

Workers' Compensation Advisory Council
Jan. 8, 2014

Members who attended

Keri Nelson for Walter Frederickson
Elaine Garry
Russell Hess
Shar Knutson
Robert Lux
Bill Blazar for David Olson
Susan Olson
Robert Ryan
Dawn Soleta

Nonvoting members who attended

Rep. Andrea Kieffer
Rep. Tim Mahoney

Members who were excused

Glen Johnson
Ed Reynoso
Gary Thaden

Members who were absent

Sen. John Pederson
Sen. Dan Sparks

DLI staff members who attended

Sandra Barnes
Kate Berger
Debbie Caswell
Deputy Commissioner Kris Eiden
Ralph Hapness
Mike Hill
Chris Leifeld

Charles McKinstry-Luepke
Phil Moosbrugger
Donna Olson
Commissioner Ken Peterson
Jessica Stimac
Lisa Wichterman
Christine Wojdyla
Brian Zaidman

Visitors who attended

Ray Bohn; MGA
Buzz Cummins, SISF/WCRA
Eric Dick; MMA
Susan Giguere; MAPS
Dan Greensweig; LMCIT
James Heer, WCRA
Brad Lehto; AFL-CIO
Jim LeRoy; MSIG
Brian Martinson; Senate
Micki Mathiesen; SFM
Brandon Miller; MWCIA
Jerry Miller, SFM
Laura Mundt; Mayo Clinic
Cindy Smith, WCRA
Sarah Strong-Belisle; Cook Girard Associates
Deb Sundquist; MDLA WC Committee
Robyn Sykes; MCIT
Anna Thompson; Medtronic
Stu Thompson; MSIG
Elizabeth Wefel; Flaherty Hood PA
Dan Wolfe; APTA

I. Call to order

The meeting of the Workers' Compensation Advisory Council (WCAC) was called to order by Department of Labor and Industry (DLI) Commissioner Ken Peterson at 9:41 a.m. Roll was called and a quorum was present.

II. Announcements

Peterson noted the WCAC talked a year ago about DLI's Jan. 1, 2014, requirement that insurers and self-insurers send First Report of Injury forms electronically. DLI's electronic system is complete and is working well. DLI receives about 30,000 First Report of Injury forms every year. Doing this function electronically makes the system much smoother and uses less paper. Jessica Stimac, DLI, has been the leader for this and did a wonderful job.

III. Approval of the agenda

Peterson moved the legislative update to the end of the agenda. *Elaine Garry moved to approve the agenda as amended. Robert Ryan seconded the motion. All voted in favor and the motion carried.*

IV. Approval of the minutes

Shar Knutson moved to approve the minutes for the Oct. 9, 2013 meeting. Dawn Soleta seconded the motion. All voted in favor and the motion carried.

V. Agenda items

a. Update about Amish proposal

Peterson gave an update about the Amish proposal. The Amish community had representatives at the most recent WCAC meeting asking for an exemption for some of their contractors from the requirement to carry workers' compensation insurance. DLI staff members have since met with the representatives and think they may be able to qualify for an exemption under a section of the law regarding family-member businesses. DLI is continuing to work with the Amish.

b. Medical cost reimbursement study

Peterson introduced Chris Leifeld and Phil Moosbrugger who will present the findings of the medical cost reimbursement study. This study was required by the Legislature last year. DLI completed the study; it was sent to WCAC members in December. Peterson's hope is that parties review the facts and if there are issues people disagree about, have a conversation with the various parties and then move toward an agreement for a legislative proposal for the 2015 session.

The PowerPoint presentation is available at www.dli.mn.gov/WC/Pdf/MedicalCostReimbursementStudy_presentation.pdf.

The complete study is available online at www.dli.mn.gov/WC/Pdf/MedicalCostReimbursementStudy.pdf.

Leifeld gave a brief overview of the study. DLI was directed by the Legislature to study various aspects of the workers' compensation carrier and health care provider reimbursement systems, including potential reforms and barriers. DLI surveyed insurers, self-insurers, hospitals and ambulatory surgery centers to gather data regarding the reimbursement system. There was a 73 percent response rate on the survey.

Moosbrugger noted the first part of the report looks at the current system, the second part talks about potential reforms and barriers to implementing those reforms. This report focused on the "unregulated" parts of workers' compensation medical cost reimbursements, which are the 85 percent and 100 percent of usual and customary fees.

Moosbrugger explained that in 2007 the Minnesota Legislature enacted Section 62J.536 that mandates that billing and remittance transactions happen electronically. The effective date for most of this was 2009. The electronic document, which is a universally recognized national standard called the 837, is transmitted from the service provider or its agent to the insurer. The remittance advice is known as the 835 and is a nationally standardized electronic document that is supposed to go back to the service provider with a payment. Section 62J.536 did not require

payment to be made by electronic funds transfer, so that can still be a paper draft or electronic funds transfer at the preference of the parties. Although mandated since 2009, electronic billing and payment is still in the early stages of being adopted by the workers' compensation industry.

Rep. Tim Mahoney asked what percentage of health care providers and insurers use electronic transfer, noting it is seven years after the Legislature passed the mandate. Moosbrugger responded that as of 2012 there was a 5 percent to 33 percent participation rate according to survey results. Mahoney asked if DLI knows what percentage of providers and insurers do electronic transfer in general health insurance. Moosbrugger reported that, according to the Minnesota Department of Health, the participation is 100 percent in electronic billing and remittance in health insurance. The only areas having difficulty establishing the process are in workers' compensation and auto. DLI, along with the Department of Health, which has the enforcement authority, are trying to ascertain what the barriers are. Early on there was a problem because there was no national standard for how the medical records attachment is attached to the 837, and there is still no standard. The attachment can be processed without a national standard but it is difficult because there are so many players involved in the process that have to come to a contractual agreement about what to pay and technical issues about how to accomplish it.

Leifeld noted DLI relied, in part, on the results of a study conducted by CGI Federal in 2012. That study, the CGI Report on Workers' Compensation Reimbursement Methodologies, was presented to the WCAC last year and is available on the department's website at www.dli.mn.gov/WC/Pdf/cgi_federal_report2012.pdf. Leifeld indicated the CGI report recommended Minnesota consider adopting a DRG-type reimbursement system for workers' compensation medical costs.

Moosbrugger pointed out that repeal of the Spaeth decision may encourage more denials. Also, the injured worker who then gets treatment from his or her general health care plan may have to pay co-pays and deductibles. Mahoney expressed concern for out-of-pocket expenses for the injured worker.

Mahoney also expressed concern about workers' compensation insurers using about 40 percent of their premiums for administrative costs. He thought there was a requirement in the Affordable Care Act that 80 percent of premiums have to go to medical costs for typical health insurance, so they have 20 percent for administrative costs. Others indicated the number might be even higher.

Deputy Commissioner Kris Eiden clarified that the 40 percent goes to brokers, insurance agents, loss adjustment expense and underwriting expense, and that a portion of it may be profits. Mahoney said he was not concerned with how the money was used, but questioned why the big health insurers, such as Medica, Blue Cross Blue Shield or PreferredOne, can do it at 80 percent. What is wrong with the workers' compensation group? Peterson speculated costs are different for workers' compensation than regular health care insurance. Mahoney asked that it be explained to him; Peterson agreed it is an issue to be included in the broad discussion.

c. Legislative proposal

Reinsurance for post-traumatic stress disorder

Jim LeRoy, from Meadowbrook, Dan Greensweig, from League of Minnesota Cities Insurance Trust, and Robyn Sykes, from Minnesota Counties Intergovernmental Trust, were introduced to discuss a legislative proposal to amend Chapter 176 to treat post-traumatic stress disorder

(PTSD) as a personal injury, rather than an occupational disease, for reinsurance purposes only. LeRoy stated that with him were representatives from the Builders Group, the League of Minnesota Cities, the Minnesota Inter-County Association, the Minnesota Counties Intergovernmental Trust and the Minnesota Self-Insurance Group.

LeRoy noted that during the most recent session, the Legislature added mental impairment to Minnesota Statutes § 176.011, subd. 15, the occupational disease section of the workers' compensation law, and also to § 176.011, subd. 16, the personal injury section of the workers' compensation law. The inclusion of this mental impairment language as an occupational disease had an unintended consequence of creating a large financial exposure for insurance companies and for self-insured employers under the terms of the reinsurance contract that exists between the Workers' Compensation Reinsurance Association (WCRA) and its members. This increase in exposure relates to the treatment of the retention or deductible selected by each WCRA member. This is handled differently for occupational disease claims than it is for personal injury claims. For personal injury claims, the retention applies on a per occurrence basis, which means one deductible applies no matter how many employees were hurt in a single event. If they have four employees who get hurt in a single occurrence, that triggers one deductible. If the deductible was \$480,000, the insurer or self-insured employer would get reimbursed for any excess paid greater than that amount for all of the workers combined. In contrast, with an occupational disease, the deduction applies for each person. Those same four employees trigger four separate deductibles and the insurers' exposure would increase from \$480,000 to almost \$2 million. Mental impairment PTSD injuries are distinguishable from other occupational diseases like asbestosis or silicosis in that by definition they are triggered by a specific event that could impact more than one person at the same time. LeRoy noted he and others have met with stakeholders, including the WCRA, to discuss their concern about this reinsurance issue. The WCRA has agreed about the need to clarify that for reinsurance purposes only, mental impairment PTSD claims would not be treated like occupational diseases.

This change would push the cost to the WCRA, which is designed to accept the exposures above a certain threshold dollar-limit. James Herr, president and CEO of WCRA, was introduced and he reported WCRA has been working with its members, members of labor and the Minnesota Chamber of Commerce. The WCRA board has indicated its willingness to support a legislative technical amendment, preferably through a DLI housekeeping bill, to clarify PTSD injuries would be treated on a per occurrence basis.

Bill Blazar moved to approve the proposal to clarify a PTSD event involving multiple employees should be considered as one occurrence for retention purposes only for the WCRA. DLI will add language to the housekeeping bill for this session. Keri Nelson seconded the motion. All voted in favor and the motion carried.

Peterson stated this provision will be included in the department's housekeeping bill for the coming session.

d. Legislative proposal

Insurance company reporting of Special Compensation Fund assessments

Bob Johnson, from the Insurers Federation of Minnesota, and Terri Miller, from SFM, were introduced to discuss a legislative proposal affecting the Special Compensation Fund (SCF) assessment.

Johnson explained their proposal is an amendment for a technical change to the language in the SCF paragraph that deals with assessments on employers. This has no impact on injured workers' benefits or employers' costs. It is a clarification of the accounting treatment of how insurers process the SCF assessments put in place in 2002. Because of a potential conflict with a separate accounting process that insurers have to follow through state regulation and the National Association of Insurance Commissioners, a question has arisen whether insurers can continue doing exactly what they have been doing since 2002. If this is not done, Johnson said Minnesota-based insurance companies would be penalized. They have met with the commissioners from the Department of Commerce and DLI and their technical staff and believe there are no problems.

Peterson said he has no problem with the language change and does not want Minnesota insurers to be penalized.

Bob Lux moved to approve the language proposed for Minnesota Statutes § 176.129, subd. 2c, and to include it in the housekeeping bill. Blazar seconded the motion. All voted in favor and the motion carried.

e. DLI's workers' compensation "unsession" housekeeping bill

Peterson pointed out DLI's proposed workers' compensation housekeeping amendments in members' packets. The proposed amendments include the governor's "unsession" proposals to repeal outdated or redundant language in Chapters 176 or 175. There is an explanation for each proposal in the summary.

John Rajkowski, the department's legislative representative, was introduced to briefly review the proposed changes. He noted the only provision that is not an "unsession" repealer is an amendment that is needed to add language to Minnesota Statutes § 176.135, subd. 7, to allow DLI to update references to the International Classification of Diseases.

Soleta moved to approve the housekeeping bill as presented. Susan Olson seconded the motion. All voted in favor and the motion carried.

Peterson referenced the 2014 WCAC meeting schedule in members' packets and asked members to put those dates on their calendars.

Knutson asked if there will there be other discussions regarding the medical costs reimbursement study. Peterson said he would like to sit down with department staff members to identify areas where there are disagreements about facts and try to resolve the differences. Then, if there are still differences in the facts, try to understand why. After that, he will begin discussions with affected parties. He is not sure how to go forward, whether there should be a committee and who should be on it. Olson asked if it was possible for the ones who did the study to go back to try to do some cleanup to find out why there are discrepancies and amend the study. Peterson said DLI would work on that. Knutson asked if there was a timeline. Peterson responded that the final decisions to any legislative proposals should be made by next fall or by next session.

Mahoney said he thinks the legislators have a valuable perspective to offer and he asked the commissioner to appoint a legislative member to any committee or task force that is established. Peterson agreed to do that.

Blazar echoed Knutson's points and said he thinks the study is a great foundation. He hopes the facts can be clarified quickly, so the WCAC has a good, thoughtful bill by the beginning of the next legislative session.

Olson moved to adjourn at 11:11 a.m. Lux seconded the motion. All voted in favor and the motion carried.

Respectfully submitted,

A handwritten signature in cursive script that reads "Debbie Caswell".

Debbie Caswell
Executive Secretary