

CHAPTER 176

WORKERS' COMPENSATION

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176.011 DEFINITIONS.

[For text of subd 1, see M.S.1986]

Subd. 2. **Child.** "Child" includes a posthumous child, a child entitled by law to inherit as a child of a deceased person, a child of a person adjudged by a court of competent jurisdiction to be the father of the child, and a stepchild, grandchild, or foster child who was a member of the family of a deceased employee at the time of injury and dependent upon the employee for support. A stepchild is a "child" within the meaning of section 176.041.

[For text of subds 3 to 5, see M.S.1986]

Subd. 6. (1) "Court of appeals" means the workers' compensation court of appeals of Minnesota.

(2) "Division" means the workers' compensation division of the department of labor and industry.

(3) "Department" means the department of labor and industry.

(4) "Commissioner," unless the context clearly indicates otherwise, means the commissioner of labor and industry.

(5) "Office" means the office of administrative hearings.

[For text of subd 7, see M.S.1986]

Subd. 7a. **Compensation judge.** (1) Compensation judge means a workers' compensation judge at the office of administrative hearings.

(2) "Calendar judge" means a workers' compensation judge at the office of administrative hearings.

(3) "Settlement judge" means a compensation judge at the department of labor and industry. Settlement judges may conduct settlement conferences, issue summary decisions, approve settlements and issue awards thereon, determine petitions for attorney fees and costs, and make other determinations, decisions, orders, and awards as may be delegated to them by the commissioner.

[For text of subd 8, see M.S.1986]

Subd. 9. **Employee.** "Employee" means any person who performs services for another for hire including the following:

(1) an alien;

(2) a minor;

(3) a sheriff, deputy sheriff, constable, marshal, police officer, firefighter, county highway engineer, and peace officer while engaged in the enforcement of peace or in the pursuit or capture of a person charged with or suspected of crime;

(4) a person requested or commanded to aid an officer in arresting or retaking a person who has escaped from lawful custody, or in executing legal process, in which cases, for purposes of calculating compensation under this chapter, the daily wage of the person shall be the prevailing wage for similar services performed by paid employees;

(5) a county assessor;

(6) an elected or appointed official of the state, or of a county, city, town, school district, or governmental subdivision in the state. An officer of a political subdivision elected or appointed for a regular term of office, or to complete the unexpired portion of a regular term, shall be included only after the governing body of the political subdivision has adopted an ordinance or resolution to that effect;

(7) an executive officer of a corporation, except those executive officers excluded by section 176.041;

(8) a voluntary uncompensated worker, other than an inmate, rendering services in state institutions under the commissioners of human services and corrections similar to those of officers and employees of the institutions, and whose services have been accepted or contracted for by the commissioner of human services or corrections as authorized by law. In the event of injury or death of the worker, the daily wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of the injury or death for similar services in institutions where the services are performed by paid employees;

(9) a voluntary uncompensated worker engaged in peace time in the civil defense program when ordered to training or other duty by the state or any political subdivision of it. The daily wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of the injury or death for similar services performed by paid employees;

(10) a voluntary uncompensated worker participating in a program established by a county welfare board. In the event of injury or death of the worker, the wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid in the county at the time of the injury or death for similar services performed by paid employees working a normal day and week;

(11) a voluntary uncompensated worker accepted by the commissioner of natural resources who is rendering services as a volunteer pursuant to section 84.089. The daily wage of the worker for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of injury or death for similar services performed by paid employees;

(12) a member of the military forces, as defined in section 190.05, while in state active service, as defined in section 190.05, subdivision 5a. The daily wage of the member for the purpose of calculating compensation under this chapter shall be based on the member's usual earnings in civil life. If there is no evidence of previous occupation or earning, the trier of fact shall consider the member's earnings as a member of the military forces;

(13) a voluntary uncompensated worker, accepted by the director of the Minnesota historical society, rendering services as a volunteer, pursuant to chapter 138. The daily wage of the worker, for the purposes of calculating compensation under this chapter, shall be the usual wage paid at the time of injury or death for similar services performed by paid employees;

(14) a voluntary uncompensated worker, other than a student, who renders services at the Minnesota state academy for the deaf or the Minnesota state academy for the blind, and whose services have been accepted or contracted for by the state board of education, as authorized by law. In the event of injury or death of the worker, the daily wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of the injury or death for similar services performed in institutions by paid employees;

(15) a voluntary uncompensated worker, other than a resident of the veterans home, who renders services at a Minnesota veterans home, and whose services have been accepted or contracted for by the commissioner of veterans affairs, as authorized by law. In the event of injury or death of the worker, the daily wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of the injury or death for similar services performed in institutions by paid employees;

(16) a worker who renders in-home attendant care services to a physically handicapped person, and who is paid directly by the commissioner of human services for these services, shall be an employee of the state within the meaning of this subdivision, but for no other purpose;

(17) students enrolled in and regularly attending the medical school of the University of Minnesota in the graduate school program or the postgraduate program. The students shall not be considered employees for any other purpose. In the event of the student's injury or death, the weekly wage of the student for the purpose of calculating compensation under this chapter, shall be the annualized educational stipend awarded to the student, divided by 52 weeks. The institution in which the student is enrolled shall be considered the "employer" for the limited purpose of determining responsibility for paying benefits under this chapter;

(18) a faculty member of the University of Minnesota employed for an academic year is also an employee for the period between that academic year and the succeeding academic year if:

(a) the member has a contract or reasonable assurance of a contract from the University of Minnesota for the succeeding academic year; and

(b) the personal injury for which compensation is sought arises out of and in the course of activities related to the faculty member's employment by the University of Minnesota;

(19) a worker who performs volunteer ambulance driver or attendant services is an employee of the political subdivision, nonprofit hospital, nonprofit corporation, or other entity for which the worker performs the services. The daily wage of the worker for the purpose of calculating compensation under this chapter shall be the usual wage paid at the time of injury or death for similar services performed by paid employees;

(20) a voluntary uncompensated worker, accepted by the commissioner of administration, rendering services as a volunteer at the department of administration. In the event of injury or death of the worker, the daily wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of the injury or death for similar services performed in institutions by paid employees; and

(21) a voluntary uncompensated worker rendering service directly to the pollution control agency. The daily wage of the worker for the purpose of calculating compensation payable under this chapter is the usual going wage paid at the time of injury or death for similar services if the services are performed by paid employees. paid employees.

If it is difficult to determine the daily wage as provided in this subdivision, the trier of fact may determine the wage upon which the compensation is payable.

[For text of subds 9a to 12, see M.S.1986]

Subd. 13. [Repealed, 1987 c 49 s 20]

[For text of subds 14 to 26, see M.S.1986]

Subd. 27. **Administrative conference.** An "administrative conference" is a meeting conducted by a commissioner's designee where parties can discuss on an expedited basis and in an informal setting their viewpoints concerning disputed issues arising under section 176.102, 176.103, 176.135, 176.136, or 176.239. If the parties are unable to resolve the dispute, the commissioner's designee shall issue an administrative decision under section 176.106 or 176.239.

History: 1987 c 332 s 5-9; 1987 c 348 s 33; 1987 c 384 art 1 s 54

176.012 [Repealed, 1987 c 332 s 117]

176.041 EXCLUDED EMPLOYMENTS; APPLICATION, EXCEPTIONS, ELECTION OF COVERAGE.

Subdivision 1. **Employments excluded.** This chapter does not apply to any of the following:

(a) a person employed by a common carrier by railroad engaged in interstate or foreign commerce and who is covered by the Federal Employers' Liability Act, United States Code, title 45, sections 51 to 60, or other comparable federal law;

(b) a person employed by a family farm as defined by section 176.011, subdivision 11a;

(c) the spouse, parent, and child, regardless of age, of a farmer-employer working for the farmer-employer;

(d) a sole proprietor, or the spouse, parent, and child, regardless of age, of a sole proprietor;

(e) a partner engaged in a farm operation or a partner engaged in a business and the spouse, parent, and child, regardless of age, of a partner in the farm operation or business;

(f) an executive officer of a family farm corporation;

(g) an executive officer of a closely held corporation having less than 22,880 hours of payroll in the preceding calendar year, if that executive officer owns at least 25 percent of the stock of the corporation;

(h) a spouse, parent, or child, regardless of age, of an executive officer of a family farm corporation as defined in section 500.24, subdivision 2, and employed by that family farm corporation;

(i) a spouse, parent, or child, regardless of age, of an executive officer of a closely held corporation who is referred to in paragraph (g);

(j) another farmer or a member of the other farmer's family exchanging work with the farmer-employer or family farm corporation operator in the same community;

(k) a person whose employment at the time of the injury is casual and not in the usual course of the trade, business, profession, or occupation of the employer;

(l) persons who are independent contractors as defined by rules adopted by the commissioner pursuant to section 176.83 except that this exclusion does not apply to an employee of an independent contractor;

(m) an officer or a member of a veterans' organization whose employment relationship arises solely by virtue of attending meetings or conventions of the veterans' organization, unless the veterans' organization elects by resolution to provide coverage under this chapter for the officer or member;

(n) a person employed as a household worker in, for, or about a private home or household who earns less than \$1,000 in cash in a three-month period from a single private home or household provided that a household worker who has earned \$1,000 or more from the household worker's present employer in a three-month period within the previous year is covered by this chapter regardless of whether or not the household worker has earned \$1,000 in the present quarter;

(o) persons employed by a closely held corporation who are related by blood or marriage, within the third degree of kindred according to the rules of civil law, to an officer of the corporation, who is referred to in paragraph (g), if the corporation files a written election with the commissioner to exclude such individuals. A written election is not required for a person who is otherwise excluded from this chapter by this section;

(p) a nonprofit association which does not pay more than \$1,000 in salary or wages in a year;

(q) persons covered under the Domestic Volunteer Service Act of 1973, as amended, United States Code, title 42, sections 5011, et. seq.

Subd. 1a. Election of coverage. The persons, partnerships and corporations described in this subdivision may elect to provide the insurance coverage required by this chapter.

(a) An owner or owners of a business or farm may elect coverage for themselves.

(b) A partnership owning a business or farm may elect coverage for any partner.

(c) A family farm corporation as defined in section 500.24, subdivision 2, clause (c), may elect coverage for any executive officer.

(d) A closely held corporation which had less than 22,880 hours of payroll in the previous calendar year may elect coverage for any executive officer if that executive officer is also an owner of at least 25 percent of the stock of the corporation.

(e) A person, partnership, or corporation hiring an independent contractor, as defined by rules adopted by the commissioner, may elect to provide coverage for that independent contractor.

A person, partnership, or corporation may charge the independent contractor a fee for providing the coverage only if the independent contractor (1) elects in writing to be covered, (2) is issued an endorsement setting forth the terms of the coverage, the name of the independent contractors, and the fee and how it is calculated.

The persons, partnerships, and corporations described in this subdivision may also elect coverage for an employee who is a spouse, parent, or child, regardless of age, of an owner, partner, or executive officer, who is eligible for coverage under this subdivision. Coverage may be elected for a spouse, parent, or child whether or not coverage is elected for the related owner, partner, or executive director and whether or not the person, partnership, or corporation employs any other person to perform a service for hire. Any person for whom coverage is elected pursuant to this subdivision shall be included within the meaning of the term employee for the purposes of this chapter.

Notice of election of coverage or of termination of election under this subdivision shall be provided in writing to the insurer. Coverage or termination of coverage is effective the day following receipt of notice by the insurer or at a subsequent date if so indicated in the notice. The insurance policy shall be endorsed to indicate the names

of those persons for whom coverage has been elected or terminated under this subdivision. An election of coverage under this subdivision shall continue in effect as long as a policy or renewal policy of the same insurer is in effect.

Nothing in this subdivision shall be construed to limit the responsibilities of owners, partnerships, or corporations to provide coverage for their employees, if any, as required under this chapter.

[For text of subds 2 and 3, see M.S.1986]

Subd. 4. Out-of-state employments. If an employee who regularly performs the primary duties of employment outside of this state or is hired to perform the primary duties of employment outside of this state, receives an injury within this state in the employ of the same employer, such injury shall be covered within the provisions of this chapter if the employee chooses to forego any workers' compensation claim resulting from the injury that the employee may have a right to pursue in some other state, provided that the special compensation fund is not liable for payment of benefits pursuant to section 176.183 if the employer is not insured against workers' compensation liability pursuant to this chapter and the employee is a nonresident of Minnesota on the date of the personal injury.

[For text of subds 5a and 6, see M.S.1986]

History: 1987 c 332 s 10-12

176.081 LEGAL SERVICES OR DISBURSEMENTS; LIEN; REVIEW.

[For text of subd 1, see M.S.1986]

Subd. 2. An application for attorney fees in excess of the amount authorized in subdivision 1 shall be made to the commissioner, compensation judge, or district judge, before whom the matter was heard. An appeal of a decision by the commissioner, a compensation judge, or district court judge on additional fees may be made to the workers' compensation court of appeals. The application shall set forth the fee requested and the basis for the request and whether or not a hearing is requested. The application, with affidavit of service upon the employee, shall be filed by the attorney requesting the fee. If a hearing is requested by an interested party, a hearing shall be set with notice of the hearing served upon known interested parties. In all cases the employee shall be served with notice of hearing.

[For text of subds 3 to 11, see M.S.1986]

History: 1987 c 332 s 13

176.101 COMPENSATION SCHEDULE.

[For text of subds 1 to 3u, see M.S.1986]

Subd. 3v. [Repealed, 1987 c 332 s 117]

[For text of subds 4 to 8, see M.S.1986]

176.1011 LOSS OF SMELL OR TASTE.

For personal injuries occurring after December 31, 1983, and before November 12, 1985, the permanent partial disability rating for total loss of taste shall be three percent of the whole body and for complete and total loss of smell shall be three percent of the whole body.

History: 1987 c 87 s 1

176.102 REHABILITATION.

[For text of subds 1 and 1a, see M.S.1986]

Subd. 2. Administrators. The commissioner shall hire a director of rehabilitation services in the classified service. The commissioner shall monitor and supervise rehabilitation services, including, but not limited to, making determinations regarding the selection and delivery of rehabilitation services and the criteria used to approve qualified rehabilitation consultants and rehabilitation vendors. The commissioner may also make determinations regarding fees for rehabilitation services. The commissioner may hire qualified personnel to assist in the commissioner's duties under this section and may delegate the duties and performance.

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, rehabilitation, and medicine, one member representing chiropractors, and four members representing labor. The members shall be appointed by the commissioner and shall serve four-year terms which may be renewed. Compensation for members shall be governed by section 15.0575. 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.

Subd. 3a. Disciplinary actions. The panel has authority to discipline qualified rehabilitation consultants and vendors and may impose a penalty of up to \$1,000 per violation, 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, chiropractic, or rehabilitation.

Subd. 3b. Review panel determinations. Recommendations from the administrative law judge following a contested case hearing shall be determined by the panel. The panel may adopt rules of procedure which may be joint rules with the medical services review board.

Subd. 4. Rehabilitation plan; development. (a) An employer or insurer shall provide rehabilitation consultation by a qualified rehabilitation consultant or by another person permitted by rule to provide consultation to an injured employee within five days after the employee has 60 days of lost work time due to the personal injury, except as otherwise provided in this subdivision. Where an employee has incurred an injury to the back, the consultation shall be made within five days after the employee has 30 days of lost work time due to the injury. The lost work time in either case may be intermittent lost work time. If an employer or insurer has medical information at any time prior to the time specified in this subdivision that the employee will be unable to return to the job the employee held at the time of the injury rehabilitation consultation shall be provided immediately after receipt of this information.

For purposes of this section "lost work time" means only those days during which the employee would actually be working but for the injury. In the case of the construction industry, mining industry, or other industry where the hours and days of work are affected by seasonal conditions, "lost work time" shall be computed by using the normal schedule worked when employees are working full time.

The qualified rehabilitation consultant appointed by the employer or insurer shall disclose in writing at the first meeting or written communication with the employee any ownership interest or affiliation between the firm which employs the qualified rehabilitation consultant and the employer, insurer, adjusting or servicing company, including the nature and extent of the affiliation or interest.

The consultant shall also disclose to all parties any affiliation, business referral or other arrangement between the consultant or the firm employing the consultant and any other party to the case, including any attorneys, doctors, or chiropractors.

If the employee objects to the employer's selection of a qualified rehabilitation consultant, the employee shall notify the employer and the commissioner in writing of the objection. The notification shall include the name, address, and telephone number of the qualified rehabilitation consultant chosen by the employee to provide rehabilitation consultation.

The employee may choose a different qualified rehabilitation consultant as follows:

(1) once during the first 60 days following the first in-person contact between the employee and the original consultant;

(2) once after the 60-day period referred to in clause (1); and

(3) subsequent requests shall be determined by the commissioner or compensation judge according to the best interests of the parties.

The employee and employer shall enter into a program if one is prescribed in a rehabilitation plan. A copy of the plan, including a target date for return to work, shall be submitted to the commissioner.

(b) If the employer does not provide rehabilitation consultation as required by this section, the commissioner or compensation judge shall notify the employer that if the employer fails to appoint a qualified rehabilitation consultant or other persons as permitted by clause (a) within 15 days to conduct a rehabilitation consultation, the commissioner or compensation judge shall appoint a qualified rehabilitation consultant to provide the consultation at the expense of the employer unless the commissioner or compensation judge determines the consultation is not required.

(c) In developing a rehabilitation plan consideration shall be given to the employee's qualifications, including but not limited to age, education, previous work history, interest, transferable skills, and present and future labor market conditions.

(d) The commissioner or compensation judge may waive rehabilitation services under this section if the commissioner or compensation judge is satisfied that the employee will return to work in the near future or that rehabilitation services will not be useful in returning an employee to work.

[For text of subd 5, see M.S.1986]

Subd. 6. Plan, eligibility for rehabilitation, approval and appeal. The commissioner or a compensation judge shall determine eligibility for rehabilitation services and shall review, approve, modify, or reject rehabilitation plans developed under subdivision 4. The commissioner or a compensation judge shall also make determinations regarding rehabilitation issues not necessarily part of a plan including, but not limited to, determinations regarding whether an employee is eligible for further rehabilitation and the benefits under subdivisions 9 and 11 to which an employee is entitled.

Subd. 6a. [Repealed, 1987 c 332 s 117]

[For text of subd 7, see M.S.1986]

Subd. 8. Plan modification. Upon request to the commissioner or compensation judge by the employer, the insurer, or employee, or upon the commissioner's own request, the plan may be suspended, terminated, or altered upon a showing of good cause, including:

(a) a physical impairment that does not allow the employee to pursue the rehabilitation plan;

(b) the employee's performance level indicates the plan will not be successfully completed;

(c) an employee does not cooperate with a plan;

(d) that the plan or its administration is substantially inadequate to achieve the rehabilitation plan objectives;

(e) that the employee is not likely to benefit from further rehabilitation services.

An employee may request a change in a rehabilitation plan once because the employee feels ill-suited for the type of work for which rehabilitation is being provided. If the rehabilitation plan includes retraining, this request must be made within 90 days of the beginning of the retraining program.

[For text of subd 9, see M.S.1986]

Subd. 10. Rehabilitation; consultants and vendors. The commissioner shall approve rehabilitation consultants who may propose and implement plans if they satisfy rules adopted by the commissioner for rehabilitation consultants. A consultant may be an individual or public or private entity, and except for the division of rehabilitation services, department of jobs and training, a consultant may not be a vendor or the agent of a vendor of rehabilitation services. The commissioner shall also approve rehabilitation vendors if they satisfy rules adopted by the commissioner.

[For text of subds 11 and 11a, see M.S.1986]

Subd. 13. Discontinuance. All benefits payable under chapter 176 may, after a determination and order by the commissioner or compensation judge, be discontinued or forfeited for any time during which the employee refuses to submit to any reasonable examinations and evaluative procedures ordered by the commissioner or compensation judge to determine the need for and details of a plan of rehabilitation, or refuses to participate in rehabilitation evaluation as required by this section or does not make a good faith effort to participate in a rehabilitation plan. A discontinuance under this section is governed by sections 176.238 and 176.239.

[For text of subd 14, see M.S.1986]

History: 1987 c 332 s 14-21

176.1021 CONTINUING EDUCATION; COMPENSATION JUDGES.

The commissioner and the chief administrative law judge shall provide continuing education and training for workers' compensation judges in the conduct of administrative hearings, new trends in workers' compensation, techniques of alternative dispute resolution and, at least annually, continuing education in the areas of physical and vocational rehabilitation.

History: 1987 c 332 s 22

176.103 MEDICAL HEALTH CARE REVIEW.

[For text of subd 1, see M.S.1986]

Subd. 2. Scope. (a) The commissioner shall monitor the medical and surgical treatment provided to injured employees, the services of other health care providers and shall also monitor hospital utilization as it relates to the treatment of injured employees. This monitoring shall include determinations concerning the appropriateness of the service, whether the treatment is necessary and effective, the proper cost of services, the quality of the treatment, the right of providers to receive payment under this chapter for services rendered or the right to receive payment under this chapter for future services. The commissioner shall report the results of the monitoring to the medical services review board. The commissioner may, either as a result of the monitoring or as a result of an investigation following receipt of a complaint, if the commissioner believes that any provider of health care services has violated any

provision of this chapter or rules adopted under this chapter, initiate a contested case proceeding under chapter 14. In these cases, the medical services review board shall make the final decision following receipt of the report of an administrative law judge. The commissioner's authority under this section also includes the authority to make determinations regarding any other activity involving the questions of utilization of medical services, and any other determination the commissioner deems necessary for the proper administration of this section, but does not include the authority to make the initial determination of primary liability, except as provided by section 176.305.

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, 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, 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.

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 hospital administrator, three physicians, one employee representative, one employer or insurer representative, and one representative of the general public.

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

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.

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.

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

(b) The medical services review board may upon petition from the commissioner and after hearing, issue a penalty of \$100 per violation, 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. 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.

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

Subd. 4. [Repealed, 1987 c 332 s 117]

History: 1987 c 332 s 23,24

176.106 ADMINISTRATIVE CONFERENCE.

Subdivision 1. Scope. All determinations by the commissioner pursuant to section 176.102, 176.103, 176.135, or 176.136 shall be in accordance with the procedures contained in this section.

Subd. 2. Request for conference. Any party may request an administrative conference by filing a request on a form prescribed by the commissioner.

Subd. 3. Conference. The matter shall be scheduled for an administrative conference within 60 days after receipt of the request for a conference. Notice of the conference shall be served on all parties no later than 14 days prior to the conference, unless the commissioner determines that a conference shall not be held. The commissioner may order an administrative conference whether or not a request for conference is filed.

The commissioner may refuse to hold an administrative conference and refer the matter for a settlement or pretrial conference or may certify the matter to the office of administrative hearings for a full hearing before a compensation judge.

Subd. 4. Appearances. All parties shall appear either personally, by telephone, by representative, or by written submission. The commissioner shall determine the issues in dispute based upon the information available at the conference.

Subd. 5. Decision. A written decision shall be issued by the commissioner or an authorized representative determining all issues considered at the conference or if a conference was not held, based on the written submissions. Disputed issues of fact shall be determined by a preponderance of the evidence. The decision must be issued within 30 days after the close of the conference or if no conference was held, within 60 days after receipt of the request for conference. The decision must include a statement indicating the right to request a de novo hearing before a compensation judge and how to initiate the request.

Subd. 6. Penalty. At a conference, if the insurer does not provide a specific reason for nonpayment of the items in dispute, the commissioner may assess a penalty of \$300 payable to the special compensation fund, unless it is determined that the reason for the lack of specificity was the failure of the insurer, upon timely request, to receive information necessary to remedy the lack of specificity. This penalty is in addition to any penalty that may be applicable for nonpayment.

Subd. 7. Request for hearing. Any party aggrieved by the decision of the commissioner may request a formal hearing by filing the request with the commissioner no later than 30 days after the decision. The request shall be referred to the office of administrative hearings for a de novo hearing before a compensation judge. The commissioner shall refer a timely request to the office of administrative hearings within five working days after filing of the request and the hearing at the office of administrative hearings must be held on the first date that all parties are available but not later than 60 days after the office of administrative hearings receives the matter. Following the hearing, the compensation judge must issue the decision within 30 days. The decision of the compensation judge is appealable pursuant to section 176.421.

Subd. 8. Denial of primary liability. The commissioner does not have authority to make determinations relating to medical or rehabilitation benefits when there is a genuine dispute over whether the injury initially arose out of and in the course of employment, except as provided by section 176.305.

Subd. 9. Subsequent causation issues. If initial liability for an injury has been admitted or established and an issue subsequently arises regarding causation between the employee's condition and the work injury, the commissioner may make the subsequent causation determination subject to de novo hearing by a compensation judge with a right to review by the court of appeals, as provided in this chapter.

History: 1986 c 444; 1987 c 332 s 25

176.111 DEPENDENTS, ALLOWANCES.

[For text of subs 1 to 14, see M.S.1986]

Subd. 15. Remote dependents. If the deceased employee leaves no surviving spouse or child or parent entitled to any payment under this chapter, but leaves a grandparent, grandchild, brother, sister, mother-in-law, or father-in-law wholly dependent on the employee for support, there shall be paid to such dependent, if but one, 30 percent of the weekly wage at the time of injury of the deceased, or if more than one,

35 percent of the weekly wage at the time of the injury of the deceased, divided among them share and share alike.

[For text of subd 16, see M.S.1986]

Subd. 17. Partial dependents. Partial dependents are entitled to receive only that proportion of the benefits provided for actual dependents which the average amount of wages regularly contributed by the deceased to such partial dependents at the time of and for a reasonable time immediately prior to the injury bore to the total income of the dependent during the same time; and if the amount regularly contributed by the deceased to such partial dependents cannot be ascertained because of the circumstances of the case, the commissioner, compensation judge, or court of appeals, in cases upon appeal, shall make a reasonable estimate thereof taking into account all pertinent factors of the case.

[For text of subds 18 and 20, see M.S.1986]

Subd. 21. Death, benefits; coordination with governmental survivor benefits. The following provision shall apply to any dependent entitled to receive weekly compensation benefits under this section as the result of the death of an employee, and who is also receiving or entitled to receive benefits under any government survivor program:

The combined total of weekly government survivor benefits and workers' compensation death benefits provided under this section shall not exceed 100 percent of the weekly wage being earned by the deceased employee at the time of the injury causing death; provided, however, that no state workers' compensation death benefit shall be paid for any week in which the survivor benefits paid under the federal program, by themselves, exceed 100 percent of such weekly wage provided, however, the workers' compensation benefits payable to a dependent surviving spouse shall not be reduced on account of any governmental survivor benefits payable to decedent's children if the support of the children is not the responsibility of the dependent surviving spouse.

For the purposes of this subdivision "dependent" means dependent surviving spouse together with all dependent children and any other dependents. For the purposes of this subdivision, mother's or father's insurance benefits received pursuant to United States Code, title 42, section 402(g), are benefits under a government survivor program.

History: 1987 c 49 s 3,4; 1987 c 332 s 26

176.129 CREATION OF THE SPECIAL COMPENSATION FUND.

[For text of subds 1 to 4, see M.S.1986]

Subd. 4a. Contribution rate adjustment. In determining the rate of adjustment as provided by subdivision 3, the commissioner shall determine the revenues received less claims received for the preceding 12 months ending June 30, 1984, and each June 30 thereafter.

If the result is:	the range of adjustment is:
over \$15,000,000	-10% to 0%
less than \$15,000,000 but more than \$10,000,000	-7% to +3%
less than \$10,000,000 but more than \$5,000,000	-5% to +5%
less than \$5,000,000 but more than \$0	-3% to +7%
\$0 but less than a \$5,000,000 deficit	0% to +10%
more than a \$5,000,000 deficit	+5% to +12%

The adjustment under this subdivision shall be used for assessments for calendar year 1984 and each year thereafter.

An amount assessed pursuant to this section is payable to the commissioner within 45 days of mailing notice of the amount due unless the commissioner orders otherwise.

The commissioner may allow an offset of the reimbursements due an employer pursuant to sections 176.131 and 176.132 against the assessment due under this section and may promulgate rules to establish the terms and conditions under which an employer will be allowed the offset.

[For text of subds 6 to 8, see M.S.1986]

Subd. 9. Powers of fund. In addition to powers granted to the special compensation fund by this chapter the fund may do the following:

- (a) sue and be sued in its own name;
- (b) intervene in or commence an action under this chapter or any other law, including, but not limited to, intervention or action as a subrogee to the division's right in a third-party action, any proceeding under this chapter in which liability of the special compensation fund is an issue, or any proceeding which may result in other liability of the fund or to protect the legal right of the fund;
- (c) enter into settlements including but not limited to structured, annuity purchase agreements with appropriate parties under this chapter;
- (d) contract with another party to administer the special compensation fund;
- (e) take any other action which an insurer is permitted by law to take in operating within this chapter; and
- (f) conduct a financial audit of indemnity claim payments and assessments reported to the fund. This may be contracted by the fund to a private auditing firm.

[For text of subd 10, see M.S.1986]

Subd. 11. Administrative provisions. The accounting, investigation, and legal costs necessary for the administration of the programs financed by the special compensation fund shall be paid from the fund during each biennium commencing July 1, 1981. Staffing and expenditures related to the administration of the special compensation fund shall be approved through the regular budget and appropriations process. All sums recovered by the special compensation fund as a result of action under section 176.061, or recoveries of payments made by the special compensation fund under section 176.183 or 176.191 shall be credited to the special compensation fund.

[For text of subd 12, see M.S.1986]

Subd. 13. Employer reports. All employers and insurers shall make reports to the commissioner as required for the proper administration of this section and sections 176.131 and 176.132. Employers and insurers may not be reimbursed from the special compensation fund for any periods for which the employer has not properly filed reports as required by this section and made all payments due to the special compensation fund under subdivision 3.

History: 1987 c 268 art 2 s 28; 1987 c 332 s 27-29

176.131 SUBSEQUENT DISABILITY, SPECIAL FUND.

Subdivision 1. If an employee incurs personal injury and suffers disability from that injury alone that is substantially greater, because of a preexisting physical impairment, than what would have resulted from the personal injury alone, the employer or insurer shall pay all compensation provided by this chapter, but the employer shall be reimbursed from the special compensation fund for all compensation paid in excess of 52 weeks of monetary benefits and \$2,000 in medical expenses, subject to the exceptions in paragraphs (a), (b), and (c):

- (a) If the disability caused by the subsequent injury is made substantially greater by the employee's registered preexisting physical impairment, there shall be apportionment of liability among all injuries. The special compensation fund shall only reim-

burse for that portion of the compensation, medical expenses, and rehabilitation expenses attributed to the subsequent injury after the applicable deductible has been met.

(b) If the subsequent personal injury alone results in permanent partial disability to a scheduled member under the schedule adopted by the commissioner pursuant to section 176.105, the special compensation fund shall not reimburse permanent partial disability, medical expenses, or rehabilitation expenses.

[For text of subds 1a to 7, see M.S.1986]

Subd. 8. As used in this section the following terms have the meanings given them:

"Physical impairment" means any physical or mental condition that is permanent in nature, whether congenital or due to injury, disease or surgery and which is or is likely to be a hindrance or obstacle to obtaining employment except that physical impairment is limited to the following:

- (a) Epilepsy,
- (b) Diabetes,
- (c) Hemophilia,

(d) Cardiac disease, provided that objective medical evidence substantiates at least the minimum permanent partial disability listed in the workers' compensation permanent partial disability schedule,

- (e) Partial or entire absence of thumb, finger, hand, foot, arm or leg,
- (f) Lack of sight in one or both eyes or vision in either eye not correctable to 20/40,
- (g) Residual disability from poliomyelitis,
- (h) Cerebral Palsy,
- (i) Multiple Sclerosis,
- (j) Parkinson's disease,
- (k) Cerebral vascular accident,
- (l) Chronic Osteomyelitis,
- (m) Muscular Dystrophy,
- (n) Thrombophlebitis,
- (o) Brain tumors,
- (p) Pott's disease,
- (q) Seizures,
- (r) Cancer of the bone,
- (s) Leukemia,

(t) Any other physical impairment resulting in a disability rating of at least ten percent of the whole body if the physical impairment were evaluated according to standards used in workers' compensation proceedings, and

(u) Any other physical impairments of a permanent nature which the commissioner may by rule prescribe;

"Compensation" has the meaning defined in section 176.011;

"Employer" includes insurer;

"Disability" means, unless otherwise indicated, any condition causing either temporary total, temporary partial, permanent total, permanent partial, death, medical expense, or rehabilitation.

History: 1987 c 332 s 30,31

176.133 ATTORNEY'S FEES, SUPPLEMENTARY BENEFITS.

Attorney's fees may be approved by the commissioner, a compensation judge, or by the workers' compensation court of appeals from the supplementary workers' compensation benefits provided by section 176.132 if the case involves the obtaining

of supplementary workers' compensation benefits. When such fees are allowed an amount equal to 25 percent of that portion of the fee which is in excess of \$250 shall be added to the employee's benefit as provided in section 176.081 rather than deducted as a portion thereof. The fees shall be determined according to section 176.081.

History: 1987 c 332 s 32

176.135 TREATMENT; APPLIANCES; SUPPLIES.

Subdivision 1. Medical, chiropractic, podiatric, surgical, hospital. (a) The employer shall furnish any medical, chiropractic, podiatric, surgical and hospital treatment, including nursing, medicines, medical, chiropractic, podiatric, and surgical supplies, crutches and apparatus, including artificial members, or, at the option of the employee, if the employer has not filed notice as hereinafter provided, Christian Science treatment in lieu of medical treatment, chiropractic medicine and medical supplies, as may reasonably be required at the time of the injury and any time thereafter to cure and relieve from the effects of the injury. This treatment shall include treatments necessary to physical rehabilitation. The employer shall furnish replacement or repair for artificial members, glasses, or spectacles, artificial eyes, podiatric orthotics, dental bridge work, dentures or artificial teeth, hearing aids, canes, crutches, or wheel chairs damaged by reason of an injury arising out of and in the course of the employment. In case of the employer's inability or refusal seasonably to do so the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing the same, including costs of copies of any medical records or medical reports that are in existence, obtained from health care providers, and that directly relate to the items for which payment is sought under this chapter, limited to the charges allowed by subdivision 7, and attorney fees incurred by the employee. No action to recover the cost of copies may be brought until the commissioner adopts a schedule of reasonable charges under subdivision 7. Attorney's fees shall be determined on an hourly basis according to the criteria in section 176.081, subdivision 5. The employer shall pay for the reasonable value of nursing services by a member of the employee's family in cases of permanent total disability.

(b) Both the commissioner and the compensation judges have authority to make determinations under this section in accordance with sections 176.106 and 176.305.

Subd. 1a. Nonemergency surgery; second surgical opinion. The employer is required to furnish surgical treatment pursuant to subdivision 1 when the surgery is reasonably required to cure and relieve the effects of the personal injury or occupational disease. An employee may not be compelled to undergo surgery. If an employee desires a second opinion on the necessity of the surgery, the employer shall pay the costs of obtaining the second opinion. Except in cases of emergency surgery, the employer or insurer may require the employee to obtain a second opinion on the necessity of the surgery, at the expense of the employer, before the employee undergoes surgery. Failure to obtain a second surgical opinion shall not be reason for nonpayment of the charges for the surgery. The employer is required to pay the reasonable value of the surgery unless the commissioner or compensation judge determines that the surgery is not reasonably required.

Subd. 2. Change of physicians, podiatrists, or chiropractors. The commissioner shall adopt rules establishing standards and criteria to be used when a dispute arises over a change of physicians, podiatrists, or chiropractors in the case that either the employee or the employer desire a change. If a change is agreed upon or ordered, the medical expenses shall be borne by the employer upon the same terms and conditions as provided in subdivision 1.

[For text of subd 2a, see M.S.1986]

Subd. 3. Limitation of liability. The pecuniary liability of the employer for the treatment, articles and supplies required by this section shall be limited to the charges therefor as prevail in the same community for similar treatment, articles and supplies furnished to injured persons of a like standard of living when the same are paid for by

the injured persons. On this basis the commissioner or compensation judge may determine the reasonable value of all such services and supplies and the liability of the employer is limited to the amount so determined.

[For text of subds 4 and 5, see M.S.1986]

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, deny all or a part of the charge on the basis of excessiveness or noncompensability, or specify the additional data needed, with written notification to the employee and the provider.

Subd. 7. Medical bills and records. Health care providers shall submit to the insurer an itemized statement of charges. Health care providers other than hospitals shall also submit copies of medical records or reports that substantiate the nature of the charge and its relationship to the work injury, provided, however, that hospitals must submit any copies of records or reports requested under subdivision 6. 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. Charges for copies provided under this subdivision shall be reasonable. The commissioner shall adopt a schedule of reasonable charges by emergency rules.

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.

History: 1987 c 332 s 33-38

176.136 MEDICAL FEE REVIEW.

[For text of subd 1, see M.S.1986]

Subd. 2. Excessive fees. If the employer or insurer determines that the charge for a health service or medical service is excessive, no payment in excess of the reasonable charge for that service shall be made under this chapter nor may the provider collect or attempt to collect from the injured employee or any other insurer or government amounts in excess of the amount payable under this chapter unless the commissioner, compensation judge, or court of appeals determines otherwise. In such a case, the health care provider may initiate an action under this chapter for recovery of the amounts deemed excessive by the employer or insurer, but the employer or insurer shall have the burden of proving excessiveness.

[For text of subd 3, see M.S.1986]

Subd. 4. [Repealed, 1987 c 332 s 117]

[For text of subd 5, see M.S.1986]

History: 1987 c 332 s 39

176.1361 TESTIMONY OF PROVIDERS.

When the commissioner, a compensation judge, or the court of appeals has reason to believe that a medical or other provider of treatment services has submitted false testimony or a false report in any proceeding under this chapter, the commissioner, compensation judge, or the court of appeals shall refer the matter to an appropriate licensing body or other professional certifying organization for review and recommendations. Based upon their recommendation, the medical services review board, after hearing, may bar the provider from making an appearance, and disallow the admission into evidence of written reports of the provider, in any proceeding under this chapter for a period not to exceed one year in the first instance and three years in the second instance, and may permanently bar the provider from appearance and the provider's reports from admission in evidence thereafter.

History: 1987 c 332 s 40

176.139 NOTICE OF RIGHTS POSTED.

Subdivision 1. Posting requirement. All employers required or electing to carry workers' compensation coverage in the state of Minnesota shall post and display in a conspicuous location a notice, in a form approved by the commissioner, advising employees of their rights and obligations under this chapter, assistance available to them, and the operation of the workers' compensation system, the name and address of the workers' compensation carrier insuring them or the fact that the employer is self-insured.

The notice shall be displayed at all locations where the employer is engaged in business.

Subd. 2. Failure to post; penalty. The commissioner may assess a penalty of \$300 against the employer payable to the special compensation fund if, after notice from the commissioner, the employer violates the posting requirement of this section.

History: 1987 c 332 s 41

176.155 EXAMINATIONS.

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. 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 addition information which was not included on the petition as required by section 176.291.

[For text of subd 2, see M.S.1986]

Subd. 3. Refusal to be examined. If the injured employee refuses to comply with any reasonable request for examination, the right to compensation may be suspended by order of the commissioner or a compensation judge, and no compensation shall be paid while the employee continues in the refusal.

[For text of subd 4, see M.S.1986]

Subd. 5. Testimony of health care provider. Any physician or other health care provider designated by the commissioner or compensation judge, or whose services are furnished or paid for by the employer, or who treats, examines, or is present at any examination, of an injured employee, may be required to testify as to any knowledge acquired by the physician or health care provider in the course of the treatment or examination relative to the injury or disability resulting from the injury only in cases involving occupational disease, cardiopulmonary injuries or diseases, injuries resulting from cumulative trauma, issues of apportionment of liability, and mental disorders, or upon an order of a compensation judge. In all other cases all evidence related to health care must be submitted by written report as prescribed by the chief administrative law judge. A party may cross-examine by deposition a physician or health care provider who has examined or treated the employee. If a physician or health care provider is not available for cross-examination prior to the hearing and the physician's or health care provider's written report is submitted at the hearing, the compensation judge shall, upon request of the adverse party, require the physician or health care provider to testify at the hearing or to be present at a posthearing deposition for the purpose of being cross-examined by the adverse party. All written evidence relating to health care must be submitted prior to or at the time of the hearing and no evidence shall be considered which was submitted after the hearing unless the compensation judge orders otherwise, and, in no case later than 30 days following the final hearing date unless an extension is granted by the chief administrative law judge. Existing medical reports must be submitted with a claim petition or answer as provided in sections 176.291 and 176.321. All reports shall substantially conform to rules prescribed by the chief administrative law judge. When a written report is used to present the testimony, it shall be admitted into evidence without the necessity for foundational testimony and shall be considered as prima facie evidence of the opinions it contains.

History: 1987 c 332 s 42-44

176.179 PAYMENTS OF COMPENSATION RECEIVED IN GOOD FAITH.

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 full credit against future lump sum benefit entitlement and as a partial credit against future weekly benefits. The credit applied against further payments of temporary total disability, temporary 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 against medical expenses due or payable.

History: 1987 c 332 s 45

176.181 INSURANCE.

[For text of subds 1 to 2a, see M.S.1986]

Subd. 3. Failure to insure, penalty. Any employer who fails to comply with the provisions of subdivision 2 to secure payment of compensation is liable to the state of Minnesota for a penalty of \$750, if the number of uninsured employees is less than five and for a penalty of \$1,500 if the number of such uninsured employees is five or more.

If the commissioner determines that the failure to comply with the provisions of subdivision 2 was willful and deliberate, the employer shall be liable to the state of Minnesota for a penalty of \$2,500, if the number of uninsured employees is less than five, and for a penalty of \$5,000 if the number of uninsured employees is five or more. If the employer continues noncompliance, the employer is liable for five times the lawful premium for compensation insurance for such employer for the period the employer fails to comply with such provisions, commencing ten days after notice has been served upon the employer by the commissioner of the department of labor and industry by certified mail. These penalties may be recovered jointly or separately in a civil action brought in the name of the state by the attorney general in any court having jurisdiction. Whenever any such failure occurs the commissioner of the department of labor and industry shall immediately certify that fact to the attorney general. Upon receipt of such certification the attorney general shall forthwith commence and prosecute the action. All penalties recovered by the state in any such action shall be paid into the state treasury and credited to the special compensation fund. If an employer fails to comply with the provisions of subdivision 2, to secure payment of compensation after having been notified of the employer's duty, the attorney general, upon request of the commissioner, may proceed against the employer in any court having jurisdiction for an order restraining the employer from having any person in employment at any time when the employer is not complying with the provisions of subdivision 2 or for an order compelling the employer to comply with subdivision 2.

[For text of subs 4 to 7, see M.S.1986]

History: 1987 c 332 s 46

176.182 BUSINESS LICENSES OR PERMITS; COVERAGE REQUIRED.

Every state or local licensing agency shall withhold the issuance or renewal of a license or permit to operate a business in Minnesota until the applicant presents acceptable evidence of compliance with the workers' compensation insurance coverage requirement of section 176.181, subdivision 2, by providing the name of the insurance company, the policy number, and dates of coverage or the permit to self-insure. The commissioner shall assess a penalty to the employer of \$1,000 payable to the special compensation fund, if the information is not reported or is falsely reported.

Neither the state nor any governmental subdivision of the state shall enter into any contract for the doing of any public work before receiving from all other contracting parties acceptable evidence of compliance with the workers' compensation insurance coverage requirement of section 176.181, subdivision 2.

This section shall not be construed to create any liability on the part of the state or any governmental subdivision to pay workers' compensation benefits or to indemnify the special compensation fund, an employer, or insurer who pays workers' compensation benefits.

History: 1987 c 332 s 47

176.183 UNINSURED AND SELF-INSURED EMPLOYERS; BENEFITS TO EMPLOYEES AND DEPENDENTS; LIABILITY OF EMPLOYER.

[For text of subd 1, see M.S.1986]

Subd. 1a. When an employee or the employee's dependent is entitled to benefits under this chapter from a self-insurer, present or past, other than the state and its municipal subdivisions, but the self-insurer fails to pay the benefits, the employee or the employee's dependents, regardless of the date when the accident, personal injury, occupational disease, or death occurred, shall nevertheless receive the benefits from the special compensation fund. The commissioner has a cause of action against the self-insuring employer for reimbursement for all benefits and other expenditures paid out or to be paid out and, in the discretion of the court, the self-insurer is liable for punitive damages in an amount not to exceed 50 percent of the total of all benefits and

other expenditures paid out or to be paid out. The commissioner shall institute an action to recover the total expenditures from the fund unless the commissioner determines that no recovery is possible. All proceeds recovered shall be deposited in the special compensation fund.

By assumption of the obligations of a self-insured employer pursuant to this subdivision, the special compensation fund shall have the right to direct reimbursement under the same conditions and in the same amounts from the workers' compensation insurers reinsurance association and from any other agreement, contract, or insurance policies which would have reimbursed or indemnified the self-insured employer for payments made pursuant to this chapter.

Subd. 2. 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 subdivisions 1 and 1a. The commissioner of finance shall upon proper certification reimburse the special compensation fund from the general fund appropriation provided for this purpose. The amount reimbursed shall be limited to the certified amount paid under this section or the appropriation made for this purpose, whichever is the lesser amount. Compensation paid under this section which is not reimbursed by the general fund shall remain a liability of the special compensation fund and shall be financed by the percentage assessed under section 176.129.

[For text of subds 3 and 4, see M.S.1986]

History: 1987 c 332 s 48,49

176.184 INSPECTIONS; ENFORCEMENT.

Subdivision 1. **Proof of insurance.** The commissioner of labor and industry, in order to carry out the purpose of section 176.181, may request satisfactory proof of authority to self-insure workers' compensation liability or satisfactory proof of insurance coverage for workers' compensation liability. If an employer does not provide satisfactory proof as requested within seven working days of the mailing of the request, the commissioner may proceed in accordance with the provisions of subdivisions 2 to 7.

Subd. 2. **At place of employment.** In order to carry out the purposes of section 176.181, the commissioner, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized to enter without delay and at reasonable times any place of employment and to inspect and investigate during regular working hours and at other reasonable times, within reasonable limits, and in a reasonable manner, any records pertaining to that employer's workers' compensation insurance policy, number of employees, documents governing conditions and benefits of employment, contracts with employees and their authorized representatives, and any other documents which may be relevant to the enforcement of section 176.181 and to question privately any employer, owner, operator, agent, or employee with respect to matters relevant to the enforcement of section 176.181.

Subd. 3. **Powers; commissioner and district court.** In making inspections and investigations under this chapter, the commissioner shall have the power to administer oaths, certify official acts, take and cause to be taken depositions of witnesses, issue subpoenas, and compel the attendance of witnesses and production of papers, books, documents, records, and testimony. In case of failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to produce evidence or to testify to any matter regarding which the person may be lawfully interrogated, the district court shall, upon application of the commissioner, compel obedience in proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by the court or a refusal to testify.

Subd. 4. **Rights of employer and employee representative.** A representative of the

employer and a representative authorized by employees shall be given an opportunity to participate in any conference or discussion held prior to, during, or after any inspection. Where there is no authorized employee representative, the commissioner shall consult with a reasonable number of employees. No employee as a consequence of aiding an inspection shall lose any privilege or payment that the employee would otherwise earn.

Subd. 5. Request for investigation by employee. (a) Any employee or representative of an employee who believes that their employer is uninsured against workers' compensation liability, may request an inspection by giving notice to the commissioner of the belief and grounds for the belief. Any notice shall be written, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer, representative, or agent no later than the time of inspection, except that, upon the request of a person giving the notice, the employee's name and the names of individual employees referred to in the notice shall not appear in the copy or on any record published, released, or made available. If upon receipt of the notification the commissioner determines that reasonable grounds exist to believe that the employer is uninsured against workers' compensation liability, the commissioner shall make an inspection in accordance with this section as soon as practicable. If the commissioner determines that there are not reasonable grounds to believe that a violation exists, the commissioner shall so notify the employee or representative of employees in writing. Upon notification, the employee or the employee representative may request the commissioner to reconsider the determination. Upon receiving the request, the commissioner shall review the determination.

(b) The commissioner, upon receipt of a report of violation of the mandatory insurance provisions of sections 176.181 or 176.185 verified by review of the department's insurance registration records and other relevant information, shall initiate a preliminary investigation to determine if reasonable grounds exist to believe that the employer is uninsured against workers' compensation liability, and upon certification of reasonable belief that the employer is uninsured the commissioner shall make an inspection in accordance with paragraph (a).

Subd. 6. Order permitting entry. Upon the refusal of an owner, operator, or agent in charge to permit entry as specified in this section, the commissioner may apply for an order in the district court in the county which entry was refused, to compel the employer to permit the commissioner to enter and inspect the place of employment.

Subd. 7. Advance notice. Advance notice may not be authorized by the commissioner except:

- (1) in circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;
- (2) where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection; and
- (3) in other circumstances where the commissioner determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

When advance notice is given to an employer, notice shall also be given by the commissioner to the authorized representative of employees if the identity of the representative is known to the employer.

History: 1987 c 332 s 50

176.185 POLICY OF INSURANCE.

[For text of subs 1 to 5, see M.S.1986]

Subd. 5a. Penalty for improper withholding. An employer who violates subdivision 5 after notice from the commissioner is subject to a penalty of 200 percent of the amount withheld from or charged the employee. The penalty shall be imposed by the commissioner. Fifty percent of this penalty is payable to the special compensation fund and 50 percent is payable to the employee.

[For text of subds 6 to 10, see M.S.1986]

History: 1987 c 332 s 51

176.191 DISPUTE BETWEEN TWO OR MORE EMPLOYERS OR INSURERS REGARDING LIABILITY.

Subdivision 1. Where compensation benefits are payable under this chapter, and a dispute exists between two or more employers or two or more insurers as to which is liable for payment, the commissioner, compensation judge, or court of appeals upon appeal shall direct, unless action is taken under subdivision 2, that one or more of the employers or insurers make payment of the benefits pending a determination of liability. A temporary order may be issued under this subdivision whether or not the employers or insurers agree to pay under the order.

When liability has been determined, the party held liable for the benefits shall be ordered to reimburse any other party for payments which the latter has made, including interest at the rate of 12 percent a year. The claimant shall also be awarded a reasonable attorney fee, to be paid by the party held liable for the benefits.

An order directing payment of benefits pending a determination of liability may not be used as evidence before a compensation judge, the workers' compensation court of appeals, or court in which the dispute is pending.

Subd. 2. Where compensation benefits are payable under this chapter, and a dispute exists between two or more employers or two or more insurers as to which is liable for payment, the commissioner or a compensation judge upon petition shall order, unless action is taken under subdivision 1, the special compensation fund established in section 176.131 to make payment of the benefits pending a determination of liability.

The personal injury for which the commissioner or a compensation judge shall order compensation from the special fund is not limited by section 176.131, subdivision 8.

When liability has been determined, the party held liable for benefits shall be ordered to reimburse the special compensation fund for payments made, including interest at the rate of 12 percent a year.

[For text of subd 3, see M.S.1986]

Subd. 4. If the employee's medical expenses for a personal injury are paid pursuant to any program administered by the commissioner of human services, or if the employee or spouse or dependents living with the employee receive subsistence or other payments pursuant to such a program, and it is subsequently determined that the injury is compensable pursuant to this chapter, the workers' compensation insurer shall reimburse the commissioner of human services for the payments made, including interest at a rate of 12 percent a year.

Amounts paid to an injured employee or spouse or dependents living with the employee pursuant to such a program and attributable to the personal injury shall be deducted from any settlement or award of compensation or benefits under this chapter, including, but not limited to, temporary and permanent disability benefits.

The insurer shall attempt, with due diligence, to ascertain whether payments have been made to an injured employee pursuant to such a program prior to any settlement or issuance of a binding award and shall notify the department of human services, benefit recovery section, when such payments have been made. An employee who has received public assistance payments shall notify the department of human services, benefit recovery section, of its potential intervention claim prior to making or settling a claim for benefits under this chapter. Notice served on local human services agencies is not sufficient to meet the notification requirement in this subdivision.

[For text of subds 5 to 8, see M.S.1986]

History: 1987 c 332 s 52,53; 1987 c 370 art 2 s 2

176.194 PROHIBITED PRACTICES.

Subdivision 1. Application. This section applies to insurers, self-insurers, group self-insurers, political subdivisions of the state, and the administrator of state employees' claims.

This section also applies to adjusters and third-party administrators who act on behalf of an insurer, self-insurer, group self-insurer, the assigned risk plan, the Minnesota insurance guaranty association, a political subdivision, or any other entity.

This section shall be enforceable only by the commissioner of labor and industry. Evidence of violations under this section shall not be admissible in any civil action.

Subd. 2. Purpose. This section is not intended to replace existing requirements of this chapter which govern the same or similar conduct; these requirements and penalties are in addition to any others provided by this chapter.

Subd. 3. Prohibited conduct. The following conduct is prohibited:

(1) failing to reply, within 30 calendar days after receipt, to all written communication about a claim from a claimant that requests a response;

(2) failing, within 45 calendar days after receipt of a written request, to commence benefits or to advise the claimant of the acceptance or denial of the claim by the insurer;

(3) failing to pay or deny medical bills within 45 days after the receipt of all information requested from medical providers;

(4) filing a denial of liability for workers' compensation benefits without conducting an investigation;

(5) failing to regularly pay weekly benefits in a timely manner as prescribed by rules adopted by the commissioner once weekly benefits have begun. Failure to regularly pay weekly benefits means failure to pay an employee on more than three occasions in any 12-month period within three business days of when payment was due;

(6) failing to respond to the department within 30 calendar days after receipt of a written inquiry from the department about a claim;

(7) failing to pay pursuant to an order of the department, compensation judge, court of appeals, or the supreme court, within 45 days from the filing of the order unless the order is under appeal; or

(8) advising a claimant not to obtain the services of an attorney or representing that payment will be delayed if an attorney is retained by the claimant.

Subd. 4. Penalties. The penalties for violations of clauses (1) through (6) are as follows:

1st through 5th violation of each paragraph	written warning
6th through 10th violation of each paragraph	\$2,500 per violation in excess of five
11th through 30th violation of each paragraph	\$5,000 per violation in excess of ten

For violations of clauses (7) and (8), the penalties are:

1st through 5th violation of each paragraph	\$2,500 per violation
6th through 30th violation of each paragraph	\$5,000 per violation in excess of five

The penalties under this section may be imposed in addition to other penalties under this chapter that might apply for the same violation. The penalties under this section are assessed by the commissioner and are payable to the special compensation fund. A party may object to the penalty and request a formal hearing under section 176.85. If an entity has more than 30 violations within any 12-month period, in addition to the monetary penalties provided, the commissioner may refer the matter to the commissioner of commerce with recommendation for suspension or revocation of the entity's (a) license to write workers' compensation insurance; (b) license to administer claims on behalf of a self-insured, the assigned risk plan, or the Minnesota

insurance guaranty association; (c) authority to self-insure; or (d) license to adjust claims. The commissioner of commerce shall follow the procedures specified in section 176.195.

Subd. 5. Rules. The commissioner may, by rules adopted in accordance with chapter 14, specify additional misleading, deceptive, or fraudulent practices or conduct which are subject to the penalties under this section.

History: 1987 c 332 s 54

176.195 REVOCATION OF INSURER'S LICENSE.

[For text of subds 1 to 2, see M.S.1986]

Subd. 3. Complaint, answer; hearing. A complaint against an insurer shall include a notice and order for hearing, shall be in writing and shall specify clearly the grounds upon which the license is sought to be suspended or revoked. The insurer shall file a written answer to the complaint within 20 days of service of the complaint. The hearing shall be conducted under chapter 14.

Subd. 4. [Repealed, 1987 c 332 s 117]

Subd. 5. [Repealed, 1987 c 332 s 117]

Subd. 6. [Repealed, 1987 c 332 s 117]

[For text of subd 7, see M.S.1986]

History: 1987 c 332 s 55

176.221 PAYMENT OF COMPENSATION AND TREATMENT CHARGES, COMMENCEMENT.

Subdivision 1. Commencement of payment. Within 14 days of notice to or knowledge by the employer of an injury compensable under this chapter the payment of temporary total compensation shall commence. Within 14 days of notice to or knowledge by an employer of a new period of temporary total disability which is caused by an old injury compensable under this chapter, the payment of temporary total compensation shall commence; provided that the employer or insurer may file for an extension with the commissioner within this 14-day period, in which case the compensation need not commence within the 14-day period but shall commence no later than 30 days from the date of the notice to or knowledge by the employer of the new period of disability. Commencement of payment by an employer or insurer does not waive any rights to any defense the employer has on any claim or incident either with respect to the compensability of the claim under this chapter or the amount of the compensation due. Where there are multiple employers, the first employer shall pay, unless it is shown that the injury has arisen out of employment with the second or subsequent employer. Liability for compensation under this chapter may be denied by the employer or insurer by giving the employee written notice of the denial of liability. If liability is denied for an injury which is required to be reported to the commissioner under section 176.231, subdivision 1, the denial of liability must be filed with the commissioner within 14 days after notice to or knowledge by the employer of an injury which is alleged to be compensable under this chapter. If the employer or insurer has commenced payment of compensation under this subdivision but determines within 30 days of notice to or knowledge by the employer of the injury that the disability is not a result of a personal injury, payment of compensation may be terminated upon the filing of a notice of denial of liability within 30 days of notice or knowledge. After the 30-day period, payment may be terminated only by the filing of a notice as provided under section 176.239. Upon the termination, payments made may be recovered by the employer if the commissioner or compensation judge finds that the employee's claim of work related disability was not made in good faith. A notice of denial of liability must state in detail specific reasons explaining why the claimed injury or occupational disease was determined not to be within the scope and course of employ-

ment and shall include the name and telephone number of the person making this determination.

Subd. 3. **Penalty.** If the employer or insurer does not begin payment of compensation within the time limit prescribed under subdivision 1 or 8, the commissioner may assess a penalty, payable to the special compensation fund, which shall be a percentage of the amount of compensation to which the employee is entitled to receive up to the date compensation payment is made.

The amount of penalty shall be determined as follows:

Numbers of days late	Penalty
1 - 15	25 percent of compensation due, not to exceed \$375,
16 - 30	50 percent of compensation due, not to exceed \$1,140,
31 - 60	75 percent of compensation due, not to exceed \$2,878,
61 or more	100 percent of compensation due, not to exceed \$3,838.

The penalty under this section is in addition to any penalty otherwise provided by statute.

[For text of subds 3a to 6a, see M.S.1986]

Subd. 7. **Interest.** Any payment of compensation, charges for treatment under section 176.135, rehabilitation expenses under 176.102, subdivision 9, or penalties assessed under this chapter not made when due shall bear interest at the rate of eight percent a year from the due date to the date the payment is made or the rate set by section 549.09, subdivision 1, whichever is greater.

For the purposes of this subdivision, permanent partial disability payment is due 14 days after receipt of the first medical report which contains a disability rating if such payment is otherwise due under this chapter, and charges for treatment under section 176.135 are due 30 calendar days after receiving the bill and necessary medical data.

If the claim of the employee or dependent for compensation is contested in a proceeding before a compensation judge or the commissioner, the decision of the judge or commissioner shall provide for the payment of unpaid interest on all compensation awarded, including interest accruing both before and after the filing of the decision.

[For text of subds 8 and 9, see M.S.1986]

History: 1987 c 332 s 56-58

176.225 ADDITIONAL AWARD AS PENALTY.

Subdivision 1. **Grounds.** Upon reasonable notice and hearing or opportunity to be heard, the commissioner, a compensation judge, or upon appeal, the court of appeals or the supreme court may award compensation, in addition to the total amount of compensation award, of up to 25 percent of that total amount where an employer or insurer has:

- (a) instituted a proceeding or interposed a defense which does not present a real controversy but which is frivolous or for the purpose of delay; or,
- (b) unreasonably or vexatiously delayed payment; or,
- (c) neglected or refused to pay compensation; or,
- (d) intentionally underpaid compensation; or
- (e) unreasonably or vexatiously discontinued compensation in violation of sections 176.238 and 176.239.

Subd. 2. Examination of books and records. To determine whether an employer or insurer is liable for the payment provided by subdivision 1, the division, a compensation judge, or the workers' compensation court of appeals upon appeal may examine the books and records of the employer or insurer relating to the payment of compensation, and may require the employer or insurer to furnish any other information relating to the payment of compensation.

The right of the division to review the records of an employer or insurer includes the right of the special compensation fund to examine records for the proper administration of sections 176.129, 176.131, 176.132, 176.181, and 176.183. The special compensation fund may not review the records of the employer or insurer relating to a claim under section 176.131 until the special compensation fund has accepted liability under that section or a final determination of liability under that section has been made. The special compensation fund may withhold reimbursement to the employer or insurer under section 176.131 or 176.132 if the employer or insurer denies access to records requested for the proper administration of section 176.129, 176.131, 176.132, 176.181, or 176.183.

[For text of subd 3, see M.S.1986]

Subd. 4. Hearing before commissioner of commerce. Upon receipt of a complaint filed under subdivision 3, the commissioner of commerce shall hear and determine the matter in the manner provided by chapter 14. On finding that a charge made by the complaint is true, the commissioner of commerce may suspend or revoke the license of the insurer to do business in this state. The insurer may appeal from the action of the commissioner revoking the license in the manner provided in chapter 14.

[For text of subd 5, see M.S.1986]

History: 1987 c 332 s 59-61

176.231 REPORT OF DEATH OR INJURY TO COMMISSIONER OF THE DEPARTMENT OF LABOR AND INDUSTRY.

[For text of subd 1, see M.S.1986]

Subd. 2. Initial report, written report. Where subdivision 1 requires an injury to be reported within 48 hours, the employer may make an initial report by telephone, telegraph, or personal notice, and file a written report of the injury within seven days from its occurrence or within such time as the commissioner of labor and industry designates. All written reports of injuries required by subdivision 1 shall include the date of injury, amounts of payments made, if any, and the date of the first payment. The reports shall be on a form designed by the commissioner, with the original to the commissioner, one copy to the insurer, and one copy to the employee.

If an insurer or self-insurer repeatedly fails to pay benefits within three days of the due date, pursuant to section 176.221, the insurer or self-insurer shall be ordered by the commissioner to explain, in person, the failure to pay benefits due in a reasonable time. If prompt payments are not thereafter made, the commissioner shall refer the insurer or self-insurer to the commissioner of commerce for action pursuant to section 176.225, subdivision 4.

[For text of subds 3 to 9, see M.S.1986]

Subd. 10. Failure to file required report, penalty. If an employer, insurer, physician, chiropractor, or other health provider fails to file with the commissioner any report required by this section in the manner and within the time limitations prescribed, or otherwise fails to provide a report required by this section in the manner provided by this section, the commissioner may impose a penalty of up to \$200 for each failure.

The imposition of a penalty may be appealed to a compensation judge within 30 days of notice of the penalty.

Penalties collected by the state under this subdivision shall be paid into the special compensation fund.

Subd. 11. Failure to file required report; substitute filing. Where this section requires the employer to file a report of injury with the commissioner, and the employer is unable or refuses to file the report, the insurer shall file the report within ten days of a request from the division. The report shall be filed in the manner prescribed by this section. If both the employer and the insurer fail to file the report within 30 days of notice of the injury, the commissioner shall file the report.

The filing of a report of injury by the commissioner does not subject an employee or the dependents of an employee to the three-year time limitations under section 176.151, paragraphs (1) and (2).

A substitute filing under this subdivision shall not be a defense to a penalty assessed under subdivision 10.

History: 1987 c 332 s 62-64

176.238 NOTICE OF DISCONTINUANCE OF TEMPORARY TOTAL, TEMPORARY PARTIAL, OR PERMANENT TOTAL COMPENSATION.

Subdivision 1. Necessity for notice and showing; contents. Except as provided in section 176.221, subdivision 1, once the employer has commenced payment of benefits, the employer may not discontinue payment of compensation until it provides the employee with notice in writing of intention to do so. A copy of the notice shall be filed with the division by the employer. The notice to the employee and the copy to the division shall state the date of intended discontinuance and set forth a statement of facts clearly indicating the reason for the action. Copies of whatever medical reports or other written reports in the employer's possession which are relied on for the discontinuance shall be attached to the notice.

Subd. 2. Continuance of employer's liability; suspension. (a) **Discontinuance because of return to work.** If the reason for discontinuance is that the employee has returned to work, temporary total compensation may be discontinued effective the day the employee returned to work. Written notice shall be served on the employee and filed with the division within 14 days of the date the insurer or self-insured employer has notice that the employee has returned to work.

(b) **Discontinuance for reasons other than return to work.** If the reason for the discontinuance is for other than that the employee has returned to work, the liability of the employer to make payments of compensation continues until the copy of the notice and reports have been filed with the division. When the division has received a copy of the notice of discontinuance, the statement of facts and available medical reports, the duty of the employer to pay compensation is suspended, except as provided in the following subdivisions and in section 176.239.

Subd. 3. Interim administrative decision. An employee may request the commissioner to schedule an administrative discontinuance conference to obtain an expedited interim decision concerning the discontinuance of compensation. Procedures relating to discontinuance conferences are set forth in section 176.239.

Subd. 4. Objection to discontinuance. An employee may serve on the employer and file with the commissioner an objection to discontinuance if:

(a) the employee elects not to request an administrative conference under section 176.239;

(b) if the employee fails to timely proceed under that section;

(c) if the discontinuance is not governed by that section; or

(d) if the employee disagrees with the commissioner's decision issued under that section. Within ten calendar days after receipt of an objection to discontinuance, the commissioner shall refer the matter to the office for a de novo hearing before a compensation judge to determine the right of the employee to further compensation.

Subd. 5. Petition to discontinue. Instead of filing a notice of discontinuance, an

employer may serve on the employee and file with the commissioner a petition to discontinue compensation. A petition to discontinue compensation may also be used when the employer disagrees with the commissioner's decision under section 176.239. Within ten calendar days after receipt of a petition to discontinue, the commissioner shall refer the matter to the office for a de novo hearing before a compensation judge to determine the right of the employer to discontinue compensation.

The petition shall include copies of medical reports or other written reports or evidence in the possession of the employer bearing on the physical condition or other present status of the employee which relate to the proposed discontinuance. The employer shall continue payment of compensation until the filing of the decision of the compensation judge and thereafter as the compensation judge, court of appeals, or the supreme court directs, unless, during the interim, occurrences arise justifying the filing of a notice under subdivision 1 or 2 and the discontinuance is permitted by the commissioner's order or no conference under section 176.239 is requested.

Subd. 6. Expedited hearing before a compensation judge. A hearing before a compensation judge shall be held within 30 calendar days after the office receives the file from the commissioner if:

(a) an objection to discontinuance has been filed under subdivision 4 within 60 calendar days after the notice of discontinuance was filed and where no administrative conference has been held;

(b) an objection to discontinuance has been filed under subdivision 4 within 60 calendar days after the commissioner's decision under this section has been issued;

(c) a petition to discontinue has been filed by the insurer in lieu of filing a notice of discontinuance; or

(d) a petition to discontinue has been filed within 60 calendar days after the commissioner's decision under this section has been issued.

If the petition or objection is filed later than the deadlines listed above, the expedited procedures in this section apply only where the employee is unemployed at the time of filing the objection and shows, to the satisfaction of the chief administrative judge, by sworn affidavit, that the failure to file the objection within the deadlines was due to some infirmity or incapacity of the employee or to circumstances beyond the employee's control. The hearing shall be limited to the issues raised by the notice or petition unless all parties agree to expanding the issues. If the issues are expanded, the time limits for hearing and issuance of a decision by the compensation judge under this subdivision shall not apply.

Once a hearing date has been set, a continuance of the hearing date will be granted only under the following circumstances:

(a) the employer has agreed, in writing, to a continuation of the payment of benefits pending the outcome of the hearing; or

(b) the employee has agreed, in a document signed by the employee, that benefits may be discontinued pending the outcome of the hearing.

Absent a clear showing of surprise at the hearing or the unexpected unavailability of a crucial witness, all evidence must be introduced at the hearing. If it is necessary to accept additional evidence or testimony after the scheduled hearing date, it must be submitted no later than 14 days following the hearing, unless the compensation judge, for good cause, determines otherwise.

The compensation judge shall issue a decision pursuant to this subdivision within 30 days following the close of the hearing record.

Subd. 7. Order of compensation judge. If the order of the compensation judge confirms a discontinuance of compensation, the service and filing of the order relieves the employer from further liability for compensation subject to the right of review provided by this chapter, and to the right of the compensation judge to set aside the order at any time prior to the review and to grant a new hearing pursuant to this chapter. Once an appeal to the workers' compensation court of appeals is filed, a compensation judge may not set aside the order. In any appeal from the compensation

judge's decision under this section, the court of appeals shall conclude any oral arguments by the parties within 60 days following certification of the record from the office.

Subd. 8. **Notice forms.** Notices under this section shall be on forms prescribed by the commissioner.

Subd. 9. **Service on attorney.** If the employee has been presently represented by an attorney for the same injury, all notices required by this section shall also be served on the last attorney of record.

Subd. 10. **Fines; violation.** An employer who violates requirements set forth in this section or section 176.239 is subject to a fine of up to \$500 for each violation payable to the special compensation fund.

Subd. 11. **Application of section.** This section shall not apply to those employees who have been adjudicated permanently totally disabled, or to those employees who have been administratively determined pursuant to division rules to be permanently totally disabled.

History: 1987 c 332 s 65

176.239 ADMINISTRATIVE DECISION CONCERNING DISCONTINUANCE OF COMPENSATION.

Subdivision 1. **Purpose.** The purpose of this section is to provide a procedure for parties to obtain an expedited interim administrative decision in disputes over discontinuance of temporary total, temporary partial, or permanent total compensation.

Subd. 2. **Request for administrative conference.** If the employee disagrees with the notice of discontinuance, the employee may request that the commissioner schedule an administrative conference to be conducted pursuant to this section.

If temporary total, temporary partial, or permanent total compensation has been discontinued because the employee has returned to work, and the employee believes benefits should be reinstated due to occurrences during the initial 14 calendar days of the employee's return to work, the employee's request must be received by the commissioner within 30 calendar days after the employee has returned to work. If the employer has failed to properly serve and file the notice as provided in section 176.238, the employee's time period to request an administrative conference is extended up to and including the 40th calendar day subsequent to the return to work.

If temporary total, temporary partial, or permanent total compensation has been discontinued for a reason other than a return to work, the employee's request must be received by the commissioner within 12 calendar days after the notice of discontinuance is received by the commissioner. If the employer discontinues compensation without giving notice as required by section 176.238, the employee's time period for requesting an administrative conference is extended up to and including the 40th calendar day after which the notice should have been served and filed.

The commissioner may determine that an administrative conference is not necessary under this section for reasons prescribed by rule and permit the employer to discontinue compensation, subject to the employee's right to file an objection to discontinuance under section 176.238, subdivision 4.

In lieu of making a written request for an administrative conference with the commissioner, an employee may make an in-person or telephone request for the administrative conference.

Subd. 3. **Payment through date of discontinuance conference.** If a notice of discontinuance has been served and filed due to the employee's return to work, and the employee requests a conference, the employer is not obligated to reinstate or otherwise pay temporary total, temporary partial, or permanent total compensation unless so ordered by the commissioner.

When an administrative conference is conducted under circumstances in which the employee has not returned to work, compensation shall be paid through the date of the administrative conference unless:

(a) the employee has returned to work since the notice was filed;
 (b) the employee fails to appear at the scheduled administrative conference; or
 (c) due to unusual circumstances or pursuant to the rules of the division, the commissioner orders otherwise.

Subd. 4. Scheduling of conference. If the employee timely requests an administrative conference under this section, the commissioner shall schedule a conference within ten calendar days after receiving the request.

Subd. 5. Continuances. An employee or employer may request a continuance of a scheduled administrative conference. If the commissioner determines there is good cause for a continuance, the commissioner may grant the continuance for not more than 14 calendar days unless the parties agree to a longer continuance. If compensation is payable through the day of the administrative conference pursuant to subdivision 3, and the employee is granted a continuance, compensation need not be paid during the period of continuance unless the commissioner orders otherwise. If the employer is granted a continuance and compensation is payable through the day of the administrative conference pursuant to subdivision 3, then compensation shall continue to be paid during the continuance. The commissioner may grant an unlimited number of continuances provided that payment of compensation during any continuance is subject to this subdivision.

Subd. 6. Scope of the administrative decision. If benefits have been discontinued due to the employee's return to work, the commissioner shall determine whether, as a result of occurrences arising during the initial 14 calendar days after the return to work, the employee is entitled to additional payment of temporary total, temporary partial, or permanent total compensation.

If periodic payment of temporary total, temporary partial, or permanent total compensation has been discontinued for reasons other than a return to work, the commissioner shall determine whether the employer has reasonable grounds to support the discontinuance. Only information or reasons specified on the notice of discontinuance shall provide a basis for a discontinuance, unless the parties agree otherwise.

Subd. 7. Interim administrative decision. After considering the information provided by the parties at the administrative conference, the commissioner shall issue to all interested parties a written decision on payment of compensation. Administrative decisions under this section shall be issued within five working days from the close of the conference. Disputed issues of fact shall be determined by a preponderance of the evidence.

Subd. 8. Disagreement with administrative decision. An employee who disagrees with the commissioner's decision under this section may file an objection to discontinuance under section 176.238, subdivision 4. An employer who disagrees with the commissioner's decision under this section may file a petition to discontinue under section 176.238, subdivision 5.

Subd. 9. Administrative decision binding; effect of subsequent determinations. The commissioner's decision under this section is binding upon the parties and the rights and obligations of the parties are governed by the decision.

If an objection or a petition is filed under subdivision 8, the commissioner's administrative decision remains in effect and the parties' obligations or rights to pay or receive compensation are governed by the commissioner's administrative decision, pending a determination by a compensation judge pursuant to section 176.238, subdivision 6.

If the commissioner has denied a discontinuance or otherwise ordered commencement of benefits, the employer shall continue paying compensation until an order is issued by a compensation judge, the court of appeals, or the supreme court, allowing compensation to be discontinued, or unless, during the interim, occurrences arise justifying the filing of a notice under section 176.238, subdivision 1 or 2, and the discontinuance is permitted by the commissioner or no conference is requested. If a compensation judge, the court of appeals, or the supreme court later rules that the

discontinuance was proper or that benefits were otherwise not owing the employee, payments made under the commissioner's administrative decision and order shall be treated as an overpayment which the insurer may recover from the employee subject to section 176.179.

If the commissioner has permitted a discontinuance or otherwise not ordered commencement of benefits, the service and filing of the administrative decision relieves the employer from further liability for compensation subject to the right of review afforded by this chapter.

Subd. 10. Application of section. This section is applicable to all cases in which the employee's request for an administrative conference is received by the division after July 1, 1987, even if the injury occurred prior to July 1, 1987. This section shall not apply to those employees who have been adjudicated permanently totally disabled, or to those employees who have been administratively determined pursuant to division rules to be permanently totally disabled.

History: 1987 c 332 s 66

176.241 [Repealed, 1987 c 332 s 117]

176.242 [Repealed, 1987 c 332 s 117]

176.2421 [Repealed, 1987 c 332 s 117]

176.243 [Repealed, 1987 c 332 s 117]

176.244 [Repealed, 1987 c 332 s 117]

176.271 INITIATION OF PROCEEDINGS.

Subdivision 1. Unless otherwise provided by this chapter or by the commissioner, all proceedings under this chapter are initiated by the filing of a written petition on a prescribed form with the commissioner at the commissioner's principal office. All claim petitions shall include the information required by section 176.291.

Subd. 2. [Repealed, 1987 c 332 s 117]

History: 1987 c 332 s 67

176.275 FILING OF PAPERS; PROOF OF SERVICE.

Subdivision 1. Filing. If a document is required to be filed by this chapter or any rules adopted pursuant to authority granted by this chapter, the filing shall be completed by the receipt of the document at the division, department, office, or the court of appeals. The division, department, office, and the court of appeals shall accept any document which has been delivered to it for legal filing immediately upon its receipt.

A notice or other document required to be served or filed at either the department, the office, or the court of appeals which is inadvertently served or filed at the wrong one of these agencies shall be deemed to have been served or filed with the proper agency. The receiving agency shall note the date of receipt of a document and shall forward the documents to the proper agency no later than two working days following receipt.

Subd. 2. Proof of service. Whenever a provision of this chapter or rules adopted pursuant to authority granted by this chapter require either a proof of service or affidavit of service, the requirement is satisfied by the inclusion of a proof of service on the document which has been served, in a form acceptable by the state district courts or approved by the commissioner.

History: 1987 c 332 s 68

176.291 DISPUTES; PETITIONS; PROCEDURE.

Where there is a dispute as to a question of law or fact in connection with a claim for compensation, a party may serve on all other parties and file a notarized petition with the commissioner stating the matter in dispute. The petition shall be on a form prescribed by the commissioner.

The petition shall also state and include, where applicable:

- (1) names and residence or business address of parties;
- (2) facts relating to the employment at the time of injury, including amount of wages received;
- (3) extent and character of injury;
- (4) notice to or knowledge by employer of injury;
- (5) copies of written medical reports or other information in support of the claim;
- (6) names and addresses of all known witnesses intended to be called in support of the claim;
- (7) the desired location of any hearing and estimated time needed to present evidence at the hearing;
- (8) any requests for a prehearing or settlement conference;
- (9) a list of all known third parties, including the departments of human services and jobs and training, who may have paid any medical bills or other benefits to the employee for the injuries or disease alleged in the petition or for the time the employee was unable to work due to the injuries or disease, together with a listing of the amounts paid by each;
- (10) the nature and extent of the claim; and
- (11) a request for an expedited hearing which must include an attached affidavit of significant financial hardship which complies with the requirements of section 176.341, subdivision 6.

Incomplete petitions may be stricken from the calendar as provided by section 176.305, subdivision 4. Within 30 days of a request by a party, an employee who has filed a claim petition pursuant to section 176.271 or this section shall furnish a list of physicians and health care providers from whom the employee has received treatment for the same or a similar condition as well as authorizations to release relevant information, data, and records to the requester. The petition may be stricken from the calendar upon motion of a party for failure to timely provide the required list of health care providers or authorizations.

History: 1987 c 332 s 69

176.301 DETERMINATION OF ISSUES.

Subdivision 1. Trial by court; reference to chief administrative law judge. When a workers' compensation issue is present in the district court action, the court may try the action itself without a jury, or refer the matter to the chief administrative law judge for assignment to a compensation judge. The compensation judge shall report findings and decisions to the district court. The court may approve or disapprove such decision in the same manner as it approves or disapproves the report of a referee. The court shall enter judgment upon such decision.

[For text of subd 2, see M.S.1986]

History: 1987 c 332 s 70

176.305 PETITIONS FILED WITH THE WORKERS' COMPENSATION DIVISION.

Subdivision 1. Hearings on petitions. The petitioner shall serve a copy of the petition on each adverse party personally or by first class mail. The original petition shall then be filed with the commissioner together with an appropriate affidavit of service. When any petition has been filed with the workers' compensation division, the commissioner shall, within ten days, refer the matter presented by the petition for a settlement conference under this section, for an administrative conference under section 176.106, or for hearing to the office.

Subd. 1a. Settlement and pretrial conferences; summary decision. The commissioner shall schedule a settlement conference, if appropriate, within 60 days after receiving the petition. All parties must appear at the conference, either personally or

by representative, must be prepared to discuss settlement of all issues, and must be prepared to discuss or present the information required by the joint rules of the division and the office. If a representative appears on behalf of a party, the representative must have authority to fully settle the matter.

If settlement is not reached, the presiding officer may require the parties to present copies of all documentary evidence not previously filed and a summary of the evidence they will present at a formal hearing. If appropriate, a written summary decision shall be issued within ten days after the conference stating the issues and a determination of each issue. If a party fails to appear at the conference, all issues may be determined contrary to the absent party's interest, provided the party in attendance presents a prima facie case.

The summary decision is final unless a written request for a formal hearing is served on all parties and filed with the commissioner within 30 days after the date of service and filing of the summary decision. Within ten days after receipt of the request, the commissioner shall certify the matter to the office for a de novo hearing.

Subd. 2. **Copy of petition.** The commissioner shall deliver the original petition and answer, after certification for a hearing, to the office of administrative hearings for assignment to a compensation judge.

[For text of subd 3, see M.S.1986]

Subd. 4. **Striking from calendar.** A compensation judge or the commissioner, after receiving a properly served motion, may strike a case from the active trial calendar after the employee has been given 30 days to correct the deficiency if it is shown that the information on the petition or included with the petition is incomplete. Once a case is stricken, it may not be reinstated until the missing information is provided to the adverse parties and filed with the commissioner or compensation judge. If a case has been stricken from the calendar for one year or more and no corrective action has been taken, the commissioner or a compensation judge may, upon the commissioner's or judge's own motion or a motion of a party which is properly served on all parties, dismiss the case. The petitioner must be given at least 30 days advance notice of the proposed dismissal before the dismissal is effective.

History: 1987 c 332 s 71-74

176.306 SCHEDULED HEARINGS.

Subdivision 1. **Chief administrative law judge.** The chief administrative law judge shall schedule workers' compensation hearings on as regular a schedule as may be practicable in no fewer than six widely separated locations throughout the state, including at least four locations outside of the seven county metropolitan area and Duluth, for the purpose of providing a convenient forum for parties to a compensation hearing and shall maintain a permanent office in Duluth staffed by at least one compensation judge. Continuances of the scheduled hearing date may be granted only under section 176.341, subdivision 4.

[For text of subd 2, see M.S.1986]

Subd. 3. **Scheduling matters.** A compensation judge may schedule a pretrial or settlement conference, whether or not a party requests such a conference.

History: 1987 c 332 s 75,76

176.312 AFFIDAVITS OF PREJUDICE AND PETITIONS FOR REASSIGNMENT.

In accordance with rules adopted by the chief administrative law judge, an affidavit of prejudice for cause may be filed by each party to the claim against a compensation judge assigned to hear a case.

A petition for reassignment of a case to a different compensation judge for hearing may be filed once, in any case, by each party to the claim within ten days after the filing

party has received notice of the assigned judge. Upon receipt of a timely petition for reassignment, the chief administrative law judge shall assign the case to another judge.

An affidavit of prejudice or a petition for reassignment shall be filed with the chief administrative law judge and shall not result in the continuance or delay of a hearing scheduled under section 176.341.

This section does not apply to prehearing or settlement conferences.

History: 1987 c 332 s 77

176.321 ANSWER TO PETITION.

[For text of subd 1, see M.S.1986]

Subd. 2. Contents. The answer shall admit, deny, or affirmatively defend against the substantial averments of the petition, and shall state the contention of the adverse party with reference to the matter in dispute.

Each fact alleged by the petition or answer and not specifically denied by the answer or reply is deemed admitted, but the failure to deny such a fact does not preclude the compensation judge from requiring proof of the fact.

The answer shall include the names and addresses of all known witnesses; whether or not the employer intends to schedule an adverse examination and, if known, the date, time, and place of all adverse examinations; the desired location for a hearing; any request for a prehearing or settlement conference; the estimated time needed to present evidence at a hearing; and, if an affidavit of significant financial hardship and request for an expedited hearing are included with the petition, any objection the employer may have to that request. If the date, time, and place of all adverse examinations is unknown at the time the answer is filed, the employer must notify the commissioner in writing of the date, time, and place of all adverse examinations within 50 days of the filing of the claim petition.

Subd. 3. Extension of time in which to file answer. Upon showing of cause, the commissioner may extend the time in which to file an answer or reply for not more than 30 additional days. The time to file an answer or reply may also be extended upon agreement of the petitioner, and provided that the commissioner must be notified in writing by the employer no later than five days beyond the time required for the filing of the answer of the fact that an agreement has been reached, including the length of the extension. Any case received by the office that does not include an answer, written extension order, or written notification of the extension agreement shall be immediately set for a hearing at the first available date under section 176.331.

History: 1987 c 332 s 78,79

176.322 DECISIONS BASED ON STIPULATED FACTS.

If the parties agree to a stipulated set of facts and only legal issues remain, the commissioner or compensation judge may determine the matter without a hearing based upon the stipulated facts and the determination is appealable to the court of appeals pursuant to sections 176.421 and 176.442. In any case where a stipulated set of facts has been submitted pursuant to this section, upon receipt of the file or the stipulated set of facts the chief administrative law judge shall immediately assign the case to a compensation judge for a determination. The judge shall issue a determination within 60 days after receipt of the stipulated facts.

History: 1987 c 332 s 80

176.331 PROCEEDINGS WHEN ANSWER NOT FILED.

Except in cases involving multiple employers or multiple insurers, if an adverse party fails to file and serve an answer or obtain an extension from the commissioner or the petitioner as required by section 176.321, subdivision 3, the commissioner shall refer the matter to the chief administrative law judge for an immediate hearing and

prompt award or other order. The adverse party that failed to file an answer may appear at the hearing, present evidence and question witnesses, but shall not be granted a continuance for any reason.

If an adverse party who fails to serve and file an answer is neither insured for workers' compensation liability nor a licensed self-insured as required by section 176.181 and the special compensation fund is a party to the proceeding, the commissioner or compensation judge may enter an order awarding benefits to the petitioning party without a hearing if so requested by the special compensation fund.

History: 1987 c 332 s 81

176.341 HEARING ON PETITION.

[For text of subs 1 and 2, see M.S.1986]

Subd. 3. Notice mailed to each party. Unless subdivision 6 applies, at least 30 days prior to the date of hearing, the chief administrative law judge shall mail a notice of the time and place of hearing to each interested party. This subdivision does not apply to hearings which have been continued from an earlier date. In those cases, the notice shall be given in a manner deemed appropriate by the chief administrative law judge after considering the particular circumstances in each case.

Subd. 4. Continuances. Only the chief administrative law judge or designee, on a showing of good cause, may grant a continuance of a hearing at the office. Except in cases of emergency or other good cause shown, any request for a continuance must be signed by both the party and the attorney seeking the continuance.

A continuance of a hearing will be granted only upon a showing of good cause. Good cause is established when the underlying eventuality is unforeseen, is not due to lack of preparation, is relevant, is brought to the chief administrative law judge's attention in a timely manner and does not prejudice the adversary.

Continuances will not be granted for the reason that an attorney for one of the parties has scheduled a vacation for the date set for the hearing unless the attorney has, prior to the setting of the hearing date, notified the office of the unavailable dates.

Continuances which are requested during the course of a hearing are subject to the same standards but may be granted or denied by the compensation judge assigned to the hearing. Continuances of prehearing or settlement conferences at the department or at the office are subject to the same standards but may be granted or denied by a settlement judge, the calendar judge, compensation judge, or other presiding officer assigned to the prehearing or settlement conference.

Subd. 5. Evidence. Absent a clear showing of surprise at the hearing or the unexpected unavailability of a crucial witness, all evidence must be submitted at the time of the hearing. Upon a showing of good cause, the compensation judge may grant an extension not to exceed 30 days following the hearing date.

Subd. 6. Significant financial hardship; expedited hearings. An employee may file a request for an expedited hearing which must be granted upon a showing of significant financial hardship. In determining whether a significant financial hardship exists, consideration shall be given to whether the employee is presently employed, the employee's income from all sources, the nature and extent of the employee's expenses and debts, whether the employee is the sole support of any dependents, whether either foreclosure of homestead property or repossession of necessary personal property is imminent, and any other matters which have a direct bearing on the employee's ability to provide food, clothing, and shelter for the employee and any dependents.

A request for an expedited hearing must be accompanied by a sworn affidavit of the employee providing facts necessary to satisfy the criteria for a significant financial hardship. The request may be made at the time a claim petition is filed or any time thereafter. Unless the employer objects to the request in the answer to the claim petition or within 20 calendar days of the filing of a request made subsequent to the filing of the claim petition, the affidavit is a sufficient showing of significant financial hardship.

If a request for an expedited hearing has been served and filed, the commissioner or compensation judge shall issue an order granting or denying the request, provided that where the parties agree that significant financial hardship exists or no objection to the request is timely filed, the request is automatically granted and the compensation judge or commissioner need not issue an order. If it is denied, the matter will be returned to the regular calendar of cases and the request for an expedited hearing may be renewed at a settlement conference. If no objection has been timely filed or if the request is granted, the commissioner shall immediately refer the matter to the office to commence prehearing procedures.

The calendar judge shall issue a prehearing order and notice of the date, time, and place for a prehearing conference which shall be set for no later than 45 days following the filing of the affidavit of significant financial hardship. The prehearing order shall require the parties to serve and file prehearing statements no later than five working days prior to the date set for the prehearing conference. The prehearing statements shall include those items listed in the joint rules of the division and the office which the calendar judge deems appropriate.

Following any prehearing conference and absent an agreement or stipulation from the parties, the commissioner or compensation judge shall issue an order establishing deadlines for the parties to complete their preparation for hearing and, after consultation with the calendar judge, establishing the date, time, and place for a hearing.

History: 1987 c 332 s 82-85

176.351 TESTIMONIAL POWERS.

[For text of subds 1 and 2, see M.S.1986]

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, shall not be subpoenaed to testify regarding the conference, hearing, 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.

[For text of subds 3 and 4, see M.S.1986]

History: 1987 c 332 s 86

176.361 INTERVENTION.

[For text of subd 1, see M.S.1986]

Subd. 2. **Written application.** A person desiring to intervene in a workers' compensation case as a party, including but not limited to a health care provider who has rendered services to an employee or an insurer who has paid benefits under section 176.191, shall submit a timely written application to intervene to the commissioner, the office, or to the court of appeals, whichever is applicable.

(a) The application must be served on all parties either personally, by first class mail, or registered mail, return receipt requested. An application to intervene must be served and filed within 30 days after a person has received notice that a claim has been filed or a request for mediation made. An untimely application is subject to denial under subdivision 7.

(b) In any other situation, timeliness will be determined by the commissioner, compensation judge, or awarding authority in each case based on circumstances at the time of filing. The application must show how the applicant's legal rights, duties, or privileges may be determined or affected by the case; state the grounds and purposes for which intervention is sought; and indicate the statutory right to intervene. The application must be accompanied by the following, if applicable, except that if the action is pending in the mediation or rehabilitation and medical services section, clause (6) is not required and the information listed in clauses (1) to (5) may be brought to the conference rather than attached to the application:

(1) an itemization of disability payments showing the period during which the payments were or are being made; the weekly or monthly rate of the payments; and the amount of reimbursement claimed;

(2) a summary of the medical or treatment payments, or rehabilitation services provided by the division of vocational rehabilitation, broken down by creditor, showing the total bill submitted, the period of treatment or rehabilitation covered by that bill, the amount of payment on that bill, and to whom the payment was made;

(3) copies of all medical or treatment bills on which some payment was made;

(4) copies of the work sheets or other information stating how the payments on medical or treatment bills were calculated;

(5) a copy of the relevant policy or contract provisions upon which the claim for reimbursement is based;

(6) a proposed order allowing intervention with sufficient copies to serve on all parties;

(7) the name and telephone number of the person representing the intervenor who has authority to reach a settlement of the issues in dispute;

(8) proof of service or copy of the registered mail receipt;

(9) at the option of the intervenor, a proposed stipulation which states that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in the case and that, if the petitioner is successful in proving the compensability of the claim, it is agreed that the sum be reimbursed to the intervenor; and

(10) if represented by an attorney, the name, address, telephone number, and Minnesota Supreme Court license number of the attorney.

[For text of subds 3 and 4, see M.S.1986]

Subd. 5. **Order.** If an objection to intervention remains following settlement or pretrial conferences, the commissioner or compensation judge shall rule on the intervention and the order is binding on the compensation judge to whom the case is assigned for hearing.

[For text of subd 6, see M.S.1986]

Subd. 7. **Effects of noncompliance.** Failure to comply with this section shall not result in a denial of the claim for reimbursement unless the compensation judge, or commissioner, determines that the noncompliance has materially prejudiced the interests of the other parties.

History: 1987 c 332 s 87-89

176.371 AWARD OR DISALLOWANCE OF COMPENSATION.

The compensation judge to whom a petition has been assigned for hearing, shall hear all competent, relevant evidence produced at the hearing. All questions of fact and law submitted to a compensation judge at the hearing shall be disposed of and the judge's decision shall be filed with the commissioner, except where expedited procedures require a shorter time, within 60 days after the submission, unless sickness or casualty prevents a timely filing, or the chief administrative law judge extends the time for good cause. The compensation judge's decision shall include a determination of all contested issues of fact and law and an award or disallowance of compensation or other order as the pleadings, evidence, this chapter and rule require. A compensation judge's decision shall include a memorandum only if necessary to delineate the reasons for the decision or to discuss the credibility of witnesses. A memorandum shall not contain a recitation of the evidence presented at the hearing but shall be limited to the compensation judge's basis for the decision.

No part of the salary of a compensation judge shall be paid unless the chief administrative law judge determines that all decisions of that judge have been issued within the time limits prescribed by this chapter.

History: 1987 c 332 s 90

176.411 RULES OF EVIDENCE, PLEADING, AND PROCEDURE.

Subdivision 1. Conduct of hearings and investigations. Except as otherwise provided by this chapter, when a compensation judge makes an investigation or conducts a hearing, the compensation judge is bound neither by the common law or statutory rules of evidence nor by technical or formal rules of pleading or procedure. Hearsay evidence which is reliable is admissible. The investigation or hearing shall be conducted in a manner to ascertain the substantial rights of the parties.

Findings of fact shall be based upon relevant and material evidence only, as presented by competent witnesses, and shall comport with section 176.021.

[For text of subds 2 and 3, see M.S.1986]

History: 1987 c 332 s 91

176.421 APPEALS TO WORKERS' COMPENSATION COURT OF APPEALS.

[For text of subds 1 to 3, see M.S.1986]

Subd. 3a. Cross-appeal. The respondent may cross-appeal within the 30-day period for taking an appeal, or within 15 days after service of the notice of appeal on that respondent, whichever is later.

Subd. 4. Service and filing of notice; cost of transcript. Within the 30-day period for taking an appeal, the appellant shall:

- (1) serve a copy of the notice of appeal on each adverse party;
- (2) file the original notice, with proof of service by admission or affidavit, with the chief administrative law judge and file a copy with the commissioner;
- (3) in order to defray the cost of the preparation of the record of the proceedings appealed from, pay to the state treasurer, office of administrative hearings account the sum of \$25.

The first party to file an appeal is liable for the original cost of preparation of the transcript. Cross-appellants or any other persons requesting a copy of the transcript are liable for the cost of the copy. The chief administrative law judge may require payment for transcription costs to be made in advance of the transcript preparation. The cost of a transcript prepared by a nongovernmental source shall be paid directly to that source and shall not exceed the cost that the source would be able to charge the state for the same service.

Upon a showing of cause, the chief administrative law judge may direct that a

transcript be prepared without expense to the party requesting its preparation, in which case the cost of the transcript shall be paid by the office of administrative hearings.

All fees received by the office of administrative hearings for the preparation of the record for submission to the workers' compensation court of appeals or for the cost of transcripts prepared by the office shall be deposited in the office of administrative hearings account in the state treasury and shall be used solely for the purpose of keeping the record of hearings conducted under this chapter and the preparation of transcripts of those hearings.

[For text of subds 5 to 7, see M.S.1986]

History: 1987 c 332 s 92,93

176.442 APPEALS FROM DECISIONS OF COMMISSIONER.

Except for a commissioner's decision which may be heard de novo in another proceeding including but not limited to a decision from an administrative conference under section 176.102, 176.103, 176.106, 176.239, or a summary decision under section 176.305, any decision or determination of the commissioner affecting a right, privilege, benefit, or duty which is imposed or conferred under this chapter is subject to review by the workers' compensation court of appeals. A person aggrieved by the determination may appeal to the workers' compensation court of appeals by filing a notice of appeal with the commissioner in the same manner and within the same time as if the appeal were from an order or decision of a compensation judge to the workers' compensation court of appeals.

History: 1987 c 332 s 94; 1987 c 384 art 3 s 3

176.501 [Repealed, 1987 c 332 s 117]

176.511 COSTS.

Subdivision 1. **Parties not awarded costs.** Except as provided otherwise by this chapter and specifically by this section, in appeals before the court of appeals or proceedings before the division or a compensation judge, costs shall not be awarded to any party.

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

Subd. 3. **Attorney's fee, allowance.** Where upon an appeal to the workers' compensation court of appeals, an award of compensation is affirmed, or modified and affirmed, or an order disallowing compensation is reversed, 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's fee, or it may allow the 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.

[For text of subds 4 and 5, see M.S.1986]

History: 1987 c 332 s 95-97

176.521 SETTLEMENT OF CLAIMS.

Subdivision 1. **Validity.** 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.

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, a compensation judge, or court of appeals.

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

History: 1987 c 332 s 98

176.540 TRANSFER OF STATE CLAIMS UNIT TO DEPARTMENT OF EMPLOYEE RELATIONS.

The responsibilities of the commissioner of labor and industry relating to the administration and payment of workers' compensation benefits to state employees under this chapter and the administration of the peace officers benefits fund under chapter 176B, and the staff assigned to administer these responsibilities, are hereby transferred to the department of employee relations under section 15.039. The complement positions to be transferred shall be determined by the commissioner of administration in consultation with the commissioners of employee relations and labor and industry.

History: 1987 c 332 s 99

176.541 STATE DEPARTMENTS.

[For text of subd 1, see M.S.1986]

Subd. 2. Defense of claim against state. When the commissioner of employee relations believes that a claim against the state for compensation should be contested, the commissioner shall defend the state claim.

Subd. 3. Duties of attorney general. At any stage in such a compensation proceeding, the attorney general may assume the duty of defending the state. When the

commissioner of employee relations or a department of this state requests the attorney general to assume the defense, the attorney general shall do so.

Subd. 4. **Medical examination of employee; witnesses; conduct of defense.** In conducting a defense against a claim for compensation, the commissioner of the department of employee relations or the attorney general, as the case may be, may require that an employee submit to a medical examination, procure the attendance of expert and other witnesses at a hearing, and do any other act necessary to conduct a proper defense.

[For text of subd 5, see M.S.1986]

Subd. 6. **Legal and clerical help.** The commissioner of employee relations may employ such legal and clerical help as authorized by the department of administration. The salaries of these persons shall be paid from the state compensation revolving fund, but shall be apportioned among the several departments of the state in relation to the amount of compensation paid to employees of any department as against the total amount of compensation paid to employees of all departments.

[For text of subds 7 and 8, see M.S.1986]

History: 1987 c 332 s 100-103

176.571 INVESTIGATIONS OF INJURIES TO STATE EMPLOYEES.

Subdivision 1. **Preliminary investigation.** When the head of a department has filed a report or the commissioner of employee relations 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 employee relations shall make a preliminary investigation to determine the question of probable liability.

In making this investigation, the commissioner of employee relations may require the assistance of the head of any department or any employee of the state. The commissioner of employee relations may require that all facts be furnished which appear in the records of any state department bearing on the issue.

Subd. 2. **Determination by department.** When the commissioner of the department of employee relations has completed an investigation, the commissioner shall inform the claimant, the head of the employing department, and the commissioner of finance in writing of the action taken.

Subd. 3. [Repealed, 1987 c 332 s 117]

Subd. 4. [Repealed, 1987 c 332 s 117]

Subd. 5. [Repealed, 1987 c 332 s 117]

Subd. 6. [Repealed, 1987 c 332 s 117]

Subd. 7. [Repealed, 1987 c 332 s 117]

History: 1987 c 332 s 104,105

176.572 CONTRACT WITH INSURANCE CARRIERS.

The commissioner of employee relations may contract with group health insurance carriers or health maintenance organizations to provide health care services and reimburse health care payments for injured state employees entitled to benefits under this chapter.

History: 1987 c 332 s 106

176.581 PAYMENT TO STATE EMPLOYEES.

Upon a warrant prepared by the commissioner of the department of employee relations and approved by the commissioner of finance, and in accordance with the terms of the order awarding compensation, the state treasurer shall pay compensation to the employee or the employee's dependent. These payments shall be made from money appropriated for this purpose.

History: 1987 c 332 s 107

176.591 STATE COMPENSATION REVOLVING FUND.*[For text of subds 1 and 2, see M.S.1986]*

Subd. 3. **Compensation payments upon warrants.** The state treasurer shall make compensation payments from the fund only as authorized by this chapter upon warrants of the commissioner of the department of employee relations.

History: 1987 c 332 s 108

176.602 [Repealed, 1987 c 332 s 117]**176.603 COST OF ADMINISTERING CHAPTER, PAYMENT.**

The annual cost to the commissioner of the department of employee relations of administering this chapter in relation to state employees and the necessary expenses which the department of employee relations or the attorney general incurs in investigating, administering, and defending a claim against the state for compensation shall be paid from the state compensation revolving fund.

History: 1987 c 332 s 109

176.611 MAINTENANCE OF STATE COMPENSATION REVOLVING FUND.*[For text of subd 1, see M.S.1986]*

Subd. 2. **State departments.** Every department of the state, including the University of Minnesota, shall reimburse the fund for money paid for its claims and the costs of administering the revolving fund at such times and in such amounts as the commissioner of labor and industry shall certify has been paid out of the fund on its behalf. The heads of the departments shall anticipate these payments by including them in their budgets. In addition, the commissioner of labor and industry, with the approval of the commissioner of finance, may require an agency to make advance payments to the fund sufficient to cover the agency's estimated obligation for a period of at least 60 days. Reimbursements and other money received by the commissioner of labor and industry under this subdivision must be credited to the state compensation revolving fund.

Subd. 3a. **Loans.** To maintain an ongoing balance sufficient to pay sums currently due for benefits and administrative costs, the commissioner of finance, upon request of the commissioner of labor and industry, may transfer money from the general fund to the state compensation revolving fund. Before requesting the transfer, the commissioner of labor and industry must decide there is not enough money in the fund for an immediate, necessary expenditure. The amount necessary to make the transfer is appropriated from the general fund to the commissioner of finance. The commissioner of labor and industry shall make schedules to repay the transferred money to the general fund. The repayment may not extend beyond five years.

Subd. 6a. **Appropriations constituting fund.** The revolving fund consists of \$3,437,690 appropriated from the general fund and other funds.

History: 1987 c 404 s 151-153

176.83 RULES.*[For text of subds 1 to 4, see M.S.1986]*

Subd. 5. **Excessive medical services.** In consultation with the medical services review board or the rehabilitation review panel, rules establishing standards and procedures for determining whether a provider of health care services and rehabilitation services, including a provider of medical, chiropractic, podiatric, surgical, hospital or other services, is performing procedures or providing services at a level or with a frequency that is excessive, based upon accepted medical standards for quality health care and accepted rehabilitation standards.

If it is determined by the payer that the level, frequency or cost of a procedure or service of a provider is excessive according to the standards established by the rules, the provider shall not be paid for the excessive procedure, service, or cost by an insurer, self-insurer, or group self-insurer, and the provider shall not be reimbursed or attempt to collect reimbursement for the excessive procedure, service, or cost from any other source, including the employee, another insurer, the special compensation fund, or any government program unless the commissioner or compensation judge determines at a hearing or administrative conference that the level, frequency, or cost was not excessive in which case the insurer, self-insurer, or group self-insurer shall make the payment deemed reasonable.

A health or rehabilitation provider who is determined by the rehabilitation review panel or medical services review board, after hearing, to be consistently performing procedures or providing services at an excessive level or cost may be prohibited from receiving any further reimbursement for procedures or services provided under this chapter. A prohibition imposed on a provider under this subdivision may be grounds for revocation or suspension of the provider's license or certificate of registration to provide health care or rehabilitation service in Minnesota by the appropriate licensing or certifying body.

The rules adopted under this subdivision shall require insurers, self-insurers, and group self-insurers to report medical and other data necessary to implement the procedures required by this clause.

[For text of subd 6, see M.S.1986]

Subd. 7. Miscellaneous rules. Rules necessary for implementing and administering the provisions of sections 176.131, 176.132, 176.238, and 176.239; sections 176.251, 176.66 to 176.669, and rules regarding proper allocation of compensation under section 176.111. Under the rules adopted under section 176.111 a party may petition for a hearing before a compensation judge to determine the proper allocation. In this case the compensation judge may order a different allocation than prescribed by rule.

[For text of subds 8 to 10, see M.S.1986]

Subd. 11. Independent contractors. Rules establishing criteria to be used by the division, compensation judge, and court of appeals to determine "independent contractor."

[For text of subds 12 to 15, see M.S.1986]

History: 1987 c 332 s 110-112; 1987 c 384 art 2 s 44; art 3 s 4

176.84 SPECIFICITY OF NOTICE OR STATEMENT.

Subdivision 1. Specificity required. Notices of discontinuance and denials of liability shall be sufficiently specific to convey clearly, without further inquiry, the basis upon which the party issuing the notice or statement is acting. If the commissioner or compensation judge determines that a notice or statement is not sufficiently specific to meet the standard under this section, the notice or statement may be rejected as unacceptable and the party issuing it shall be informed of this. The rejected notice or statement may be amended to meet the requirement of this section or a new one may be filed.

Subd. 2. Penalty. The commissioner or compensation judge may impose a penalty of \$300 for each violation of subdivision 1.

Subd. 3. Effective date. This section shall not be effective until the commissioner adopts rules which specify what is required to be contained in the notice of discontinuance and the denial of liability.

History: 1987 c 332 s 113