

2020 Workers' Compensation Advisory Council recommendations HF4206 (Sundin)/SF4130 (Utke)

Detailed Bill Summary

This legislation adopts the recommendations made by the Workers' Compensation Advisory Council 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.

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.

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, 2021, 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.

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.

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, 2021, 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 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) changes the occupations covered by the post-traumatic stress disorder (PTSD) presumption consistent with paragraph (b).

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

- (a) Requires an employer or insurer to be approved by the commissioner as a qualified rehabilitation consultant (QRC) firm, and create an account in Campus as a firm, to employ a QRC to provide vocational rehabilitation services to an injured worker.
- (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 Aug. 31, 2020.

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

- 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.
- Effective Aug. 1, 2020.

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 charges that exceed the pharmacy's usual and customary charge or the maximum amount payable for the medication under the workers' compensation pharmacy fee schedule.

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.

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) is public and how it may be requested for workers' compensation insurance verification purposes. Requires a public website for public inquiries.
- Paragraph (c) prohibits the use of insurance coverage data obtained from DLI for commercial purposes, which are 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 the day following final enactment.

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

- Clarifies the requirements for preparing and publishing the annual prompt first action report.

- Requires DLI to publish the report for each workers' compensation insurer. 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 time frames.
- By specified dates, requires DLI to provide each insurer with notice of the data to be included in the report and give the insurer time to notify DLI of inaccurate data and submit corrections.

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

- This subdivision, enacted in 2018, describes the national standard by which workers' compensation employers and insurers must file reports electronically with the commissioner as of Aug. 31, 2020.
- Amends paragraph (c) to reflect that the Minnesota implementation guide also prescribes requirements for service of reports on injured workers.
- Amends paragraph (d) to cross-reference the authority for amending or repealing rules that conflict with the national electronic reporting standard and Minnesota implementation guide.
- Effective Aug. 31, 2020.

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

- Specifies the types of reports of injury that must be filed electronically with the commissioner according to a national electronic reporting standard and the Minnesota implementation guide, and the time frames for filing the reports.
- Describes how the reports must be served on or provided to injured workers.
- Effective for reports filed on or after Aug. 31, 2020.

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

- Adds that employee's guardian under section 176.092, a dependent or representative of a deceased employee under sections 176.111 or 13.10, and a legal heir of a deceased employee's estate have access to the division file 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 Aug. 31, 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) specifies that 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 that representation is limited. A retainer agreement, authorization or document initiating, responding to or intervening in a dispute must be attached to a notice of representation of an employee.
- Effective Aug. 31, 2020.

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

- Adds an expiration date of Aug. 31, 2020, to 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), because that is the effective date of corresponding language in Minn. Stat. § 176.231, subd. 9b.

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

- Requires that Campus generate an audit trail when the division file is accessed.
- Effective Aug. 31, 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. This 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 Aug. 31, 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. 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 the day following final enactment.

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

- Allows for service of workers’ compensation documents by first class United States mail or personal service, except where electronic service is authorized or required. Effective Aug. 31, 2020.

Section 22. Repealer of Minn. Stat. § 176.181, subd. 6. Financial statements. This repeals a provision that prohibits a group self-insurer from requiring an employer to provide financial statements certified by a CPA in order to be approved for group self-insurance. This conflicts with Minn. Stat. § 79A.03, subs. 6 and 9, which require an employer to provide financial statements that are certified or reviewed by a CPA.