

Proposed amendments providing for penalties and employee reimbursement where a health care provider collects or attempts to collect payment of medical charges from an employee

Draft previously discussed on – Feb. 5, 2020 and Feb. 10, 2021
Revised draft for discussion at the WCAC meeting on Feb. 24, 2021

1 **Minn. Stat. § 176.136, subd. 2. Excessive fees.**

2 If the employer or insurer determines that the charge for a health service or medical service is
3 excessive, no payment in excess of the reasonable charge for that service shall be made under this
4 chapter nor may the provider collect or attempt to collect from the injured employee or any other
5 insurer or government amounts in excess of the amount payable under this chapter unless the
6 commissioner, compensation judge, or court of appeals determines otherwise. In such a case, the
7 health care provider may initiate an action under this chapter for recovery of the amounts deemed
8 excessive by the employer or insurer. A charge for a health service or medical service is excessive if it:

- 9 (1) exceeds the maximum permissible charge pursuant to subdivision 1, 1a, 1b, or 1c;
10 (2) is for a service provided at a level, duration, or frequency that is excessive, based upon
11 accepted medical standards for quality health care and accepted rehabilitation standards;
12 (3) is for a service that is outside the scope of practice of the particular provider or is not
13 generally recognized within the particular profession of the provider as of therapeutic value for
14 the specific injury or condition treated; or
15 (4) is otherwise deemed excessive or inappropriate pursuant to rules adopted pursuant to this
16 chapter.

17
18 **Subdivision 2a. Penalties, costs and expenses for improper collection or attempts to collect payment**
19 **for medical services from an employee.**

20
21 **(a) Violations of subdivision 2a. The commissioner may assess penalties, costs and expenses against**
22 **a health care provider who collects or attempts to collect payment from an employee in violation of**
23 **section 176.136, subdivision 2; section 176.135, subdivision 7; or section 176.83, subdivision 5,**
24 **paragraph (c), as provided in this subdivision. For purposes of paragraphs (b) and (c):**

25
26 **(1) A violation occurs only if the health care provider or the provider's representative was**
27 **informed that the treatment or service was for a claimed workers' compensation injury or that**
28 **the bill should be submitted to a workers' compensation insurer.**

29
30 **(2) Once the health care provider has been provided the information described in clause (1), a**
31 **violation occurs each time the health care provider, or any person acting on the provider's behalf**

Proposed amendments providing for penalties and employee reimbursement where a health care provider collects or attempts to collect payment of medical charges from an employee

Draft previously discussed on – Feb. 5, 2020 and Feb. 10, 2021
Revised draft for discussion at the WCAC meeting on Feb. 24, 2021

32 or direction, collects or attempts to collect payment from the employee for charges on a bill for
33 medical treatment or services. An attempt to collect payment from an employee includes:

34 (i) each contact made in person, by United States mail, telephone, text, e-mail, or any other
35 type of contact seeking payment;

36 (ii) engaging a collection agency or other third party to collect from the employee;

37 (iii) filing a claim in conciliation court;

38 (iv) attaching the employee's tax refund; or

39 (v) submitting a report to a credit agency.

40 (b) Penalty payable to the ARSA; notice of violation. The penalty assessed against a health care
41 provider for each violation shall be \$1000, payable to the Assigned Risk Safety Account, except that:

42 (1) the penalty shall be \$2000, payable to the Assigned Risk Safety Account, for each violation
43 if the employee paid the health care provider as a result of the violation, or for the violations
44 described in paragraph (a)(2), (ii) to (v); and

45 (2) The commissioner shall not assess a penalty under this paragraph (b) unless the
46 commissioner has documentation that the health care provider or the health care provider's
47 representative has been provided with written notice that the attempted collection or
48 collection from an employee is prohibited by workers' compensation law, and that penalties
49 may be assessed for a violation of the law. The notice required by this clause may be
50 provided by any agency or person, including an employee, self-insured employer, insurer,
51 third party administrator or attorney. The written notice required by this paragraph must
52 only be provided once and thereafter, the commissioner may assess penalties under this
53 paragraph (b) for a health care provider's or the health care provider's representative's
54 improper collection or attempts to collect payment for medical services from any employee
55 without provision of written notice required by this paragraph. Written notice provided
56 before the effective date of this subdivision satisfies the notice requirement. The
57 commissioner shall post on the Department's web site a model notice. The model notice is
58 presumed to provide sufficient notice for purposes of this clause when provided to a health
59 care provider's billing office by any agency or person.
60
61

Proposed amendments providing for penalties and employee reimbursement where a health care provider collects or attempts to collect payment of medical charges from an employee

Draft previously discussed on – Feb. 5, 2020 and Feb. 10, 2021
Revised draft for discussion at the WCAC meeting on Feb. 24, 2021

62 (c) Reimbursement of costs and expenses incurred by the employee. In addition to any penalty
63 assessed under paragraph (b), the commissioner has the authority to order the health care provider
64 to pay the employee the following amounts as reasonable reimbursement of costs and expenses
65 incurred by the employee as a result of one or more violations, as provided in clauses (1) and (2) of
66 this paragraph (c), and to take all reasonable action to restore the employee’s credit rating if it has
67 been damaged as a result of the violation.

68 (1) The health care provider must reimburse the employee all amounts that the employee paid
69 to the health care provider as a result of a violation, with interest as specified in section
70 176.221, subdivision 7; and

71 (2) For violations described in paragraph (a), clause (2) (ii) to (v), the health care provider must
72 reimburse the employee a minimum lump sum payment of 500 dollars for which no supporting
73 documentation is required to be provided, in addition to costs or expenses documented by
74 the employee over that amount ~~up to a maximum reimbursement of _____ dollars~~.

75 Non-exclusive examples of costs and expenses incurred as a result of a violation include
76 attorney fees, lost wages, filing fees, court costs, courier fees, photocopying or facsimile
77 charges, telephone and postage charges, computer or research costs, witness fees, records,
78 and travel expenses. Costs and expenses incurred by the employee as a result of a violation
79 are payable whether or not the health care provider has been provided with the notice
80 described in paragraph (b), clause 2.

81 **Effective date:** This section is effective for violations on or after **August 1, 2021.**