

Minnesota Department of Labor and Industry

STATEMENT OF NEED AND REASONABLENESS

Possible Amendment to Rules Governing Workers' Compensation Rules of Practice and Penalties Related to Electronic Filing of First Reports of Injury; *Minnesota Rules*, 5220.2530; 5220.2820; and 5220.2830. Revisor ID No. 4134.

INTRODUCTION

The Commissioner of the Minnesota Department of Labor and Industry has a duty to keep fully informed of the nature and extent of all injuries compensable under the workers' compensation law, and must supervise and require prompt and full compliance with all provisions of the law.¹ To accomplish this supervision, Minnesota's workers' compensation law requires self-insured employers and workers' compensation insurers to file First Reports of Injury with the Minnesota Department of Labor and Industry (DLI) at specified times and upon the Commissioner's request.²

Under Minnesota's workers' compensation law, when an employee is seriously or fatally injured at work, the employer must notify DLI within 48 hours (usually by phone).³ The employer must also file a written First Report of Injury with DLI within seven days and with the workers' compensation insurer within ten days. Within 14 days, a workers' compensation insurer or self-insured employer must file a First Report of Injury with DLI for each injured worker who is wholly or partially incapacitated from working for more than three calendar days. DLI receives approximately 30,000 First Reports of Injury a year, and creates a file for each injured worker's claim. The files are audited by Department staff to ensure proper payment of benefits.⁴

Until 1993, all First Reports of Injury were filed on paper forms. In 1993, DLI's Workers' Compensation Division started an electronic data interchange program with one workers' compensation insurer, which allowed the insurer to file first reports of injury for its claims electronically. Since 1993 this program has evolved and expanded; there are now 40 companies submitting approximately 40% of all First Reports of Injury electronically. As of Jan. 1, 2014, Minnesota will require the electronic submission of First Report of Injury data either through electronic data interchange (EDI), or through DLI's Web portal ("eFROI"), where the reporting entity enters the data onto a secure website established by DLI for that purpose.⁵

The electronic submission of workers' compensation claim information has a number of advantages over the submission of paper claims, including improved reporting performance, time

1. Minn. Stat. §§ 176.231, subd. 4, and 176.251. See, <https://www.revisor.mn.gov/statutes/?id=176.231>; <https://www.revisor.mn.gov/statutes/?id=176.251>.

2. Minn. Stat. § 176.231, subds. 1 and 2.

3. *Id.*

4. Minn. Stat. § 176.231 also requires insurers and self-insured employers to file subsequent reports of disability and benefits paid, which are described in Minn. R. parts 5220.2510 to 5220.2840. Health care providers who treat the injury must also file reports, which are described in Minn. R. parts 5220.2510 to 5220.2840 and Minn. R. part 5221.0410.

5. In 2004 DLI implemented a version of an eFROI Web portal, but that program was discontinued in 2010.

savings, cost savings, improved accuracy, and enhanced flexibility. The advantages of EDI are shared by the reporting entities and DLI. While EDI is more cost effective in most situations, reporting entities that have very little claim data in their system and file very few claims with DLI every year may find it more cost-effective to use the DLI eFROI Web portal to electronically send their first reports of injury.

The EDI environment at the Department is designed to accept First Report of Injury transactions from insurers, self-insured employers and third party administrators (called “trading partners” or “reporting entities”) throughout the country, based on standards developed by the International Association of Industrial Accident Boards and Commissions (IAIABC).⁶ The Department is a member organization of the IAIABC, which is a 100-year old not-for-profit trade association formed to represent government agencies charged with administering workers’ compensation systems throughout the United States, Canada, and other countries. The purpose of the IAIABC is to “advance the efficiency and effectiveness of workers’ compensation systems throughout the world.”⁷ The IAIABC structure includes a separate membership category for entities interested only in EDI, and the organization creates, maintains and publishes EDI standards that are specific for workers’ compensation insurance claims. The proposed rule amendments incorporate the IAIABC standards, called “Claims Release 3.0,” for submitting FROIs through EDI and eFROIs through the DLI Web portal. The Minnesota implementation guide is also incorporated by reference. This implementation guide describes how to use the IAIABC Claims Release 3.0 standards to electronically file EDI First Reports of Injury and eFROIs under the Minnesota workers’ compensation law.

The following is a summary of the acronyms used throughout this Statement of Need and Reasonableness:

- DLI means the Department of Labor and Industry.
- EDI means electronic data interchange.
- eFROI means a First Report of Injury submitted electronically through a DLI Web portal.
- FROI means “First Report of Injury.”
- IAIABC means the International Association of Industrial Accident Boards and Commissions.
- SONAR means this Statement of Need and Reasonableness.

ALTERNATIVE FORMAT

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Kelli Peters at the Department of Labor and Industry,

6. Workers’ compensation insurers, self-insured employers and third party administrators who file first reports of injury via EDI are called “trading partners,” which is the EDI industry term used in the IAIABC and Minnesota EDI implementation guides incorporated by reference in the proposed Minn. R. 5220.2530, subpart 4. In this SONAR, workers’ compensation insurers, self-insured employers and third party administrators who are DLI trading partners are more often referred to as “reporting entities” because the proposed rules specify the First Report of Injury reporting requirements for workers’ compensation payers.

7. <http://www.iaiaabc.org/i4a/pages/index.cfm?pageid=3277>. According to its website, the IAIABC also represents workers’ compensation professionals, medical providers, insurers, and corporate agencies with 60 jurisdictions and over 150 associate corporate members, with more than 30 committees and subcommittees.

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STATUTORY AUTHORITY

The Department has the necessary statutory authority to adopt the proposed rules.

- Minnesota Statutes, § 176.83, subd. 1, authorizes the commissioner to adopt, amend or repeal rules to implement the provisions of the workers' compensation law, which includes:
 - the authority to issue a penalty under Minn. Stat. § 176.231, subd. 10 for failure to file a report required by the workers' compensation law;
 - the authority to require documents to be filed electronically under Minn. Stat. § 176.285; and
 - the authority to prescribe forms for use in making the reports provided to commissioner as provided in Minn. Stat. § 176.231, subd. 5.
- Minnesota Statutes, § 176.83, subd. 5a, authorizes the commissioner to adopt rules necessary for the reporting of workers' compensation injuries.
- Minnesota Statutes, § 176.83, subd. 15, authorizes the commissioner to adopt rules to prescribe forms and other reporting procedures to be used by an employer, insurer, or other person subject to the workers' compensation law.
- Minnesota Statutes, § 175.171 authorizes DLI to adopt rules related to its powers and duties, which include providing electronic data interchange of public and nonpublic workers' compensation data.

The rulemaking authority in Minn. Stat. §§ 176.83 and 175.171 has not been amended since 1996 and so Minn. Stat. § 14.125, does not apply.⁸

REGULATORY ANALYSIS

(1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The proposed amendments will likely affect self-insured employers and workers' compensation insurers who are required to report injuries to DLI. Self-insured employers and workers' compensation insurers will bear any costs of the proposed rule amendments, and will also benefit

8. Additionally, Minn. R. 5220.2525 provides: "Where parts 5220.2510 to 5220.2960 authorize or require a document to be filed with the commissioner, department, or division, the commissioner is authorized to allow or require the document to be filed electronically in the manner and format specified by the commissioner under Minnesota Statutes, § 176.285."

from the proposed rule amendments. Employees and insured employers may be interested in the rule amendments, but would not directly bear any costs or directly benefit from the amendments.

(2) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

There is no anticipated cost to DLI to implement electronic filing because many reporting entities are already filing FROIs electronically. Programming updates to the electronic filing requirements will be done periodically, but they would be required for the existing reporting entities anyway. The only new programming is to permit reporting entities to file FROIs via the DLI eFROI Web portal. The cost to this agency is primarily staff time required for programming, which can be absorbed by existing IT personnel. The DLI Special Compensation Fund, which reports injuries for uninsured employers, will report injuries using the eFROI Web portal. There may be minimal additional staff time needed to input the data into the Web portal, but no new staff would be required.

The Minnesota Department of Administration, which pays state workers' compensation claims, has indicated that the cost for filing FROIs electronically is anticipated to be minimal.

There is no anticipated effect on state revenues from the amendments.

There are no anticipated additional costs for enforcement, because DLI already has and uses its penalty authority when reporting entities file FROIs later than required by statute and rule. DLI does not anticipate an increase in late filings of FROIs after the electronic filing requirements are implemented, so no increase in the number of penalties is anticipated.

(3) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

DLI receives approximately 30,000 FROIs annually. The purpose of the rule is to reduce the enormous amount of paper handled by DLI and reporting entities who file FROIs. The policy to encourage electronic filing of workers' compensation documents is reflected in Minn. Stat. § 176.285, which allows documents to be filed electronically if transmitted in the manner and format specified by DLI. DLI is offering two ways to file these reports of injury electronically. First, reporting entities may file by eFROI, which can be completed and filed on the DLI website. If a reporting entity uses the eFROI system, the additional costs will be minimal additional staff time to input the data into the DLI Web portal, but these minimal costs may be offset by the savings realized because paper forms will no longer have to be completed, stored, and mailed or faxed. Second, reporting entities may also elect to file by EDI. If these reporting entities are not current EDI trading partners, they will have to pay a vendor or pay for the EDI software and staff programming costs, but that choice would be made only if the reporting entity determined that EDI would be more cost-effective in the long run than eFROI. Alternatives to these two systems would incur more costs than building on the existing EDI system, which is already established in Minnesota. Therefore, DLI has determined that there are no less costly or intrusive methods to accomplish this purpose.

(4) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

DLI will offer reporting entities the option of filing using EDI or the eFROI Web portal. Either system can be used. It would be nearly impossible for DLI to allow reporting entities to use any type of electronic filing outside of the two options offered here because it would not have the systems in place to process reports using those other systems. That is the reason the IAIABC developed a national standard for transmitting reports of injury electronically. No alternative methods for achieving the purpose of the proposed amendments were therefore seriously considered.

(5) The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

The probable costs of complying with the proposed rule will depend on the method each reporting entity chooses. If a reporting entity uses the eFROI system, the costs will be only minimal additional staff time to input the data into the DLI Web portal. These minimal costs may be offset by the savings realized because paper forms will no longer have to be completed, stored, and mailed or faxed. If a reporting entity files the reports using EDI, there may be programming costs and costs of paying a vendor or purchasing the software to implement EDI. However, electronic filing is anticipated to save paper, mailing, processing, and storage costs incurred by the existing paper based system. Cost savings are indicated by the fact that 40 reporting entities have voluntarily elected to use EDI, resulting in electronic transmission of approximately 40% of all FROIs. Again, however, it is assumed that a reporting entity that chooses EDI will do so because it is more cost effective than using eFROI.

The amendments to the penalty provisions reflect the requirement that FROIs and corrected FROIs be filed electronically as of January 1, 2014, and provide for a penalty when an employer does not file a written report of death or serious injury within seven days as required by statutes. Penalties for noncompliance with statutes and rules are not costs of compliance. However, even if they were considered a cost of compliance, it is not anticipated that the rules will result in significant increased penalty assessments. No penalty is assessed for failure to timely file a paper or electronic FROI under Minn. R. 5220.2830 unless DLI has first issued an "advisory letter" to the reporting entity in the previous 12 months. The amendments to Minn. R. 5220.2830, for failure to file a corrected electronic FROI within 60 days, only apply if DLI has first sent an electronic acknowledgement describing the errors that must be corrected. Accordingly, reporting entities will always be given prior notice of the statutory and rule requirements before a penalty is issued.

DLI requested information on the cost of complying with the proposed amendments from the members of the Workers' Compensation Insurers Task Force, from persons on the DLI EDI e-mail list, and from approximately 1700 persons on the e-mail list maintained by DLI to provide information to insurance adjustors. DLI did not receive any response that estimated or objected to the costs of complying with the proposed amendments.

(6) The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

If the rules are not adopted, DLI and reporting entities that do not already use EDI will continue to complete and file FROIs on paper, and will incur associated costs with mailing, faxing, processing, and storing the documents. All reporting entities will be similarly affected, whether they are governmental units or businesses.

(7) An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

Workers' compensation is a state system. There are no known federal regulations that would affect these rules.

(8) An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . '[C]umulative effect' means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.

Again, workers' compensation is a state system. The proposed amendments cover areas that are not addressed by federal law or other Minnesota state laws. The federal government has its own workers' compensation system for federal employees. Privately insured employers do not need to file workers' compensation forms with the federal government; they will continue to file reports of injury with their workers' compensation insurers as they always have. Other states have their own requirements for reporting injuries consistent with the workers' compensation laws in those states. However, the amendments do incorporate the national standard developed by the IAIABC to minimize inconsistent electronic filing requirements for insurers who are licensed in multiple states. This will reduce the burden that insurers and self-insured employers currently have where they are currently required to file different paper forms in each state.

PERFORMANCE-BASED RULES

Minnesota Statutes, §§ 14.002 and 14.131, require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals. The workers' compensation law, in Minn. Stat. § 176.231, requires employers to file reports of injury with their workers compensation insurers, and requires self-insured employers and workers' compensation insurers to file reports of injury with DLI, all within specified periods of time. The regulatory objective of the proposed rules is to require insurers and self-insured employers to file these reports electronically. To meet this goal, DLI is adopting a national uniform electronic reporting standard developed by the IAIABC, an association established by state and international jurisdictions that also includes workers' compensation insurers and self-insured employers. Using a national electronic reporting standard will minimize the regulatory burden on insurers licensed in more than one state, each of

which could impose a different standard. Moreover, the proposed amendments do allow flexibility because they offer reporting entities two options for filing reports electronically: 1) eFROI via the DLI Web portal, and 2) via EDI.

ADDITIONAL NOTICE

Minnesota Statutes, §§ 14.131 and 14.23, require that the SONAR contain a description of DLI's efforts to provide additional notice to persons who might be affected by the proposed rules or explain why these efforts were not made.

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in an Order dated July 12, 2013 by Administrative Law Judge Jeanne Cochran.

DLI has identified persons and organizations that represent those most likely to be affected by or interested in the rule amendments. The Notice of Intent to Adopt the proposed amendment will be mailed or e-mailed to all of the following:

1. The members of the Workers' Compensation Advisory Council (WCAC) established pursuant to Minn. Stat. § 176.007, which consists of labor, employer, and legislative representatives, and persons who have requested to receive notice of WCAC meetings;
2. Members of the Workers' Compensation Insurers Task Force (WCITF), an ad hoc group of workers' compensation reporting entities who meet at DLI several times a year to learn about and discuss workers' compensation issues with DLI. The WCITF consists of 19 representatives of workers' compensation insurers, self-insured employers, and third-party administrators. Persons who have requested to receive notice of the WCTIF meetings will also be provided with the Notice;
3. Workers' compensation payers on the DLI EDI e-mail list, which was created by DLI to communicate information about the planned implementation of EDI/eFROI filing to workers' compensation insurers, self-insured employers and third party administrators that file first reports of injury in Minnesota. This list contains approximately 340 addresses, including e-mail addresses for separate claim offices for companies that have more than one location;
4. Approximately 1700 persons and organizations who are on DLI's e-mail list for Minnesota workers' compensation claims adjusters. This list includes adjusters who work for insurers, public and private self-insured employers, and third party administrators;
5. The Minnesota Self-Insurers Association, a non-profit association "formed in 1971 to promote the interests of business and government units who are self-insured or retain a high deductible . . . for workers' compensation liability in the State of Minnesota."⁹ Members include both private and public entities;
6. Persons and organizations who have requested to receive *CompAct*, DLI's electronic

9. <http://mnsia.com/>

newsletter, which is published at least quarterly to provide news and other information about the workers' compensation system; This list includes approximately 1346 persons interested in the workers' compensation system, including representatives of labor, employers, insurers, third party administrators, attorneys, rehabilitation providers and health care provider organizations;

7. Those who have commented on the draft amendments since the Request for Comment was published on November 5, 2012; and
8. In addition, DLI will place the Notice of Intent to Adopt the proposed rules, the proposed rule amendments, and the Statement of Need and Reasonableness on DLI's rule docket website: http://www.dli.mn.gov/PDF/docket/5220_25_29_Docket.pdf

DLI's Notice Plan also includes giving notice required by statute. The proposed rules and Notice of Intent to Adopt will be mailed to everyone who has registered to be on DLI's workers' compensation rulemaking mailing lists under Minn. Stat. § 14.14, subdivision 1a. Notice will also be given to the Legislature as required by Minn. Stat. § 14.116.

The Notice Plan does not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per Minn. Stat. § 14.111. The proposed rules do not have their primary effect on Chicano/Latino people, and therefore Minn. Stat. § 3.922 does not require additional notice to the state Council on Affairs of Chicano/Latino People.

CONSULT WITH FINANCE ON LOCAL GOVERNMENT IMPACT

Minnesota Statutes, § 14.131, requires the agency to consult with the Department of Finance to help evaluate the fiscal impact and benefits of proposed rules on local governments. As required by Minn. Stat. § 14.131, DLI has consulted with the Commissioner of Finance. In a letter dated June 4, 2013, Elisabeth Hammer, Executive Budget Officer at the Office of Management and Budget, opined that that the proposed rule amendments will not have significant fiscal impact on local units of government.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

Minnesota Statutes, § 14.128 requires the agency to determine whether a local government will have to adopt or amend an ordinance or other regulation to comply with a proposed agency rule and submit this determination for ALJ approval. The statute defines "local government" as a town, county, or home rule charter or statutory city.

DLI has determined that no local government will be required to adopt or amend an ordinance or other regulation to comply with the proposed amendments. Local governments are required to comply with the workers compensation law.¹⁰ Under Minn. Stat. § 176.231, units of local

10. Minnesota Statutes, § 176.021, subd. 1, provides that the workers' compensation law applies to all employers unless excluded by chapter 176. Under Minn. Stat. § 176.011, subd. 10, the definition of "employer" includes counties, towns, cities, school districts, and governmental subdivisions. Minn. Stat. § 176.021, subd. 6, requires home rule charter cities to pay the compensation provided under Minn. Stat. chapter 176, although the charter may provide for

government that are self-insured for workers' compensation are already required to report injuries to DLI in the same manner as any other employer of an injured employee.¹¹ In lieu of submitting FROIs by EDI transmission, the proposed amendments allow a self-insured unit of local government to report the injury by filling in an eFROI on the DLI Web portal, which only requires internet access. Therefore, the proposed amendments will not require local governments to adopt or amend an ordinance or regulation to file reports of injury electronically.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

Minnesota Statutes, § 14.127, requires the agency to determine if the cost of complying with proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. A small business is defined as a business (either for profit or nonprofit) with less than 50 full-time employees and a small city is defined as a city with less than ten full-time employees. The proposed amendments will only affect reporting entities that are required to file FROIs with DLI electronically because they are an insurer, self-insured employer or third party administrator for an insurer or self-insured employer. Small cities and small businesses are not any of these, and therefore will not be required to file FROIs electronically with DLI directly.¹² However, even if a small city or business is self-insured, the proposed rules allow an eFROI to be completed and submitted through the DLI Web portal, which only requires a computer with internet access. If a small business or city uses the eFROI system, the costs will be only minimal additional staff time to input the data into the DLI Web portal. These minimal costs may be offset by the savings realized because paper forms will no longer have to be completed, stored, and mailed or faxed. Therefore, DLI has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city.¹³

LIST OF WITNESSES

If these rules go to a public hearing, DLI anticipates having the following witnesses testify in support of the need for and reasonableness of the rules: Jessica Stimac, Director of the DLI Compliance, Records and Training unit; Jim Vogel, Compliance Officer; and other agency staff as needed.

compensation that exceeds the amount an employee is entitled to under chapter 176.

11. Units of local government that are not self-insured are not required to report injuries electronically. They will report injuries to their workers' compensation insurer as they always have, and the insurer will be required to file a FROI electronically.

12. Most units of local government that do not carry private workers' compensation insurance are self-insured jointly in a group with other similar units, such as the League of Minnesota Cities Insurance Trust (LMCIT), Minnesota Counties Intergovernmental Trust (MCIT), and Minnesota Association of Townships (MAT). The third party administrators for the LMCIT and MAT already file electronic First Reports of Injury with DLI, as does the MCIT. Therefore, we do not anticipate any significant negative fiscal impact on local government.

13. The proposed amendments to the penalty provisions are not a cost of compliance. However, even if they were considered a cost of compliance, the penalty amounts are small and are only assessed after the employer or insurer is given prior notice that the FROI or a corrected FROI must be filed, so any penalty costs for a small city or business that does not comply after notice would be minimal.

RULE-BY-RULE ANALYSIS

Part 5220.2530. First Report of Injury.

The focus of the changes is to require the reporting of FROIs electronically by insurers and self-insured employers in all cases where a FROI must be filed with DLI, with the single exception noted in subpart 2. Separate subparts are created to make it easier to read and reference within the part and via other parts of chapter 5220.

Subpart 1. Definition.

This subpart defines terms used in the proposed amendments as follows:

Item A: The definition of “Electronic first report of injury” contains two requirements: Subitem (2) provides that an electronic First Report of Injury must comply with the IAIABC Claims Release 3.0 standard, which is the current national standard for electronic filing of claim information between insurers or self-insured employers and state jurisdictions. Subitem (1) provides that the electronic report must comply with Sections 2, 3 and 4 of the referenced Minnesota implementation guide for electronic filing of First Reports of Injury, which specifies which of the IAIABC Claims Release 3.0 elements are required in Minnesota, as more fully discussed in subpart 4. The IAIABC Claims Release 3.0 Implementation Guide specifies:¹⁴

- the data to be submitted to jurisdictions in the form of data elements;
- the level of importance of each data element, such as whether a data element is mandatory, expected, conditional, or if available;
- the format in which the data needs to be submitted, such as alpha-numeric or a limited number of characters;
- the location of the data element in the record layout; and
- conditional requirements for submission. For example, the number of dependents is expected only if a date of death is specified.

The Claims Release 3.0 standard defines each data element and includes requirements for different business scenarios. For example, reporting requirements differ based on employment situations, such as whether the employee is a leased employee.

The Claims Release 3.0 standard also outlines the data that jurisdictions must provide to the reporting entity in response to a filing. For example, DLI must send an acknowledgment record to the reporting entity confirming receipt or rejection of the transmission and identifying any errors by data element.

A single standard for filing first reports of injury electronically is needed because it would not be technologically feasible for DLI to accept FROIs submitted with any electronic system and with

14. The table of contents for the Claims Release 3.0 standard shows the data elements can be viewed on the DLI website at <http://www.dli.mn.gov/WC/Edi.aspx>.

the fields and elements for each field chosen by the insurer. A consistent standard is anticipated by Minn. Stat. § 176.231, subd. 5, which allows the commissioner to establish forms to be used to report injuries; Minn. Stat. § 175.171 (5), which directs the commissioner to provide “direct computer access to and electronic data interchange of public and nonpublic workers’ compensation data;” and Minn. Stat. § 176.285, which authorizes the electronic filing of documents when authorized by the department. A national standard is also helpful for reporting entities because they do not have to comply with different electronic submission standards imposed by other state workers’ compensation systems. The Claims Release 3.0 standard allows DLI, other states, and their reporting entities to speak the same “language” when transmitting first reports of injury electronically according to the substantive requirements in each state. Although the IAIABC Claims Release 3.0 standard was developed for submission of first reports of injury by EDI, the eFROI Web portal requires the reporting entity to provide the same data elements required by the Claims Release 3.0 standard and the Minnesota implementation guide.

Item B: “Minnesota implementation guide” is defined as the *Minnesota Department of Labor and Industry Electronic Filing of First Report of Injury Implementation Guide* incorporated by reference in subpart 4. The abbreviated reference makes the rules easier to read.

Item C: “IAIABC Claims Release 3.0” is defined as the *IAIABC EDI Implementation Guide for Claims, First, Subsequent, Header, Trailer & Acknowledgment Detail Records Release 3.0*, and the corresponding *Supplement of Pending Changes* established for the International Association of Industrial Accident Boards and Commissions, which is incorporated by reference in subpart 4. As with the Minnesota implementation guide, the IAIABC implementation guide is referenced in abbreviated form to make the rules easier to read.

Subp. 2. Timely reporting.

This subpart is renumbered from the former subpart 1. References to subparts 3 and 5 are added to reflect the additional requirements established in these subparts for electronic reporting. The sentence referring to “a form prescribed by the commissioner” is deleted because the existing subpart 1, which anticipated that all FROIs would be filed on paper, is being replaced by subparts 3 and 5.

Subp. 3. Employer report.

The amendments to subpart 3 limit its application to only the specific situation where the employer files a paper FROI on a fatal or serious injury within seven days as required by Minn. Stat. § 176.231, subd. 2. A paper FROI is appropriate because employers are only required to file a FROI directly with DLI in this limited circumstance, and most employers do not have a death or serious injury to report very often. However, the rule provides that if the insurance company files the FROI in this circumstance on behalf of the employer or, if the employer is self-insured and elects to file it electronically, the FROI must be filed electronically according to subpart 5.

Items A to H describe the information that must be provided by the employer when it files the paper FROI to report a fatal or serious injury within seven days:

Item A. The reference to an “adjusting company” is changed to “third-party administrator” because that is the more common term used to describe a vendor that is licensed to administer

workers' compensation claims on behalf of an insurer or self-insured employer under Minn. Stat. § 60A.23, subp. 8.¹⁵ The address of the employer, insurer and third-party administrator is necessary to identify who the employer is and where the claim is being handled.

Item B. DLI does not need the OSHA log number as part of the workers' compensation file it maintains on a claim, so that requirement is deleted from the rule. The claim number is only required if one has been assigned by the insurer at the time the paper FROI is being filed with DLI. The claim number is helpful because it facilitates communication between DLI and the workers' compensation reporting entity. However, because the FROI must be filed within seven days under this subpart, the claim number is only required if one has been assigned by then.

Item C. Unnecessary language is removed.

Item D. Information about the employee's work schedule is an added requirement because that information is used in calculating the employee's average weekly wage for purposes of determining the amount of monetary workers' compensation benefits owed.

Item E. The employer may not know the exact date the insurer received notice of the injury at the time the employer files the paper FROI with DLI. Moreover, DLI does not need this information when receiving the employer's report of a serious or fatal injury within seven days. The insurer's electronic report filed within 14 days under subpart 5 will contain that information. Therefore, this requirement is deleted.

(Items F and G are unchanged.)

Item H. DLI does not need to know the name of the treating physician when the paper FROI is filed directly with DLI by the employer in this limited circumstance, and that requirement is therefore deleted. Information about the employee's date of birth and gender is necessary to ensure proper identification of the employee. Marital status is needed because dependency benefits may be owed to the spouse when the injury results in the death of the employee.

Subp. 4. Implementation guides incorporated by reference.

Items A and B. This subdivision incorporates by reference the Minnesota implementation guide and the IAIABC Claims Release 3.0 standard (as more specifically named in the definitions in subpart 1). It is necessary to incorporate these by reference because they are the technical manuals used to ensure standard, consistent electronic transmission of first reports of injury and DLI acknowledgements. Both the IAIABC and Minnesota implementation guides contain tables and extensive technical data that cannot easily be written as a rule. The Minnesota implementation guide contains more than 40 pages of information and technical requirements for filing FROI forms electronically via EDI or eFROI Web portal according to the IAIABC Claims Release 3.0 standard. The Minnesota implementation guide provides in greater detail what communication methods (EDI and eFROI) are accepted by DLI, how the FROI data must be formatted, and what data needs to be submitted under differing circumstances. Minnesota's implementation guide does

15. See, <http://mn.gov/commerce/insurance/ins-companies/licensing/other-insurance-related-licenses.jsp>.

not change any of the IAIABC Claims Release 3.0 data elements, but specifies which ones are required for the Minnesota workers' compensation system. For example:

- Data element DN0058, "Employment Status Code," has 12 valid codes listed in the Claims Release 3.0 standard, but DLI only accepts seven of them because the other five are not relevant for Minnesota workers' compensation.
- Data element DN0118, "Accident Site County/Parish," is a valid data element in the Claims Release 3.0 standard, but DLI does not accept this element because the county in which the accident occurs is not used by DLI.

The IAIABC Claims Release 3.0 standard is updated annually to add to or amend the existing requirements. The changes are initially published throughout the year in a Supplement of Pending Changes before they are included in the Claims Release 3.0 standard. When those updates affect the electronic filing requirements of the FROI in Minnesota, DLI will update the Minnesota implementation guide and notify EDI trading partners of the changes. This rule incorporates the updates into the Minnesota implementation guide because they are needed to maintain consistency with the national standard and there is not always enough time to incorporate them using the regular rulemaking process.

Subp. 5. Insurer report.

This subpart requires reporting entities (workers' compensation insurers and self-insured employers and their third party administrators) to file electronic first reports of injury. It is added to require that all FROI forms filed by insurers and self-insured employers must be filed electronically using the requirements specified in the IAIABC Claims Release 3.0 standard as implemented by the Minnesota implementation guide. The exception is noted for paper FROI forms allowed to be filed by the employer on fatal and serious injuries as noted in subpart 3. FROIs received by DLI in any other manner will not be considered filed with DLI's workers' compensation division for the purposes of meeting the filing requirements and timelines under Minn. Stat. § 176.231. The Claims Release 3.0 and Minnesota implementation guides spell out the criteria for when electronically submitted FROIs will be accepted with or without errors or rejected in their entirety.

Item A. If a FROI submitted electronically is rejected pursuant to the criteria set out in the implementation guide, it is not considered filed with the division for the purposes of meeting the filing requirements and timelines under the statute. For example, a FROI might be rejected because of incorrect formatting, making the data unreadable by DLI. A FROI would also be rejected if information necessary to properly identify the parties to the claim is missing, such as the name of the employee, employer and insurer. These fundamental elements must be completed for DLI to create a file for the claim. If they are not provided, the sender is notified immediately by DLI via EDI or the eFROI system that the transmission was not successful and what data is required for the resubmitted FROI to be accepted.

Item B. If a FROI submitted electronically is accepted without any errors pursuant to the criteria set out in the implementation guide, it is considered filed with the division as of the date prescribed in item D. These FROIs have all the data needed by DLI to create a file for the claim and keep informed about the status of the claim to date.

Item C. If a FROI submitted electronically is accepted with one or more errors pursuant to the criteria set out in the implementation guide, it is considered filed with the division as of the date prescribed in item D. It requires DLI to notify the submitter immediately via EDI or the eFROI Web portal that the FROI contains errors that must be corrected within 60 days. Examples of errors include missing information related to the employee's employment status and wages, which is needed to calculate the employee's average weekly wage for benefit purposes. This information is eventually needed by DLI in order to ensure prompt and accurate payment of benefits, but it is not deemed critical enough at this initial stage of the claim that the FROI has to be rejected. Thus the reporting entity is allowed to provide the corrected data at a later date. Sixty days is established as the date by which the errors must be corrected because the missing data will be available by then. Sixty days allows the reporting entity a reasonable period of time in which to gather that data and submit a corrected or changed First Report of Injury by EDI or eFROI.

Item D. This sets up the receipt date for the electronically filed FROI as the first day DLI is open for business after the electronic FROI was transmitted. It also provides that FROIs submitted after 4:30 p.m. are considered filed on the next business day DLI is open for business. These timelines match how paper forms that are mailed, delivered, or faxed are currently processed by DLI. They are also consistent with other DLI rules.¹⁶

Subp. 6. Penalty for untimely report.

The added language clarifies that the penalties for failure to timely file a FROI (or failure to pay or deny a claim) according to the statutory time frames apply to both paper and electronically filed FROIs according to the requirements in the rules. This subpart cross-references the rule governing the penalty for failure to timely file a FROI in Minn. R. 5220.2820, and the rule governing the penalty for failure to timely pay or deny a claim in Minn. R. 5220.2770.

Subp. 7. Penalty for untimely corrected report.

Under Minn. Stat. § 176.231, subd. 10, DLI has authority to issue a penalty when a regulated party fails to file a required workers' compensation report when requested by DLI and has the authority to require documents to be filed electronically under Minn. Stat. §§ 176.285 and 175.171. Minnesota Rule 5220.2820 (cross-referenced in subp. 6) governs the penalty for failure to file a First Report of Injury, while Minn. R. 5220.2830 governs the penalty for failure to file a required report other than a First Report of Injury. This subpart 7 cross-references the penalty rule that would apply when the electronically filed First Report of Injury is timely filed and accepted with errors, but the insurer or self-insured employer fails to file a report correcting the errors in a timely manner as required by subpart 5. This rule applies existing penalty authority to the EDI/eFROI context.

Part 5220.2820. Failure to Make Timely Report of Injury; Penalty.

Subpart 1. Basis. This subpart governs the basis for a penalty assessed against the employer and insurer for failure to timely file a First Report of Injury. However, under subpart 2, which is not being amended, the first violation in any 12 month period results only in an advisory letter; a

16. For example, Minn. R. 1415.0700, subp. 4, of the DLI and OAH joint rules of practice, allows documents related to workers' compensation disputes to be filed with DLI by fax, but a document is considered filed on the next business day if the fax is received after 4:30 p.m.

penalty is assessed under this part only if the employer or insurer has failed a second time to file a timely FROI as required by statute. The changes are necessary to reflect the new electronic filing requirements and clarify application of existing language, as follows:

Item A. Minnesota Statutes, § 176.231, subd. 1, requires an employer to report a death or serious injury to DLI within 48 hours after its occurrence. This is often done by phone. The existing rule includes a penalty for fatal or serious injuries that are not initially reported within the 48 hours, but does not include a penalty when the employer meets the 48 hour requirement but fails to subsequently file a paper (not electronic) written FROI within the seven day requirement reflected in Minn. Stat. § 176.231, subd. 2 and Minn. R. 5220.2530, subp. 3. It is necessary to add item A, subitem 2 to correct the omission and enforce the statutory requirement. Again, however, subpart 2 provides for an advisory letter for the first violation in any 12 month period; a monetary penalty is assessed only if the employer fails a second time to file the required FROI after DLI provides notice of the requirement.

Item B. Item B is amended to clarify when a penalty is assessed against a self-insured employer (after the advisory letter is sent). A self-insured employer is both the employer and insurer, and therefore the requirement that first reports of injury must be filed by EDI or eFROI within 14 days under Minn. R. 5220.2530 applies.

Subitem (1) is added to provide that if the employer is self-insured and the injury is not a death or serious injury that must be reported earlier, the 14 day electronic reporting requirement applies for purposes of assessment of a penalty for late filing; the employer is not required to report the injury to itself (as the self-insured employer) within ten days.

Subitem (2) also clarifies that the 10-day reporting requirement from the employer to the insurer set out in Minn. Stat. § 176.231, subd. 1, only applies when the employer is not self-insured. The electronic filing requirement is not reflected in subitem (2) because employers are not required to report the injury to insurers electronically.

Item C. This item describes when a penalty is assessed against the insurer for failure to timely file the FROI with DLI, after the initial advisory letter.

Subitem (2) clarifies that a penalty against the insurer is only assessed if the insurer timely received the FROI from the employer within the 10-day period described in item B, subitem (2). If the insurer did not receive the FROI from the employer within the ten days, the penalty is assessed against the employer under item B.

Subitem (3) is amended to reflect the requirement that insurers are required to file the FROI with DLI electronically according to the requirements of Minn. R. 5220.2530.

(Subparts 2 through 4 are not being changed.)

Part 5220.2830. Other Failure to File Report in Manner or Within Time Limits Provided; Penalty.

This rule describes the circumstances under which DLI may assess a penalty for failure to file a required or requested report. Minnesota Statutes § 176.231, subdivision 2, permits the commissioner or authorized representative to require supplementary reports of accidents as necessary to provide information required by law. Subdivision 6 requires the commissioner, among other things, to “keep fully informed of the nature and extent of all injuries compensable under this chapter, their resultant disabilities, and of the rights of employees to compensation.”¹⁷ Subdivision 5 requires the commissioner to prescribe forms for use in making the reports required by Minn. Stat. § 176.231. Finally, subdivision 10 provides for a penalty to be assessed where an employer or insurer, among other parties, fails to file with the commissioner any report required by chapter 176 in the manner and within the time limitations prescribed.

This rule, which is cross-referenced in Minn. R. 5220.2530, subpart 7, describes the conditions under which a penalty is assessed for a party’s failure to timely file other required or DLI-requested reports. The proposed amendments provide for a penalty when the insurer or self-insured employer files an electronic First Report of Injury that is accepted with errors, such as missing information, but the insurer or self-insured employer fails to file a report correcting the errors in a timely manner as required by subpart 5. However, the proposed penalty is only assessed if DLI sent electronic notice of the errors and they are not corrected within 60 days.

Subpart 1. Basis.

Item C. The amendments to item C provide for a penalty if a changed report or a report correcting errors identified by DLI is not filed within 60 days after DLI sends an acknowledgement with notice of the error as required by the proposed amendments to Minn. R. 5220.2530, subpart 5, item C. A penalty for failure to update missing or erroneous information is anticipated by Minn. Stat. § 176.231, subd. 10, and is necessary to ensure accurate, complete and timely reporting of claims to assist the commissioner keep fully informed of the nature and extent of all injuries and the rights of employees to compensation, and to supervise and require prompt and full compliance with all provisions of the workers’ compensation law relating to payment of compensation.

Subp. 2. Amount.

Items B and C: The penalty amounts under subpart 2, items A, B and C correspond to the violations in subpart 1, items A, B and C. The amendments to item B simply limit its application to situations where the commissioner has requested a report under subpart 1, item B. This is necessary to distinguish it from the new item C, which provides for a graduated penalty when the changed or corrected report is not electronically filed within 60 days after the division sent the insurer or self-insured employer an electronic acknowledgement transmission describing the errors. The penalty amounts increase with the number of days late, and are the same amounts assessed under item A, when any other report required by Minn. Stat. § 176.231 is not filed when due.

17. Additionally, Minn. Stat. § 176.251 requires the commissioner to “supervise and require prompt and full compliance with all provisions of this chapter relating to the payment of compensation.”

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

July 17, 2013



Kris Eiden, Deputy Commissioner

This Statement of Need and Reasonableness was made available for public review on July 17, 2013.

