

Meeting minutes: Workers' Compensation Advisory Council

Date: March 21, 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
Jason George
Russell Hess
Brad Lehto
Douglas Loon
Edward Reynoso
Robert Ryan
Gary Thaden
Kevin Yakes

Legislative liaisons attended

Representative Tim Mahoney
Senator Paul Utke

Visitors attended

Deb Anger – LMCIT
Scott Brener – SFM
Auntara De – MWCIA
Katie Friend – Corvel
Maggie Green – Messerli Kramer
Dan Greensweig – LMCIT
Timothy Jung – Lind Jensen
Shepard Harris – MSIG/MAT
Erin Huppert – Allina
Cody Marks – Corvel
Patty Milun – WCCA
Laura Mundt – Mayo Clinic
Deb Norsten – SFM
Chris Parsons – Minnesota Professional Firefighters

DLI staff members attended

Commissioner Ken Peterson
Assistant Commissioner Chris Leifeld
Alexis Russell
Sandy Barnes
Kate Berger
Karen Kask-Meinke
Ethan Landy
Mark McCrea
Donna Olson
Lisa Wichterman
Laura Zajac

Tom Poul – Messerli and Kramer
Patty Prentice – LMCIT
Jim Putzer – Society Insurance
Joe Schindler – MHA
Cindy Smith – WCRA
Michael Strong – SFM
Sandra Stoddard – UCWCP
Deb Sundquist – WCCA
Robyn Sykes – MCIT
Kirsten Tate – Office of Administrative Hearings
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.

Announcements

Commissioner Peterson announced he would like to remove Item (a), the post-traumatic stress disorder (PTSD) legislative proposals, from today's proposed agenda. Since the parties are looking at new solutions to the PTSD issue, the WCAC will not discuss the issue today.

Approval of the agenda

Commissioner Peterson asked for approval of today's agenda, minus agenda Item (a). Ed Reynoso made a motion to approve the agenda with Item (a) removed and it was seconded by Doug Loon. All voted in favor and the amended agenda was approved.

Rep. Tim Mahoney asked to comment on the PTSD issue. He believes some type of PTSD legislation will pass at the Legislature this year, so he encouraged the council to come to an agreement about the issue.

Commissioner Peterson asked Loon to address the council concerning a development in the outpatient hospital payment system issue. Loon reported there is a broad outline of an agreement for a fee schedule for the outpatient payment system. The Chamber of Commerce was able to convene four meetings between the hospitals and insurers to reach a broad outline of an agreement for a fee schedule. While he could not go into specifics at this point, he believes the outline of the agreement will bring efficiencies to the system and timely and accurate payment to the system. He said the Chamber of Commerce wants Minnesota's workers' compensation system to be as competitive as possible compared to other states. He added he will speak to the labor representatives to make sure they are in agreement with the outline.

Commissioner Peterson asked for a tentative meeting date to follow up with this matter. He proposed April 5, but that will depend on the members' availability and whether an agreement about the issue is reached. The WCAC executive secretary will follow up with the members about a meeting date, should this move forward.

Rep. Mahoney commented that this has been on the discussion table for three years and he would like to see an agreement soon. He said both he and the commissioner have been patient with the parties by allowing this long period of discussion. Part of the tentative agreement three years ago was to eliminate the "scrubbers" as part of the cost savings. This has not happened yet and he would like to see penalties on the parties who do not live up to their part of the agreement made three years ago. He asked the commissioner and the parties involved if they are looking at penalties. He also indicated there could be legislation proposed concerning the penalties without the approval of the WCAC. The compact between the WCAC and the Legislature has worked well for 30 years, but he said all parties must hold up their end of the agreement.

Loon responded that the items above are included in the agreement outline, in addition to the enforcement piece. Both parties currently are in agreement with the details. The WCAC will be briefed and asked for input when there is something more firm between the parties.

The commissioner commented the department has penalized third-party administrators and insurers.

Approval of the minutes

The commissioner asked for approval of the minutes from the most recent WCAC meeting. Robert Ryan moved to approve the minutes from the Jan. 24, 2018 meeting, Jason Bartlett seconded the motion and all voted in favor to approve the minutes.

Agenda items

b. Legislative proposal – Workers’ Compensation Court of Appeals pay parity

Commissioner Peterson introduced the first item on the agenda, the Workers’ Compensation Court of Appeals pay parity legislative proposal. He indicated he discussed this proposal with both parties this morning, but asked if the members would like to hear testimony. Judge Deb Sundquist, Workers’ Compensation Court of Appeals, is available to present the issue and answer any questions. If there are no questions and the members want to vote, the council can just move forward on the matter.

Gary Thaden made a motion to include the proposed language in the workers’ compensation bill and Ryan seconded the motion. A vote was taken and the motion was passed to approve the proposal as submitted.

c. Legislative proposal – filing requirements at OAH and DLI

The commissioner introduced Chief Judge Tammy Pust, Office of Administrative Hearings (OAH) and asked her to address the WCAC about the proposed legislation. Pust explained the proposal does two things: first, it will eliminate duplicate filing of documents; and second, it allows non-identifying employee information to be posted for scheduling proceedings at the agencies’ principal place of business or website. She gave the example of posting the location of courtrooms and using the first three letters of a last name to keep it confidential and protect the employee’s identification. It will also allow classified data under the Government Data Practices Act to be shared with only with authorized parties to the claim.

Thaden asked why the definitions of some of the terms (lines 5 through 11) are included in the proposal. Since the terms have already been defined earlier in Section 176, would repeating them cause some confusion? The judge confirmed these are the same definitions as in prior parts of 176, but thinks the revisor’s office will clean up this language and determine which definitions are necessary. The other point Thaden brought up was that the proposal states the effective date is June 1, 2018. He questioned whether this a reasonable amount of time to implement the changes. The judge said her office has been working to go live without this legislation with both attorney groups. They are willing to dual file until this gets passed.

Rep. Mahoney commented that changing legislation concerning data privacy must go through the civil law process since it raises a red flag at the Legislature. The chairs of the committees are required to look further into these matters. The commissioner responded that the department will try to move this along as soon as possible. The commissioner asked for a motion.

Loon made a motion to approve the proposal as presented and Brad Lehto seconded the motion. A vote was taken and the motion carried.

d. Legislative proposal – worker identification (WID) number

Kate Berger, DLI Office of General Counsel, explained that a number of years ago the Legislature enacted a law that said the department is required to create a worker identification (WID) number for use in workers' compensation claims. The purpose of the law was to protect employees' Social Security numbers from being used in the claims. Because the department and OAH encourage the use of the WID number, it becomes a part of the worker's file that cannot be shared. Attorneys for the employees and qualified rehabilitation consultants (QRCs) working on their behalf will need to file documents using an identifying number, but we cannot give them the WID number; the WID number is only shared with the insurer. What this proposal does is enable the department to share the WID number with the attorney for the claim, a QRC working on behalf of an injured worker and an intervenor who is a party to a claim. The other change is paragraph (b), where it enables authorization to be signed and not written. Since the department and OAH are moving toward electronic filing, electronic signing should be included.

Thaden commented that Rep. Mahoney's comments regarding data privacy in the previous proposal will also apply to this proposal in terms of legislation. Berger agreed data privacy will have to be considered as part of the legislation as well.

Reynoso made a motion to approve the language as written and Kevin Yakes seconded the motion. All voted in favor and the motion carried.

Other business

Commissioner Peterson proposed the next meeting date be tentatively scheduled for April 5, 2018, to discuss the hospital outpatient payment fee schedule. The WCAC executive secretary will send notification of the date to see if it works for the members. If not, another date will be suggested.

Adjournment

Reynoso made a motion to adjourn the meeting and Yakes seconded the motion. All voted in favor and the motion carried. The meeting was adjourned at 10:15 a.m.