



May 2012

Minnesota Department of Labor and Industry

- 2 Register today – Summit focuses on current workers' compensation issues, solutions
- 2 From the *State Register*: Provider participation list available
- 3 2010 *Minnesota Workers' Compensation System Report* released
- 4 Study will analyze department's workers' compensation data
- 5 Compliance, Records and Training – What's in a name?
- 6 Fun facts about Compliance, Records and Training
- 6 Post office box change for workers' compensation legal material mail
- 7 CompScope report shows Minnesota's medical treatment price trends
- 8 VRU: Successful placement outcomes
- 10 More resources from DLI: newsletters, email lists
- 11 DLI review: Work comp medical payment denials, reductions
- 13 CompFact: Top five events leading to the most indemnity benefits
- 14 Basic Adjuster Training 2012: June 14 and 15, Oct. 30 and 31
- D-1 Court decisions: January through March 2012

Register today – Summit focuses on current workers' compensation issues, solutions

DLI review: Work comp medical payment denials, reductions

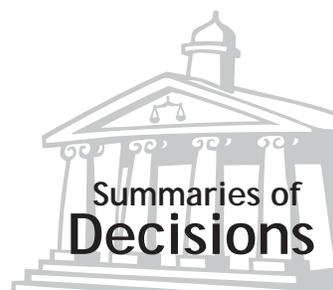
Court decisions: January through March 2012



2



11



D-1

Register today – Summit focuses on current workers' compensation issues, solutions

Time and space are running out! Be sure to register today for the 2012 Workers' Compensation Policy Summit: Working Together for a Better Minnesota, June 12 and 13, at Cragun's Conference Center, Brainerd, Minn.

The summit will feature general sessions and workshops that focus on current issues affecting the workers' compensation system and ways to improve processes and services that affect employers and injured workers. Topics to be addressed include: workplace violence prevention; medical costs; treatment of chronic pain; post-deployment stress; recent administrative and judicial decisions; and retraining initiatives.

The complete schedule, with topics and speakers listed, plus registration information is online at www.dli.mn.gov/Summit. Registration closes Fri., May 25.

New! Sponsorship opportunity available

New this year, the Department of Labor and Industry invites organizations to register as a sponsor to support this important conference. For only \$500, sponsor organization's name and/or logo will appear on sponsor signage throughout the conference area and in the conference program.



From the State Register

Provider participation list available

Minnesota Statutes § 256B.0644 and Minnesota Rules parts 5221.0500, subp. 1, and 9505.5200 to 9505.5240, also known as DHS "Rule 101," require health care providers that provide medical services to an injured worker under the workers' compensation law to participate in the Medical Assistance Program, the General Assistance Medical Care Program and the MinnesotaCare Program.

Notice is hereby given that the Minnesota Health Care Programs provider participation list for April 2012 is now available. The provider participation list is a compilation of health care providers that are in compliance with the Department of Human Services (DHS) Rule 101. If a provider's name is not on the list, DHS considers the provider noncompliant.

The list of providers is separated by provider type, each section is in alphabetical order by provider name and there is no additional information on the list other than the provider's name. This list is distributed on a quarterly basis to Minnesota Management and Budget, the Department of Labor and Industry, and the Department of Commerce. To obtain the list, call Julie Hervas, DHS Rule 101 specialist, at (651) 431-2707 or toll-free at 1-800-366-5411. You may fax requests to (651) 431-7462 or mail them to the Department of Human Services, P.O. Box 64987, St. Paul, MN 55164-0987.

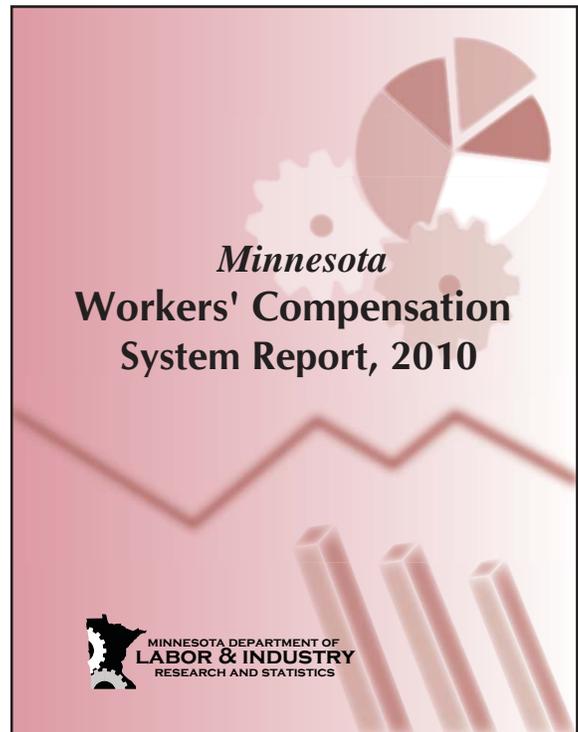


2010 *Minnesota Workers' Compensation System Report* released

By David Berry, Research and Statistics

The Department of Labor and Industry (DLI) has released its 2010 *Minnesota Workers' Compensation System Report*. The report is available at www.dli.mn.gov/Research.asp.¹ The report, part of an annual series, presents data from 1997 through 2010 about several aspects of Minnesota's workers' compensation system – claims, benefits and costs; vocational rehabilitation; and disputes and dispute resolution. These are some of the report's findings.

- The overall claim rate – the number of paid claims per 100 full-time-equivalent workers – declined from 8.7 to 4.9 from 1997 to 2010, a 43-percent decrease.
- The total cost of the workers' compensation system was an estimated \$1.25 per \$100 of payroll in 2010, 22 percent less than 1997 and below the previous low-point of \$1.31 for 2000. Total system cost for 2010 was an estimated \$1.3 billion.
- On a current-payment basis, medical benefits accounted for an estimated 35 percent of total system cost in 2010, followed by insurer expenses at 31 percent and indemnity benefits (cash benefits to injured workers or survivors) at 30 percent.
- Regarding benefit levels:
 - Medical benefits averaged \$5,500 per insured claim in 2009, and indemnity benefits, \$3,500. After adjusting for average wage growth, medical benefits per insured claim were 90 percent higher in 2009 than in 1997; indemnity benefits were 34 percent higher.
 - Stipulated benefits – benefits paid under an award on stipulation – rose 87 percent per paid indemnity claim from 1997 to 2010, after adjusting for average wage growth. (An award on stipulation usually occurs in a claim settlement.)
 - Relative to payroll, indemnity benefits were down 14 percent between 1997 and 2010, while medical benefits were about the same, reflecting the net effect of a falling claim rate and higher benefits per claim.
- Regarding vocational rehabilitation:
 - The vocational rehabilitation participation rate – the percentage of paid indemnity claims with a vocational rehabilitation plan filed – increased from 15 percent to 23 percent between 1997 and 2010.
 - The average cost of vocational rehabilitation services per participant was \$8,830 in 2010, a 25-percent increase from 1998 after adjusting for average wage growth. Vocational rehabilitation service costs accounted for an estimated 3.0 percent of total workers' compensation system cost for 2010.



¹The report is also available by calling (651) 284-5025. For alternative formats, call 1-800-342-5354 or TTY at (651) 297-4198.

- The percentage of vocational rehabilitation plans closed because of plan completion fell from 61 to 44 percent between 1998 and 2010; during the same period, the percentage of closures resulting from claim settlement or agreement of the parties increased from 36 to 50 percent.
- Regarding disputes and dispute resolution:
 - The percentage of filed indemnity claims with a dispute of any type rose from 15 percent to 21 percent from 1997 to 2010, a 37-percent increase.
 - The percentage of paid indemnity claims with any type of claimant attorney involvement rose from 17 percent to 24 percent from 1997 to 2010, a 41-percent increase. Claimant attorney fees account for an estimated 3.2 percent of total system cost.
 - The percentage of filed medical and vocational rehabilitation disputes that were certified by DLI dropped from 66 percent to 51 percent from 1999 to 2011. (In a medical or vocational rehabilitation dispute, before an attorney may charge for services, DLI must certify that a dispute exists and that informal intervention did not resolve the dispute.²) This resulted primarily from an increase in the percentage of disputes not certified because they were resolved.
 - From 2006 to 2011, the number of DLI mediations rose by 1,050 while the number of DLI administrative conferences fell by 230. This coincides with an increased DLI emphasis on mediation and other early dispute-resolution activities.

²Minnesota Statutes § 176.081, subd. 1(c).

Study will analyze department's workers' compensation data

Supports state's goals to assure public resources are managed efficiently, quality improved

The Department of Labor and Industry is taking the first step in using data analytics to gather and analyze workers' compensation data to identify ways to reduce medical costs.



**MINNESOTA DEPARTMENT OF
LABOR & INDUSTRY**
WORKERS' COMPENSATION

DLI is working with a third-party vendor that will capture and analyze data and reimbursement methods of other state and federal programs. Data captured will focus on specific treatments and categories of care including hospital care, outpatient surgery, anesthesia and implants. The vendor will look at how other third-party payers are working to control costs in these areas and will analyze the results of their efforts.

It is hoped the results of this study can be used to develop proposals to address the problem of medical costs in Minnesota's workers' compensation system.

Compliance Records and Training – What's in a name?

By Ralph Hapness, Supervisor, and Jessica Stimac, Director

The part of the Department of Labor and Industry work unit that manages workers' compensation compliance has undergone several name changes in the past few years – Compliance Services, Benefit Management and Resolution, Data Management and Training – and is now Compliance Records and Training. One thing that has remained constant, however, has been the focus of the unit, which is to monitor and enforce compliance with workers' compensation statutes and rules. This is accomplished through many methods, such as writing to the insurers to request forms and reports, seeking clarification of submissions, providing information to ensure correction when noncompliance is discovered and, finally, issuing penalties for noncompliance.

Compliance, Records and Training also provides training to stakeholders. For claims adjusters who have less than one year experience handling Minnesota workers' compensation claims, CRT conducts three two-day sessions each year of Basic Adjuster Training. For employers that would like to learn more about workers' compensation, the unit conducts a half-day seminar three times each year at St. Paul College. Customized training for employees, employers or insurers about workers' compensation can be arranged for groups of at least 20 individuals by contacting the training coordinator, Jim Vogel, at (651) 284-5265. More information is also available at www.dli.mn.gov/WC/Training.asp.

Compliance, Records and Training conducts database management of insurers/employers and the annual registration of rehabilitation providers and their firms. The work unit includes a medical policy specialist and a rehabilitation specialist who are responsible for stakeholder training, consultation about rule application and development of rules. If necessary, the specialists investigate stakeholder complaints about rehabilitation and health care providers.

By the numbers for fiscal-year 2011

- More than 10,000 requests for information were sent, including:
 - 6,079 requests for forms or reports;
 - 1,499 requests for Notice of Insurer's Primary Liability Determination (NOPLD) forms;
 - 2,273 requests for Interim Status Report (ISR) and Notice of Intention to Discontinue Workers' Compensation Benefits (NOID) forms;
 - 985 requests for Notice of Benefit Payment (NOBP) forms; and
 - 230 requests for reports to support a permanent partial disability (PPD) payment.

- More than 6,600 issues were addressed through written correspondence with stakeholders, including:
 - 338 involving the compensation rate;
 - 934 involving indemnity benefits paid incorrectly;
 - 1,527 involving PPD issues;
 - 374 involving the release of attorney fees; and
 - 433 involving problems with NOID forms, specifically those with Box 3 checked.

- Penalties assessed against the insurer, employer, health care provider or rehabilitation provider during fiscal-year 2011 included:
 - 611 for the late filing of the First Report of Injury (FROI) form;
 - 670 for late first payments;
 - 277 for late denials;



- 38 for prohibited practices; and
- 277 for “other” penalties, which may include late payments of ongoing benefits, late payments of stipulations for settlement/orders, failure to file required forms or late payment of PPD, among others.

Compliance, Records and Training staff members are always interested in answering stakeholder questions and helping to sort out unique or difficult situations with claims handling. During the past year, the compliance officers received more than 2,700 contacts for assistance and provided valuable information in their written requests. Despite the variations in the title of the unit, the dedication of the staff members of the unit to educating, assisting and monitoring stakeholders to ensure compliance with workers’ compensation statutes and rules has remained steady.

Fun facts about Compliance, Records and Training

2,622

Average number each month of First Report of Injury (FROI) reports coded for nature, part of body, source, event, occupation and business classification (131 a day)

1,074

Average number of copy file requests a month (54 a day)

219,714

Average number of pages scanned each month (10,986 a day)

591

Average number each month of phone calls made to obtain missing information or clarify information on data entry documents (29.5 a day)

30%

Percentage of First Report of Injury (FROI) forms received via electronic data interchange (EDI); the department currently has 33 EDI trading partners

38,853

Average number of documents indexed each month (1,943 a day)

12,520

The average number of documents data-entered each month (626 a day)

Post office box change for workers' compensation legal material mail

Effective immediately, all workers' compensation general mail and legal material mail should be sent to P.O. Box 64221, with a corresponding ZIP code of 55164-0221.

In August 2008, the Department of Labor and Industry (DLI) announced the use of post office boxes and corresponding ZIP codes. Of the six post office boxes itemized, two were for mail to the Special Compensation Fund, one was for mail to Copy File Review, one was for mail to the Vocational Rehabilitation unit and two were for workers' compensation mail. Workers' compensation general mail was to be sent to P.O. Box 64221 and workers' compensation legal material mail was to be sent to P.O. Box 64218.

Post office box 64218 will now be used for DLI's Construction Codes and Licensing Division's Electrical Inspections unit. Forms on DLI's website have been amended to reflect this change.

CompScope report shows Minnesota's medical treatment price trends

By Brian Zaidman, Research and Statistics

In March, the Workers' Compensation Research Institute (WCRI) released its most recent report about medical prices, *WCRI Medical Price Index for Workers' Compensation, Fourth Edition*. The study looks at professional medical services (services billed by physicians, chiropractors and physical therapists) delivered to injured workers in Minnesota and 24 other large states. The following is a summary of the price index trends for Minnesota; the full report is available for purchase from WCRI at www.wcrinet.org/studies/public/books/BMscope_multi12_MN_book.html.

WCRI is a nonprofit organization based in Cambridge, Mass., that conducts research about workers' compensation policy issues. Its WCRI medical price index methodology is based on a marketbasket of medical services most commonly used to treat injured workers.

WCRI uses data directly from insurers and self-insured employers about the amount paid for each medical service on a bill. Changes in price are measured while holding utilization constant. The WCRI marketbasket represents 87 percent of the professional services expenditures for the Minnesota claims available to WCRI. Professional services are further divided into eight categories: emergency services, evaluation and management, major radiology, minor radiology, neurological/neuromuscular testing, physical medicine, major surgery and pain management injections.

The report presents prices for 2002 through the first half of 2011. Minnesota's medical fee schedule changed on Oct. 1, 2010, updating to the 2009 Medicare relative value units and decreasing the conversion factor. Here is a summary of the Minnesota results.

- Overall, prices for professional services increased 21 percent from 2002 to 2011. This was the 11th lowest increase among the 25 states.



- Minnesota's overall marketbasket price for professional services in 2011 was 12 percent above the median, which was the 17th lowest.
- Prices for professional evaluation and management services (office visits) increased 41 percent from 2002 to 2011, although more than half this increase occurred in the past two years.
- Prices for professional surgery services increased by 15 percent from 2002 to 2009, but then decreased to 8 percent below the 2002 level in 2011.
- A similar pattern occurred for pain management injections, falling from 49 percent above the 2002 level in 2009 to 7 percent below the 2002 level in 2011.
- Minnesota's 2011 price for professional evaluation and management services was 28 percent above the median, the second-highest of the 25 states, while its price from professional major surgery was 30 percent below the median, the third-lowest.

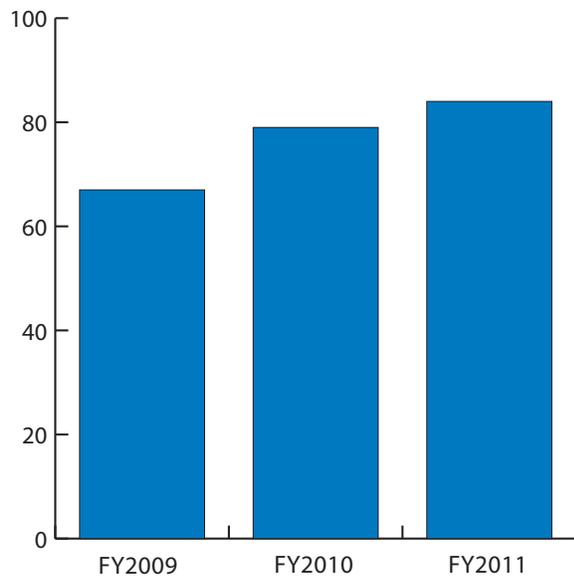
VRU: Successful placement outcomes

By Stacy Kerkow-Dohmen, Placement Coordinator, and Dee Torgerson, Director

The Department of Labor and Industry’s Vocational Rehabilitation unit (VRU) provides services to injured workers, predominantly those whose primary liability claims have been denied and are in litigation. Frequently, these injured workers are no longer able to return to their date-of-injury-employers and are in need of job placement assistance. VRU has in-house placement services provided by a team of professional staff members: two placement coordinators, three rehabilitation technicians and a vocational evaluator. They are located in the department’s Bemidji, Duluth, St. Cloud and St. Paul offices.

VRU in-house placement outcomes

Average number of injured workers who received in-house placement services each month



Outcomes			
	Fiscal-year 2010	Fiscal-year 2011	Fiscal-year 2012 to date*
Average number of days in placement	125	121	155
Average cost of placement services	\$1,124	\$1,016	\$986
Percent of date-of-injury wages restored	70%	74%	78%

*Fiscal-year 2012 includes data from July 2011 through February 2012

VRU placement team innovative, successful

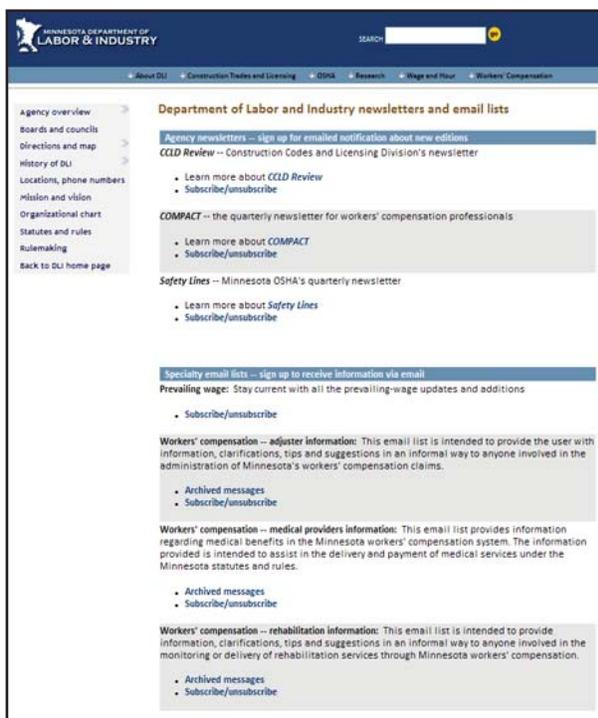
In today’s challenging labor market, one area remains constant: all job-seekers need support. The following are some recent examples of how VRU’s innovative placement team is always working toward successful outcomes and what is done to facilitate those successes.

- **VRU Job Club** is offered on the first Monday of each month. The agenda is always topical, relevant, thought-provoking and based on the needs of the injured workers in attendance. Injured workers have repeatedly said how helpful it is to know they are not the only one going through this and to realize the amount of resources available. Often, guest speakers are invited to share their expertise.
 - In the past year, VRU has hosted two human resource professionals who discussed general personnel information, resume and interviewing suggestions, and how to get along with a human resources office in a company an individual is very interested in becoming a part of.
 - Former Assistant Commissioner Gary Hall provided insight about the importance of diligent recordkeeping throughout the individual's claim, especially job logs.
 - One former injured worker who received VRU services became a job coach/placement specialist and has come back to VRU Job Club numerous times to offer insight, support and additional ideas to attendees.
 - A senior counselor with HIRED recently taught attendees how to provide excellent customer service, reduce life stress and find more happiness.
- VRU provides **a variety of job-seeking-skills** training, including completion of mock interviews to prepare, advise and support each injured worker. Recently, an individual who was admittedly nervous as he prepared for two interviews on the same day was able to spend time with VRU's placement team on the day of these interviews. After reviewing the video of his mock interview and receiving constructive feedback, he successfully completed both interviews later that day and was offered a new job earning \$22 an hour and located only 20 minutes from his home.
- **Computer training** is provided to injured workers individually or in small groups. Many injured workers seeking help have no experience using computers and now find themselves in situations where they cannot apply for jobs or use community resources without knowing how to use a computer, email and the Internet. VRU provides basic skill training to its clients and assists them in setting up an email account, accessing valuable Internet resources and applying for jobs online. One individual was convinced she had to attend a costly education program to learn how to use the computer; through VRU services, she learned keyboarding, emailing, Microsoft Word, tracking her schedule by use of Microsoft Outlook, Internet use and completion of online applications. She was very grateful to receive tailored services and, when she settled her claim, she was confident she could independently continue her search for work and market her new skills to potential employers.
- **Weekly job leads and coaching** are provided to all injured workers.
- The VRU placement team seeks out and encourages injured workers in its program to **attend various job fairs around the state**. A VRU staff member will meet the client at the job fair and provide coaching and support to assist them in exploring career options, finding job openings and successfully speaking with potential employers. Some individuals have been able to complete interviews at the job fairs and make successful networking connections. Recently, one of VRU's placement coordinators volunteered her expertise at a local job fair to provide assistance to all attendees in writing and critiquing their resumes.

- VRU is *a member of the Minnesota Business Leadership Network*, which provides unlimited opportunities to network, request tours and job shadow at member companies, as well as receive disability awareness training and access to a wealth of experience, knowledge and best practices related to the employment of people with disabilities. VRU also attends or participates in the group's annual training event.
- During *placement team staff meetings and VRU training sessions*, there are opportunities to learn best practices from industry leaders, program directors and innovative individuals who keep staff members on top of vocational rehabilitation's ever-changing world. VRU placement team staff members are also members of Minnesota Rehabilitation Association's Job Placement and Development professional organization where they participate in regional meetings and training sessions.
- VRU recently completed its *new vocational rehabilitation resource book*, a comprehensive manual to provide clients with resources, direction, support and the answers to a variety of questions.
- One of the new initiatives for VRU is *the use of virtual tools* for ongoing meetings, training and computer assistance for injured workers. VRU is in the beginning phases of implementing this exciting technology to help decrease staff member time and travel costs, allowing for more individuals to be served. The placement team will be using virtual meetings to provide one-on-one support to clients throughout the state.

More resources from DLI: newsletters, email lists

Besides *COMPACT*, the Minnesota Department of Labor and Industry (DLI) offers two other quarterly publications: *CCLD Review* and *Safety Lines*.



- ***CCLD Review*** is the newsletter from DLI's Construction Codes and Licensing Division. Its purpose is to promote safe, healthy work and living environments in Minnesota and to inform construction and code professionals about the purpose, plans and progress of the division. Learn more or subscribe at www.dli.mn.gov/CCLD/Review.asp.
- ***Safety Lines***, from Minnesota OSHA, promotes occupational safety and health, and informs readers of the purpose, plans and progress of Minnesota OSHA. Learn more or subscribe to the quarterly newsletter at www.dli.mn.gov/WC/SafetyLines.asp.

DLI also maintains four specialty email lists to which interested parties may subscribe:

- prevailing wage information;
- workers' compensation adjuster information;
- workers' compensation medical providers information; and
- workers' compensation rehabilitation information.

Learn more about each of DLI's specialty email lists, subscribe or review previously sent messages at www.dli.mn.gov/EmailLists.asp.

DLI review

Work comp medical payment denials, reductions

A review of Medical Request forms and complaints received by the Department of Labor and Industry (DLI) shows some workers' compensation payers are not providing the required specific information to health care providers and injured workers about why they have reduced or denied payment for a medical charge or service. Additionally, some payers have provided a reason that is not a legal basis to deny payment under the workers' compensation law.



Therefore, DLI intends to focus compliance efforts in the coming months on ensuring the explanation of benefits (EOB) sent to health care providers comply with applicable workers' compensation statutes and rules.

The department's goal is to reduce the number of disputes and complaints by ensuring health care providers and injured workers have a clear understanding of the legal basis for the payer's reduction or denial of payment. The legal requirements for payment of bills are discussed below.

Legal requirements

Legal requirements for payment of workers' compensation medical bills under Minnesota Statutes § 176.135, subd. 6 and Minnesota Rules 5221.0600 include the following.

- Within 30 calendar-days after receiving the bill and medical record or report substantiating the nature and necessity of a service being billed and its relationship to the work injury, the payer must pay the charge or any portion of the charge that is not denied.
- Legal bases to deny a charge are:
 1. the injury or condition is not compensable under the workers' compensation law;
 2. the charge or service is excessive under Minn. Stat. §§ 176.135 or 176.136, or Minn. R. 5221.0500;
 3. the charges are not submitted on the prescribed billing form;¹ and
 4. additional medical records or reports are required to substantiate the nature of the charge and its relationship to the work injury.

If payment is denied under clauses 3 or 4, the charges must be reconsidered within 30 days of receipt of the correct billing form or requested medical records or reports.

- Within the 30 days, the payer must provide written notice to the employee and health care provider explaining the basis for denial of all or part of a charge.²
- The written notice must include the following.
 - The basis for denial or reduction of *each* charge and the *specific amounts being denied or reduced for each charge* that meets the conditions of an excessive or noncompensable charge under Minn. R. 5221.0500, subparts 1 and 2, or Minn. Stat. § 176.136, subd. 2.
 - *The specific rule, part and subpart that supports the payer’s denial or reduction* of a charge. A general statement that a service or charge “exceeds the fee schedule or treatment parameters” is not adequate notification. Links to the statutes and the rule parts and subparts that must be cited to support denial or reduction of each charge are on the DLI website at www.dli.mn.gov/WC/835Main.asp.
- A payer’s electronic written notice (EOB) must be submitted to the health care provider in accordance with the requirements of Appendix C of the Minnesota Uniform Companion Guide for the Implementation of the ASC X12/005010X221A1 Health Care Claim Payment/Advice (835) (page 47 to 49), which specifically applies to Minnesota workers’ compensation claims. The requirements for pharmacy EOBs is on the Minnesota Department of Health website at www.health.state.mn.us/auc/adoptedrulesubmissionresp062110.pdf.

Examples that do not meet the requirements

Examples of payment notifications that do not meet the above requirements include:

- failure to provide the part and subpart of the rule allowing the reduction – for example, citing only that the charge is reduced by “the fee schedule in Minn. Rule 5221.4030”;
- failure to specify how much *each charge* is reduced based on the “prevailing charge”;
- stating only that a charge is “duplicative” without identifying the duplicated charge;
- failure to identify all services the payer believes should have been bundled together;
- stating only that a charge is “excessive” without providing the specific basis for excessiveness; and
- stating a charge is reduced based on a “contract” with the health care provider, when there is no contract that meets the requirements of Minn. Stat. § 62Q.74 (which prohibits network shadow contracting) or where a contract is prohibited by law.

DLI’s enforcement may include corrective action and penalties

Penalties may be assessed against payers for failure to pay medical bills in a timely manner in accordance with the legal requirements.³ DLI may intervene with a payor to obtain agreement on corrective action before issuing a penalty.

Questions

Questions about the above requirements may be emailed to lisa.wichterman@state.mn.us.

¹Under Minnesota Statutes § 62J.536, a payer must accept submission of electronic transactions from a health care provider and must submit the remittance advice (EOB) electronically. The payer or its clearinghouse may not charge the health care provider for accepting an electronic transaction.

²The payer is not required to notify the employee if the charges are reduced only by the fee schedule or pursuant to Minn. Stat. § 176.136, subd. 1b.

³See Minn. Stat. §§ 176.221, subd. 6a; 176.225, subds. 1 and 5; 176.194, subd. 3; and 176.106, subd. 6; and Minn. R. parts 5220.2740; 5220.2770; and 5220.2790.

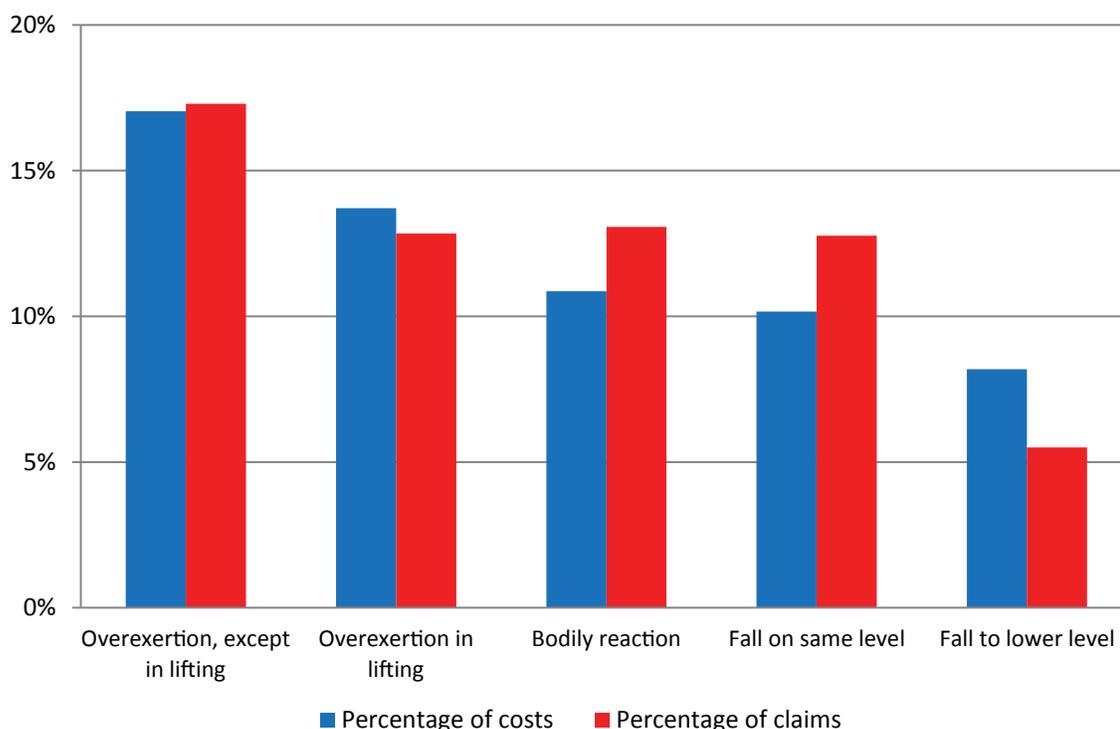
CompFact

Top five events leading to the most indemnity benefits

By Brian Zaidman, Research and Statistics

Among indemnity benefit claims that closed in 2010, the top five types of injury events (out of 21 categories) accounted for 60 percent of the indemnity benefit costs and 62 percent of the claims. The categories and their respective percentages of total costs and number of claims are shown in the figure below.

Top five events leading to indemnity benefits and indemnity claims among claims closed in 2010



Overexertion, except lifting, includes overexertions due to pulling, pushing, holding, carrying, turning, wielding or throwing objects. This category accounted for \$65 million (inflation-adjusted) in indemnity benefits, 17 percent of the total indemnity benefits and 17 percent of the claims.

Overexertion in lifting accounted for \$50 million in indemnity benefits (14 percent) and 13 percent of the claims. Bodily reaction, the third-highest cost category, includes injuries due to climbing, crawling, reaching, twisting, running and walking (without other incident), sitting, standing, sudden reactions, and tripping, slipping or loss of balance without falling. These claims accounted for \$39 million in indemnity benefits (11 percent) and 13 percent of the claims. These three types of events often result in musculoskeletal disorders.

Technical notes: Because of changes made to the injury characteristics coding system, these closed claims only include injuries from 2003 through 2010. Indemnity benefits include temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, dependents' benefits, and settlements, which may also include payments for medical and vocational rehabilitation benefits included in the settlement amounts. The cost percentages are the same for values inflation-adjusted to 2010 wages and for unadjusted values.

Basic Adjuster Training 2012

– *Two sessions left in 2012* –

June 14 and 15 • Oct. 30 and 31

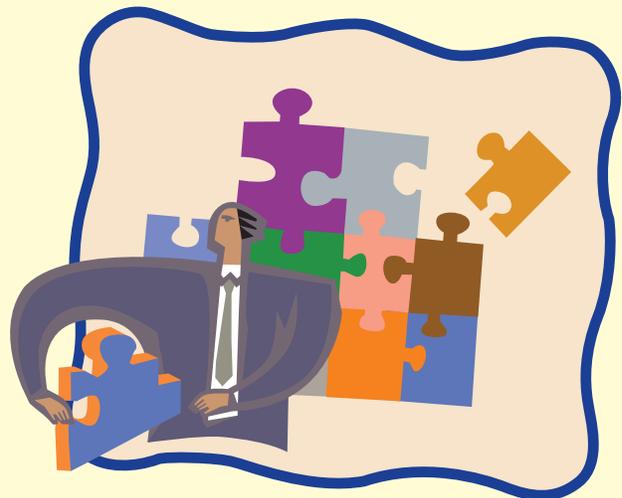
8:30 a.m. to 4 p.m.



This training is recommended for claim adjusters who have less than one year of experience in Minnesota workers' compensation.

Session topics

- Overview of Minnesota workers' compensation
- Waiting period
- Liability determination
- Indemnity benefits
- Rehabilitation benefits and issues
- Medical benefits and issues
- Penalties
- Dispute resolution
- How to file forms



Location: Minnesota Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN 55155

Cost: \$150 for the two-day session (includes lunch)

All participants must register and pay online

★ <https://secure.doli.state.mn.us/events/events.aspx?eid=15> ★

Early registration is encouraged. The sessions are limited to 28 people. Classes are filled on a first-come, first-served basis. The Department of Labor and Industry reserves the right to cancel a session if there are not enough participants registered.

Accommodation

If you need special accommodations to enable you to participate in this event or have questions about this training, call Jim Vogel at (651) 284-5265, toll-free at 1-800-342-5354 or TTY (651) 297-4198.

Take the pre-test

Do you administer Minnesota workers' compensation claims? Not sure if you need training? Take the pre-test at www.dli.mn.gov/WC/PDF/quiz.pdf and see how you do.

Workers' Compensation Court of Appeals

January through March 2012

Case summaries published are
those prepared by the WCCA



Connell vs. Strom Engineering Corporation, Jan. 4, 2012

Jurisdiction – Out-of-State Employment;
Statutes Construed – Minn. Stat. § 176.041, Subd. 3

Where the employee was at his home in Oklahoma when he was offered a temporary job in Texas by telephone from an employer representative at the employer's headquarters in Minnesota, and the employee was injured at the Texas jobsite, the compensation judge properly denied the employee's claim for Minnesota workers' compensation benefits on jurisdictional grounds.

Affirmed.

Dorr vs. National Marrow Donor Program, Jan. 5, 2012

Attorney Fees – Irwin Fees

Where there was no evidence the ongoing stream of benefits being paid to the employee would not be adequate to provide a reasonable fee to her attorney, it was not an abuse of discretion for the compensation judge to deny a claim for Roraff and Heaton fees.

Affirmed.

L. Johnson vs. Midwest Precision Machining, Jan. 6, 2012

Discontinuance;
Practice and Procedure – Judge Assignment

The requirement for block assignments contained in Minn. Stat. § 176.307 (2010) supports the order of the assistant chief administrative law judge denying the employer and insurer's motion to disqualify the assigned compensation judge. Nothing in the definition of "de novo hearing" contained in Minn. Stat. § 176.238, subd. 5, requires the hearing be conducted by a different judge. Pursuant to Minn. R. 1420.2600, subp. 2, the employer and insurer failed to timely file their motion to disqualify the assigned judge.

Temporary Total Disability – Work Restrictions

Substantial evidence, including adequately founded medical opinion, supports the compensation judge's finding that employee had continuing restrictions on his ability to work and the judge's denial of the employer and insurer's petition to discontinue temporary total disability benefits.

Affirmed.

Wierre vs. Health Personnel Options, Jan. 6, 2012

Practice and Procedure – Dismissal;
Statutes Construed – Minn. Stat. § 176.305, Subd. 4

Where the employee failed to request reinstatement of her claim in the year after it was stricken from the calendar or after receiving notice that it would be dismissed, an order dismissing the stricken pleadings was appropriate.

Affirmed.

Marquette vs. Minneapolis Special School District #1, Jan. 6, 2012

Causation – Permanent Aggravation;
Evidence – Expert Medical Opinion

Substantial evidence, including the adequately founded opinion of the employee's physician, supports the compensation judge's finding that the employee has permanent restrictions as a result of her left knee injury.

Medical Treatment and Expense – Surgery

Substantial evidence supports the finding that a gastric bypass procedure was recommended prior to proceeding with knee replacement surgery, and the employer is liable for the reasonable and necessary costs associated with an evaluation of whether the employee is a candidate for a weight loss program including bariatric surgery. Where recommended evaluations have not been performed, the compensation judge's finding that gastric bypass surgery is reasonable and necessary and the judge's order that the employer pay for the surgery are vacated as premature.

Causation – Medical Treatment

Substantial evidence, including the opinion of the employee's physician, supports the finding that the employee is a candidate for knee replacement surgery.

Causation – Psychological Condition;
Evidence – Expert Medical Opinion

The compensation judge reasonably relied on the adequately founded opinion of the independent medical examiner in finding that the employee's work-related injury did not cause or aggravate her psychological condition.

Temporary Total Disability – Substantial Evidence

Substantial evidence supports the compensation judge's determination that the employee failed to cooperate with rehabilitation efforts and the judge's consequent denial of the employee's claim for temporary total disability benefits.

Rehabilitation – Substantial Evidence

Where the employee has permanent restrictions as a result of her work injury, is not able to return to work with the employer and has expressed a desire and willingness to return to work, the compensation judge properly awarded rehabilitation assistance.

Affirmed in part and vacated in part.

Watson vs. Cass County, Jan. 9, 2012

Temporary Partial Disability – Substantial Evidence;
Job Search

A job search is not required for an award of temporary partial disability benefits, but the nature and extent of any job search is evidence that the compensation judge may consider in determining the employee's earning capacity. The compensation judge did not err by awarding temporary partial disability benefits where the employee was working full time and cooperating with rehabilitation services.

Affirmed.

Gossett vs. Ramsey Excavating Co., Jan. 13, 2012

Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence supports the compensation judge's decision denying the employee's claim for the proposed hybrid disc replacement and fusion surgery.

Vacation of Award – Mistake;
Vacation of Award – Newly Discovered Evidence;
Vacation of Award – Fraud

The employee failed to establish sufficient cause to vacate the findings and order based on mutual mistake of fact, newly discovered evidence or fraud.

Affirmed.

Petition to vacate findings and order denied.

Washek vs. New Dimensions Home Health, Feb. 7, 2012*

Residential Remodeling;
Statutes Construed – Minn. Stat. § 176.137

Although it was undisputed that the recommended lift system was medically reasonable and necessary for the employee, and although that system could not be “furnished” within the meaning of Minn. Stat. § 176.135 without major structural remodeling of the employee’s residence, an insurer’s liability for necessary structural remodeling is capped at \$60,000 under Minn. Stat. § 176.137, and the necessity of such remodeling does not automatically convert such remodeling into a medical expense compensable under Minn. Stat. § 176.135.

Reversed.

Walseth vs. Wal-Mart Stores, Inc., Feb. 9, 2012

Causation – Substantial Evidence

Substantial evidence, including expert opinion, supported the compensation judge’s conclusion that the employee’s work injury was a substantial contributing cause of the employee’s herniated disc and resulting disability and need for treatment.

Affirmed.

Swanson vs. Cypress Semiconductor Corp., Feb. 9, 2012

Rehabilitation – Retraining

Where the employee cooperated with the rehabilitation plan in her job search but was able to find only part-time employment, substantial evidence supports the compensation judge’s award of the requested retraining plan.

Affirmed.

Schmidt vs. Churches United In Ministry, Feb. 21, 2012

Causation – Substantial Evidence;
Evidence – Expert Medical Opinion

Substantial evidence in the record as a whole, including the well-founded opinions of Dr. Gratzner and Dr. Misukanis, supports the compensation judge’s determination that the employee failed to prove she sustained a traumatic brain injury resulting in cognitive impairment, memory loss, recurrent headaches, chronic fatigue, trauma-induced narcolepsy and injury to the cervical spine as the result of a work-related injury on Nov. 5, 2008.

Affirmed.

Janikowski vs. Ryan Janikowski, Feb. 29, 2012

Causation – Substantial Evidence

Where the compensation judge reasonably concluded from the records of two doctors that the employee's injury was something other than a mere temporary contusion that did not rise to the level of an injury, the compensation judge's conclusion that the employee sustained a work-related injury on Aug. 26, 2009, was not clearly erroneous and unsupported by substantial evidence.

Permanent Partial Disability – Back;
Statutes Construed – Minn. R. 5223.0390, Subp. 3.C.(2)

Where, although she may not have directly quoted specific medical findings directly responsive to the language of the permanency schedules, the compensation judge did identify in the medical record certain indicators reasonably associated with the language of the schedules, the compensation judge's conclusion that the employee's condition satisfied the schedule's requirement of "persistent objective clinical findings" was not clearly erroneous and unsupported by substantial evidence.

Wages – Calculation;
Wages – Self-employment

The compensation judge's calculation of the employee's pre-injury wage, imputing to the employee a hypothetical wage of \$1,000 a week based on the amount he paid his workers to perform the same physical work he was performing, is legally erroneous and contrary to the supreme court's holding in Jellum v. McGough Constr. Co., Inc., 479 N.W.2d 718, 46 W.C.D. 182 (Minn. 1992). An employee's wage from self-employment may be determined with reference to the annual net income of the employee's business, Newbauer v. Pepsi Bottling Group, 43 W.C.D. 339 (W.C.C.A. 1990), to the employee's income tax returns, Wallak v. Ace Plumbing & Heating 42 W.C.D. 772 (W.C.C.A. 1990), or to an imputed wage based on what it would cost to hire someone to do the work performed by the employee, but only if it does not exceed the earnings of the employee's business, Egan v. Shannon's Plumbing & Heating, 61 W.C.D. 580 (W.C.C.A. 2001). The compensation judge's wage finding is reversed and remanded for reconsideration and new findings.

Medical Treatment and Expense – Reasonable and Necessary

Where the treating physician had indicated he considered the employee's August 2009 injury to have been an exacerbation of the employee's 2007 injury, the doctor's statement that he related certain recent treatment of the employee's condition "ultimately" to the 2007 injury did not imply that the doctor considered that treatment unrelated to the employee's Aug. 26, 2009, injury, and the compensation judge's award of medical benefits was not clearly erroneous and unsupported by substantial evidence.

Rehabilitation – Substantial Evidence

Substantial evidence supports the compensation judge's conclusion that the employee remains restricted by his work injuries and is entitled to a rehabilitation consultation.

Affirmed in part and reversed and remanded in part.

Gergel vs. First Transit, Inc., March 5, 2012

Causation – Temporary Injury

Substantial evidence, including expert opinion, supported the compensation judge's decision allowing discontinuance of temporary total disability benefits on grounds that the employee's work injury had resolved.

Evidence – Res Judicata

The compensation judge did not err in failing to give res judicata effect to an administrative decision under Minn. Stat. § 176.106, approving the employee's request for future surgery, where the employee had not yet undergone the surgery by the time of the hearing on the employer's petition to discontinue temporary total disability benefits on causation grounds, despite the fact that causation had apparently been disputed and decided in the employee's favor at the prior administrative conference.

Affirmed.

Powers vs. Allina Health Systems, March 5, 2012

Causation – Psychological Condition

Substantial evidence, including expert opinion, supported the compensation judge's decision that the employee's psychological condition and need for treatment were not causally related to her work injury.

Affirmed.

Keane vs. Critical Care Services, Inc., March 5, 2012*

Causation – Intervening Cause

Where the employee was involved in a motor-vehicle accident that resulted in the need for additional surgery on the site of her earlier work-related fusion surgery, substantial evidence supports the compensation judge's finding that the employee's work injury remained a substantial contributing cause of the employee's need for surgery.

Affirmed.

Mach vs. Wells Concrete Products Co., March 7, 2012

Causation – Substantial Evidence;
Evidence – Expert Medical Opinion

Substantial evidence, including expert medical opinion, supports the compensation judge's determination that the employee failed to prove that he suffers from reflex sympathetic dystrophy (RSD) or complex regional pain syndrome (CRPS).

Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence, including expert medical opinion, supports the compensation judge's finding that medical treatment related to a spinal cord stimulator was not reasonable and necessary.

Temporary Total Disability – Substantial Evidence

Substantial evidence supports the compensation judge's denial of the employee's claim for temporary total disability benefits.

Affirmed in part and vacated in part.

Regenscheid vs. Cedar Valley Services, Inc., March 20, 2012

Causation – Substantial Evidence

Substantial evidence, including the medical records, expert medical opinion and lay testimony, supported the compensation judge's findings that the employee sustained a Gillette injury culminating on April 11, 2005, and that this injury was a substantial contributing factor to the employee's subsequent medical condition and permanent total disability.

Permanent Total Disability – Substantial Evidence

Substantial evidence, including the medical records, expert medical opinion, expert vocational opinion and lay testimony, supported the compensation judge's findings that the employee was permanently totally disabled from and after April 11, 2005.

Affirmed.

Walker vs. First Transit, Inc., March 21, 2012

Causation – Substantial Evidence

Substantial evidence, in the form of a medical opinion with adequate foundation, supports the compensation judge's denial of the employee's claim that she injured her entire back in a work-related fall and the compensation judge's consequential denial of claims for medical expenses and permanent partial disability.

Affirmed.

Hill vs. Beckerella Investments, L.L.C., March 22, 2012

Medical Treatment and Expense – Surgery

Substantial evidence, including the surveillance video, medical records and expert medical opinion, supports the finding that a proposed anterior spinal fusion is not reasonable and necessary.

Practice and Procedure – Matters at Issue

Where the sole issue before the judge was the reasonableness and necessity of certain proposed surgery, that portion of the compensation judge's order dealing with the presence or absence of a causal relationship between the employee's injury and the proposed surgery is vacated.

Affirmed in part and vacated in part.

Washek vs. New Dimensions Home Healthcare, March 27, 2012

Penalties

The compensation judge properly denied the employee's request for penalties based on alleged late payment of fees pursuant to Minn. Stat. § 176.081, subdivision 7, where there had been no award of those fees.

Affirmed.

Wellett vs. Breezy Point Resort, March 27, 2012

Causation – Substantial Evidence

Substantial evidence, including expert opinion, supported the compensation judge's conclusion that the employee's left knee condition and need for treatment were not a compensable consequence of the employee's work-related right knee injury.

Affirmed.

Minnesota Supreme Court

January through March 2012

Case summaries published are
those prepared by the WCCA



• **Brenda J. Schwalbe vs. American Red Cross and Cambridge Integrated Services/
Sedgwick CMS, A11-1799, March 29, 2012**

Decision of the Workers' Compensation Court of Appeals filed Sept. 14, 2011, affirmed without opinion.