

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;

C. the discontinuance occurred without notice despite a final decision of a compensation judge, the Workers' Compensation Court of Appeals, or the supreme court requiring payment of ongoing benefits;

D. an administrative conference was requested and the request was not withdrawn, the discontinuance occurred before the date of the administrative conference, except where allowed by part 5220.2640, subpart 3; or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 one-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, \$200;
- (b) 21 to 30 days late, \$600;
- (c) 31 to 60 days late, \$800; and
- (d) over 60 days late, \$1,000.

B. If an insurer has had a penalty assessed in the one-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, \$400;
- (2) 11 to 20 days late, \$600;
- (3) 21 to 30 days late, \$800; and
- (4) over 30 days late, \$1,000.

C. Alternatively, a penalty may be assessed as provided in Minnesota Statutes, section 176.221, subdivision 3, payable to the commissioner for deposit in the assigned risk safety account.

D. In addition to a penalty payable to the commissioner for deposit in the assigned risk safety account under this part, a penalty may be assessed under part 5220.2760.

Subp. 3. **Payable to.** Penalties under this part are payable to the commissioner for deposit in the assigned risk safety account.

Statutory Authority: *MS s 14.388; 175.17; 175.171; 176.129; 176.138; 176.221; 176.225; 176.231; 176.238; 176.83; 176.84*

History: *11 SR 1530; 18 SR 2546; 23 SR 1484; 35 SR 2015*

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