

Meeting minutes: Workers' Compensation Advisory Council

Date: May 2, 2018
Minutes prepared by: Executive secretary to the Workers' Compensation Advisory Council
Location: Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN 55155

Attendance

Members attended

Jason Bartlett
Walter Frederickson
Russell Hess
Douglas Loon
Bill McCarthy
Robert Ryan
Gary Thaden
Kevin Yakes

Legislative liaisons attended

Sen. Paul Utke

Visitors attended

Craig Anderson – MWCIA
Liam Bievere – LMCIT
Sandra Bodensteiner – City of St. Paul
Lynn Carroll – WCRA
Seamus Dolan – Health Partners
Jeremy Estenson – Alliance
Karen Ebert – MCIT
Maggie Green – Messerli Kramer
Dan Greensweig – LMCIT
Shepard Harris – MSIG/MAT
Suzanna Kennedy – MEWCA
Brad Lehto – AFL-CIO
Terry Miller – SFM
Kristen Ohlsen – Aafedt Forde

DLI staff members attended

Sandy Barnes
Kate Berger
David Berry
Ethan Landy
Mark McCrea
Brad Morse
David Musielewicz
Angelina Nguyen
Donna Olson
Jessica Stimac
Lisa Wichterman
Brian Zaidman
Laura Zajac

Kim Olson – CorVel Corporation
Patty Prentice – LMCIT
Dean Salitis - MNAJ
Joe Schindler – MHA
Tyron Spratt – MNIT Services
Michael Strong – SFM
Deb Sundquist – Workers' Compensation Court of Appeals
Gary Westman – Department of Administration
Cam Winton – Minnesota Chamber of Commerce
Adam Wolhoff – Office of Administrative Hearings

Call to order and roll call

- Commissioner Ken Peterson called the meeting to order at 9:40 a.m.
- Roll call was taken and a quorum was present.

Approval of the agenda

Commissioner Peterson asked for approval of the day's agenda. Gary Thaden made a motion to approve the agenda and it was seconded by Doug Loon. All voted in favor and the agenda was approved.

Approval of the minutes

The commissioner asked for approval of the minutes from the most recent Workers' Compensation Advisory Council (WCAC) meeting. Jason Bartlett moved to approve the minutes from March 21, 2018 meeting, Thaden seconded the motion and all voted in favor to approve the minutes.

Agenda items

a. Legislative proposal

Peterson explained the first item on the agenda is the legislative proposal concerning the outpatient hospital payment system. The representatives from hospitals, insurance companies, labor, business and other interested parties have come to agreement on terms and this is now in the proposed legislation before the WCAC today.

The commissioner introduced Ethan Landy and Kate Berger from the department's Office of General Counsel. Landy introduced the first section of the proposal, Minnesota Statutes 176.1364, Workers' compensation hospital outpatient fee schedule (attached to these minutes). As part of this proposal, the commissioner is advised to report to the WCAC and legislative bodies the percentage of claims paid timely and accurately. This study would need to be reported by Jan. 15, 2021.

Landy explained the next part of the proposal, Minn. Stat. 176.1363, Ambulatory surgical center payment (attached to these minutes). This proposal would establish a payment system for ambulatory surgical centers (ASCs) based on Medicare's Ambulatory Surgical Center Payment System (ASCPS). It uses the addendum Medicare uses to establish the payment rates. This section also requires the department to conduct a study of the results of this reform and report to the WCAC and legislative bodies by Jan. 15, 2021.

The third document relates to both the ASCs and the hospital outpatient fee schedule regarding billing review (attached to the minutes) as Minn. Stat. 176.136, Medical fee review.

Berger explained the next attachment regarding benefit adjustments, Minn. Stat. 176. 101, subd. 2. This section relates to benefit adjustments that have been agreed to by the parties and contains a new fee schedule.

Loon expressed his appreciation to the commissioner and all parties who have worked to get the language satisfactory to the parties. Bill McCarthy also expressed thanks to Deputy

Commissioner Chris Leifeld and the department for bringing the sides together about the negotiated settlement.

The commissioner stated the negotiated settlement is summed up in this legislation and thanked all the parties. As in all good compromises, the commissioner stated no party received everything they wanted, but these compromises will allow meaningful legislation going forward for all parties.

Loon made a motion to approve the agenda item legislative proposal (a) as proposed to the WCAC in the four attachments. McCarthy seconded the motion, a vote was taken and the motion was approved.

b. Legislative proposal – Other

The commissioner explained the Department of Labor and Industry (DLI) and the Office of Administrative Hearings (OAH) are responsible for the operations of the workers' compensation system. In attempting to bring forth meaningful changes to the electronic case management systems there have been a few bumps in the road to an agreement. The commissioner stated the proposed legislation today will try to clarify a few things about issues of access to case management and imaging systems. Although there is an agreement facilitated between the parties by the Bureau of Mediation Services (BMS), there is a disagreement of some of those terms between OAH and DLI. The commissioner reiterated DLI will continue to negotiate with OAH and BMS about these issues, but feels the WCAC needs to move forward with this proposal.

The commissioner introduced Laura Zajac from the DLI Office of General Counsel to explain the proposed amendment to Minn. Stat. 176.231, subd. 9. (The amendment is attached to these minutes as OAH/DLI dispute resolution filing requirements.) Zajac explained the proposal has been reviewed and passed by this council, but she will point out the changes to the new language. Line 18 is simply a technical modification, changing "written" to "signed" authorization relevant to what is required of employees who have a worker identification number. This change reflects the word change from line 11 that was modified from "written" to "signed." The reason for the change is to make it clear there is no need to have a paper document as the system moves to electronic authorization and transmission.

There is new language to subdivision 5 on the third page, line 73 through 89. This specifies the department must provide OAH with continued access to the workers' compensation imaging system and OAH will provide the department with complete read-only access to its case management system. The access is defined to mean what OAH can view in the system but in the read-only format, but the department is unable to change or edit any documents. It specifies it would be data elements and document contents. At line 79, there are two exceptions that were identified as nonaccessible to the department, which are confidential mediation statements and the judge's work product, such as personal notice and draft decisions.

Line 85 states OAH must send the department all documents it accepts for filing or issues within two business days. Line 88 says the department must place those documents in the appropriate imaged

file for the employee. The goal is to have a complete and accurate file for each employee concerning workers' compensation disputes.

Berger explained lines 108 through 112 of the new language concerning the Workers' Compensation Court of Appeals (WCCA). This change was added at the request of the court to allow electronic filing for WCCA since the workers' compensation system is moving to electronic filing. This also allows WCCA to amend rules to reflect the electronic filing and transmission of the records.

The record should reflect that the effective dates on lines 112 and 115 should be changed from Jan 1, 2019 to June 1, 2018.

Thaden voiced the concern that since some of the workers' compensation dispute cases go on to the Minnesota Supreme Court and Court of Appeals there is an issue with the two court systems communicating. In other words, does the court system have to make changes to system to accommodate this update and would this increase their cost. The commissioner stated the U.S. Supreme Court is already allowing electronic filing and transmission so this should not put an extra burden on system.

Thaden questioned using "pending" on line 28 because what happens after the system is completed. The commissioner recommended striking the word "pending" from line 28 for clarification.

The commissioner introduced Judge Adam Wolkoff to speak about the proposed amendment. Wolkoff said he is the deputy chief judge and was speaking on behalf of Chief Judge Tammy Pust who is out of town. Wolkoff said OAH is requesting WCAC vote no on the legislation related to OAH's case management system because OAH doesn't feel it has had enough time to review and discuss the proposal. Wolkoff commented that OAH and DLI agreed in writing that DLI would not present anything to WCAC with substantial changes to the Workers' Compensation Modernization Program or C-Track unless it was discussed by the two of the parties in advance.

Wolkoff felt there are technological and financial implications of this proposal that would affect MNIT, the state's information technology partner. He did not believe MNIT has been able to review and analyze these proposed changes. Wolkoff told WCAC he felt this proposal will breach the mediation agreement signed by OAH, DLI and MNIT Services in March 2018. BMS should have been involved to discuss any disagreement between the parties. He also brought up the workers' compensation bar's lack of involvement in the legislation.

Wolkoff expressed concern with data practices regarding the proposal. He believes that the current legislation will allow more than 70 DLI staff members to have total access to the OAH system and questions why this many need access. Concluding, Wolkoff suggested OAH, DLI and MNIT Services should get back to BMS and continue to resolve the differences before going forward with this legislation.

Thaden said he would be supporting this legislation knowing all sides will work together in good faith. He expressed disappointment the parties could not work together to come to resolution.

Loon agreed with Thaden and said WCAC should move forward today because of limited time at the Legislature. He believes the commissioner is willing to continue the discussions and still come to a resolution. He is in favor of pressing forward with the expectation the conversation will continue between the parties and produce a reasonable result.

Wolkoff said the Minnesota Defense Lawyers Association has not officially agreed to this proposal even though individual members may have expressed support.

McCarthy said he, too, would like to move this proposal forward to legislation and would support it.

Walter Frederickson made a motion to approve the legislation; Thaden seconded the motion. All voted in favor and the motion carried to approve the legislative proposal (item b) as written.

Other business

The commissioner said this may be his last WCAC meeting because his term ends in January when a new administration takes leadership. He expressed his appreciation to the members for their time and effort on behalf of the injured workers and all interested parties.

Adjournment

Loon made a motion to adjourn the meeting, Robert Ryan seconded the motion, all voted in favor and the motion carried. The meeting was adjourned at 10:40 a.m.