

1 Department of Labor and Industry

2

3 Adopted Permanent Rules Relating to Workers' Compensation; Fraud

4 Unit

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6 Rules as Adopted

7 5228.0100 DEFINITIONS.

8 Subpart 1. Scope. For purposes of parts 5228.0100 to

9 5228.0130, the following terms have the meanings given them.

10 Subp. 2. Attorney. "Attorney" means a person licensed to

11 practice law in Minnesota who represents a party for a fee on

12 matters over which the commissioner has jurisdiction.

13 Subp. 3. Commissioner. "Commissioner" means the

14 commissioner of the Department of Labor and Industry or the

15 commissioner's designee.

16 Subp. 4. Compensation or workers' compensation benefits.

17 "Compensation" or "workers' compensation benefits" has the

18 meaning given compensation in Minnesota Statutes, section

19 176.011, subdivision 8.

20 Subp. 5. Employee. "Employee" has the meaning given it in

21 Minnesota Statutes, section 176.011, subdivisions 9 and 9a.

22 Subp. 6. Employer. "Employer" has the meaning given it in

23 Minnesota Statutes, section 176.011, subdivision 10.

24 Subp. 7. Fraud unit. "Fraud unit" means the workers'

25 compensation investigative unit established at the Department of

26 Labor and Industry under Minnesota Statutes, section 176.86.

27 Subp. 8. Health care provider. "Health care provider" has

28 the meaning given it in Minnesota Statutes, section 176.011,

29 subdivision 24, and includes managed care organizations

30 certified by the commissioner.

31 Subp. 9. Illegal activity. "Illegal activity" for

32 purposes of Minnesota Statutes, section 176.86, means acts,

33 omissions, or material misrepresentations which are in violation

34 of statutes or rules relating to workers' compensation,

35 including Minnesota Statutes, section 176.178 or 609.52. The

1 acts and omissions include, but are not limited to, the
2 following:

3 A. making a knowingly false statement or
4 misrepresentation to obtain or deny workers' compensation
5 benefits;

6 B. presenting a knowingly false material written or
7 oral statement in support of, or in opposition to, a claim for
8 workers' compensation benefits, including a notice, proof of
9 injury, bill and payment for services, test result, and medical
10 or legal expense;

11 C. knowingly assisting persons or parties who engage
12 in illegal activity; or

13 D. making a knowingly false material statement or
14 material representation regarding entitlement to benefits with
15 the intent to discourage an injured worker from pursuing a claim
16 or with the intent to encourage an employee to pursue a claim.

17 Subp. 10. **Insurer.** "Insurer" has the meaning given it in
18 Minnesota Statutes, section 79.01, subdivision 2, and includes
19 self-insurers.

20 Subp. 11. **Material fact.** "Material fact," for purposes of
21 Minnesota Statutes, section 176.178, means a fact which if
22 untruly asserted or wrongfully suppressed, if it had been known
23 to the person paying workers' compensation benefits, would have
24 influenced the decision to pay. Material facts include, but are
25 not limited to:

26 A. representations or omissions regarding employment
27 status, income, or job offers by any party which result in an
28 underpayment or overpayment or payment of benefits;

29 B. representations or omissions regarding symptoms or
30 ability to perform physical activities, including but not
31 limited to standing, sitting, driving, walking, climbing,
32 crawling, or any other aspect relating to a work or
33 non-work-related medical condition or functional capacity which
34 affects the payment or nonpayment of workers' compensation
35 benefits;

36 C. representations or omissions regarding past or

1 present medical conditions, illnesses, diseases, or injuries,
2 whether related to employment or not, which influence the
3 decision to pay or not pay workers' compensation benefits and
4 which result in underpayment, overpayment, payment, or
5 nonpayment of workers' compensation benefits;

6 D. representations or omissions concerning medical
7 treatment or supplies or rehabilitation services submitted in
8 connection with claims by health care providers under Minnesota
9 Statutes, section 176.135, or rehabilitation providers under
10 Minnesota Statutes, section 176.102, for reimbursement which
11 result in an overpayment or nonpayment;

12 E. representations or omissions regarding compensable
13 hours and costs or disputed amounts on attorney fee petitions
14 which result in overpayment of attorney fees;

15 F. representations or omissions to the commissioner
16 concerning the payment or receipt of workers' compensation
17 benefits by employers, employees, insurers, third-party
18 administrators, or attorneys;

19 G. representations or omissions to the commissioner
20 concerning the filing of requested or required reports under
21 Minnesota Statutes, chapter 176, by employers, employees,
22 insurers, third-party administrators, or attorneys;

23 H. representations or omissions by a person regarding
24 a notice of injury under Minnesota Statutes, section 176.141;
25 and

26 I. representations or omissions by a party or person
27 regarding the occurrence, nature, or extent of a claimed work
28 injury under Minnesota Statutes, chapter 176.

29 Subp. 12. **Person.** "Person" means a party, individual,
30 partnership, association, corporation, or other legal entity
31 including, but not limited to, employers, employees, insurers,
32 third-party administrators, attorneys, health care providers,
33 vendors, and rehabilitation providers.

34 Subp. 13. **Probable cause.** "Probable cause" means evidence
35 which leads fraud unit investigators to reasonably believe that
36 illegal activity has been or is being committed.

1 Subp. 14. Prosecuting authority. "Prosecuting authority"
2 means the attorney general, county attorney, or other
3 appropriate law enforcement agency or agency designee having
4 jurisdiction and authority to prosecute criminal, civil, or
5 administrative violations of Minnesota Statutes, sections
6 176.178, 176.179, and 609.52.

7 Subp. 15. Rehabilitation provider. "Rehabilitation
8 provider" has the meaning given it in part 5220.0100, subpart 28.

9 Subp. 16. Request for action. "Request for action" means
10 the fraud unit standard for referral to the prosecuting
11 authority based on probable cause that illegal activity has been
12 or is being committed.

13 5228.0110 IDENTIFICATION OF SUSPECTED FRAUD OR PAYMENTS NOT
14 RECEIVED IN GOOD FAITH.

15 The fraud unit shall be responsible for the investigation
16 and identification of workers' compensation fraud under
17 Minnesota Statutes, sections 176.178 and 609.52, subdivision 2,
18 clauses (d) and (e), and other illegal practices related to
19 workers' compensation. Evidence of overpayments not received in
20 good faith as defined by Minnesota Statutes, section 176.179,
21 may be referred to the appropriate paying party to commence
22 proceedings to seek reimbursement.

23 5228.0120 INVESTIGATIVE POWERS.

24 Subpart 1. Authority. Fraud unit investigators shall have
25 full investigating powers under Minnesota Statutes, section
26 175.20 and chapter 176, for the purpose of undertaking
27 investigations.

28 Subp. 2. Disclosure of information. Fraud unit
29 investigators may require the disclosure of personal or
30 privileged information without written authorization under
31 Minnesota Statutes, section 72A.502.

32 Subp. 3. Violations. Potential violations of Minnesota
33 Statutes, sections 176.178, 176.179, and 609.52, include, but
34 are not limited to:

35 A. employee representations or omissions;

- 1 B. employer representations or omissions;
 2 C. insurer representations or omissions;
 3 D. health care provider representations or omissions;
 4 E. rehabilitation provider representations or
 5 omissions;
 6 F. attorney representations or omissions; and
 7 G. other persons whose representations or omissions
 8 constitute material facts inducing the wrongful payment or
 9 receipt of workers' compensation benefits.

10 5228.0130 DETERMINATIONS BY FRAUD UNIT.

11 Subpart 1. **Investigation; scope.** The fraud unit shall
 12 determine:

13 A. whether violations of statutes or rules relating
 14 to workers' compensation, including Minnesota Statutes, section
 15 176.178, 176.179, or 609.52, exist and can be documented by
 16 evidence sufficient to warrant a request for action or to
 17 support proceeding with civil, criminal, or administrative legal
 18 action;

19 B. whether there is probable cause for a request for
 20 action to the appropriate prosecuting authority; and

21 C. whether other referrals should be made for civil,
 22 criminal, or administrative action.

23 Subp. 2. **Post-investigative action.** Following the
 24 completion of an investigation, the fraud unit shall take one or
 25 more of the following actions:

26 A. determine that no further action is necessary;

27 B. refer to the paying party entitled to seek an
 28 order for reimbursement of overpayment of benefits not received
 29 in good faith under Minnesota Statutes, section 176.179;

30 C. refer by request for action to the appropriate
 31 prosecuting authority for criminal review and legal action;

32 D. refer for civil legal action or review;

33 E. refer to the appropriate state licensing
 34 authorities having disciplinary jurisdiction over licensees or
 35 registrants including, but not limited to, the commissioners of

1 commerce, health, and labor and industry;

2 F. refer to the Lawyers Professional Responsibility
3 Board for review or investigation of attorneys;

4 G. refer to the Department of Commerce for review or
5 action concerning insurers, third-party administrators, or other
6 business entities;

7 H. refer to the commissioner for review of whether
8 administrative sanctions for licensees, registrants, or
9 rehabilitation and health care providers under Minnesota
10 Statutes, chapter 176, are appropriate;

11 I. refer to the boards, commissions, or departments
12 having regulatory oversight of rehabilitation or health care
13 providers including, but not limited to, the health-related
14 licensing boards enumerated and defined in Minnesota Statutes,
15 section 214.01, subdivision 2, the medical services review
16 board, and the rehabilitation review panel;

17 J. refer to the Department of Human Rights, the Equal
18 Employment Opportunity Commission, or the United States
19 Department of Justice, Civil Rights Division, Office of the
20 Americans with Disabilities Act, for review and action
21 concerning disability discrimination; or

22 K. refer to the commissioner for further
23 investigation, review, or action regarding safety or labor
24 standards violations.