

## Brown & Carlson Insight

### **RECENT MINNESOTA WORKERS' COMPENSATION ACT AMENDMENTS** **by Paige E. Andruss**

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#### **LIMITATION OF ATTORNEY'S FEES**

Under Minn. Stat. § 176.081, subd. 1, attorney's fees shall only be allowable to an attorney who procures a benefit on behalf of the Employee based solely on genuinely disputed claims. Therefore, the Employee/Employee's attorney must serve the Employer and Insurer with a Request for Certification of Dispute.

If the Department of Labor & Industry does not issue a decision regarding the dispute within 30 days, the dispute will be certified, so long as:

- 1) The Insurer has not approved the benefits;
- 2) The Employee's treating provider has supplied the additional information requested by .... the Insurer for their decision to either approve or deny; and
- 3) The Insurer had at least 7 days to review the additional information provided.

For a non-emergency surgery, if the Employer and Insurer requested a second opinion or an IME opinion, the dispute will be certified 45 days following a written request if, 1-3 are met above.

If the Employee's attorney claims attorney's fees, they must file a Statement of Attorney Fees and send a copy of the same to the Employer and Insurer and their attorney.

Additionally, under Minn. Stat. § 176.135, subd. 1, if an item is customized specifically for the Employee, then it is considered the "property" of the injured worker. These can include items such as glasses, artificial lenses, orthotics, canes or crutches, hearing aids, and wheelchairs.

#### **NON-EMERGENCY SURGERY & SECOND OPINIONS**

If a request is received for a non-emergency surgery by the Employer and/or Insurer, there are some important deadlines to keep in mind. If the Employer and/or Insurer receives a request for non-emergency surgery, the Employer and Insurer must respond in writing within 7 calendar days after receiving the request from the health care provider or Employee. The Employer and Insurer must approve, deny, request additional information, request a second opinion, or request an IME. If the Employer and Insurer request a second opinion, the Employer and Insurer must notify the Employee and the health care provider of the request within 7 calendar days of the request. If the Employer and Insurer deny authorization within 7 working days of receiving the second opinion, the health care provider can elect to perform the surgery subject to determination of compensability by the Commissioner or Compensation Judge.

Takeaway: When Employers and/or Insurers receive a surgical request, even if it is a verbal request, they must act immediately to either approve, deny, request additional information, or

request an IME.

### **NOID CONFERENCES**

Changes have been made under Minn. Stat. § 176.239, subd. 6 regarding the scope of administrative decisions and subd. 7 regarding interim administrative decisions.

As of August 1, 2023, only reasons specifically specified on the NOID shall provide a basis for discontinuance, unless the parties agree otherwise. Therefore, this change allows for the Employer and Insurer to submit their own exhibits that support the basis for the discontinuance at .239 Administrative Conferences. However, the Employer and Insurer cannot argue a new basis for discontinuance. They must stick to the reason outlined within the NOID.

### **CLAIM PETITIONS**

Minn. Stat. § 176.291 now provides that a Claim Petition must include:

- Copies of written medical reports or medical records that support each claim asserted;
- Names and addresses of witnesses to be called in support of each injury and claim; and
- The nature and extent of each claim.

Incomplete Claim Petitions can be stricken or even dismissed within 14 days of a request by a party if it does not include the above information. Under Minn. Stat. § 176.305, subd. 4, the Employee has 30 days to correct a deficient Claim Petition. If a case is stricken from the court calendar for 180 days or more without corrective action by the Employee, the Compensation Judge may dismiss the case.

### **ANSWERS TO CLAIM PETITIONS**

Per Minn. Stat. § 176.331, if an Answer is not filed as required, the Office of Administrative Hearings will now set the matter for an immediate Pretrial Conference and a Hearing. This change adds the Pretrial Conference.

The party that failed to file an Answer (Employer and/or Insurer) or appear at a Pretrial Conference can still appear at the Hearing.

*The following changes to the Minnesota Workers' Compensation Act went into effect on October 1, 2023:*

### **PPD SCHEDULES**

For injury dates on or after October 1, 2023, PPD benefits will increase substantially. Please click [here](#) for a link to a table specifying the increases.

Of note, during the 2026 legislative session and every “even year” thereafter, the Workers' Compensation Advisory Council (WCAC) must consider whether the PPD scheduled is “reasonable.”

### **FEE SCHEDULE – HOSPITAL OUTPATIENT SERVICES**

Also beginning on October 1, 2023, the Commissioner will adjust the Hospital Outpatient Fee Schedule (HOFS) conversion factors. These are multiplied by the relative weight of a procedure to determine the standardized outpatient fees.

- For services effective in 2023: 3% overall reduction in total payments for hospital .....outpatient services.
- For services effective in 2024: 3% overall reduction in total payments for hospital .....outpatient services.
- For services effective in 2025: 4% overall reduction in total payments for hospital .....outpatient services

Outpatient fees are still paid at the fee scheduled amount even if the actual charges are less.

## **PTSD**

There is an entirely new article regarding PTSD. The Commissioner is planning to conduct a study to identify changes that can improve the experiences and outcomes of employees with work-related PTSD. This will include:

- Identifying and studying best practices and models used in other jurisdictions to prevent, ...detect, and treat PTSD effectively.
- Considering the list of occupations subject to the “rebuttal presumption.”

Moving forward, Public Employees Retirement Association (PERA) and other related agencies will have to comply with this study. The Commissioner will then report its results to the WCAC and any relevant individuals by August 1, 2025. The Commissioner may contract with a third party and is exempt from state procurement laws and procedures. They will be given \$500,000.00 to complete this.

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