

Workers' Compensation Advisory Council

Jan. 13, 2016 – Meeting Minutes

Members attended

Jason Bartlett
Julie Donnelly
Janice Draxler
Walter Fredrickson
Russell Hess
Douglas Loon
Brad Lehto
Robert Lux
Bobbi Pearson
Ed Reynoso
Robert Ryan
Gary Thaden

Nonvoting members attended

Representative Tim Mahoney

DLI staff members attended

Commissioner Ken Peterson
Sandy Barnes
Kate Berger
Jon Brothen
Deb Jevne
Tom Hanson
Sonya Herr
Mike Hill
Karen Kask-Meinke
Chris Leifeld
Mark McCrea
Pat Munkel-Olson
David Musielewicz
Donna Olson
John Rajkowski
Jessica Stimac
Jenny Vogel
Lisa Wichterman
Laura Zajac

Visitors attended

Andrew Berninghaus – DEED
Ray Bohn – WCRA
Bill Blazar – MCC
Gary Carlson – LMC
Nancy Conley – MN Legislature
Rachel Cornell – DEED
Amanda Cox – Mayo
Auntara De – MWCIA
Jeremy Estenson – SLS
Katie Friend – Corvel
Susan Gigiere – MAPS
Chelsea Gorgesen – DEED
Britt Graupner – DHS
Katrina Gulstad – DEED
James Heer – WCRA
Matt Hilgart – MN Counties
Erin Huppert – Allina
Bob Johnson – Insurance MN
Suzanna Kennedy – Stinson Leonard
Cody Marks – Corvel
Patricia Milun – Judge WCCA
Tom Mottaz – Mottaz Law
Kristen Ohlsen – MDLA
Tammy Pust – Judge OAH Joe
Schindler – MHA
Mike Scully – Sieben Carey
Michael Vaughn – DEED
Christine Zimmer – Winthrop & Weinstine

I. Call to order and roll call

Commissioner Ken Peterson called the meeting to order at 9:35 a.m.

Roll call was taken and a quorum was present.

III. Approval of the agenda

Robert Ryan moved to approve the agenda and Douglas Loon seconded the motion. All voted in favor and the agenda was approved.

IV. Approval of minutes

Gary Thaden moved to approve the minutes from the Dec. 9, 2015 meeting. Bobbi Pearson seconded the motion. All voted in favor and the minutes from the December meeting were approved.

V. Agenda items

a. Legislative proposal

Workers' Compensation Court of Appeals

The commissioner explained this agenda item has been discussed at the WCAC meetings on two different occasions. There was one change reflected in the revised version of the proposal in which the last paragraph of the original proposal was deleted. This paragraph would have provided for a presumed attorney fee of \$3,000 without a hearing or argument or \$3,500 for cases that involve oral argument for appellate cases before the Workers' Compensation Court of Appeals. The remaining language in the proposal is the same as what was presented and discussed at the prior meetings.

The commissioner asked the members if more discussion was needed on this topic. Loon said he thinks the changes as revised are acceptable. Thaden asked why some of the provisions have effective dates the day following enactment and some do not. Are they all intended to be the day following enactment? The commissioner said yes they should all reflect effective dates the day following enactment and indicated this would be corrected in the revised proposal.

Loon made a motion to approve the revised proposal and Thaden seconded the motion. A vote was taken and the motion carried.

b. Legislative proposal

Workers' Compensation Reinsurance Association

The commissioner explained this item comes from the WCRA. The president of the WCRA, James Heer, has presented this to the WCAC previously and discussed this issue. The proposal provides for establishing a new jumbo retention level of \$5 million so that a member of the WCRA could self-insure up to \$5 million. Right now, there are three other retentions levels: low, high and super. This proposal would be adding a fourth, the jumbo retention limit.

The second part of this proposal would allow the WCRA to raise the lowest retention level to \$500,000. The WCRA would determine future adjustments to the low retention limit subject to the approval of the commissioner of labor and industry. As this lower level is raised, the other three level limits will also be adjusted. The only change in this proposal from last month's presentation is the additional provision giving the commissioner certain criteria to use when determining the increase. The criteria to be considered in this determination will be costs, inflation, the impact on members and workers' compensation reinsurance markets in other states.

The commissioner opened the discussion for questions and comments. Thaden questioned the effective dates of the changes and James Heer explained there are two effective dates. The removal of the indexing of retentions would become effective right away and the change for adding the jumbo retention limit would become effective Jan. 1, 2018.

A motion was made by Lux and seconded by Ryan to approve the WCRA legislative proposal. A vote was taken and the motion was carried.

c. Legislative proposal

Extend deadline for mandated use of attachment standard for electronic transactions and standard to be used

Assistant Commissioner Chris Leifeld explained this language addresses legislation the WCAC approved last year and was passed at the Legislature. This relates to electronic transactions of bills and payments in the workers' compensation payer system. The department became aware late last year of a concern from a couple of small providers. Leifeld indicated he's met with hospital representatives and other health care providers in the past month and they had a concern about the implementation date of July 1, 2016. They have requested it be extended to Jan. 1, 2017.

This proposal also modifies the language to include a standard version of the electronic data exchange, the ASC X12N 5010, rather than the "most recently approved." The 5010 is the one that is used by Medicare currently.

Lux moved to approve the motion and Fredrickson seconded the motion. A vote was taken and the motion carried.

d. Legislative proposal

Intervention issues in response to Sumner decision

The commissioner introduced Britt Graupner from the Department of Human Services (DHS). Graupner explained she is the manager of the Tort Recovery unit at DHS, which administers the Medicaid program. This unit is mandated by federal law to intervene in workers' compensation cases to recover funds from liable third parties when Medicaid benefits are paid in a workers' compensation claim. Graupner explained her department gets involved in workers' compensation cases as intervenors, but also cases in auto accidents, medical malpractice and mass tort cases.

Graupner also indicated other agencies, such as the Department of Employment and Economic Development (DEED) and the Department of Labor and Industry (DLI), are also intervenors and are obligated to recover funds from liable third parties. The Sumner decision now requires all intervenors to attend the proceedings. Graupner explained that given the large number of cases DHS, DLI and DEED are involved in as intervenors, it is impossible to attend all the proceedings in all areas of the state, even by telephone. She indicated the DHS unit handling the intervenor cases would have to hire more staff members to accommodate such requirements. Her proposal would exempt DLI, DEED and DHS from this requirement to attend each proceeding unless a compensation judge requests an appearance.

Representative Mahoney commented he has had three different agencies proposing changes to the statute that would exempt state agencies from appearing at each claim proceeding. He would like to see one proposal that includes all agencies' involved and bring that proposal to the Legislature.

Katrina Gulstad, chief judge of the DEED Unemployment Law Division, then spoke to the group and indicated DEED is in full support of this language proposed by DHS. As a backup plan, DEED has submitted a proposal to their advisory board and that was approved. She reiterated all three agencies have the same concern with Sumner and the do not have separate goals, just a solution to what has become a burdensome requirement.

Lehto said this was a good decision to combine all three proposals from the state agencies and put this into one proposal. Thaden asked if anyone had spoken to the Bar Association regarding the intervenor's proposal. Graupner indicated she had not, but that Judge Pust had been in talks with the Minnesota Bar Association concerning this matter, but was not certain if the bar was involved in direct intervention representation. She indicated DHS would not object to a more global solution, thereby addressing intervenors as a whole.

Thaden spoke, indicating he does not believe government agencies should be exempt from attending these proceedings if private parties are required to attend. Loon commented that the proposed language presented fixes the situation and brings three agencies back to status quo. He also indicated the WCAC should be looking at a little broader solution to include private industry before a decision is made. The commissioner said the language in this DHS proposal could be modified to include all intervening parties, thereby all parties are treated equally for the proceedings. Loon suggested this be held over to the next meeting in order to include more inclusive language for the benefit of all parties.

The commissioner said a modified proposal will be forthcoming and the WCAC will review it before the Legislature convenes in March. Lehto indicated labor is not in favor of supporting a separate proposal that includes only state agencies. They would like to see a proposal that encompasses both public and private parties.

There was discussion among the members regarding the next WCAC meeting and it was agreed they will meet Feb. 24 to decide on the proposal to bring to the Legislature. Reynoso made a motion to table this item, Lux seconded the motion. A vote was taken and the motion passed to table this item and vote on a proposal at the next meeting in February.

VI. New business

Update on Hospital Outpatient Prospective Payment System (OPPS) and Ambulatory Surgery Centers Payment System (ASCPS) negotiations

The commissioner gave an update about the continuing negotiations on the OPSS and ASCPS payment systems. He said there has been some progress by the parties and he is still optimistic an agreement can be reached prior to the session. Lehto asked that if there is a proposal for the Feb. 24 meeting, it be sent to WCAC members prior to the meeting so they can review and discuss with their members.

VII. Other business

The commissioner proposed the WCAC postpone the regularly scheduled Feb. 10 meeting to Feb. 24, 2016, to discuss and address the issues considered today. Prior to that meeting, the commissioner will distribute the proposals to the WCAC members to review.

John Rajkowski spoke to the group and indicated there are currently three proposals approved by the WCAC that will be sent to the Legislature. If there are further items to be added from the February meeting, there will still be time to do so.

VIII. Adjournment

Jason Bartlett made a motion to adjourn the meeting, Ryan seconded, a vote was taken and the motion carried. The meeting was adjourned.

Respectfully submitted,
Patty Rutz
Executive Secretary