

SENATE

STATE OF MINNESOTA

EIGHTY-NINTH SESSION

S.F. No. 2398

(SENATE AUTHORS: SPARKS)

DATE	D-PG	OFFICIAL STATUS
03/08/2016	4914	Introduction and first reading Referred to Jobs, Agriculture and Rural Development
03/23/2016		Comm report: To pass as amended Second reading

1.1

A bill for an act

1.2

relating to workers' compensation; adopting recommendations of the Workers'

1.3

Compensation Advisory Council; amending Minnesota Statutes 2014, sections

1.4

176.081, subdivisions 1, 3; 176.471, subdivisions 3, 5; 176.511, subdivisions

1.5

2, 3; 176.571, subdivision 1; Minnesota Statutes 2015 Supplement, section

1.6

176.135, subdivision 7a.

1.7

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

1.8

ARTICLE 1

1.9

WORKERS' COMPENSATION COURT OF APPEALS PROPOSALS

1.10

Section 1. Minnesota Statutes 2014, section 176.081, subdivision 1, is amended to read:

1.11

Subdivision 1. **Limitation of fees.** (a) A fee for legal services of 20 percent of the

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first \$130,000 of compensation awarded to the employee is the maximum permissible fee

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and does not require approval by the commissioner, compensation judge, or any other

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party. All fees, including fees for obtaining medical or rehabilitation benefits, must be

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calculated according to the formula under this subdivision, except as otherwise provided

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in clause (1) or (2).

1.17

(1) The contingent attorney fee for recovery of monetary benefits according to the

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formula in this section is presumed to be adequate to cover recovery of medical and

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rehabilitation benefit or services concurrently in dispute. Attorney fees for recovery of

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medical or rehabilitation benefits or services shall be assessed against the employer or

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insurer only if the attorney establishes that the contingent fee is inadequate to reasonably

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compensate the attorney for representing the employee in the medical or rehabilitation

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dispute. In cases where the contingent fee is inadequate the employer or insurer is liable

1.24

for attorney fees based on the formula in this subdivision or in clause (2).

For the purposes of applying the formula where the employer or insurer is liable for attorney fees, the amount of compensation awarded for obtaining disputed medical and rehabilitation benefits under sections 176.102, 176.135, and 176.136 shall be the dollar value of the medical or rehabilitation benefit awarded, where ascertainable.

(2) The maximum attorney fee for obtaining a change of doctor or qualified rehabilitation consultant, or any other disputed medical or rehabilitation benefit for which a dollar value is not reasonably ascertainable, is the amount charged in hourly fees for the representation or \$500, whichever is less, to be paid by the employer or insurer.

(3) The fees for obtaining disputed medical or rehabilitation benefits are included in the \$26,000 limit in paragraph (b). An attorney must concurrently file all outstanding disputed issues. An attorney is not entitled to attorney fees for representation in any issue which could reasonably have been addressed during the pendency of other issues for the same injury.

(b) All fees for legal services related to the same injury are cumulative and may not exceed \$26,000. If multiple injuries are the subject of a dispute, the commissioner, compensation judge, or court of appeals shall specify the attorney fee attributable to each injury.

(c) If the employer or the insurer or the defendant is given written notice of claims for legal services or disbursements, the claim shall be a lien against the amount paid or payable as compensation. Subject to the foregoing maximum amount for attorney fees, up to 20 percent of the first \$130,000 of periodic compensation awarded to the employee may be withheld from the periodic payments for attorney fees or disbursements if the payor of the funds clearly indicates on the check or draft issued to the employee for payment the purpose of the withholding, the name of the attorney, the amount withheld, and the gross amount of the compensation payment before withholding. In no case shall fees be calculated on the basis of any undisputed portion of compensation awards. Allowable fees under this chapter shall be based solely upon genuinely disputed claims or portions of claims, including disputes related to the payment of rehabilitation benefits or to other aspects of a rehabilitation plan. The existence of a dispute is dependent upon a disagreement after the employer or insurer has had adequate time and information to take a position on liability. Neither the holding of a hearing nor the filing of an application for a hearing alone may determine the existence of a dispute. Except where the employee is represented by an attorney in other litigation pending at the department or at the Office of Administrative Hearings, a fee may not be charged after June 1, 1996, for services with respect to a medical or rehabilitation issue arising under section 176.102, 176.135,

or 176.136 performed before the employee has consulted with the department and the department certifies that there is a dispute and that it has tried to resolve the dispute.

(d) An attorney who is claiming legal fees for representing an employee in a workers' compensation matter shall file a statement of attorney fees with the commissioner, or compensation judge before whom the matter was heard, ~~or Workers' Compensation Court of Appeals on cases before the court~~. A copy of the signed retainer agreement shall also be filed. The employee and insurer shall receive a copy of the statement. The statement shall be on a form prescribed by the commissioner and shall report the number of hours spent on the case.

(e) Employers and insurers may not pay attorney fees or wages for legal services of more than \$26,000 per case.

(f) An attorney must file a statement of attorney fees within 12 months of the date the attorney has submitted the written notice specified in paragraph (c). If the attorney has not filed a statement of attorney fees within the 12 months, the attorney must send a renewed notice of lien to the insurer. If 12 months have elapsed since the last notice of lien has been received by the insurer and no statement of attorney fees has been filed, the insurer must release the withheld money to the employee, except that before releasing the money to the employee, the insurer must give the attorney 30 days' written notice of the pending release. The insurer must not release the money if the attorney files a statement of attorney fees within the 30 days.

Sec. 2. Minnesota Statutes 2014, section 176.081, subdivision 3, is amended to read:

Subd. 3. **Review.** A party that is dissatisfied with its attorney fees awarded by the commissioner or a compensation judge may file an application a petition for review by the Workers' Compensation Court of Appeals. The ~~application~~ petition shall state the basis for the need of review and whether or not a hearing is requested. A copy of the ~~application~~ petition shall be served by the court upon the party's attorney ~~by the court administrator~~ and if a hearing is requested by either party, the matter shall be set for hearing awarded or denied attorney fees. ~~The notice of hearing shall be served upon known interested parties.~~ The Workers' Compensation Court of Appeals shall have the authority to raise the issue of the attorney fees at any time upon its own motion and shall have continuing jurisdiction over attorney fees.

Sec. 3. Minnesota Statutes 2014, section 176.471, subdivision 3, is amended to read:

Subd. 3. **Service of writ and bond; filing fee.** To effect a review upon certiorari, the party shall serve a writ of certiorari ~~and a bond~~ upon the administrator of the Workers'

Compensation Court of Appeals within the 30-day period referred to in subdivision 1. The party shall also at this time pay to the ~~administrator~~ clerk of the appellate courts the fee prescribed by rule ~~103.01~~ 116.03 of the Rules of Civil Appellate Procedure ~~which shall be disposed of in the manner provided by that rule.~~

Sec. 4. Minnesota Statutes 2014, section 176.471, subdivision 5, is amended to read:

Subd. 5. **Bond.** ~~The bond required by subdivision 3 shall be executed in such amount and with such sureties as the Workers' Compensation Court of Appeals directs and approves. The bond shall be conditioned to pay the cost of the review. The Workers' Compensation Court of Appeals may, upon motion of any respondent and a showing that extraordinary circumstances warrant the requirement of a cost bond, order that a bond be provided as prescribed by rule 107.02 of the Rules of Civil Appellate Procedure.~~

Sec. 5. Minnesota Statutes 2014, section 176.511, subdivision 2, is amended to read:

Subd. 2. **Disbursements, taxation.** The commissioner or compensation judge, or ~~on appeal~~ the Workers' Compensation Court of Appeals on cases before the court, may award the prevailing party reimbursement for actual and necessary disbursements. ~~These Disbursements shall be taxed upon five ten days' written notice to adverse parties.~~

Sec. 6. Minnesota Statutes 2014, section 176.511, subdivision 3, is amended to read:

Subd. 3. **Attorney fee, allowance.** ~~Where upon an appeal to the Workers' Compensation Court of Appeals, (1) an award of compensation is affirmed, or modified and affirmed, or (2) an order disallowing compensation is reversed, or (3) a petition to vacate an award is granted, the Workers' Compensation Court of Appeals may include in its award as an incident to its review on appeal an amount to cover a reasonable attorney fee; or it may allow the an attorney fee in a proceeding to tax disbursements.~~

If the employer or insurer files a notice of discontinuance of an employee's benefits and an administrative conference is held to resolve the dispute, but the employer or insurer fails to attend the administrative conference, the commissioner or compensation judge may order the employer or insurer to pay the employee's attorney fees as a cost under this section if the employee's benefits are continued.

Sec. 7. **EFFECTIVE DATE.**

Sections 1 to 6 are effective the day following final enactment.

5.1 **ARTICLE 2**

5.2 **WORKERS' COMPENSATION DEPARTMENT PROPOSALS**

5.3 Section 1. Minnesota Statutes 2015 Supplement, section 176.135, subdivision 7a,
5.4 is amended to read:

5.5 Subd. 7a. **Electronic transactions.** (a) For purposes of this subdivision, the
5.6 following terms have the meanings given:

5.7 (1) "workers' compensation payer" means a workers' compensation insurer and an
5.8 employer, or group of employers, that is self-insured for workers' compensation;

5.9 (2) "clearinghouse" has the meaning given in section 62J.51, subdivision 11a; and

5.10 (3) "electronic transactions" means the health care administrative transactions
5.11 described in section 62J.536.

5.12 (b) In addition to the requirements of section 62J.536, workers' compensation payers
5.13 and health care providers must comply with the requirements in paragraphs (c) to (e).

5.14 (c) No later than January 1, 2016, each workers' compensation payer must place
5.15 the following information in a prominent location on its Web site or otherwise provide
5.16 the information to health care providers:

5.17 (1) the name of each clearinghouse with which the workers' compensation payer has
5.18 an agreement to exchange or transmit electronic transactions, along with the identification
5.19 number each clearinghouse has assigned to the payer in order to route electronic
5.20 transactions through intermediaries or other clearinghouses to the payer;

5.21 (2) information about how a health care provider can obtain the claim number
5.22 assigned by the workers' compensation payer for an employee's claim and how the
5.23 provider should submit the claim number in the appropriate field on the electronic bill to
5.24 the payer; and

5.25 (3) the name, phone number, and e-mail address of contact persons who can answer
5.26 questions related to electronic transactions on behalf of the workers' compensation payer
5.27 and the clearinghouses with which the payer has agreements.

5.28 (d) No later than ~~July 1, 2016~~ January 1, 2017:

5.29 (1) health care providers must electronically submit copies of medical records or
5.30 reports that substantiate the nature of the charge and its relationship to the work injury
5.31 using the ~~most recently approved~~ ASC X12N 5010 version of the ASC X12N 275
5.32 transaction ("Additional Information to Support Health Care Claim or Encounter"),
5.33 according to the requirements in the corresponding implementation guide. The ASC X12N
5.34 275 transaction is the only one that shall be used to electronically submit attachments

unless a national standard is adopted by federal law or rule. If a new version of the attachment transaction is approved, it must be used one year after the approval date;

(2) workers' compensation payers and all clearinghouses receiving or transmitting workers' compensation bills must accept attachments using the ASC X12N 275 transaction and must respond with the ~~most recently approved~~ ASC X12N 5010 version of the ASC X12 electronic acknowledgment for the attachment transaction. If a new version of the acknowledgment transaction is approved, it must be used one year after the approval date; and

(3) if a different national claims attachment or acknowledgment requirement is adopted by federal law or rule, it will replace the ASC X12N 275 transaction, and the new standard must be used on the date that it is required by the federal law or rule.

(e) No later than September 1, 2015, workers' compensation payers must provide the patient's name and patient control number on or with all payments made to a provider under this chapter, whether payment is made by check or electronic funds transfer. The information provided on or with the payment must be sufficient to allow providers to match the payment to specific bills. If a bulk payment is made to a provider for more than one patient, the check or electronic funds transfer statement must also specify the amount being paid for each patient. For purposes of this paragraph, the patient control number is located on the electronic health care claim 837 transaction, loop 2300, segment CLM01, and on the electronic health care claim payment/advice 835 transaction, loop 2100, CLP01.

(f) The commissioner may assess a monetary penalty of \$500 for each violation of this section, not to exceed \$25,000 for identical violations during a calendar year. Before issuing a penalty for a first violation of this section, the commissioner must provide written notice to the noncompliant payer, clearinghouse, or provider that a penalty may be issued if the violation is not corrected within 30 days. Penalties under this paragraph are payable to the commissioner for deposit in the assigned risk safety account.

Sec. 2. Minnesota Statutes 2014, section 176.571, subdivision 1, is amended to read:

Subdivision 1. **Preliminary investigation.** When the head of a department has filed a report or the commissioner of administration has otherwise received information of the occurrence of an injury to a state employee for which liability to pay compensation may exist, the commissioner of administration shall make a preliminary investigation to determine the question of probable liability.

In making this investigation, the commissioner of administration may require the assistance of the head of any department or any employee of the state. The commissioner

7.1 of ~~management and budget~~ administration may require that all facts be furnished which
7.2 appear in the records of any state department bearing on the issue.

7.3 Sec. 3. **EFFECTIVE DATE.**

7.4 Sections 1 and 2 are effective the day following enactment.

APPENDIX
Article locations in 16-4726

	WORKERS' COMPENSATION COURT OF APPEALS	
ARTICLE 1	PROPOSALS	Page.Ln 1.8
ARTICLE 2	WORKERS' COMPENSATION DEPARTMENT PROPOSALS	Page.Ln 5.1