

**HF2253 - 0 - Workers' Compensation Recommendations Adopted**

Chief Author: **Mike Sundin**  
 Committee: **Labor, Industry, Veterans and Military Affairs**  
**Finance and Policy**  
 Date Completed: **3/23/2021 1:08:20 PM**  
 Lead Agency: **Labor and Industry Dept**  
 Other Agencies:  
     Administration Dept              Administrative Hearings

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Administration Dept</b>	-	-	-	-	-	-
<b>Other Misc. Special Revenue</b>	-	-	-	-	-	-
<b>Labor and Industry Dept</b>						
<b>Workers Compensation</b>	-	(14)	(14)	(14)	(14)	(14)
<b>State Total</b>						
<b>Other Misc. Special Revenue</b>	-	-	-	-	-	-
<b>Workers Compensation</b>	-	(14)	(14)	(14)	(14)	(14)
<b>Total</b>	-	(14)	(14)	(14)	(14)	(14)
<b>Biennial Total</b>			(28)			(28)

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Administration Dept	-	-	-	-	-
Other Misc. Special Revenue	-	-	-	-	-
Labor and Industry Dept					
Workers Compensation	-	-	-	-	-
<b>Total</b>	-	-	-	-	-

**Lead LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Christian Larson    **Date:** 3/23/2021 1:08:20 PM  
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**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>	<b>Biennium</b>			<b>Biennium</b>	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Administration Dept	-	-	-	-	-
Other Misc. Special Revenue	-	-	-	-	-
Labor and Industry Dept					
Workers Compensation	-	(14)	(14)	(14)	(14)
<b>Total</b>	<b>-</b>	<b>(14)</b>	<b>(14)</b>	<b>(14)</b>	<b>(14)</b>
<b>Biennial Total</b>			<b>(28)</b>		<b>(28)</b>
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>					
Administration Dept	-	-	-	-	-
Other Misc. Special Revenue	118	652	300	100	100
Labor and Industry Dept					
Workers Compensation					
Expenditures	-	1	-	-	-
Absorbed Costs	-	(1)	-	-	-
<b>Total</b>	<b>118</b>	<b>652</b>	<b>300</b>	<b>100</b>	<b>100</b>
<b>Biennial Total</b>			<b>952</b>		<b>200</b>
<b>2 - Revenues, Transfers In*</b>					
Administration Dept	-	-	-	-	-
Other Misc. Special Revenue	118	652	300	100	100
Labor and Industry Dept					
Workers Compensation	-	14	14	14	14
<b>Total</b>	<b>118</b>	<b>666</b>	<b>314</b>	<b>114</b>	<b>114</b>
<b>Biennial Total</b>			<b>980</b>		<b>228</b>

**HF2253 - 0 - Workers' Compensation Recommendations Adopted**

Chief Author: **Mike Sundin**  
 Committee: **Labor, Industry, Veterans and Military Affairs Finance and Policy**  
 Date Completed: **3/23/2021 1:08:20 PM**  
 Agency: **Labor and Industry Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Workers Compensation	-	(14)	(14)	(14)	(14)	(14)
<b>Total</b>	-	<b>(14)</b>	<b>(14)</b>	<b>(14)</b>	<b>(14)</b>	<b>(14)</b>
<b>Biennial Total</b>			<b>(28)</b>			<b>(28)</b>

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Workers Compensation	-	-	-	-	-
<b>Total</b>	-	-	-	-	-

**LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

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**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		Biennium			Biennium	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
Workers Compensation		-	(14)	(14)	(14)	(14)
<b>Total</b>		-	(14)	(14)	(14)	(14)
<b>Biennial Total</b>				(28)		(28)
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
Workers Compensation						
Expenditures		-	1	-	-	-
Absorbed Costs		-	(1)	-	-	-
<b>Total</b>		-	-	-	-	-
<b>Biennial Total</b>				-		-
<b>2 - Revenues, Transfers In*</b>						
Workers Compensation						
		-	14	14	14	14
<b>Total</b>		-	14	14	14	14
<b>Biennial Total</b>				28		28

**Bill Description**

This bill adopts the recommendations made by the Workers' Compensation Advisory Council (WCAC) on March 10, 2021, related to: the minimum weekly compensation rate; inpatient hospital and ambulatory surgical center payment; prohibited practices; annual payer reports of prompt first action; subpoenas of Department of Labor and Industry (Department) employees; penalties for billing injured workers for treatment; and extension of the workers' compensation COVID-19 presumption through Dec. 31, 2021.

**Section 1. Minimum weekly compensation.** Amends Minnesota Statutes, section 176.101, subdivision 1, to provide that the minimum weekly compensation is the lesser of 20% of the maximum compensation rate (instead of \$130 a week) or the employee's actual weekly wage. Effective for injuries on or after Oct. 1, 2021.

**Section 2. Penalties for billing injured workers for treatment of a work injury.** Amends Minn. Stat. § 176.136 to: provide a penalty payable to the Assigned Risk Safety Account against a health care provider that bills an injured worker for treatment in violation of the workers' compensation law; require notice to the provider before a penalty can be assessed; and require providers to reimburse employees for expenses related to the violation. Effective for violations on or after Aug. 1, 2021.

**Sections 3 and 4. Payment based on Medicare inpatient calculator.** Amends Minn. Stat. § 176.1362 to require use of a new Medicare web-based calculator to calculate the maximum fees payable for workers' compensation inpatient hospital treatment for discharges on or after Oct. 1, 2021.

**Sections 5 to 7. Ambulatory Surgical Center (ASC) fees.** Amends Minn. Stat. § 176.1363 related to payment of treatment of work injuries in an ASC to: describe the multiple procedure payment reduction rule instead of cross-referencing the Medicare regulation; clarify when payment to an ASC is based on the ASC's actual charges instead of the fee schedule amount; and delete an inapplicable cross-reference and a phrase related to payment for services not in the fee schedule. Effective for services provided on or after the day following final enactment.

**Sections 8 and 9. Prohibited practices.** Amends Minn. Stat. § 176.194 to: clarify application of existing workers' compensation prohibited practices; add new prohibited practices for providing fraudulent written information to the department or an employee and for failing to pay benefits or correct behavior on a claim if a penalty for the conduct was paid or became a final order; and eliminate warnings before penalizing for specified intentional or egregious prohibited practices. Effective for violations on or after July 1, 2021.

**Section 10. Prompt First Action Report.** Amends Minn. Stat. § 176.223 to: delay the first annual report, based on data filed in Work Comp Campus, until March 15, 2022; allow the commissioner to exclude incomplete or unreliable data; and require workers' compensation payers to electronically file corrected data in Campus by Feb. 15 for the data to be reflected in the annual report. Effective the day following final enactment.

**Section 11. Subpoenas of DLI employees not permitted.** Amends Minn. Stat. § 176.351 to prohibit subpoenas of Department of Labor and Industry employees, unless the department is a party to a claim or enforcement action or provides vocational rehabilitation services to an injured worker. Effective the day following final enactment.

**Section 12. Extension of sunset date.** Extends the May 1, 2021, sunset date of the current workers' compensation Covid-19 presumption statute (Minn. Stat. § 176.011, subd. 15 (f); Laws 2020, chapter 72, section 1 included below for reference) to 11:59 p.m., Dec. 31, 2021.

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**Laws 2020, chapter 72, section 1**

Laws 2020, chapter 72, section 1 (<https://www.revisor.mn.gov/laws/2020/0/72/>), added a new paragraph (f) to Minn. Stat. § 176.011, subd. 15, of the workers' compensation law, which applies to occupational diseases. Effective Wednesday, April 8, 2020, an employee who contracts Covid-19 is presumed to have an occupational disease covered by the Minnesota workers' compensation law if the employee meets certain requirements.

(1) The employee must be employed in one of the following occupations:

- a licensed peace officer under Minn. Stat. § 626.84, subd. 1, firefighter, paramedic or emergency medical technician;
- a nurse or health care worker, correctional officer or security counselor employed by the state or a political subdivision at a corrections, detention or secure treatment facility;
- a health care provider, nurse or assistive employee employed in a health care, home care or long-term care setting, with direct Covid-19 patient care or ancillary work in Covid-19 patient units; or
- a person required to provide child care to first responders and health care workers under Executive Order 20-02 and Executive Order 20-19.

**(2) The employee's contraction of Covid-19 must be confirmed by a positive laboratory test or, if a test was not available for the employee, as diagnosed, based on the employee's symptoms, by a licensed physician, licensed physician's assistant or licensed advanced practice registered nurse (APRN). A copy of the positive test or documentation of the diagnosis must be provided to the employer or the employer's workers' compensation insurer.**

If the employee meets the requirements of (1) and (2):

- The employer or insurer shall only rebut the presumption that the employee's contraction of Covid-19 is an occupational disease by showing that the employee's employment was not a direct cause of the disease; and
- If the insurer denies liability for the workers' compensation claim, the denial must meet the requirements for denials in Minn. Stat. § 176.221, subd. 1.

**An employee who has contracted Covid-19, but does not meet the requirements of (1) and (2), is not prohibited from claiming an occupational disease as provided in other paragraphs of the occupational disease law (Minn. Stat. § 176.011, subd. 15) or from claiming a workers' compensation injury under subdivision 16.**

**The date of injury for an employee who has contracted Covid-19 is the date the employee was unable to work due to contraction of Covid-19 or was unable to work due to symptoms that were later diagnosed as Covid-19, whichever occurred first.**

**Clause 6 of the provision required the Department of Labor and Industry (Department) to provide a detailed report by January 15, 2021, about the handling of Covid-19 workers' compensation claims to the Workers' Compensation Advisory Council (WCAC), and the chairs and ranking minority members of the House of Representatives and Senate committees with jurisdiction over workers' compensation. The link to this report is included below in the References section.**

Laws 2020, chapter 72, section 1, subdivision 15, paragraph (f), sunsets May 1, 2021.

### **Assumptions**

**Section 1:** No anticipated state fiscal impact.

**Section 2:** creates a new penalty payable to the Assigned Risk Safety Account against a health care provider that bills an injured worker for treatment in violation of the workers' compensation law.

DLI received 22 complaints from January 1, 2019 to January 30, 2021, about hospitals, orthopedic and radiology groups, physicians, and an ambulatory surgical center billing injured workers. In every case the provider was notified that this was a workers' compensation injury. Of the 22 complaints, it is estimated five of the billings were sent to collections which qualifies for the higher \$2,000 penalty.

**Section 3 and 4:** No anticipated state fiscal impact.

**Section 5 through 7:** No anticipated state fiscal impact

**Section 8 and 9:** The prohibited practices language is intended to clarify prohibited conduct by insurers, this clarification will have minimal impact to penalties assessed. The new prohibited practices language may result in additional penalties, however we estimate the amount of revenue to be minimal.

**Section 10:** No anticipated state fiscal impact

**Section 11:** No anticipated state fiscal impact.

**Section 12:** As the underlying law has been in effect for almost a year, the Department assumes that there will be a

temporary spike in inquiries related to the extension before returning to baseline and that approximately 25 hours of time, estimated at a cost of approximately \$1,000, will be dedicated to answering these inquiries, and updating FAQs and training materials related to the presumption.

The Special Compensation Fund (SCF) provides workers' compensation benefits to injured workers' whose employers do not carry workers' compensation insurance. Since enactment of the presumption, the SCF has not been a named party to any Covid-19 workers' compensation claims. Because it is highly unlikely that an employer to whom the presumption applies would not have workers' compensation coverage, it is assumed that the SCF will not be named as a party to any Covid-19 workers' compensation claims as a result of extension of the presumption.

The Department receives over 30,000 First Reports of Injury (FROI) claims annually. The impact of the potential additional claims resulting from this bill, which would be submitted through the Campus/EDI system, would have a limited impact on the overall work of the compliance and records process and staff in CRT, and would be absorbed through existing resources.

### **Expenditure and/or Revenue Formula**

Annual average # of Penalties = 11

Annual average # of serious violations = 3

8 x 1,000 = \$8,000

3 x 2,000 = \$6,000

Estimated annual penalty revenue = \$14,000

#### **Expenditures**

Stakeholder education: Staff time estimated at 25 hours \* \$40.00 per hour = \$1,000.00

### **Long-Term Fiscal Considerations**

#### **Local Fiscal Impact**

**Sections 1:** It is estimated that the increase in the minimum TTD will increase total benefits paid to local government workers by \$20,000 annually.

**Sections 3 and 4.** The change in calculator use may result in updates to the calculator occurring more frequently than the existing calculator. This may impact expenditures but cannot be estimated.

**Sections 5 to 7.** This language is simply meant to provide clarification, therefore there is no fiscal impact anticipated to the ASC fees provisions.

**Sections 8 and 9.** Local units of government have not historically been penalized under prohibited practices, therefore there is no local government fiscal impact anticipated.

**Section 12:** The Department estimates that local governments will incur an additional \$2 million dollars in Covid-19 claim costs with a presumption of compensability through December 31, 2021, compared with claim costs without a presumption. This is based on average total benefits (wage loss and medical services) of \$9,800 per claim, using data compiled by the Department and the Minnesota Workers' Compensation Insurers Association.

This cost estimates that an average of 50 Covid-19 claims per month will be reported by local government workers, most of whom are covered by the presumption, and that 90 percent of the claims under the presumption will be accepted for benefits compared with a 40 percent claim acceptance rate for workers not entitled to a presumption of compensability. (These claims acceptance rates are based on analysis of recent Covid-19 claims.) There would then be an estimated 360 paid claims with a presumption (\$3.53 million) and 160 paid claims without a presumption (\$1.59 million). This difference rounds off to \$2 million.

**References/Sources**

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**HF2253 - 0 - Workers' Compensation Recommendations Adopted**

Chief Author: **Mike Sundin**  
 Committee: **Labor, Industry, Veterans and Military Affairs Finance and Policy**  
 Date Completed: **3/23/2021 1:08:20 PM**  
 Agency: **Administration Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

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State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Other Misc. Special Revenue	-	-	-	-	-	-
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Other Misc. Special Revenue	-	-	-	-	-
<b>Total</b>	-	-	-	-	-

**LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Joe Harney      **Date:** 3/23/2021 8:48:12 AM  
**Phone:** 651-284-6438      **Email:** joe.harney@lbo.leg.mn

**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		Biennium			Biennium	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025	
Other Misc. Special Revenue	-	-	-	-	-	-
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Biennial Total</b>			<b>-</b>			<b>-</b>
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
Other Misc. Special Revenue	118	652	300	100	100	
<b>Total</b>	<b>118</b>	<b>652</b>	<b>300</b>	<b>100</b>	<b>100</b>	<b>100</b>
<b>Biennial Total</b>			<b>952</b>			<b>200</b>
<b>2 - Revenues, Transfers In*</b>						
Other Misc. Special Revenue	118	652	300	100	100	
<b>Total</b>	<b>118</b>	<b>652</b>	<b>300</b>	<b>100</b>	<b>100</b>	<b>100</b>
<b>Biennial Total</b>			<b>952</b>			<b>200</b>

**Bill Description**

The bill adopts recommendations of the Workers Compensation Advisory Council.

**Assumptions**

The following assumptions apply to the first several sections of the bill:

- Change to the minimum weekly compensation will have no cost impact.
- Penalties against health care providers for improper collection or attempts to collect payment for medical services from employees will have no cost impact.
- Reimbursements based on Medicare MS-DRG system will have no cost impact.
- We do not anticipate post payment audits, records, and interest to have a cost impact.
- Reimbursement for covered surgical procedures and ancillary services based on Medicare ASCPS will have no cost impact.
- Reimbursement for compensable surgical services not covered under ASCPS will have no cost impact.
- We do not anticipate any actions that will result in prohibited conduct cost increases.

The following assumptions regarding Section 12 are based on COVID-19 claims experience to date:

- Based on FY21 actual claim experience, indemnity and/or medical benefits paid of \$1,483,763 divided by 474 claims equals an average cost per claim of \$3,130.
- We assume an additional 150 paid claims at an average of \$3,130 each totaling approximately \$470,000 for the period May 2, 2021 to December 31, 2021.
- FY21 - \$470,000/8 months x 2 months = \$117,500
- FY22 - \$470,000/8 months x 6 months = \$352,500
- We estimate that 3 of the additional 150 paid claims will have long-term indemnity and medical expenses at a cost of \$300,000 both in FY22 and FY23.

- We estimate that 1 of the additional 150 paid claims will have long-term indemnity and medical expenses at a cost of \$100,000 both in FY24 and FY25.
- Claims would be paid from the Worker's Compensation Revolving Fund and then charged back to the state agencies where the employees who contract COVID work.
- Costs to administer these claims will be absorbed by existing staff who do that work.

#### **Expenditure and/or Revenue Formula**

All estimates are based on average experience. Actual expenditures will vary based on individual claims experience.

#### **Long-Term Fiscal Considerations**

We estimate that 3 of the 150 additional claims will have long-term costs.

#### **Local Fiscal Impact**

We anticipate that local units of government having similar employees covered by this change in law will be impacted.

#### **References/Sources**

Gary Westman, Risk Management Division Director

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**HF2253 - 0 - Workers' Compensation Recommendations Adopted**

Chief Author: **Mike Sundin**  
 Committee: **Labor, Industry, Veterans and Military Affairs Finance and Policy**  
 Date Completed: **3/23/2021 1:08:20 PM**  
 Agency: **Administrative Hearings**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-	-

**LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

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**State Cost (Savings) Calculation Details**

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\*Transfers In/Out and Absorbed Costs are only displayed when reported.

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Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025	
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>2 - Revenues, Transfers In*</b>						
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

**Bill Description**

HF2253 provides for the adoption of recommendations made by the Workers' Compensation Advisory Council (WCAC) on March 10, 2021, related to: the minimum weekly compensation rate; inpatient hospital and ambulatory surgical center payment; prohibited practices; annual payer reports of prompt first action; subpoenas of Department of Labor and Industry (Department) employees; penalties for billing injured workers for treatment; and extension of the workers' compensation COVID-19 presumption through Dec. 31, 2021.

**Assumptions**

The Office of Administrative Hearings (OAH) assumes that the current complement of workers' compensation judges employed by OAH is sufficient to preside over any disputes arising from claims under HF2253. No additional funds would be needed for this work.

**Expenditure and/or Revenue Formula**

**Long-Term Fiscal Considerations**

**Local Fiscal Impact**

**References/Sources**

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