

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Amendments of the Rules Relating to Workers' Compensation Rules Of Practice

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Commissioner's intent to amend the above-entitled rule was published in the State Register on February 13, 1989 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on February 10, 1989. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received by the agency.

No submissions or comments on the rule were received by the agency. No requests for notice of submission to the attorney general were received by the agency.

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rules identified as Minn. Rules Parts 5220.2690 and 5220. 2840 are amended this 17th day of March 1989, pursuant to authority vested in me by Minnesota Statutes, sections 175.17, 176.83 and 176.129.

Ken Peterson
Commissioner

Speed Letter®

To Christie Eller
AAA- 515 Transportation

From WR Howard AG's office
520 Lafayette Rd
St Paul

Subject Dept of L+I Rules

—No. 9 & 10 FOLD

MESSAGE

Enclosed please the Commissioners order Adopting the dept rules. If you have further question please call me

Date 4/10/89 Signed WR Howard

REPLY

Kati
original for Rule file
rule already approved based on fax copy

—No. 9 FOLD
—No. 10 FOLD

Date Signed

WilsonJones
GRAYLINE FORM 44-902 3-PART
©1983 • PRINTED IN U.S.A.

RECIPIENT—RETAIN WHITE COPY, RETURN PINK COPY

1184

CBE

RULE REVIEW CHECKLIST

File No. 1581 Docket No. 050039.0600

DATE RECEIVED 3-22-89 ADOPTED W/O HEARING X

REVIEW DATE 4-5-89 EMERGENCY RULE _____

DUE DATE 4-10-89 REVISOR APPROVED _____

APPROVED 4-10-89 REVISOR DISAPPROVED _____

DISAPPROVED _____ FILED W/SEC. OF STATE _____

WITHDRAWN _____ RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
10/17/88 Date published in State Register
none Comments

_____ ~~Petition for Adoption of a Rule (if applicable)~~

✓ ~~Board's Authorizing Resolution~~
~~yes~~ ~~Date adopted~~

✓ Proposed Rule
yes Revisor's Certificate

_____ Notice of Intent to Adopt Rule
175.17, 176.83, 176.129 Statutory Authority
yes Small Business Statement
N/A Expenditure of public money statement
yes Signature

✓ Statement of Need and Reasonableness (if applicable)
NO Small Business Statement
N/A Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
2/10/89 Date (30)/25 days before adoption
yes Notice attached
yes Copy of rule or summary attached

✓ Publication in State Register
2/13/89 Date (30)/25 days before adoption

_____ 180-day deadline from:
N/A Effective date of law requiring rule (14.12) (both rules)
3/15/89 end of comment period (§ 14.26) (rules without hearing)
_____ ~~effective date of statutory authority (§ 14.29)~~ (emergency rules)

_____ ~~Resolution Adopting~~
_____ ~~Date adopted~~

✓ Findings of Fact, Conclusions & Order Adopting
3/14/89 Date

_____ ~~Written requests, submissions or comments~~

✓ Declaration of attorney
W. Howard Name of SAAG representing agency

_____ ~~Notice of Submission to Atty. Gen. (if applicable)~~

_____ ~~Aff. of Mailing Notice to Atty. Gen. (if applicable)~~

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : April 12, 1989

TO : WILLIAM R. HOWARD
Assistant Attorney General

FROM : CHRISTIE B. ELLER
Assistant Attorney General

PHONE : 6-9421

SUBJECT : In the Matter of the Adopted Permanent Rules Relating to Workers' Compensation Rules of Practice

The above-referenced rule has been approved as to its legality by the Attorney General on April 10, 1989.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accoradance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

CBE:klk
Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

William Brown
Chief Administrative Law Judge
Office of Administrative Hearings

Department of Labor and Industry

Adopted Permanent Rules Relating to Workers' Compensation Rules of Practice

Rules as Adopted

5220.2690 SUBROGATION INTEREST IN THIRD-PARTY RECOVERY.

Subpart 1. [Unchanged.]

Subp. 2. **Stipulated agreement.** Where all of the parties have reached agreement with respect to the subrogation interest, a stipulated agreement concerning that interest may be submitted as provided in Minnesota Statutes, section 176.521.

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:

(1) information identifying both the district court action if any and the workers' compensation claim involved;

(2) the total proceeds of the third-party settlement or award;

(3) the amount of legal fees and costs of the third-party claim;

(4) the subrogation interest of the employer itemized by type of benefits paid such as but not limited to:

(a) temporary total disability;

(b) temporary partial disability;

(c) permanent total disability;

(d) permanent partial disability;

(e) medical expenses where Minnesota Statutes, section 176.061, subdivision 7, claim was not made; and

(f) other;

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

B. The petitioner shall serve a copy of the petition and attachments on all parties to both the third-party action and the workers' compensation proceeding. Notice to the special compensation fund shall be given where a subrogation interest based on payments made pursuant to Minnesota Statutes, section 176.183 or potential interest under Minnesota Statutes, section 176.131 is known.

C. The original petition, together with a copy of the district court order or stipulation for settlement and corresponding order for dismissal or other documentary evidence reflecting the nature and extent of the resolution in district court must be filed with the division with proof of service as required in item B.

D. Upon receipt of the petition, the division will issue an order containing the following:

(1) information identifying both the district court action if any and the workers' compensation claim involved;

(2) the information upon which the subrogation order is based;

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

(4) an explanation of the effect of the credit upon future benefit entitlement.

The order will be served on all parties and will contain notice of the parties' right to appeal the order within 30 days of its service.

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

Subp. 4. **Appeal of order.** A party may appeal the order by filing a written appeal with the division and serving it on all parties within 30 days of the service of the order. The appeal must contain a detailed statement explaining the factual or

legal basis for the appeal and include any documentation supporting the appeal.

Upon receipt of a timely appeal, the matter will be referred to a settlement judge for a settlement conference to resolve the issues by agreement.

If agreement is not reached at the settlement conference but the parties agree to a stipulated set of facts, the settlement judge will rule on the subrogation interest under Minnesota Statutes, section 176.322. The determination is appealable as provided in Minnesota Statutes, section 176.322.

If agreement is not reached at the settlement conference and facts remain in dispute, the matter will be certified to the office for hearing.

5220.2840 FAILURE TO MAKE PAYMENT 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.

Subp. 2. **Basis.** A penalty will be assessed under Minnesota Statutes, section 176.129, subdivision 10, where either:

A. the completed assessment form and payment of the special compensation fund assessment; or

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, 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; or

(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; or

(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; or

B. $500, whichever is greater.

Subp. 4. **Payable to.** Both the assessment amount and any penalty due under this part are payable to the special compensation fund.

Subp. 5. **Continued nonpayment.** If the insurer penalized does not make payment within six months of the due date, the fund director shall refer the file to the Department of Commerce for consideration of license or permit revocation.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

APR 12 1989

Joan Anderson Growe
Secretary of State

10:10 AM

JH

APPROVED AS TO FORM AND LEGALITY

March 10 19 89

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Christie B Eller
ASSISTANT ATTORNEY GENERAL

Department of Labor and Industry

Workers' Compensation Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Amendment to Rules Relating to Workers' Compensation; Rules of Practice.

NOTICE IS HEREBY GIVEN that the State Department of Labor and Industry is seeking information or opinions from sources outside the agency in preparing to modify proposed amendment to rules relating to Workers' Compensation Rules of Practice published at 12 SR 1182 on December 7, 1987. The adoption of the rule is authorized by *Minnesota Statute* 176.17 (2); 176.83, subd. 1 and 15; and 176.129. subd. 10 which permit the agency to amend rules to implement *Minnesota Statutes* § 176.061 on third party liability, adopt rules governing practice, prescribe the forms to be used by persons subject to the provisions, and to prescribe the manner of payment of and impose a penalty for nonpayment of the Special Compensation Fund's assessment under *Minnesota Statutes* § 176.129, subd. 10.

The State Department of Labor and Industry requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Ken Peterson
Commissioner
Department of Labor and Industry
443 Lafayette Road
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone at 296-8726 and in person at the above address.

All statements of information and opinions shall be accepted until November 16, 1988.

Dated: 10 October 1988

Ken Peterson
Commissioner

Polk County Law Library

Notice of Filing Fee Increase

NOTICE IS HEREBY GIVEN that the Polk County Law Library Board of Trustees, with the confirmation of the Polk County Board of Commissioners, have voted an increase in the law library filing fee to $5.00 per case for petty misdemeanors and $7.50 per case for criminal, civil (including conciliation), and family court matters effective October 1, 1988. The law library filing fee for probate matters remains at $5.00.

Office of the Secretary of State

Notice of Vacancies in Multi-Member State Agencies

NOTICE IS HEREBY GIVEN to the public that vacancies have occurred in multi-member state agencies, pursuant to *Minnesota Statutes* 15.0597. subdivision 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul, MN 55155-1299; (612) 296-2805. Specific information about these vacancies may be obtained from the agencies listed below. The application deadline is November 8, 1988.

MN ZOOLOGICAL BOARD

1 member — to be appointed by the MN Zoological Board.

MN ACADEMIC EXCELLENCE FOUNDATION

1 representative of education group — non-metro, minorities encouraged to apply.

ADVISORY TASK FORCE ON MENTAL RETARDATION AND RELATED CONDITIONS

21 members. see description of advisory task force.

Department of Labor and Industry

Proposed Permanent Rules Relating to Workers' Compensation Rules of Practice

Rules as Proposed

5220.2690 SUBROGATION INTEREST IN THIRD-PARTY RECOVERY.

Subpart 1. [Unchanged.]

Subp. 2. **Subrogation information** Stipulated agreement. ~~The parties shall furnish the division with the information necessary to issue its order determining the subrogation rights of the insurer, and any credit to which the insurer may be entitled against compensation liability. The division must serve the subrogation order on the parties.~~ Where all of the parties have reached agreement with respect to the subrogation interest, a stipulated agreement concerning that interest may be submitted as provided in Minnesota Statutes, section 176.521.

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:

(1) information identifying both the district court action if any and the workers' compensation claim involved;

(2) the total proceeds of the third-party settlement or award;

(3) the amount of legal fees and costs of the third-party claim;

(4) the subrogation interest of the employer itemized by type of benefits paid such as but not limited to:

(a) temporary total disability;

(b) temporary partial disability;

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(c) permanent total disability;

(d) permanent partial disability;

(e) medical expenses where Minnesota Statutes, section 176.061, subdivision 7, claim was not made; and

(f) other;

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

B. The petitioner shall serve a copy of the petition and attachments on all parties to both the third-party action and the workers' compensation proceeding. Notice to the special compensation fund shall be given where a subrogation interest based on payments made pursuant to Minnesota Statutes, section 176.183 or potential interest under Minnesota Statutes, section 176.131 is known.

C. The original petition, together with a copy of the district court order or stipulation for settlement and corresponding order for dismissal or other documentary evidence reflecting the nature and extent of the resolution in district court must be filed with the division with proof of service as required in item B.

D. Upon receipt of the petition, the division will issue an order containing the following:

(1) information identifying both the district court action if any and the workers' compensation claim involved;

(2) the information upon which the subrogation order is based;

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

(4) an explanation of the effect of the credit upon future benefit entitlement.

The order will be served on all parties and will contain notice of the parties' right to appeal the order within 30 days of its service.

Approved
by Revisor _____

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

Subp. 4. **Appeal of order.** A party may appeal the order by filing a written appeal with the division and serving it on all parties within 30 days of the service of the order. The appeal must contain a detailed statement explaining the factual or legal basis for the appeal and include any documentation supporting the appeal.

Upon receipt of a timely appeal, the matter will be referred to a settlement judge for a settlement conference to resolve the issues by agreement.

If agreement is not reached at the settlement conference but the parties agree to a stipulated set of facts, the settlement judge will rule on the subrogation interest under Minnesota Statutes, section 176.322. The determination is appealable as provided in Minnesota Statutes, section 176.322.

If agreement is not reached at the settlement conference and facts remain in dispute, the matter will be certified to the office for hearing.

5220.2840 FAILURE TO MAKE PAYMENT TO SPECIAL FUND; PENALTY.

~~For payments under Minnesota Statutes, section 176.129, the original payment notice will give warning that failure to pay by the due date without requesting an extension or showing good cause will result in a penalty.~~

~~Within 30 working days after the due date, the fund director must send notice of penalty by certified mail to those who have not responded to the original payment notice. Payment of the original amount due plus a fine of 15 percent of the amount due or $500, whichever is greater, must be made within 30 days of notice of penalty by the fund director or good cause must be shown, or a request for hearing must be filed with the division.~~

~~If the insurer penalized does not make payment within six months of the original payment notice, the fund director will refer the file to the department of commerce for consideration~~

Approved by Revisor _____

~~of license or permit revocation.~~

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.

Subp. 2. **Basis.** A penalty will be assessed under Minnesota Statutes, section 176.129, subdivision 10, where either:

A. the completed assessment form and payment of the special compensation fund assessment; or

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, 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; or

(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; or

(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

Approved by Revisor _____

after the due date; or

B. $500, whichever is greater.

Subp. 4. **Payable to.** Both the assessment amount and any penalty due under this part are payable to the special compensation fund.

Subp. 5. **Continued nonpayment.** If the insurer penalized does not make payment within six months of the due date, the fund director shall refer the file to the Department of Commerce for consideration of license or permit revocation.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Workers' Compensation Rules of Practice

AGENCY: Department of Labor and Industry

MINNESOTA RULES: Chapter 5220

The attached rules are approved for publication
in the State Register

John C. Fuller
Assistant Deputy Revisor

DEPARTMENT OF LABOR AND INDUSTRY

Proposed Permanent Rules Relating to Workers' Compensation; Rules of Practice

Notice of Intent to Amend Rules Without a Public Hearing

Notice is hereby given that the State Department of Labor and Industry, Workers' Compensation Division, intends to adopt the above entitled amendments to Minnesota Rules, parts 5220.2500 to 5220.5000 without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rules is contained in Minnesota Statutes Section 175.17 (2); Section 176.83, subd. 1 and 15; and Section 176.129, subd. 10.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule with the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Ken Peterson
Commissioner, Department of Labor and Industry
443 Lafayette Road
St. Paul, Minnesota 55101
(612) 296-2342

The proposed amendments may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed language.

The text of the proposed amendments follows this notice in the State Register. It sets out the procedure for handling the issuance of third-party subrogation orders and revises the penalty for nonpayment of the Special Compensation Fund assessment.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendment has been prepared and is available from the Commissioner upon request.

The Commissioner has determined that these rules do not have impact on small business directly. The duties contained in the rules are imposed on self-insured employers which are, by definition, not small businesses and insurers, which are also not small businesses.

Upon adoption of the amendments without a public hearing the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to the Commissioner.

Dated this 25th

Day of January, 1989.

Ken Peterson, Commissioner
Department of Labor and Industry

(F)

STATE OF MINNESOTA
Department of Labor and Industry
Workers' Compensation Division

In the Matter of the Proposed Amendment to Rules of the State Department of Labor and Industry Governing Workers' Compensation; Division Rules of Practice.

STATEMENT OF NEED AND REASONABLENESS

The agency has become aware of the need to amend several of its Rules of Practice through recent events occurring in connection therewith.

On December 1, 1987 and December 8, 1987 respectively the Workers' Compensation Court of Appeals issued decisions in the cases of James Pastor v. National School Studios and Frank DeMars v. Ramsey County. In those Decisions the Workers' Compensation Court of Appeals remanded orders of the Workers' Compensation Division's Subrogation Manager to the Division for further information and procedures in accordance with their opinions. In Pastor the Court states:

> "There must be opportunity provided for a factual hearing of some sort. The parties must provide information as to the third-party settlement, the Court's order thereon, if any, the documents' from the District Court showing what action has been taken therein, if any, or if the matter remains pending therein."

The procedures set out in the proposed amendment to Minn. Rule Part 5220.2690 have been developed in response to the Court's concerns.

With respect to Minn. Rule Part 5220.2840 there have been recent challenges to penalties assessed under the current rule. Because the statutory provision authorizing the penalty envisions that assessment payments be made "in the manner prescribed by the commissioner" and allows for discretion on the part of the Commissioner as to the amount assessed, the Department has determined that the procedure should be set out, including the basis for determining a penalty amount less than 15 percent. The amendment to Part 5220.2840 is proposed to deal with these concerns.

MEM/kh
1/89

A. The proposed project must substantially consist of residential housing and other housing related services such as community spaces or parking facilities, with at least 75 percent of the units rented to or cooperatively owned by low-income persons and families.

B. The application must include a comprehensive plan for the development and management of housing for low-income persons and document the ability of the applicant to develop and maintain that housing for a period of time specified by the agency. At a minimum, this plan must include:

(1) documentation of a need for the type of housing in the proposed geographic area;

(2) a description of the applicants' goals and objectives in meeting the area's need for the type of housing;

(3) a detailed description of how the housing will be developed and managed, including:

(a) a description of the proposed site for the housing;

(b) preliminary architectural plans for the development;

(c) qualifications of the development and management staff; and

(d) a proposed tenant selection plan;

(4) a detailed budget for the development of the proposed housing showing all development costs and the sources of funds to pay them;

(5) a detailed budget for the operation of the housing showing all anticipated operating costs and the proposed rents and other income; and

(6) documentation of the experience and fiscal responsibility and capability of the applicant or fiscal agent of the applicant in developing similar housing.

4900.1923 ELIGIBLE APPLICANTS.

To be eligible for selection as a recipient of a grant or loan under the program, an applicant must be an individual, a nonprofit entity, a for profit entity, a cooperative housing corporation, a Minnesota city, a joint powers board established by two or more cities, or a Minnesota housing and redevelopment authority created under *Minnesota Statutes*, sections 462.415 to 462.705, with the authority to enter into any loan or grant documents that may be required by the agency.

4900.1924 SELECTION CRITERIA.

The agency shall take the following criteria into consideration when determining whether an application and applicant will be selected for a grant or loan under the program:

A. the prior experience of the applicant in development and managing similar residential housing;

B. the extent to which grant funds are combined with other funds from private or public sources to make the development economically feasible;

C. the ability of the applicant to proceed expeditiously with the development;

D. the documented need for this type of residential housing in the proposed geographic area;

E. the cost and quality of the proposed housing;

F. the extent to which the amount of rent to be charged is less than 30 percent of the income of the low-income person leasing the housing unit;

G. the geographic area to be serviced, to the end that a reasonable distribution of low-income housing can be achieved; and

H. the extent of community support for this type of development.

Department of Labor and Industry

Proposed Permanent Rules Relating to Workers' Compensation Rules of Practice

Notice of Intent to Amend Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Labor and Industry, Workers' Compensation Division, intends to adopt the above entitled amendments to *Minnesota Rules*, parts 5220.2500 to 5220.5000 without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rules is contained in *Minnesota Statutes* Section 175.17 (2); Section 176.83, subd. 1 and 15; and Section 176.129, subd. 10.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Ken Peterson
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The Commissioner has determined that these rules do not have impact on small business directly. The duties contained in the rules are imposed on self-insured employers which are, by definition, not small businesses and insurers, which are also not small businesses.

Upon adoption of the amendments without a public hearing the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission of this material to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to the Commissioner.

Dated: 25 January 1989

Ken Peterson, Commissioner
Department of Labor and Industry

Rules as Proposed

5220.2690 SUBROGATION INTEREST IN THIRD-PARTY RECOVERY.

Subpart 1. [Unchanged.]

Subp. 2. ~~**Subrogation information**~~ Stipulated agreement. ~~The parties shall furnish the division with the information necessary to issue its order determining the subrogation rights of the insurer, and any credit to which the insurer may be entitled against compensation liability. The division must serve the subrogation order on the parties.~~ Where all of the parties have reached agreement with respect to the subrogation interest, a stipulated agreement concerning that interest may be submitted as provided in *Minnesota Statutes*, section 176.521.

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:

(1) information identifying both the district court action if any and the workers' compensation claim involved;

(2) the total proceeds of the third-party settlement or award;

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

(3) the amount of legal fees and costs of the third-party claim;

(4) the subrogation interest of the employer itemized by type of benefits paid such as but not limited to:

(a) temporary total disability;

(b) temporary partial disability;

(c) permanent total disability;

(d) permanent partial disability;

(e) medical expenses where *Minnesota Statutes*, section 176.061, subdivision 7, claim was not made; and

(f) other;

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

B. The petitioner shall serve a copy of the petition and attachments on all parties to both the third-party action and the workers' compensation proceeding. Notice to the special compensation fund shall be given where a subrogation interest based on payments made pursuant to *Minnesota Statutes*, section 176.183 or potential interest under *Minnesota Statutes*, section 176.131 is known.

C. The original petition, together with a copy of the district court order or stipulation for settlement and corresponding order for dismissal or other documentary evidence reflecting the nature and extent of the resolution in district court must be filed with the division with proof of service as required in item B.

D. Upon receipt of the petition, the division will issue an order containing the following:

(1) information identifying both the district court action if any and the workers' compensation claim involved;

(2) the information upon which the subrogation order is based;

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

(4) an explanation of the effect of the credit upon future benefit entitlement.

The order will be served on all parties and will contain notice of the parties' right to appeal the order within 30 days of its service.

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

Subp. 4. **Appeal of order.** A party may appeal the order by filing a written appeal with the division and serving it on all parties within 30 days of the service of the order. The appeal must contain a detailed statement explaining the factual or legal basis for the appeal and include any documentation supporting the appeal.

Upon receipt of a timely appeal, the matter will be referred to a settlement judge for a settlement conference to resolve the issues by agreement.

If agreement is not reached at the settlement conference but the parties agree to a stipulated set of facts, the settlement judge will rule on the subrogation interest under *Minnesota Statutes*, section 176.322. The determination is appealable as provided in *Minnesota Statutes*, section 176.322.

If agreement is not reached at the settlement conference and facts remain in dispute, the matter will be certified to the office for hearing.

5220.2840 FAILURE TO MAKE PAYMENT TO SPECIAL FUND; PENALTY.

~~For payments under *Minnesota Statutes*, section 176.129, the original payment notice will give warning that failure to pay by the due date without requesting an extension or showing good cause will result in a penalty.~~

~~Within 30 working days after the due date, the fund director must send notice of penalty by certified mail to those who have not responded to the original payment notice. Payment of the original amount due plus a fine of 15 percent of the amount due or $500, whichever is greater, must be made within 30 days of notice of penalty by the fund director or good cause must be shown, or a request for hearing must be filed with the division.~~

~~If the insurer penalized does not make payment within six months of the original payment notice, the fund director will refer the file to the department of commerce for consideration of license or permit revocation.~~

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.

Subp. 2. **Basis.** A penalty will be assessed under *Minnesota Statutes,* section 176.129, subdivision 10, where either:

A. the completed assessment form and payment of the special compensation fund assessment; or

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, 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; or

(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; or

(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; or

B. $500, whichever is greater.

Subp. 4. **Payable to.** Both the assessment amount and any penalty due under this part are payable to the special compensation fund.

Subp. 5. **Continued nonpayment.** If the insurer penalized does not make payment within six months of the due date, the fund director shall refer the file to the Department of Commerce for consideration of license or permit revocation.

Board of Optometry

Second Notice of Intent to Amend and Adopt Rules Without a Public Hearing in the Matter of the Proposed Adoption of the Amendment of the Rules Relating to License Renewal Fees

In order to comply with the requirements of *Minnesota Statutes,* section 16A.128, subdivision 2a, and section 14.22, the Minnesota Board of Optometry hereby republishes the Notice of Intent to Amend and Adopt Rules Without a Public Hearing, and the proposed rules regarding license renewal fees. The Notice and the copy of the rules, which appeared at 13 *State Register* 1368 (December 5, 1988) are incorporated herein by reference.

Dated: 27 January 1989

Burton H. Skuza, O.D.
Executive Director
Board of Optometry

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

(K)

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Amendments of the Rules Relating to Workers' Compensation Rules Of Practice

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Commissioner's intent to amend the above-entitled rule was published in the State Register on February 13, 1989 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on February 10, 1989. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received by the agency.

No submissions or comments on the rule were received by the agency. No requests for notice of submission to the attorney general were received by the agency.

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rules identified as Minn. Rules Parts 5220.2690 and 5220. 2840 are amended this 14th day of March 1989, pursuant to authority vested in me by Minnesota Statutes, sections 175.17, 176.83 and 176.129.

Ken Peterson
Commissioner

MINNESOTA ATTORNEY GENERAL'S OFFICE

520 Lafayette Road

TO: Christy Eller Asst Atty General
515 Transportation Bldg

FROM: Wm R Hawver Suite 200 520 Lafayette Rd

Number of Pages: (including this page) 2

* *

OUR FAX MACHINE: (612) 296-6596

* *

If there are problems receiving this transmission,
PLEASE CALL: WR Hawver AT (612) 296-2106

Original order
to be substituted in
file when received

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Amendments of the Rules Relating to Workers' Compensation Rules Of Practice

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Commissioner's intent to amend the above-entitled rule was published in the State Register on February 13, 1989 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on February 10, 1989. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received by the agency.

No submissions or comments on the rule were received by the agency. No requests for notice of submission to the attorney general were received by the agency.

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rules identified as Minn. Rules Parts 5220.2690 and 5220. 2840 are amended this 17th day of March 1989, pursuant to authority vested in me by Minnesota Statutes, sections 175.17, 176.83 and 176.129.

Ken Peterson
Commissioner

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY

RECOMMENDED DECLARATION OF COUNSEL

In the Matter of the Amendment of the Rule Relating to Workers' Compensation Rules of Practice

DECLARATION OF COUNSEL

I, William R. Howard, Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General bill purposes, the four-digit docket code is 60.8T63.0600.

William R. Howard

WILLIAM R. HOWARD
Assistant Attorney General

Dated: March 23, 1989

(G)

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO AMEND RULES WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST.

In the Matter of the Proposed Amendment to Rules Relating to Workers' Compensation; Rules of Practice

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO AMEND A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Debra Caswell, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state Workers' Compensation/Rehabilitation rulemaking mailing list is accurate, complete, and current as of this 10th day of February, 1989.

That on the 10th day of Feb, 1989, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Amend A Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Debra L. Caswell

Subscribed and sworn before me
this 10th day of February, 1989

_____

Minnesota
Department of Labor and Industry

Labor and Industry Building
443 Lafayette Road
St. Paul, Minnesota 55101
(612) 296-6107

Telecommunication Device
for the Deaf (612) 297-4198

February 10, 1989

Dear Sir or Madam:

Enclosed is the Notice of Intent to Amend Rules Without a Public Hearing for the Workers' Compensation Division Rules of Practice. These rules will be published in the State Register on February 13, 1989.

A copy of the proposed amendments is available upon request from Debbie Caswell at (612) 296-6889.

Sincerely,

WORKERS' COMPENSATION DIVISION
LEGAL SERVICES

Debbie Caswell

Debbie Caswell
Secretary

DC/cm

Department of Labor and Industry

Proposed Permanent Rules Relating to Workers' Compensation Rules of Practice

Rules as Proposed

5220.2690 SUBROGATION INTEREST IN THIRD-PARTY RECOVERY.

Subpart 1. [Unchanged.]

Subp. 2. **~~Subrogation information~~** Stipulated agreement. ~~The parties shall furnish the division with the information necessary to issue its order determining the subrogation rights of the insurer, and any credit to which the insurer may be entitled against compensation liability. The division must serve the subrogation order on the parties.~~ Where all of the parties have reached agreement with respect to the subrogation interest, a stipulated agreement concerning that interest may be submitted as provided in Minnesota Statutes, section 176.521.

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:

(1) information identifying both the district court action if any and the workers' compensation claim involved;

(2) the total proceeds of the third-party settlement or award;

(3) the amount of legal fees and costs of the third-party claim;

(4) the subrogation interest of the employer itemized by type of benefits paid such as but not limited to:

(a) temporary total disability;

(b) temporary partial disability;

Approved by Revisor JCF

(c) permanent total disability;

(d) permanent partial disability;

(e) medical expenses where Minnesota Statutes, section 176.061, subdivision 7, claim was not made; and

(f) other;

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

B. The petitioner shall serve a copy of the petition and attachments on all parties to both the third-party action and the workers' compensation proceeding. Notice to the special compensation fund shall be given where a subrogation interest based on payments made pursuant to Minnesota Statutes, section 176.183 or potential interest under Minnesota Statutes, section 176.131 is known.

C. The original petition, together with a copy of the district court order or stipulation for settlement and corresponding order for dismissal or other documentary evidence reflecting the nature and extent of the resolution in district court must be filed with the division with proof of service as required in item B.

D. Upon receipt of the petition, the division will issue an order containing the following:

(1) information identifying both the district court action if any and the workers' compensation claim involved;

(2) the information upon which the subrogation order is based;

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

(4) an explanation of the effect of the credit upon future benefit entitlement.

The order will be served on all parties and will contain notice of the parties' right to appeal the order within 30 days of its service.

Approved
by Revisor _____

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

Subp. 4. **Appeal of order.** A party may appeal the order by filing a written appeal with the division and serving it on all parties within 30 days of the service of the order. The appeal must contain a detailed statement explaining the factual or legal basis for the appeal and include any documentation supporting the appeal.

Upon receipt of a timely appeal, the matter will be referred to a settlement judge for a settlement conference to resolve the issues by agreement.

If agreement is not reached at the settlement conference but the parties agree to a stipulated set of facts, the settlement judge will rule on the subrogation interest under Minnesota Statutes, section 176.322. The determination is appealable as provided in Minnesota Statutes, section 176.322.

If agreement is not reached at the settlement conference and facts remain in dispute, the matter will be certified to the office for hearing.

5220.2840 FAILURE TO MAKE PAYMENT TO SPECIAL FUND; PENALTY.

~~For payments under Minnesota Statutes, section 176.129, the original payment notice will give warning that failure to pay by the due date without requesting an extension or showing good cause will result in a penalty.~~

~~Within 30 working days after the due date, the fund director must send notice of penalty by certified mail to those who have not responded to the original payment notice. Payment of the original amount due plus a fine of 15 percent of the amount due or $500, whichever is greater, must be made within 30 days of notice of penalty by the fund director or good cause must be shown, or a request for hearing must be filed with the division.~~

~~If the insurer penalized does not make payment within six months of the original payment notice, the fund director will refer the file to the department of commerce for consideration~~

Approved by Revisor _____

~~of license or permit revocation.~~

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.

Subp. 2. **Basis.** A penalty will be assessed under Minnesota Statutes, section 176.129, subdivision 10, where either:

A. the completed assessment form and payment of the special compensation fund assessment; or

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, 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; or

(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; or

(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

Approved by Revisor _____

after the due date; or

B. $500, whichever is greater.

Subp. 4. **Payable to.** Both the assessment amount and any penalty due under this part are payable to the special compensation fund.

Subp. 5. **Continued nonpayment.** If the insurer penalized does not make payment within six months of the due date, the fund director shall refer the file to the Department of Commerce for consideration of license or permit revocation.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Workers' Compensation Rules of Practice

AGENCY: Department of Labor and Industry

MINNESOTA RULES: Chapter 5220

The attached rules are approved for publication
in the State Register

John C. Fuller
Assistant Deputy Revisor

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : March 23, 1989

TO : MARTY CASSERLY
515 Transportation

FROM : WILLIAM R. HOWARD WRH
Assistant Attorney General

PHONE : 6-2106

SUBJECT :

RECEIVED
MAR 27 89 OK RMD
ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG.
ST. PAUL, MN 55155

Enclosed please find the signed Declaration and Amendments to Rules Relating to Workers' Compensation Rules of Practice. If you have any questions, feel free to call me.

WRH:gs
Enclosure
cc: Mary Miller
Compensation Attorney

SF-00006-05 (4/86)

DEPARTMENT : **LABOR AND INDUSTRY**

STATE OF MINNESOTA

Office Memorandum

DATE : March 15, 1989

TO : Bill Howard
Assistant Attorney General

FROM : Mary Miller
Compensation Attorney

PHONE : 296-8726

SUBJECT : **AMENDMENTS TO RULES RELATING TO WORKERS' COMPENSATION RULES OF PRACTICE**

Enclosed are the documents for your reviewing this matter in order to sign the Declaration of Counsel. I have labeled the items as they appear in Minnesota Rule Part 2010.0300 for your convenience. After signing the Declaration will you forward the package to Marty Casserly or return to us promptly so that we can.

Thank you for your prompt attention.

MM/kh