

Workers' Compensation Advisory Council
March 11, 2015 - minutes

Members attended

Gary Thaden
Jason Bartlett
Bill Blazar
Walter Fredrickson
Glen Johnson
Shar Knutson
Bobbi Pearson
Ed Reynoso
Robert Ryan
Jonathan Fletcher
Elaine Garry

Members excused

Russell Hess

Nonvoting members attended

Rep. Tony Albright

DLI staff members attended

Commissioner Ken Peterson Sandy Barnes
Karen Ryba
Kate Berger
David Berry Kathy Hanson
Jon Brothen Christine Wojdyla
Deb Heisick Darci Wing
Karen Kask-Meinke
Wendy Legge
Chris Leifeld
Mark McCrea
David Musielewicz
Donna Olson
Clayton Overmire
Jessica Stimac
Jim Vogel
Lisa Wichterman
Laura Zajac
Patty Rutz
John Rajkowski

Nonvoting members absent

Sen. John Pederson
Sen. Dan Sparks
Rep. Tim Mahoney

Visitors attended

Scott Brener – SFM
Dawn Carlson – Almeida PA
Evan Cordes – MCIT
Jeremy Estenson – Stinson Leonard Street
Susan Gigiere – MAPS
Natalie Haefner – WCRA
Erin Huppert – Allina
Brad Lehto – AFL-CIO
James McClean – Health Partners
Branden Miller – MWCIA
Philip Moosbrugger – Minnesota Department of Commerce
Laura Mundt – Mayo Clinic
Mary Nikolai – Messerli
Tom Poul – MASCA
Tammy Pust – Office of Administrative Hearings
Joe Schindler – MHA
Mike Scully – MAJ
Joe Twomey – MDLA
Dan Wolfe – MN APTA
Christine Zimmer – Winthrop

I. Call to order and roll call

Commissioner Ken Peterson called the meeting to order at 2:50 p.m. The commissioner apologized to the members and public for the rescheduling of the meeting and he acknowledged it may have disrupted schedules. He explained the parties for the DRG issue are trying to come to a settlement and there have been delays.

Roll call was taken and a quorum was present.

II. Announcements

The commissioner announced legislation was passed in 2013 that required the Department of Labor and Industry to pass opioid rules for the purpose of protecting injured workers from addiction to prescription drugs. DLI has been working with the Medical Services Review Board, trial lawyers and others. The rules will be published Monday, March 16. The rules require that if the commissioner receives 25 requests for a hearing, the department will have a hearing about the issue. If DLI does not get 25 requests, the rules will go into effect by June. If there is a hearing, most likely the rules will go into effect in September or October 2015.

III. Approval of the agenda

The commissioner made one change to the agenda, removing "Legislative Update," item (e). Bobbi Pearson moved to approve the agenda as amended and Glen Johnson seconded the motion. All voted in favor and the motion carried.

IV. Approval of minutes

Jason Bartlett moved to approve the minutes from the Jan. 14, 2015 meeting. Johnson seconded the motion. All voted in favor and the motion carried.

V. Agenda items

a. Diagnosis related group (DRG) hospital inpatient payment methodology

The commissioner addressed the DRG issue, explaining he hoped hospitals and insurers would come to an agreement prior to the meeting, which unfortunately did not happen. He also explained a few items leading up to the issue today. Rising medical costs have been a recurring issue, especially in the past 10 years. Studies by the Workers' Compensation Research Institute indicate increased hospital costs, both for outpatient and inpatient, have been driving increases in medical costs in Minnesota. Inpatient has been increasing at a higher rate, but both have seen increases. In 2012, DLI retained a consulting firm, CGI, that looked at Minnesota's and other states' systems. The report showed the trend throughout the country was use of a fee schedule, particularly a DRG fee schedule for inpatient hospital care, moving away from a charge basis, which we have in Minnesota. CGI recommended adopting a DRG system for Minnesota for inpatient care. In the most recent legislative session, money was appropriated to help insurers and hospitals to transition to a DRG system. This past summer, DLI hired a consultant, Optum, to assist. The first proposal was made by the hospitals at the end of June 2014.

Work on the issue was delayed by the death of Kris Eiden, DLI's deputy commissioner, and because the Ebola crisis forced the staff of the hospital association to focus on that issue.

The parties also have had a difficult time determining the correct data to use. In December and January, DLI got better data and negotiations between the parties picked up. Both sides were working together in good faith and offering proposals. There are several significant items remaining. DLI will continue to try to get an agreement that will work for both hospitals and payers. Also, the commissioner wants to make the injured workers' lives better and, at the same time, lower the premiums for the employers. If there is a last-minute agreement, the commissioner will call an emergency meeting. At the same time, if there is not an agreement, the law allows the commissioner of the Department of Labor and Industry (DLI) to proceed with rulemaking. Rulemaking is not as desirable as legislation and does not always include

100 percent agreement from the parties. However, it is a way of moving ahead, and what DLI will do is take the best information it has from both sides and move forward. DLI submitted a request for comments that was published in the *State Register* in the latter part of January and has received some comments. The process of rulemaking will take at least until the 2016 legislative session, and likely longer. It takes that long, or possibly longer, for rulemaking, but at least it would be done rather than coming back year after year trying to reach an agreement.

Pearson asked the commissioner if it's possible to hear from both parties so they can explain some of the issues that are delaying the agreement. The commissioner asked Scott Brener, SFM, and Joe Schindler, Minnesota Hospital Association (MHA), to speak to the group. Pearson asked if the two parties could explain where they stand on the issues now and if there are plans for an agreement.

Brener, SFM senior vice president, explained there are two major concepts to consider with the proposal. The first is creating system efficiencies with fewer disputes within the medical billing context, quicker payments, an expedited approach to payments and the documentation associated with medical billing. The quid pro quo to some degree is pricing. It can be argued that within the Minnesota's workers' compensation system there is a need for lower costs and lower price points within the hospitals for workers' compensation care. Most of the debate at this point has been focused on the price points – how can the payers save costs and how much can the hospitals be comfortable with in terms of a price point decrease. The payers have agreed for the most part on the methodology they would like to get to, which is the MS-DRG approach, the Medicare DRG coding process that many states have adopted. There is general agreement about where the price of those DRGs should be set as to Medicare, because it would be much greater than Medicare. The remaining issue with price point on the inpatient side is what hospitals should be paid for catastrophic cases. Bad burn cases, for example, are very expensive and would fall out of the MS-DRG model and be paid on a usual and customary basis. The disagreement is, at what level that threshold should be established. Both sides are getting closer. The second issue the parties have not spent enough time focusing on is the payment systems for outpatient and ambulatory surgery systems. These are different coding systems. The discussion has focused mainly on inpatient, but two-thirds of the issue is on the outpatient or ASC side of the equation. To do this correctly and completely, Brener believes all three of the fee schedules need to be addressed. Brener indicated the insurers have put forth a proposal the hospitals are still analyzing and are in the process of proposing something of their own. In conclusion, Brener stated that while the parties are getting closer, there is still disagreement about what those thresholds should be.

Joe Schindler, MHA vice president, addressed the group and indicated he believes 85 to 90 percent of the issues have been settled. The DRG system is a predictable payment system that providers would appreciate because their bills get held up in bill review and sometimes it can take as long as two years to get paid. In this agreement, he said, the hospitals can live with DRGs for most other payers, so we can do this on the workers' compensation side. This would work as long as the hospitals could send a claim electronically, receive payment within 30 days and not receive extra requests for documentation that seem to drag out the payments. This scenario leads to a predictable price that everyone can agree to. On the outlier side, for the most part there are only two or three hospitals, Hennepin County Medical Center, Regions Hospital and Mayo, possibly Abbott Hospital, that handle the very severe

cases, including burn cases. MHA tries to assist those few hospitals from losing too much money from those cases and the carriers have said they do not have issues paying for those cases.

Schindler also indicated they are close to settling the inpatient issues. He pointed out there are a couple of organizations he would have to consult because MHA does not represent all of the ambulatory surgical centers.

Bobbi Pearson asked if MHA anticipates reaching an agreement within the next couple of weeks, since time is of the essence. Brener and Schindler indicated they couldn't guarantee they could reach an agreement in that timeline. There are still two significant hurdles to overcome: the threshold amount and the outpatient payment issues. Pearson asked if the threshold claims are defined by type of injury or dollar amount of the claim. Brener said the discussions they have had has been based on the dollar amount per claim. He indicated that as far as percentages of the outlier cases compared with all cases, the threshold cases are 8 percent of the cases and 34 percent of the dollars.

Glen Johnson also clarified that most of the claims would fall under the DRG model of payment so we're trying to determine a better process for the industry, the workers, etc. He felt we should go forward based on what is best for the most because we cannot cover all situations by adopting this proposal. There will always be the exception outliers.

Gary Thaden pointed out that to get something passed this legislative session, a proposal would have to come to the council within days. Pearson asked the commissioner if the council should proceed with a recommendation for rulemaking if the deadline is not reached. The commissioner indicated this could be done at the next meeting.

The Commissioner asked to change the agenda to accommodate OAH Chief Judge Pust's schedule. Item (d) was moved and became the next item on the agenda. Also, Ed Reynoso was excused from the meeting to attend another meeting.

b. Legislative proposal – Office of Administrative Hearings contracting with retired OAH workers' compensation judge

Tammy Pust, OAH chief judge, addressed the WCAC regarding a proposal to contract with retired OAH workers' compensation judges, in light of the pending retirement of several judges. The proposal would allow OAH to call upon the experience and skills of these retired judges to preside at cases on a contract and as-needed basis. The proposal is to grant an exception so OAH may contract with former judges as a way of retaining their expertise, addressing OAH's scheduling needs and saving money for the state.

Glen Johnson asked if there is a plan in place to continue to train new judges during the contracting period. Pust indicated OAH will continue to recruit new workers' compensation judges, but it takes time to hire and train them. This proposal will ensure the state does not lose this valuable resource.

Dean Salita, a representative of the Minnesota Association of Justice representing the plaintiffs' bar, and Joe Twomey, a representative of the Minnesota Defense Lawyers Association representing the employer/insurers bar, spoke to the council in support of the proposal.

Pust said the bills, S.F. 1438 and H.F. 1538, have not yet had a hearing.

Thaden moved to approve the proposal and Johnson seconded. A vote was taken and the council approved.

c. Legislative proposal – Workers' compensation computerized system modernization project

Cindy Kevern, MN. IT Services @ Labor and Industry chief information officer, presented slides to the group outlining the computerized system modernization project for work-related injuries and claims in Minnesota. The goal of the modernization project is to create efficiencies, reduce time for transactions, improve electronic interface for the injured workers and increase reporting capabilities. The improved system will be easier to support and maintain for future enhancements.

The commissioner explained the rough estimate cost is \$3 million annually for the next four years. He will be asking the Legislature for funding at the estimated amount by the end of this month. If the department sees the cost of the project will be substantially more or less, the commissioner will report that to the council. The funding for the project comes from the Special Compensation Fund maintained by the department.

A motion was made by Shar Knutson to approve and was seconded by Thaden. All voted in favor and the proposal was approved.

d. Legislative proposal – Electronic billing and payment transactions proposal

Kate Berger, DLI Office of General Counsel, explained the draft language to the council members. She said electronic billing is routinely done in the group health setting, but has not been as successfully done by the payers and the providers in the workers' compensation area. The parties involved agree improvements can be made to the current system and electronic submissions will make the process run more smoothly.

Glen Johnson brought up another aspect to the electronic transactions and asked if injured workers are notified they are eligible for direct deposit payments made to their financial institution rather than receiving a paper check. The commissioner responded the department will be more proactive in promoting this option, including putting it on the DLI website. The commissioner also indicated language could be added to the proposed legislation that would require payers to provide electronic funds transfer of injured workers' monetary benefits to their financial institutions if requested by the injured worker. Johnson made a motion to amend the language. The motion was seconded; the members voted in favor of the motion.

Jason Bartlett questioned the proposed language that would require each workers' compensation payer to include language on their website regarding workers' compensation transactions. He indicated self-insured employers that have a commercial business would have a problem having to include workers' compensation information while they are trying to sell products on their websites. Elaine Garry agreed and asked if an employer is self-insured, could this information be on the website of the administrator rather than the commercial employer. Bartlett pointed out the current proposal requires the payer have this language prominently on its website.

Bill Blazar wanted to make certain the employer be given sufficient time to implement the changes proposed in the language. Blazer also clarified the three proposed changes to the

language the WCAC is considering. First, on line 17 after “on its website,” add “or otherwise provide the information.” Second, add that the injured worker will be notified that electronic funds transfer of payment is available as an option, language the council has already approved. Third, there is a proposed change to the draft language is to lines 32 and 39 that refer to “most recently approved version of the ASC X12N 275.” The concern identified was the time needed by both parties to implement it. Blazar recommended amending the language so that when there is a new version of the ASC X12N 275, parties will have one to year to implement.

The proposed changes were moved by Blazar, seconded and approved by the council.

e. Workers' Compensation Summit – June 17 and 18, 2015: Approval of expenses for WCAC members attending (registration, lodging and travel)

Chris Leifeld, DLI assistant commissioner, asked for the WCAC to approve expenses for WCAC members and alternates to attend the summit, June 17 and 18. He asked the members to notify the department of their decision about whether to attend.

Robert Lux moved to approve the motion, there was no discussion and the motion carried.

There was no further business to discuss. Knutson moved for adjournment, Blazar seconded the motion to adjourn and the motion carried. The meeting was adjourned at 4:25 p.m.

Respectfully submitted,
Patty Rutz
Executive Secretary