

Workers' Compensation Advisory Council
June 8, 2011
Minutes

Members

Elizabeth Shogren
Edward Reynoso
Gary Thaden
Mike Bredeck
Mike Wilde (for Glen Johnson)
Rep. Andrea Kieffer
Rep. Tim Mahoney
Robert Lux
Ryan Holmes
Senator Ken Kelash
Senator Ted Lillie
Shar Knutson
Susan Olson

Absent members

David Olson
Glen Johnson
Wayne Ellefson

Visitors/DLI staff members

Ann Marie O'Neill
Brad Lehto
Brian Zaidman
Carey Demaris
Charlie Bierman
Chris Leifeld
Dan Wolfe
Dawn Carson
David Berry
David Wulff
Donna Olson
Elizabeth Wefel
Gary Hall, assistant commissioner
Jason George
Jessica Stimac
Jim Vogel
John Rajkowski

Visitors/DLI staff members

Karen Ebert
Karen Kask-Meinke
Kelly Rodieck
Ken Peterson, commissioner
Kevin Gregerson
Lisa Wichterman
Matt Marquis
Mark McCrea
Melissa Parish
Mike Hill
Pamela McLaughlin, rec.sec.
Ray Bohn
Ros Oteg
Suzanna Kennedy
Tim O'Malley
Tom Hesse
Wendy Legge

Opening

The meeting was called to order by Commissioner Ken Peterson at 9:45 a.m. Commissioner Peterson welcomed the council members and thanked visitors for attending. Instead of roll call, council members introduced themselves. A quorum was present.

Mike Bredeck made a motion to approve the minutes from the March 9, 2011 meeting. Ed Reynoso seconded the motion. All voted in favor; it passed on a voice vote.

Commissioner Peterson made a motion to approve the agenda as presented. No objections were made; the agenda will stand as approved.

Announcements

- **The 2011 Workers' Compensation Policy Summit** (planned for mid-September) will not be undertaken this year due to the uncertainty surrounding funding. We didn't want the resort to hold a reservation for an unknown length of time.
- **Assessment of insurance companies:** DLI is in the process of its annual assessment to cover the administrative costs involved in the operation of the workers' compensation system (DLI, OAH, Workers' Compensation Court of Appeals, supplemental benefits, second-injury fund (closed in 1992 and 1996). DLI is in the process and a report is due shortly. Assessment costs are expected to be reduced by a few percentage points.

- **Legislative review:** The WCAC bill, *Legislation on OAH Hearing and Language on Remodeling and Pharmacy Fee Schedule* was passed unanimously in the Senate and almost unanimously in the House. Some of the key changes the bill put into place include: exempts certain conferences from the requirement to block-assign judges; ensures formal *de novo* hearings are presided over by a judge other than the one that held settlement conferences and informal proceedings; and speeds up the timing for settlement conferences and for hearings by requiring them to be scheduled within a specific number of days after the petition has been filed. It also makes settlement conferences mandatory, except in limited circumstances; it speeds up the process by requiring pretrial statements be filed within certain specified time limits; it limits the use of contract judges in workers' compensation cases to disputes where the regularly appointed judges are disqualified due to conflicts; it increases from \$60,000 to \$75,000 the amount permitted for remodeling the residence of a permanently disabled employee and streamlines the remodeling approval process in a way that will save money on architect fees; it authorizes the Department of Labor and Industry commissioner to change the benchmark measure for calculating maximum fees for prescription drugs (the benchmarks used were due to be discontinued in September and an alternative was needed, and the statute now allows the commissioner to decide the benchmarks); it appropriates funding for an electronic case management system at OAH; and, as part of that provision, it asks one labor and one business representative be appointed to review proposals for this computerized case management system. Commissioner Peterson stated the Finance Committee wanted outside review of the program and OAH has agreed. Both Shar Knutson and David Olson have agreed to serve on the review panel. Commissioner Peterson thanked the two bill sponsors, Rep. Kiefer and Sen. Lillie, and its two co-sponsors, Sen. Kelash and Rep. Mahoney, for their participation and for presenting this bill to members of the Legislature.

Discussion

- Gary Thaden asked about the status of one item for consideration to coordinate OAH and attorney schedules, which was withdrawn. Assistant Commissioner Gary Hall confirmed the proposal was withdrawn. OAH Assistant Chief Judge O'Malley stated the office is currently coordinating schedules with attorneys. A series of meetings have taken place and one is scheduled in a couple of weeks with members of the Bar to discuss all of this legislation, including some of the internal changes made to address the settlement conferences timeframe and pretrial statements, and so on. A big part of its ability to accommodate that more efficiently will be the case management system, which will be put into place approximately a year out. In the meantime, OAH schedulers have been re-instructed to make sure they always look at the calendars the attorneys submit and to make sure they try to coordinate. Occasionally, due to statutory time limits, coordination of schedules cannot be accommodated. If it's with a larger firm, someone usually can cover for them; if it's with a sole practitioner, OAH still tries to work it out with them.
- **Contingency planning:** Commissioner Peterson stated it is hoped there will be a resolution to prevent a state government shutdown beginning July 1. All government agencies are making plans and DLI has submitted recommendations about which items the agency believe are critical to continue – the core items that are essential to the operations of government, to Minnesota Management and Budget (MMB). No response has been received at this time. Critical services have been identified as checks to injured workers of uninsured and/or bankrupt employers. DLI wants to make sure those injured workers continue to receive their checks.

Discussion

- Gary Thaden asked whether OAH has requested that workers' compensation hearings and settlement conferences be considered "critical" to continue during a government shutdown. Rep. Mahoney responded that a list of services provided by OAH has been submitted to MMB. This service could be a "critical priority three," which means no hearings for one week to 30 days. There are some decisions that need to be made within a week or so. When a decision is known, communications for that plan will be sent to members of the Bar and all clients, with a status report about the situation. Appointments are being scheduled through September to prevent any gaps on the calendar that could have been used.

- **Highlights from the Workers' Compensation Research Institute's Medical Benchmarks for Minnesota**, presented by Brian Zaidman, DLI Research and Statistics: The Workers' Compensation Research Institute (WCRI), located in Boston, Mass., studied 16 states, including Minnesota, whose data was used in comparison of medical costs in 2008 and 2009. The report is available by request from DLI's Research and Statistics at dli.research@state.mn.us. The data focused on claims with lost-time away from work greater than seven days in a 12-month timeframe. WCRI's full report is 250 pages, which is the model used to deconstruct medical costs, and includes price utilization, indices used to hold costs constant. By providers, services hospital, non-hospital. The report is a huge volume of statistics. The life of a claim varies in length – some are 18 months and some are six months, for a 12-month average. Some of the claims are three times older than other claims. Another group of claims is averaged over a 36-month period and most of the claims used in this presentation are averaged over a 24-month time period. Minnesota's costs are slightly below the median (of all 16 states) for the 12-month and 36-month claims. Overall, Minnesota's medical costs per claim are not wildly out of range with the other 15 states. During six years, Minnesota's medical costs have grown 40 percent per claim, for more than seven days away from work. There are a lot of variables that impact the data.
 - **Medical costs per claim, trends, component shares and payment** charts show hospital inpatient/outpatient, nonhospital, chiropractor, and unclassified claims and payments. Fewer people use hospitals, but hospitals account for more costs. Minnesota's median claims/payments are higher than for the 12-month timeframe.
 - **Nonhospital provider services (higher cost-related items were selected) evaluation and management (office visits)** – Minnesota is right at the median; **physical medicine, major surgery** is below the median; **radiology** is above the median.
 - **Hospital provider services:** total services are 9 percent above the median, inpatient services 8 percent above and outpatient services are at the median.
 - **Inpatient payment per episode cumulative percent change:** an increase was shown from 2003 through 2004 to 2008 through 2009.
 - **Inpatient payments per episode cumulative** shows Minnesota is 33 percent below the median, but the growth increased per episode (hospital check in).
 - **Surgeries (24 months) same, the number of claims (nonhospital charges for major surgery):** Minnesota is slightly below the median. **Inpatient surgery:** Minnesota is higher than the median.
 - **Hospital inpatient services for neurologic spine pain cases:** inpatient surgery in Minnesota is much higher than the median. This data is consistent for both WCRI surveys.
 - **Stability of hospital inpatient service utilization: at 24 months, using more than the median, near 10 percent. When an inpatient: what 58 to 59 percent gets surgery? Overall, Minnesota has the highest percentage, even though medical costs are not the highest.**

- ***Trends in hospital payments for inpatient episodes:*** Minnesota costs are below the median, even though the median grew. For surgery episodes (the average payment 24-month went down, but the median increased). Higher volume of use (hospital check in), but at a lower cost (utilization).

Discussion:

- Commissioner Peterson has no recommendations at this point, but this statistical information may be helpful when that time comes.
- Rep. Mahoney: Hospital inpatient costs rose 32 percent from 2006 through 2007 to 2008 through 2009, *see figure 72*. This increase appears to raise a “red flag” of concern. Brian Zaidman stated the data fluctuates significantly up and down over the years for all states, but the increase has not been sustained.
- Bettye Shogren attended a meeting where these benchmarks were discussed in detail. The Minnesota data measures increase in cost for seven days, not for all services provided in Minnesota. This compilation of data is a picture of what WCRI has established as a standardized case (missed work for seven days), but generally, the data was not found valuable to correlate actual medical costs in Minnesota.
- Overall, medical costs are below the median, even though services and surgeries have increased. Trends in hospital payments for inpatient episodes are below the median in 2007 through 2009.
- Rep. Mahoney asked whether a companion study has been done to look at outcomes of dollars spent and returning the employee to work. Zaidman responded that durational claims show Minnesota is lower. WCRI has surveyed state worker outcomes (some states, not necessarily Minnesota).
- Sen. Kelash questioned the value of the WCRI trend lines with so many variables. What can be gleaned over time? Zaidman responded that another year’s report will show whether there is consistency in rising costs or stabilization. He agreed the value is what can be learned in longer-termed trends.
- Gary Thaden: This is the second time Minnesota has participated. Employees who have returned to work don’t show up in the report. Workers returned to work within seven days aren’t credited in the report.
- Bob Lux asked whether Minnesota has a database showing medical cost trends. Zaidman stated DLI looks at overall medical costs within the workers’ compensation system, but no hospital and nonhospital costs are included, at this point. The insurance industry is creating its own medical database with much more detail. DLI is looking forward to next year, when more complete databases are expected from the Minnesota Workers’ Compensation Insurers Association, Inc. (MWCIA) and the National Council on Compensation Insurance, Inc. (NCCI).
- Bettye Shogren: The workers’ comp report is a “gold mine” of information regarding the types of claims and which industries are affected, it has more relevant information to measure ourselves year-to-year. Workers’ comp and work injury report trendlines are shown by industry.
- Ryan Holmes: Surgeries are increasing. They must be the right kinds of surgeries being done because the workers are getting back to work within seven days and costs are reduced.
- Commissioner Peterson: We don’t have specific information about returning those who have had back surgeries to work.
- Bettye Shogren: We do have treatment parameters that Minnesota physicians pretty much adhere to and the insurance company rigidly enforces.

- Gary Thaden: Do we know for sure that the insurance company adheres to those parameters?
 - Bettye Shogren: Insurance companies will not pay for surgery if it is outside of the treatment parameters, so most of the physicians want to get paid and will follow them.
- **Workers' compensation medical disputes**, presented by David Berry, DLI Research and Statistics: Dispute rates are increasing in Minnesota, with medical request disputes leading the way. Medical disputes are also filed on claim petitions. A high proportion of medical disputes, especially those filed on claim petitions, have a primary liability or causation defense. It has been shown that medical disputes delay medical service delivery. All statistics by injury or policy year are developed to a uniform claim maturity for comparison over time. Berry's report shows the policy years effective 1997 through 2008. All DLI trends in cost per claim are adjusted for average wage growth.
 - **Benefits per claim, averaged over all claims (insurance data):** Indemnity claims reflect an increase of 39 percent; medical requests and rehabilitation requests have increased by 94 percent.
 - The indemnity had a hefty increase overall of 39 percent from 1997 through 2008, but stable since 2003.
 - Total numbers of paid claims (DLI data): medical-only claims have increased 44 percent; however, indemnity claims have been reduced 37 percent.
 - **Disputes have been rapidly rising:** Any dispute an increase of 40 percent, claim petitions increased 40 percent, discontinuance disputes increased 21 percent, medical requests have increased 144 percent and rehabilitation requests have increased 87 percent. The number of claims is reducing, discontinuance disputes have dropped. The rate of medical rehabilitation requests are increasing significantly.
 - **The percentage of paid indemnity claims with award on stipulation (DLI data)** shows an increase in dispute rate has been substantial. In injury-years 1997 through 2009, the percentage of paid indemnity claims with award on stipulation has increased from 17.2 percent to 24.5 percent, which is a 42 percent increase. This has continued to rise from 2003 with an increase of about 20 percent. We've reached the point where fully one-quarter of our paid indemnity claims are ending with award on stipulation. There has been a very large increase in the average amount of award on stipulation: from 1997 through 2009, increase of 64 percent; from 2003 through 2009, increase of 33 percent. (With the caveat: The older claims matured earlier and the projection factor was less. The estimation factor increases with more recent awards.)
 - **The average stipulated benefits per paid indemnity claim** in 1997 through 2009: There is a 133 percent increase after adjusting for average wage growth in the amount of benefits paid in the form of a stipulated lump-sum on the average indemnity claim.
 - **To what degree do the increasing stipulation awards reflect medical amounts?** The data is suggestive, but not known. DLI's data about awards on stipulation does not distinguish between indemnity and medical components. Medical disputes are increasing rapidly. Insurance data average indemnity claim rate, since 2003 has been stable, but average medical claims have increased.

- **DLI's Dispute Issue Tracking Study:** Former Assistant Commissioner, Safety and Workers' Compensation Division, Patricia Todd, authorized DLI's Dispute Issue Tracking Study, which includes data about medical and rehabilitation request disputes from 2003 and 2007, as well as claim petition disputes from 2003. The data was coded from imaged documents in DLI's database and an electronic log (available on DLI's website).
- **Nature of injury** for both medical disputes that were filed on medical requests (from 2003 and 2007) and medical issues that were filed on claim petitions (from 2003): The most common category of injury is sprains, strains, tears and pain. Peripheral nerve disorders, including carpal tunnel syndrome, is the second most common category of injuries.
- **Service at issue** is the service the claimant wants the insurer to pay for. The first columns show the same three dispute categories seen previously, showing the percentage of disputes. The last three columns show the percentage of all issues. The breakdown is different for claim petition disputes and medical request disputes. The sum of percentages add up to more than 100 percent because a dispute may have more than one point in dispute (insurer defense). Medical request disputes are handled by DLI's Alternative Dispute Resolution unit and are often resolved early on, before an insurer defense is begun.
- **Final events:** For medical request disputes, Minnesota law requires DLI must certify a dispute exists (not resolved) before an attorney is charged for fees. Approximately 20 percent ended in an award on stipulation. For medical request disputes filed on claim petitions, 74 percent ended in an award on stipulation.
- **Time to final event:** For medical request disputes from 2007 and claim petition medical disputes from 2003, the mean and the median time lines are outlined.

Discussion:

- Mike Wilde asked whether and Berry confirmed that the percentage of disputes is rising, but the number of claims is not.
 - Commissioner Peterson: Any idea why one quarter of the indemnity claims end with award on stipulation? Berry responded that it connects directly with increase in dispute rates. The two trends are directly connected.
 - Commissioner Peterson: In 50 percent of the cases (the median), it was noted the more complicated cases take almost three times as long to resolve compared to the cases resolved early on.
 - Commissioner Peterson stated the length of time to resolve these claims hurts both sides: injured party and the employer.
- Commissioner Peterson thanked both Brian Zaidman and David Berry for their presentations.

Conclusion

Commissioner Peterson stated the next WCAC meeting will be Aug. 10, 2011.

Adjournment

Senator Lillie made a motion to adjourn at 11:25 a.m. Edward Reynoso seconded the motion. All voted in favor and it was passed on a voice vote.

Respectfully submitted,

Pamela McLaughlin

Pamela McLaughlin, executive secretary