

## Meeting minutes: Workers' Compensation Advisory Council

Date: Dec. 18, 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  
Colin Beere  
Walter Frederickson  
Dennis Galligan  
Russell Hess  
Maggie Hobbs  
Doug Loon  
Bill McCarthy  
Ed Reynoso  
Robert Ryan  
Gary Thaden  
Kevin Yakes

#### Legislative liaisons attended

Senator Paul Utke

#### DLI staff members attended

Sandy Barnes  
Kate Berger  
Jon Brothen  
Pam Carlson  
Karen Kask-Meinke  
Chris Leifeld  
Brad Morse  
Donna Olson  
Melissa Parish  
Tyrone Spratt  
Jessica Stimac  
Brian Zaidman  
Laura Zajac

#### Visitors attended

Deb Anger, LMCIT  
Jon Boesche, Minnesota Senate  
Kathy Bray, SFM  
Joel Carlson, MAJ  
Gary Carlson, LMC  
Lynn Carroll, WCRA  
Aaron Cocking, IFM  
Eric Dick, MMA  
Jeremy Estenson, Stinson  
Carla Ferrucci, MAJ  
Shep Harris, MSIG/MATIT  
James Heer, WCRA  
Courtney Jasper, Messerli  
Bob Johnson, Insurance Federation of Minnesota  
Jon Kelly, Department of Commerce  
Jon Kysylyczyn, DeLaforest Consulting  
Brad Lehto, AFL-CIO  
Kaleb McCulloch, SFM  
Patty Milun, chief judge, Workers' Compensation Court of Appeals  
Brandon Miller, MWCIA  
Phil Moosbrugger, Department of Commerce  
Deb Norsten, SFM  
Tom Poul, Messerli  
Patty Prentice, LMCIT  
Sean Quinn, Workers' Compensation Court of Appeals  
Dean Salita, MNAJ  
Lauren Schothorst, Minnesota Chamber of Commerce  
Jerry Sisk, MNAJ  
Jenny Starr, chief judge, Office of Administrative Hearings

Sophie Thaden, MMCA  
Lauren Weaver, Stinson

Gary Westman, Department of Administration  
John Wiatros, Mackinaw

## 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 present.

## 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 Nov. 13, 2019 meeting, Gary Thaden seconded the motion and all voted in favor of the motion.

## Announcements

The commissioner gave an update of the post-traumatic stress disorder (PTSD) rulemaking status. The department only received a handful of comments and one request for hearing related to those proposed rules. This means the department will be able to use the expedited rulemaking process to adopt those rules. The department is preparing the paperwork necessary to move to expedited rulemaking. The anticipated final adoption of the rules is estimated to be spring 2020.

The other announcement is WCAC is hearing the final proposals related to legislation for the 2020 Minnesota legislative session. The commissioner will ask for a vote on the proposals at the Jan. 22, 2020 meeting. There are two new proposals to be presented today, in addition to an update about proposals that were previously presented and where additional changes were sought by WCAC members. The Work Comp Campus project remains on time and on budget; however, only nine months remain until that system goes live. The commissioner thanked the workers' compensation staff for the work and the success of the work that has been done.

The commissioner asked for questions and feedback concerning this timetable; there were none.

## Agenda items

- a. Department of Commerce legislative proposal §§ 79A.02, 79A.04, 79A.06, 79A.22, 176.181 – Philip Moosbrugger, Department of Commerce, manager, Workers' Compensation Self Insurance Division; Jonathan Kelly, Department of Commerce, legislative liaison.

Moosbrugger explained the bill is intended to clean up and update portions of the workers' compensation self-insurance law. Briefly, the Minnesota Department of Labor and Industry (DLI) oversees the payment of benefits and is the primary agency that oversees workers' compensation. The Department of Commerce, on

the other hand, oversees the workers' compensation self-insurance portion of the law. Large employers are allowed by state law to self-insure.

Key points of the proposal:

- prohibiting self-insurers to run on negative surplus;
- limiting the actuarial liability to present value discount; and
- repealing 176.181, subd. 6.

Thaden recommended striking the sentence in line 279, "The license is for a two-year period."

This amendment will be included in the package that will be voted on Jan. 22, 2020, by WCAC.

There were no other changes or comments added to the proposal. The entire language is attached to these minutes.

b. Minnesota Association for Justice (MNAJ) – Jerry Sisk and Dean Salita, co-chairmen

Sisk began by explaining there is no official proposal currently but MNAJ wanted to begin the discussion regarding several issues of concern. There were four areas Sisk and Salita discussed.

1. The Certificate of Dispute process can often get delayed during the workers' compensation process. This delay causes harm to the injured worker, since medical treatment can get delayed while waiting for either an approval or denial. MNAJ is asking for the groups of stakeholders to move this process forward to either denial or approval in a method that is quicker and less harmful to the injured workers. Often, it is the independent medical examination (IME) that seems to cause drag on the process. MNAJ is looking for ways of rectifying this process by both DLI and the stakeholders.
2. There is language in Minnesota Statutes that states *may intervene* and some language states *shall intervene*. Because of the difference in these terms, it can cause confusion for all parties and in some instances cause extinguishment.
3. Currently, when a claim petition is filed, the employer and insurer technically have 120 days in which to request an IME. The courts have interpreted this statute as allowing an employer and insurer an opportunity to present good cause even after 120 days. MNAJ would like a requirement that the employer and insurer file a motion for good cause prior to the 120 days. This would move the process along a little quicker to get the injured employee the treatment they need.
4. This relates to North Dakota as an out-of-state employer. If a worker employed by a North Dakota employer is injured working in Minnesota, he or she would not receive Minnesota workers' compensation benefits. The worker's exclusive remedy would be under North Dakota. There is currently a case before the Minnesota Supreme Court that may clarify this issue.

Doug Loon said the North Dakota issue could have significant impact on employers, insurers and providers. He would like to understand the scope of what MNAJ is proposing. Loon said the Chamber of Commerce can provide resources to facilitate more discussion.

c. Occupational disease presumptions § 176.011 – Ed Reynoso, WCAC member

Reynoso explained there have been several conversations about this issue both last year and this year. He indicated the modification he is proposing is simple in that correctional officers, both at the state and county level, are included in coverage. The change would encompass correctional officers or security counselors employed by the state or political subdivision at a corrections, detention or secure treatment facility.

Loon said the business representatives do not have any objections to this proposal.

McCarthy moved to approve the amendment as proposed, a vote was taken and it was approved unanimously. The commissioner confirmed this proposal will be added to the legislative package, but it is agreed this specific language has been approved and will not be bundled with the other proposals.

d. Revisions of proposals presented at the Nov. 13, 2019, WCAC meeting – Laura Zajac, Jessica Stimac, Kate Berger, DLI Office of General Counsel

Key components of the revisions are the following.

- Changes access to insurance verification data reported to DLI by the Minnesota Workers' Compensation Insurers Association (MWCIA) and describes the public elements in the data and how the public can access that data. Certain data elements will apply if the policy has been canceled.
- Improper electronic filing: Identifies the obligations of senders, recipients and agencies when serving on the wrong party.
- Payment to employee's estate by affidavit of collection of personal property as an alternative to a personal representative. This allows payment to the employee's estate by either affidavit or collection of personal property. This provides an alternative, simplified process to the payment to the estate of a deceased employee when there are no dependents entitled to dependency benefits and no probate of the estate is required.

Because of extensive questions and commenting about subdivision 22 (payments to estate), the commissioner stated there will be more research and the department will queue up some different scenarios and further evaluate this section of the proposal. Language changes will be forwarded to the members at the beginning of January to review before the Jan. 22 meeting.

e. Penalties for collecting from employees § 176.136, subd. 2 (this is a separate handout titled "(e)" because this was rewritten, it is separate page)

The penalty for the first violation is \$500, the penalty for each subsequent violation would be \$1,000 and the penalty is discretionary. The new language is in clause 3, starting on page 26, and this provides for an additional penalty of \$2,000 if the employee actually pays the provider that amount that was incorrectly billed or if the provider attempts to collect by: engaging a collection agency or other third party; filing a claim in conciliation court; attaching the employee's tax refund; or submitting a report to a credit agency.

Maggie Hobbs said she would like the notification to the provider to be claim-specific to isolate that particular workers' compensation billing from other potential billing. If the notice provides a claim number and indicates it is workers'-compensation-related, it would help better distinguish which claim it is referencing.

Berger stated the health care provider has already been notified of the incorrect billing and any penalty would be discretionary for the department to issue.

Sen. Paul Utke said he would like the language to be more specific if there will be penalties and fines for this violation.

The commissioner suggested the department add another option to the proposal and have further discussion between now and the Jan. 22 meeting.

Further discussion occurred about what to do with the provider that habitually sends the same bill to the injured worker. The commissioner said this is why the department is proposing the penalty. Perhaps a penalty potential would act as a deterrent and correct the billing.

Jon Brothen said the department gets complaints from both insurers and employers that are encouraging the department to take action on their behalf to rectify the situation.

The commissioner asked the members if they wish the department to continue to work on this matter. There was a verbal consensus to do so. The department will respond by changing the language and perhaps look at ways of dealing with repeat offenders.

The department has withdrawn a proposal regarding an incentive by insurers to timely submit certain reports with a 10-day time frame. This report was provided by insurers to report about the status of treatment. The department will continue talks with the insurers and providers to come up with a solution.

The full package will be distributed before the Jan. 22, 2020, meeting so the members will have time to review before voting.

- f. Campus-related proposals §§ 176.2612, 176.102, 176.231 – Laura Zajac, Jessica Stimac and Kate Berger, DLI Office of General Counsel

Key components of the proposal:

- employees are not required to create an account in Work Comp Campus;
- providers are not required to participate unless the provider is initiating a medical request;
- certain reporting must occur regarding specific critical events of the claim; and
- certain claims data needs to be received via electronic data interchange in the new system.

This language was distributed among the payers and business and no requests were received to change the language. This proposal will be added to the legislative package for the Jan. 22, 2020 meeting.

## Other business

The next meeting will be Jan. 22, 2020, and we will vote on the language presented today and in the past couple of meetings.

## **Adjournment**

The meeting adjourned at 11:45 am.

Respectfully submitted,  
Executive secretary