

Meeting minutes: Workers' Compensation Advisory Council

Date: Sept. 8, 2021

Minutes prepared by: Elizabeth Cole, executive secretary to the Workers' Compensation Advisory Council

Location: Webex meeting

Attendance

Members attended

Jason Bartlett
Maggie Hobbs
Doug Loon
Bill McCarthy
Edward Reynoso
Robert Ryan (joined the meeting at 2:33 p.m.)
Gary Thaden
Kevin Yakes (did not announce at roll call)

Angelina Nguyen
Julie Klejewski
Gretchen Longbehn
Sonya Herr
Debra Jevne
Elizabeth Cole
Ender Kavas
Donna Olson
Jeanne Vogel

Legislative liaisons attended

Sen. Jason Isaacson
Sen. Paul Utke
Rep. Tony Albright
Rep. Mike Sundin (did not announce at roll call)

DLI staff members attended

Commissioner Roslyn Robertson
Ethan Landy
Jessica Stimac
Laura Zajac
David Berry
Brad Morse
Jon Brothen
Pam Carlson
Brian Mak
Richard Davis
Brian Zaidman
Karen Kask-Meinke
Mike Hill
Lisa Wichterman

Visitors attended

Brad Lehto, AFL-CIO
Lauren Schothorst, Minnesota Chamber of Commerce
Meg Kasting, SFM Mutual Insurance Co.
Kyle Probst, CIOX
Gary Westman, Department of Administration
James McClean, HealthPartners
John Kysylyczyn
Lauren Weaver
Aaron Cocking, IFM
Gary Carlson, LMC
Lynn Carroll, WCRA
Denise Collins, Office of Administrative Hearings
Shep Harris, Fredrikson and Byron
Colin Marsh
Tyler Treichel, Stearns County
David Sullivan, Minnesota House of Representatives
Jenny Starr, Office of Administrative Hearings
Tyrone Spratt, Minnesota IT Services
Peter Lindquist, SFM Mutual Insurance Co.
Sarah Hunter, SFM Mutual Insurance Co.

Daniel Gillis, Minnesota Senate
Carla Ferrucci, MAJ
Jonathan Boesche, Minnesota Senate
Philip Moosbrugger, Department of Commerce
Kathleen Bray, SFM Mutual Insurance Co.
Suzanne Kennedy, Stinson
John Hollick, SFM Mutual Insurance Co.
Laura Mundt, Mayo Clinic

Andrea Everling, MWCIA
Evan Cordes
Karen Ebert, MCIT
Anne Finn, LMC
Bette Zerwas, North Memorial
Adam Wolkoff, Office of Administrative Hearings
Andrew Essling, MCIT

Call to order

Commissioner Roslyn Robertson called the meeting to order at 1:07 p.m. The commissioner announced that due to the COVID-19 pandemic, the meeting would be online via the Webex platform; the remote meeting statement was read to the attendees. All votes were taken by roll call and all handouts discussed are posted on the Department of Labor and Industry (DLI) website at www.dli.mn.gov/about-department/boards-and-councils/workers-compensation-advisory-council.

Meeting minutes and agenda

There was a verbal roll call and it was determined there were not enough labor members present for a quorum. Commissioner Robertson stated that because a quorum was not present, votes on the previous meeting minutes and agenda would not occur. Bill McCarthy requested to proceed given the council would not be acting on any items at the meeting. Robertson asked if there were any calls to amend the agenda and none were expressed.

Agenda items

1. Commissioner's update

The commissioner began the meeting by thanking the body for the work the Workers' Compensation Advisory Council (WCAC) accomplished during the 2021 legislative session. The commissioner indicated that overall, DLI fared very well during the session. She said several DLI policy initiatives were successful during the session, including: operating increases for the Apprenticeship, Labor Standards and Minnesota OSHA units; additional changes to workplace accommodations for nursing and pregnant employees; Construction Codes Advisory Council and child labor data protection; changes to the Contractor Recovery Fund and fee reductions for the construction trades; extension of the Work Comp Campus fund; and appropriations for the Dual-training Pipeline program.

Preliminary proposals are being worked on for the 2022 legislative session.

The commissioner provided an update about DLI's return-to-work plan. Given the increase in positive tests for COVID-19, Minnesota Management and Budget requested the timeline be re-evaluated; examination of job duties is being conducted for this purpose. The commissioner also updated the council about the

renovations to the DLI building in preparation for the return of employees, visitors, stakeholders and members, including the increase of functionality of the Alternative Dispute Resolution unit's conference and mediation rooms, as well as the installation of turnstiles for added security for the staff and visitors.

The commissioner informed the body that Dr. Emily Bannister is under contract as the DLI medical consultant. The commissioner also welcomed Sen. Jason Isaacson to the council.

2. 2020 legislative proposals not included in the 2021 WCAC bill (non-COVID-19) – Ethan Landy, Office of General Counsel

Ethan Landy, DLI Office of General Counsel, gave a review of the proposals contained in the "Status of outstanding 2021 workers' compensation legislative proposals" handout.

Item 1: Additional amendments related to the January 2021 study regarding the hospital outpatient fee schedule (HOFS) and ambulatory surgical center payment systems (ASCPS) – Since March, DLI has followed-up on the results of the ASCPC and HOFS studies and provided general guidance about common payment errors from the studies, as well as more specific guidance that is being provided to the insurers and providers that submitted data for the study. Doug Loon said he would like the council to stay focused on this topic, specifically addressing the following: what can be done to get to the 80% threshold; whether another study would be useful; or, as Work Comp Campus comes fully online, see if potential savings are there to reach the threshold for fee schedule savings and increase benefits. McCarthy stated support for this effort and the commissioner said DLI will continue to look at this issue and will gather more information to inform the council.

Item 2: Repeal of North Dakota language contained in Minnesota Statutes 176.041, subdivision 5b, previously presented by the Minnesota Association for Justice (MAJ), to which Landy referred – Loon reflected on the comments made the last time this was in front of the council and expressed that there had been no compelling changes that would warrant spending more time on it this year. McCarthy said it seemed more information was needed after the last meeting but, given the agenda for this year, it might be better to remove this topic.

Item 3: Proposal for a statutory change for cost-of-copies of medical records – Landy referred to the presentation MAJ gave in January 2021. In the interim, DLI worked with MAJ and other stakeholders to see if there was interest in finding a common solution to proposed changes. Ultimately, no agreement was reached. The commissioner indicated there was an inquiry received about this proposal, as well as a request from Ciox Health to be heard on this matter if this proposal moves forward and a vote is to occur. Loon expressed the need for the stakeholders to come together to reach a conclusion and indicated support for additional testimony if it would help move this forward.

Item 4: Firefighter cancer presumption standard, SF 1035 – Landy referred to the handout of the proposed bill language presented by Sen. Gregory Clausen and his testifiers at the Feb. 24, 2021 meeting. Landy said the proposal would, essentially, add a new paragraph to the occupational disease definition in Minn. Stat. 176.011, subd. 15, that would add 14 types of specific cancers as presumed occupational disease for firefighters employed for a specific period of time. McCarthy expressed support to move this matter forward. Loon indicated the need for more input from employers and municipalities to understand the cost implications. He also said other states are wrestling with this same question and are developing different

strategies. Careful consideration needs to be given to fully understand the impact. The commissioner asked Loon if he would provide the list of states that have made meaningful progress on this subject.

Item 5: Landy gave a brief review of the potential proposals DLI is considering this year; these are proposals that have not been heard by the council, but are issues that came up during the last session and that might be able to be addressed via legislation. Some of these proposals include: cleaning up conflicting filing language noted in a Workers' Compensation Court of Appeals decision; addressing requirements of filing notices of appeal with DLI; cleaning up references to Minnesota Insurance Guaranty Association; clarifying licensure requirements for Medical Services Review Board members; and cleaning up Campus, including statutory updates.

McCarthy requested an additional proposal be added regarding the extension of the COVID-19 presumption, which was previously extended to December 2021. McCarthy proposed extending an additional year, given the spread of the Delta variant. Loon said it may be useful to hear an update about this topic in 30 to 60 days about the spread rate of the populations covered, similar to the report DLI presented in January 2021. The commissioner said DLI is paying attention to the COVID-19 presumption activity and is receiving regular updates. As of Aug. 10, DLI had processed 21,277 COVID-19 claims, of which 96% of accepted claims were in the presumption groups. The commissioner suggested either a presentation or a short report for this body each month for the council to track changes in the activity. The most recent information is good, but fluid, given that new claims are made every day. The commissioner said she will bring up-to-date information to the next meeting to continue building a discussion. Loon asked if there was a way to compare the number of claims with the number of workers, as well as the trendline as it relates to vaccination rates; the commissioner indicated DLI does not collect vaccination information, but could look to the Minnesota Department of Health for additional information to inform the discussion. The commissioner further said space will be provided in coming meetings for a continued discussion about the COVID-19 presumption.

3. Work Comp Campus update – Brad Morse, DLI Workers' Compensation Modernization Program

Brad Morse gave a brief Work Comp Campus update. Current goals are: to get to a point of stability; start identifying opportunities to focus on for the coming year; focus on key enhancements; incorporate a number of new features; and adapt the business processes to account from going from a paper process to a data-driven process. Campus support was transferred to Minnesota IT Services (MNIT) in July. DLI continues to offer support for users in the system, including a help desk to direct questions to experts and obtain feedback for continued system improvement, and additionally focuses on stakeholder training. Discussion about future feature enhancements will continue; the system should evolve and adapt to stakeholders' needs. Loon expressed optimism regarding the system. The commissioner indicated the message to stakeholders is that the system continues to get good reviews, despite frustrations. We have built a robust system and we will continue to see improvements. She invited stakeholders to use tools that are in place to help with any system issues. DLI is looking to provide one-on-one tutorials if stakeholders are having problems, but needs to hear specifics to meaningfully address issues. DLI is committed to addressing the concerns brought to its attention.

4. 2019 Workers' Compensation System Report presentation – David Berry, DLI Research and Statistics

David Berry presented about the 2019 Workers' Compensation System Report, which is a 20-year observation of statistics from 1999 to 2019. McCarthy noted the claims have gone down during the past 20 years and said it would be good to see an increase in benefits – especially for permanent partial disability – because it has been impacted the most recently.

Other business

The commissioner said the next meeting is Oct. 13, 2021. A discussion occurred periodically throughout the meeting regarding the need for a November meeting to continue moving the agenda items forward for the next legislative session. The commissioner indicated DLI would continue to work with the business and labor leaders to continue to develop future agendas.

Adjournment

The commissioner called for an unofficial adjournment of the meeting. Loon moved and McCarthy seconded a motion to adjourn, and the unofficial motion passed. The meeting was adjourned at 3:01 p.m.

Respectfully submitted,
Elizabeth Cole, executive secretary