

Meeting minutes: Workers' Compensation Advisory Council

Date: Oct. 9, 2019

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

Dennis Galligan

Doug Loon

Bill McCarthy

Gary Thaden

Russell Hess

Maggie Hobbs

Ed Reynoso

Kevin Yakes

Lynn Carroll, WCRA

Joel Carlson, MAJ

Evan Cordes MDLA

Andrea Everling, MWCA

Bob Johnson, Insurance Federation of Minnesota

Brad Lehto, MN AFL-CIO

Tammy Lohmann, Department of Commerce

Bridget Loser, Metropolitan Council

Peter Baillon, Metropolitan Council

James Heer, WCRA

Jon Kelly, Department of Commerce

James McClean, HealthPartners

Patty Milun, Workers' Compensation Court of Appeals

Patty Prentice, LMCIT

Lauren Schothorst, Minnesota Chamber of Commerce

Brad Lehto – AFL-CIO

Brandon Miller, MWCA

Phil Moosbrugger, Department of Commerce

Deb Norsten, SFM

Lauren Weaver, Stinson

Suzanna Kennedy, MEWCA

Amy Strens, PERA

Kathy Bray, SFM

Liam Bieber, LMCIT

Sophie Thaden, MMCA

Bette Zerwas, North Memorial

Phil Vigliaturo, Department of Commerce

Legislative liaisons attended

Sen. Paul Utke

Rep. Mike Sundin

DLI staff members attended

Jon Brothen

Pam Carlson

Ethan Landy

Chris Leifeld

Nancy Leppink, commissioner

Brad Morse

Donna Olson

Roslyn Robertson, deputy commissioner

Jessica Stimac

Laura Zajac

Tyrone Spratt, MNIT Services @ Labor and Industry

Visitors attended

Doug Anderson, PERA

Craig Anderson, MWCA

Call to order and roll call

Commissioner Nancy Leppink called the meeting to order at 9:45 a.m. A verbal roll call was taken and a quorum was not present. The commissioner said there would not be a vote on the proposals today, but a discussion of the issues and information gathering.

Approval of the minutes and agenda

Leppink asked for approval of the minutes from the most recent Workers' Compensation Advisory Council (WCAC) meeting and today's agenda. Bill McCarthy moved to approve the minutes from the Aug. 14, 2019, meeting and today's agenda; Doug Loon seconded the motion; and all voted in favor of the motion.

Announcements

The commissioner introduced Office of Administrative Hearings (OAH) Chief Judge Jenny Starr. Starr was recently appointed to OAH by Gov. Tim Walz. She explained she most recently was the assistant commissioner at the Department of Revenue. Before that, she was an attorney at the Department of Revenue and worked for a nonprofit providing legal services to low income people. She said she is looking forward to this opportunity to continue public service.

The commissioner apologized for scheduling a meeting on Yom Kippur and said the department will try to be more cognizant of scheduling going forward.

The Department of Labor and Industry (DLI) is preparing an order related to noticing the post-traumatic stress disorder (PTSD) rules; that notice will be posted in the near future. DLI will be proposing expedited rulemaking; however, if the department receives 100 or more requests for hearing, it will move to more formal hearing procedures.

The commissioner reiterated the timeline she suggested at prior meetings. DLI's goal is to have all WCAC legislative proposal recommendations by mid-January 2020, at the latest. This will ensure there are still several weeks before the beginning of the legislative session for the department to meet with legislators and to have mapped the route for the legislation well in advance of the session. In November, WCAC will discuss the proposal that has been made regarding expanding the definition of occupational disease. This proposal was presented by Ed Reynoso. DLI also received a proposal from the plaintiff's bar regarding certain aspects of Minnesota Statutes Chapter 176. This will also be on the agenda in November, along with possible additional proposals.

Agenda items

A. Rate Oversight Commission – Minnesota Workers' Compensation Insurers Association (MWCIA) – Craig Anderson, MWCIA

WCAC serves in a statutory function as the Rate Oversight Commission. Each year, DLI receives a report from MWCIA that explains the foundation for insurance pricing in the workers' compensation area.

Craig Anderson, MWCIA, addressed the group by presenting a copy of the 2020 Ratemaking Report that was filed with the Department of Commerce. He explained MWCIA is a nonprofit organization responsible for setting pure premium advisory rates for the insurance industry in Minnesota. MWCIA files its ratemaking report every year with the Department of Commerce.

The 2020 report is MWCIA's 37th annual ratemaking report and it was released in early August. Anderson explained the data is derived from the most recent insurance company data from Minnesota only, the approach that has been used since 2004. MWCIA believes this is the best predictor of future costs.

Key highlights from the report include the following.

- The statewide loss-ratio has improved 31 points during the same time period and case frequency has dropped 9% during the past 10 years.
- The average cost per case for an indemnity benefit has only had an annual increase of 1.1%.
- Claims are closing slightly faster than has been seen in the past 10 years and the expected development on lost-time medical cases has decreased significantly.
- Insurer carriers were able to identify the indemnity portion of medical claims and set their reserves a lot earlier in the process.
- There has been a 17% reduction in payments per episode following 2016 reforms, so there is some good news and some stability on the medical side.
- The health of the market continues to be manifested in very stable and pure premium movement.

Remarks about MWCIA rate filing – Phil Vigliaturo, Department of Commerce

Phil Vigliaturo, Minnesota Department of Commerce, said his comments will be about the MWCIA ratemaking process, rather than the competitiveness of the Minnesota market or what carriers actually do with the information. He indicated MWCIA uses methodologies similar to organizations that provide these services in other states for workers' compensation. In summary, all key decisions are made by the actuarial committee. MWCIA actuaries work with consultants and brings recommendations to MWCIA's actuarial committee and then their recommendation is to either accept it or alter it. That recommendation goes to the board and the board makes its approval. Vigliaturo concluded by saying this process is very stable and the process validates the ratemaking report.

Maggie Hobbs asked about the source of the actuarial data that is used to compile this information.

Anderson said the financial data comes from information from individual insurance companies and their company carrier groups that has premium data in it by policy year, by calendar year. Participation is mandatory

and if the insurance company wants to write workers' compensation insurance, each company must belong to a data service organization. MWCIA is the data service organization for Minnesota.

Vigliaturo will provide DLI with a handout that includes his remarks and additional information about the report. That material is attached to these minutes.

B. Legislative proposal – Claims Access and Management Platform User System (CAMPUS)

The commissioner introduced: Kate Berger, Office of General Counsel, Jon Brothen, Compliance, Records and Training; and Brad Morse, Workers' Compensation Modernization Program director.

Berger presented WCAC with key components of the proposed legislation.

- Qualified rehabilitation consultant (QRC) interns: This proposal requires the supervisor sign a plan of supervision and file that with the intern's application. Currently, the rules provide that the supervisor must sign all written work of the intern. Because of the new requirements of filing electronically, this language will avoid having the intern and the supervisor both having to electronically sign each written document. It requires the supervisor to review the work and the intern is required to verify the supervisor has reviewed it.

Gary Thaden questioned the term "intern" in the statutes and indicated the term does not exist there. Berger said interns are described in Minnesota Rules and not the statutes, currently. Thaden asked if there will be changes to the rules in light of the statutory changes. Berger said DLI is working on rules currently and this topic will be reviewed for clarity.

- Prompt first-action reporting: This language adds to the definition of insurer. This adds self-insured employers for this proposal. The current language requires the insurer to pay or deny a claim within 14 days. This new language clarifies the report really does need to include prompt first action.

Thaden brought up the acronym "CAMPUS" and how it will be referred to in the future. There was discussion about capitalization of CAMPUS going forward and how it is referenced in the statutes. Berger said DLI has trademarked the term and under federal trademark law, it does not matter if it is uppercase or lowercase. As a practical matter, DLI is going to only capitalize the "C" (Campus) and not the whole word. In the statute, it will be capitalized in its entirety (CAMPUS).

- This portion clarifies proof of service through electronic filing.
- This section refers to provisions related to interagency access to documents (OAH, DLI and WCAC).
- This portion clarifies who has access to an injured worker's file and the authorizations needed to access the documents in the file. It also defines an employee as an employee's guardian or dependent of a deceased employee.

Thaden asked if by including an heir of a deceased employee (lines 156 to 160), will this process result in that person being considered an employee? Berger said DLI will look at that section to clarify the language if needed. She also said the added language on line 280 was requested by Rep. Scott and that includes generating an audit trail when the division file is accessed by any person.

The proposed legislation is attached to these minutes.

Other business

The commissioner said today's proposal will come back for review with some answers to the questions that were posed. This will be included in the full packet of legislative proposals.

Sen. Paul Utke asked that the word "CAMPUS" be consistent throughout when using the term, either all caps or just the "C" capitalized.

The dates of the next two meetings are: Nov. 13 and Dec. 11. The new date proposed for January is Jan. 15. The commissioner asked the members to look at their calendars and confirm the new January meeting date works.

Adjournment

The meeting was adjourned at 10:50 am.

Respectfully submitted,
Executive secretary