

CHAPTER 5228

DEPARTMENT OF LABOR AND INDUSTRY

WORKERS' COMPENSATION; FRAUD UNIT

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5228.0100 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 5228.0100 to 5228.0130, the following terms have the meanings given them.

Subp. 2. **Attorney.** "Attorney" means a person licensed to practice law in Minnesota who represents a party for a fee on matters over which the commissioner has jurisdiction.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of the Department of Labor and Industry or the commissioner's designee.

Subp. 4. **Compensation or workers' compensation benefits.** "Compensation" or "workers' compensation benefits" has the meaning given compensation in Minnesota Statutes, section 176.011, subdivision 8.

Subp. 5. **Employee.** "Employee" has the meaning given it in Minnesota Statutes, section 176.011, subdivisions 9 and 9a.

Subp. 6. **Employer.** "Employer" has the meaning given it in Minnesota Statutes, section 176.011, subdivision 10.

Subp. 7. **Fraud unit.** "Fraud unit" means the workers' compensation investigative unit established at the Department of Labor and Industry under Minnesota Statutes, section 176.86.

Subp. 8. **Health care provider.** "Health care provider" has the meaning given it in Minnesota Statutes, section 176.011, subdivision 24, and includes managed care organizations certified by the commissioner.

Subp. 9. **Illegal activity.** "Illegal activity" for purposes of Minnesota Statutes, section 176.86, means acts, omissions, or material misrepresentations which are in violation of statutes or rules relating to workers' compensation, including Minnesota Statutes, section 176.178 or 609.52. The acts and omissions include, but are not limited to, the following:

A. making a knowingly false statement or misrepresentation to obtain or deny workers' compensation benefits;

B. presenting a knowingly false material written or oral statement in support of, or in opposition to, a claim for workers' compensation benefits, including a notice, proof of injury, bill and payment for services, test result, and medical or legal expense;

C. knowingly assisting persons or parties who engage in illegal activity; or

D. making a knowingly false material statement or material representation regarding entitlement to benefits with the intent to discourage an injured worker from pursuing a claim or with the intent to encourage an employee to pursue a claim.

Subp. 10. **Insurer.** "Insurer" has the meaning given it in Minnesota Statutes, section 79.01, subdivision 2, and includes self-insurers.

Subp. 11. **Material fact.** "Material fact," for purposes of Minnesota Statutes, section 176.178, means a fact which if untruly asserted or wrongfully suppressed, if it had been known to the person paying workers' compensation benefits, would have influenced the decision to pay. Material facts include, but are not limited to:

A. representations or omissions regarding employment status, income, or job offers by any party which result in an underpayment or overpayment or payment of benefits;

B. representations or omissions regarding symptoms or ability to perform physical activities, including but not limited to standing, sitting, driving, walking, climbing, crawling, or any other aspect relating to a work or non-work-related medical condition or functional capacity which affects the payment or nonpayment of workers' compensation benefits;

C. representations or omissions regarding past or present medical conditions, illnesses, diseases, or injuries, whether related to employment or not, which influence the decision to pay or not pay workers' compensation benefits and which result in underpayment, overpayment, payment, or nonpayment of workers' compensation benefits;

D. representations or omissions concerning medical treatment or supplies or rehabilitation services submitted in connection with claims by health care providers under Minnesota Statutes, section 176.135, or rehabilitation providers under Minnesota Statutes, section 176.102, for reimbursement which result in an overpayment or nonpayment;

E. representations or omissions regarding compensable hours and costs or disputed amounts on attorney fee petitions which result in overpayment of attorney fees;

F. representations or omissions to the commissioner concerning the payment or receipt of workers' compensation benefits by employers, employees, insurers, third-party administrators, or attorneys;

G. representations or omissions to the commissioner concerning the filing of requested or required reports under Minnesota Statutes, chapter 176, by employers, employees, insurers, third-party administrators, or attorneys;

H. representations or omissions by a person regarding a notice of injury under Minnesota Statutes, section 176.141; and

I. representations or omissions by a party or person regarding the occurrence, nature, or extent of a claimed work injury under Minnesota Statutes, chapter 176.

Subp. 12. **Person.** "Person" means a party, individual, partnership, association, corporation, or other legal entity including, but not limited to, employers, employees, insurers, third-party administrators, attorneys, health care providers, vendors, and rehabilitation providers.

Subp. 13. **Probable cause.** "Probable cause" means evidence which leads fraud unit investigators to reasonably believe that illegal activity has been or is being committed.

Subp. 14. **Prosecuting authority.** "Prosecuting authority" means the attorney general, county attorney, or other appropriate law enforcement agency or agency designee having jurisdiction and authority to prosecute criminal, civil, or administrative violations of Minnesota Statutes, sections 176.178, 176.179, and 609.52.

Subp. 15. **Rehabilitation provider.** "Rehabilitation provider" has the meaning given it in part 5220.0100, subpart 28.

Subp. 16. **Request for action.** "Request for action" means the fraud unit standard for referral to the prosecuting authority based on probable cause that illegal activity has been or is being committed.

Statutory Authority: *MS s 176.87*

History: *17 SR 3380*

5228.0110 IDENTIFICATION OF SUSPECTED FRAUD OR PAYMENTS NOT RECEIVED IN GOOD FAITH.

The fraud unit shall be responsible for the investigation and identification of workers' compensation fraud under Minnesota Statutes, sections 176.178 and 609.52, subdivision 2, clauses (d) and (e), and other illegal practices related to workers'

compensation. Evidence of overpayments not received in good faith as defined by Minnesota Statutes, section 176.179, may be referred to the appropriate paying party to commence proceedings to seek reimbursement.

Statutory Authority: *MS s 176.87*

History: *17 SR 3380*

5228.0120 INVESTIGATIVE POWERS.

Subpart 1. **Authority.** Fraud unit investigators shall have full investigating powers under Minnesota Statutes, section 175.20 and chapter 176, for the purpose of undertaking investigations.

Subp. 2. **Disclosure of information.** Fraud unit investigators may require the disclosure of personal or privileged information without written authorization under Minnesota Statutes, section 72A.502.

Subp. 3. **Violations.** Potential violations of Minnesota Statutes, sections 176.178, 176.179, and 609.52, include, but are not limited to:

- A. employee representations or omissions;
- B. employer representations or omissions;
- C. insurer representations or omissions;
- D. health care provider representations or omissions;
- E. rehabilitation provider representations or omissions;
- F. attorney representations or omissions; and
- G. other persons whose representations or omissions constitute material facts inducing the wrongful payment or receipt of workers' compensation benefits.

Statutory Authority: *MS s 176.87*

History: *17 SR 3380*

5228.0130 DETERMINATIONS BY FRAUD UNIT.

Subpart 1. **Investigation; scope.** The fraud unit shall determine:

A. whether violations of statutes or rules relating to workers' compensation, including Minnesota Statutes, section 176.178, 176.179, or 609.52, exist and can be documented by evidence sufficient to warrant a request for action or to support proceeding with civil, criminal, or administrative legal action;

B. whether there is probable cause for a request for action to the appropriate prosecuting authority; and

C. whether other referrals should be made for civil, criminal, or administrative action.

Subp. 2. **Post-investigative action.** Following the completion of an investigation, the fraud unit shall take one or more of the following actions:

A. determine that no further action is necessary;

B. refer to the paying party entitled to seek an order for reimbursement of overpayment of benefits not received in good faith under Minnesota Statutes, section 176.179;

C. refer by request for action to the appropriate prosecuting authority for criminal review and legal action;

D. refer for civil legal action or review;

E. refer to the appropriate state licensing authorities having disciplinary jurisdiction over licensees or registrants including, but not limited to, the commissioners of commerce, health, and labor and industry;

F. refer to the Lawyers Professional Responsibility Board for review or investigation of attorneys;

G. refer to the Department of Commerce for review or action concerning insurers, third-party administrators, or other business entities;

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H. refer to the commissioner for review of whether administrative sanctions for licensees, registrants, or rehabilitation and health care providers under Minnesota Statutes, chapter 176, are appropriate;

I. refer to the boards, commissions, or departments having regulatory oversight of rehabilitation or health care providers including, but not limited to, the health-related licensing boards enumerated and defined in Minnesota Statutes, section 214.01, subdivision 2, the medical services review board, and the rehabilitation review panel;

J. refer to the Department of Human Rights, the Equal Employment Opportunity Commission, or the United States Department of Justice, Civil Rights Division, Office of the Americans with Disabilities Act, for review and action concerning disability discrimination; or

K. refer to the commissioner for further investigation, review, or action regarding safety or labor standards violations.

Statutory Authority: *MS s 176.87*

History: *17 SR 3380*