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CHAPTER 5222 DEPARTMENT OF LABOR AND INDUSTRY BENEFIT REIMBURSEMENT; NOTICE OF COVERAGE

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REIMBURSEMENT OF SUPPLEMENTARY BENEFITS

5222.0100 DEFINITIONS.

Subpart 1. **Generally.** As used in this chapter, the following terms have the meanings given them.

Subp. 2. **Commissioner.** "Commissioner" means commissioner of the Department of Labor and Industry.

Subp. 3. **Effective date.** "Effective date" as used in part 5222.0400 means the date on which the employer began or will begin to apply the offset provision of Minnesota Statutes, section 176.101, subdivision 4.

Subp. 4. **Government disability benefits.** "Government disability benefits" means disability benefits paid by any government disability program within the meaning of Minnesota Statutes, section 176.101. It includes social security disability benefits, old age and survivor benefits, and police relief association benefits.

Subp. 5. **Party.** "Party" means the employee, employer, insurer, or commissioner.

Subp. 6. **Rehabilitation plan.** "Rehabilitation plan" means the plan established for the employee pursuant to Minnesota Statutes, section 176.102.

Subp. 7. **Supplementary benefits.** "Supplementary benefits" means benefits paid pursuant to Minnesota Statutes, section 176.132.

Subp. 8. **Total disability benefits.** "Total disability benefits" means all benefits paid or payable by the week pursuant to Minnesota Statutes, section 176.101. Included in these benefits are economic recovery and impairment compensation because the method of payment of economic recovery or impairment compensation is determined at the time the payments commence to the employee. Where impairment compensation is paid or payable instead of economic recovery compensation under Laws of Minnesota 1983, chapter 290, section 48, it is deemed to be paid or payable weekly.

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: 8 SR 1898

5222.0200 AUTHORITY AND PURPOSE.

Parts 5222.0100 to 5222.1000 are promulgated pursuant to the authority granted to the commissioner by Minnesota Statutes, sections 176.132, subdivision 4, and 175.17, clause (2); and by Laws of Minnesota 1983, chapter 290, section 165. The purpose of these parts is to specify the procedure by which employers may apply for an administrative finding of permanent total disability

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in order to obtain reimbursement for supplementary benefits pursuant to Minnesota Statutes, section 176.132. After an administrative finding is made, all past and future total disability benefits are deemed to be payments for permanent total disability pursuant to Minnesota Statutes, section 176.101, subdivision 4.

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*

5222.0300 APPLICATION.

This chapter applies only if all of the following prerequisites are met:

A. The employee is and has been receiving total disability benefits under Minnesota Statutes, section 176.101, subdivision 1 or 4 without interruption for the injury which gave rise to total disability. Benefits are deemed to be without interruption if the total length of all interruptions does not exceed 60 days during the three years prior to filing an application or, if less than three years, since the time of the injury which gave rise to the permanent total disability.

B. The employee is receiving government disability benefits.

C. The employee is receiving supplementary benefits pursuant to Minnesota Statutes, section 176.132, subdivision 1, or would be eligible for supplementary benefits after a finding of permanent total disability is made.

D. The employee has not been determined to be permanently and totally disabled by application of Minnesota Statutes, section 176.101, subdivision 5, or by an order on stipulation, or by an order after a hearing.

E. The issue of whether the employee's total disability is permanent or temporary is not being and has never been raised in any judicial or quasi-judicial administrative proceeding, including administrative conferences under Minnesota Statutes, sections 176.242 and 176.243.

F. The total amount of weekly benefits to be received by the employee after a finding of permanent total disability has been made is equal to or greater than the amount of benefits that would be received by the employee in the absence of a finding of permanent total disability. The total amount of weekly benefits includes total disability benefits, government disability benefits, and supplementary benefits.

G. The employer or insurer has applied the offset provision of Minnesota Statutes, section 176.101, subdivision 4, from the time that \$25,000 of total disability benefits was paid or from the time that the employee began to receive government disability benefits, whichever is later.

H. The employer or insurer concludes that the employee's total disability is permanent within the meaning of Minnesota Statutes, section 176.101, subdivision 5 and applicable case law.

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*

5222.0400 PROCEDURE.

Subpart 1. Generally. The employer or insurer must comply with the procedures set forth in this part in submitting an application to the commissioner for a finding of permanent total disability.

Subp. 2. Contents of application. The application must state:

A. the name of the employee;

B. the social security number of the employee;

C. the name of the employer;

D. the insurer of the employer, or, if self-insured, that the employer is self-insured;

E. the date of the employee's injury that gave rise to permanent total disability;

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F. the date on which the requested finding of permanent total disability is to be effective;

G. the date on which the employee became eligible for government disability benefits;

H. the name of the medical provider submitting the medical report showing that the employee is permanently totally disabled at the time of application, and the date of the medical report; and

I. the status of the rehabilitation plan as active, inactive, or nonexistent.

Subp. 3. Time of application. The application may not be filed more than 45 days prior to the effective date of the finding.

Subp. 4. Filing of medical reports. Any medical reports which are identified pursuant to subpart 2, item 8, but have not been previously filed with the commissioner, must be attached to the application.

Subp. 5. Filing of rehabilitation reports. Any reports of qualified rehabilitation consultants which have not been previously filed with the commissioner must be attached to the application.

Subp. 6. Benefit amounts. The application must state the amount of weekly benefits currently received by the employee for government disability, total disability, and supplementary benefits. The application must also state the amount of each of these benefits which will be received by the employee if a finding of permanent total disability is made.

Subp. 7. Signing of application. The application must be signed by an authorized representative of the employer or of the employer's insurer. It must also state the telephone number of the person signing the application.

Subp. 8. Notice to employee. The employer or insurer must mail a copy of the application to the employee and to the employee's attorney by first class mail at the same time that the application is filed with the commissioner, and must so affirm on the application.

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*

5222.0500 NOTICE OF DECISION.

Unless grounds for disapproval exist pursuant to part 5222.0600, the commissioner must approve an application for a finding of permanent total disability. An application is deemed approved unless notice of disapproval and the grounds for disapproval are mailed by first class mail within 30 calendar days of the commissioner's receipt of the application.

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*

5222.0600 DISAPPROVAL BY COMMISSIONER.

An application for a finding of permanent total disability shall be disapproved if any of the following grounds are present:

A. The application is incomplete, is inaccurate, or is not in conformity with any part of this chapter. For example, the submission of medical reports which fail to show that the employee is permanently totally disabled at the time of application renders an application incomplete and inaccurate and not in conformity with the rules. Applications which are disapproved on any of these grounds may be resubmitted under the procedure authorized in part 5222.0400.

B. The employer or insurer has not complied with the provisions of Minnesota Statutes, section 176.102 regarding the provision of rehabilitation services to the employee. This shall apply only if the injury giving rise to total disability occurred on or after October 1, 1979.

C. The commissioner concludes that the employee's total disability is

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not permanent within the meaning of Minnesota Statutes, section 176.101, subdivision 5 and applicable case law.

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*

5222.0700 EFFECT OF FINDING.

Approval or disapproval of an application by the commissioner is without prejudice to a party's right to petition for a hearing pursuant to Minnesota Statutes, section 176.305 for a finding or for a revision of a finding of permanent total disability.

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*

5222.0800 REVISION OF FINDING.

A finding of permanent total disability pursuant to this chapter is subject to revision based on judicial order pursuant to rules of the office of administrative hearings or on future changes in the employee's employability, medical conditions, or other conditions which relate to permanent total disability under Minnesota Statutes, section 176.101 and applicable case law. A party seeking to revise a finding of permanent total disability may seek a judicial finding in the manner described in part 5222.0700.

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*

5222.0900 SEVERABILITY.

If any provision of this chapter is held to conflict with a governing statute, applicable provisions of the Minnesota Administrative Procedure Act, or other relevant law; to exceed the statutory authority conferred; to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable; or to be invalid or unenforceable for any other reason; the validity and enforceability of the remaining provisions of the chapter shall in no manner be affected.

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*

5222.1000 EFFECTIVE DATE.

Parts 5222.0100 to 5222.0900 shall apply to requests for reimbursement of supplementary benefits filed on or after February 27, 1984.

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*

INSURANCE VERIFICATION

5222.2000 PURPOSE.

Parts 5222.2000 to 5222.2006 govern the filing by insurers of insurance coverage notices under Minnesota Statutes, section 176.185. Those parts apply to endorsements; binders; notices of new policy issuance, cancellation, expiration, termination, intent to provide insurance, policy reinstatement, and corrections; and similar documents relating to policy coverage.

Statutory Authority: *MS s 176.185; 176.83 subd 1*

History: *11 SR 1505*

5222.2001 CONTENTS OF NOTICE.

Subpart 1. **Form.** Notices relating to policy coverage shall be filed on forms

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prescribed by the commissioner or as provided in subpart 2. All notices submitted must be typewritten, machine printed, on computer magnetic tape in an approved format, or via telecommunications using an approved format and protocol.

Subp. 2. Use of declaration sheets. An insurer's policy declaration sheet or insurance binder may be used in place of forms prescribed by the commissioner if the declaration contains at least the following information:

- A. Type of action, such as new policy, correction, binder, reinstatement, expiration, cancellation, termination, or notice of intent to provide insurance.
- B. Employer's legal name.
- C. Every dba (doing business as) name used by the employer.
- D. Employer's legal form of ownership, such as corporation, partnership, limited partnership, or government entity. All owners or partners must be specifically named. In limited partnerships, only the general partners must be identified.
- E. Employer's complete mailing address, including zip code.
- F. Nature of employer's business.
- G. Policy number.
- H. Effective and expiration dates of policy.
- I. Name of carrier.
- J. Carrier office issuing the policy.
- K. Type of cancellation, if applicable.
- L. Reason for cancellation, if applicable.
- M. Effective date of cancellation, if applicable.

Subp. 3. Filing not accepted. Notices not in compliance with this part will not be accepted for filing.

Statutory Authority: *MS s 176.185; 176.83 subd 1*

History: *11 SR 1505*

5222.2002 PLACE OF FILING.

All notices required by Minnesota Statutes, section 176.185 shall be filed with the commissioner's contract designee for this purpose, the Minnesota Workers' Compensation Insurers Association, Inc. (MWCIA). This part applies to all insurers licensed to write workers' compensation insurance in Minnesota, including insurers who are not members of the MWCIA. MWCIA shall function only as a repository for data collection and processing; any issues regarding the adequacy, timeliness, or other aspects of the filing are to be addressed to the commissioner.

Statutory Authority: *MS s 176.185; 176.83 subd 1*

History: *11 SR 1505*

5222.2003 TIME FOR FILING NOTICE.

Subpart 1. Policy issuance. Notice of coverage must be filed by the insurer within ten days of issuance (effective date) of a policy or 20 days of issuance (effective date) of a binder or acceptance of an employer's application for insurance, whichever is earlier.

Subp. 2. Cancellation. Notice of cancellation, termination, or expiration must be filed by the insurer at the same time that notice is given to the insured, or, if cancellation is initiated by the insured, upon receipt of notice from the insured. The policy shall remain in effect for 30 days after the insurer's filing of notice, or, if sooner, until another policy or binder is issued by the same carrier or a different carrier.

Subp. 3. Receipt of notice. Filing is effective upon receipt by the Minnesota

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Workers' Compensation Insurers Association, Inc. (MWCIA) of a notice that complies with part 5222.2001. Notices received by the commissioner will be forwarded to the MWCIA and will not become effective until received by that organization.

Subp. 4. Failure to timely file. If an insurer fails to file timely notice, other than a notice of cancellation, termination, or expiration provided for in subpart 2, as required by parts 5222.2000 to 5222.2006 on five percent of all policies for which such notices are due in any calendar month, if greater than five notices, it shall be subject to the sanctions described below. If the commissioner determines that an insurer has exceeded this percentage on more than one occasion in any 12-month period, the commissioner shall issue a warning letter advising the insurer of its responsibilities under the law, and the effect of future noncompliance.

If the commissioner determines that an insurer has exceeded this percentage on more than two occasions in any 12-month period, the commissioner may require the insurer to provide to the commissioner a written description of the steps the insurer will take to implement changes in the insurer's notice filing procedures to prevent future untimely delays and periodic written reports as to the progress and success of the implementation of such procedures.

If the commissioner determines that an insurer has exceeded this percentage on more than four occasions in any 12-month period, the commissioner may in addition to the other actions identified in this subpart notify the Department of Commerce and request a review of the insurer's authority to write workers' compensation insurance in Minnesota. This subpart does not affect the insurer's continued liability on the policy, as determined by law, for failure to timely file.

Statutory Authority: *MS s 176.185; 176.83 subd 1*

History: *11 SR 1505*

5222.2004 EFFECT OF FILING.

Filing with the Minnesota Workers' Compensation Insurers Association, Inc. under parts 5220.2000 to 5220.2006 is deemed a filing with the commissioner for purposes of Minnesota Statutes, section 176.185, subdivision 1. Filing under this part is not notice to the employer under Minnesota Statutes, sections 176.181 and 176.185.

Statutory Authority: *MS s 176.185; 176.83 subd 1*

History: *11 SR 1505*

5222.2005 CANCELLATION OF SUBSIDIARY COVERAGE.

If a single policy covers a parent corporation and its subsidiaries, a cancellation or endorsement must be filed even if the policy for the parent is to continue. The notice must specify that the subsidiary is canceled and the parent remains covered. If a new subsidiary is added to the policy, an endorsement to the declaration sheet must be filed.

Statutory Authority: *MS s 176.185; 176.83 subd 1*

History: *11 SR 1505*

5222.2006 COVERAGE.

Parts 5222.2000 to 5222.2006 shall apply to all filings required by Minnesota Statutes, section 176.185 on or after March 1, 1987.

Statutory Authority: *MS s 176.185; 176.83 subd 1*

History: *11 SR 1505*