

2023 STATUTORY CHANGES

PART ONE: CHANGES EFFECTIVE AUGUST 1, 2023

ATTORNEY FEES & DISPUTE CERTIFICATION

Minn. Stat. § 176.081, subdivision 1c has been amended to state that fees under the chapter are “available to an attorney who procures a benefit on behalf of the employee” upon genuinely disputed claims or portions of claims. However, unless the employee is represented by an attorney in other litigation pending at the Office of Administrative Hearings, a fee may not be charged for services with respect to a medical or rehabilitation issue performed before the attorney has filed with the commissioner and served upon the employer/insurer (and their attorney, if any) “a request for certification of dispute containing the name of the employer and its insurer, the date of the injury, and a description of the benefits claimed” and the department certifies that there is a dispute and that it has tried to resolve the dispute.

If the department has not issued a determination of whether a dispute exists within 30 days of the filing of a request, the dispute *shall* be certified if all the following apply:

- (1) the insurer has not approved the requested benefit;
- (2) the employee, the employee's attorney, or the employee's treating provider has submitted any and all additional information requested by the insurer necessary to determine whether the requested benefit is disputed or approved; and
- (3) the insurer has had at least seven calendar days to review any additional information submitted.

Non-Emergency Surgery Disputes

If an employer/insurer has requested a second opinion (pursuant to 176.135) or an examination (pursuant to 176.155), a dispute *shall* be certified if 45 days have passed following a written request for a second opinion or examination, if the three conditions enumerated above are met as well. Cross-reference the amendments to **Minn. Stat. 176.135, subdivision 1a** for further details on procedures for second opinions on requests for non-emergency surgeries, as discussed below.

CUSTOMIZED MEDICAL ITEMS ARE PROPERTY OF THE EMPLOYEE AND MUST BE REPLACED

Minn. Stat. § 176.135, Subdivision 1(d) was amended to specify that any “artificial members, glasses or spectacles, artificial eyes, podiatric orthotics, dental bridge work, dentures or artificial teeth, hearing aids, canes, crutches, or wheel chairs” that had been customized specifically for an injured worker are the property of the injured worker. If any of these items

were damaged by reason of an injury arising out of and in the course of the employment, the employer *shall* furnish their replacement or repair. An employer/insurer's inability or refusal to *timely* provide these items, will make it liable for the reasonable expense incurred by or on behalf of the employee in providing them.

REQUESTS FOR NON-EMERGENCY SURGERY AND SECOND OPINIONS

Minn. Stat. 176.135, subdivision 1a(a) was amended to specify that if an employer or insurer requires an employee to get a second opinion before undergoing a non-emergency surgery, the expense of that second opinion shall be paid by the employer *or* the insurer (the previous language only mentioned the employer).

Language stating that “the failure to obtain a second surgical opinion shall not be reason for nonpayment of the charges for the surgery. The employer is required to pay the reasonable value of the surgery unless the commissioner or compensation judge determines that the surgery is not reasonably required” has now been removed from the statute. The new language states that ***if an employer or insurer receives a request for non-emergency surgery, it must respond in writing no later than seven calendar days after receiving the request from the health provider or the employee either: approving the request, asking for additional information, requesting a second opinion, or requesting an examination by a physician chosen by the employer (under 176.155).***

Subdivision 1a(b) has now been added to the statute. It states that if the employer or insurer requests a second opinion, it must notify the employee and the health care provider of this request within seven calendar days of the request for non-emergency surgery. ***If the authorization of the non-emergency surgery is denied within seven calendar days of receiving the second opinion, the health care provider may elect to perform the surgery, subject to a determination of compensability by the commissioner or compensation judge.***

Subdivision 1a(c) has also been added. It states that ***“failure to obtain a second surgical opinion is not reason for nonpayment of the charges for the surgery. The employer or insurer is required to pay the reasonable value of the surgery unless the commissioner or compensation judge determines that the surgery is not reasonably required.”***

CHARGES FOR MEDICAL BILLS AND RECORDS

Minn. Stat. § 176.135, subdivision 7 has undergone significant amendments, mostly limiting the dollar amounts that health care providers can charge for their records.

Paragraph (a) has added language specifying that health care providers may charge for copies of their records or reports pursuant to Minnesota Rules, part 5219.0300, and directs the commissioner to adopt, by rule, a schedule of reasonable charges that will apply to charges not addressed by **paragraphs (d) and (e)** (see below).

Paragraph (d) was added to the subdivision, it provides that:

- (1) Health care providers *must* notify requestors of the estimated cost before sending copies of records. If the requestor approves the costs and record copies are provided, the payment due is the applicable fee under paragraph (e) (see below);
- (2) Health care providers *shall not* require prepayment for the costs of copies *unless* there is an outstanding past-due invoice for the requestor for previous records requests;
- (3) Health care providers *shall* provide copies of medical records in electronic format;
- (4) The charges scheduled under paragraph (e) includes fees for retrieval, downloading, or other delivery of records;

Paragraph (e) then provides the following limits for how much a health care provider may charge for any records provided under paragraph (d):

1. No more than \$10 if there are no records available;
2. No more than \$30 for records of up to 25 pages;
3. No more than \$50 for records of up to 100 pages;
4. No more than \$50, plus and additional 20 cents per page for pages 101 and above; or
5. No more than \$500 total for any request.

MEDICAL EXAMINATIONS

Minn. Stat. § 176.155, subdivision 1 was amended, largely to provide further parameters regarding requests for extension of time for file I.M.E. reports. **Paragraph (a)** added language allowing employees to have a “witness” present at any examinations performed that the request of the employer (previously the paragraph only allowed employees to have “a personal physician” present at their own expense).

Paragraph (b) removed language providing that IME reports must be made available to the employee or employee’s representative upon request, and now states that: **regardless of whether litigation is pending, the report *must* be served upon the employee and employee’s attorney no later than 14 days within the issuance of the report or written statement.**

Paragraph (d) states that “any request for a good cause extension pursuant to **paragraph (e)** must be made within 120 days of service of the claim petition” with the following exceptions:

1. There has been a change to the employee’s claim regarding the nature and extent of the injury;
2. There has been a change to the permanency benefits claimed by the employee, including a change in permanent partial disability percentage;
3. There is a new claim for indemnity benefits; or
4. The employment relationship is not admitted by an uninsured employer.

SCOPE OF .239 CONFERENCES

176.239, subdivision 6 was amended to state that “*only* reasons specified on the notice of discontinuance shall provide a basis for a discontinuance, unless the parties agree otherwise,” striking the word “information” from that sentence. This appears to indicate that .239 conferences will be decided much more on just the four corners of the reasons provided on Box 3 Notices of Intent to Discontinue, and that Employer/Insurers may not be able to rely on providing additional information or arguments not previously raise in the discontinuance notice at the time of the conference.

However, **subdivision 7** adds the term “exhibits filed by the parties with the office” to “information provided by the parties at the administrative conference” as the information to be considered in issuing administrative decisions on .239 conferences.

CLAIM PETITION PROCEDURE AND REQUIREMENTS

176.291 has been amended, apparently to require greater specificity and documentary support in Claim Petitions, especially those asserting multiple claims. Under **paragraph (b)** the petition shall state and include: the extent and character of *each* injury; copies of medical records supporting *each* claim asserted; copies of other information in support of the claim, witness information for all known witnesses to be called in support of *each* injury and claim; the nature and extent of *each* claim.

Paragraph (c) now allows “incomplete” petitions to be stricken *or dismissed* from the calendar pursuant to 176.305, subd. 4. Further, an employee who has filed a claim petition *shall* provide a list of their physicians and health care providers who have provided treatment for same/similar conditions as well as authorizations for relevant information, data, and records *within 14 days* to any requester (previously it was 30 days).

CASES WITH DEFICIENT PETITIONS MAY STRICKEN FROM THE CALENDAR AND DISMISSED IF NOT CORRECTED IN 180 DAYS

176.305, subdivision 4 now allows a compensation judge, upon a properly served motion, to strike a case from the active trial calendar after the employee has been given 30 days to correct a deficient petition if the information on the petition was incomplete (see the amendments to **176.291** above). If a case has been stricken from the calendar for **180 days** (previously, it was 1 year) or more and no corrective action has been taken, the judge may dismiss the case (*sua sponte*, or upon the motion of a party). The petitioner must be given 30 days notice of the proposed dismissal before the dismissal is effective.

PROCEEDINGS WHEN ANSWER NOT FILED (.331 HEARINGS)

In an apparent move to provide a bit of a “speedbump” for a full-blown hearing on a short turn-around time, 176.331 was amended to have OAH set the matter for an *immediate pretrial conference* and hearing when an adverse party fails to file and serve an answer or obtain an extension to answer. The adverse party that failed to file and answer *or appear at a pretrial conference* may appear at the hearing, but will not be granted a continuance except for good cause.

CESSATION OF DEPENDENT BENEFITS NOTICE REQUIREMENTS

Minn. Stat. § 176.111, subdivision 16 added language stating that the cessation of dependent benefits (due to the death or marriage of any dependent) requires notice pursuant to **subdivision 23**.

Subdivision 23, in turn, is a new subdivision stating the procedural requirements of notice of cessation of dependency benefits. An employer seeking to discontinue dependency benefits must file with the commissioner and serve upon the dependent written notice within 14 days of the discontinuance. The notice must state the date the benefits will be discontinued and provide a statement of facts clearly indicating the reason the individual will no longer receive dependency benefits and is no longer considered a dependent under **§ 176.111**. Any document relied upon for the discontinuance must be attached to the notice. Failure to file the notice as required may result in a penalty under **§ 176.231, subdivision 10**.

PART TWO: CHANGES EFFECTIVE OCTOBER 1, 2023

CHANGES TO THE PERMANENT PARTIAL DISABILITY SCHEDULE: EFFECTIVE FOR INJURIES ON OR AFTER OCTOBER 1, 202

176.101, subdivision 2a, has been significantly amended. **Paragraph (a)** now contains a provision stating that “during the 2026 regular legislative session, and every even-year legislative session thereafter, the Workers' Compensation Advisory Council must consider whether the permanent partial disability schedule in **paragraph (b)** represents adequate compensation for permanent impairment.”

Paragraph (b), in turn, provides significantly higher base dollar amounts by which the impairment rating percentages are derived. This appears to be an approximately 31% increase for lower-end percentages, and it tapers to an approximate 5% for the high ratings. For example, the amount for impairment ratings of less than 5.5% is going to \$114,260 (from \$78,800), whereas ratings of 95.5% and higher only go up to \$567,840 from \$540,800.

HOSPITAL OUTPATIENT FEE SCHEDULE

Minn. Stat. §176.1364, subdivision 3, which addresses the Hospital Outpatient Fee Schedule (HOFS) was amended to include a new paragraph (g), which directs the commissioner, beginning October 1, 2023 to October 1, 2025, to adjust the conversion factors provided in the subdivision to result in an overall reduction in total payments of hospital outpatient service by 3% for services effective October 1, 2023, a further 3% overall reduction starting October 1, 2024, and then a 4% overall reduction for services effective October 1, 2025.

Minn. Stat. §176.1364, subdivision 6 is repealed.

PART THREE: POST-TRAUMATIC STRESS DISORDER STUDY

This new legislation directs the commission of labor and industry to “conduct a study to identify systemic or regulatory changes to improve the experience and outcomes of employees with work-related post-traumatic stress disorder.” This study must:

- (1) identify evidence-based methods and best practices for early detection and treatment of post-traumatic stress disorder;
- (2) review models, including those used in other jurisdictions and systems, for delivering mental health wellness training or employee assistance programs, treatment for post-traumatic stress disorder, and benefits related to post-traumatic stress disorder. Review must include outcomes and cost considerations;
- (3) identify any programs in other jurisdictions with effective prevention, timely and effective medical intervention, or high return-to-work rates for employees with work-related post-traumatic stress disorder;
- (4) review the definition of post-traumatic stress disorder provided in Minnesota Statutes, section **176.011, subdivision 15, paragraph (d)**, and compare to definitions in other jurisdictions; and
- (5) consider the list of occupations subject to the rebuttable presumption in Minnesota Statutes, section **176.011, subdivision 15, paragraph (e)**.

Any relevant state agency, and specifically the Public Employees Retirement Association, Minnesota State Retirement System, and Minnesota Workers’ Compensation Insurers Association are directed to cooperate with the commissioner in conducting this study. The commissioner must report the results of this study to the Workers’ Compensation Advisory Council and the chairs and ranking minority members of the house of representatives and senate committees with jurisdiction over workers’ compensation by August 1, 2025.

PART FOUR: CHANGES EFFECTIVE “THE DAY AFTER FINAL ENACTMENT”

“RELATIVE VALUE FEE SCHEDULE” DEFINED

Minn. Stat. § 176.011 was amended to include **Subdivision 17b** which provides the statutory definition of “relative value fee schedule” as “the medical fee schedule adopted by rule under section 176.136, subdivision 1a, using the Physician Fee Schedule tables adopted for the federal Medicare program.”