

## Work Comp Campus: Modernizing for Minnesotans

The Department of Labor and Industry (DLI) is working to improve workers' compensation for Minnesotans by building the new web-based system, Work Comp Campus, for filing and accessing workers' compensation claims. Campus will go live for all users in August 2020.



Campus will allow ready and easy access for all parties involved in a workers' compensation claim to manage their claim in real time online. Quicker access to claim information among all parties will ensure work injuries and benefits are reported in a streamlined process.

### Campus benefits for stakeholders

- **Employees** may elect online access to their claims, including accurate details about their benefits and dispute-related proceedings scheduled at DLI.
- **Employers** will be able to monitor the status of claims and proceedings of their employees' workers' compensation claims.
- **Insurers** will have access to a more efficient system to submit documentation, correct errors and resolve claims and disputes, minimizing their costs. The system will maximize data-driven and automated processes for insurers for the exchange of information with DLI.
- **Attorneys** will have access to a streamlined process to submit filings, have real-time access to the complete, accurate and up-to-date DLI Workers' Compensation Division file and be able to view calendars for proceedings at DLI, the Office of Administrative Hearings and the Workers' Compensation Court of Appeals.
- **Vocational rehabilitation providers** will be able to electronically create, file and view documents related to an employee's vocational rehabilitation or a dispute related to rehabilitation.

*“ To ensure DLI is building a system that serves the needs of the future users, DLI is engaging actively with communities in Minnesota. ”*

### Engaging actively with stakeholders

To ensure DLI is building a system that serves the needs of the future users, DLI is engaging actively with communities in Minnesota. This currently involves speaking engagements at relevant existing groups (task forces, advisory councils, committees and conferences) as well as specific advisory groups put together by DLI. The participants in these groups are contributing significantly to the functionality of the future system by highlighting the specific needs of their communities, providing feedback and testing system functionality.

If you would like to learn more about Campus or become involved in the Workers' Compensation Modernization Program (WCMP), email WCMP Change Management Lead Valerie Brophy at [valerie.brophy@state.mn.us](mailto:valerie.brophy@state.mn.us).

## DLI welcomes two new staff members to commissioner's office

**Nicole Blissenbach** is the Department of Labor and Industry's (DLI's) new assistant commissioner for enforcement and compliance strategies and partnerships. Her role is to provide the department with leadership and direction for its enforcement and compliance strategies and to develop strong partnerships with labor law enforcement agencies at the local, state and federal levels.

**Naheeda Hirji-Walji** is DLI's new assistant to the commissioner for public engagement and outreach. She leads and directs the agency's public engagement and outreach activities statewide to increase public awareness and help coordinate interactions with the agency, with attention to underserved populations.

Hirji-Walji has extensive experience with a wide range of service organizations, including working on community engagement, partnership building, diversity and inclusion education and project management.



**Nicole Blissenbach (left) and Naheeda Hirji-Walji**

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## Update: Post-traumatic stress disorder rules

Minnesota Statutes § 176.83, subdivision 5 (b)(8), requires the Department of Labor and Industry (DLI) to adopt rules governing criteria for treatment of post-traumatic stress disorder (PTSD) in workers' compensation. The statute directs the commissioner to adopt the rules under the expedited rulemaking process in Minn. Stat. § 14.389.

The commissioner was required to consult the Medical Services Review Board (MSRB) in drafting the rules. MSRB recommended proposed rules to the commissioner July 18, 2019. DLI will publish notice of the proposed rules in the *State Register* as required by statute, after which the public has the opportunity to request a hearing.

A copy of the proposed rules are available on DLI's rulemaking docket page at [www.dli.mn.gov/about-department/rulemaking/rulemaking-docket-minnesota-rules-chapter-52216700-2019](http://www.dli.mn.gov/about-department/rulemaking/rulemaking-docket-minnesota-rules-chapter-52216700-2019).

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## Turn to Office of Workers' Compensation Ombudsman for help with claims



The Office of Workers' Compensation Ombudsman is a separate entity within the Department of Labor and Industry. Its purpose is to inform, assist and empower injured workers and small businesses having difficulty navigating the workers' compensation system, to help resolve problems encountered in the system.

The Office of Workers' Compensation Ombudsman also recommends statute or rule changes to improve the effectiveness of the workers' compensation system.

To request assistance, contact the Office of Workers' Compensation Ombudsman at 651-284-5013, 800-342-5354 or [dli.ombudsman@state.mn.us](mailto:dli.ombudsman@state.mn.us).

# New provider fee levels, fee schedules effective October 2019

The statewide average weekly wage (SAWW) effective Oct. 1, 2019, is \$1,112, which is a 3.25% increase from the SAWW of \$1,077 in effect since Oct. 1, 2018. The table of historical SAWW changes is on page 7 of the June/July edition of COMPACT at [www.dli.mn.gov/sites/default/files/pdf/0619c.pdf](http://www.dli.mn.gov/sites/default/files/pdf/0619c.pdf).

## Vocational rehabilitation maximum hourly fee adjustments

Pursuant to Minnesota Rules, part 5220.1900, subpart 1b, the maximum qualified rehabilitation consultant hourly rate will be increased by 3.00% to \$109.38 for rehabilitation services provided on or after Oct. 1, 2019. The maximum hourly rate for rehabilitation job development and placement services, whether provided by rehabilitation vendors or by qualified rehabilitation consultant (QRC) firms, will increase by 3.00%, to \$87.61.

## Relative value medical fee schedule adjustments

Effective for services on or after Oct. 1, 2019, the following updates to the workers' compensation relative value medical fee schedule pursuant to Minnesota Statutes 176.136, subdivision 1a, and Minn. R., parts 5221.4005 to 5221.4061, have been approved by an administrative law judge. These updates were published in the State Register on Monday, Sept. 23, at [mn.gov/admin/bookstore/register.asp](http://mn.gov/admin/bookstore/register.asp) and are available on DLI's website at [www.dli.mn.gov/business/workers-compensation/work-comp-medical-fee-schedules-rbrvs](http://www.dli.mn.gov/business/workers-compensation/work-comp-medical-fee-schedules-rbrvs).

- 1. Relative value unit (RVU) updates** – As required by law, the Department of Labor and Industry (DLI) has incorporated by reference the 2019 Medicare RVU table and the GPCI table (used to geographically adjust the RVUs for Minnesota). The Notice of Incorporation by Reference of these 2019 tables was published in the *State Register* on July 15, 2019 (see 44 SR 45 at [https://mn.gov/admin/assets/SR44\\_3 - Accessible\\_tcm36-392887.pdf](https://mn.gov/admin/assets/SR44_3 - Accessible_tcm36-392887.pdf)).
- 2. Conversion factor adjustments** – There are two conversion factor adjustments. First, as required by law, each time the RVU tables are updated the conversion factors must be adjusted so that, for services in both the new fee schedule and the one most recently in effect, there is no difference in the overall payment under the fee schedules for each of the four categories of service. Second, the conversion factors are also required to be annually adjusted by no more than the percent change in the annual statewide average weekly wage. As in previous years, the annual adjustment of the conversion factors is based on the percent change in the federal Department of Labor's Producer Price Index for Offices of Physicians (PPI-P) (annual-average basis), which for 2018 was 0.82%.

Based on these two adjustments, the conversion factors effective for services provided on or after Oct. 1, 2019, are:

- for medical/surgical services described in Minn. R. 5221.4030..... \$70.24
- for pathology and laboratory services described in Minn. R. 5221.4040 ..... \$59.57
- for physical medicine/rehabilitation services described in Minn. R. 5221.4050 ..... \$58.16
- for chiropractic services described in Minn. R. 5221.4060 ..... \$50.25

- 3. RVU fee schedule rule amendments** – Minnesota Rules, parts 5221.4020, 5221.4035, 5221.4050, 5221.4060 and 5221.4061 have been amended, effective for services provided on or after Oct. 1, 2019, to implement the adjusted conversion factors and updated Medicare relative value tables. Specifically, the rules are amended to reflect Medicare changes in calculating the maximum fee for multiple diagnostic imaging procedures and to update the range of physical medicine and chiropractic procedure codes included in the fee schedule. The rule amendments are online at [www.dli.mn.gov/sites/default/files/pdf/5221\\_draft\\_rules\\_2019.pdf](http://www.dli.mn.gov/sites/default/files/pdf/5221_draft_rules_2019.pdf).

## Independent or adverse medical examination fee adjustment

Minnesota Rules, part 5219.0500, subp. 4, provides for adjustment of the maximum fees in subp. 3 for, or in connection with, independent or adverse medical examinations, in the same manner as the adjustment of the conversion factors. Therefore, the maximum fees in part 5219 are further increased by 0.82% for independent or adverse medical examinations provided on or after Oct. 1, 2019.

## Notice of availability of PC Pricer program under Minn. Stat. 176.1362, subd. 1

On Oct. 1, 2019, the applicable PC Pricer program to be used to calculate payment for workers' compensation inpatient hospital services, articles and supplies based on the Medicare MS-DRG system under Minn. Stat. 176.1362, subd. 1, is the 2019 Fiscal Year PC-Pricer, version 2019.0, available on DLI's website at [www.dli.mn.gov/business/workers-compensation/work-comp-pc-pricer-tool-inpatient-hospital-bills](http://www.dli.mn.gov/business/workers-compensation/work-comp-pc-pricer-tool-inpatient-hospital-bills). This PC Pricer program is the most recent version available on Medicare's website as of July 1, 2019. It is effective for patients discharged on or after Oct. 1, 2019, unless the charges exceed the catastrophic injury threshold amount of \$209,336 described below.

## Inpatient hospital catastrophic injury threshold adjustment

The threshold for payment of inpatient hospital services, articles and supplies provided to patients with catastrophic, high-cost injuries is adjusted pursuant to Minn. Stat. 176.362, subd. 2. For hospital discharges on or after Oct. 1, 2019, the threshold amount is \$209,336. If a hospital's usual and customary charges exceed this amount, payment is 75% of the hospital's charges instead of the MS-DRG amount calculated according to the PC Pricer. This \$209,336 threshold amount reflects adjustments to corrected 2017 and 2018 threshold amounts, which are available on DLI's website at [www.dli.mn.gov/business/workers-compensation/work-comp-pc-pricer-tool-inpatient-hospital-bills](http://www.dli.mn.gov/business/workers-compensation/work-comp-pc-pricer-tool-inpatient-hospital-bills).

## Notice of availability of ambulatory surgical center addenda

The applicable ambulatory surgical center (ASC) addenda to be used to calculate payment for covered workers' compensation surgical procedures and ancillary services provided by an ASC on or after Oct. 1, 2019, are the July 2019 Addenda AA, BB and DD1, updated June 26, 2019, of the Medicare Ambulatory Surgical Center Payment System (ASCPS).

These addenda are the most recent available on Medicare's website as of July 1, 2019. Links to these ASCPS addenda, applicable federal regulations, the applicable chapter of the Medicare claims manual and instructions for calculating payment for workers' compensation services provided by an ASC are available on DLI's website at [www.dli.mn.gov/business/workers-compensation/work-comp-medical-fee-schedules-ascps](http://www.dli.mn.gov/business/workers-compensation/work-comp-medical-fee-schedules-ascps).

## Notice of availability of hospital outpatient fee schedule

The hospital outpatient fee schedule (HOFS) was established by Minn. Stat. 176.1364, subd. 3(d), for payment of workers' compensation outpatient hospital bills. The HOFS for services provided from Oct. 1, 2019, through Sept. 30, 2020, is available on DLI's website at [www.dli.mn.gov/business/workers-compensation/work-comp-medical-fee-schedules-hofs](http://www.dli.mn.gov/business/workers-compensation/work-comp-medical-fee-schedules-hofs).

The HOFS shows two payment rates for each service: one for non-critical access hospitals of 100 or fewer licensed beds; and one for hospitals with more than 100 licensed beds.

# Compensation rates as of Oct. 1, 2019

Statewide average weekly wage (SAWW) = \$1,112

Percentage change in SAWW from previous year = 3.25%

(Apply Minnesota Statutes § 176.645 adjustment as necessary based on date of injury.)

## Maximum under Minn. Stat. § 176.101, subd. 1(b)(1)

*105% of SAWW*

10-01-93 .....	\$508.20
10-01-94 .....	\$516.60

*Set by statute*

10-01-95 .....	\$615.00
10-01-00 .....	\$750.00
10-01-08 .....	\$850.00

*102% of SAWW*

10-01-13 .....	\$963.90
10-01-14 .....	\$980.22
10-01-15 .....	\$1,008.78
10-01-16 .....	\$1,046.52
10-01-17 .....	\$1,061.82
10-01-18 .....	\$1,098.54
<b>10-01-19 .....</b>	<b>\$1,134.24</b>

## Minimum under Minn. Stat. § 176.101, subd. 1(c)

*20% of the SAWW or the employee's actual weekly wage, whichever is less*

10-01-92 .....	\$91.80
10-01-93 .....	\$96.80
10-01-94 .....	\$98.40

*Set by statute, the listed amount or the employee's actual weekly wage, whichever is less*

10-01-95 .....	\$104.00
<b>10-01-00 .....</b>	<b>\$130.00</b>

## Supplementary benefits under Minn. Stat. § 176.132 (Minnesota Statutes 1994) and permanent total minimum under Minn. Stat. § 176.101, subd. 4 (for injuries 10-1-95 and later)

10-01-02 .....	\$456.30	(rounded to \$457)*
10-01-03 .....	\$466.70	(rounded to \$467)*
10-01-04 .....	\$481.00	(round)
10-01-05 .....	\$503.10	(rounded to \$504)*
10-01-06 .....	\$508.30	(rounded to \$509)*
10-01-07 .....	\$525.20	(rounded to \$526)*
10-01-08 .....	\$552.50	(rounded to \$553)
10-01-09 .....	\$570.70	(rounded to \$571)*
10-01-10 .....	\$564.20	(rounded to \$565)*
10-01-11 .....	\$582.40	(rounded to \$583)*
10-01-12 .....	\$595.40	(rounded to \$596)*
10-01-13 .....	\$614.25	(rounded to \$615)*
10-01-14 .....	\$624.65	(rounded to \$625)*
10-01-15 .....	\$642.85	(rounded to \$643)*
10-01-16 .....	\$666.90	(rounded to \$667)*
10-01-17 .....	\$676.65	(rounded to \$677)*
10-01-18 .....	\$700.05	(rounded to \$701)*
<b>10-01-19 .....</b>	<b>\$722.80</b>	<b>(rounded to \$723)*</b>

\*Rounding applies to supplementary benefits.

# Medicare compliance considerations in workers' compensation settlements

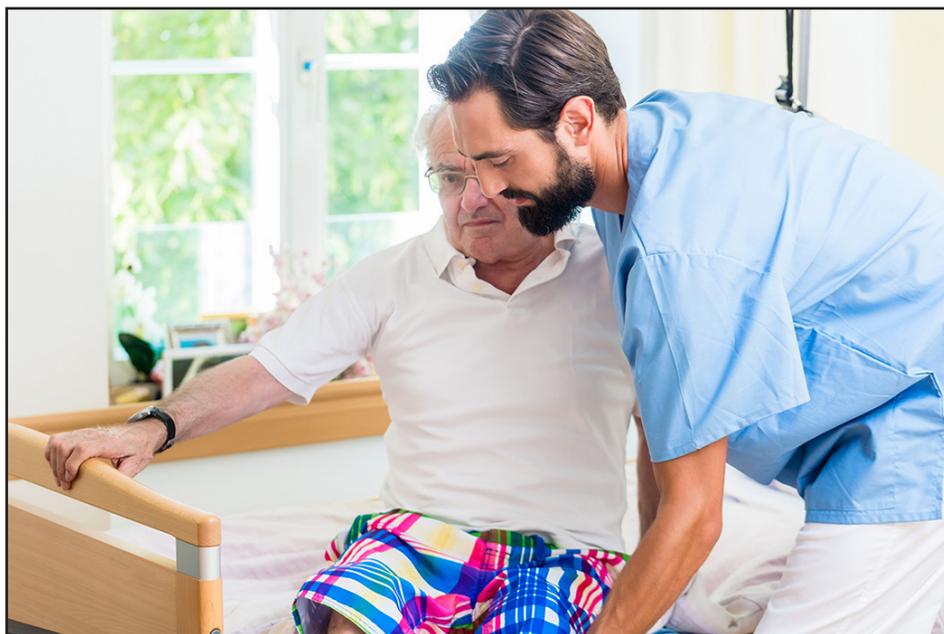
By Aaron Frederickson, Mediator/arbitrator

The aging workforce requires attorneys and other interested stakeholders in workers' compensation matters to understand the Medicare Secondary Payer Act. This includes recognizing it impacts many cases and that steps need to be taken to properly handle such cases before settlement or hearing.

## Understanding conditional payments

When Medicare makes a payment, it is only a "conditional" payment, to preserve Medicare's right to recover payments mistakenly paid. Medicare generally makes conditional payments for treatment when the workers' compensation payer has denied primary liability for the injury, has denied medical causation for a condition or has denied payment based on the treatment parameters, or because the insurer believes the treatment was not reasonable or necessary.

During settlement discussions involving disputed treatment that has been provided to an injured worker who is or may be a Medicare beneficiary, attorneys and members of the claim management team need to conduct a diligent investigation and determine whether any Medicare payment has been made. If Medicare has not made any payment under a fee-for-service plan (Medicare Part A or B), the parties should determine whether the patient is covered by a Medicare Advantage Plan (also known as Medicare Part C), where a private insurance carrier has contracted with Medicare to provide benefits to beneficiaries. Parties should also consider whether a Medicare Prescription Drug Plan (Medicare Part D) has provided coverage for drugs provided to the injured worker.



## Future medical benefits

When settling a workers' compensation claim, a Medicare set-aside (MSA) is often the preferred tool parties use to consider Medicare's interests and protect their clients from future adverse action. In workers' compensation cases, parties have the opportunity to have an MSA reviewed and approved by Medicare under a voluntary process. Under current Medicare practice, this review process is available if the injured worker:

- is a Medicare beneficiary at the time of the settlement and the total settlement amount is greater than \$25,000; or
- is not a Medicare beneficiary at the time of settlement, but the total settlement amount is greater than \$250,000 and there is a reasonable expectation of Medicare entitlement within 30 months of the settlement date (for example there is a reasonable expectation of Medicare entitlement within 30 months if the injured worker has a pending Social Security claim or appeal; has reached age 62 years and six months; and/or has end-stage renal disease).

The Centers for Medicare and Medicaid Services states: "These thresholds are based on Medicare workload and are not intended to indicate that claimants may settle below the threshold with impunity. Claimants must still consider Medicare's interests in all workers' compensation cases and ensure Medicare pays secondary to workers' compensation

in such cases" (see [www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Workers-Compensation-Medicare-Set-Aside-Arrangements/WCMSA-Overview.html](http://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Workers-Compensation-Medicare-Set-Aside-Arrangements/WCMSA-Overview.html)).

## Solving the Medicare maze

There is no magic wand for effective representation and claims management when Medicare is in the mix. All interested stakeholders are responsible for ensuring Medicare-related issues are identified and resolved in a workers' compensation claim. Tips for accomplishing this goal include the following.

- The Medicare set-aside review process should not be limited to settlements where all future medical benefits are closed out and the current review thresholds are met.
- Use available discovery tools and authorizations to identify if Medicare is an interested party. Parties should also consider gaining access to the Medicare Secondary Payer Recovery Portal (MSPRP) to obtain information.
- Cooperation between parties is essential. Everyone has an interest in making sure Medicare's interests are identified and resolved.
- Parties should have realistic expectations at the beginning of every claim.
- Monitor, review and respond to all correspondence from the Centers for Medicare and Medicaid Services. Make sure all parties receive a copy of conditional payment and set-aside information.



## Conclusion

All interested stakeholders in a workers' compensation claim need to take responsibility for issues that concern Medicare. Effective compliance requires you to evaluate your case **early** in the process and understand if it may be an issue. It is also important to review and re-evaluate your case **often** as facts, defenses and other circumstances change. It is also important to never be afraid of being **reasonable** in how you consider Medicare's interests and protect your client. Always be mindful when drafting your Stipulation for Settlement by being **precise**; avoid the use of boilerplate language at all times.

## Results of 2019 Special Compensation Fund assessment

The Special Compensation Fund (SCF) assessment funds Minnesota's workers' compensation programs. Most of the assessment dollars go to funding the supplementary and second-injury benefit programs. The assessment also pays the operating expenses of the workers' compensation divisions of the Department of Labor and Industry (DLI), the Office of Administrative Hearings and the Workers' Compensation Court of Appeals.

The SCF assessment is directly invoiced by DLI. The first half of the assessment is invoiced by June 30 of each year, and is due Aug. 1 of that year. The second billing is due Feb. 1 of the following year, and is mailed approximately 30 days before the due date.

	2018 indemnity	Ratio	2020 funding liabilities	2018 DSR pure premium
Insurers	\$368,982,893	77.76%	\$52,953,065	\$829,147,309
Self-insurers	\$105,545,542	22.24%	\$15,146,935	
Total	\$474,528,435	100.00%	\$68,100,000	\$829,147,309

The 2019 SCF assessment continues the downward trend. The 2019 assessment of \$68.1 million is \$1.9 million less than the 2018 assessment of \$70 million. During the past 10 years, the annual funding requirement has dropped \$22.9 million. The 2009 assessment was \$91 million versus \$68.1 million for the 2019 assessment.

The estimated state-fiscal-year 2020 funding requirement for the Special Compensation Fund was determined to be \$68.1 million. The liability was divided between the insurers and self-insurers by the ratio of their 2018 indemnity payments to the total indemnity reported by both groups.

### Insurer premium surcharge rate

The insurer premium surcharge rate applied for the purpose of determining the SCF assessment was 6.39%. The rate was determined by dividing the insurer portion of the SCF state-fiscal-year 2020 liability (\$52,953,065) by the 2018 designated statistical reporting (DSR) pure premium reported by all insurers to the Minnesota Workers' Compensation Insurers Association (\$829,147,309).

The amount each insurer is assessed is determined by multiplying 6.39% by the DSR pure premium for calendar-year 2018.

### Self-insured assessment rate

The imputed self-insured assessment rate was 14.35%. It was determined by dividing the self-insured portion of the SCF state-fiscal-year 2020 liability (\$15,146,935) by the total 2018 indemnity reported by the self-insured employers (\$105,545,543).

The amount each self-insurer is assessed is determined by multiplying 14.35% by the indemnities self-reported to DLI for calendar-year 2018.

The insurer portion of the 2019 assessment will be adjusted for actual 2019 data reported by the Minnesota Workers' Compensation Insurers Association. As a result of 2014 amendments to [Minnesota Statutes 176.129, subd. 2a](#), the current assessment is considered to be an estimate based on the prior year's data. The reconciliation and final determination (true-up) for insurers will be completed by December 2020. See [2014 Minnesota Laws Chapter 182](#).

### More information

For further information, send a message to [dli.assessment@state.mn.us](mailto:dli.assessment@state.mn.us).

Percentage for assessments due for insurers and self-insurers			
Year assessed	Basis for assessment	Insurers	Self-insurers
2009	2008	8.5347%	23.3185%
2010	2009	8.6636%	22.4319%
2011	2010	8.9013%	22.0264%
2012	2011	8.2960%	21.6310%
2013	2012	7.6546%	19.9725%
2014	2013	7.5457%	19.8520%
2015	2014	7.2723%	19.2567%
2016	2015	7.0704%	19.2897%
2017	2016	6.4976%	18.9351%
2018	2017	6.3851%	14.4276%
2019	2018	6.39%	14.35%

# Recent WCRI reports compare Minnesota's workers' compensation system to other states

By Brian Zaidman, Research and Statistics

The Workers' Compensation Research Institute (WCRI) recently published six reports that provide insight into various aspects of Minnesota's workers' compensation system. This article provides a few highlights of the findings. Readers are encouraged to visit WCRI's website at [www.wcrinet.org](http://www.wcrinet.org) to purchase and review the full studies.



## ***Designing Workers' Compensation Medical Fee Schedules, 2019 (May 2019)***

This report highlights some of the key decision choices made by the 44 state workers' compensation agencies (and the District of Columbia) with physician and professional services fee schedules. The information is current through February 2019. The study also discusses the substantial fee schedule changes made since the report was first published in March 2016.

WCRI classifies state fee schedules by design characteristics and compares the percentage difference between each jurisdiction's workers' compensation fees and the corresponding Medicare rates. Overall, Minnesota's workers' compensation rates were 78% above Medicare rates. This varied by service type, from a high of 102% for the major radiology technical component to a low of 59% for physical medicine. The workers' compensation premium over Medicare varied from 1% above Medicare in Massachusetts to 179% above Medicare in Alaska. Since March 2016, WCRI has calculated that Minnesota's fee schedule rates increase by 16%, 6% higher than the Medicare change.

## ***Health Insurance and Outcomes of Injured Workers (June 2019)***

This report examines how expanded access to health insurance may have affected workers' experiences after they were injured at work. WCRI data for this report covers workers injured between 2010 and 2014 across 15 states, including Minnesota, with more than seven days of lost time. The report matches information from worker surveys with medical payment information on their workers' compensation claims.

Analysis of the multi-state data found workers with health insurance had: faster times to get their first non-emergency office visit; somewhat better recovery of physical health and functioning; faster rates of returning to work; higher satisfaction with the primary provider; and lower likelihood of hiring an attorney.

## ***Hospital Outpatient Payment Index: Interstate Variations and Policy Analysis, 8th Edition (May 2019)***

This report reflects Minnesota's hospital outpatient costs before the introduction of Minnesota's Hospital Outpatient Fee Schedule (HOFS). During this period, Minnesota was characterized as a state with a percent-of-charge-based fee regulation. Under HOFS, which became effective Oct. 1, 2018, Minnesota would be categorized as a state with a fixed-amount fee schedule.

This report benchmarks hospital payments for a group of common knee and shoulder outpatient surgeries across 36 states, based on an index for hospital outpatient payments. The study's data focuses on 2017 and looks at trends during a 13-year period, from 2005 to 2017.

In 2017, Minnesota's hospital payment index for outpatient surgical episodes was 166, the ninth highest, with the index set to 100 at the median state's value. Among neighboring states in the study, Iowa had an index of 168 and Wisconsin had an index of 189. Neither of these neighboring states have hospital outpatient fee schedules. States with percent-of-charge-based fee schedules had substantially higher outpatient payments per surgical episode than states with fixed-amount fee schedules.

The report also compares workers' compensation payments with Medicare rates for common shoulder and knee surgeries performed in 2017. Minnesota's workers' compensation paid an average of \$17,731 compared to a Medicare rate of \$5,390, a 229% difference. Minnesota's HOFS was designed to result in the same overall payment for hospital

outpatient services as the actual payments made during the 2017 to 2018 period, adjusted for inflation. Iowa and Wisconsin had higher average workers' compensation surgical payments (above \$18,000) and Medicare cost differences in excess of 260%.

Among the 23 states without substantial fee schedule changes, Minnesota had the seventh-highest cumulative growth rate for outpatient surgery payments, at 35%, during the 2011 to 2017 period. States with percent-of-charge-based fee schedules had higher growth rates than did states with fixed-amount fee schedules.

### ***WCRI Medical Price Index for Workers' Compensation, 11th Edition (May 2019)***

This report benchmarks the actual prices paid for medical professional services delivered to injured workers across 36 states. The interstate comparisons use an index based on a marketbasket of the most commonly used services for treating injured workers. The report focuses on all of 2017 and the first half of 2018 payments and growth rates since 2008.

Minnesota's index was 112 in 2018, the 14th highest value. Among neighboring states in the study, Iowa had an index of 135 and Wisconsin had an index of 264, the highest value. Neither of these neighboring states have professional service fee schedules.

Minnesota's cumulative growth rate in prices for professional services from 2008 to 2018 was 10%. The growth rates among the 22 states with no significant changes in their fee schedules ranged from -3% in Nebraska to 44% in Wisconsin.

The report also shows the trends in prices paid by service group, such as emergency services, radiology and surgery during the 2008 to 2018 period. Evaluation and management services (office visits) had the highest cumulative price growth, 52%, while prices paid for major radiology decreased by 43%.

### ***Interstate Variation and Trends in Workers' Compensation Drug Payments: 2015Q1 to 2018Q1 (June 2019)***

This report presents data for 27 states about payment levels and trends for prescription drugs from the first quarter of 2015 (2015Q1) through the first quarter of 2018 (2018Q1). The report looks at opioids, nonsteroidal anti-inflammatory drugs, dermatological agents, anticonvulsants, musculoskeletal therapy agents and compounded drugs. Two measures are reported: the share of all prescription payments in a quarter for each drug group; and the total quarterly payment for each drug group per claim with a prescription for any drug. Only prescriptions filled within three years of the injury are included.

For all drug groups combined, quarterly drug payments per claim with any medical payment decreased from \$43 in 2015Q1 to \$32 in 2018Q1, a 26% decline. The median among the 27 states was a 27% decrease. Minnesota's percentage of prescription payments that were for opioids decreased from 20% in 2015Q1 to 12% in 2018Q1, and quarterly payments decreased 51% during that interval. In contrast, Minnesota's percentage of prescription payment that were for anticonvulsants increased from 19% in 2015Q1 to 23% in 2018Q1, and quarterly payments decreased 2%.

### ***Interstate Variations in Opioid Dispensing, 5th Edition (July 2019)***

This study focuses on the prevalence and trends in dispensing of opioids in 27 state workers' compensation systems and compares them with use of other pain medications and pain treatments. The data is based on claims with more than seven days of lost time occurring from October 2011 through September 2016, and treatments received through March 2018. The report documents the substantial decline in opioid prescribing across the study states, although there is substantial interstate variation. The study shows there was a shift in treatment patterns from prescribing pain medications to providing only non-pharmacologic pain treatments, such as physical medicine, chiropractic care and acupuncture.

In Minnesota, 54% of the 2016 claims with a prescription had opioids and 28% had two or more opioid prescriptions. These were near the median state values of 52% and 26%, respectively. Minnesota claims had an average of 111 opioid pills, below the median state value of 131 pills. The pills were meant to supply 26 days of use, below the median state value of 36 days. Minnesota saw a 37% decrease in the average amount of opioids during the four-year study period.

# CompFact: Effects of maximum claimant attorney fee increase

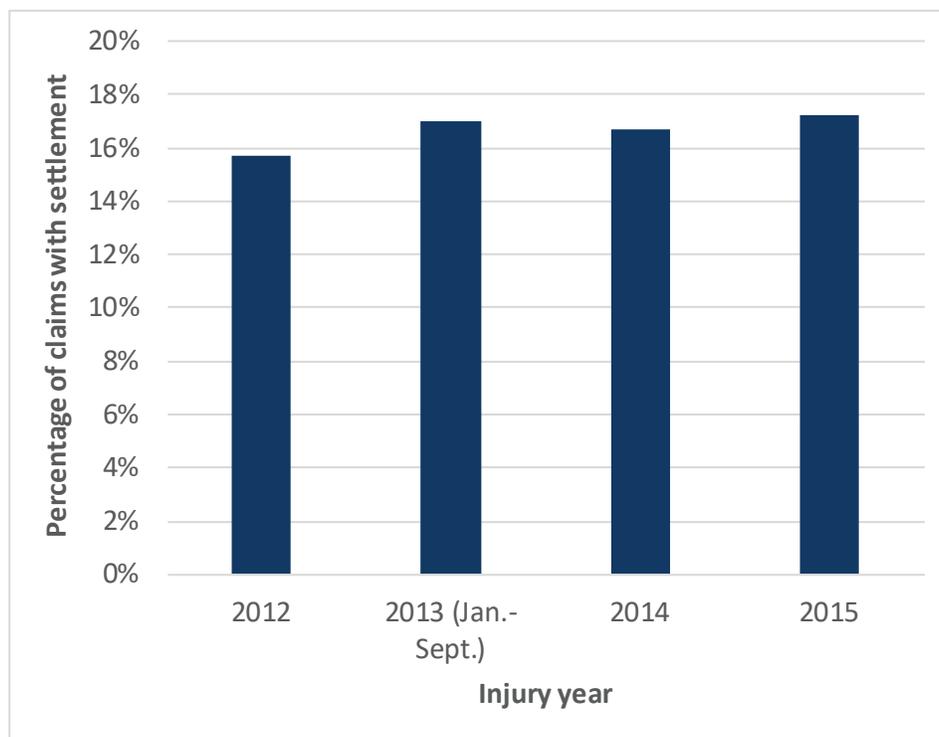
By Brian Zaidman, Research and Statistics

The 2013 workers' compensation statute change increased the maximum claimant attorney fee pre injury to \$26,000 in fees. Previously, the cap was \$13,000 per injury. The law change became effective for injured workers with dates of injury on or after Oct. 1, 2013. This article examines the changes in the values of stipulated settlement agreements and attorney fee payments for workers' compensation claims occurring during the 21 months before (January 2012 through September 2013) and 24 months after (January 2014 through December 2015) the law change. Stipulated settlements may include payments for medical and indemnity benefits, both past and future. Attorneys may petition the court for fees beyond the cap. Additional years of claims experience and development are needed to fully understand the effect of this statute change.

To control for the shorter development period for the post-law-change claims, only claims that closed within 30 months of the injury date are included in the analysis. There were between 19,000 and 20,000 claims for each of the full years and 14,800 claims from 2013 included (which works out to about 19,700 claims for 12 months).

Did the increase in available attorney fees lead to an increase in stipulation agreements for claims closed within 30 months of the injury? The law change did not affect the percentage of claims with a stipulated settlement. Figure 1 shows the annual percentage of claims with a stipulation settlement ranged from a low of 15.7% in 2012 to a high of 17.2% in 2015, but there was no consistent trend.

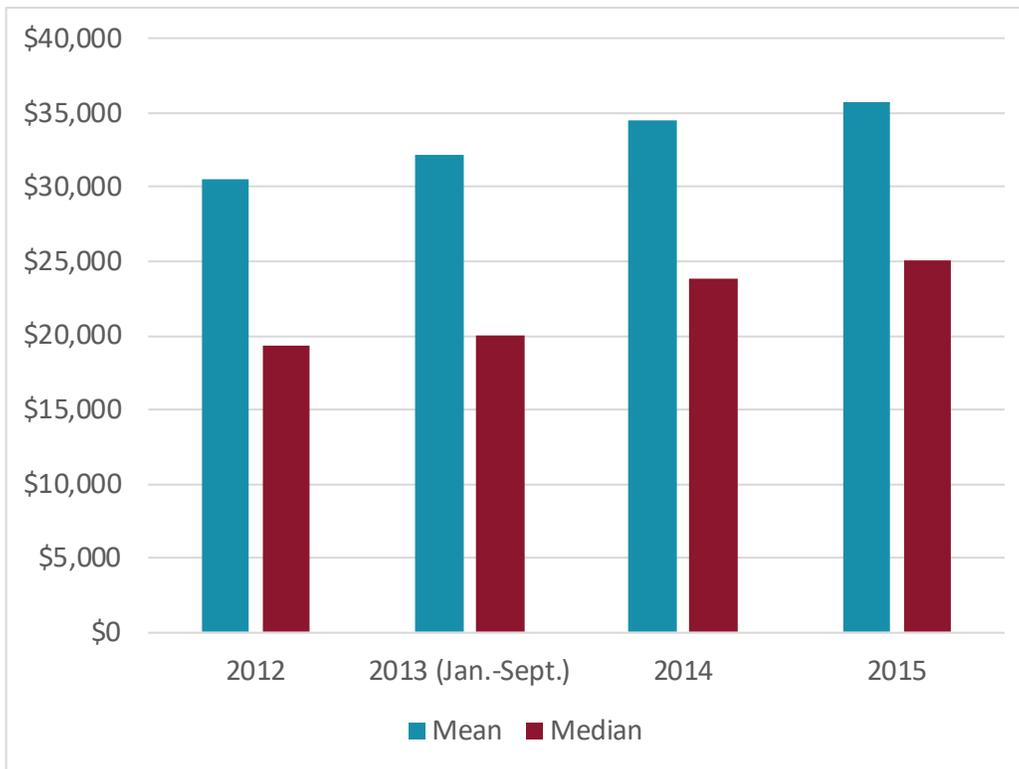
Figure 1. Percentage of claims with a settlement among closures at 30 months post-injury



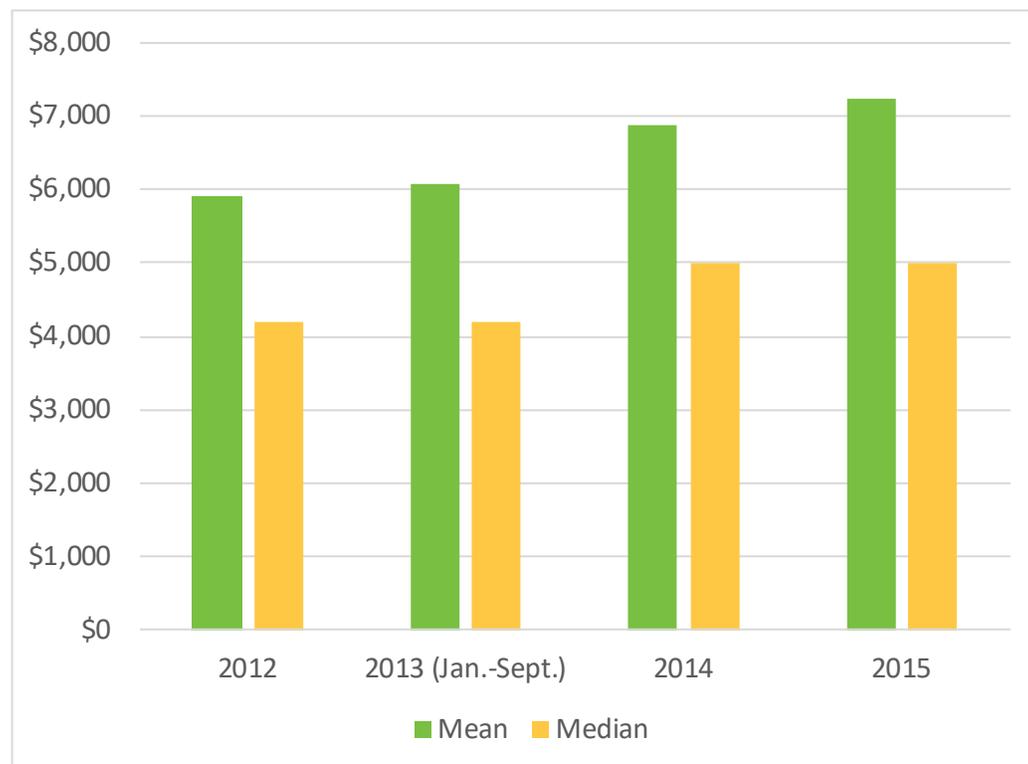
The remainder of this article relates to stipulations limited to a range of \$1,000 through \$500,000. Limiting the range eliminates minor settlements and the very rare large settlements. This range of values includes 99% of all the stipulated settlements.

The average amount paid for stipulated settlements (including contingent attorney fees) increased by 17% from 2012 to 2015, with a 29% increase in the median payment (Figure 2). The maximum settlement value increased 40%, from \$312,000 for 2012 claims to \$438,000 for 2015 claims. Average attorney fee payments increased by 22%, with a median increase of 19% (Figure 3). The maximum attorney fee payment increased by 72%, from \$46,960 to \$81,000.

**Figure 2. Mean and median amounts paid for stipulated settlements, \$1,000-\$500,000 settlements, current dollars**



**Figure 3. Mean and median amounts paid for attorney fees, claims with \$1,000-\$500,000 settlements, current dollars**

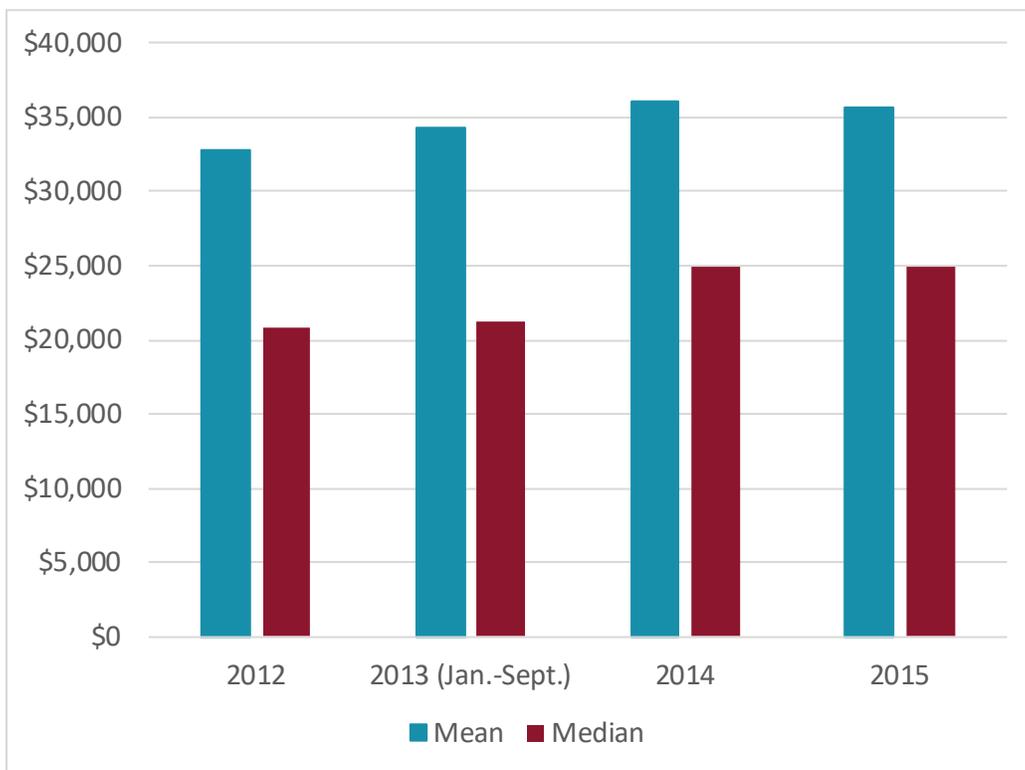


The average attorney fee increased more than the average settlement amount, but the median settlement amount increased more than the median attorney fee. The lower percentage increase for the average settlement is mostly due to the higher average value of settlements in 2012, compared with the median value of settlements and the size of attorney fee payments. The average settlement increased by \$5,180, the median settlement increased by \$5,680 and the average attorney fee increased by \$1,330. The relatively higher increase in the median settlement value indicates lower-value settlements had increases in value. The relatively higher increase in the average attorney fee may indicate attorneys could more easily receive higher contingent fees for higher-value settlements.

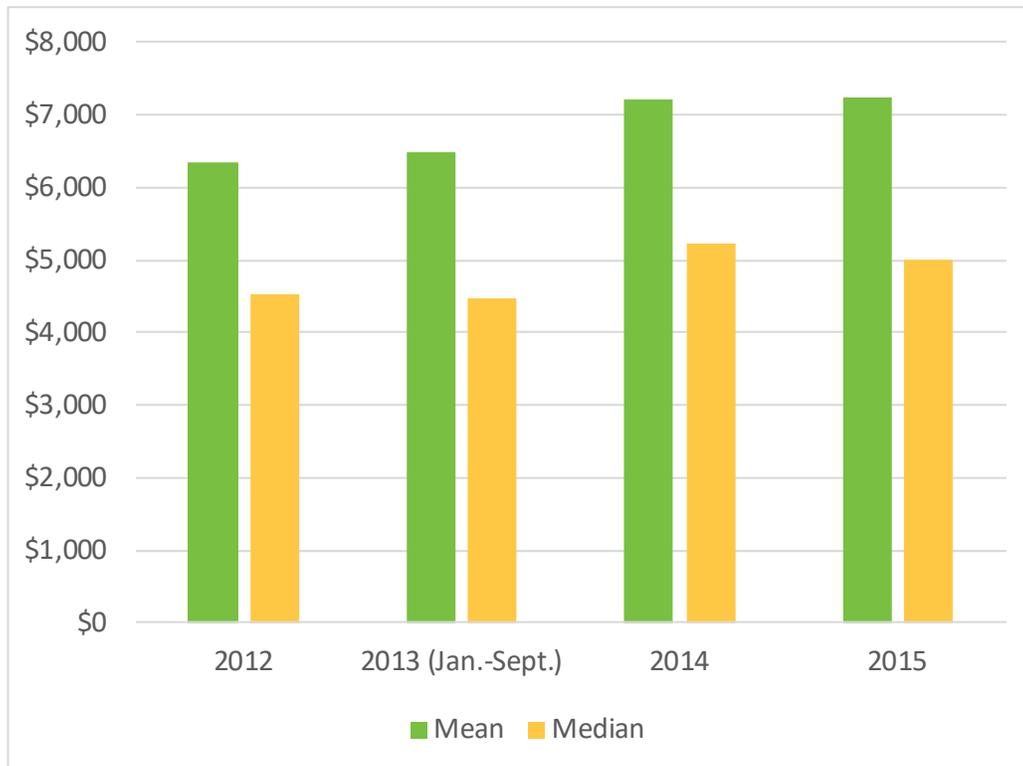
The value of stipulated settlement agreements also depends on workers' pre-injury average weekly wages. The Department of Labor and Industry does not have information allowing a breakdown of stipulated settlement payments into those related to medical and indemnity benefits, and to further disaggregate indemnity benefits into permanent partial disability (PPD) and non-PPD benefits. Medical benefits and PPD benefits are not dependent on a worker's pre-injury wage. With that caveat, the stipulated settlement and attorney fee values were adjusted by the ratio of the 2015 average weekly wage of the workers with settlements to the average weekly wage of the workers with settlements in each injury year, allowing a look at the effects of the law change controlling for the change in worker wages. The average weekly wage of the workers injured in 2015 (\$687) was 7.4% higher than the average weekly wage of workers injured in 2012 (\$639).

Using the adjusted values, the average amount paid for stipulated settlements increased by 9% from 2012 to 2015, with a 20% increase in the median payment (Figure 4). The maximum settlement value increased by 31%. Average attorney fee payments increased by 14%, with a median increase of 11% (Figure 5). The maximum attorney fee payment increased by 60%. Once again, the average attorney fee increased more than the average settlement amount, but the median settlement amount increased more than the median attorney fee.

**Figure 4. Mean and median amounts paid for stipulated settlements, \$1,000-\$500,000 settlements, adjusted to 2015 wage level**



**Figure 5. Mean and median amounts paid for attorney fees, claims with \$1,000-\$500,000 settlements, adjusted to 2015 wage level**



The full effect of the law change on settlements and attorney fee payments will not be known until settlements occurring more than 30 months after the injury are available for analysis. It will also take additional years to learn if settlement rates and amounts are continuing to change. Also, if the proportion of settlements closing out medical benefits changes, it will become difficult to ascribe changes in settlement amounts to the effects of the law change.

## Reviewing the basics: *Recordkeeping training offered Nov. 6*

Maintaining an accurate OSHA log of recordable work-related injuries and illnesses is an important skill that benefits employers, workers, safety professionals and government agencies. The Department of Labor and Industry is offering a free introductory-level training session Nov. 6 about OSHA recordkeeping.

### Topics

- Recordability of injuries and illnesses
- Differences between OSHA cases and workers' compensation claims
- Classifying cases
- Privacy cases
- Counting time
- Maintaining logs
- How many logs to keep
- Reporting log data to OSHA
- Creating a log summary



### Registration, more information

To register, visit <https://secure.doli.state.mn.us/events>. For more information about the training session, visit [www.dli.mn.gov/business/workplace-safety-and-health/mnosha-compliance-recordkeeping-standard](http://www.dli.mn.gov/business/workplace-safety-and-health/mnosha-compliance-recordkeeping-standard).

# Statistics shine spotlight on worker safety indicators

The Minnesota Safety Council has updated its Minnesota Workplace Safety dashboard to spotlight the most recent indicators related to worker safety and health. The Minnesota Department of Labor and Industry (DLI) and the Minnesota Department of Health produced the statistics. The dashboard presents some of the most important occupational safety and health measures together in an easy-to-use format.

## MINNESOTA WORKPLACE SAFETY SEPTEMBER 2019

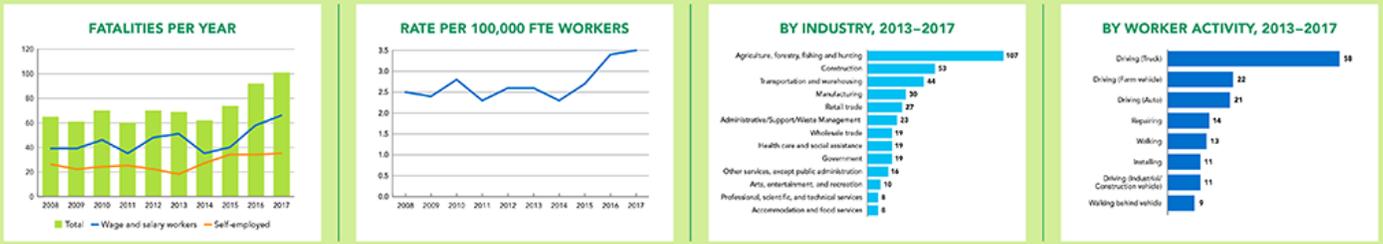


### FATAL OCCUPATIONAL INJURIES

In 2017, one Minnesota worker died every 87 hours (3.6 days).

3.5: Minnesota's fatal occupational injury rate in 2017.  
3.5: National fatal occupational injury rate in 2017.

Almost one in three fatal workplace injuries involved driving a vehicle.



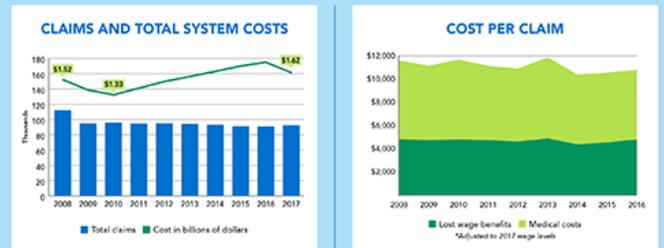
### NON-FATAL INJURIES AND ILLNESSES

198/day: Number of nonfatal workplace injuries and illnesses, 2017.  
100/day: Number of serious workplace injuries and illnesses requiring time off, job transfer or other restrictions, 2017.



### WORKERS' COMPENSATION

The number of claims has dropped since 2008, but the inflation-adjusted cost per claim has remained near \$11,000.



## Dashboard highlight

- Minnesota's 2017 fatal occupational injury rate increased to 3.5 per 100,000 workers, up from 3.4 in 2016 and equal to the national rate of 3.5 for 2017. In 2017, one Minnesota worker died from a fatal occupational injury every 87 hours.
- Agriculture remains one of the state's most dangerous sectors. Between 2013 and 2017, 107 fatal work injuries involved those employed in the agriculture, forestry, fishing and hunting businesses, particularly workers in crop production jobs. Statistically, seven people in this sector are seriously injured each day.
- The 533 concussion injuries resulting in wage-loss payments for 2018 were six times greater than the number recorded in 2009.
- Falls remain a leading cause of injuries. Statistically, 11 people a day are injured by falls at work.
- While Minnesota's number of workers' compensation claims has dropped since 2008, the inflation-adjusted cost for a claim has remained steady at about \$11,000.

"After a steady decline over the more than nine decades since the Minnesota Safety Council was founded, we're now seeing a concerning uptick in workplace fatalities," said Paul Aasen, president, Minnesota Safety Council President. This means all of us – employers, government agencies, the Minnesota Safety Council and others – must continue to join forces to make our state's workers safer."

The dashboard, Minnesota Workplace Safety, 2019, is on the Minnesota Safety Council website at [www.minnesotasafetycouncil.org/WorkplaceSafetyDashboard.pdf](http://www.minnesotasafetycouncil.org/WorkplaceSafetyDashboard.pdf).

# Workers' compensation events calendar

## October 2019

- Oct. 3 Rehabilitation Review Panel
- Oct. 9 Workers' Compensation Advisory Council
- Oct. 10 Medical Services Review Board

## November 2019

- Nov. 6 OSHA recordkeeping training: Learn the basics
- Nov. 13 Workers' Compensation Advisory Council
- Nov. 20 Workers' Compensation Insurers' Task Force

## December 2019

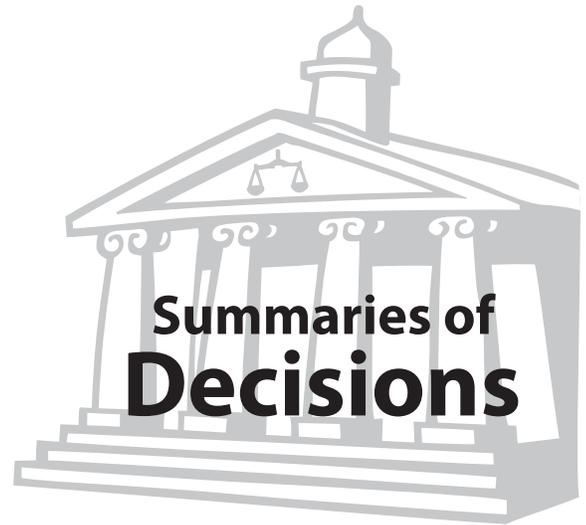
- Dec. 11 Workers' Compensation Advisory Council

Note: Event dates may change. Check the online calendar at [www.dli.mn.gov/about-department/about-dli/events-workers-compensation](http://www.dli.mn.gov/about-department/about-dli/events-workers-compensation).

## Workers' Compensation Court of Appeals

May through July 2019

Case summaries published are those prepared by the WCCA



### *Janus A. Reason v. Ell Z Trucking, Inc., May 2, 2019*

#### **Appeals – Notice of Appeal**

This court lacks jurisdiction to consider an issue briefed but not listed by specific finding or order or identified as an issue raised on appeal in the appellant's notice of appeal pursuant to Minnesota Statutes 176.421.

#### **Causation – Substantial Evidence**

Substantial evidence in the form of a medical opinion with adequate foundation supports the compensation judge's determination that the employee's 2015 work injury was not a substantial contributing factor in his claimed disability.

Affirmed.

### *Brandon Beager v. North Valley, Inc., May 15, 2019*

#### **Attorney Fees**

The employee's attorney is entitled to reasonable attorney fees where the employer and insurer did not agree to entry of an order vacating an earlier award on stipulation until after the employee's attorney performed significant work on the employee's behalf. Under the facts presented, the presumptive attorney fee award is the appropriate amount to award as fees, rather than the hourly fee total requested.

Attorney fees awarded.

### *Emma Munoz v. JBS USA, May 15, 2019*

#### **Attorney Fees**

The compensation judge appropriately applied the Irwin factors in determining how to divide reasonable attorney fees from a settlement between an employee's current and former attorneys, and substantial evidence supports the compensation judge's finding that both attorneys provided valuable legal services to the employee and her division of the attorney fee.

Affirmed.

***Kelly Miskowiec v. CM Information Specialists, Inc., May 16, 2019***

**Practice and Procedure – Intervention**

Where an intervenor was not given direct notice of the 30-day time limit for filing a motion to intervene after a notice of an administrative conference and had filed a motion to intervene within 60 days of a notice of a right to intervene, the compensation judge did not err by finding that the intervenor's claim was not barred by a failure to timely intervene.

**Medical Expenses – Change of Physician  
Rules Construed – Minnesota Rules 5221.0430**

Where there was no evidence that the employee's physician had referred the employee to a new physician or that the physician had endorsed the care provided by the new physician, the compensation judge erred by finding that the physician had made a proper referral and by determining that the treatment with the new physician did not constitute an unauthorized change of physician under Minnesota Rules 5221.0430. The findings and award of payment for the treatment provided by the new physician are therefore reversed.

**Medical Treatment and Expense – Reasonable and Necessary  
Practice and Procedure**

Where the medical treatment at issue is denied on other grounds, whether the treatment is reasonable and necessary is moot and need not be addressed on appeal.

Affirmed in part and reversed in part.

***Bruce M. Holzschuh v. MNSCU Metropolitan State University, May 20, 2019***

**Causation – Psychological Condition**

Substantial evidence, including medical records, expert psychological opinion and lay testimony, supported the finding that the employee had failed to prove he sustained a work-related post-traumatic stress disorder condition within the meaning of DSM-5 and the Minnesota Workers' Compensation Act.

Affirmed.

***Jason H. Amborn v. City of Maplewood, May 30, 2019***

**Vacation of Award**

The employee's allegations fail to establish a mutual mistake of fact and his petition to vacate is denied.

Petition to vacate denied.

***Lori A. Schallock v. Battle Lake Good Samaritan Center, May 31, 2019***

**Evidence – Burden of Proof**

Where a compensation judge stated, in consideration of a petition to discontinue benefits, that an employer and insurer's evidence was not more convincing nor had a greater probability of truth than the employee's evidence presented in support of the employee's claim that her medical condition was related to the work injury, and held that the employer and insurer did not meet their burden of proof, the judge erred by placing the burden of proving whether the employee was entitled to benefits on the employer and insurer instead of on the employee as required by Minnesota

Statutes 176.021, subdivision 1. The judge's finding that the employer and insurer did not meet their burden of proof that the employee's work injury was temporary and had resolved and the dismissal of the petition to discontinue benefits are vacated, and the matter is remanded to the compensation judge.

Vacated and remanded.

***Mary Farrell v. St. Paul Café, June 4, 2019***

**Jurisdiction – Nonstatutory Rehabilitation**

As disability case management services are nonstatutory rehabilitation services outside the scope of the workers' compensation act, the workers' compensation courts have no jurisdiction to impose limitations on the right of an employer and insurer to change the provider of disability case management services.

Vacated.

***John Devos v. Rhino Contracting, Inc., June 12, 2019***

**Exclusions From Coverage – Substantial Evidence**

Substantial evidence supported the finding that the employee was hired in North Dakota by a North Dakota employer, for the purposes of applying Minnesota Statutes 176.041, subdivision 5(b), which provides an exclusion from Minnesota jurisdiction where an employee so employed and hired was injured during temporary work in Minnesota.

**Statutes Construed – Minn. Stat. 176.041, subd. 5(b)**

To determine whether work in Minnesota was "temporary" within the meaning of this provision, the extent of work performed for the employer in Minnesota during the single calendar year, from Jan. 1 through Dec. 31, must be reviewed. For an injury arising out of work performed on a specific date, the calendar year in which the date of injury falls is the calendar year that must be used pursuant to the statutory requirements.

Affirmed.

***Thomas Reel v. Loftness Specialized Farm Equipment, June 12, 2019***

**Vacation of Award – Substantial Change in Medical Condition**

Where the employee has not shown an increase in permanent partial disability rating, an impairment in work ability, or other aspect outside of the contemplation of the parties at the time of settlement, the employee has not met his burden to have the award on stipulation vacated.

**Vacation of Award – Referral for Hearing**

Where there is minimal indication that any facts are in dispute regarding the employee's ability to work at the time of the settlement now sought to be vacated, or any other issue, there is no basis for referring the matter to the Office of Administrative Hearings for an evidentiary hearing and factual findings.

Petition to vacate denied.



***Yer Sumner v. Jim Lupient Infiniti, June 19, 2019***

**Attorney Fees – Roraff fees**

The compensation judge appropriately applied the Irwin factors to reach a reasonable Roraff fee.

Affirmed.

***Kristine A. Markham v. Minnesota Department of Natural Resources, June 27, 2019***

**Evidence – Res Judicata**

Where the parties had not litigated the permanent nature of the employee's chronic regional pain syndrome (CRPS) condition at an earlier hearings, only medical treatment and a proposed retraining plan, and there were no previous findings in the 2017 decision that would preclude the litigation of the employee's claimed permanent partial disability (PPD) rating, the judge did not err in failing to apply the doctrine of res judicata in this case.

**Permanent Partial Disability – Reflex Sympathetic Dystrophy, Substantial Evidence  
Rules Construed – Minnesota Rules 5223.0435**

Substantial evidence, including adequately founded medical opinion, supports the compensation judge's finding that the employee was not entitled to PPD.

Affirmed.

***Mark Turner v. SMCD Medical Center, July 3, 2019***

**Causation – Psychological Condition**

Where there is insufficient medical opinion that establishes a causal connection between the employee's physical injury to his right little finger and his alleged mental disability, the compensation judge erred in finding that the employee had sustained a compensable mental injury.

Reversed.

***Lyle B. Knaack v. Dee, Inc., July 10, 2019***

**Appeals – Interlocutory Order  
Jurisdiction**

An order dismissing parties without prejudice is not an order affecting the merits of the case and this court does not have jurisdiction to consider an appeal from such an order pursuant to Minnesota Statutes 176.421, subdivision 1.

Dismissed.



***Ramdai Allie v. Health Care Services Group, July 15, 2019***

**Practice and Procedure – Estoppel  
Appeals – Law of the Case  
Medical Treatment and Expense**

A request for approval of surgery intended to treat a work-related injury is not barred by collateral estoppel or the law of the case where the facts establish that the employee's condition has not improved since the prior approved surgery and no prior appeal established any facts limiting the parties in subsequent proceedings.

**Medical Treatment and Expense – Surgery  
Evidence – Medical Records**

The compensation judge's award of surgery, incorrectly described as a three-level fusion, is supported by substantial evidence where the surgeon's proposed procedure is quoted from the employee's medical record and no other specific procedure was offered as an alternative.

Affirmed as modified.

***Jeffrey A. Larson v. Viking Automatic Sprinkler, July 15, 2019***

**Rehabilitation – Consultation  
Rehabilitation – Eligibility  
Rehabilitation – Substantial Evidence**

Where the record reasonably supported the compensation judge's conclusion that the employee failed to establish that he is subject to restrictions as a result of his work injuries, the judge's denial of a rehabilitation consultation was not clearly erroneous or unsupported by substantial evidence.

**Appeals – Scope of Review**

Where the hearing below only addressed the employee's rehabilitation requests and the medical request was not heard, this court will not address the issue for the first time on appeal.

**Jurisdiction  
Statutes Construed – Minnesota Statutes 175A.01, subdivision 5**

The authority of this court is limited to the determination of questions of law and fact arising under the workers' compensation laws of Minnesota. Minnesota Statutes 175A.01, subd. 5. The employee's arguments regarding his social disability claims, Texas workers' compensation claims, union issues and employment disability claims are outside of this court's jurisdiction.

Affirmed.

***Arthur H. Wendroth v. Madsen and Sons, July 15, 2019***

**Settlements – Interpretation**

Substantial evidence in the record supports the compensation judge's finding that a consequential injury was not reasonably contemplated by the parties when they entered into the settlement agreement and that the compensation judge did not err by finding that the employee's claims related to the consequential injury are not closed out by the earlier settlement.



### **Permanent Total Disability – Substantial Evidence**

Substantial evidence, including expert vocational opinion, supports the compensation judge's finding regarding the onset of the employee's permanent total disability.

### **Permanent Partial Disability**

Under the circumstances of this case, which involved a prior settlement, the employee was entitled to an award of compensation for only that portion of his permanency that is attributable to a consequential condition diagnosed after the settlement. The permanent partial disability award is vacated and remanded for reconsideration on the issue of what permanency, if any, is attributable solely to the consequential condition using the law in effect on the date of injury.

Affirmed in part and vacated and remanded in part.

#### ***Ismail Ouassaddine v. Rosemount Aerospace, Inc., July 22, 2019***

### **Causation – Substantial Evidence**

Substantial evidence, including well-founded expert medical opinion and medical records, supported the compensation judge's finding that the employee did not sustain a Gillette injury to his left wrist and a consequential injury to his right wrist.

Affirmed.

#### ***Virgil Hall v. U.S. Steel Corporation, July 24, 2019***

### **Causation – Substantial Evidence**

Substantial evidence, including an expert medical opinion with adequate foundation and the credible testimony of the employee, supports the compensation judge's award of the employee's claims.

### **Practice and Procedure – Adequacy of Findings**

The compensation judge's implicit conclusion that the employee's need for treatment was causally related to his work injuries is supported by substantial evidence.

Affirmed.

#### ***Richard Peterson v. Viracon, Inc., July 24, 2019***

### **Attorney Fees – Heaton Fees**

Where the employee had stopped attending a retraining program with no intention of returning to the program and no longer received retraining wage loss benefits, the award of Heaton fees to the employee's attorney was not premature and was not barred by collateral estoppel or law of the case based on an earlier denial of fees before the employee stopped attending the program.

### **Attorney Fees – Heaton Fees**

Substantial evidence supports the compensation judge's application of the Irwin factors and the amount of Heaton fees awarded.

Affirmed.



***Robert M. Dexter v. Hubbard County Developmental Achievement Center, July 30, 2019***

**Practice and Procedure – Matters at Issue**

Where the compensation judge awarded benefits not claimed by the employee, and ordered payment to an intervenor for bills already acknowledged to have been paid, the compensation judge improperly expanded the issues and the related awards must be vacated.

Vacated in part.

***Angela Hawley v. City of Blaine, July 31, 2019***

**Jurisdiction – Subject Matter**

Where the employee had never sought or received workers' compensation benefits, but had merely completed a first report of injury, and the employer and insurer had denied the alleged injury, a compensation judge has no subject matter jurisdiction to consider a discovery motion by the employer and insurer.

Affirmed.



## Minnesota Supreme Court

May through July 2019

Case summaries published are those prepared by the WCCA



### ***Richard Oseland (deceased) by Terrence Oseland, Richard Oseland and Karen Hayhoe v. Crow Wing County, A18-1550, May 29, 2019***

1. Under Minnesota Statutes § 176.221, subd. 7 (2018), the "due date" for underpaid compensation benefits is the date of each underpayment, and interests on those underpaid benefits accrues at the statutory rate in effect at the time the payment was due.
2. The compensation judge's determination that relator is not entitled to penalties under Minn. Stat. § 176.225 (2018) is supported by substantial evidence.
3. Relator's expense incurred in obtaining a decree of descent is not a taxable disbursement under Minn. Stat. § 176.511, subd. 2 (2018).

Affirmed in part, reversed in part, and remanded.

### ***Jennifer Rodriguez v. State Farm Mutual Automobile Co., A17-1800, July 3, 2019***

The reimbursement prohibition set forth in Minnesota Statutes § 176.83, subd. 5(c) (2018), applies only to "the provider" determined by a workers' compensation payer to have provided excessive, unnecessary, or inappropriate procedures or services. Because the provider of the treatment for which the injured employee sought reimbursement from her no-fault insurer had not been determined by a workers' compensation payer to have provided excessive, unnecessary, or inappropriate services, the no-fault insurer's denial of coverage was improper.

Affirmed.

### ***Chadd A. Smith v. Carver County, A19-0199, July 17, 2019***

1. In a claim for workers' compensation benefits where the alleged injury is post-traumatic stress disorder arising out of and in the course of employment, Minnesota Statutes § 176.011, subd. 15(d) (2018), requires the employee to prove that the employee has been diagnosed with post-traumatic stress disorder (PTSD) by a licensed psychologist or psychiatrist and that the diagnosing professional use the latest version of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) in making a diagnosis. The statute does not require a compensation judge to conduct an independent assessment to verify that the diagnosis of a psychologist or psychiatrist conforms to the PTSD criteria set forth in the DSM before accepting the expert's diagnosis.
2. The Workers' Compensation Court of Appeals erred by reversing the compensation judge's choice between two competing medical experts because the expert opinion adopted by the compensation judge had an adequate factual foundation for the diagnosis.

Reversed.

***Alapati Noga v. Minnesota Vikings Football Club, A18-1685, July 31, 2019***

The employee did not meet his burden to show that the employer-provided medical treatment was an acceptance of responsibility for the employee's later-diagnosed Gillette injury, and thus did not demonstrate that a "proceeding" occurred that satisfied the statute of limitations under Minnesota Statutes § 176151 (2018).

Reversed.

