



OFFICE OF
ADMINISTRATIVE
HEARINGS

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August 7, 2018

Legislative Reference Library
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Re: In The Matter of the Proposed Permanent Rules Governing Workers'
Compensation Litigation Procedures: Resolution of Claims with Intervenors,
Minnesota Rules, 1420.1850; Revisor's ID Number RD4527

Dear Librarian:

The Minnesota Office of Administrative Hearings intends to adopt rules governing workers' compensation litigation procedures and resolution of claims with intervenors. We plan to publish a Notice of Intent to Adopt Rules without a Public Hearing in the August 20, 2018 State Register.

The Office of Administrative Hearings has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Office of Administrative Hearings is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules without a Public Hearing.

If you have questions, please contact me at katie.lin@state.mn.us or 651-361-7911.

Yours very truly,

A handwritten signature in black ink, appearing to be 'Katie Lin', with a long horizontal line extending to the right.

Katie Lin
Rulemaking Coordinator

Enclosure: Statement of Need and Reasonableness

**Minnesota Office of Administrative Hearings
Workers' Compensation Unit**

STATEMENT OF NEED AND REASONABLENESS

**Proposed Permanent Rules Governing Workers' Compensation Litigation
Procedures: Resolution of Claims with Intervenors, *Minnesota Rules*, 1420.1850;
Revisor's ID Number R-4527**

INTRODUCTION

The Minnesota Office of Administrative Hearings (OAH) proposes to adopt permanent rules relating to workers' compensation intervention practices. The rule amendments align with recent amendments to Minnesota Statutes, chapter 176, the Workers' Compensation Act.

Specifically, the statutory amendments make it easier for employees and employers/insurers to settle workers' compensation claims by allowing the filing of partial settlements that do not affect the legal rights of intervenors. Generally, intervenors in workers' compensation matters are medical providers seeking reimbursement for provided medical services. Far too often, intervenors (in)advertently complicate and/or prevent settlements by failing to respond to offers or demands made by the primary parties to the claim. The statutory changes were designed to allow partial settlements to proceed without the signature of intervenors, whose rights were not cut off but instead were reserved for future litigation directed by the intervenors.

The legislation directed the amendment of existing workers' compensation rules, at Minn. R. 1420.1850, to make the rules conform to the statutory changes.

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 Katie Lin, Rulemaking Coordinator, Office of Administrative Hearings, P.O. Box 64620, St. Paul, Minnesota 55164, at Telephone: (651) 361-7911, Facsimile: (651) 539-0310, TTD: (651) 361-7878, Email: katie.lin@state.mn.us.

STATUTORY AUTHORITY

The Chief Administrative Law Judge has authority to adopt rules that are reasonably necessary to carry out the duties and powers conferred under Chapter 176 (2016). The agency's statutory authority is set forth in Minn. Stat. § 176.83, subd. 12, as follows:

The chief administrative law judge shall adopt rules relating to procedures in matters pending before a compensation judge in the Office of Administrative Hearings.

2017 Minnesota Laws Chapter 94, Article 5, Section 4 also directed the amendment of existing workers' compensation rules at Minnesota Rules, part 1420.1850, to make the rules conform to statutory changes to Minnesota Statutes, sections 176.361, subd. 3 and 176.521. See 42 State Register 845 (January 22, 2018).

REGULATORY ANALYSIS

Minn. Stat. § 14.131 (2016) requires that the agency address the following eight factors of 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 amendment would affect potential intervenors participating in a pending matter before a compensation judge, as well as employees and employers engaged in settlement of a workers' compensation claim.

(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 are no anticipated costs to the agency or to any other agency associated with the implementation and enforcement of this rule amendment. This rule amendment will have no effect on state revenues.

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

There are no less costly or intrusive methods to make it easier for employees and employers/insurers to settle workers' compensation claims while reserving the rights of intervenors.

(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

The Minnesota Legislature, through enactment of 2017 Minnesota Laws Chapter 94, Article 5, Section 4, directed OAH to amend existing workers' compensation rules to conform to statutory changes to Minnesota Statutes, sections 176.361, subd. 3 and 176.521. Given the legislative directive, no alternative methods were 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

There are no probable costs for compliance with the proposed rules. No other governmental units, businesses, or individuals will be financially affected by the rule modifications.

(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 rule is not amended, it will remain contrary to statute. This will lead to confusion within the workers' compensation system, coupled with the costs of increased litigation.

(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

There are no federal requirements governing workers' compensation intervention claims.

(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.

As there are no other state or federal rules that regulate the treatment of potential intervenor claims upon settlement of an underlying workers' compensation claims, there is no cumulative effect to be considered.

PERFORMANCE-BASED RULES

Minn. Stat. §§ 14.002, .131 (2016), require that the Statement of Need and Reasonableness describes a proposing agency's consideration and implementation of certain performance-based standards when developing proposed rules. Performance-based standards emphasize superior achievement in meeting the agency's regulatory objectives and provide maximum flexibility for the regulated party and the agency when meeting those objectives.

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The proposed rule amendments were completed with the goal of aligning Minnesota Rules, Chapter 1420 with 2017 statutory changes to Minnesota Statutes, sections 176.361, subd. 3 and 176.521. See 42 State Register 845 (January 22, 2018). The proposed amendments have incorporated best practices in judicial administration by providing a process for litigants to proceed to settlement even in instances when an intervening party has failed to participate in settlement discussions and/or to agree to negotiated terms, all without prejudicing the rights of the non-settling party to proceed to litigate its claim. At its essence, the rule amendment provides maximum flexibility for injured workers, their employers and insurers, while it protects the rights of intervening parties, and thereby streamlines proceedings at the agency such that justice is delivered more efficiently, timely, and cost-effectively.

ADDITIONAL NOTICE

This Additional Notice Plan was received by OAH and approved in a July 31, 2018 order by Administrative Law Judge Barbara Neilson, contingent upon sending additional groups either a paper or an electronic copy of the Notice of Intent to Adopt Rules Without a Hearing.

OAH's Notice Plan includes a commitment to provide all notice required by statute. OAH will mail or email a copy of the rules and Notice of Intent to Adopt to every individual who has requested notice by registering on the list maintained by OAH under Minn. Stat. § 14.14, subd. 1a (2016). Additionally, OAH will give notice to the Minnesota Legislature as required by Minn. Stat. § 14.116 (2016).

As part of its effort to “notify persons or classes of persons who may be significantly affected by the rule being proposed” as required by Minn. Stat. § 14.14, subd. 1a, OAH will mail a copy of the rules and Notice of Intent to Adopt to:

- All persons who have registered with OAH for the purpose of receiving notice of rule proceedings;
- Various groups, organizations, and government agencies who are involved or interested in Workers' Compensation matters, including:
 - Minnesota Association of Justice
 - Minnesota Defense Lawyers Association
 - Minnesota Department of Labor and Industry
 - Workers' Compensation Court of Appeals
 - Minnesota Department of Human Services
 - Department of Employment and Economic Development
- Attorneys and individuals that have registered for the Office of Administrative Hearings Workers' Compensation List Serv;

- Publish the Notice of Intent to Adopt Rules Without A Public Hearing on its rulemaking website at <https://mn.gov/oah/media/pending-rulemaking-docket.jsp>.
- Pursuant to July 31, 2018 order by Administrative Law Judge Barbara Neilson:
 - Minnesota Board of Medical Practice
 - Minnesota Board of Chiropractic Examiners
 - Minnesota Board of Physical Therapy
 - Minnesota Board of Occupational Therapy Practice
 - Minnesota Medical Association
 - Minnesota Osteopathic Medical Society
 - Minnesota Nurses Association
 - Minnesota Academy of Physician Assistants
 - Minnesota Psychological Association
 - Association of Minnesota Chiropractors
 - Minnesota Physical Therapy Association
 - Minnesota Occupational Therapy Association

This Additional Notice Plan will ensure that all known and/or potential stakeholders and others likely to be affected by the procedural rules in the foreseeable future will receive notice of the rule amendment.

OAH's Additional Notice Plan does not include notifying the Commissioner of Agriculture. This notification is not required because the proposed rules do not affect farming operations, as those terms are used in Minn. Stat. § 14.111 (2016).

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, OAH will consult with Minnesota Management and Budget (MMB). On the same day OAH sends the documents to the Governor's Office for review and approval, copies will also be sent to MMB. These filings will occur prior to publishing the Notice of Intent to Adopt Rules Without a Public Hearing. The documents will include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. OAH will submit a copy of the cover correspondence and any response received from the MMB to OAH at the hearing or with the documents it submits for review to the assigned judge.

To the best of OAH's knowledge, there is no feature of these procedural rules that will, as a result of their adoption, require any specific actions of a local unit of government or touch upon any locally-administered program.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

These procedural rules do not relate to or implicate any local ordinance or other regulation or any locally-administered program. Local units of government (including towns, counties, home rule charter cities and statutory cities) will not be required to adopt or amend an existing ordinance or other regulation, in order to comply with the proposed rules. See Minn. Stat. § 14.128 (2016).

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

No feature of these procedural rules will, as a result of their adoption, require any specific actions of a local unit of government or affect any locally-administered program. Likewise, there is no requirement, or likelihood, that any one business with less than 50 full-time employees will necessarily intervene in a workers' compensation matter and then fail or refuse to participate in settlement discussions such that the rule provision would come into play. Even if those facts occurred, the proposed rule would not affect the business's rights under the law to have its intervention claim heard on a timely basis, nor require it to expend any specific amount of money to comply with the rule provision. For these reasons and as required by Minnesota Statutes, section 14.127 (2016), the Office of Administrative Hearing 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.

RULE-BY-RULE ANALYSIS

1420.1850 RESOLUTION OF CLAIMS WITH INTERVENORS; HEARINGS.

Subpart 1, B(1), (2). This rule provides that when parties have agreed to settle a workers' compensation claim but are unable to reach an agreement with an intervenor, or obtain the intervenor's signature on a stipulation, the claim may be resolved by allowing the filing of partial settlements that preserve the legal rights of intervenors.

Subpart 3, A. This rule provides that if parties have not fully resolved an intervenor's claim and there is no action pending at OAH, in accordance with Minn. Stat. § 176.291 the intervenor must request a hearing on the merits of its claim, thereby ensuring the employee and employer/insurer's claim may be finalized without delay.

CONCLUSION

For all of these reasons, the Office of Administrative Hearings has the statutory authority to promulgate the proposed rules and has demonstrated, through an affirmative presentation of facts, the need and reasonableness for each rule.

Dated: August 7, 2018

A handwritten signature in black ink, appearing to read 'TLP', is written above a horizontal line.

TAMMY L. PUST
Chief Judge