

Workers' Compensation Advisory Council
Dec. 7, 2009
minutes

Voting members present:

Mike Bredeck
Jim Gander
Ryan Holmes
Mike Wilde for Glen Johnson
Shar Knutson
David Olson
Susan Olson
Edward Reynoso
Elizabeth Shogren
Gary Thaden

Nonvoting members present:

Senator Joe Gimse
Representative Bob Gunther

Voting members excused:

Wayne Ellefson
Bob Lux

Nonvoting members excused:

Senator Tom Bakk
Representative Michael Nelson

Staff members present:

Jayne Jones
Julie Klejewski
Donna Olson
Carol Pankow
Shawn Peterson
John Rajkowski
Steve Sviggum
Patricia Todd

Cindy Valentine
Jana Williams
Lisa Wichterman

Visitors present:

Kathryn Berg, MNHLRP
Ray Bohn, WCRA
D. Brown
Joel Carlson, Research
Buzz Cummings, WCRA
Karen Ebert, MCIT
Jeremy Estenson, MN Chamber
Tom Hesse, MN Chamber
Steve Hollander, MARP
Todd Johnson
Meg Kasting, SFM
Jonell Kluver, Encore
Brett Krumhardt, Encore
Susan LaBonte, Mayo Clinic
Nancy Larson, MARP
Carolyn Laviolette, Messerli & Kramer
Brad Lehto, MN AFL-CIO
Lorna Leatherdahl, MCIT
Sandy Olevitch, HAS
Don Ostenson, MASPPR
Rob Otos, Alaris
Tom Mottaz, MNAJ
Ken Peterson, Fairpay Solutions
Greg Schmidt, MNHLRP
Mark Shamphe
David Sullivan, House DFL
Elizabeth Wefel, MARP
Dan Wolfe, MNAPTA
Kelly Wolfe, LSD

The meeting was called to order by Commissioner Steve Sviggum at 9:35 a.m. Roll was called and a quorum was present.

Opening

Sviggum reported that the Workers' Compensation Policy Summit held by DLI this past summer was very successful. There were approximately 300 attendees. He introduced and welcomed new council members Shar Knutson, President of the Minnesota ALF-CIO, and Ed Reynoso, Political Director of the Teamsters Union.

Jim Gander made a motion to approve the minutes from the June 10, 2009 meeting. Gary Thaden seconded the motion. All voted in favor of the motion and it passed on a voice vote.

Sviggum stated there are two meeting rooms available if members wanted to break at anytime for caucus.

Gary Thaden made a motion to accept the meeting agenda. Susan Olson seconded the motion. All voted in favor of the motion and it passed on a voice vote.

Sviggum referred members to the preliminary report found in their packet from the Workers' Compensation Research Institute (WCRI). The report is not yet finalized; however, WCRI has agreed to share some of the initial information that compares Minnesota to other states. WCRI does *not* make any recommendations to the states.

Looking ahead to the 2010 legislative session he hopes there will be changes to the MN Workers' Compensation system in the best interests of the two most important stakeholders, the injured workers and the businesses that pay the premiums. Four items he would focus in on are:

1. complexity of the dispute-resolution process (referred to in the WCRI study and also in last years legislative auditors report);
2. costs of vocational rehabilitation (Minnesota among the highest in the country);
3. medical costs (continue to increase 7 percent a year);
4. costs per claim.

Sviggum reviewed that the legislative session begins Feb. 4, 2010. By meeting again at least once or twice in January and in early February, he hopes the council will come together with some ideas and proposals to bring forth a workers' compensation reform bill and introduce it early so that it gets the attention it deserves.

Proposed rules

Todd reviewed the rulemaking process within the Workers' Compensation Division, specifically the rulemaking steps the MSRB has taken in regard to medication. It is the intent of the department when doing rules to get input and feedback throughout the whole process.

The board had approved the specific reports regarding the different types of medication in October 2005, another in April 2006 and another in July of 2006. Draft rules were generated and reviewed by the MSRB in September 2006, and, based on recommended changes, were reviewed again in April 2007 and July 2007; the department also did another publication and review in February 2008 and February 2009. The rule docket on the department Web site was updated nine times in regard to the medication rules and the department mailed 10 times, to approximately 2,500 people each time, a request for comments on those specific rules.

In November 2006, the MSRB began reviewing again the PPD rules that originally were approved by the board in 1999 and 2000. They were reviewed and approved in 2008, and the rulemaking docket had been updated five times and was sent seven times in rule form to the department's rulemaking e-mail distribution list.

During that time period, the department received and reviewed all comments from various stakeholders, such as: health care providers, medical providers, unions, attorneys. The department received more than 25 comments, so a hearing will be scheduled toward the end of February 2010.

Overview of the rules and the reason proposing to amend them:

PPD – technical and housekeeping changes necessary to correct internal inconsistencies, gaps in coverage, omissions, confusing language, changes in medical terminology, technical errors. These changes are not expected to increase or decrease payments to anyone. The more substantive changes were based on either omissions or changes resulting from court decisions that had been made.

Treatment Parameters – changes made were dealing with passive care, functional capacity evaluations, which again were changes resulting from court decisions that had been made. Treatment parameters implemented regarding different medications: oral anesthetics, narcotics and muscle relaxant. Dr. Lohman had done extensive reports that were reviewed and approved by the MSRB over a period of time to ensure the accuracy of the information in those reports.

Housekeeping legislation

Todd reviewed a potential housekeeping proposal requiring insurer's or employer's that submit a certain number of FROI forms to do so in an electronic format that will continue to facilitate the data-driven workers' compensation system.

Sviggum offered each advisory council member a visit from him and his staff, if they would like, to discuss workers' compensation as they prepare for the upcoming legislative session.

As a follow-up regarding the WCRI report, Todd stated it is WCRI's intent to have the report in final format by the end of December. They are also doing a medical cost analysis that includes Minnesota and hope to have that completed by end of February.

H1N1

Shogren discussed H1N1 and how it is virtually impossible for a health care worker to process a WC claim related to contracting H1N1 when they believed it was contracted in the workplace:

- most insurers and employers requiring the employee be tested and prove positive culture for H1N1;
- employee must prove exposure to a confirmed case;
- H1N1 testing is only being done on hospitalized patients;
- test results yield one-third false-positives;
- health care workers using surgical masks are more likely to be exposed than those using N-95 masks.

Thaden asked what insurance companies require for non-H1N1 flu for workers' compensation. Shogren stated the same thing – required to be tested and tied to a specific patient case. Thaden stated it would be impossible to get the information under HIPAA.

Shogren would like to convene a group of interested parties (health care employers, insurers, unions representing health care workers) to have a serious discussion about how this issue can be addressed – need to discuss infectious agents, not just H1N1 in general.

Conclusion

Sviggum added this past Fall, the Policy Development, Research and Statistics unit released its annual health and safety survey results and shows Minnesota continues to have a very good trend going in the right direction – went from 92,000 reported injuries and illnesses to 87,000.

He stated the department will work on putting together a task force regarding the H1N1/infectious disease issues.

Gander made a motion to adjourn at 10:40 a.m. Thaden seconded the motion. All voted in favor of the motion and it passed on a voice vote.

Respectfully submitted,

Julie Klejewski

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Executive Secretary