



COVID-19: **Workers' Compensation** **Implications for Health Care** **& Long-Term Care Facilities**



April 14, 2020

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The information in this program is based upon the very dynamic and evolving outbreak of respiratory disease caused by a novel (new) coronavirus that was first detected in China and which has now been detected in more than 100 locations internationally, including in the United States. The virus has been named “SARS-CoV-2” and the disease it causes has been named “coronavirus disease 2019” (abbreviated “COVID-19”). The information presented is current as of the date of this program, but it may change in the coming hours and days ahead. Participants are encouraged to refer to information from the U.S. Centers for Disease Control and Prevention (“CDC” at www.cdc.gov).

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Doug founded Brown & Carlson in 1992, and has been the Managing Shareholder from the firm's inception. Doug received his undergraduate degree from Nebraska Wesleyan University in 1982, and his J.D. from Hamline University School of Law in 1985. He practices in the areas of workers' compensation, employment and labor law, and personal injury defense. Doug was also co-chair of the Minnesota Defense Lawyers Association's Workers' Compensation Committee from 2007 to 2012. Doug is a frequent lecturer at numerous conferences, CLEs and Symposiums. Outside the office, Doug enjoys reading, biking, camping and spending time with his family.



Webinar Agenda

- New Statutory Presumption
 - Who Qualifies (Employee/Employer)
 - What Qualifies
 - How to Rebut Presumption
 - Miscellaneous Provisions
 - Issues to Consider
- Existing Statutory Framework
- Investigating COVID-19 Claims
- Other Defenses
- Final Thoughts

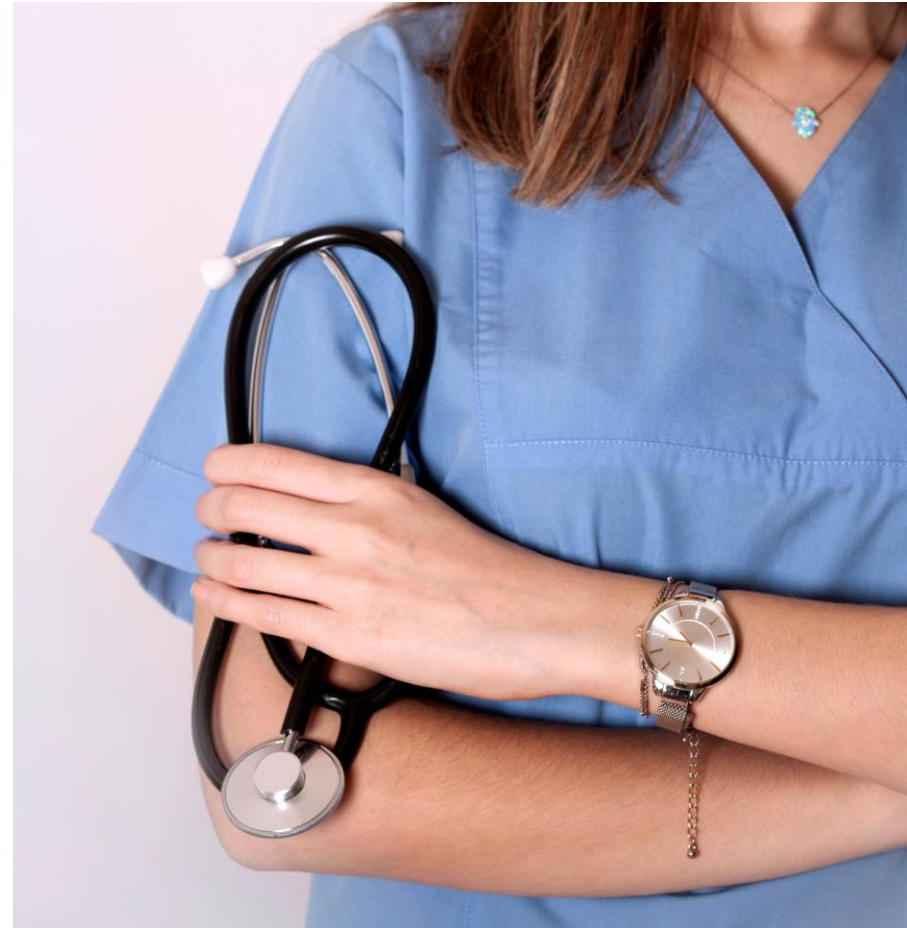
New Statutory Presumption – Who Qualifies

Applies to:

- Healthcare Providers
 - Nurses
 - Assistive Employees
- + Healthcare, Homecare or Long-Term Care Employers
- + With Direct Covid-19 Patient Care

OR

- + “Ancillary” Work in COVID-19 Patient “Units”



New Statutory Presumption – What Qualifies & How To Rebut

What Qualifies

- Employees with positive COVID-19 laboratory testing
- If a laboratory test not available, a diagnosis and documented by a licensed physician, licensed physician's assistant, or licensed advanced practice registered nurse based on symptoms
- Simple exposure and quarantine is not enough

How to Rebut

- The employer and insurer must show the employment was not a direct cause of the disease



New Statutory Presumption – Miscellaneous Provisions



- Date of injury: When employee unable to work due to diagnosis or due to symptoms, whichever occurred first
- If presumption does not apply, employee may still claim an occupational disease under old law



- Statute effective for employees who contract COVID-19 on or after the day following final enactment (**April, 8 2020**)
- Statute sunsets on May 1, 2021



- Childcare coverage does not appear to extend to healthcare organizations (unless you provide on-site childcare – impact unclear)
- A Denial Of Liability Must Meet Denial Requirements Per §176.221, Subd. 1. (14 Days To Admit Or Deny; 60 Days To Reverse Admission)

New Statutory Presumption – Issues to Consider

- What is a “Healthcare Provider?”
 - *Minn. Stat. §176.011, Subd. 12a defines a Healthcare Provider as “a physician, the diet wrist, chiropractor, dentist, optometrist, osteopathic physician, psychologist, psychiatric social worker, or any other person who furnishes a medical or health service to an employee under this chapter...”*
- What is an “assistive” employee?
- What is “ancillary work”?
- What is a “COVID-19 Patient Unit”?
- How does employee prove exposure to COVID-19?
- Whose burden is it to prove diagnostic test are not available?

New Statutory Presumption – Issues to Consider Cont'd

- HIPAA Considerations for Patients – Who is entitled to information about which patients/residents are or are not diagnosed with COVID-19?
- Can you dispute a diagnosis based on symptoms?
- What happens if an employee diagnoses based on symptoms later tests negative?
- Presumably, diagnoses from only symptoms will be based on histories obtained by phone
- Can we require a blood draw to test for antibodies at an IME to disprove a COVID-19 diagnosis?
- Can we rebut a diagnosis?
- What happens when employees work for multiple employers at once with COVID-19 exposure?

New Statutory Presumption – Issues to Consider

Rebutting the Presumption



- The presumption can be rebutted only if the employer and insurer show the “employment was not a direct cause of the disease”
- Can the presumption be rebutted by showing the employee does not have COVID-19?

Existing Statutory Provisions (Minn. Stat. §176.011, Subd. 15)

Ordinary diseases of life to which the general public is equally exposed outside of employment are not compensable, except where the diseases follow as an incident of an occupational disease, or whether the exposure peculiar to the occupation makes the disease an occupational disease hazard. A disease arises out of employment only if there be a direct causal connection between the conditions under which the work is performed and if the occupational disease follows as a natural incident of the work as a result of the exposure occasioned by the nature of the employment.

Investigating COVID-19 Claims

1. What specific diagnoses have your healthcare providers given you? (You need to know whether the claimant has a specific COVID-19 diagnosis or has some other provisional diagnosis.)
2. What is the basis for the diagnosis? (Here you are seeking to understand if the claimant has been specifically diagnosed with COVID-19 based on a specific test result or based on symptoms and rule-out testing.)
3. Did you provide direct patient care to a patient/resident diagnosed with COVID-19?
4. How many patients/residents had the diagnosis?
5. Did you provide ancillary work in a COVID-19 patient unit?
6. What was the work you performed?
7. Over what timeframe were you exposed?
8. What safety protocols and PPE were you using while working to prevent contracting the virus?
9. Can you recall any time when you were not using appropriate safety protocols and PPE around the patient(s) in question?
10. Can you recall any time when you were not using appropriate safety protocols and PPE while working in a COVID-19 patient unit?

Investigating COVID-19 Claims Cont'd

11. Under what circumstances would you have been exposed to the COVID-19 while failing to use proper safety techniques, protocols, clothing, PPE, etc.?
12. What was the duration of patient's/resident's symptoms?
13. How much time elapsed between exposure to the patient and the onset of your symptoms?
14. When did your symptoms start?
15. What symptoms did you start to develop?
16. How did your symptoms progress?
17. How long was it between exposure at work and your diagnosis of COVID-19?
18. Did you report this exposure to your manager/supervisor?
19. Have you been around individuals (friends, family members, etc.) outside of work who had similar symptoms or were otherwise sick?
20. You would then need to find out the answers to the same series of questions about the timing of that exposure, the symptoms those individuals demonstrated, etc., for any exposure outside of the work environment.

Other Defenses

Notice/Statute of Limitations

- Since COVID-19 is described as an “occupational disease,” the employee has three years after the employee “has knowledge of the cause of such injury and the injury has resulted in disability” to give notice and commence an action

Last Significant Exposure Defense





Final Thoughts

- ✓ Prevention
- ✓ Overwhelm Claim Management
- ✓ Potential Exposures
 - Minimal in most cases
 - Comorbid conditions
 - Serious cases
 - Death
- ✓ Financial Relief

Resource Center

Find more information on other insurance implications at:

hayscompanies.com/covid-19-resource-center/

&

brownandcarlson.com/covid-19/additional-webinar-materials

Resource Links:

WHO

www.who.int/health-topics/coronavirus

CDC

www.cdc.gov/coronavirus/2019ncov/index.html

OSHA

www.osha.gov



Thank you for joining us.

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