

## Workers' compensation insurance: Home health care workers

*This document contains general information. It is not legal advice. Every situation is different and other laws might apply to your situation. If you have questions, contact an attorney, visit the Department of Labor and Industry website at [www.dli.mn.gov/business/workers-compensation-businesses](http://www.dli.mn.gov/business/workers-compensation-businesses) or call the workers' compensation hotline at 800-342-5354 and press 3.*

For purposes of this notice, the term “home health care workers” broadly includes personal care assistants (PCAs), consumer-directed community support (CDCS) workers, home health aides, home care nurses and others who provide in-home health care services.

### Employers must purchase workers' compensation insurance

Under Minnesota law, all employers – even employers with only one part-time employee – must provide workers' compensation insurance coverage for their employees, unless there is a specific exception in the law.<sup>1</sup> As an employer, a patient or legal guardian is generally required to provide workers' compensation insurance for the home health care workers he or she hires. In some cases, the patient may be considered the employer because he or she receives the benefit of the home health care services, even though someone else, such as a family member, may have arranged for the hiring on the patient's behalf.

Patients often use government funding to pay for home health care workers. There are a variety of models used by the Minnesota Department of Human Services to provide grants for home health care. In many models the patient (sometimes called the “program participant” or the “participant employer”) is considered the employer of the home health care worker who is providing the care.

Frequently, program participants are required by the state or a county to use a fiscal support entity to help manage the government grants they receive. A fiscal support entity is a Medical Assistance (MA) enrolled provider that people use to help them with CDCS employer-related responsibilities.<sup>2</sup> However, in the event of an employee's work injury, the fiscal support entity might not be responsible for the work injury, depending on the terms of the contract between the fiscal support entity and the patient (program participant/program employer). No matter what type of contract is in place, all employers are responsible for ensuring there is workers' compensation insurance coverage for anyone hired to perform home health care services.

### Penalties for not having workers' compensation insurance

The Minnesota Department of Labor and Industry can order an employer that is not insured for workers' compensation liability to: pay a penalty of up to \$1,000 per employee per week for the entire time the employer was not insured; purchase the necessary insurance coverage; and refrain from employing any person, at any time, without workers' compensation insurance in place.<sup>3</sup> Additional penalties apply if an employee is

injured while the employer is uninsured. The employer will not only be responsible for the workers' compensation benefits owed to the employee, but will also have to pay to the state a penalty in the amount of 65 percent of these benefits.<sup>4</sup>

## Exclusion for hiring spouses, parents and children

As noted above, workers' compensation insurance is not required for persons who are excluded under the law.<sup>5</sup> One particular exclusion is for sole proprietors and their immediate family members (spouse, parents and children, regardless of age). For example, if a patient hires their child to work as a PCA, the patient is not required to purchase workers' compensation insurance for their child. However, the patient may choose to purchase this coverage. This exclusion does not extend to other family members. For example, the patient must purchase workers' compensation insurance if a cousin or grandchild is providing him with home health care services.

There are many other categories of persons for whom workers' compensation insurance is not required.<sup>6</sup> You should carefully review the workers' compensation law to determine whether any of these categories apply to your particular situation.

## Next steps

Take the following steps to purchase workers' compensation insurance for a home health care worker.

1. Start by contacting your fiscal support entity, if you have one. Your fiscal support entity may be able to help you purchase workers' compensation insurance for your employee.
2. If your fiscal support entity is not able to help you purchase insurance, contact a private insurance agent to purchase workers' compensation insurance.
3. If an insurance company declines to sell you workers' compensation insurance coverage, you may purchase a policy through the Minnesota Workers' Compensation Assigned Risk Plan. Email the Minnesota Workers' Compensation Insurers Association at [www.mwcia.org](http://www.mwcia.org) for information.<sup>7</sup>

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<sup>1</sup>Minnesota Statutes §§ 176.041 and 176.181 (2016).

<sup>2</sup>More information about fiscal support entities is available at <https://mn.gov/dhs/people-we-serve/people-with-disabilities/services/home-community/programs-and-services/fiscal-support-entities.jsp>.

<sup>3</sup>See Minn. Stat. § 176.181, subd. 3.

<sup>4</sup>See Minn. Stat. § 176.183, subd. 2.

<sup>5</sup>See Minn. Stat. § 176.041, subd. 1.

<sup>6</sup>See, e.g., Minn. Stat. § 176.041, subd. 1 (12) and Minnesota Rules Chapter 5224, including subparts 5224.0240, 5224.0250 and 5224.0080. Patients should use caution when considering whether a home health care worker is an independent contractor. If an employer does not purchase workers' compensation insurance and the home health care worker is actually an employee under the law, the employer will be responsible for any benefits owed as well as penalties.

<sup>7</sup>Additional information about the Minnesota Workers' Compensation Assigned Risk Plan is available at [www.mwcarp.org/default.htm](http://www.mwcarp.org/default.htm) or by calling 800-471-6767.