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Safe Patient Handling in Minnesota

Legislative report to the chairpersons of the House and Senate Committees

MINNESOTA DEPARTMENT OF
LABOR & INDUSTRY

Dec. 20, 2007

Background

On May 25, 2007, legislation was enacted in Minnesota requiring all licensed health care facilities in the state to implement a safe patient-handling program. The program requires adopting a written safe patient-handling policy and establishing a safe patient-handling committee by July 1, 2008. The policy must establish a plan to minimize manual lifting of patients by Jan. 1, 2011, through the use of safe patient-handling equipment.

The program must address:

1. assessment of hazards with regard to patient handling;
2. the acquisition of an adequate supply of appropriate safe patient-handling equipment;
3. initial and ongoing training of nurses and other direct patient care workers about the use of this equipment;
4. procedures to ensure physical plant modifications and major construction projects are consistent with program goals; and
5. periodic evaluations of the safe patient-handling program.

The committee must meet the following requirements:

1. at least half of the members shall be nonmanagerial nurses and other direct patient care workers; and
2. in a health care facility where nurses and other direct patient care workers are covered by a collective bargaining agreement, the union shall select the committee members proportionate to its representation of nonmanagerial workers, nurses and other direct patient care workers.

Health care organizations with more than one covered facility may establish a committee at each facility or one committee for all facilities. If one committee is chosen for multiple facilities, at least half of the members must be nonmanagerial nurses and other direct patient care workers, and each facility must be represented on the committee.

Facilities with existing programs that satisfy the requirements for a safe patient-handling program are considered to be in compliance with the requirements, but must continue to satisfy all requirements.

The committee must complete a patient-handling hazard-assessment that considers patient-handling tasks, types of nursing units, patient populations and the physical environment of patient care areas. It must also identify problems, solutions and areas of highest risk for lifting injuries and recommend a mechanism to report, track and analyze injury trends. The committee must also make recommendations about the purchase, use and maintenance of an adequate supply of appropriate equipment. It must make recommendations for training of nurses and other direct patient care workers about use of safe patient-handling equipment when the equipment arrives at the facility and periodically afterward. An annual evaluation of the implemented plan and progress toward established goals must be conducted. The committee will recommend procedures to ensure any future remodeling plans of patient care areas incorporate the appropriate space and equipment.

Grant funding will be available through the Safe Patient Handling Act. Priority may be given to facilities that demonstrate acquisition of safe patient-handling equipment will impose financial hardship on the facility. In cases where the commissioner of the Minnesota Department of Labor and Industry determines financial hardship, those facilities will have until July 1, 2012, to meet the Safe Patient Handling Act requirements.

The legislation requires the commissioner of the Department of Labor and Industry to study ways to require workers' compensation insurers to recognize compliance with Minnesota Statutes §182.6553 in the workers' compensation premiums of health care and long-term-care facilities.

In addition, the legislation requires the commissioner to make recommendations to the Legislature regarding funding sources available to health care facilities for safe patient-handling programs and equipment.

Study

A study was conducted in 2005 to identify safety incentives in Minnesota's workers' compensation insurance system that would also require workers' compensation insurers to recognize compliance with Minnesota Statutes. This study specifically focused on those industries considered "high hazard," typically insured in the Assigned Risk Plan (ARP). The U.S. Bureau of Labor Statistics (BLS) incident rates place health care facilities included in the safe patient-handling legislation within the definition of a high-hazard industry. The ARP is the state-run insurer of last-resort for employers unable to obtain insurance from private insurers in the voluntary market. Employers may be in the ARP because they are small, have a poor loss history, are in a dangerous industry or have been in business a short time and have only a limited loss history. The ARP accounts for 38 percent of all insured employers; because these employers tend to be relatively small, they account for only 5.9 percent of insured payroll and 7.7 percent of insured indemnity claims.

Current incentives include the following.

- **Experience rating** – Employers in the voluntary market and the ARP are subject to experience rating if their annual premium is at least $3,000 (about 44 percent in the voluntary market and 11 percent in the ARP). The employer's premium is adjusted according to its own recent losses relative to the average for similar employers. Because prior losses are a weak predictor of future losses for small employers, the "experience modification factor" has only a slight sensitivity to actual losses for small employers, but becomes more sensitive to losses for larger employers.

- **Merit rating** – Non-experience-rated employers in the ARP are subject to "merit rating." Merit rating provides a 33-percent premium credit to employers with no wage-loss claims during the past three years, no adjustment if there has been one wage-loss claim and a 10-percent debit for two or more claims. The Legislature enacted merit rating to provide premium relief to employers that had superior safety records but were unable to benefit from experience rating.

- **Deductible plans** – Deductible plans reduce premium if the employer accepts responsibility for losses up to a limit. Deductibles are popular in the voluntary market, but are seldom used in the ARP.

- **Schedule rating** – Schedule rating, available only in the voluntary market, provides a premium credit or debit on the basis of employer characteristics – such as safety equipment or training – that are not reflected in the employer's experience modification factor.

- **Retrospective rating** – Also limited to the voluntary market, retrospective rating adjusts premium to reflect losses for claims that arose during the policy period, usually with a cap on final premium. This option is used primarily by large employers.

- **Dividend plans** – Dividend plans, available only in the voluntary market, return a portion of premium to the insured after policy expiration, on the basis of actual loss experience.

- **Safety inspection credit** – The ARP conducts 800 to 1,000 safety inspections annually of members with poor safety records or in high-risk industries. Inspected employers receive a one-year, one-percent credit or debit, respectively, for each recommendation they implement or fail to implement. Voluntary-market insurers may award a three-percent credit to employers requesting safety consultations (separate from schedule rating), but this is seldom used.

Conclusion

Workers' compensation safety incentives

Pricing programs in Minnesota's voluntary market generally follow nationwide conventions; therefore, it seems unrealistic to contemplate changes there. Since the ARP is run by the Department of Commerce (through third-party administrators), it presents an opportunity for considering enhancements to pricing programs to increase safety incentives. The preponderance of smaller employers in the ARP presents a special challenge in adjusting premium to reflect risk, because past losses are a weak predictor of future losses for those employers.

The following possible changes in ARP pricing seem worthy of consideration.

- **Incorporate more years of experience into the experience-rating formula** – A longer experience period would be less subject to random fluctuation than the current three-year period and would, thus, be a better reflection of the employer's underlying level of risk. This would allow the formula to be made more sensitive to loss history for all employers and would allow more small employers to be experience-rated.

- **Introduce schedule rating** – This could provide an additional basis for recognizing superior safety practices for small employers, whose actual loss histories are unreliable indicators of underlying risk. It could also provide immediate rewards for safety improvements for larger employers until these are realized in reduced losses.

- **Modify merit rating** – The 33-percent credit for employers without wage-loss claims during the past three years is a statutory provision not based on actuarial analysis. While it provides a strong safety incentive for small employers, it takes away much of the pricing variation that would otherwise be available for distinguishing among different loss records for other employers. Further, many employers receiving the 33-percent credit are being rewarded for good luck rather than for a truly low level of risk.

- **Introduce a modified form of retrospective rating** – In the current retrospective-rating formula (voluntary market only), actual losses have greater than dollar-for-dollar effect on final premium (although there are minimum and maximum premium factors). The formula could be modified for use in the ARP by making final premium less sensitive to actual losses and reducing the total-premium cap for small employers. With appropriate modifications of this type, retrospective rating could be made mandatory in the ARP.

These are merely items to consider, not actual recommendations. Development of actual proposals would require careful study by the Department of Commerce, the Department of the Labor and Industry and the Minnesota Workers' Compensation Insurers Association (the state's workers' compensation rating bureau and data service organization). A modification of the 33-percent merit-rating credit would require a statutory change. Other changes could be accomplished by rule. Any proposal for change should be evaluated according to how well it achieves the goal of pricing insurance according to the actual risk presented by the insured.

Funding sources

General Fund: annually appropriate $2 million in the General Fund for safe patient-handling grants under M.S. §182.6552, Subd 7. The grants shall be used to acquire safe patient-handling equipment and for training about safe patient-handling and safe patient-handling equipment for health care facilities as defined in section 144.50, subdivision 2; outpatient surgical centers as defined in section 144.55, subdivision 2; and nursing homes as defined in section 144A.01, subdivision 5. This funding may reduce injury and illness rates, reduce workers' compensation costs and improve employee protection.

Susan Harwood Training Grant Program: this program provides funds for programs to train workers and employers to recognize, avoid and prevent safety and health hazards in their workplaces. The program emphasizes three areas:

- educating workers and employers in small businesses (a small business has 250 or fewer workers);
- training workers and employers about new OSHA standards; and
- training workers and employers about high-risk activities or hazards identified by OSHA through its Strategic Management Plan or as part of an OSHA special-emphasis program.

The "Targeted Topic" category grants are available to nonprofit organizations to conduct training for employers and employees about two different occupational safety health topic areas selected by OSHA.

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The grant announcement time-frame is May 2008, grant amount is $10.1 million a year.

Minnesota Job Skills Partnership (MJSP) Program: this program strategically helps Minnesota businesses and schools competitively train the workforce. Grants are awarded by the Minnesota Job Skills Partnership Board to educational institutions that partner with businesses to develop new-job training or retraining for existing employees. All training projects pair at least one public/private accredited Minnesota educational institution and one business. Funds may be used for training-related costs or educational infrastructure improvements necessary to support businesses located or intending to locate in Minnesota. A cash or in-kind contribution from the contributing business must match program funds on at least a one-to-one ratio.

The main MJSP program is its Partnership Program, with grants to provide training that businesses need for new or existing employees. A Pre-development Grant may be available to assist in covering costs associated with planning a specific, large-scale project for which Partnership Program funds will subsequently be requested.

Other MJSP grant programs include:

- Special Incumbent Worker Training Program – grants to provide training to assist businesses and workers to gain new skills that are in demand in the Minnesota economy;
- Health Care and Human Services Training Program – grants to provide training to alleviate worker shortages in the health care and human services industries;

- Pathways Program – grants to provide training for individuals making a transition from public assistance to work; and
- Low Income Worker Training Program – grants to help low-income individuals receive training to acquire additional skills to move up the career ladder to higher paying jobs.

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The grant announcement time-frame is on a year-round basis through a grant application process. Grants, pending the availability of funding, are generally approved two to three times a year. Grant application deadlines are posted on the Department of Employment and Economic Development Web site, www.deed.state.mn.us, and published in the *State Register*. As much as $400,000 of partnership funds each grant can be awarded for a project. A short-form application is available for grants of $50,000 or less, to assist smaller businesses in getting the customized training they need.