

Workers' Compensation Advisory Council
March 12, 2014
Minutes

Members attended

Elaine Garry
Jason George
Robert Ryan
Walter Frederickson
Shar Knutson
Robert Lux
Bill Blazar for David Olson
Dawn Soleta
Gary Thaden

Members excused

Russell Hess
Susan Olson
Ed Reynoso

Nonvoting members attended

Representative Tim Mahoney

Nonvoting members absent

Representative Andrea Kieffer
Senator John Pederson
Senator Dan Sparks

DLI staff members attended

Sandy Barnes
Kate Berger
Jon Brothen
Debbie Caswell
Kris Eiden
Ralph Hapness
Mike Hill
Wendy Legge
Chris Leifeld
Charlie McKinstry-Luepke
Karen Kask-Meinke
Clayton Overmire

Donna Olson
Ken Peterson
John Rajkowski
Jessica Stimac
Lisa Wichterman
Christine Wojdyla
Brian Zaidman

Visitors attended

Bonnie Belash; Licensed Acupuncturist
Sharon E. Belton; WCRI
Ray Bohn; WCRA
Evan Cordes; MCIT
Susan Giguere; MAPS
Kevin Gregerson; UCWCP
James Heer; WCRA
Steve Hollander; MARP
Bob Johnson; Insurance Federation of Minnesota
Brad Lehto; AFL-CIO
Representative Ben Lien
James McClean; Health Partners
Matt Marquis; Management Guidance, LLP
Phil Moosbrugger; Commerce
Andy Morrison; MN SISF
Laura Mundt; Mayo Clinic
Julie Olson; WCRA
Ray Peterson; MNAJ
Kathleen Picora; MN Physical Therapy Assn
Julian Plamann; Messerli & Kramer
Maureen Reger; Fairview Health Services
Joe Schindler; MHA
Deb Sundquist; Aafedt, Forde – MDLA WC
Anna Thompson; Medtronic
Elizabeth Wefel; Flaherty Hood PA

I. Call to order and roll call

The Workers' Compensation Advisory Council (WCAC) meeting was called to order by Commissioner Ken Peterson at 9:35 a.m. Roll was called and a quorum was present.

II. Announcements

Commissioner Peterson stated the department has met with representatives of the insurance industry and representatives from the Minnesota Hospital Association to discuss the Medical Cost Reimbursement Study report. Both parties have shown a willingness to look at some sort of a fee schedule along the DRG line. The department is trying to put together

a proposal and the hospitals are also working on putting some information together. Commissioner Peterson said the next phase would likely be getting a group of interested parties together to discuss options.

III. Approval of the agenda

Gary Thaden moved to amend the order of the agenda, with Rep. Tim Mahoney's presentation first, followed by Rep. Ben Lein and then the legislative update. Dawn Soleta seconded the motion. All voted in favor and the motion carried.

IV. Approval of minutes

Elaine Garry moved to approve the minutes for the Jan. 8, 2014 meeting. Bob Ryan seconded the motion. All voted in favor and the motion carried.

V. Agenda items

a. Legislative proposal to cap insurer administrative expenses

Mahoney distributed a copy of H.F. No. 2740, a bill he is authoring. He indicated the idea for the bill came out of the Medical Cost Reimbursement Study report presented at the Jan. 8, 2014, WCAC meeting. Mahoney indicated workers' compensation insurers have administrative expenses ranging from 12 to 88 percent of premium. He said health insurers had from 3 to 18 percent in administrative costs. Mahoney noted the Affordable Care Act (ACA) put into effect a 20 percent cap on administrative costs. Mahoney's proposal will require that insurers' administrative expenses do not exceed 20 percent of the insurers' expected total revenue. He strongly believes this cap is fair. One of the amendments he will probably add is that any savings have to go into rate reductions.

Peterson pointed out this bill does not amend Chapter 176. While it affects workers' compensation, it does not need the approval of the WCAC. The bill amends Chapter 179, which is a Department of Commerce statute, but Mahoney wanted to bring the proposal to the attention of the WCAC for comment.

Soleta asked Mahoney to define "total revenue" and what the 20 percent is, because there are a lot of "buckets" of costs in workers' compensation. Mahoney stated he was not sure about the buckets referred to by Soleta. He noted he had asked House of Representative research staff members with extensive workers' compensation experience to draft the bill to limit administrative expenses. He indicated the proposal is consistent with the ACA and should result in a dramatic reduction in administrative costs.

Bill Blazar thanked Mahoney for bringing his proposal before the WCAC; it is in a different statute but affects everyone involved in the workers' compensation system. He noted the work done by the department related to health care costs and presented to the WCAC in January put the advisory council on a path to begin a discussion about administrative costs. From his employer perspective, Blazar wants to deal with the health care cost portion of the equation first. If the WCAC can figure out a way to get through that and get to a place where those costs are more affordable, then he thought they will have a clearer view about what the administrative costs should be. He is concerned about a set percentage, especially because there are key differences between general health insurers and workers' compensation insurers. He was not sure whether 20 percent is too high, too low, right or wrong. He was confident that if the WCAC can deal successfully with the medical costs as they have started to do, then they should look at the administrative costs, because he thinks there should be savings on the administrative side. Blazar emphasized he appreciated the issue Mahoney raised; however, he thought the WCAC needs to deal with the health care cost issues first.

Mahoney responded that part of the reason for his proposal comes out of the department's study. The other piece is the number of complaints he gets at the Capitol from workers who get caught up in the system. He did not care how workers' compensation gets paid; he is frustrated when an injured person gets caught up in a system that is so difficult to maneuver. The businesses also get caught up in the system and have complaints that the system is complicated. He would prefer that the WCAC figure out the cost issues. As Blazar stated, the study was a good start, but Mahoney believes the WCAC needs to work faster.

Thaden thanked Mahoney for bringing his bill forward and respectfully requested he hold off on the bill for one year. The work the WCAC is doing with hospitals will, hopefully, reduce the need for bill scrubbers. He noted that when he saw the bill, he immediately figured out a way to get around it – and still have scrubbers – by having insurance companies require that hospitals contract with third parties to do the scrubbing and, thus, the cost would be under the

hospitals and not under the insurance companies. There are ways that people would still do things. Thaden thought there is a better way to get rid of a system that requires scrubbers, if that is the big cost. He said the WCAC did that on the fee schedule side and now they need to do it on the hospital side. Thaden noted they have been attempting to do this for the past few years and, frankly, have had a lot of resistance from the Legislature.

Mahoney stated this bill will have a hearing. He was happy to have the insurers, businesses or the WCAC come to talk about the work the WCAC has done and what the problems are with medical costs, hospitals and insurers. He will move his bill forward until he feels comfortable the WCAC will address this issue.

Shar Knutson noted this is one of a handful of issues the WCAC has talked about a number of times. Knutson would like to continue those conversations and, as Blazar mentioned, see if there is anything that can come about that might ease Mahoney's mind and help the WCAC find a pathway to some of those answers.

Mahoney noted that if those conversations take place, the hospitals, the insurers and the WCAC need to be in the same room.

b. Legislative proposal to repeal section 176.041, subd. 5b

Lien distributed a handout about repealing Minnesota Statutes § 176.041, subd. 5b, and some background information. This subdivision limits employees of North Dakota companies from filing workers' compensation claims in Minnesota when they are injured in Minnesota under certain circumstances. This change was brought to Minnesota by North Dakota workers' compensation officials in the 1990s, and it was enacted into law in 2005.

Lien stated the law was intended to only affect a small number of certain types of employees, such as pizza delivery drivers, from North Dakota. However, it has impacted a lot more employees than those initially cited by the North Dakota officials. Lien indicated the law puts Minnesota residents who work for a North Dakota employer at a disadvantage. It also puts Minnesota at a competitive disadvantage in terms of attracting employers to the state and is an issue for border cities. Lien noted he is bringing this issue to the table now for consideration as part of the WCAC 2015 bill. He introduced attorney Ray Peterson to answer questions.

Ray Peterson said he is a workers' compensation attorney and has represented injured workers for 34 years. He noted this statute harms individuals in border cities who would otherwise have a legitimate claim in Minnesota.

Thaden asked if this is a statutory or an enforcement problem. Ray Peterson and Lein responded it is an interpretation of the statute that works to the disadvantage of everyone on the Minnesota side; it is not an enforcement issue.

Jason George asked what happens if a worker lived in North Dakota and worked for a North Dakota contractor and they picked up a job in Minnesota and that employee worked in Minnesota and got hurt 12 days into the job. Ray Peterson said the worker would have no claim in Minnesota right now. Before this statute came into play, if you were hurt in Minnesota, you were covered by Minnesota workers' compensation. This carved out an exception if you had a North Dakota employer and an employee who was temporarily doing work in Minnesota. This applies to both North Dakota and Minnesota residents; they would have to go to North Dakota for benefits.

Soleta asked about the jurisdictional statutes in workers' compensation where an employee who is injured on the job has the right to choose from the statutes of the state in which they reside, the state in which they report to an employer or the state in which the injury occurred. Ray Peterson said they do have those rights, except under subd. 5b.

Robert Lux asked if the North Dakota companies with employees working in Minnesota are paying Minnesota premiums. Ray Peterson stated he did not know, but assumed if they are only working in temporary situations as defined by this statute, they are not paying based on Minnesota premiums because their exposure is only under North Dakota. If this subdivision were removed, the North Dakota employers' premiums would be based upon their exposure in Minnesota. That is part of the problem for employers now. There are employers in Moorhead, Minnesota, paying premiums based upon their exposure in Minnesota; the guy across the border in North Dakota, who is doing the identical work, can do it cheaper because his exposure is North Dakota only. That is not good for Minnesota businesses. It is easier for them to pack up and move across the border, and then we have lost a business. This law is not good for either business or labor.

Thaden suggested that, because Lein agreed to work on this during the interim, we could get someone from the North Dakota system to give their perspective. Commissioner Peterson said the department will look into the matter closer to next fall.

c. Legislative update

John Rajkowski, the department's legislative director, noted he was at the WCAC meeting two months ago to brief the members about the bill it approved that has now been introduced and will be heard tomorrow morning in the House Labor Committee. Mahoney and Sen. Dan Sparks are the authors. It is H.F. 2658 and S.F. 2220.

Rajkowski noted the League of Minnesota Cities had a proposal regarding reinsurance for certain post-traumatic stress disorder (PTSD) claims. After the WCAC approved the proposal, it was discovered the effective date of that provision should be Oct. 1, 2013, when the law covering PTSD became effective. This language will be amended onto the bill.

d. An in-depth look at workers' compensation medical costs in Minnesota

Sharon Belton from the Workers' Compensation Research Institute (WCRI) gave a PowerPoint presentation that provided an in-depth look at workers' compensation from the perspectives of costs, price and use, and also compared medical costs in various states. WCRI's research also identified trends. A copy of the presentation is available at www.dli.mn.gov/PDF/wcac/wcri_presentation_0314.pdf.

Ryan moved to adjourn at 11:27 a.m. Lux seconded the motion. All voted in favor and the motion carried.

Respectfully submitted,



Debbie Caswell
Executive Secretary