

Workers' Compensation Advisory Council
Jan. 13, 2010
minutes

Voting members present

Wayne Ellefson
Jim Gander
Glen Johnson
Shar Knutson
David Olson
Susan Olson
Edward Reynoso
Carrie Mortrud for Elizabeth Shogren

Voting members absent

Bob Lux

Voting members excused

Mike Bredeck
Ryan Holmes
Gary Thaden

Nonvoting members present

Senator Joe Gimse
Representative Bob Gunther
Representative Michael Nelson

Nonvoting members excused

Senator Tom Bakk

Staff members present

Penny Grev
Ralph Hapness
Mike Hill
Jayne Jones
Julie Klejewski
Donna Olson
Carol Pankow
Shawn Peterson
John Rajkowski
Steve Sviggum

Patricia Todd
Cindy Valentine
Lisa Wichterman
Jana Williams
Brian Zaidman

Visitors present

Kathryn Berg, MNHLRP
Ray Bohn, WCRA
D. Brown, WCTF
Doug Brown, MDLA
Jeremy Estenson, MN Chamber
Carla Ferrucci, MN Association for Justice
Kevin Gregerson, UCWCP
Jay Hartman, Hencox, Hartman
Steve Hollander, MARP
Judge Bill Johnson, OAH
Meg Kasting, SFM
Jonell Kluver, Encore Unlimited
Judge Ray Krause, OAH
Brett Krumhardt, Encore
Nancy Larson, MARP
Carolyn Laviolette, Messerli & Kramer
Brad Lehto, MN AFL-CIO
Matthew Lemke, Winthrop & Weinstine
Rep. Tim Mahoney, MN House of Representatives
Keith Maurer
Tom Mottaz, MNAJ
Laura Mundt, Mayo Clinic
Carol Norris, QRC/MASPPR
Rob Otos, Alaris
Ken Peterson, Fairpay Solutions
Greg Schmidt, MNHLRP
David Sullivan, House DFL
Pete Thrane, MN Self-Insurers
Mike Wilde, Local 49
Dan Wolfe, MN APTA
Kelly Wolfe, LS&D
David Wulff, MNAJ

The meeting was called to order by Commissioner Steve Sviggum at 9:45 a.m. Roll was called and a quorum was present.

Opening

Ed Reynoso made a motion to approve the minutes from the Dec. 7, 2009 meeting. Jim Gander seconded the motion. All voted in favor of the motion and it passed on a voice vote.

Commissioner Sviggum noted a small change in the agenda to respect Representative Mahoney's time by moving #4 item B – Ombudsman, ahead of item A – Alternative dispute-resolution. Members agreed.

Discussion

Sviggum asked for an open discussion of current policy reforms circulating around workers' compensation.

1. Ombudsman office: Representative Tim Mahoney spoke about his legislation to require the department to employ a neutral ombudsman to serve injured workers' navigating the workers' compensation system. Discussion followed with questions about the role of the ombudsman and the current services provided by the department. No policy decision was recommended.
2. Modifications to alternative dispute-resolution: Employee attorney Tom Mottaz and employer attorney Jay Hartman spoke about procedural modifications to the workers' compensation dispute-resolution process and the agreed upon factor that currently, Minnesota's workers' compensation dispute-resolution system is complicated and a procedural fix is necessary.

Additionally, Chief Judge Raymond Krause and Assistant Commissioner Pat Todd spoke about the actual number of claims referred to both OAH and the department, and the recommendation to the WCAC last year that simplified dispute-resolution.

No policy decision was recommended.

3. H1N1 task force: Commissioner Sviggum announced the department has begun the process for starting a H1N1 task force and there will be a meeting in February 2010.

Additional discussion

Sviggum discussed the following.

1. CompScope study: The commissioner reviewed the recent CompScope study and recommended all members review it before making policy decisions.
2. Workers' compensation conference: The commissioner asked the WCAC to "host" the 2010 workers' compensation conference to be scheduled in June 2010.
3. Caucus: The commissioner recommended the members caucus to come forth with legislative policy decisions at the next WCAC meeting in February.

Conclusion

After discussions, it was agreed that the next meeting of the WCAC will be Wed., Feb. 3, 2010, instead of Feb. 10. Representatives Gunther and Nelson both agreed the earlier the better to get the bill introduced. The session begins Feb. 4.

Susan Olson made a motion to adjourn at 11:30 a.m. Carrie Mortrud seconded the motion. All voted in favor of the motion and it passed on a voice vote.

Respectfully submitted,

Julie Klejewski

Julie Klejewski
Executive Secretary

Attachment to the Jan. 13, 2010 minutes

Patricia Todd's transcript – Jan. 13, 2010, WCAC meeting

First of all, when I heard that we were going to start talking about the dispute-resolution process, one of the things that I started thinking about was perception versus reality and, and the problem gets to be is that you know people, you know, it's easy to say this is what's happening, but we need to look into the reality of data what is actually occurring is I think worthwhile analyzing and evaluating, um, and then one of the things when I tried to think about my response is, you know, I think one thing that happens so often in all industries or in all cases is that people are advocating to keep something to say this is my business. I'm going to keep it. I'm not going to give it away so I don't want to give the approach that the Department of Labor and Industry is going to fight for conferences or OAH is going to fight for conferences. I really want to get to the approach of what, what does work and what has worked and what has been the perception overtime and what really is the reality over time and I think those really have to come to the, to the true questions in my mind and, you know, since I've joined this organization, there have been quite a few different perceptions and realities that have been brought forth over a period of time and we've done studies on everyone of them and, you know, studies related to, one had to do with the objectivity of the DLI's staff, um, and when we evaluated that there was truth to that. The DLI staff did tend to make more decisions in favor of injured employees than they did for employers. It wasn't a 50/50 split so we made some changes to make sure that it was a little bit more, you know, to, to make sure that, that it was similar across between DLI and OAH. Um, we looked at such things as the effectiveness or the quality of the, um, the staff over here and we did a survey of individuals who attended our conferences to see what their thoughts were in regard to our effectiveness and, and some of the questions had to do deal with the ability of the people who ran the conferences to understand the law specifically associated with workers' compensation. So, again, one of the changes that we specifically made is we hired more attorneys over here, In fact, we have two former, um, work comp judges and one former, um, district judge, who are presently in our, in our process doing this work in order to be able to ensure that we improve the quality and consistency of ___ and then I went through and I started thinking about some of the things that I've been hearing as of late which has to deal with the, um, the effectiveness of the system, um, the speed bump process, um, the fact that everything is appealed, you know, those tend to be right now kind of the comments that tend to be up there from the perception standpoint. So again, anyone who knows me, I do a study. You can tell these are just a few of the studies that I've done or that we, as an agency, had done in regard to some of the concerns that have been addressed and I just kind of want to talk a little bit about the disputes and, and some of the things that, that were brought up. You know, one of the, the things that if you do look at the WCRI report, it says some things. If you look at the dispute study report, it says other things. The whole thing is that each study in a way whether it's the dispute study that we've done, whether it's a ___ study, where it's a legislative audit report, whether it's the WCRI report all of 'em have pieces of information and you kind of have to glean it altogether to determine kind of what specifically does it mean and one of the things when I, when I sat down and I thought through some of the things is that if you start with 1,000 disputes if you start with 1,000 medical disputes where something was filed or that there's a dispute from an employee's perspective in regard to something to deal with medical. If you start with a 1,000 of those disputes out of those 1,000, um, 700 of 'em are resolved in informally so 700 of 'em don't have any hearing, don't have any activity ___. It's resolved informally. So this is a significant number and out of those 1,000, 184 are actually heard here. So, again, if you look at the fact that it's like well why have us do a path (?), why have us do this thing, 184 come over here, You know, it's not a huge number, 184, and out of that 184, 75 are appealed. So again, you kind of think 1,000 started, 75 from here are appealed, 700 of 'em are resolved informally so and then you look at the time frame associated with it and people talked

about the time frame overall too and if you look at the time frame associated with it from a medical dispute to get resolved over here on average, it indicated it takes 61 days. You know, yes you add all these times together and you add all the maximum on the times that could be allowed on average they resolved here in 61 days, OAH 126 days. Now why that happened the complexity of some of 'em that go directly over there versus ones that they stay over here. There's a variety of reasons why different things happen in different ways and, and if you look at the rehab, it's a similar type thing where there's, you know, you start with 1,000, very few come over here, very few get appealed, very few go through that specific process. So when I looked at it, I kind of thought OK the perception versus reality of what's appealed, yeah, maybe. The perception versus reality of what comes over here versus what goes over to the OAH, hmm, maybe. You know, I, I just kind of looked at that and I'm thinking the perception and the reality type approach that I'm hearing just doesn't quite line up and then one of the other things is what when I look at the studies and I look at the analysis and I look at some of the things that Judge Krause and Tom will be talking about later is that I think that from my, my perspective and I think from all of our perspective our thoughts shouldn't be how to make the dispute process better. Our question should be is how do we remove disputes cause that's really the question. If you don't have disputes, if you find out what's causing the disputes and you figure out how you can resolve those disputes without having them happen that's better for all of us. I mean you're improving a process that is based on the fact that you need to resolve a dispute. Well why? You know, what's causing the disputes and when we go through and we analyze again another study, when we go through and analyze at least for medical what are the biggest disputes, diagnostic imaging, causation, reasonable and necessary surgery, soft tissue issues. You know what are the issues or the specific things that are more likely to be disputed and then why are those being disputed. I think we need to again change our paradigm and change our thought process and look at it from a perspective of again why do you need a dispute? Why can't it be resolved without having to have any party whether it's the attorney, whether it's the employer, whether it's the employee, whether it's whomever, why do you have to have it? And then my other question really kind of gets to also is that there are these multiple paths and there are these different things. You have one over here. You have one over there. You have one over here. You have all these different paths that are going through and one of the things that Judge Johnson and I as well as and some of the staff have started to work on is trying to figure out how do we stop that, you know, how can we combine those cases right away and say OK if there's one here, one at OAH, how do we combine 'em. Right now we do call each other up and say are you willing to take this? Can you work on this or not? We're looking at more formalizing that process versus with what we've been doing presently. So those to me kind of get to some of the, the, the true questions of what we need to address and then also when we look at the complexity of the system one versus the other and you look at what the, um, the construction system is versus what our present system is again I did a study to be able to determine which one is more effective, which one isn't more effective and the construction one clearly has their dispute rate is significantly lower. Their dispute rate overall for the construction program is about 8-7 percent, no, about 9 percent. The ones for the non for our present process is about 25 percent so there's a significant difference between the two pro...the two dispute rates. Why is that? What, what is causing those specific differences to occur and how can we utilize those. What is happening and the different things to develop and improve the overall system and, um, and then based on all these things we kind of looked at and kind of talked about and we've been analyzing things over the years and that's what we're going to talk a little bit about now is you're having your handout or you have a handout that kind of includes what this is. It's the last page on something that starts with this and what this is really is, is we made copies of this what our present system is which is very convoluted, very complex, very not good, technical words that I say and, you know, this is what all the studies have indicated. It is overly complex. You look at the next page which indicates what the union construction program is and that is clearly a more streamline process than what our present process is and then you look at the last page which was

the recommendation that the work comp that, that Workers' Compensation and OAH came up with and brought forth to this Board, Work Comp Council Advisory Board, last year which is to do a more streamline process to put the formalized and the informal in different, in different ways so if it is a formal dispute it goes right to hearing. Why do you have to have a conference? Why do you do this? It goes to hearing. You know, you can do mediation. To look at it again from a different perspective you change your paradime to say why again is the dispute happening and how again can you resolve it in the most efficient and effective way in order to get the best result for the, all the parties that are involved because even though any of these studies have indicated it is a complex process. They indicate that the, the percentage is increasing over our dispute or our number of claims is decreasing, our number of disputes are going up. The reality is if you really look at the data, the reality is we have the same quantity of disputes in the last ten years, the same quantity. Our claims are going down. The overall quantity of disputes that go through the system is the same so is that a supply demand issue? Is that a what issue? You know, it's pretty much the same. So why is that happening? Again, I, I really think that, that the way to analyze again I'm an engineer what can I say. I analyze everything, but from my perspective I think really the questions continue to have to be again why are they there and how can we make them so that they're not there and if they are there how do we streamline in a way that's the most efficient and effective way for all parties involved to decrease the cost and increase the effectiveness of what's specifically laid out there. So we have this plan that's laid out and when we put together this plan the reason we, you know sat down again with the group was to determine how to make it most efficient an effective. And Judge Krause if you're willing to kind of come up and talk a little bit about that process then, I would greatly appreciate it.