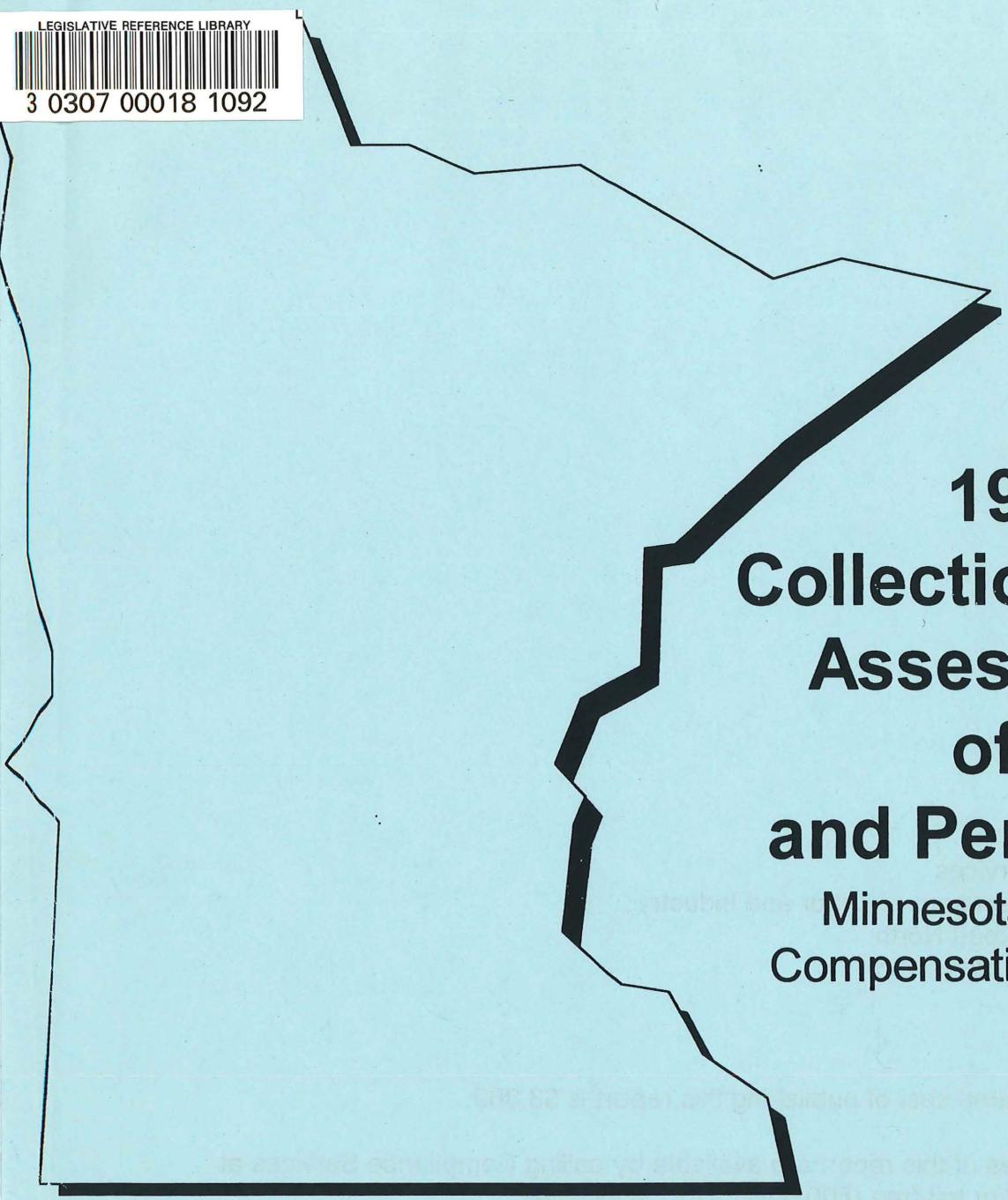

1999 Collection and Assessment of Fines and Penalties

Minnesota Workers' Compensation System

Minnesota Department of Labor and Industry
Compliance Services

Compliance Services
Minnesota Department of Labor and Industry
443 Lafayette Road North
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TABLE OF CONTENTS

INTRODUCTION

As part of its 1992 workers' compensation reform legislation, the Minnesota Legislature directed the Commissioner of the Department of Labor and Industry to submit an annual report on the assessment and collection of fines and penalties under workers' compensation law (Minnesota Statutes § 176.222).

Fines and penalties are found throughout the workers' compensation statutes. Employers may be penalized for failing to obtain workers' compensation insurance, falsifying insurance information, failing to post a required poster, and for late filing of injury reports with their insurance companies. Insurance companies and self-insured employers may be penalized for a variety of reasons, including failure to commence benefit payments to an injured worker or to deny liability for a claimed injury in a timely manner, failure to pay benefits when ordered to do so by the commissioner or a compensation judge, failure to file required reports with the department, and denying benefits without notice or reason, among others. Vocational rehabilitation providers are subject to sanctions, including penalties for failure to follow the rehabilitation rules such as the professional conduct standards. Certified managed care plans are subject to sanctions, including penalties for failure to provide services as required by statute, rule, or in accordance with the managed care plan as certified. Any party to a claim may be penalized for failing to release existing medical data in a timely fashion when requested.

The workers' compensation statutes allow the Department of Labor and Industry to use its discretion in assessing penalties for violations of workers' compensation law. This gives the department the flexibility to monitor all cases for violations that inflict the greatest damage to injured workers, employers, and the system as a whole. Other violations may result in penalties when they are reported to the department by a party to a claim or by the general public.

Under workers' compensation law, penalties are paid to one of three recipients depending on the nature of the violation. Most penalties are paid to the Assigned Risk Safety Account that was created in 1992 by the Minnesota Legislature. Through this account, matching grants are awarded to employers to improve the safety of their workplaces. A few penalties are paid to the second recipient, the Special Compensation Fund, to assist in financing the entire workers' compensation system. Finally, some penalties are paid directly to injured workers when their monetary benefit payments have been unreasonably delayed by the insurer.

The department's Financial Services unit collects all workers' compensation penalties that are payable to the Assigned Risk Safety Account and the Special Compensation Fund. The department's Compliance Services unit monitors the payment of penalties to injured workers.

This report presents fine and penalty information in its appendix for FY 1996, FY 1997, FY 1998, and FY 1999. Each fiscal year begins on July 1, ends on June 30 the following year, and is named

for the year in which the 12-month period ends. For example, the fiscal year beginning July 1, 1998 and ending June 30, 1999 is given the name "FY 1999." This report focuses on penalties issued and collections made during FY 1999. Although warnings are also technically defined as penalties, only penalty assessments that involve monetary fines are included in the appendix.

ASSESSMENT AND COLLECTION PROCEDURES

When a potential penalty situation is identified by the department's internal monitoring system or by an external customer, department staff members carefully review the facts and determine whether a penalty should be assessed. If so, a letter is sent to the violator describing the infraction and the dollar amount of the penalty. This information is also entered into the department's data base. When the penalty is for an employer's failure to obtain workers' compensation insurance, the employer may challenge the penalty by filing a written objection with the department within ten days. Objections to all other penalties must be filed within 30 days of the assessment.

If an objection is received by the department, the penalty recipient and the department may attempt to settle the penalty. If these attempts are unsuccessful, a settlement conference and/or hearing is conducted at the Office of Administrative Hearings (OAH) before a compensation judge to determine whether the penalty was appropriate. Appeals from OAH are heard by the Minnesota Workers' Compensation Court of Appeals and may be appealed to the Minnesota Supreme Court.

A penalty becomes final when it is assessed and no objection is filed. If an objection has been filed by its deadline, the penalty becomes final when it is settled or when an order is issued by a judge and is not appealed.

Once a penalty is final, it must be paid within 30 days. The department initiates collection procedures when parties have not paid their penalties by this deadline. When necessary, the department uses the Minnesota Collection Enterprise (MCE) to obtain payment of the penalty. The department may take a penalty case to district court as long as the action is filed within two years of the date the penalty becomes final.

GENERAL APPENDIX TABLE INFORMATION

The penalties contained within Minnesota Statutes § 176 are listed on the left of the appendix table at the end of this report. The table is divided into columns describing the total number and dollar amount of penalties assessed and collected during each fiscal year for each penalty type. Assessments in a fiscal year do not correspond to collections during the same fiscal year for various reasons:

- If a penalty is challenged, any subsequent settlement or withdrawal of the penalty will reduce the number and/or amount of penalties to be collected.
- Litigation and/or collection procedures can delay the collection of a penalty for one or more years after the assessment.
- The department is not the recipient of penalty payments made to injured employees. Although these penalty numbers and dollar amounts are included in the "Assessed" column, they are not included in the "Collected" column.

PENALTY DESCRIPTIONS

LATE FILING OF FIRST REPORT (Minnesota Statutes § 176.231)

Description: The First Report of Injury is a document completed by the employer when he or she receives notice that a workplace injury or illness has occurred. The employer has ten days to file this report with its workers' compensation insurance company when a period of work extending beyond three calendar days has been lost due to the injury or illness. The insurance company has an additional four days to file the First Report with the Department of Labor and Industry, accept the claim and initiate benefit payments, or deny liability for the claim. The department considers the prompt filing of First Reports of Injury by employers and insurers to be essential in keeping the costs of the workers' compensation system as low as possible. An employer's delay in filing the First Report with the insurance company reduces the amount of time the insurer has to determine liability and meet its own filing deadline. A delay in the insurer's or self-insured employer's filing of the First Report with the department hinders the department's ability to monitor the claim and respond to questions about its status. Any delay in the provision of medical and monetary benefits caused by the late filing of a First Report can create mistrust between the injured worker and the employer and adversely affect the future of the claim.

All new lost-time claims are monitored to determine whether the First Report of Injury has been filed in a timely manner. Penalties are paid to the Assigned Risk Safety Account. If an objection is filed, the department may settle the penalty or refer the matter to the Office of Administrative Hearings for a settlement conference or a hearing before a compensation judge.

Appendix Table: A dramatic increase in late First Report of Injury penalties occurred in FY 1997 when the department began assessing this penalty against insurance companies. Prior to that year, only employers and self-insured employers had been penalized for late reporting of injuries. Once they became aware of this penalty, insurance companies improved their timeliness. This improvement is reflected in penalty totals for FY 1998 and FY 1999.

LATE FIRST PAYMENT OF BENEFITS (Minnesota Statutes §§ 176.221 and 176.225)

Description: Every self-insured employer or insurance company who accepts liability on a claim that results in disability extending beyond three calendar days must either begin payment of monetary benefits to the injured worker or explain why no benefits are yet payable. Either action must be taken within 14 days of the date the employer receives notice of the injury. Timely issuance of the first payment or explanation of the reason for nonpayment is critical to the smooth handling of a claim. A delay often motivates the injured worker to retain the services of an attorney and to view the insurer or self-insured employer as an adversary, increasing the costs of the claim.

All new lost-time claims are monitored to determine whether the first payment has been timely. Penalties assessed for late first payment of benefits are payable to the Assigned Risk Safety Account. Additional penalties are payable to the injured worker in certain situations as directed by Minnesota Statutes § 176.225. Settlement and litigation procedures are identical to those for late filing of First Reports of Injury.

Appendix Table: The number of penalties assessed for late first payment of benefits declined by 10.6 % in FY 1999 from the previous year despite a slight increase (1.6%) in new lost-time claims. Factors contributing to this decrease may include the department's quarterly communication with insurance companies and self-insured employers regarding the timeliness of their first payments, publication of the annual *Prompt First Action Report on Workers' Compensation Claims* and training given periodically to new claims adjusters by the department.

LATE DENIAL OF CLAIMS (Minnesota Statutes § 176.221)

Description: If a self-insured employer or insurance company does not accept liability for an injury resulting in disability extending beyond three calendar days, it must notify both the injured worker and the department of its denial within 14 days after the employer receives notice of the injury. As with the first payment of benefits, it is important to give this information to injured workers quickly. A timely denial gives the injured worker the opportunity to dispute the insurance company's liability decision before his/her financial situation becomes severely damaged. Delays may affect the future relationship between the injured worker and the insurance company, even if the claim is later accepted.

All new lost-time claims are monitored to determine whether the denial has been filed on time. Penalties assessed for the late denial of claims are payable to the Assigned Risk Safety Account. Settlement and litigation procedures are consistent with those already described in this report.

Appendix Table: Despite a 1.6% increase in the number of lost-time claims filed in FY 1999, penalties for late denials of claims during the fiscal year decreased by 14.7%. As with late first payments on claims, factors contributing to the decrease in late denial penalties may include the department's communication each quarter with insurers and self-insured employers regarding the timeliness of their denials, publication of the annual *Prompt First Action Report on Workers' Compensation Claims* and department-initiated training for new adjusters.

PROHIBITED PRACTICES (Minnesota Statutes § 176.194)

Description: Minnesota Statutes § 176.194 describes eight types of conduct by insurance companies, self-insured employers, and third party administrators that are prohibited under workers' compensation law. These include:

- failing to reply within 30 days to written requests from the claimant for information about a claim;
- failing to either deny the claim or commence benefits within 45 days after a written request to do so;
- failing to pay or deny medical bills within 45 days of receipt of all information requested of the provider;
- failing to investigate a claim before denying liability;
- failing to pay weekly benefits in a timely manner;
- failing to respond within 30 days to the department's written request for information about a claim;
- failing to pay pursuant to an order within 45 days; and

- advising the injured worker not to obtain an attorney.

The department monitors written requests it makes to insurers and self-insured employers and assesses penalties when a party fails to respond. Penalties are also assessed as a result of complaints made by parties to a claim alleging violations of the prohibited practice statute by insurers, self-insured employers, and third party administrators. Depending on the type of prohibited conduct, monetary penalties may either be assessed immediately or after five violations of that type of conduct have occurred within the last 12 months. Monetary penalties issued per this statute are payable to the Assigned Risk Safety Account. As with the preceding penalties, these may be settled or litigated before an administrative law judge.

Appendix Table: Although small in numbers, prohibited practice penalties have risen annually since FY 1996 due to the department's increased monitoring of claims and more consistent follow through when auditing files.

REHABILITATION PROVIDER DISCIPLINE (Minnesota Statutes § 176.102)

Description: Minnesota Statutes § 176.102 and Minnesota Rules Part 5220 provide minimum standards of performance and professional conduct for rehabilitation providers. These standards require each provider to follow the process specified in the statute and rules for the provision of vocational rehabilitation consultation and services. Each provider must also follow certain standards of conduct, objectivity, and professional competence, and must not confuse the role of a provider with that of an insurer.

The department certifies rehabilitation providers and also monitors their performance. Members of the general public may file complaints with the department when they believe a rehabilitation provider has violated any of the performance or professional conduct standards. The department investigates these complaints and may initiate a variety of disciplinary actions against the provider, including monetary penalties. Subsequent negotiations with the rehabilitation provider may result in a settlement of the penalty. If a settlement does not occur, the department brings the issue before an administrative law judge for a hearing. However, unlike other penalty processes, the judge's findings of fact and conclusions of law are submitted to the Rehabilitation Review Panel, which was created under Minnesota Statutes § 176.102. The Rehabilitation Review Panel imposes the penalty, which is payable to the Special Compensation Fund. The panel's decision may be appealed to the Workers' Compensation Court of Appeals.

Appendix Table: The department's monitoring of rehabilitation providers has resulted in penalties during each of the four fiscal years listed in the appendix.

MANAGED CARE ORGANIZATION DISCIPLINE (Minnesota Statutes § 176.1351)

Description: Under Minnesota Statutes § 176.1351 the Department of Labor and Industry certifies managed care plans. Minnesota Rules Parts 5218.0800 and 5218.0900 require the department to monitor the performance of these plans and investigate complaints.

The department may refuse to certify, suspend or revoke certification of a managed care plan for failure to provide required medical services and for failure to provide those services in accordance with the terms of the certified plan. In lieu of suspension or revocation of certification, administrative penalties may be assessed. The commissioner may enter into a stipulated consent agreement with the managed care plan for corrective or preventative action or the amount of the penalty to be paid. If there is no stipulated agreement and the managed care plan objects to the penalty assessment, it may be brought before a compensation judge for a hearing. Penalty payments are made to the Special Compensation Fund.

Appendix Table: The certified managed care plan program was included in legislation passed in 1993. The first managed care plan was certified in 1995 and penalties were first assessed in FY 1998. One penalty was assessed in FY 1999.

FAILURE TO INSURE (Minnesota Statutes § 176.181)

Description: Under the provisions of Minnesota Statutes § 176.181, all employers who are required to provide compensation under the workers' compensation law must obtain insurance through an insurance company or become self-insured. When an employer is suspected of operating without workers' compensation insurance, the department conducts an investigation and assesses a penalty when the employer is found to be in violation of this law. Beginning in FY 1996, the department assessed the statutory maximum penalty of $1,000 per week per employee for each violation. Effective July 1997, the department began using a penalty matrix to determine the severity of each violation and the appropriate amount of the penalty.

Penalties for an employer's failure to insure are paid into the Assigned Risk Safety Account. As with other penalties, a dispute may result in a settlement of the penalty or a hearing before an administrative law judge. Employers who fail to respond to the department's penalty assessment may be taken to District Court for judgement and collection.

Appendix Table: The department continues to closely monitor and investigate employers suspected of being uninsured. A reduction is seen in the dollar amount assessed in FY 1999 against uninsured employers due to fewer employers found to be non-compliant and fewer uninsured claims.

LATE FILING OF SPECIAL FUND ASSESSMENT
(Minnesota Statutes §§ 176.129 and 176.130)

Description: The Special Compensation Fund is administered by the Department of Labor and Industry. It is funded primarily by semi-annual assessments against insurance companies and self-insured employers based on indemnity benefits paid in the previous six months. Minnesota Statutes § 176.129 and Minnesota Rules Part 5220.2840 dictate filing and payment time line criteria and provide for the issuance of penalties when the time lines are not met.

A second workers' compensation statute, Minnesota Statutes § 176.130, imposes an annual assessment on Minnesota wood mills. This assessment is used to pay rebates to qualified employers in the logging industry and to fund a logger safety education program. Penalties provided under Minnesota Statutes § 176.129 may be imposed against wood mills for failure to pay their assessments by the statutory deadline.

These two penalties are combined in the appendix table under "Late Filing of Special Fund Assessment." Both penalties are payable to the Assigned Risk Safety Account. Settlement and litigation procedures are consistent with those used for other department penalties.

Appendix Table: The number of penalties for late filing of special fund assessments and logger assessments increased slightly again in FY 1999. Part of the increase is due to penalties assessed against insurers who have "zero" reportable assessments, yet filed their reports late.

OTHER PENALTIES (Minnesota Statutes §§ 176.221, 176.225, 176.138, 176.231, 176.238, 176.84)

Description: Situations resulting in these penalties are listed on the appendix table and generally include late payment of medical, rehabilitation, and/or monetary benefits, failure to file required reports, frivolous or nonspecific denials of claims, and the improper payment or discontinuance of benefits. Most penalties are assessed against insurers, but penalties for failure to file required reports are also assessed against employers and health care providers. Generally, these penalties occur as a result of complaints from members of the general public. As with other penalties, they may be settled or litigated after the penalty is assessed. Penalty payments are made to the Assigned Risk Safety Account, the Special Compensation Fund, and/or the injured worker.

Appendix Table: FY 1999 penalties for these violations were similar to FY 1998 levels due to the department's continued close monitoring of files.

APPENDIX

Workers' Compensation Division Penalty Statistics

Penalty Type	FY 1996				FY 1997				FY 1998				FY 1999			
	Assessed		Collected		Assessed		Collected		Assessed		Collected		Assessed		Collected	
	Total #	Dollar Amount	Total #	Dollar Amount	Total #	Dollar Amount	Total #	Dollar Amount	Total #	Dollar Amount	Total #	Dollar Amount	Total #	Dollar Amount	Total #	Dollar Amount
Late Filing of 1st Report (M.S. 176.231)	620	$68,100	428	$46,595	1,165	$168,000	866	$118,575	778	$122,250	684	$101,685	761	$193,475	639	$141,660
Late 1st Payment (M.S. 176.221)	1,904	$689,362	1,808	$433,755	1,903	$730,299	1,784	$462,591	1,414	$601,956	1,454	$425,343	1,264	$558,166	1,196	$356,252
Late Denial (M.S. 176.221)	0	$0	0	$0	278	$110,750	140	$46,400	557	$374,100	459	$256,550	475	$377,300	358	$243,593
Prohibited Practices (M.S. 176.194)	0	$0	3	$5,121	19	$63,000	6	$19,000	38	$126,000	18	$46,000	60	$204,000	45	$88,350
Rehabilitation Provider Discipline (M.S. 176.102)	1	$25,000	0	$0	3	$1,850	3	$1,850	15	$7,133	14	$6,683	6	$3,800	5	$16,800
Managed Care Organization Discipline (M.S. 176.1351)	0	$0	0	$0	0	$0	0	$0	3	$9,750	3	$9,750	1	$10,000	1	$10,000
Failure To Insure (M.S. 176.181)	150	$31,533,861	113	$128,440	180	$41,479,271	175	$243,499	155	$3,146,115	149	$257,511	137	$1,689,129	164	$288,824
Late Filing of Special Fund Assessment (M.S. 176.129 & 176.130)	43	$90,085	35	$46,954	59	$94,704	55	$92,279	69	$161,899	68	$71,978	85	$96,326	82	$116,577
* Other Penalties (M.S. 176.221, 176.225, 176.138, 176.231, 176.238, & 176.84)	14	$16,855	17	$14,871	24	$32,640	15	$10,301	208	$78,612	139	$42,906	222	$79,804	185	$37,478
TOTALS	**2,732**	**$32,423,262**	**2,404**	**$675,736**	**3,631**	**$42,680,514**	**3,044**	**$994,494**	**3,237**	**$4,627,815**	**2,988**	**$1,218,407**	**3,011**	**$3,212,000**	**2,675**	**$1,299,535**

* These penalties could include: non-specificity of notices, improper payment of permanent partial disability, late payment of orders, improper discontinuance, frivolous denial, late payment of medical expenses, failure to release medical data, late payment of ongoing benefits, failure to file other required reports, and late payment of rehabilitation expenses.

Notes: Penalties pursuant to M.S. 176.225, which are payable to the employee, have been included in the assessed amounts only. All dollar amounts have been rounded to the nearest whole dollar.