

Workers' Compensation Advisory Council
Feb. 8, 2012
Minutes

Members

Edward Reynoso
Larry Rice
Jason George for Glen Johnson
Mike Bredeck
Robert Lux
Ryan Holmes
Sen. Ted Lillie
Shar Knutson
Susan Olson – via telephone
Tom Hesse for David Olson
Wayne Ellefson

Dee Torgerson
Donna Olson
Doug Brown
Gary Hall
Greg Schmidt
Heather Keenan
James Heer
Jeremy Esfenson
Jessica Stimac
Joe Schindler
John Krapek
John Rajkowski
Karen Ryba
Ken Peterson
Kris Eiden
Linda Sandvig
Lisa Smith
Karen Ebert
Karen Kaske-Meinke
Kate Berger
Kathryn Berg
Kathy Hanson
Kelly Rodieck
Keri Elliott
Kristi Ryman

Lisa Wichterman
Laura Munt
Marsha Thiel
Mark McCrea
Mary Gilbert
Meg Kasting
Members of the Old Order of Amish
Micki Mathiesen
Mike Scully
Nancy Larson
Natalie Haefner
Nathan Missell
Peter Thru
Phil Moosbrugger
Philip Villaume
Randy Bradley
Ray Bohn
Sen. John Pederson
Sen. David Thompson
Suzanna Kennedy
Tara Mulloy
Thomas Saby
Tim O'Malley
Wendy Wulff

Visitors and DLI staff members

Anna Thompson
Ben Gerber
Brad Lehto
Brett Krumhartt
Buck McAlpin
Buzz Cumming
Carla Ferrucci
Carlton Fontaine
Carolyn LaViolette
Chris Leifeld
Dawn Carlson

I. Call to order

The meeting was called to order by Commissioner Ken Peterson at 9:40 a.m. Members introduced themselves and a quorum was declared.

II. Announcements

III. Approval of previous meeting minutes

A motion was made by Ed Reynoso to approve the Jan. 18, 2012 meeting minutes, seconded by Mike Bredeck. *All voted in favor and the motion was carried.*

IV. Approval of agenda

An item relating to a legislative exemption proposed for the Amish community was proposed to be added to the agenda. *A motion was made, seconded, approved and carried to approve the Feb. 8, 2012 agenda, with the change noted.*

V. New business

a. Legislative proposal: Workers' compensation reform ideas – Sen. John Pederson

Sen. Pederson stated the purpose of the proposal is to work toward reforms that would reduce costs for every company that purchases workers' compensation insurance in Minnesota and to provide a fair and moderate solution to the fixed and rising costs. Questions or concerns can be sent to Sen. Pederson by email at sen.john.pederson@senate.mn or by telephone at (651) 296-6455 (St. Paul) or (320) 529-6932 (St. Cloud).

A summary sheet was made available to council members, but a typographical error was noted in the second to the last paragraph. The corrected sentence should read: “*Consider a process that discourages “bill scrubbing” (audit) and a more timely payment from the insurance companies for services provided.*”

Sen. Pederson stated legislation is currently being prepared at the revisor’s office. It would address: adjusting the medical fee schedule so workers’ compensation reimburses at the major medical level; establishing a percentage cap on markups for medical implants; requiring disclosure to the injured workers prior to back fusion surgeries, explaining the potential risks and expectations of the results; authorizing full, final and complete settlements of medical claims when the injured worker is represented by an attorney; expanding the current Wilson-McShane program in use for the construction industry to other industries statewide; establishing a method to encourage the insurance companies to negotiate with the medical community; establishing a method to encourage insurance companies to move away from a “paper-based” system to electronically based (claims, documents and processes); and adopting a process that discourages “bill scrubbing” (audit) and encourages a more timely payment from the insurance companies for services provided. Sen. Pederson stated workers’ compensation is “business” and that no one in the medical community is required to participate in. Yet, employers are required to purchase workers’ compensation insurance, in addition to the major medical insurance they already provide.

It was discussed that the council had reviewed similar reforms in the past and that more time is needed to review the proposed legislation. Sen. Lillie suggested the council prioritize the list for discussion and input may be needed by those that are impacted – hospitals, employers, employees, etc.

Shar Knutson moved that more research and review be done by the department with respect to the proposals. Bob Lux seconded, all voted in favor and the motion carried.

b. Legislative proposal: Workers’ compensation benefits and pension rules – Sen. David Thompson

Sen. Thompson described the case brought to his attention by a constituent, Wendy Wulff, whose husband was totally disabled in a blast seven years ago while working as a commander of the Minneapolis bomb squad. Because of offsets in the workers’ compensation and PERA laws for permanently totally disabled workers, the employee receives a lower pension rate than an injured worker with a less severe injury. Several years ago, the Legislature enacted a bill to increase his pension, but this doesn’t help others who have fallen through the loophole. Carlon Fontaine, an attorney for the Minnesota State Senate, stated she has been working with the legislative commission on pensions and retirement, reviewing the inequity for officers with permanent disability cases such as this, to carve out an exception, which affects two to four individuals annually. Sen. Thompson asked the council to address the issue and come up with a better outcome for injured workers who sustain these types of injuries. Council members expressed a desire to correct the disparity. Commissioner Peterson stated a department workers’ compensation attorney will be assigned and Assistant Commissioner Gary Hall will work with the group to resolve the system inequity. Updates will be conveyed to the council at its next meeting.

c. Proposed legislative Amish exemption

Attorney Philip Villaume, his associate Lisa McLeod Lofquist and representatives of the Old Order Amish were welcomed to the council. A legislative proposal was presented to the council seeking to amend current workers’ compensation law to include an exemption from coverage for people who are members of an established religious sect and who conscientiously oppose receiving

payments and/or assistance from the government. The current system in Minnesota requires members of the Amish community to participate in a system of insurance, which violates their religious beliefs. A summary of the proposal and application was provided to the council and is attached to these minutes. Minnesota currently provides 21 exemptions from coverage under Minnesota Statutes §176.041. Work of the Amish is primarily agriculture and residential construction. Mr. Villaume stated that to require the Amish Order to pay into a compensation-insurance program, from which they will never draw benefits, is inequitable and creates an undue financial burden. The council asked questions of Mr. Villaume, Ms. Lofquist and the representatives of the Old Order Amish. It was asked whether not paying workers' compensation insurance would provide an unfair advantage over small employers that are required to pay workers' compensation insurance and bid on residential construction jobs. The Amish believe there is no unfair advantage, as they pay into their own system that covers the costs related to workers injured on the job. It was asked whether it would be possible for an employer to refuse to hire a worker who does not want to sign the waiver proposed by Mr. Villaume. The Old Order of Amish stated that every member of the Amish community will sign the waiver. Ms. Lofquist stated statistics are available, about the payments by Amish into the workers' compensation system, and she will put the additional information together for the council.

Commissioner Peterson stated DLI staff members and attorneys will work with Mr. Villaume and Ms. Lofquist in an effort to protect all workers, while respecting the religious beliefs of the Old Order Amish.

A motion was made by Tom Hesse and seconded by Shar Knutson to table the topic for future discussion. With no further discussion, all voted in favor and the motion carried.

d. **Spinal procedure costs and practices – Dr. William Lohman**

Dr. Lohman provided handouts to members of the council, copies of which are attached to these minutes. Dr. Lohman presented to the council an overview of spinal fusions and discussed data he had gathered regarding questionable outcomes and factors predictive of a poor outcome. Dr. Lohman noted HealthPartners, Medica, Blue Cross/Blue Shield and Washington State Fusion Guideline Comparison provide treatment details to divert patients into intensive treatment programs prior to considering them for fusion surgery. The state of Washington has created an "informed consent" form to provide patients with unbiased data to make a decision that Minnesota may be able to develop something similar for doctors and patients to use. Commissioner Peterson stated DLI is working with outside consultants to capture more data about fusion surgeries. Commissioner Peterson thanked Dr. Lohman for the preliminary study and noted more data/discussion will be forthcoming.

VI. Meeting schedule

The WCAC is scheduled to meet April 11. An announcement will be sent to the council in advance.

VII. Adjournment

Commissioner Peterson asked for a motion to adjourn. Larry Rice made the motion, seconded by Tom Hesse. All voted in favor and the motion to adjourn carried.

The meeting adjourned at 11:35 a.m.

Respectfully submitted,
Pamela McLaughlin
Executive Secretary