

CHAPTER 250—S.F.No. 3218

An act relating to workers' compensation; adopting recommendations of the Workers' Compensation Advisory Council; amending Minnesota Statutes 2006, sections 176.011, subdivision 9; 176.041, subdivision 1; 176.101, subdivision 1; 176.102, subdivisions 2, 11; 176.135, by adding a subdivision; 176.136, subdivisions 1a, 1b; 176.1812, subdivision 1; 176.183, subdivision 1; 176.185, subdivision 8a; 176.231, subdivision 10; 176.245; 176.275, subdivision 1; 176.285; 176.83, subdivision 7; repealing Minnesota Statutes 2006, sections 176.1041; 176.669.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2006, section 176.011, subdivision 9, is amended to read:

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, 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 emergency management as defined in section 12.03, subdivision 4, who is:

(i) registered with the state or any political subdivision of it, according to the procedures set forth in the state or political subdivision emergency operations plan; and

(ii) acting under the direction and control of, and within the scope of duties approved by, the state or political subdivision.

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 local social services agency. For purposes of this clause, "local social services agency" means any agency established under section 393.01. 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 voluntary uncompensated worker in the building and construction industry who renders services for joint labor-management nonprofit community service projects. 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;

(13) 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;

(14) 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;

(15) 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 commissioner 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;

(16) 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;

~~(17) a worker who renders in-home attendant care services to a physically disabled 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, performing services under section 256B.0655 for a recipient in the home of the recipient or in the community under section 256B.0625, subdivision 19a, who is paid from government funds through a fiscal intermediary under section 256B.0655, subdivision 7. For purposes of maintaining workers' compensation insurance, the employer of the worker is as designated in law by the commissioner of the Department of Human Services, notwithstanding any other law to the contrary.~~

(18) 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;

(19) 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;

(20) 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;

(21) 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;

(22) 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;

(23) a voluntary uncompensated worker while volunteering services as a first responder or as a member of a law enforcement assistance organization while acting under the supervision and authority of a political subdivision. 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; ~~and~~

(24) a voluntary uncompensated member of the civil air patrol rendering service on the request and under the authority of the state or any of its political subdivisions. The daily wage of the member for the purposes 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; and

(25) a Minnesota Responds Medical Reserve Corps volunteer, as provided in sections 145A.04 and 145A.06, responding at the request of or engaged in training conducted by the commissioner of health. The daily wage of the volunteer for the purposes of calculating compensation payable under this chapter is established in section 145A.06. A person who qualifies under this clause and who may also qualify under another clause of this subdivision shall receive benefits in accordance with this clause.

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.

EFFECTIVE DATE. Clause (25) is effective the day that amendments to Minnesota Statutes, sections 145A.04 to 145A.06, related to Medical Reserve Corps volunteers, are effective. The other amendments to this section are effective the day following final enactment.

Sec. 2. Minnesota Statutes 2006, section 176.041, subdivision 1, is amended to read:

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 section 181.723 and any rules adopted by the commissioner pursuant to section 176.83 except that ~~this exclusion does~~ these exclusions do 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.;

(r) a manager of a limited liability company having ten or fewer members and having less than 22,880 hours of payroll in the preceding calendar year, if that manager owns at least a 25 percent membership interest in the limited liability company;

(s) a spouse, parent, or child, regardless of age, of a manager of a limited liability company described in paragraph (r);

(t) persons employed by a limited liability company having ten or fewer members and having less than 22,880 hours of payroll in the preceding calendar year who are related by blood or marriage, within the third degree of kindred according to the rules of civil law, to a manager of a limited liability company described in paragraph (r), if the company files a written election with the commissioner to exclude these persons. A written election is not required for a person who is otherwise excluded from this chapter by this section; or

(u) members of limited liability companies who satisfy the requirements of paragraph (l).

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. Minnesota Statutes 2006, section 176.101, subdivision 1, is amended to read:

Subdivision 1. **Temporary total disability.** (a) For injury producing temporary total disability, the compensation is 66-2/3 percent of the weekly wage at the time of injury.

(b)(1) Commencing on October 1, ~~2000~~ 2008, the maximum weekly compensation payable is ~~\$750~~ \$850 per week.

(2) The Workers' Compensation Advisory Council may consider adjustment increases and make recommendations to the legislature.

(c) The minimum weekly compensation payable is \$130 per week or the injured employee's actual weekly wage, whichever is less.

(d) Temporary total compensation shall be paid during the period of disability subject to the cessation and recommencement conditions in paragraphs (e) to (l).

(e) Temporary total disability compensation shall cease when the employee returns to work. Except as otherwise provided in section 176.102, subdivision 11, temporary total disability compensation may only be recommenced following cessation under this paragraph, paragraph (h), or paragraph (j) prior to payment of ~~104~~ 130 weeks of temporary total disability compensation and only as follows:

(1) if temporary total disability compensation ceased because the employee returned to work, it may be recommenced if the employee is laid off or terminated for reasons other than misconduct if the layoff or termination occurs prior to 90 days after the employee has reached maximum medical improvement. Recommended temporary total disability compensation under this clause ceases when any of the cessation events in paragraphs (e) to (l) occurs; or

(2) if temporary total disability compensation ceased because the employee returned to work or ceased under paragraph (h) or (j), it may be recommenced if the employee is medically unable to continue at a job due to the injury. Where the employee is medically unable to continue working due to the injury, temporary total disability compensation may continue until any of the cessation events in paragraphs (e) to (l) occurs following recommencement. If an employee who has not yet received temporary total disability compensation becomes medically unable to continue working due to the injury after reaching maximum medical improvement, temporary total disability compensation shall commence and shall continue until any of the events in paragraphs (e) to (l) occurs following commencement. For purposes of commencement or recommencement under this clause only, a new period of maximum medical improvement under paragraph (j) begins when the employee becomes medically unable to continue working due to the injury. Temporary total disability compensation may not be recommenced under this clause and a new period of maximum medical improvement does not begin if the employee is not actively employed when the employee becomes medically unable to work. All periods of initial and recommenced temporary total disability compensation are included in the ~~104-week~~ 130-week limitation specified in paragraph (k).

(f) Temporary total disability compensation shall cease if the employee withdraws from the labor market. Temporary total disability compensation may be recommenced following cessation under this paragraph only if the employee reenters the labor market prior to 90 days after the employee reached maximum medical improvement and

prior to payment of ~~104~~ 130 weeks of temporary total disability compensation. Once recommenced, temporary total disability ceases when any of the cessation events in paragraphs (e) to (l) occurs.

(g) Temporary total disability compensation shall cease if the total disability ends and the employee fails to diligently search for appropriate work within the employee's physical restrictions. Temporary total disability compensation may be recommenced following cessation under this paragraph only if the employee begins diligently searching for appropriate work within the employee's physical restrictions prior to 90 days after maximum medical improvement and prior to payment of ~~104~~ 130 weeks of temporary total disability compensation. Once recommenced, temporary total disability compensation ceases when any of the cessation events in paragraphs (e) to (l) occurs.

(h) Temporary total disability compensation shall cease if the employee has been released to work without any physical restrictions caused by the work injury.

(i) Temporary total disability compensation shall cease if the employee refuses an offer of work that is consistent with a plan of rehabilitation filed with the commissioner which meets the requirements of section 176.102, subdivision 4, or, if no plan has been filed, the employee refuses an offer of gainful employment that the employee can do in the employee's physical condition. Once temporary total disability compensation has ceased under this paragraph, it may not be recommenced.

(j) Temporary total disability compensation shall cease 90 days after the employee has reached maximum medical improvement, except as provided in section 176.102, subdivision 11, paragraph (b). For purposes of this subdivision, the 90-day period after maximum medical improvement commences on the earlier of: (1) the date that the employee receives a written medical report indicating that the employee has reached maximum medical improvement; or (2) the date that the employer or insurer serves the report on the employee and the employee's attorney, if any. Once temporary total disability compensation has ceased under this paragraph, it may not be recommenced except if the employee returns to work and is subsequently medically unable to continue working as provided in paragraph (e), clause (2).

(k) Temporary total disability compensation shall cease entirely when ~~104~~ 130 weeks of temporary total disability compensation have been paid, except as provided in section 176.102, subdivision 11, paragraph (b). Notwithstanding anything in this section to the contrary, initial and recommenced temporary total disability compensation combined shall not be paid for more than ~~104~~ 130 weeks, regardless of the number of weeks that have elapsed since the injury, except that if the employee is in a retraining plan approved under section 176.102, subdivision 11, the ~~104-week~~ 130-week limitation shall not apply during the retraining, but is subject to the limitation before the plan begins and after the plan ends.

(l) Paragraphs (e) to (k) do not limit other grounds under law to suspend or discontinue temporary total disability compensation provided under this chapter.

(m) Once an employee has been paid 52 weeks of temporary total compensation, the employer or insurer must notify the employee in writing of the ~~104-week~~ 130-week limitation on payment of temporary total compensation. A copy of this notice must also be filed with the department.

EFFECTIVE DATE. This section is effective for injuries occurring on or after October 1, 2008.

Sec. 4. Minnesota Statutes 2006, section 176.102, subdivision 2, is amended to read:

Subd. 2. **Administrators.** (a) 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 and shall by rule establish a fee schedule or otherwise limit fees charged by qualified rehabilitation consultants and vendors. The commissioner shall annually review the fees and give notice of any adjustment in the State Register. ~~By March 1, 1993, the commissioner shall report to the legislature on the status of the commissioner's monitoring of 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.

(b) On October 1, 2008, the maximum hourly rate for rehabilitation services under Minnesota Rules, part 5220.1900, subpart 1c, is increased to \$91, and the maximum hourly rate for rehabilitation services under Minnesota Rules, part 5220.1900, subpart 1d, is increased to \$81. These increases are in lieu of the October 1, 2008, annual increase authorized by Minnesota Rules, part 5220.1900, subpart 1b. The maximum hourly rate and annual increase under Minnesota Rules, part 5220.1900, subpart 1e, and the hourly rate reduction under Minnesota Rules, part 5220.1900, subpart 1f, are unchanged by this paragraph.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 5. Minnesota Statutes 2006, section 176.102, subdivision 11, is amended to read:

Subd. 11. **Retraining; compensation.** (a) Retraining is limited to 156 weeks. An employee who has been approved for retraining may petition the commissioner or compensation judge for additional compensation not to exceed 25 percent of the compensation otherwise payable. If the commissioner or compensation judge determines that this additional compensation is warranted due to unusual or unique circumstances of the employee's retraining plan, the commissioner may award additional compensation in an amount not to exceed the employee's request. This additional compensation shall cease at any time the commissioner or compensation judge determines the special circumstances are no longer present.

(b) If the employee is not employed during a retraining plan that has been specifically approved under this section, temporary total compensation is payable for up to 90 days after the end of the retraining plan; except that, payment during the 90-day period is subject to cessation in accordance with section 176.101. If the employee is employed during the retraining plan but earning less than at the time of injury, temporary partial compensation is payable at the rate of 66-2/3 percent of the difference between the employee's weekly wage at the time of injury and the weekly wage the employee is able to earn in the employee's partially disabled condition, subject to the maximum rate for temporary total compensation. Temporary partial compensation is not subject to the 225-week or 450-week limitations provided by section 176.101, subdivision 2, during the retraining plan, but is subject to those limitations before and after the plan.

(c) Any request for retraining shall be filed with the commissioner before ~~156~~ 208 weeks of any combination of temporary total or temporary partial compensation have

been paid. Retraining shall not be available after ~~156~~ 208 weeks of any combination of temporary total or temporary partial compensation benefits have been paid unless the request for the retraining has been filed with the commissioner prior to the time the ~~156~~ 208 weeks of compensation have been paid.

(d) The employer or insurer must notify the employee in writing of the ~~156-week~~ 208-week limitation for filing a request for retraining with the commissioner. This notice must be given before 80 weeks of temporary total disability or temporary partial disability compensation have been paid, regardless of the number of weeks that have elapsed since the date of injury. If the notice is not given before the 80 weeks, the period of time within which to file a request for retraining is extended by the number of days the notice is late, but in no event may a request be filed later than 225 weeks after any combination of temporary total disability or temporary partial disability compensation have been paid. The commissioner may assess a penalty of \$25 per day that the notice is late, up to a maximum penalty of \$2,000, against an employer or insurer for failure to provide the notice. The penalty is payable to the commissioner for deposit in the assigned risk safety account.

EFFECTIVE DATE. This section is effective for injuries occurring on or after October 1, 2008.

Sec. 6. Minnesota Statutes 2006, section 176.135, is amended by adding a subdivision to read:

Subd. 1b. **Complementary and alternative health care providers.** Any service, article, or supply provided by an unlicensed complementary and alternative health care practitioner as defined in section 146A.01, subdivision 6, is not compensable under this chapter.

EFFECTIVE DATE. This section is effective for treatment, services, articles, and supplies provided on or after the day following final enactment for all dates of injury.

Sec. 7. Minnesota Statutes 2006, section 176.136, subdivision 1a, is amended to read:

Subd. 1a. **Relative value fee schedule.** (a) The liability of an employer for services included in the medical fee schedule is limited to the maximum fee allowed by the schedule in effect on the date of the medical service, or the provider's actual fee, whichever is lower. ~~The medical fee schedule effective on October 1, 1991, remains in effect until the commissioner adopts a new schedule by permanent rule. The commissioner shall adopt permanent rules regulating fees allowable for medical, chiropractic, podiatric, surgical, and other health care provider treatment or service, including those provided to hospital outpatients, by implementing a relative value fee schedule to be effective on October 1, 1993. The commissioner may adopt by reference, according to the procedures in paragraph (h), clause (2), the relative value fee schedule tables adopted for the federal Medicare program or a relative value fee schedule adopted by other federal or state agencies.~~ The relative value fee schedule must contain reasonable classifications including, but not limited to, classifications that differentiate among health care provider disciplines. The conversion factors for the original relative value fee schedule must reasonably reflect a 15 percent overall reduction from the medical fee schedule most recently in effect. The reduction need not be applied equally to all treatment or services, but must represent a gross 15 percent reduction.

(b) Effective October 1, 2005, the commissioner shall remove all scaling factors from the relative value units and establish four separate conversion factors according to paragraphs (c) and (d) for each of the following parts of Minnesota Rules:

(1) Medical/surgical services in Minnesota Rules, part 5221.4030, as defined in part 5221.0700, subpart 3, item C, subitem (2);

(2) Pathology and laboratory services in Minnesota Rules, part 5221.4040, as defined in part 5221.0700, subpart 3, item C, subitem (3);

(3) Physical medicine and rehabilitation services in Minnesota Rules, part 5221.4050, as defined in part 5221.0700, subpart 3, item C, subitem (4); and

(4) Chiropractic services in Minnesota Rules, part 5221.4060, as defined in part 5221.0700, subpart 3, item C, subitem (5).

(c) The four conversion factors established under paragraph (b) shall be calculated so that there is no change in each maximum fee for each service under the current fee schedule, except as provided in paragraphs (d) and (e).

(d) By October 1, 2006, the conversion factor for chiropractic services described in paragraph (b), clause (4), shall be increased to equal 72 percent of the conversion factor for medical/surgical services described in paragraph (b), clause (1). Beginning October 1, 2005, the increase in chiropractic conversion factor shall be phased in over two years by approximately equal percentage point increases.

(e) When adjusting the conversion factors in accordance with paragraph (g) on October 1, 2005, and October 1, 2006, the commissioner may adjust by no less than zero, all of the conversion factors as necessary to offset any overall increase in payments under the fee schedule resulting from the increase in the chiropractic conversion factor.

(f) The commissioner shall give notice of the relative value units and conversion factors established under paragraphs (b), (c), and (d) according to the procedures in section 14.386, paragraph (a). The relative value units and conversion factors established under paragraphs (b), (c), and (d) are not subject to expiration under section 14.386, paragraph (b).

(g) The conversion factors shall be adjusted as follows:

(1) After permanent rules have been adopted to implement this section, the conversion factors must be adjusted annually on October 1 by no more than the percentage change computed under section 176.645, but without the annual cap provided by that section.

(2) Each time the workers' compensation relative value fee schedule tables are updated under paragraph (h), the commissioner shall adjust the conversion factors so that, for services in both fee schedules, there is no difference between the overall payment in each category of service listed in paragraph (b) under the new schedule and the overall payment for that category under the workers' compensation fee schedule most recently in effect. This adjustment must be made before making any additional adjustment under clause (1).

(h) The commissioner shall give notice of the adjusted conversion factors and updates to the relative value fee schedule as follows:

(1) The commissioner shall annually give notice in the State Register of the adjusted conversion factors and may also give annual notice of any additions, deletions, or changes

~~to the relative value units or service codes adopted by the federal Medicare program. The relative value units may be statistically adjusted in the same manner as for the original workers' compensation relative value fee schedule and any amendments to rules to implement Medicare relative value tables incorporated by reference under this subdivision. The notices of the adjusted conversion factors and additions, deletions, or changes to the relative value units and service codes is in lieu of the requirements of chapter 14. The commissioner shall follow the amended rules to implement the relative value tables are subject to the requirements of section 14.386, paragraph (a). The annual adjustments to the conversion factors and the medical fee schedules adopted under this section, including all previous fee schedules, are not subject to expiration under section 14.386, paragraph (b).~~

(2) The commissioner shall periodically, but at least once every three years, update the workers' compensation relative value tables by incorporating by reference the relative value tables in the national physician fee schedule relative value file established by the Centers for Medicare and Medicaid Services. The commissioner shall publish the notices of the incorporation by reference in the State Register at least 60 days before the tables are to become effective for purposes of payment under this section. Each notice of incorporation must state the date the incorporated tables will become effective and must include information on how the Medicare relative value tables may be obtained. The published notices of incorporation by reference and the incorporated tables are not rules subject to section 14.386 or other provisions of chapter 14, but have the force and effect of law as of the date specified in the notices.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 8. Minnesota Statutes 2006, section 176.136, subdivision 1b, is amended to read:

Subd. 1b. **Limitation of liability.** (a) The liability of the employer for treatment, articles, and supplies provided to an employee while an inpatient or outpatient at a small hospital shall be the hospital's usual and customary charge, unless the charge is determined by the commissioner or a compensation judge to be unreasonably excessive. A "small hospital," for purposes of this paragraph, is a hospital which has 100 or fewer licensed beds.

(b) The liability of the employer for the treatment, articles, and supplies that are not limited by subdivision 1a or 1c or paragraph (a) shall be limited to 85 percent of the provider's usual and customary charge, or 85 percent of the prevailing charges for similar treatment, articles, and supplies furnished to an injured person when paid for by the injured person, whichever is lower. On this basis, the commissioner or compensation judge may determine the reasonable value of all treatment, services, and supplies, and the liability of the employer is limited to that amount. The commissioner may by rule establish the reasonable value of a service, article, or supply in lieu of the 85 percent limitation in this paragraph.

(c) The limitation of liability for charges provided by paragraph (b) does not apply to a nursing home that participates in the medical assistance program and whose rates are established by the commissioner of human services.

(d) An employer's liability for treatment, articles, and supplies provided under this chapter by a health care provider located outside of Minnesota is limited to the payment that the health care provider would receive if the treatment, article, or supply were paid

under the workers' compensation law of the jurisdiction in which the treatment was provided.

EFFECTIVE DATE. This section is effective for treatment, services, articles, and supplies provided on or after the day following final enactment for all dates of injury.

Sec. 9. Minnesota Statutes 2006, section 176.1812, subdivision 1, is amended to read:

Subdivision 1. **Requirements.** Upon appropriate filing, the commissioner, compensation judge, Workers' Compensation Court of Appeals, and courts shall recognize as valid and binding a provision in a collective bargaining agreement between a qualified employer or qualified groups of employers and the certified and exclusive representative of its employees to establish certain obligations and procedures relating to workers' compensation. For purposes of this section, "qualified employer" means any self-insured employer that is self-insured for workers' compensation in compliance with this chapter, any employer, through itself or any affiliate as defined in section 60D.15, subdivision 2, who is responsible for the first \$100,000 or more of any claim, or a private any employer developing or projecting an annual workers' compensation premium, in Minnesota, of \$250,000 or more that is insured for workers' compensation in compliance with this chapter. For purposes of this section, a "qualified group of employers" means a group of private employers engaged in workers' compensation group self-insurance complying with chapter 79A, or a group of private employers who purchase workers' compensation insurance as a group, which develops or projects annual workers' compensation insurance premiums of \$2,000,000 or more, in which each employer is insured for workers' compensation in compliance with this chapter or is self-insured for workers' compensation in compliance with this chapter. This agreement must be limited to, but need not include, all of the following:

(a) an alternative dispute resolution system to supplement, modify, or replace the procedural or dispute resolution provisions of this chapter. The system may include mediation, arbitration, or other dispute resolution proceedings, the results of which may be final and binding upon the parties. A system of arbitration shall provide that the decision of the arbiter is subject to review either by the Workers' Compensation Court of Appeals in the same manner as an award or order of a compensation judge or, in lieu of review by the Workers' Compensation Court of Appeals, by the Office of Administrative Hearings, by the district court, by the Minnesota Court of Appeals, or by the Supreme Court in the same manner as the Workers' Compensation Court of Appeals and may provide that any arbiter's award disapproved by a court be referred back to the arbiter for reconsideration and possible modification;

(b) an agreed list of providers of medical treatment that may be the exclusive source of all medical and related treatment provided under this chapter which need not be certified under section 176.1351;

(c) the use of a limited list of impartial physicians to conduct independent medical examinations;

(d) the creation of a light duty, modified job, or return to work program;

(e) the use of a limited list of individuals and companies for the establishment of vocational rehabilitation or retraining programs which list is not subject to the requirements of section 176.102;

(f) the establishment of safety committees and safety procedures; or

(g) the adoption of a 24-hour health care coverage plan if a 24-hour plan pilot project is authorized by law, according to the terms and conditions authorized by that law.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 10. Minnesota Statutes 2006, section 176.183, subdivision 1, is amended to read:

Subdivision 1. **Uninsured and self-insured employers; special compensation fund.** When any employee sustains an injury arising out of and in the course of employment while in the employ of an employer, other than the state or its political subdivisions, not insured or self-insured as provided for in this chapter, the employee or the employee's dependents shall nevertheless receive benefits as provided for in this chapter from the special compensation fund. The commissioner is not required to comply with the procedures in chapter 16C before purchasing, paying for, or reimbursing the employee for medical treatment, equipment, or supplies that are compensable under this chapter. As used in subdivision 1 or 2, "employer" includes any owners or officers of a corporation who direct and control the activities of employees. In any petition for benefits under this chapter, the naming of an employer corporation not insured or self-insured as provided for in this chapter, as a defendant, shall constitute without more the naming of the owners or officers as defendants, and service of notice of proceeding under this chapter on the corporation shall constitute service upon the owners or officers. An action to recover benefits paid shall be instituted unless the commissioner determines that no recovery is possible. There shall be no payment from the special compensation fund if there is liability for the injury under the provisions of section 176.215, by an insurer or self-insurer.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 11. Minnesota Statutes 2006, section 176.185, subdivision 8a, is amended to read:

Subd. 8a. **Insolvent insurer.** (a) If an insurer is or becomes insolvent as defined in section 60C.03, subdivision 8, the insured employer is liable, as of May 23, 2003, for payment of the compensable workers' compensation claims that were covered under the employer's policy with the insolvent insurer, to the extent that the Insurance Guaranty Association has determined that the claims are not covered claims under chapter 60C. This paragraph does not in any way limit the Insurance Guaranty Association's right of recovery from an employer under section 60C.11, subdivision 7, for workers' compensation claims that are covered claims under chapter 60C.

The Insurance Guaranty Association shall notify the employer and the commissioners of the Departments of Commerce and Labor and Industry of the association's determination and of the employer's liability under this subdivision. The association's failure to notify the employer or the commissioners shall not relieve the employer of its liability and obligations under this subdivision.

(b) An employer who is liable for payment of claims under paragraph (a) shall have all of the rights, responsibilities, and obligations of a self-insured employer under this chapter for those claims only, but without the need for an order from the commissioner of commerce. The employer shall not be self-insured for purposes of the workers' compensation self-insurers' security fund under chapter 79A for those claims. The employer shall not be required to pay assessments to the workers' compensation self-insurers' security fund, and the security fund shall not be liable for the claims under

section 79A.10. Notwithstanding any contrary provision of chapter 60C, the Insurance Guaranty Association shall pay the claims as covered claims under chapter 60C if the employer fails to pay the claims as required under this chapter and the commissioner of commerce ~~determines that~~:

(1) determines that the employer is the subject of a voluntary or involuntary petition under the United States Bankruptcy Code, title 11;

(2) determines that a court of competent jurisdiction has declared the employer to be bankrupt or insolvent; ~~or~~

(3) determines that the employer is insolvent; ~~or~~

(4) issues a certificate of default against the employer for failure to pay workers' compensation benefits as required under this chapter.

The commissioner of labor and industry shall notify the commissioner of commerce and the Insurance Guaranty Association if the commissioner of labor and industry has knowledge that any employer has failed to pay, and will likely continue to fail to pay, workers' compensation benefits as required by chapter 176. If clauses (1) to (3) do not apply, but the employer refuses or fails to pay benefits required under this chapter, or if there is a dispute about an employer's liability for the claims, the commissioner of commerce shall issue a certificate of default.

The commissioner of commerce shall immediately notify, by certified mail, the Insurance Guaranty Association of the occurrence of any of the circumstances in clauses (1) to (4), and shall order the association to assume the employer's obligations under this chapter. The association shall commence payment of these obligations as soon as possible upon receipt of the employer's claim files. Upon the assumption of obligations by the association pursuant to the commissioner of commerce's notification and order, the association has the right to immediate possession of all relevant workers' compensation claim files and data of the employer or other possessor of the files and data. The possessor of the files and data must provide the files and data, or complete copies of them, to the association within five days of the notification provided under this subdivision.

If the possessor of the files and data fails to timely provide the files and data to the association, it is liable to the commissioner of commerce for a penalty of \$500 per day for each day after the five-day period has expired. The association is also entitled to recover from the employer reasonable attorney fees and costs in administering and paying benefits owed under this chapter. If the association's payments are made pursuant to a certificate of default as provided in clause (4), the employer is also liable for and shall pay a penalty in the amount of 300 percent of all benefits the association pays to or on behalf of the employee. The commissioner of commerce shall assess the penalties under this paragraph.

An appeal from the commissioner of commerce's order or penalties under this paragraph may be instituted pursuant to the contested case procedures of chapter 14. Payment of claims by the association shall not be stayed pending the resolution of the disputes.

(c) If the employer contracts with an entity or person to administer the claims under paragraph (a), the entity or person must be a licensed workers' compensation insurer or a licensed third-party administrator under section 60A.23, subdivision 8. The commissioner of commerce may require the employer to contract with a licensed

third-party administrator when the commissioner determines it is necessary to ensure proper payment of compensation under this chapter.

(d) For all claims that an employer is liable for under paragraph (a) and pays on or after May 26, 2005, and for all deductible amounts an employer pays on or after May 26, 2005, under an employer's policy with an insurer that became insolvent before May 23, 2003:

(1) the employer shall file reports and pay assessments to the special compensation fund, according to the requirements of section 176.129 that apply to self-insured employers, based on paid indemnity losses for the claims and deductible amounts it paid; and

(2) the employer may request supplementary benefit and second injury reimbursement from the special compensation fund for the claims and deductible amounts it paid, subject to section 176.129, subdivision 13. Reimbursement from the special compensation fund is limited to claims that are eligible for supplementary benefit and second injury reimbursement under Minnesota Statutes 1990, section 176.131, and Minnesota Statutes 1994, section 176.132.

(e) For all claims for which an employer is liable under paragraph (a) and paid between the date of the insurer's insolvency and May 26, 2005, and for all deductible amounts an employer paid between the date of the insurer's insolvency and May 26, 2005, under an employer's policy with an insurer that became insolvent before May 23, 2003, the employer may request supplementary benefit and second injury reimbursement from the special compensation fund, subject to section 176.129, subdivision 13, if:

(1) the employer files reports and pays all past assessments based on paid indemnity losses, for all claims and deductible amounts it paid from the date of the insolvency of the insurer to May 26, 2005, at the rate that was in effect for self-insured employers under section 176.129 during the applicable assessment reporting period;

(2) the employer has a pending request for reimbursement of the claims and deductible amounts it paid from the special compensation fund as of May 26, 2005, or files a request for reimbursement within one year after May 26, 2005; and

(3) the claims are eligible for supplementary benefit and second injury reimbursement under Minnesota Statutes 1990, section 176.131, and Minnesota Statutes 1994, section 176.132.

(f) An employer who is liable for claims under paragraph (a) shall be eligible for reimbursement from the Workers' Compensation Reinsurance Association under chapter 79 for those claims to the extent they exceed the applicable retention limit selected by the insolvent insurer and if the employer has complied with the requirements for reimbursement established by the Workers' Compensation Reinsurance Association for its self-insured members. The employer is not responsible for payment of premiums to the reinsurance association to the extent the premiums have been paid by the insolvent insurer.

(g) The expenses of the employer in handling the claims paid under paragraph (a) are accorded the same priority as the liquidator's expenses. The employer must be recognized as a claimant in the liquidation of an insolvent insurer for amounts paid by the employer under this subdivision, and must receive dividends and other distributions at the priority set forth in chapter 60B. The receiver, liquidator, or statutory successor of an insolvent insurer is bound by settlements of claims made by the employer under this

subdivision. The court having jurisdiction shall grant the claims priority equal to that which the claimant would have been entitled against the assets of the insolvent insurer in the absence of this subdivision.

(h) The Workers' Compensation Reinsurance Association and the special compensation fund, as a condition of directly reimbursing an employer eligible for reimbursement, may require the employer to hold it harmless from any claims by a liquidator, receiver, or statutory successor to the insolvent insurer that the Workers' Compensation Reinsurance Association or special compensation fund improperly indemnified or reimbursed the employer. In no event shall the Workers' Compensation Reinsurance Association or the special compensation fund be required to reimburse any amounts for any claim more than once.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 12. Minnesota Statutes 2006, section 176.231, subdivision 10, is amended to read:

Subd. 10. **Failure to file required report, penalty.** If an employer, qualified rehabilitation consultant or rehabilitation vendor, insurer, physician, chiropractor, or other health provider fails to file with the commissioner any report required by this ~~section~~ chapter in the manner and within the time limitations prescribed, or otherwise fails to provide a report required by this ~~section~~ chapter in the manner provided by this ~~section~~ chapter, the commissioner may impose a penalty of up to \$500 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 payable to the commissioner for deposit into the assigned risk safety account.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 13. Minnesota Statutes 2006, section 176.245, is amended to read:

176.245 RECEIPTS FOR PAYMENT OF COMPENSATION, FILING.

An employer shall promptly file with the division receipts for payment of compensation as may be required by the rules of the division.

The commissioner of the Department of Labor and Industry shall periodically check its records ~~in each case~~ to determine whether these receipts have been promptly filed, and if not, shall require the employer to do so. The commissioner may determine, using statistical methodology similar to Six Sigma, the most efficient manner of reviewing or auditing the records filed under this chapter, including using sampling methodology, to determine compliance with this chapter.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 14. Minnesota Statutes 2006, section 176.275, subdivision 1, is amended to read:

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~~, but may refuse to accept any form or document that lacks the name of the injured employee, employer, or insurer, the date of injury, or the injured employee's Social Security number. If a workers' compensation identification number has been assigned by the department, it may be substituted for the Social Security number on a form or document. If the injured employee has fewer than three days of lost time from work, the party submitting the required document must attach to it, at the time of filing, a copy of the first report of injury.

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.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 15. Minnesota Statutes 2006, section 176.285, is amended to read:

176.285 SERVICE OF PAPERS AND NOTICES; ELECTRONIC FILING.

Service of papers and notices shall be by mail or otherwise as the commissioner or the chief administrative law judge may by rule direct. Where service is by mail, service is effected at the time mailed if properly addressed and stamped. If it is so mailed, it is presumed the paper or notice reached the party to be served. However, a party may show by competent evidence that that party did not receive it or that it had been delayed in transit for an unusual or unreasonable period of time. In case of nonreceipt or delay, an allowance shall be made for the party's failure to assert a right within the prescribed time.

~~Where service to the division, department, office, or court of appeals is by electronic filing, digitized signatures may be used provided that the signature has been certified by the department no later than five business days after filing. Where a statute or rule authorizes or requires a document to be filed with or served on an agency, the document may be filed electronically if electronic filing is authorized by the agency and if the document is transmitted in the manner and in the format specified by the agency. Where a statute or rule authorizes or requires a person's signature on a document to be filed with or served on an agency, the signature may be transmitted electronically, if authorized by the agency and if the signature is transmitted in the manner and format specified by the agency. The commissioner may require that a document authorized or required to be filed with the commissioner, department, or division be filed electronically in the manner and format specified by the commissioner, except that an employee must not be required to file a document electronically unless the document is filed by an attorney on behalf of an employee. An agency may serve a document electronically if the recipient agrees to receive it in an electronic format. The department or court may adopt rules for the certification of signatures.~~

When the electronic filing of a legal document with the department marks the beginning of a prescribed time for another party to assert a right, the prescribed time for another party to assert a right shall be lengthened by two calendar days when it can be shown that service to the other party was by mail.

The commissioner and the chief administrative law judge shall ensure that proof of service of all papers and notices served by their respective agencies is placed in the official file of the case.

For purposes of this section, "agency" means the workers' compensation division, the Department of Labor and Industry, the commissioner of the Department of Labor and Industry, the Office of Administrative Hearings, the chief administrative law judge, or the Workers' Compensation Court of Appeals. "Document" includes documents, reports, notices, orders, papers, forms, information, and data elements that are authorized or required to be filed with an agency or the commissioner or that are authorized or required to be served on or by an agency or the commissioner.

Except as otherwise modified by this section, the provisions of chapter 325L apply to electronic signatures and the electronic transmission of documents under this section.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 16. Minnesota Statutes 2006, section 176.83, subdivision 7, is amended to read:

Subd. 7. **Miscellaneous rules.** Rules necessary for implementing and administering the provisions of Minnesota Statutes 1990, section 176.131, Minnesota Statutes 1994, section 176.132, sections 176.238 and 176.239; sections 176.251; ~~and 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.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 17. **REVISOR'S INSTRUCTION.**

The revisor of statutes shall recode Minnesota Statutes, section 176.181, subdivision 2b, as Minnesota Statutes, section 79A.04, subdivision 3a.

Sec. 18. **REPEALER.**

Minnesota Statutes 2006, sections 176.1041; and 176.669, are repealed.

EFFECTIVE DATE. This section is effective the day following final enactment.

Presented to the governor April 28, 2008

Signed by the governor April 30, 2008, 3:19 p.m.