

2020 Workers' Compensation Advisory Council legislation

HF 19 and SF 27 (Article 2) (2020 7th Special Session)

Signed by the governor Dec. 16, 2020

Available at http://wdoc.house.leg.state.mn.us/leg/LS91/7_2020/HF0019.0.pdf

Overview

This legislation adopts recommendations made by the Workers' Compensation Advisory Council in 2020 related to: implementation of the Workers' Compensation Modernization Program (known as Work Comp Campus); Department of Commerce proposals related to self-insurers; occupations entitled to occupational disease presumptions; payment to the estate of a deceased employee using a simplified process; application of the workers' compensation pharmacy fee schedule to second-injury claims reimbursed by the Special Compensation Fund; and access to workers' compensation insurance coverage data for insurance verification purposes.

This document provides only a summary of new law; refer to the actual law for complete language and details.

Section 1. Amends Minnesota Statutes § 79A.02, subdivision 4, Recommendations to commissioner regarding revocation

- Strikes the language that currently would allow a workers' compensation standard group self-insurer to maintain a negative balance in its common claims fund.
- Effective Dec. 17, 2020.

Section 2. Amends Minn. Stat. § 79A.04, subd. 2, Minimum deposit

- Limits the discount rate that may be applied to estimates of future workers' compensation liabilities of self-insurers for the purposes of setting the self-insurer's security posting requirement.
- Effective Jan. 1, 2022, and applies to actuarial opinions with a valuation date on or after that date.

Section 3. Amends Minn. Stat. § 79A.06, subd. 5, Private employers who have ceased to be self-insured

- Paragraph (b) prohibits the discounting of future workers' compensation liabilities for self-insured entities that have exited the self-insurance program.
- Effective Dec. 17, 2020.

Section 4. Amends Minn. Stat. § 79A.22, subd. 13, Common claims fund; five-year exception

- Strikes the language that currently would allow a workers' compensation commercial group self-insurer to maintain a negative balance in its common claims fund.
- Effective Dec. 17, 2020.

Section 5. Amends Minn. Stat. § 79A.24, subd. 2, Minimum deposit

- Limits the discount rate that may be applied to estimates of future workers' compensation liabilities of commercial self-insurer groups for the purposes of setting the security posting requirement.
- Effective Jan. 1, 2022, and applies to actuarial opinions with a valuation date on or after that date.

Section 6. Amends Minn. Stat. § 176.011, subd. 15, Occupational disease

- Paragraph (b) includes correctional officers employed by cities and counties and security counselors employed by cities, counties and the state in the list of occupations for which myocarditis, coronary sclerosis, pneumonia or its sequel and infectious or communicable diseases are presumed to be occupational diseases due to employment, if certain conditions are met. Paragraph (e) clarifies the occupations covered by the post-traumatic stress disorder (PTSD) presumption consistent with paragraph (b). The presumptions are rebuttable by the payer due to substantial factors.
- Effective Dec. 17, 2020.

Section 7. Amends Minn. Stat. § 176.102, subd. 10, Rehabilitation; consultants, interns and vendors

- Paragraph (a) requires an employer or insurer to be approved by the commissioner as a qualified rehabilitation consultant (QRC) firm, and create an account in Work Comp Campus as a firm, to employ a QRC to provide vocational rehabilitation services to an injured worker.
- Paragraph (b) requires a plan of supervision signed by the QRC intern's supervisor to be filed with the intern's application in Campus. The supervisor must verify the intern's compliance with all rehabilitation statutes and rules. The intern must verify all rehabilitation documents prepared by the intern were reviewed by the supervisor before they were filed with the commissioner.
- Effective Dec. 17, 2020.

Section 8. Amends Minn. Stat. § 176.111, subd. 22, Payments to estate; death of employee

- Paragraph (a) allows the use of an affidavit of collection or personal property according to Minn. Stat. § 524.3-1201 to 524.3-1202 for the \$60,000 payment to a deceased employee's estate where there are no dependents entitled to dependency benefits, no probate of the estate is required and no personal representative has been appointed. (Note the maximum amount that can be claimed using this process is \$75,000, excluding jointly held property.)
- Paragraph (b) requires that, within 14 days of notice to the insurer of the death of the employee, the insurer must send notice to the estate, at the deceased employee's last known address, that this payment will be made after receipt of documentation of appointment of a personal representative or an affidavit of collection of personal property and certified death record.
- Effective Jan. 4, 2021.

Section 9. Amends Minn. Stat. § 176.135, subd. 1, Medical, psychological, chiropractic, podiatric, surgical, hospital

- Paragraph (h) prohibits the Special Compensation Fund from reimbursing a payer from the second-injury fund under Minn. Stat. § 176.131 (repealed, but applies to grandfathered claims) for any medication charges that exceed the pharmacy's usual and customary charge or the maximum amount payable under the workers' compensation pharmacy fee schedule in Minnesota Rules, part 5220.4070, subparts

3 and 4, notwithstanding any contract under subpart 5 that provides for a different reimbursement amount.

- Effective Dec. 17, 2020.

Section 10. Amends Minn. Stat. § 176.181, subd. 2, Compulsory insurance; self-insurers

- Strikes a sentence that limits a third-party administrator license to two years, because it conflicts with Minn. Stat. § 60A.23, subd. 8, which provides for a three-year license period.
- Effective Dec. 17, 2020.

Section 11. Amends Minn. Stat. § 176.185, subd. 11, Employment and insurance data

- Paragraphs (a) and (b) describe what insurance policy data reported to the Department of Labor and Industry (DLI) by its contractor, the Minnesota Workers' Compensation Insurance Association (MWCIA), is public and how it may be requested for workers' compensation insurance verification purposes. Requires a public website for public inquiries, which is the insurance look-up page on DLI's website.
- Paragraph (b) prohibits the use of insurance coverage data obtained from DLI for commercial purposes, which is defined as the sale or use for marketing or profit. Provides the contractor with a private right of action to enforce a prohibition against a person who uses the data for commercial purposes.
- Effective Dec. 17, 2020.

Section 12. Amends Minn. Stat. § 176.223, Prompt first action report

- This section sets forth requirements for preparing and publishing the annual prompt first action report (currently called the prompt first payment report).
- Paragraph (a) defines "insurer," "prompt first action" and "wage loss benefits."
- Paragraph (b) requires DLI to publish the report for each workers' compensation insurer by March 15 annually. The report must include the number and percentage of claims in which each insurer commenced wage-loss benefits or filed a denial of liability within statutory timeframes in the previous calendar year.
- Paragraph (c) requires DLI, on or before Jan. 15 of each year, to provide each insurer with notice of the data DLI plans to include in the report. By Feb. 15, the insurer must notify the department in writing of inaccurate data reported to the commissioner and of any corrections to the data for the report. The insurer must electronically file the corrected data with the commissioner in Work Comp Campus.
- Effective Dec. 17, 2020.

Section 13. Amends Minn. Stat. § 176.231, subd. 5, Electronic reports filed under this section

- This subdivision, initially enacted in 2019, describes the International Association of Industrial Accident Boards and Commissions (IAIABC) national standard by which workers' compensation employers and insurers must file reports electronically in Campus with the commissioner.
- The amendments to subdivision 5, paragraphs (c) and (d), reflect that the Minnesota implementation guide for the national standard will also include requirements for service of reports about injured workers; and cross-reference the expedited rulemaking authority to amend or repeal rules that conflict with the IAIABC electronic reporting standard and Minnesota implementation guide.
- Effective Dec. 17, 2020.

Section 14. Amends Minn. Stat. § 176.231, subd. 6, Commissioner of labor and industry; duty to keep informed

- Paragraph (a) requires insurers and self-insured employers (insurers) to report to DLI all payments of compensation and attorney fees; and the amounts paid and withheld, whether paid voluntarily or by order. Requires reports to be made within 14 days of the date of the first payment, a denial of primary liability, a denial of any part of compensation, a change in the compensation amount or type, commencement of an additional compensation type, reinstatement of compensation after previous discontinuance or final payment of compensation. Additional reporting requirements are provided in paragraphs (b) through (g).
- Paragraph (b) requires insurers to report compensation paid and amounts withheld from compensation paid, and any amounts paid for attorney fees, beginning 180 days after the date of injury and every six months thereafter.
- Paragraph (c) requires a report of permanent partial disability (PPD) benefits commenced or paid must include a copy of the medical report supporting the PPD benefit paid; and the prescribed form that was served on the employee showing the PPD benefit that was or will be paid.
- Paragraph (d) requires a final report must be filed within 180 days after an insurer has ceased payment of all indemnity and rehabilitation benefits (where no litigation is pending).
- Paragraph (e) requires an insurer to report a change in the number of dependents receiving benefits within 14 days of the change.
- Paragraph (f) requires an insurer to report when a claim is acquired from another insurer and whether benefits are currently being paid. A third-party administrator must report when it begins administering a claim and whether benefits are currently being paid. The reports under this paragraph must be filed within 30 days of the acquisition or change in the third-party administrator.
- Paragraph (g) requires the reports required under this section to be filed electronically, in the form and manner required by the commissioner, according to the requirements of subdivision 5. The reports must be served on or provided to the employee as follows.
 - 1) If service is required under the workers' compensation law, the self-insured employer or insurer must serve the report on the employee or dependents within the time limits required, and must retain a proof of service as required by Minn. Stat. § 176.285, subd. 3.
 - 2) If a document is not required to be served on the employee, the self-insured employer or insurer must, no later than two business days of acceptance of the report by the commissioner, send the report to the employee by first class United States mail or another method agreed to by the employee, and must specify on the report the date it was sent.
 - 3) A report required to be served on or provided to the employee under the law must contain the information designated by the commissioner in the format required by the commissioner, according to the requirements specified under subdivision 5.
- Effective Dec. 17, 2020.

Section 15. Amends Minn. Stat. § 176.231, subd. 9, Uses that may be made of reports; access to division file

- Paragraphs (a) and (c) clarify who has access to the division file when the employee or deceased employee has a guardian, dependents or heirs. For purposes of authorization to access the division file under this subdivision and subdivision 9a, an "employee" includes the employee's guardian under Minn. Stat. § 176.092, a dependent or representative of a deceased employee under Minn. Stat. §§ 176.111 or

13.10, and a legal heir of a deceased employee's estate if a court order or other legal documentation is submitted that establishes the person's legal status as a guardian, dependent, representative or legal heir.

- Effective Dec. 17, 2020.

Section 16. Amends Minn. Stat. § 176.231, subd. 9a, Access to the division file without an authorization; attorney access

- Paragraph (a) (1) cross-references representatives of an employee or a deceased employee who have access to the employee's division file under the amendments to Minn. Stat. § 176.231, subd. 9.
- Paragraph (a) (7) adds that the program administrator for a collective bargaining agreement approved by the commissioner under Minn. Stat. § 176.1812 (the Union Construction Workers' Compensation Program) has access to the Workers' Compensation Division file for a claim covered by the agreement.
- Paragraph (b) is amended to specify an attorney who has filed in Campus a notice of representation of the persons and entities listed in paragraph (a) has the same access as the represented person, unless the attorney specifies representation is limited. A retainer agreement, written authorization or document initiating, responding to or intervening in a dispute must be attached to a notice of representation of an employee.
- Paragraph (c) refers to the documents in which the attorney may specify the attorney's limited access.
- Effective Dec. 17, 2020.

Section 17. Amends Minn. Stat. § 176.2611, subd. 5, Form revision and access to documents and data

- Language in paragraphs (b) and (e) governing "read-only" access to documents in the case management systems of the Office of Administrative Hearings, Department of Labor and Industry and the Workers' Compensation Court of Appeals is deleted because corresponding language in Minn. Stat. § 176.231, subd. 9b, was enacted in 2019.
- Paragraph (d) is deleted because documents sent from the Office of Administrative Hearings are no longer placed in the DLI's imaged files after Campus implementation but are now available in Campus.
- Paragraph (f), governing each agency's employees' use of workers' compensation data in the agencies' case management systems, is deleted because corresponding language in Minn. Stat. § 176.231, subd. 9b, was enacted in 2019.
- Effective Dec. 17, 2020.

Section 18. Amends Minn. Stat. § 176.2612, subd. 1, Requirements

- Requires that Campus generate an audit trail when the division file is accessed.
- Effective Dec. 17, 2020.

Section 19. Amends Minn. Stat. § 176.2612, subd. 3, Creating a Campus account

- Paragraph (b) requires that a person creating an account in Campus must provide the commissioner of DLI with information needed to create the account, including authentication of the person's identity, according to Minnesota IT Services (MNIT) and DLI requirements. Also requires the person to agree to terms and conditions needed to safeguard security and privacy of data and comply with other requirements in the workers' compensation law related to Campus.

- Paragraph (c) adds representatives of a deceased employee’s estate to the list of persons who would need to create an account in Campus to electronically access or file documents, consistent with proposed amendments to Minn. Stat. § 176.231, subd. 9.
- Paragraph (e) requires the program administrator for a collective bargaining agreement approved by the commissioner under Minn. Stat. § 176.1812 (the Union Construction Workers’ Compensation Program) to create an account to view documents related to a claim that is covered by the agreement. It also requires a health care provider to create an account to file a request for an administrative conference to recover amounts deemed excessive by the employer or insurer.
- Effective Dec. 17, 2020.

Section 20. Minn. Stat. § 176.275, subd. 2, Proof of service; affidavits and notarized statements

- Paragraph (d) clarifies proof of service requirements when a party serves a document through an agency’s electronic system.
- Paragraph (e) identifies obligations of senders, recipients and agencies when a party to a claim uses an agency’s electronic system to file a document in the wrong file, or to serve or send a document to a recipient who is not entitled to receive the document.
 - Requires the party who made the error to, upon discovery, promptly notify the recipient, the subject of the data and the agency whose system was used to send it.
 - It also provides that the agency whose electronic system is used is not responsible under Minn. Stat. § 3.971 and chapter 13 for the improper release, but must promptly correct its files or remove the document upon discovery or notification.
- Effective Dec. 17, 2020.

Section 21. Minn. Stat. § 176.285, subd. 1, Service by mail

- Allows for service of workers’ compensation documents by personal service in addition to first class United States mail, except where electronic service is authorized or required.
- Effective Dec. 17, 2020.

Section 22. Repealer of Minn. Stat. § 176.181, subd. 6, Financial statements

- Repeals a provision that prohibits a group self-insurer from requiring an employer to provide financial statements certified by a CPA to be approved for group self-insurance. This conflicts with Minn. Stat. § 79A.03, subds. 6 and 9, which require an employer to provide financial statements that are certified or reviewed by a CPA.
- Effective Dec. 17, 2020.