writing and signed by the parties and intervenors in the matter, and, where one or more of the parties is not represented by an attorney, the commissioner or a compensation judge has approved the settlement and made an award thereon. If the matter is upon appeal before the ~~Court of Appeals or district court, the court of appeals or district court~~ is the approving

body. An agreement to settle any claim is not valid if a guardian or conservator is required under section 176.092 and an employee or dependent has no guardian or conservator.

(b) If the matter is on appeal before the workers' compensation court of appeals, the proposed settlement shall be submitted for approval to a compensation judge at the Office of Administrative Hearings. Before the settlement is submitted to the compensation judge, the parties shall notify the workers' compensation court of appeals and request that it suspend further action on the appeal pending review of the settlement by the compensation judge. Within 14 days after the compensation judge's final approval or disapproval of the settlement, the parties shall notify the workers' compensation court of appeals of the compensation judge's action and shall request that the appeal be dismissed or reactivated.

Subd. 2. **Approval.** Settlements shall be approved only if the terms conform with this chapter.

The commissioner, a compensation judge, ~~the court of appeals~~, and the district court shall exercise discretion in approving or disapproving a proposed settlement.

The parties to the agreement of settlement have the burden of proving that the settlement is reasonable, fair, and in conformity with this chapter. A settlement agreement where both the employee or the employee's dependent and the employer or insurer are represented by an attorney shall be conclusively presumed to be reasonable, fair, and in conformity with this chapter except when the settlement purports to be a full, final, and complete settlement of an employee's right to medical compensation under this chapter or rehabilitation under section 176.102. A settlement which purports to do so must be approved by the commissioner; or a compensation judge, ~~or court of appeals~~.

The conclusive presumption in this subdivision is not available in cases involving an employee or dependent with a guardian or conservator.

The conclusive presumption in this subdivision applies to a settlement agreement entered into on or after January 15, 1982, whether the injury to which the settlement applies occurred prior to or on or after January 15, 1982.

Subd. 2a. **Settlements not subject to approval.** When a settled case is not subject to approval, upon receipt of the stipulation for settlement, the commissioner; or a compensation judge, ~~or the court of appeals~~ shall immediately sign the award and file it with the commissioner. Payment pursuant to the award shall be made within 14 days after it is filed with the commissioner. The commissioner may correct mathematical or clerical errors at any time.

Subd. 3. **Setting aside award upon settlement.** Notwithstanding the provisions of subdivision 1, 2, or 2a, or any provision in the agreement of settlement to the contrary, upon the filing of a petition by any party to the settlement, the workers' compensation

7.1 court of appeals may set aside an award made upon a settlement, pursuant to this chapter.
7.2 In appropriate cases, the workers' compensation court of appeals may refer the matter to
7.3 the chief administrative law judge for assignment to a compensation judge for hearing.

7.4 **EFFECTIVE DATE.** This section is effective for settlement agreements submitted
7.5 for approval on or after July 1, 2013.