

**CHAPTER 5220**  
**DEPARTMENT OF LABOR AND INDUSTRY**  
**REHABILITATION AND COMPENSATION**

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**5220.0105 INCORPORATION BY REFERENCE.**

The following documents are incorporated by reference only to the extent specifically referenced in chapter 5220. The documents in items A and B are not subject to frequent change, although new editions may occasionally be published. The documents in item C are revised annually. All documents are available through the Mintex interlibrary loan system.

A. The Dictionary of Occupational Titles, fourth edition, 1991, United States Department of Labor, is available for purchase through the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402.

*[For text of items B and C, see M R ]*

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

**5220.2510 SCOPE AND PURPOSE.**

Chapter 5220 governs all workers' compensation matters before the commissioner of the Department of Labor and Industry and the Office of Administrative Hearings. The Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings in chapter 1415 also govern workers' compensation matters.

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

**5220.2520 DEFINITIONS.**

Subpart 1 **Scope.** Terms used in parts 5220 2510 to 5220 2960 have the meanings given them in part 1415 0300 and this part and Minnesota Statutes, section 176 011.

*[For text of subps 2 to 8, see M R ]*

Subp 9 [Repealed, 18 SR 2546]

Subp 10 [Repealed, 18 SR 2546]

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

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## REHABILITATION AND COMPENSATION 5220.2540

### 5220.2530 FIRST REPORT OF INJURY.

The first report of injury must be fully completed and submitted to the division within the time limits established by Minnesota Statutes, section 176 231 It must be on a form prescribed by the commissioner, containing substantially the following

A information identifying the employee, employer, insurer, and any adjusting company, including numbers identifying the employer, insurer, adjusting company, and insurer class code,

B claim numbers and Occupational Safety and Health log number,

*[For text of item C, see M R ]*

D. information regarding employment status and occupation, including date of hire,

E information regarding the circumstances of the injury, including the date, place, time, persons or objects involved, and the date notice was received by the employer and insurer,

*[For text of item F, see M R.]*

G information regarding lost time from work, and

H information identifying the treating physician

Failure to file the report in a timely manner may result in the assessment against the employer or insurer of the penalty set out in part 5220 2820 and against the insurer of the penalty set out in part 5220 2770

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

### 5220.2540 PAYMENT OF TEMPORARY TOTAL, TEMPORARY PARTIAL, OR PERMANENT TOTAL COMPENSATION.

Subpart 1 **Time of payment.** Payment of compensation must be commenced within 14 days of

*[For text of items A and B, see M R ]*

C an order by the division, compensation judge, or workers' compensation court of appeals requiring payment of benefits which is not appealed A party's consideration of an appeal does not excuse payment beyond the 14-day time limit When an appeal is not filed, payments made after the 14th day are subject to penalties and interest under parts 5220 2760 and 5220 2780

Once temporary total or permanent total disability benefits have been commenced, they must continue to be paid on a regular basis at the intervals the employee would have received wages from the employer had the employee continued working Less frequent payments may be arranged by written agreement of the parties. With the initial payment of temporary total or permanent total disability benefits, the insurer must notify the employee in writing of the day of the week that further payments will be made and the frequency with which payments will be made If the initial payment is a first and final payment, then notification need not be sent

The same time limits apply to payments of temporary partial disability benefits If the current wage varies so that wage documentation for calculation of temporary partial disability benefits is necessary, payment is due ten days following the date the employee or employer sends wage verification to the insurer

*[For text of subp 2, see M R ]*

Subp 3. **Notice to division.** The insurer must keep the division advised of all payments of compensation and amounts withheld and amounts paid for attorney fees by the filing of interim status reports each year and upon specific request by the division

The insurer must also file with the division proof of payment which must indicate the amount of compensation paid and the date when the first payment was made, at each of the following times

A when the insurer makes the first payment to the employee following the injury,

B when payments are reinstated after they have been previously discontinued by a notice of intention to discontinue benefits or an order of the division under part 5220 2640, subpart 7;

C when monitoring period compensation is commenced under Minnesota Statutes, section 176 101, subdivision 31, and

D when payments are commenced by order of the division, a compensation judge, the workers' compensation court of appeals, or the Minnesota Supreme Court

*[For text of subp 4, see M R ]*

**Subp 5 Removal from the labor market.** An employee who voluntarily removes himself or herself from the labor market is no longer entitled to temporary total, temporary partial, or permanent total disability benefits. A removal from the labor market has occurred when the employee is released to return to work by a health care provider and the employee retires or the employee's opportunities for gainful employment or suitable employment are significantly diminished due to the employee's move to another labor market

**Subp 6. Apprentices, temporary partial disability benefits.** An apprentice, upon return to the same apprenticeship program in the same position or a similar position to that held on the date of injury, has not suffered a loss of earning capacity where the wage upon return to the apprenticeship program is the same or greater than the wage on the date of injury. Temporary partial disability benefits are not owing where there is no loss in earning capacity

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

#### **5220.2550 PAYMENT OF PERMANENT PARTIAL DISABILITY, INCLUDING IMPAIRMENT COMPENSATION AND ECONOMIC RECOVERY COMPENSATION.**

**Subpart 1 Time of payment.** Permanent partial disability must be paid at the time specified in Minnesota Statutes, sections 176 021 and 176 101. When permanent partial disability compensation is being paid periodically following the payment of temporary total benefits or following or concurrent with the payment of temporary partial benefits, the payments must be continued without interruption at the same intervals that the temporary benefits were paid. When the employee reaches maximum medical improvement, the insurer must request an initial assessment of any permanent partial disability from the employee's physician

A When the extent of permanent partial disability is not disputed, upon receipt of a medical report containing a permanency rating or medical information from which the insurer may determine a rating, the employer or insurer must, within 30 days

*[For text of subitems (1) and (2), see M R ]*

B When the extent of permanent partial disability is disputed, upon receipt of a medical report containing a permanency rating or medical information from which the insurer may determine a rating, the employer or insurer must, within 30 days

(1) make a minimum lump sum payment or begin periodic payments based on the minimum undisputed permanent partial disability ascertainable, and

*[For text of subitem (2), see M R ]*

C If permanent partial disability benefits are not currently payable under Minnesota Statutes, section 176 101, inform the employee in writing of the disability rating and the time when the permanent partial disability payment will be payable by statute.

**Subp 2 Notice of benefit payment.**

*[For text of item A, see M R ]*

B For injuries on or after January 1, 1984, when the insurer makes a lump sum payment of permanent partial disability benefits or begins periodic payment, the employer or insurer shall fully complete, serve on the employee, and file with the division a notice of permanent partial disability benefits which must be on a form prescribed by the commissioner, containing substantially the following information

*[For text of subitems (1) to (5), see M R ]*

(6) instructions to the employee concerning any disagreement about the payment,

*[For text of subitems (7) and (8), see M R ]*

(9) copies of medical reports containing disability ratings or medical information upon which the insurer bases the rating,

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## REHABILITATION AND COMPENSATION 5220.2570

*[For text of subitems (10) and (11), see M R ]*

*[For text of subps 3 and 4, see M R ]*

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

### **5220.2555 RETRAINING COMPENSATION.**

An employee who has been approved for retraining under Minnesota Statutes, section 176 102, subdivision 11, may petition the commissioner or a compensation judge for additional compensation, not to exceed 25 percent of the compensation otherwise payable, if the employee will incur a special, unusual, or unique circumstance during the retraining period that would otherwise reduce the likelihood that the retraining plan will be successfully completed. Additional compensation is not warranted under this subpart if the circumstance on which the request is based is compensable as a cost of the rehabilitation plan under Minnesota Statutes, section 176 102, subdivision 9. The commissioner or a compensation judge may order an award of additional compensation and specify the amount to be awarded. When the employee is entitled to additional compensation for retraining, the compensation shall begin on the first day the special, unusual, or unique circumstance of the retraining is present but not before the start of the retraining program, and shall stop at any time the special, unusual, or unique circumstance is no longer present. The commissioner or compensation judge may determine the date of commencement and the date of discontinuance of the additional compensation.

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

### **5220.2560 ATTACHMENT AND GARNISHMENT OF BENEFITS.**

Workers' compensation benefits are not subject to attachment or garnishment, although they may be withheld under Minnesota Statutes, sections 518 54, subdivision 6, and 518 611, and paid for child support or spousal maintenance if the other requirements of those statutes are met. Upon request, the insurer shall file with the division a statement of the amount being withheld from the employee's benefits and paid to the county or obligee, a copy of the order for withholding of income, and verification of payments made.

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

### **5220.2570 DENIALS OF LIABILITY.**

*[For text of subpart 1, see M R.]*

**Subp 2 Denial of liability form.** A denial of primary liability under Minnesota Statutes, section 176 221, subdivision 1, except a letter denial under subpart 4 or 5, must be fully completed and on a form prescribed by the commissioner, containing substantially the following:

*[For text of items A to D, see M R.]*

**E** a specific reason for the denial which must be in language easily readable and understandable to a person of average intelligence and education and a clear statement of the facts forming the basis for the denial. A denial which states only that the injury did not arise out of and in the course and scope of employment or that the injury was denied for lack of a medical report, for example, is not specific within the meaning of this item,

**F** a copy of a medical report or summary of any health care provider contact which forms a basis for the denial, and

**G** instructions to the employee if the employee disagrees, including the availability of rehabilitation benefits, the statute of limitations for filing a workers' compensation claim, and the address and telephone numbers of division offices the employee may contact for information.

**Subp 3 Notice of intention to discontinue benefits.** A denial of primary liability filed more than 30 days after notice to or knowledge by the employer of a work-related injury which is required to be reported to the commissioner under Minnesota Statutes, section

176 231, subdivision 1, and for which benefits are being paid must be made by a notice of intention to discontinue benefits under part 5220 2630 and must clearly indicate that its purpose is to deny liability for the entire claim

Subp 4 **Letter denial for new period of temporary total.** A denial of liability for temporary total disability benefits for a new period of lost time due to a previous work-related injury must be in writing and include

*[For text of items A to D, see M.R.]*

E. a specific reason for the denial in language easily readable and understandable to a person of average intelligence and education and a clear statement of the facts forming the basis for the denial

Subp 5 **Letter denial for other benefits.** A denial of liability for a portion of benefits or any other compensation where primary liability has been accepted must be in writing and include

*[For text of items A to D, see M.R.]*

E a specific reason for the denial in language easily readable and understandable to a person of average intelligence and education and a clear statement of the facts forming the basis for the denial

Subp 6 **Service.** The employer or insurer shall serve on the employee the form or letter under subparts 1 to 5 with any relevant medical or other reports attached and file a copy with the division

*[For text of subp 7, see M.R.]*

Subp 8 [Repealed, 18 SR 2546]

Subp 9 **Penalty; timeliness.** Failure to pay or deny in a timely manner may result in the assessment of the penalties in parts 5220 2770 and 5220 2790

Subp 10 **Penalty; frivolous denial.**

A A frivolous denial under Minnesota Statutes, section 176 225, subdivision 1, clause (a), includes one which

(1) does not state facts indicating that an investigation has been completed or that a good faith effort to investigate has been attempted, or

(2) states a basis which is a clearly inaccurate statement of fact or the applicable law

B In addition to any workers' compensation benefits due and a penalty under subpart 9, a penalty may be assessed by the division or compensation judge under parts 5220 2760 and 5220 2770 and Minnesota Statutes, sections 176 221, subdivision 3a, and 176 225, subdivision 1, for a frivolous denial

Subp 11 **Penalty; nonspecific denial.** A nonspecific denial as defined in subpart 2, item E, 4, item E, or 5, item E, may result in the assessment of a penalty in the amount of \$300 under Minnesota Statutes, section 176 84, subdivision 2 A penalty for a nonspecific denial may be assessed without regard to the substantive validity of the denial of benefits A penalty under this subpart may be assessed in addition to the penalties described in subparts 9 and 10 and is payable to the special compensation fund

**Statutory Authority:** *MS s 175 17, 175.171, 176 83*

**History:** *18 SR 2546*

## 5220.2580 CLAIM FOR REFUND FROM EMPLOYEE OR DEPENDENT; OVERPAYMENTS.

Subpart 1 **Request for refund.** All requests for refunds or reimbursements by an insurer for payments made under a mistake of fact or law, which were allegedly not received by an employee or dependent in good faith, must be made in writing to the employee with a copy immediately mailed to the attorney representing the employee or dependent, if any, and upon request to the division

Subp 2 **Contents of request.** All requests must contain the following information

*[For text of items A to C, see M.R.]*

D the mistake of fact or law which forms the basis for the claimed overpayment,

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E the reason the insurer believes the payments were not received in good faith, and

F a statement informing the employee that, if the employee has any questions regarding the legal obligations to repay any claims for overpayment alleged to have not been received in good faith, the employee should contact either a private attorney or the division

Subp 3 **Overpayments.** The insurer that overpaid benefits that were received by the employee in good faith may take the credit allowed under Minnesota Statutes, section 176 179, after giving notice to the employee of the information in subpart 2, items A to F. Benefits paid pursuant to Minnesota Statutes, section 176 239, subdivision 3, are not overpaid benefits unless so ordered by a compensation judge under Minnesota Statutes, section 176 239, subdivision 9

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

**5220.2590** [Repealed, 18 SR 1472, 18 SR 2546]

## **5220.2605 DISPOSITION OF COVERAGE ISSUES.**

Subpart 1 **Motion.** If an answer filed under Minnesota Statutes, section 176 321, raises an issue related to independent contractor or employment status, a party may move to bifurcate the issue or issues for immediate and expedited resolution upon affidavit or, if requested by any party, an oral hearing

Subp 2 **Filing.** The motion must be filed with the division, or the office if the matter has been certified to the office, within ten days after the filing of the answer. The motion, which must be served upon the petitioner or petitioner's attorney and other parties to the proceedings, must include (1) an affidavit of service, (2) evidence relied on in support of the motion by verified affidavits, (3) any request and reasons for an oral hearing, and (4) if desired, a written brief not exceeding 25 pages in support of the motion. Other parties to the proceeding may respond to the motion within 20 days after the service of the motion under this part by submission of affidavits and, in its discretion, a written brief not exceeding 20 pages. The movant will have ten days from service of a response to the motion to file affidavits and, if desired, a written brief not exceeding ten pages in rebuttal to any issue raised in opposition to the motion

Subp 3 **Decision; hearing.** The judge may determine the motion on the basis of the written matter submitted, or may, on the judge's own motion or upon motion of a party, schedule a hearing. If a hearing is scheduled, the parties must be served with notice of hearing at least 20 days before the hearing. The parties may present the issues fully, including the right to introduce evidence supplementing that presented by affidavit and the right to cross-examine adverse witnesses

Subp 4 **Appeal.** Whether or not a hearing is held, the judge shall issue a decision based on the facts presented. This decision may be appealed to the Workers' Compensation Court of Appeals

Subp 5 **Hearing on the merits.** The commissioner or compensation judge shall schedule a hearing on other issues not decided under this subpart, if needed, following a final decision on the motion under this subpart and any related appeal

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

## **5220.2610 ADMINISTRATIVE CONFERENCES.**

Subpart 1 **Scope.** This part governs administrative conferences conducted under Minnesota Statutes, sections 176 106 and 176 239

Subp. 2 **Notice.** Unless the issue will be decided on the basis of written submissions, or unless the parties agree on a shorter notice period, the division must notify the parties and intervenors or potential intervenors under Minnesota Statutes, section 176 361, of the date, time, and place of the conference at least ten working days before the conference date. The qualified rehabilitation consultant, if one is assigned, must be notified of a rehabilitation conference. The special compensation fund must be notified of all administrative conferences where the fund is reimbursing benefits to an insurer or self-insurer under Minnesota Stat-

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utes, section 176 131 or 176 132, or a claim has been made under the above referenced statutes against the fund for benefits by any of the parties, or the fund is paying benefits under Minnesota Statutes, section 176 191 The notice must include the statutory authority to hold the conference and indicate whether issues from another petition or request form have been joined for consideration at the conference Telephone notice of the conference at least three working days before the conference date is sufficient for a discontinuance or other expedited conference if timely service of notice by mail cannot be made

**Subp 3 Appearances.** All parties and the qualified rehabilitation consultant, if the conference is conducted under Minnesota Statutes, section 176 106 concerning rehabilitation services, must be given notice and the opportunity to attend administrative conferences or, at their option, to present documents on their behalf A person who has an interest in the outcome of the conference such that the person may either gain or lose by the decision may attend the conference A party may be represented by an attorney The employee and insurer or designated person having authority to act on behalf of the party regarding the matter in dispute is required to attend an administrative conference under Minnesota Statutes, section 176 239, unless health reasons, distances, or other good cause prevents attendance If absent because of distance, the employee and insurer or authorized designee of the employee and insurer must be available by telephone at the scheduled conference time

**Subp 4** [Repealed, 18 SR 2546]

**Subp 5 Information considered.** The presiding official shall permit the parties to present their positions and reports or other documents or exhibits relevant to the issues involved Reasonable opportunity for parties to refute statements or other information submitted must be allowed Copies of documents submitted must be simultaneously supplied to the other parties

**Subp 6 Concurrent litigation.** When the same or a nearly identical issue in the same case is pending with the office, the workers' compensation court of appeals, or another court, the division must decline to issue a decision and defer to the office or court to avoid inconsistent determinations

**Subp 7 Continuance.** Continuances are disfavored and will be granted only upon a showing of good cause for the inability or failure to appear at a conference Good cause generally means that circumstances beyond the control of the party or party's representative prevent attendance at the scheduled time Before a continuance is granted, the division must consider receiving written arguments and supporting documentation in place of the scheduled conference

**Subp 8 Intervenors.** If, at the time of the conference, the division determines that a potential party has not been notified of the conference, the conference must be canceled or continued, the parties may enter into an agreement which does not compromise the rights of the potential party, or the division must issue a decision which does not compromise the rights of the potential party A potential party is a person who has an interest in the outcome of the conference under Minnesota Statutes, section 176 361, such that the person may either gain or lose by the decision to be made following the conference

**Subp 9 Decision.** The decision following an administrative conference shall include a determination concerning the rights an intervenor or potential intervenor under Minnesota Statutes, section 176 361, may have in the dispute The decision must include a statement indicating the right to request a formal hearing and explain how to initiate the request

**Subp 10 Testimony cost.** The division shall not order reimbursement of costs for testimony at an administrative conference

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

## 5220.2620 MEDICAL DISPUTES.

**Subpart 1 Definition.** For purposes of this part, the following term has the meaning given.

"Medical issues" means all health care rendered under Minnesota Statutes, sections 176 135 and 176 136, and determinations by the division under Minnesota Statutes, sections 176 103 and 176 106, and includes

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A. whether the charge is a reasonable charge as described and allowed by chapter 5221 and Minnesota Statutes, section 176 136,

B the reasonableness and necessity of a medical service or treatment as described and allowed by chapter 5221 and Minnesota Statutes, sections 176 135 and 176 136,

C the need for a second opinion prior to surgery,

D a request for change of primary health care provider,

E the employee's cooperation with medical treatment,

F the inability to secure a health care provider report,

G the relationship of the health care to the work injury,

H the assessment of penalties or interest for untimely response to medical billings and failure to provide at an administrative conference a specific reason for nonpayment of the items in dispute,

I the availability of medical services from a managed care organization under Minnesota Statutes, section 176 1351, and

J other problems related to medical treatment and supplies

**Subp 2 Medical claim, request.** An employee or insurer may initiate a medical claim by filing a medical request form with the division. A medical request form may be filed by a health care provider as defined by Minnesota Statutes, section 176 011, subdivision 24, where the insurer has denied payment on the basis that a charge is excessive under Minnesota Statutes, section 176 136, subdivision 2. A claim is not denied based on excessiveness where the insurer asserts that the injury did not arise out of and in the course of employment or where the disputed treatment is for a condition which the insurer asserts is not wholly or partly casually related to the work injury. The requesting party shall serve the medical request form and attachments on the other parties, including the employee, insurer, employer, and any health care provider and other person having an interest in the outcome such that the person may either gain or lose by the resulting decision. The requesting party shall specify the medical issues in dispute and attach supporting documents. A health care provider filing a medical request form must attach evidence of the insurer's denial of payment based on excessiveness, an itemized statement of charges, and the appropriate record as defined in part 5221 0100, subpart 1a. The requesting party must also specify the name and address of any third party who has paid or has been ordered to pay to reimburse medical or treatment expense, and the claim or policy number, if known. At the time the medical request form is filed, the requesting party must mail a copy of the medical request form to third parties who have paid benefits. A claim petition containing medical issues only may be treated in the same manner as a medical request form under this subpart if the insurer is not disputing that the injury arose out of and in the course of employment.

**Subp 3. Medical claims response.** If the employee or health care provider has filed a medical request form, the insurer must file a medical response form with the division and serve copies on the other parties no later than 20 days after service of the medical request form or within the time period provided by part 5221 6050, subpart 7. Failure to file a required form will be considered in the determination of disputed issues, penalties, and interest charges, and may result in a determination based solely on the written submissions of the requester when an administrative conference is not scheduled.

Subp 4 [Repealed, 18 SR 2546]

**Subp 5 Medical claim; denial of liability.** If a medical request form has been mistakenly filed in a case in which initial issues of liability exist, the matter may be set for a settlement conference before a judge of the division under Minnesota Statutes, section 176 305, or the requester will be instructed to file a claim petition, intervene in another proceeding, or other procedure as the division directs.

Subp 6 [Repealed, 18 SR 2546]

Subp 7 [Repealed, 18 SR 2546]

Subp 8 [Repealed, 18 SR 2546]

Subp. 9 [Repealed, 18 SR 2546]

Subp 10 [Repealed, 18 SR 2546]

Subp 11 [Repealed, 18 SR 2546]



Subp 12 **Penalties.** Where payment of medical charges is not made in compliance with part 5221 0600 and Minnesota Statutes, section 176 135, a penalty may be assessed under part 5220 2740

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

### 5220.2630 DISCONTINUANCE OF COMPENSATION.

Subpart 1 **Generally.** When an insurer proposes or intends to reduce, suspend, or discontinue an employee's benefits, it shall file one of the following documents described in this part. A form need not be filed when an insurer increases or decreases an employee's periodic temporary partial benefit due to changes in the employee's earnings while employed, provided that a payment continues to be made based on the employee's actual earnings.

Subp 2 **Petition.** The filing of a petition to discontinue compensation with the division under part 1415 1000 and Minnesota Statutes, section 176 238, subdivision 5, commences a formal action to reduce, suspend, or discontinue compensation. A petition is required to reduce, suspend, or discontinue permanent total benefits if a judicial or administrative order finding permanent total status was previously issued. The division shall refer the matter to the office under Minnesota Statutes, section 176 238.

#### Subp 3 **Notice of benefit payment.**

A The employer or insurer may make a lump sum or final payment of the benefit indicated by the filing of a notice of benefit payment with the division and service of the notice on the other parties at the time that the payment occurs when the payment represents

- (1) a lump sum payment of full permanent partial disability compensation,
- (2) a final periodic payment of impairment compensation or economic recovery compensation,

- (3) a final payment under an award, order, or stipulation,

- (4) for injuries occurring before August 1, 1975, where the employee is not permanently totally disabled, a final payment of temporary total disability or for injuries occurring before May 28, 1977, a final payment of temporary partial disability based on a statutory maximum number of weekly payments, or

- (5) a final payment of monitoring period compensation.

B A notice of benefit payment must be fully completed and on the form prescribed by the commissioner, containing substantially the relevant information described in part 5220 2550, subpart 2.

#### Subp 4 **Notice of intention to discontinue benefits.**

A To discontinue temporary total, temporary partial, or permanent total benefits in situations not specified in subpart 3, the employer or insurer must serve upon the employee and file with the division a notice of intention to discontinue benefits or a petition under subpart 2. The insurer may serve and file a notice of intention to discontinue permanent total benefits under this subpart only where no judicial or administrative decision finding permanent total status was previously issued. The notice of intention to discontinue benefits must be accompanied by a form prescribed by the commissioner with which to request an administrative conference on the proposed discontinuance. The form must contain the employer's name, the date of the injury or disease, and the name, social security number, and address of the employee and a space for the employee to indicate the reason the employee objects to the proposed discontinuance.

B A notice of intention to discontinue benefits must be fully completed and on the form prescribed by the commissioner, containing substantially the following

*[For text of subitems (1) to (3), see MR ]*

- (4) the type of benefits being reduced or discontinued,

- (5) the legal reason or reasons for the proposed discontinuance or reduction, stated in language which may easily be read and understood by a person of average intelligence and education, and in sufficient detail to inform the employee of the factual basis for the discontinuance or reduction,

*[For text of subitems (6) to (8), see MR ]*

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(9) the date the notice was served on the employee and the employee's attorney,

(10) verification and information identifying the person making the proposal to discontinue benefits,

(11) instructions to the employee, including who to contact for more information and how to request a conference or hearing,

(12) copies of relevant medical reports, and

(13) copies of any other relevant documents

Supporting documents must be attached to all copies of the discontinuance notice when served

C The liability of the insurer to make compensation payments continues at least until the notice of intention to discontinue benefits is received by the division and served on the employee and the employee's attorney, except that benefits may be discontinued on the date the employee returned to work and temporary partial benefits may be discontinued as of the date the employee ceased employment. Continuation of benefits following service and filing of a notice of intention to discontinue benefits is set out in part 5220.2640, subpart 3

Subp 5 [Repealed, 18 SR 2546]

Subp 6 **Penalties.** Where compensation is discontinued, reduced, or suspended in violation of this part, a penalty may be assessed under parts 5220.2720, 5220.2760, and 5220.2790

**Statutory Authority:** *MS s 175.17, 175.171, 176.83*

**History:** *18 SR 2546*

### 5220.2640 DISCONTINUANCE CONFERENCES.

Subpart 1 **Purpose.** The purpose of an administrative conference under Minnesota Statutes, section 176.239, is to determine whether reasonable grounds exist for a discontinuance of weekly benefits. The conference is an informal procedure to encourage discussion and clarify issues. If the parties do not reach an agreement on the issues, they will be resolved by a decision of the division. If all affected parties consent, or if notice of joinder of rehabilitation or medical issues has been given under part 5220.2610, subpart 2, rehabilitation and medical issues may also be discussed and clarified and decisions issued under Minnesota Statutes, sections 176.102, 176.103, and 176.106

Subp 2 **Request.** The employee may request that the division schedule an administrative conference to discuss a proposed discontinuance of benefits. If the proposed discontinuance is based on a reason other than a return to work, the employee's request for a conference must be personally delivered, received by, or telephoned to the department no later than 12 calendar days from the date a notice of intention to discontinue benefits, which was served on the employee and the employee's attorney, was received by the division. If the proposed discontinuance is based on a return to work, the employee's request must be received by the division within 30 days of the reported date of the employee's return to work. Allowance will be made, if appropriate, for nonreceipt or delay under Minnesota Statutes, section 176.285

If the insurer discontinues, reduces, or suspends benefits without properly serving and filing a notice of intention to discontinue benefits and with the required attachments in a situation in which a notice of intention to discontinue benefits was required under part 5220.2630 and Minnesota Statutes, section 176.238, the employee may request an administrative conference within 40 days after the employee received the last payment but no later than 12 days after a notice of intention to discontinue benefits is properly served and filed, or 30 days after the employee returned to work if the notice is properly served and filed within 14 days after the insurer has notice of the employee's return to work

The employee's request should be on the form provided by the insurer under part 5220.2630, subpart 4, item A

Subp 3 **Continuation of benefits.**

A If an employee requests an administrative conference within the time set out in this part, benefits must be paid through the date of the conference unless

(1) the employee has withdrawn the request for a conference,

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(2) the commissioner determines that no conference is necessary and allows the discontinuance,

(3) the employee fails to appear at the conference without good cause,

(4) the employee has returned to work in which case benefits are due through the date of the employee's return to work,

(5) the employee is receiving temporary partial benefits and the employee is no longer employed,

(6) the employee dies,

(7) no plausible information is presented by the employee to dispute the proposed discontinuance of the benefits,

(8) notice of maximum medical improvement was served more than 90 days before the administrative conference,

(9) an approved retraining plan ended more than 90 days before the administrative conference,

(10) the employee has failed to make a good faith effort to participate in the rehabilitation plan before the administrative conference, but is making a good faith effort at the time of the conference, in which case benefits may be discontinued between the date the notice of intention to discontinue benefits was served and filed and the administrative conference date,

(11) the workers' compensation claim was mistakenly accepted by the insurer and primary liability for the entire injury is now denied;

(12) the employee has received temporary partial benefits for the maximum period allowed under Minnesota Statutes, section 176 101, subdivision 2,

(13) the employee has completely recovered from the injury, or

(14) the employee has voluntarily retired from the labor market

B If an employee's request for a continuance under part 5220 2610, subpart 7, is granted and the employee is awarded ongoing benefits, benefits must be paid through the date of the conference and continuing. If the employee's request for a continuance is granted and the employee is not awarded benefits, benefits need not be paid during the period of continuance. If the employer or insurer requested the continuance, benefits must be paid during the period of continuance. If the employee and insurer's joint request for a continuance is granted, benefits must be paid during the period of continuance unless the employee agrees in writing to waive the interim payment and await a decision regarding payment under subpart 7 following the administrative conference.

**Subp. 4 Scheduling.** Subject to part 5220 2610, subpart 7, a discontinuance conference must be set within the time limits set by this subpart. Following a notice of intention to discontinue benefits, the division shall schedule an administrative conference no later than ten calendar days after the division's receipt of a timely request for a conference. If no notice of intention to discontinue benefits was filed as required by part 5220 2630 and the employee requests a conference, the division shall schedule a conference no later than ten calendar days after the division's receipt of the employee's request if the conference request is received within 40 days from the date the employee's last benefit payment was received.

Subp 5 [Repealed, 18 SR 2546]

*[For text of subp 6, see M R ]*

**Subp 7 The decision.** The decision must be based on information presented at the conference and information from the division file relating to the department's authority to decide the issue, and information contained in the notice of intention to discontinue benefits and any attachments. The division shall mail a copy of the decision to the parties no later than five working days from the date of the conference.

Subp 8 [Repealed, 18 SR 2546]

**Subp 9 Penalties.** Penalties may be imposed for an improper discontinuance of compensation under part 5220 2720 and Minnesota Statutes, section 176 238, subdivision 10,

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and for unreasonable or inexcusable delay or other grounds under parts 5220 2760 and 5220 2790 and Minnesota Statutes, section 176 225, subdivisions 1 and 5

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

**5220.2650** [Repealed, 18 SR 2546]

### **5220.2655 SMALL CLAIMS COURT OPERATIONS.**

Subpart 1 **Jurisdiction.** Only claims within the jurisdictional limits of Minnesota Statutes, section 176 2615, as described in items A to D, may be brought in small claims court. The claim may be heard in small claims court if all parties agree to submit the claim to the jurisdiction of the small claims court and

A the claim is for rehabilitation benefits only under Minnesota Statutes, section 176 102,

B the claim is for medical benefits only under Minnesota Statutes, section 176 135,

C the claim in its total amount does not equal more than \$5,000, or

D where the claim is for apportionment or for contribution and reimbursement, no counterclaim in excess of \$5,000 is asserted

Subp 2 **Statement of claim.** An employee, employer, insurer, self-insured employer, or claims service agent for a self-insured employer or insurer may file a statement of claim in a format or form prescribed by the commissioner which has been signed by all parties or with signed attachments of the parties consenting to the jurisdiction of the small claims court. The statement of claim must provide

A the name and social security number of the employee,

B the address and telephone number of the employee,

C the name, title, address, and telephone number of the insurer's claim representative and claim number;

D the name, address, and telephone number of the potential intervenor or other payor or provider of benefits received by an employee following an alleged work-related injury,

E a statement of the benefits claimed, including, if appropriate, value in dollars,

F attached supporting documentation,

G defenses to the claim and supporting documentation,

H the statement that the judge's award or order determining the dispute is final and that the matter may not be appealed, used as evidence, or further considered in any other forum or proceeding, and

I a statement providing for mutual waiver of representation by attorneys if the parties agree

Subp 3 **Notice.** The department shall notify all parties by mail of the date, time, and place of the small claims court hearing

Subp 4 **Hearing.** All parties must appear at the hearing fully prepared with the witnesses, exhibits, and evidence the parties choose to present to the presiding judge. Parties may agree to appear without representation by attorneys. Participation of attorneys is permitted to the extent that the judge determines is helpful to the resolution of the case. Attorney's fees shall be awarded subject to the limitations of Minnesota Statutes, section 176.081, only if the judge determines that the attorney's participation was significantly instrumental in the disposition of the case

Subp 5 **Decision.** The judge shall issue findings and an order deciding the issues within three working days of the completion of the hearing. No appeals can be taken. In the event of a settlement, the judge shall issue a settlement order within three working days of receipt of a settlement agreement

**Statutory Authority:** *MS s 175.17, 175 171, 176 83*

**History:** *18 SR 2546*

5220.2660 [Repealed, 18 SR 2546]

**5220.2670 MEDIATION.**

Subpart 1 **Evaluation for mediation.** The commissioner may refer, or any party to a workers' compensation matter or dispute may, at any stage of the proceedings, request evaluation of a disputed matter by the mediation unit to determine suitability of the matter for further action by the unit. If the matter is found to be suitable for resolution by the mediation process, the mediation unit will contact the parties or their attorneys, if they are represented, to attempt conciliation or schedule a mediation session.

Subp 2 **Conciliation.** Conciliation is the resolution of a matter through informal means without conducting a full conference. If the matter is appropriate for conciliation, the mediation unit may conciliate an agreement of the parties.

*[For text of subps 3 to 5, see M R ]*

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

**5220.2680 SECOND INJURY LAW.**

Subpart 1. [Repealed, 18 SR 2546]

Subp 2 [Repealed, 18 SR 2546]

Subp 3 [Repealed, 18 SR 2546]

Subp 4 [Repealed, 18 SR 2546]

Subp 5 **Notice of intention to claim reimbursement.** Notice of intention to claim reimbursement under Minnesota Statutes, section 176 131, subdivision 6, must be on forms prescribed by the division. In a claim under Minnesota Statutes, section 176 131, subdivision 1, forms must be filed within one year after the payment of sufficient weekly benefits or medical expenses to make claim against the special compensation fund. In a claim under Minnesota Statutes, section 176 131, subdivision 2, forms must be filed within one year from the first payment of weekly benefits or medical expense. The insurer must file with the division the original and one copy of the notice of intention to claim reimbursement.

Subp. 6 **Claim for reimbursement.** Reimbursement will be made by an order of the division or workers' compensation court of appeals from the special compensation fund on a yearly basis upon application for reimbursement on forms prescribed by the division. The insurer must file the original and one copy of the claim for reimbursement with the division. The application must be verified, set out in detail expenditures made and expenditures for which reimbursement is claimed, and must be supported by medical reports, showing the nature and extent of disability and relationship to the injury and physical impairment for which reimbursement is claimed.

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

**5220.2690 SUBROGATION INTEREST IN THIRD-PARTY RECOVERY.**

*[For text of subps 1 and 2, see M R ]*

Subp 3. **Determination of subrogation interest.** The insurer or employee must comply with the procedures in this part in submitting a petition to the workers' compensation division for an order determining subrogation interest and credit.

A The petition must be on the form prescribed by the commissioner and contain substantially the following:

*[For text of subitems (1) to (4), see M R ]*

(5) the name, address, and telephone number of the attorney for each party if any; and

(6) calculation of the subrogation interest, including the future credit amount and the sum payable to the employee.

*[For text of items B and C, see M R ]*

D If a party disagrees with the petitioner's request, the disagreeing party shall serve an answer on all parties to the third-party action and parties to the workers' compensa-

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tion proceeding within 20 days of service of the petition. If the answering party disagrees with the petitioner's calculation of the subrogation interest, future credit, or sum payable to the employee, the answering party must propose alternative calculations. The answer and a proof of service must be filed with the division within 20 days of service of the petition.

E. Upon receipt of the petition and any answer to the petition, the division will issue an order containing the following:

*[For text of subitems (1) to (4), see M.R.]*

F. If an appeal of the order is not received by the division within 30 days, the order will become the final order.

*[For text of subp 4, see M.R.]*

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

### 5220.2720 IMPROPER DISCONTINUANCES; PENALTY.

Subpart 1 **Basis.** A penalty assessment for improper discontinuance will be made by the division, if appropriate where:

A. benefits were discontinued without timely notice to the employee and the employee's attorney as required under part 5220 2630 and Minnesota Statutes, section 176 238,

B. the discontinuance occurred despite an administrative determination denying a request to discontinue under part 5220 2640 and Minnesota Statutes, section 176 239,

*[For text of item C, see M.R.]*

D. an administrative conference was requested and the request was not withdrawn, the discontinuance occurred before the date of the administrative conference, except where allowed by part 5220 2640, subpart 3, or

E. when a notice of intention to discontinue benefits is required to be filed but the discontinuance is retroactive, taking effect prior to the date that the notice of intention to discontinue benefits is served and filed with the division or served on the employee, except as allowed by part 5220 2630.

Subp 2 **Amount.** When the division makes a determination under subpart 1, notice will be given and fines assessed as follows:

A. (1) If an insurer has not had a penalty assessed in the two-year period before the assessment for violation of a particular item in subpart 1, the division will send a warning notice to the insurer that the division has determined the discontinuance is improper. The warning notice will direct the insurer to pay the improperly discontinued benefits and serve and file any required notice of discontinuance within ten days of service of notice or a penalty will be assessed.

(2) If the improperly discontinued benefits are not paid and any proper discontinuance filed within the following time periods after the warning notice is served, the division will send notice that a penalty is imposed as follows:

- (a) 11 to 20 days late, \$100,
- (b) 21 to 30 days late, \$300,
- (c) 31 to 60 days late, \$400, and
- (d) over 60 days late, \$500

B. If an insurer has had a penalty assessed in the two-year period before the assessment for violation of an item in subpart 1 and again violates the same item, the following penalties apply if the improperly discontinued benefit is not paid and a discontinuance notice is not filed when required:

- (1) one to ten days late, \$200,
- (2) 11 to 20 days late, \$300,
- (3) 21 to 30 days late, \$400, and
- (4) over 30 days late, \$500

*[For text of item C, see M.R.]*

D. Alternatively, a penalty may be assessed under Minnesota Statutes, section 176 221, subdivision 3, payable to the assigned risk safety account, of up to 100 percent of the amount of compensation to which the employee is entitled.

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E In addition to a penalty payable to the special compensation fund or the assigned risk safety account under this part, a penalty may be assessed under part 5220 2760

*[For text of subp 3, see M R ]*

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

**5220.2730** [Repealed, 18 SR 2546]

### **5220.2740 FAILURE TO PAY OR DENY MEDICAL CHARGES; PENALTY.**

Subpart 1 **Basis.** Under Minnesota Statutes, section 176 221, subdivision 6a, a penalty may be assessed where payment or denial of medical charges is not made in a timely manner as provided in part 5221 0600 and Minnesota Statutes, section 176 135

Subp 2. **Amount.** Under Minnesota Statutes, section 176 221, subdivision 3a, a penalty of up to \$1,000 shall be assessed as follows.

A one to 15 days late, \$250,

B 16 to 30 days late, \$500,

C 31 to 60 days late, \$750, and

D over 60 days late, \$1,000

Subp 3 [Repealed, 18 SR 2546]

Subp 4 **Payable to.** Penalties assessed under this part are payable to the assigned risk safety account

Subp 5 **Interest.** Interest on the sums owed under Minnesota Statutes, section 176 221, subdivision 8, is payable to the health care provider

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

### **5220.2750 FAILURE TO MAKE TIMELY PAYMENT OF ECONOMIC RECOVERY COMPENSATION OR IMPAIRMENT COMPENSATION; PENALTY.**

*[For text of subpart 1, see M R.]*

Subp 2 **Amount.** Under Minnesota Statutes, section 176.221, subdivisions 3 and 6a, a penalty of up to 100 percent of the amount owing may be assessed

Subp. 3 **Payable to.** The penalty is payable to the assigned risk safety account

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

### **5220.2760 ADDITIONAL AWARD AS PENALTY.**

Subpart 1 **Basis.** Penalties under Minnesota Statutes, section 176 225, subdivision 1, in an amount up to 25 percent of the total amount of the compensation award may be assessed by the division on the grounds listed in that section, including:

A underpaying, delaying payment of, or refusing to pay within 14 days of the filing of an order by the division or a compensation judge the workers' compensation court of appeals or the Minnesota Supreme Court unless the order is appealed within the time limits for an appeal If the payor does not appeal the order, payments made more than 14 days after the order is served and filed are late, however, the division shall not issue a penalty under this part unless payment is made after the 30th day following a final order A penalty may be issued, however, for a payment after the 14th day and through the 30th day following a settlement award under Minnesota Statutes, section 176 521 Payments made after the 14th day must include interest pursuant to Minnesota Statutes, section 176 221, subdivision 7, or 176 225, subdivision 5, to the payee,

*[For text of item B, see M R ]*

C other violations under Minnesota Statutes, section 176 225, subdivision 1, paragraph (a), (b), (d), or (e)

This part does not affect the employee's independent right to seek penalties by filing a claim petition under Minnesota Statutes, section 176 271

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Subp 2 **Amount.** A penalty assessed under this part will be for at least five percent of the compensation owing and shall be assessed as follows

- A one to five days late, five percent,
- B six to 15 days late, ten percent,
- C 16 to 30 days late, 15 percent,
- D 31 to 60 days late, 20 percent, and
- E over 60 days late, 25 percent

*[For text of subp 3, see M R ]*

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

### 5220.2770 FAILURE TO PAY OR DENY; PENALTY.

*[For text of subpart 1, see M R ]*

Subp 2 **Amount.** The commissioner's designee must use the following procedure to determine the amount of the penalty

*[For text of item A, see M R ]*

- B Calculation of the amount of the penalty will be in the following manner

*[For text of subitems (1) and (2), see M R ]*

(3) the penalty due for the number of days late is calculated under Minnesota Statutes, section 176 221, subdivision 3

*[For text of item C, see M R ]*

D Where no compensation has been paid but the insurer has failed to file a denial of liability within the statutory 14- or 30-day limit on a claim required to be reported to the division, a penalty of up to \$1,000 may be assessed under Minnesota Statutes, section 176 221, subdivision 3a, as follows

- (1) one to 15 days late, \$100,
- (2) 16 to 30 days late, \$150,
- (3) 31 to 60 days late, \$350, and
- (4) over 60 days late, \$500

If the insurer has been assessed five or more penalties for violation of this item in the two-year period before the assessment, a penalty of \$1,000 shall be assessed for a subsequent violation

E Where the insurer has filed a frivolous denial under part 5220 2570, subpart 10, a penalty may be assessed under Minnesota Statutes, section 176 221, subdivision 3a, as follows:

- (1) one to five violations in the two-year period before the assessment, \$500,

and

- (2) six or more violations in the two-year period before the assessment,

\$1,000.

Subp 3 **Payable to.** This penalty is payable to the assigned risk safety account

*[For text of subp 4, see M R ]*

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

### 5220.2780 FAILURE TO PAY UNDER ORDER; PENALTY.

Subpart 1 **Basis.** Where payment of compensation or expenses is not made within 14 days following an order as required by Minnesota Statutes, section 176 221, subdivisions 6a and 8, the division may assess the penalties provided in Minnesota Statutes, section 176 221, subdivision 3 or 3a, however, the division shall not issue a penalty under this part unless payment is made after the 30th day following a final order. A penalty may be issued, however, for a payment after the 14th day and through the 30th day following a settlement award under Minnesota Statutes, section 176 521. Payments made after the 14th day must include interest to the payee



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Subp 2 **Amount.** The penalty available under Minnesota Statutes, section 176.221, subdivision 3 or 3a, shall be assessed where there has been a failure to pay under an order which has not been appealed. If the payor chooses not to appeal the order, payments made more than 14 days after the order is served and filed are late. Each day after the 14th day is considered a day late. Penalties under Minnesota Statutes, section 176.221, subdivision 3a, shall be assessed as follows:

- A one to 15 days late, \$250,
- B 16 to 30 days late, \$500,
- C 31 to 60 days late, \$750; and
- D over 60 days late, \$1,000

Subp 3 **Payable to.** The penalty is payable to the assigned risk safety account.

**Statutory Authority:** *MS s 175.17, 175.171, 176.83*

**History:** *18 SR 2546*

## 5220.2790 INEXCUSABLE DELAY IN MAKING PAYMENT, INCREASE IN PAYMENT.

Subpart 1 **Basis.**

*[For text of item A, see M R ]*

B Where other payment of temporary total, temporary partial, permanent total, or permanent partial disability benefits is not made within three business days of the date provided by statute or rule on more than three occasions in any 12-month period, the failure is deemed inexcusable.

*[For text of subps 2 and 3, see M.R.]*

Subp 4 **Assessment.**

A The procedure for assessment of a penalty under subpart 1, item A, must be made as provided in part 5220.2770 except that only ten percent of the amount delayed shall be assessed as a penalty under this part.

B The calculation of a penalty under subpart 1, item B, for late payment of temporary total, temporary partial, or permanent total disability benefits must be as follows.

*[For text of subitems (1) to (3), see M R ]*

(4) The penalty is calculated at ten percent of the sum paid in an untimely manner.

C The calculation of a penalty for late payment of permanent partial disability benefits, including economic recovery compensation and impairment compensation under subpart 1, item B, must be as follows:

*[For text of subitem (1), see M R ]*

(2) If payment of the sum due is not made within three business days of the due date on more than three occasions in any 12-month period, a penalty of ten percent of the sum paid in an untimely manner is assessed.

**Statutory Authority:** *MS s 175.17, 175.171, 176.83*

**History:** *18 SR 2546*

## 5220.2810 FAILURE TO RELEASE MEDICAL DATA; PENALTY.

*[For text of subps 1 and 2, see M R ]*

Subp 3 **Amount.**

A If a collector or a possessor of medical data was not issued a warning under this part in the preceding 12-month period, the division must send a warning letter before a monetary penalty is assessed. The warning letter must advise the collector or possessor against whom the penalty is sought of the obligation to provide medical data under Minnesota Statutes, section 176.138, and that a penalty will be assessed if it fails to provide the requested data within seven working days after the warning letter and to file written verification of the release of the data or a copy of the data with the division within that time.

B If the requested data is not provided and written verification filed with the division within seven working days after receipt of a required warning letter or the division's

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request where no warning letter is required, a penalty of \$100 shall be imposed. If that collector or possessor has had more than three penalties assessed or warning letters sent for violation of this part in the preceding 12 months, the penalty will be \$200 as well as further penalties under items C and D.

C. If the requested data is not provided and written verification filed with the division within 30 days after the date of a required warning letter or the division's request where no warning letter is required, a penalty of \$150 will be imposed.

D. If the requested data is not provided and written verification filed with the division within 60 days after the date of a required warning letter or the division's request where no warning letter is required, a penalty of \$200 will be imposed.

Subp. 4 **Payable to.** The amount of any penalty assessed under this part is payable to the assigned risk safety account.

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

### 5220.2820 FAILURE TO MAKE TIMELY REPORT OF INJURY; PENALTY.

Subpart 1 **Basis.** A penalty may be assessed under Minnesota Statutes, section 176 231, subdivision 10.

A. against the employer, if a work-related death or serious injury occurs to an employee and the commissioner is not notified within 48 hours,

B. against the employer, if any other injury which must be reported to the division occurs and the first report of injury is received by the insurer more than ten days after the first day of lost time due to the injury or ten days after the date when notice of lost time due to the injury was received by the employer, whichever is later, or

C. against the insurer, if

(1) an injury which must be reported to the division occurs,

(2) the first report of injury is received by the insurer within the ten-day period described in item B, and

(3) the report is received by the division more than 14 days after the first day of lost time due to the injury, or 14 days after the date when notice of lost time due to the injury was received by the employer, whichever is later.

Subp. 2 **Amount.** If the employer or insurer has violated subpart 1 and has had no similar violations in the 12-month period prior to the assessment, an advisory letter informing the employer or insurer of the violation and the statutory requirement must be sent. If the employer or insurer has had one violation of subpart 1 in the past 12 months, a penalty of \$50 must be assessed. If the employer or insurer has had two violations in the past 12 months, a penalty of \$100 must be assessed. If the employer or insurer has had three violations in the past 12 months, a penalty of \$150 must be assessed. If the employer or insurer has had four or more violations in the past 12 months, a penalty of \$200 must be assessed.

Subp. 3 **Assessment.** The penalty must be assessed by letter informing the employer or insurer of the number of violations in the past 12 months on record and the amount of the penalty. The letter must contain instructions for payment.

Subp. 4 **Payable to.** The penalty is payable to the assigned risk safety account.

Subp. 5 [Repealed, 18 SR 2546]

**Statutory Authority:** *MS s 175 17, 175 171; 176 83*

**History:** *18 SR 2546*

### 5220.2830 OTHER FAILURE TO FILE REPORT IN MANNER OR WITHIN TIME LIMITS PROVIDED; PENALTY.

*[For text of subpart 1, see MR.]*

Subp. 2 **Amount.** If, after a letter request from the commissioner or authorized designee, a report under this part is not received by the division within 21 days, a penalty of \$50 must be assessed. A failure to file a report after a second request will result in an additional penalty assessment of \$150. A subsequent failure will result in penalty assessments of \$200.

Subp 3 **Payable to.** The penalty is payable to the assigned risk safety account

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

**5220.2840 FAILURE TO MAKE PAYMENT OR REPORT TO SPECIAL FUND; PENALTY.**

Subpart 1 **Due date.** For workers' compensation benefits paid from January 1 through June 30, the due date of the completed assessment form and corresponding assessment amount is August 15 of the same calendar year

For workers' compensation benefits paid from July 1 through December 31, the due date of the corresponding assessment amount is March 1 of the following calendar year

Notice of the assessment rate and instructions for payment will be issued by the fund 45 or more days before the due date

Insurers no longer licensed to provide, or no longer providing workers' compensation insurance in Minnesota, and employers no longer self-insured to provide workers' compensation benefits must continue to file the assessment form until five years have elapsed since a policy of workers' compensation insurance or self-insurance was provided, or three years after the last indemnity payment was made, whichever is later. Insurers not owing an assessment must report zero liability during the required reporting years

Subp 2 **Basis.** A penalty will be assessed under Minnesota Statutes, section 176 129, subdivision 10, where either

*[For text of item A, see M R ]*

B written certification that the assessment report and assessment payment will not be made by the due date because of reasons beyond the control of the insurer or because no assessment is owing, is not received by the special compensation fund on or before the due date

Subp 3 **Amount.** Within 30 days of the due date, the special compensation fund will give notice of penalty to those who have neither filed the completed assessment form and paid the assessment amount, nor submitted a certified reason for nonpayment by the due date as follows

A Either

(1) 2 5 percent of the assessment amount due if the assessment payment is received at the fund within five days after the due date,

(2) five percent of the assessment amount due if the assessment payment is received at the fund within six to 30 days after the due date,

(3) ten percent of the assessment amount due if the assessment payment is received at the fund within 31 to 60 days after the due date, or

(4) 15 percent of the assessment amount due if the assessment payment is received at the fund 61 or more days after the due date,

B \$500, whichever is greater, or

C \$200 for failure to timely report under subpart 2, item B, that no assessment is due

Subp 4 **Payable to.** Both the assessment amount and any penalty due under this part are payable to the assigned risk safety account

*[For text of subp 5, see M R ]*

**Statutory Authority:** *MS s 175 17, 175 171; 176 83*

**History:** *18 SR 2546*

**5220.2850 FAILURE OF UNINSURED OR SELF-INSURED TO PAY; PENALTY.**

The fund director, through an authorized designee or representative, will seek reimbursement of benefits paid from the special fund and the penalties provided under Minnesota Statutes, sections 176 181, subdivision 3, and 176 183, subdivision 2, by filing petitions for contribution and reimbursement or recovery, and through other collection mechanisms or remedies available in the civil courts

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

**5220.2860 FAILURE TO INSURE; PENALTY.**

Penalties for failure to insure will be assessed by the commissioner as provided by Minnesota Statutes, section 176 181, subdivision 3. The employer may object to the penalty as provided in part 5220 2870, except that the objection must be served and filed within ten working days from the date the notice of assessment was served on the employer.

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

**5220.2870 PENALTY OBJECTION AND HEARING.**

A party to whom notice of assessment has been issued may object to the penalty assessment by filing a written objection with the division on the form prescribed by the commissioner. The objection must be served on the special compensation fund if the penalty is payable to the special compensation fund or the assigned risk safety account in addition to filing the objection with the division, and on the employee if the penalty is payable to the employee. The objection must be filed and served within 30 days after the date the notice of assessment was served on that party by the division. The written objection must contain a detailed statement explaining the legal or factual basis for the objection and including any documentation supporting the objection. Upon receipt of a timely objection, unresolved issues shall be referred for a hearing to determine the amount and conditions of any penalty. Objections which are not served and filed within the 30-day objection period must be dismissed by a compensation judge.

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

**5220.2890** [Repealed, 18 SR 2546]

**5220.2910** [Repealed, 18 SR 2546]

**5220.2920 ATTORNEY FEES.**

Subpart 1 **Applicable principles.** Attorney fees shall be awarded in accordance with this part and Minnesota Statutes, section 176 081, after resolution of a disputed benefit or service issue, whether the matter is settled or a decision is issued.

A contingent fee provided by Minnesota Statutes, section 176 081, must not be based on the time an attorney spends on a case. It must be based on the amount awarded to a client which was genuinely in dispute. The contingent fee provided by Minnesota Statutes, section 176 081, subdivision 1, is presumed reasonable. If measured on an hourly basis, a contingent fee may seem unreasonably high or unreasonably low. On average, however, the attorney is reasonably compensated but not excessively compensated, on a contingent basis. It is contrary to the legislature's protective policy of administrative regulation of attorney fees in workers' compensation cases under Minnesota Statutes, section 176 081, to allow a contingent fee to stand when it provides a high hourly rate, but to routinely grant excess fees under Minnesota Statutes, section 176 081, subdivision 2, when the contingent fee provides a low hourly rate. The attorney fee in a particular case is not unreasonable simply because the hourly rate is below the attorney's usual billing rate. An attorney who enters into a retainer agreement with an employee or dependent under which the attorney agrees to accept a fee that is less than the fee presumed reasonable by Minnesota Statutes, section 176 081, subdivision 1, may not claim a higher fee unless a new retainer agreement providing a higher fee is executed. If, during the course of representation involving a pending claim, an attorney requests that the client sign a new retainer agreement, the attorney must notify the client by conspicuous notice in the new retainer agreement that the client is not required by law to agree to a fee higher than a fee already negotiated and agreed upon by the attorney and client.

Subp 2 **Withholding of attorney fees.** Upon receipt of the notice of representation, the employer and insurer may withhold attorney fees on genuinely disputed portions of claims under subpart 5 and Minnesota Statutes, section 176 081. Attorney fees must be withheld on genuinely disputed portions of claims if the employee's attorney so requests.

Subp 3 **Statement of fees, petition for disputed or excess attorney fees.** The following procedures must be followed in claiming fees.

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A If the claim for attorney fees does not exceed the fees allowed by Minnesota Statutes, section 176.081, subdivision 1, clause (a), the party claiming fees shall fully complete and file a statement of attorney fees on a form prescribed by the commissioner, including

- (1) information identifying the employee, employer, insurer, and any adjusting company;
- (2) claim numbers or codes,
- (3) the date of injury or disease,
- (4) a list of benefits obtained which were genuinely in dispute and which would not have been recovered without the attorney's involvement, and the total dollar amount of benefits obtained,
- (5) information concerning any retainer received from the employee,
- (6) information concerning expense advancement;
- (7) information regarding the withholding of attorney fees, and the amount of attorney fees previously paid for the same injury,
- (8) the specific dollar amount claimed for attorney fees,
- (9) information regarding the attorney's license to practice law in the state,
- (10) a statement of the statutory basis or other legal authority for attorney fees,
- (11) a notice regarding how to object to the requested fees,
- (12) information identifying the employee's attorney, and
- (13) the number of hours spent in the employee's representation and the attorney's hourly fee

The statement must be accompanied by the retainer agreement, if not previously filed, and proof of service on the employer or insurer, and employee

B If an attorney claims fees in excess of the amount listed in Minnesota Statutes, section 176.081, subdivision 1, clause (a), or an objection to the statement under item A is filed, or it is requested that fees be assessed against the employer or insurer for refusal to pay rehabilitation or medical benefits or provide rehabilitation or medical services or the requested fees were incurred in connection with an administrative conference under Minnesota Statutes, section 176.102, 176.135, 176.136, or 176.239, the attorney shall fully complete and file a petition for disputed or excess attorney fees on a form prescribed by the commissioner, including

- (1) information identifying the employee, employer, insurer, and any adjusting company,
- (2) claim numbers or codes,
- (3) date of the injury or disease,
- (4) an exhibit showing specific legal services performed, the date performed, and the time spent,
- (5) the number of hours spent in the employee's representation and the attorney's hourly fee,
- (6) a statement of expertise and experience in workers' compensation matters,
- (7) a complete description of the factual, medical, and legal issues in dispute,
- (8) the nature of proof required in the case,
- (9) a list of the benefits obtained which were genuinely in dispute and which would not have been recovered without the attorney's involvement, and the total dollar amount of benefits obtained,
- (10) information concerning any retainer,
- (11) the amount the employee advanced for expenses,
- (12) the specific dollar amount claimed in fees,
- (13) information regarding the withholding of attorney fees, and the amount of attorney fees previously paid for the same injury,

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(14) a list of the disbursements incurred and if the disbursement has been paid, by whom,

(15) information regarding the attorney's license to practice law in the state,

(16) a statement of the statutory basis or other legal authority for attorney fees,

(17) whether or not a hearing on attorney fees is requested,

(18) information identifying the employee's attorney, and

(19) where all or a portion of the fee may be payable by the employee, the prescribed notice to the employee requesting that the employee return the attached form within ten days of the employees' receipt of the notice, indicating whether or not the employee agrees that the requested fee should be awarded and notifying the employee of the relevant factors in determining the attorney fee

The petition must be accompanied by a copy of the retainer agreement, if not previously filed, proof of service on the employer or insurer, and employee, and a form prescribed by the commissioner upon which the employee indicates agreement or disagreement with the claim for excess fees

**Subp. 4 Fees; objection.** If a timely objection to the statement of attorney fees or petition for excess fees is filed, the compensation judge or settlement judge shall use this part and Minnesota Statutes, section 176 081, subdivision 5, to determine whether the fee is justified

**Subp 5 Genuinely disputed portions of claims.** This subpart provides the applicable principles for the commissioner, compensation judge, or workers' compensation court of appeals to determine whether the benefit paid or payable was genuinely disputed for the purpose of calculation of a contingent fee under Minnesota Statutes, section 176 081, subdivision 1.

The statement of attorney fees or petition for excess attorney fees must include, for each benefit paid or awarded for which an attorney fee is sought sufficient information to allow the fee determiner to apply the principles contained in this subpart

The principles applicable to determine whether a benefit was genuinely disputed are as follows

A If primary liability had been denied for the claim, all compensation paid or awarded to the employee or dependent other than payment of medical and rehabilitation expenses, is used to compute the attorney's fee

B If there was no dispute concerning the rate, amount, duration, or eligibility for a benefit and the benefit was timely paid, the benefit may not be used to compute the fee

C The fee may not be computed on the entire amount of a benefit where only a portion of the benefit is disputed Only the disputed portion of the benefit may be used to compute the fee

D. If eligibility for the benefit is disputed, the entire benefit during the period for which eligibility was disputed is used to compute the fee

E If the rate of the benefit is disputed, only the amount paid or awarded above the rate admitted and timely paid is used to compute the fee

F If the duration of the benefit is disputed, only the portion of the benefit not conceded and not timely paid is used to compute the fee

G Benefits allegedly admitted but not timely paid may be used to compute the fee

H Benefits timely paid may not be used to compute the fee except where primary liability for the entire claim or eligibility for the benefit had been generally denied

I The difference between the compensation eventually paid or awarded and the amount admitted and timely paid is used to compute the fee.

J The following benefits may be used to compute the fee

(1) remodeling compensation pursuant to Minnesota Statutes, section 176 137, which was in dispute under this subpart,

(2) a penalty sum awarded to the employee or dependent for a benefit which was in dispute under this subpart,

(3) interest on a benefit which was in dispute under this subpart, and

(4) a benefit which was in dispute under this subpart although reimbursable to an intervenor

K Generally, each benefit is evaluated separately, however, if the rate, duration, or eligibility for economic recovery compensation is disputed, the difference between the impairment compensation which was conceded and timely paid and the amount of disputed economic recovery compensation eventually paid or awarded is used to compute the fee

L The principles of this subpart apply to settlement sums A portion of a lump sum award allocated to medical or rehabilitation expenses must not be used to compute the fee unless the hourly fee associated with the service exceeds the contingent fee available under Minnesota Statutes, section 176 081, subdivision 1, for all other disputed benefits under this subpart that are resolved pursuant to the award Benefits that have not yet become due and are not in dispute under this subpart may not be used to compute the fee

Subp 6 **Defense attorney fees.** On August 1 of each year, every insurer must file with the department its annual statement of attorney fees containing the information required by this subpart for the previous 12-month period from July 1 to June 31 The insurer must include defense fees and costs incurred by itself and its agents and representatives, including but not limited to adjusting companies and third-party administrators Costs include charges for contract service providers such as surveillance companies and transcription service organizations Only defense attorney fees and defense costs which are charged by the insurer against an individual claim file and which relate to a contested workers' compensation claim must be reported under this subpart Contested workers' compensation claims are those claims which are the subject of pending or anticipated workers' compensation litigation Workers' compensation litigation includes but is not limited to administrative conference proceedings, mediation, small claims court, and settlement proceedings For the purpose of this subpart, "paid" includes sums billed or due but not yet paid

A The annual defense attorney fees and defense costs statement must include

(1) Total attorney fees paid to outside and in-house counsel for representation and advice concerning workers' compensation cases If in-house counsel spends 100 percent of work time on workers' compensation cases, the attorney's full gross wage plus the cost of the employee's benefit package is reported as attorney fees paid If a portion of the attorney's time is attributable to the defense of workers' compensation cases, the wages and benefits may be prorated by the respective percentage of wages and benefits attributable to the defense of workers' compensation cases The outside counsel fees reported must be the total fee paid to all firms for representation and advice concerning workers' compensation cases

(2) Total paralegal fees paid or cost incurred in connection with workers' compensation cases Wages and benefits of in-house paralegals may be prorated as provided in subitem (1)

(3) Deposition costs are reported in this subitem Other deposition costs such as court reporter fees for time, preparation of a deposition transcript, and copies of depositions, and any costs paid to the deponent must be included in this subitem Expert witness fees are included under subitem (4) The attorney's fee for a deposition is reported in subitem (1)

(4) Expert witness fees, including fees paid to expert witnesses in connection with hearings, depositions, or other workers' compensation proceedings

(5) Independent medical evaluation fees, including all sums paid for health care provider opinions sought by the insurer or self-insured employer under Minnesota Statutes, section 176 155, subdivision 1

(6) Fees for the generation of a medical report not already included in another category of this item

(7) Cost of copies of medical and other data such as personnel files and medical treatment charts

(8) Court filing fees

(9) Transcript costs, including fees for preparation and copies of hearing transcripts

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(10) Investigation costs not otherwise reported under this item, including surveillance costs and other services and fees connected with investigations related to litigated claims

(11) Travel and mileage costs, including reimbursement for travel costs associated with litigated cases when these sums are not already reported under another subitem

(12) The total number of injuries to which the fees and costs included on the report are attributable

(13) Other litigation costs not included in subitems (1) to (12) are reported in a miscellaneous category

B The insurer must collect and make available for review by the department as needed individual case information relating to defense attorney fees and defense costs as provided in this item This individual case fee information need not be reported annually except as provided by item A The information specified under this item must be made available to the department upon request and to parties to the claim The fees listed in item A, subitems (1) and (2), must be collected for individual employee claims by date of injury All other costs and fees in item A, subitems (3) to (13), may be collected in the aggregate without regard to individual claims The data collected under item A, subitems (1) and (2), must include

(1) the employee's social security number,

(2) the date of injury,

(3) the Minnesota supreme court registration numbers for all attorneys providing services relating to the injury,

(4) the hourly rate, if any, charged by all attorneys and paralegals providing services relating to the injury,

(5) the lump sum attorney fees paid for all attorneys providing services relating to the injury, and

(6) a sum representing all in-house attorney and paralegal time spent providing services relating to the injury For the purpose of this subitem, the employer of the in-house attorney or paralegal may establish an hourly rate for the paralegal or attorney's time based on the gross wages and fringe benefits which closely represents the actual payment for the services rendered

C. The attorney fees paid to in-house or outside counsel as reported in this subpart must be approved under Minnesota Statutes, section 176 081, subdivision 2, if the payment exceeds \$13,000 for any injury

**Subp. 7. Contingent fee limitations.** The contingent fee presumed reasonable under Minnesota Statutes, section 176 081, subdivision 1, applies to fees paid to the attorney or attorneys for the employee It does not apply to each attorney individually, but begins to run from the first claim concerning the injury and continues until the \$13,000 sum is reached without regard to the number of attorneys or claims initiated concerning the same injury The \$13,000 fee which is presumed reasonable applies separately to fees payable to the attorney or attorneys for the employee, and fees payable to the attorney or attorneys for the insurer The maximum fee presumed reasonable per injury is \$26,000, half to the attorney or attorneys for the employee and half to the attorney or attorneys for the insurer Where the only issues in dispute are medical or rehabilitation benefits or services and it was not reasonable to join the rehabilitation or medical issue with other disputed benefit issues, the attorney fee payable for recovery of the benefit or service is payable by the insurer on an hourly basis If the hourly fee associated with medical or rehabilitation issues exceeds the available contingent fee under Minnesota Statutes, section 176 081, subdivision 1, the available contingent fee shall be awarded as well as a fee payable by the insurer such that the two fees combined compensate the attorney at a reasonable hourly rate

**Subp 8 Determinations without a hearing.** If an objection to the requested fee has been filed and the interested parties waive their right to a hearing, the fees may be determined without a hearing A hearing must be scheduled if an objection has been filed and all interested parties have not waived their right to a hearing Where no objection to the requested fee has been filed, the commissioner, judge, or court before whom the matter is pending shall



determine, without a hearing, the amount of attorney fees owing under this part and Minnesota Statutes, section 176 081

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

**5220.2930 DEPENDENT'S BENEFITS.**

Subpart 1. **Allocation of compensation by judge.**

A A party may petition for an allocation of benefits under Minnesota Statutes, section 176 111, subdivision 10 The petition may contain a proposed allocation The petition must be served on all parties and filed with the division within one year after the date of death If a petition for allocation is not filed in a timely manner and the death occurred after June 30, 1981, the allocation will be as provided in subpart 2

*[For text of items B and C, see M R ]*

*[For text of subp 2, see M R ]*

Subp 3 [Repealed, 18 SR 2546]

*[For text of subps 4 and 5, see M R ]*

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*

**5220.2940** [Repealed, 18 SR 2546]

**5220.2950** [Repealed, 18 SR 2546]

**5220.2960 COMMISSIONER INTERIM NOTICES AND ORDERS.**

The commissioner may develop and publish commissioner interim notices and orders concerning matters within the authority of the department. Interim notices and orders do not have the force and effect of law, except where specifically authorized by statute, but may be relied upon by the public until revoked or modified to bind the department The purpose of an interim notice or order is to provide uniform information and guidance to the public concerning department action An interim notice or order may be relied upon to bind the department until a statute, appellate court decision, rule, or subsequent commissioner's notice or order conflicts with the notice or order, until the date stated in the notice or order, or until one year after publication, whichever occurs first An interim notice or order under this part binds the department only if the published notice or order is clearly identified as an interim notice or order and is given an indexing number

**Statutory Authority:** *MS s 175 17, 175 171, 176 83*

**History:** *18 SR 2546*