

CHAPTER 75—S.F.No. 1476

An act relating to labor and employment; modifying workers' compensation provisions; amending Minnesota Statutes 2008, sections 176.101, subdivision 2a; 176.102, subdivisions 3, 3a, by adding a subdivision; 176.103, subdivision 3; 176.135, subdivisions 6, 7, by adding a subdivision; 176.155, subdivision 1; 176.179; 176.181, subdivision 8; 176.183, subdivision 2; 176.186; 176.231, subdivision 1; 176.341, subdivision 1; 176.351, subdivision 2a; repealing Minnesota Statutes 2008, section 176.1021.

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

Section 1. Minnesota Statutes 2008, section 176.101, subdivision 2a, is amended to read:

Subd. 2a. **Permanent partial disability.** (a) Compensation for permanent partial disability is as provided in this subdivision. Permanent partial disability must be rated as a percentage of the whole body in accordance with rules adopted by the commissioner under section 176.105. The percentage determined pursuant to the rules must be multiplied by the corresponding amount in the following table:

Impairment rating (percent)	Amount
0-5 <u>less than 5.5</u>	\$ 75,000
6-10 <u>5.5 to less than 10.5</u>	80,000
11-15 <u>10.5 to less than 15.5</u>	85,000
16-20 <u>15.5 to less than 20.5</u>	90,000
21-25 <u>20.5 to less than 25.5</u>	95,000
26-30 <u>25.5 to less than 30.5</u>	100,000
31-35 <u>30.5 to less than 35.5</u>	110,000
36-40 <u>35.5 to less than 40.5</u>	120,000
41-45 <u>40.5 to less than 45.5</u>	130,000
46-50 <u>45.5 to less than 50.5</u>	140,000
51-55 <u>50.5 to less than 55.5</u>	165,000
56-60 <u>55.5 to less than 60.5</u>	190,000
61-65 <u>60.5 to less than 65.5</u>	215,000
66-70 <u>65.5 to less than 70.5</u>	240,000
71-75 <u>70.5 to less than 75.5</u>	265,000

76-80 <u>75.5 to less than 80.5</u>	315,000
81-85 <u>80.5 to less than 85.5</u>	365,000
86-90 <u>85.5 to less than 90.5</u>	415,000
91-95 <u>90.5 to less than 95.5</u>	465,000
96-100 <u>95.5 up to and including 100</u>	515,000

An employee may not receive compensation for more than a 100 percent disability of the whole body, even if the employee sustains disability to two or more body parts.

(b) Permanent partial disability is payable upon cessation of temporary total disability under subdivision 1. If the employee requests payment in a lump sum, then the compensation must be paid within 30 days. This lump-sum payment may be discounted to the present value calculated up to a maximum five percent basis. If the employee does not choose to receive the compensation in a lump sum, then the compensation is payable in installments at the same intervals and in the same amount as the employee's temporary total disability rate on the date of injury. Permanent partial disability is not payable while temporary total compensation is being paid.

EFFECTIVE DATE. This section is effective the day following final enactment and applies retroactively to dates of injury on or after October 1, 2000.

Sec. 2. Minnesota Statutes 2008, section 176.102, subdivision 3, is amended to read:

Subd. 3. **Review panel.** There is created a Rehabilitation Review Panel composed of the commissioner or a designee, who shall serve as an ex officio member and two members each from employers, insurers, and rehabilitation, and medicine two licensed or registered health care providers, one member representing chiropractors chiropractor, and four members representing labor. The members shall be appointed by the commissioner and shall serve four-year terms which may be renewed. Terms, compensation, and removal for members shall be governed by section 15.0575. Notwithstanding section 15.059, this panel does not expire unless the panel no longer fulfills the purpose for which the panel was established, the panel has not met in the last 18 months, or the panel does not comply with the registration requirements of section 15.0599, subdivision 3. The panel shall select a chair. The panel shall review and make a determination with respect to appeals from orders of the commissioner regarding certification approval of qualified rehabilitation consultants and vendors. The hearings are de novo and initiated by the panel under the contested case procedures of chapter 14, and are appealable to the Workers' Compensation Court of Appeals in the manner provided by section 176.421.

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

Sec. 3. Minnesota Statutes 2008, section 176.102, subdivision 3a, is amended to read:

Subd. 3a. **Disciplinary actions.** The panel has authority to discipline qualified rehabilitation consultants and vendors and may impose a penalty of up to \$3,000 per violation, payable to the commissioner for deposit in the assigned risk safety account, and may suspend or revoke certification. Complaints against registered qualified rehabilitation consultants and vendors shall be made to the commissioner who shall investigate all complaints. If the investigation indicates a violation of this chapter or rules adopted under this chapter, the commissioner may initiate a contested case proceeding under the

provisions of chapter 14. In these cases, the rehabilitation review panel shall make the final decision following receipt of the report of an administrative law judge. The decision of the panel is appealable to the Workers' Compensation Court of Appeals in the manner provided by section 176.421. The panel shall continuously study rehabilitation services and delivery, develop and recommend rehabilitation rules to the commissioner, and assist the commissioner in accomplishing public education.

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

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

Sec. 4. Minnesota Statutes 2008, section 176.102, is amended by adding a subdivision to read:

Subd. 3c. **Rehabilitation Review Panel meetings.** (a) Except where the Rehabilitation Review Panel is making a decision in a contested case matter under subdivisions 3, 3a, or 3b, the panel may conduct a meeting of its members by telephone or other electronic means so long as the following conditions are met:

(1) all members of the panel participating in the meeting, wherever their physical location, can hear one another and can hear all discussion and testimony;

(2) members of the public present at the regular meeting location of the panel can hear clearly all discussion and testimony and all votes of members of the panel and, if needed, receive those services required by sections 15.44 and 15.441;

(3) at least one member of the panel is physically present at the regular meeting location; and

(4) all votes are conducted by roll call, so each member's vote on each issue can be identified and recorded.

(b) Each member of the panel participating in a meeting by telephone or other electronic means is considered present at the meeting for purposes of determining a quorum and participating in all proceedings.

(c) If telephone or other electronic means are used to conduct a regular, special, or emergency meeting, the panel, to the extent practical, shall allow a person to monitor the meeting electronically from a remote location. The panel or the Department of Labor and Industry may require the person making such a connection to pay for documented costs that the panel or the Department of Labor and Industry incurs as a result of the additional connection.

(d) If telephone or other electronic means are used to conduct a regular, special, or emergency meeting, the panel shall provide notice of the regular meeting location, of the fact that some members may participate by telephone or other electronic means, and that a person may monitor the meeting electronically from a remote location. The timing and method of providing notice is governed by section 13D.04.

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

Sec. 5. Minnesota Statutes 2008, section 176.103, subdivision 3, is amended to read:

Subd. 3. **Medical Services Review Board; selection; powers.** (a) There is created a Medical Services Review Board composed of the commissioner or the commissioner's designee as an ex officio member, two persons representing chiropractic, one person representing ~~hospital administrators~~ hospitals, one physical therapist, one registered nurse, one occupational therapist, and six physicians representing different specialties which the commissioner determines are the most frequently utilized by injured employees. The board shall also have one person representing employees, and one person representing employers or insurers, ~~and one person representing the general public~~. The members shall be appointed by the commissioner and shall be governed by section 15.0575. Terms of the board's members may be renewed. The board may appoint from its members whatever subcommittees it deems appropriate. Notwithstanding section 15.059, this board does not expire unless the board no longer fulfills the purpose for which the board was established, the board has not met in the last 18 months, or the board does not comply with the registration requirements of section 15.0599, subdivision 3.

The commissioner may appoint alternates for one-year terms to serve as a member when a member is unavailable. The number of alternates shall not exceed one chiropractor, one physical therapist, one registered nurse, one hospital administrator representative, three physicians, one employee representative, one employer or insurer representative, and one ~~representative of the general public~~ occupational therapist.

(b) The board shall review clinical results for adequacy and recommend to the commissioner scales for disabilities and apportionment.

(c) The board shall review and recommend to the commissioner rates for individual clinical procedures and aggregate costs. The board shall assist the commissioner in accomplishing public education.

(d) In evaluating the clinical consequences of the services provided to an employee by a clinical health care provider, the board shall consider the following factors in the priority listed:

- (1) the clinical effectiveness of the treatment;
- (2) the clinical cost of the treatment; and
- (3) the length of time of treatment.

(e) The board shall advise the commissioner on the adoption of rules regarding all aspects of medical care and services provided to injured employees.

(f) The Medical Services Review Board may upon petition from the commissioner and after hearing, issue a warning, a penalty of \$200 per violation, a restriction on providing treatment that requires preauthorization by the board, commissioner, or compensation judge for a plan of treatment, disqualify, or suspend a provider from receiving payment for services rendered under this chapter if a provider has violated any part of this chapter or rule adopted under this chapter, or where there has been a pattern of, or an egregious case of, inappropriate, unnecessary, or excessive treatment by a provider. Any penalties collected under this subdivision shall be payable to the commissioner for deposit in the assigned risk safety account. The hearings are initiated by the commissioner under the contested case procedures of chapter 14. The board shall make the final decision following receipt of the recommendation of the administrative law judge. The board's decision is appealable to the Workers' Compensation Court of Appeals in the manner provided by section 176.421.

(g) The board may adopt rules of procedure. The rules may be joint rules with the rehabilitation review panel.

(h) Except where the board is making a decision in a contested case matter under paragraph (b), the board may conduct a meeting of its members by telephone or other electronic means so long as the following conditions are met:

(1) all members of the board participating in the meeting, wherever their physical location, can hear one another and can hear all discussion and testimony;

(2) members of the public present at the regular meeting location of the board can hear clearly all discussion and testimony and all votes of members of the board and, if needed, receive those services required by sections 15.44 and 15.441;

(3) at least one member of the board is physically present at the regular meeting location; and

(4) all votes are conducted by roll call, so each member's vote on each issue can be identified and recorded.

(i) Each member of the board participating in a meeting by telephone or other electronic means is considered present at the meeting for purposes of determining a quorum and participating in all proceedings.

(j) If telephone or other electronic means are used to conduct a regular, special, or emergency meeting, the board, to the extent practical, shall allow a person to monitor the meeting electronically from a remote location. The board or the Department of Labor and Industry may require the person making such a connection to pay for documented costs that the board or the Department of Labor and Industry incurs as a result of the additional connection.

(k) If telephone or other electronic means are used to conduct a regular, special, or emergency meeting, the board shall provide notice of the regular meeting location, of the fact that some members may participate by telephone or other electronic means, and that a person may monitor the meeting electronically from a remote location. The timing and method of providing notice is governed by section 13D.04.

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

Sec. 6. Minnesota Statutes 2008, section 176.135, subdivision 6, is amended to read:

Subd. 6. **Commencement of payment.** As soon as reasonably possible, and no later than 30 calendar days after receiving the bill, the employer or insurer shall pay the charge or any portion of the charge which is not denied, or deny all or a part of the charge with written notification to the employee and the provider explaining the basis for denial, except that the employer or insurer is not required to notify the employee of payment of charges that have been reduced in accordance with section 176.136, subdivisions 1, 1a, or 1b. All or part of a charge must be denied if any of the following conditions exists:

(1) the injury or condition is not compensable under this chapter;

(2) the charge or service is excessive under this section or section 176.136;

(3) the charges are not submitted on the prescribed billing form; or

(4) additional medical records or reports are required under subdivision 7 to substantiate the nature of the charge and its relationship to the work injury.

If payment is denied under clause (3) or (4), the employer or insurer shall reconsider the charges in accordance with this subdivision within 30 calendar days after receiving additional medical data, a prescribed billing form, or documentation of enrollment or certification as a provider.

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

Sec. 7. Minnesota Statutes 2008, section 176.135, subdivision 7, is amended to read:

Subd. 7. **Medical bills and records.** Health care providers shall submit to the insurer an itemized statement of charges in the standard electronic transaction format when required by section 62J.536 or, if there is no prescribed standard electronic transaction format, on a billing form prescribed by the commissioner. ~~A paper billing form is not required if the health care provider and insurer agree to electronic submission under section 62J.535.~~ Health care providers shall also submit copies of medical records or reports that substantiate the nature of the charge and its relationship to the work injury. Health care providers may charge for copies of any records or reports that are in existence and directly relate to the items for which payment is sought under this chapter. The commissioner shall adopt a schedule of reasonable charges by rule.

A health care provider shall not collect, attempt to collect, refer a bill for collection, or commence an action for collection against the employee, employer, or any other party until the information required by this section has been furnished.

A United States government facility rendering health care services to veterans is not subject to the uniform billing form requirements of this subdivision.

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

Sec. 8. Minnesota Statutes 2008, section 176.135, is amended by adding a subdivision to read:

Subd. 8. **Data.** Each self-insured employer and insurer shall retain or arrange for the retention of (a) all billing data electronically transmitted by health care providers for payment for the treatment of workers' compensation; and (b) the employer of insurer's electronically transmitted payment remittance advice. The self-insured employer or insurer shall ensure that the data in clauses (a) and (b) shall be retained for seven years in the standard electronic transaction format that is required by rules adopted by the commissioner of the Department of Health under section 62J.536. The data shall be provided in the standard electronic transaction format to the commissioner of labor and industry within 120 days of the commissioner of labor and industry's request, and shall be used to analyze the costs and outcomes of treatment in the workers' compensation system. The data collected by the commissioner of labor and industry under this section is confidential data on individuals and protected nonpublic data, except that the commissioner may publish aggregate statistics and other summary data on the costs and outcomes of treatment in the workers' compensation system.

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

Sec. 9. Minnesota Statutes 2008, section 176.155, subdivision 1, is amended to read:

Subdivision 1. **Employer's physician.** The injured employee must submit to examination by the employer's physician, if requested by the employer, and at reasonable

times thereafter upon the employer's request. Examinations shall not be conducted in hotel or motel facilities. The examination must be scheduled at a location within 150 miles of the employee's residence unless the employer can show cause to the department to order an examination at a location further from the employee's residence. The employee is entitled upon request to have a personal physician present at any such examination. Each party shall defray the cost of that party's physician. Any report or written statement made by the employer's physician as a result of an examination of the employee, regardless of whether the examination preceded the injury or was made subsequent to the injury, shall be made available, upon request and without charge, to the injured employee or representative of the employee. The employer shall pay reasonable travel expenses incurred by the employee in attending the examination including mileage, parking, and, if necessary, lodging and meals. The employer shall also pay the employee for any lost wages resulting from attendance at the examination. A self-insured employer or insurer who is served with a claim petition pursuant to section 176.271, subdivision 1, or 176.291, shall schedule any necessary examinations of the employee, if an examination by the employer's physician or health care provider is necessary to evaluate benefits claimed. The examination shall be completed and the report of the examination shall be served on the employee and filed with the commissioner within 120 days of service of the claim petition.

No evidence relating to the examination or report shall be received or considered by the commissioner, a compensation judge, or the court of appeals in determining any issues unless the report has been served and filed as required by this section, unless a written extension has been granted by the commissioner or compensation judge. The commissioner or a compensation judge shall extend the time for completing the adverse examination and filing the report upon good cause shown. The extension must not be for the purpose of delay and the insurer must make a good faith effort to comply with this subdivision. Good cause shall include but is not limited to:

(1) that the extension is necessary because of the limited number of physicians or health care providers available with expertise in the particular injury or disease, or that the extension is necessary due to the complexity of the medical issues, or

(2) that the extension is necessary to gather additional information which was not included on the petition as required by section 176.291.

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

Sec. 10. Minnesota Statutes 2008, section 176.179, is amended to read:

176.179 RECOVERY OF OVERPAYMENTS.

Notwithstanding section 176.521, subdivision 3, or any other provision of this chapter to the contrary, except as provided in this section, no lump-sum or weekly payment, or settlement, which is voluntarily paid to an injured employee or the survivors of a deceased employee in apparent or seeming accordance with the provisions of this chapter by an employer or insurer, or is paid pursuant to an order of the workers' compensation division, a compensation judge, or court of appeals relative to a claim by an injured employee or the employee's survivors, and received in good faith by the employee or the employee's survivors shall be refunded to the paying employer or insurer in the event that it is subsequently determined that the payment was made under a mistake in fact or law by the employer or insurer. When the payments have been made to a person who is entitled to receive further payments of compensation for the same injury, the mistaken

compensation may be taken as a partial credit against future periodic benefits. The credit applied against further payments of temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, retraining benefits, death benefits, or weekly payments of economic recovery or impairment compensation shall not exceed 20 percent of the amount that would otherwise be payable.

~~A credit may not be applied~~ An employer or insurer may not offset an overpayment of benefits against:

(1) medical expenses due or payable; or

(2) a penalty awarded to the employee for late payment or underpayment of benefits.

Where the commissioner or compensation judge determines that the mistaken compensation was not received in good faith, the commissioner or compensation judge may order reimbursement of the compensation. For purposes of this section, a payment is not received in good faith if it is obtained through fraud, or if the employee knew that the compensation was paid under mistake of fact or law, and the employee has not refunded the mistaken compensation.

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

Sec. 11. Minnesota Statutes 2008, section 176.181, subdivision 8, is amended to read:

Subd. 8. **Data sharing.** (a) The Departments of Labor and Industry, Employment and Economic Development, Human Services, Agriculture, Transportation, and Revenue are authorized to share information regarding the employment status of individuals, including but not limited to Social Security numbers and payroll and withholding and income tax information, and may use that information for purposes consistent with this section and regarding the employment or employer status and federal employer identification numbers of individuals, partnerships, limited liability companies, corporations, or employers, including, but not limited to, general contractors, intermediate contractors, and subcontractors. The commissioner shall request data in writing or pursuant to a state agency agreement, and the responding department shall respond to the request by producing the requested data within 30 days.

(b) The commissioner is authorized to inspect and to order the production of all payroll and other business records and documents of any alleged employer in order to determine the employment status of persons and compliance with this section. If any person or employer refuses to comply with such an order, the commissioner may apply to the district court of the county where the person or employer is located or may apply to Ramsey County or the county where the nearest office of the Department of Labor and Industry is located, for an order compelling production of the documents.

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

Sec. 12. Minnesota Statutes 2008, section 176.183, subdivision 2, is amended to read:

Subd. 2. **Special compensation fund; penalties.** After a hearing on a petition for benefits and prior to issuing an order against the special compensation fund to pay compensation benefits to an employee, a compensation judge shall first make findings regarding the insurance status of the employer and its liability. The special compensation fund shall not be found liable in the absence of a finding of liability against the employer. Where the liable employer is found after the hearing to be not insured or self-insured as

provided for in this chapter, the compensation judge shall assess and order the employer to pay all compensation benefits to which the employee is entitled, the amount for any actual and necessary disbursements expended by the special compensation fund, any actual and necessary disbursements of the employee paid or reimbursed by the special compensation fund, any attorney fees paid to the employee's attorney by the special compensation fund, and a penalty in the amount of 65 percent of all compensation benefits ordered to be paid. The award issued against an employer after the hearing shall constitute a lien for government services pursuant to section 514.67 on all property of the employer and shall be subject to the provisions of the Revenue Recapture Act in chapter 270A. The special compensation fund may enforce the terms of that award in the same manner as a district court judgment. The commissioner of labor and industry, in accordance with the terms of the order awarding compensation, shall pay compensation to the employee or the employee's dependent from the special compensation fund. The commissioner of labor and industry shall certify to the commissioner of finance and to the legislature annually the total amount of compensation paid from the special compensation fund under subdivision 1. Compensation paid under this section shall remain a liability of the special compensation fund and shall be financed by the percentage assessed under section 176.129.

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

Sec. 13. Minnesota Statutes 2008, section 176.186, is amended to read:

176.186 RECORDS FROM OTHER STATE AGENCIES.

Notwithstanding any other state law to the contrary except chapter 270B, the commissioner may obtain from the Department of Employment and Economic Development, and Office of the Secretary of State, or any other state agency, upon request, names or lists of employers doing business in the state. This information shall be treated by the commissioner in the manner provided by chapter 13. ~~and shall be used only for insurance verification by the commissioner.~~

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

Sec. 14. Minnesota Statutes 2008, section 176.231, subdivision 1, is amended to read:

Subdivision 1. **Time limitation.** Where death or serious injury occurs to an employee during the course of employment, the employer shall report the injury or death to the commissioner and insurer within 48 hours after its occurrence. Where any other injury occurs which wholly or partly incapacitates the employee from performing labor or service for more than three calendar days, the employer shall report the injury to the insurer on a form prescribed by the commissioner within ten days from its occurrence. An insurer and self-insured employer shall report the injury to the commissioner no later than 14 days from its occurrence. Where an injury has once been reported but subsequently death ensues, the employer shall report the death to the commissioner and insurer within 48 hours after the employer receives notice of this fact. An employer who provides notice to the occupational safety and health division of the Department of Labor and Industry of a fatality, or of inpatient hospitalization of three or more employees, within the eight-hour time frame required by law has satisfied the employer's obligation under this section.

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

Sec. 15. Minnesota Statutes 2008, section 176.341, subdivision 1, is amended to read:

Subdivision 1. **Time.** Upon receipt of a matter from the commissioner, the chief administrative law judge shall fix a time and place for hearing the petition. The hearing shall be held as soon as practicable and at a time and place determined by the chief administrative law judge to be the most convenient for the parties, keeping in mind the intent of chapter 176 and the requirements of section 176.306. Except where a shorter time period is required under this chapter, all hearings must be held within 26 months after a petition has been filed, unless the chief administrative law judge issues an order for a later date for the hearing explaining why the hearing could not be held within 26 months.

EFFECTIVE DATE. This section is effective for petitions filed with the commissioner on or after the day following final enactment.

Sec. 16. Minnesota Statutes 2008, section 176.351, subdivision 2a, is amended to read:

Subd. 2a. **Subpoenas not permitted.** A member of the Rehabilitation Review Panel or Medical Services Board or an employee of the department who has conducted an administrative or settlement conference or hearing under section 176.106 or 176.239, or who has certified or has declined to certify a dispute under section 176.081, subdivision 1, paragraph (c), shall not be subpoenaed to testify regarding the conference, hearing, dispute certification, or concerning a mediation session. A member of the Rehabilitation Review Panel, Medical Services Board, or an employee of the department may be required to answer written interrogatories limited to the following questions:

(a) Were all statutory and administrative procedural rules adhered to in reaching the decision?

(b) If the answer to question (a) is no, what deviations took place?

(c) Did the person making the decision consider all the information presented prior to rendering a decision?

(d) Did the person making the decision rely on information outside of the information presented at the conference or hearing in making the decision?

(e) If the answer to question (d) is yes, what other information was relied upon in making the decision?

In addition, for a hearing with a compensation judge and with the consent of the compensation judge, an employee of the department who conducted an administrative conference, hearing, or mediation session, may be requested to answer written interrogatories relating to statements made by a party at the prior proceeding. These interrogatories shall be limited to affirming or denying that specific statements were made by a party.

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

Sec. 17. **REPEALER.**

Minnesota Statutes 2008, section 176.1021, is repealed.

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

Presented to the governor May 8, 2009

Signed by the governor May 12, 2009, 4:50 p.m.