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MINNESOTA DEPARTMENT OF LABOR & INDUSTRY

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Workers' Compensation Advisory Council
June 11, 2014
Minutes

Members attended
Bill Blazar
Elaine Garry
Russell Hess
Brad Lehto
Robert Lux
Susan Olson
Dawn Soleta
Gary Thaden

Members excused
Robert Ryan
Glen Johnson

Members absent
Walter Frederickson
Ed Reynoso

Nonvoting members attended
Representative Andrea Kieffer
Representative Tim Mahoney
Senator Dan Sparks

Nonvoting members absent
Senator John Pederson

DLI staff members attended
Sandy Barnes
Kate Berger
David Berry
Ralph Hapness
Mike Hill
Lorelei Hoyer
Wendy Legge
Chris Leifeld
Mark McCrea
Charles McKinstry-Luepke
Donna Olson
Clayton Overmire
Jessica Stimac
Christine Wojdyla
Laura Zajac

Visitors attended
Ray Bohn
Scott Brener, SFM
Evan Cordes, MCIT
Eric Dick, MMA
Susan Gigiere, MAPS
Anne Green, WSI
Shep Harris, MCIT/MSIG
James Herr, WCRA
Bob Johnson, Insurance Federation of Minnesota
Bryan Klipfel, WSI
Brian Martinson, Senate
Micki Mathiesen, SFM
Brandon Miller, MWCIA
Steve Novak, Trean
Ray Peterson, MNAJ
Joe Schindler, MHA
Cindy Smith, WCRA
Deb Sundquist, MDLA (Aafedt Forde)

I. Call to order

Commissioner Ken Peterson called the meeting to order at 9:39 a.m.

II. Announcements

Commissioner Peterson acknowledged Rep. Andrea Kieffer will be resigning from the Workers' Compensation Advisory Council (WCAC) and thanked her for her three-and-a-half years of service. Her expertise and work with the WCAC were greatly appreciated.

Commissioner Peterson noted there was not a quorum present for voting purposes. The agenda was approved by consensus. The minutes from the March 12, 2014, meeting will be held over for approval at the next meeting.

III. Agenda items
a. Continued discussion of Minnesota Statutes § 176.041, subd. 5(b)

Commissioner Peterson stated Rep. Ben Lien, from Moorhead, Minnesota, was at the March 12, 2014, WCAC meeting to discuss his proposal to repeal Minnesota Statutes § 176.041, subd. 5b. This statute allows North Dakota employers that operate on a short-term basis in Minnesota to just be insured with North Dakota and have their employees covered by North Dakota benefits. Bryan Klipfel, director of the North Dakota Department of Workforce Safety and Insurance (WSI), Anne Green, general counsel, WSI, and Steve Novak, consultant from Trean Corporation, were introduced to give an overview of how the workers' compensation insurance system works in North Dakota and to answer any questions.

Klipfel stated the Minnesota statute works well and permits commerce across the border. North Dakota's economy is doing very well. WSI's business has grown dramatically due to the financial activity in the state. Five years ago its earned premium was about $172 million. This year its earned premium will be about $360 million. Historically, it has dealt with 20,000 employers and would have about 20,000 filed claims. In the past few years, it has been insuring about 25,000 employers and projects it will have about 26,500 filed claims this year. Klipfel indicated the purpose of WSI is to care for the injured workers; it also works hard to further commerce in the state.

Klipfel reported WSI is a monopolistic state agency with 280 full time and temporary employees working at the agency. The governor appoints the WSI director. According to Klipfel, there are advantages to being a monopolistic state. However, when workers cross the state line, there can be issues. To address some of the temporary and incidental coverage issues, WSI has an all-states policy available that provides coverage if someone works out of state for up to 30 days. This statute benefits businesses that occasionally cross the border throughout the year.

Green stated that since this statute was passed, the process has worked well. The addition of this Minnesota statute in 2005 provided a greater equity between Minnesota employers whose employees work temporarily to conduct business in North Dakota, for which a statutory provision already exists in North Dakota. The addition of the statute in 2005 provided a balance for those North Dakota employers that were moving across the border into Minnesota to conduct temporary and incidental operations in Minnesota, which is defined as 15 consecutive calendar-days or 240 hours in a calendar-year. Employers in both Minnesota and North Dakota are required to insure in the other state if the employer has employees working beyond the narrow parameters of the temporary and incidental exposures. This is a way for commerce to move across both borders and the employers do not have to double cover for workers' compensation insurance in both jurisdictions. Green distributed an informational handout that provided a North Dakota/Minnesota system overview, a copy of which is attached to these minutes.

Gary Thaden asked Green to outline the North Dakota statute that covers Minnesota employers that work occasionally in North Dakota. Green responded the North Dakota statute provides that a Minnesota employer can come into North Dakota with its existing Minnesota workers' compensation coverage and not purchase North Dakota coverage until any one of its employees earns 25 percent of their wages in North Dakota or the gross annual payroll in North Dakota exceeds 25 percent of that employer's gross annual payroll. Thaden asked about a Minnesota employer that sends a Minnesota employee to North Dakota to work for one day and the employee gets hurt. The employer does not have to buy a North Dakota policy. What benefits does the employee receive? Green responded that from her experience and from the facts given to her, that employee would receive Minnesota benefits.

Commissioner Peterson asked how many employees are injured and are covered by these provisions every year. Green replied that what she has is the number of claims accepted by WSI where the place of injury is Minnesota. They do not have the ability to track down claims that were accepted based on Minnesota Statutes § 176.041, subd. 5b. Commissioner Peterson asked Green to provide DLI with information about to the number of claims accepted by WSI where the injury occurred in Minnesota, if possible.

Brad Lehto noted that when this statute was reviewed by the WCAC in 2004, it was described as something that would cover people like pizza delivery drivers. He asked whether that was correct. Green responded that the focus of the proposal was to deal with those incidental exposures on the other side of the border and was not intended in any way to replace coverage for exposure that is more than temporary and incidental. From both perspectives they want Minnesota-based employers that have significant contact in North Dakota to buy North Dakota coverage. Likewise, they want North Dakota employers to not find themselves in an uninsured status in Minnesota when their exposure exceeds what is permitted by Minnesota statute.

Klipfel commented about the benefit structure. According to the Oregon study, North Dakota has the lowest premium rates in the nation. Some have claimed that the low rates are possible at the expense of injured workers. Klipfel said that is not the case. He gave a wage-loss example. Two years ago, because of the statewide average weekly wage (SAWW) increase, injured workers in North Dakota received a 9.9 percent increase in their indemnity payments. Last year, because the SAWW went up again, they received a 10.3 percent increase in their indemnity benefits. This year, it looks like it will level off somewhat and be 4 or 5 percent. You are looking at a 25-percent-plus increase in indemnity payments for injured workers in North Dakota. Klipfel indicated things are a lot different than they were in 2004.

There was a discussion about the number of claims affected by these jurisdictional laws. Deputy Commissioner Kris Eiden will try to get records of any employees injured in Minnesota and paid by North Dakota. Thaden asked whether there would be claims in Minnesota's system that took place in North Dakota, but Minnesota paid. Commissioner Peterson said Minnesota has those claims; the issue is whether the data can be separated out. He indicated staff members would look into this.

Russell Hess asked what happens on the borders with other states. Commissioner Peterson responded that we do not have a similar statute addressing the other border states. Novak noted that a border with a monopolistic state is different because the insurers in Minnesota cannot go into North Dakota, and North Dakota cannot do business in Minnesota. If you have a claim in Iowa, the insured will just pay the claim in Iowa benefits and look at the payroll to support that claim. North Dakota has reciprocal agreements with its other borders states – Montana and South Dakota – where when a North Dakota employee goes into South Dakota for a defined period of time, they agree to suspend the South Dakota statute. North Dakota brings its employees in to do a job and then they leave. North Dakota also has that arrangement with Montana, and Montana can come into North Dakota and do the same. Commissioner Peterson asked if those are similar statutes to Minnesota's. Novak responded they were not; they have six-month terms. Novak stated it is his understanding that Minnesota law does not allow reciprocal agreements.

Robert Lux recalled from the most recent meeting that one issue was that the benefits in North Dakota were not as good as Minnesota's. According to the summary distributed by Green, that may no longer be the case. He asked for a description of the benefits of a monopolistic system versus Minnesota's competitive system. Green responded she could not speak to the full spectrum of Minnesota benefits, but based on the handout, there are many similarities. For many years, North Dakota's SAWW lagged behind a number of states. This year, for perhaps the first time, North Dakota's SAWW will exceed Minnesota's. Medical benefits are paid for the life of the claim in both states. Temporary total benefits are capped at 104 weeks in North Dakota and 130 weeks in Minnesota. North Dakota has the ability to extend those 104 weeks under certain circumstances. North Dakota has substantially similar benefit levels in terms of what the injured worker is able to procure for the life of an injury.

Novak noted the WSI monopoly in North Dakota provides three basic functions. WSI provides coverage and pays claims; it is the regulator that fines uninsured employers; and it adjudicates any claim disputes. WSI is also the ratemaker and acts in North Dakota as the MWCIA does in Minnesota. WSI has 100 percent of the data, so its actuaries are the ones who develop the rates that are presented to the governor's office. This creates issues for them, but there are also efficiencies because all of the regulation and provision of workers' compensation are in the same agency. Novak stated Klipfel told him yesterday that WSI's expense ratio is around 8 percent. There is no commission paid to agents, so it is a direct environment. WSI is basically running a $370 million insurance company.

Lehto asked whether North Dakota allows "mental-mental" claims. Green's response was "no." Lehto asked how North Dakota addresses permanent total injuries. Green responded they have a permanent total statute with certain severities of injuries eligible for permanent total benefits.

Klipfel followed up on the post-traumatic stress disorder (PTSD) and mental-mental discussion. WSI has worked on PTSD during the past couple of sessions, but the North Dakota legislators have not approved it because they do not like it. Every four years, WSI has a performance evaluation done where an outside consultant comes in and PTSD is one of the elements they are looking at to see if there is a way WSI can cover that. He has been talking to a couple of legislators and they are looking at maybe starting with PTSD for emergency responders. WSI's benefit structure goes through their Legislature and the Legislature has to approve the benefits.

Thaden requested DLI put together a benefit schedule comparison between the two states and work with North Dakota so the WCAC has some idea of the benefits and about how long it takes to get into the process and get benefits. If possible, Thaden requested the insurance rates between the two states also be compared. Commissioner Peterson said they would try. Klipfel noted the Oregon study is done every two years and it shows the rates of all of the states.

Commissioner Peterson announced that while Lein was unable to attend the meeting, Ray Peterson was present if anyone had questions for him. There were no questions. This item will be put on the WCAC agenda later this year to decide if the WCAC wants to recommend passage of any legislation.

Lux asked and Klipfel confirmed the administrative costs for WSI's workers' compensation program are 8 percent. Lux asked how that compares to Minnesota. Commissioner Peterson said it varies from company to company and DLI looks at the averages. Peterson noted the amount of administrative costs is a concern of Rep. Tim Mahoney and that he proposed legislation that would cap the administrative costs at 20 percent; it did not pass this year.

b. Legislative update

John Rajkowski, the department's legislative director, was introduced to give a summary of the legislation from this year's session. Rajkowski noted the WCAC housekeeping bill was passed by the Legislature and the governor signed it into law as Chapter 182. That bill included several "unsession" repealers. It also included a provision that would allow multiple claims of PTSD arising from a single event to be aggregated for the purposes of reaching the Workers' Compensation Reinsurance Association's retention limit.

Rajkowski also advised that Mahoney was successful in getting funds from any excess surplus in the Minnesota Workers' Compensation Assigned Risk Plan (MWCARP) allocated to the department. The Legislature and previous governors have transferred money from the MWCARP to the General Fund from time to time over the years. Mahoney authored language instructing the commissioner of Minnesota Management and Budget to transfer $4,820,000 of any excess surplus to the commissioner of the Department of Labor and Industry (DLI), assuming funds remain after certain other transfers take place. If there is a surplus available in 2016, that would happen again by June 30, 2016. It is important to note the commissioner of the DLI must use this money to reimburse parties for costs related to reform of the workers' compensation system. The law provides that the commissioner may spend this money only after the WCAC approves a new system, including a Medicare-based diagnosis-related group or a similar system for payment of workers' compensation inpatient hospital services.

Commissioner Peterson stated he spoke with the Department of Commerce Commissioner Mike Rothman; Rothman said they will certify whether a surplus exists sometime in June 2015. DLI will come up with some guidelines and bring them to the WCAC before that time, to discuss how the money would be distributed, assuming there is a surplus. Commissioner Peterson invited suggestions from the members.

Mahoney noted none of this actually works until the participants, the insurers and the hospitals and a variety of other people, actually come together and come up with a MS-DRG or similar type program. Mahoney indicated such a system should help eliminate many of the complaints that have been around here for awhile and help reduce administrative costs.

Bill Blazar noted it looks like there are transfers out of the fund to a couple of other places as well and asked if there is a priority. Rajkowski said there was and that funds are distributed in the order presented in the legislation. As a result, noted Rajkowski, DLI may not receive any funds even if the MWCARP has an excess surplus.

c. *2012 Workers' Compensation System Report*

David Berry presented an overview of the *2012 Minnesota Workers' Compensation System Report*. Copies of the report were included in the members' packets and made available for visitors. The report is available online at www.dli.mn.gov/RS/Pdf/wcfact12.pdf.

Commissioner Peterson announced DLI is working on medical cost negotiations. The Minnesota Hospital Association has assured DLI it will provide a proposal in the next few weeks. DLI has also received some ideas from the insurance companies. DLI is in the process of hiring a consultant for assistance in the development of a DRG-based system and hopes to have the contract finalized by next week. Commissioner Peterson will be involving the WCAC after DLI gets proposals from all parties and figures out where to go from there.

The next meeting is set for Aug. 13 and will be canceled unless a need arises for it. The Oct. 8 meeting will go forward and it is anticipated that discussion of medical cost reimbursement reform will begin.

Lehto brought up the issue of individuals having an opportunity to address the advisory council with issues such as positions on bills. He feels it is important that people understand they can address the WCAC at its meetings. Commissioner Peterson said anyone who wants to address the WCAC is encouraged to do so and should call WCAC Executive Secretary Debbie Caswell and ask to be put on the agenda.

The meeting was adjourned at 10:52 a.m.

Respectfully submitted,

Debbie Caswell

Debbie Caswell
Executive Secretary

Minnesota DLI Workers' Compensation Advisory Council Meeting—June 11, 2014

North Dakota/Minnesota System Overview

Background

- North Dakota's Workforce Safety & Insurance (WSI) is a monopolistic state fund with no provisions for self-insurance or private insurance for purposes of workers compensation.
- Minnesota is a competitive state meaning that workers compensation insurance is secured through private carriers, a competitive state fund, or through self-insurance.
- The contrast in systems necessitated a means by which employers from both Minnesota and North Dakota could conduct temporary and incidental business in the other state without purchasing workers compensation in both states.
- The Minnesota Workers Compensation Advisory Council unanimously approved a statutory solution in December 2004. The Minnesota Legislature passed this concept into law in May 2005.

Scope of Coverage Comparison

- Minnesota coverage is recognized in North Dakota if no more than 25% of any employee's income or 25% of employer's annual payroll is expended while operating in North Dakota. Essentially, a Minnesota employer may bring business operations into North Dakota for 90 days (25% of one year) without purchasing Workforce Safety and Insurance coverage in North Dakota. See N.D.C.C. §65-08-01.
- WSI coverage was previously not recognized in Minnesota
- With the 2005 passage of MN 176.041(5b), North Dakota coverage is recognized on a limited basis in Minnesota and provides that North Dakota is the exclusive remedy so long as the Minnesota exposure does not exceed 15 consecutive calendar days or 240 total hours in a calendar year.
- Exposure beyond temporary and incidental necessitates every employer to secure coverage in the other state

Injured Worker Benefits

- Both Minnesota and North Dakota pay medical benefits related to the injury for the life of the claim.
- Both states pay disability benefits at the rate of 66 2/3% of gross wages at the time of injury up to a maximum weekly rate of $934 (102% of SAWW) in Minnesota and $1,098 (125% of SAWW) in North Dakota
- ND's minimum weekly benefit is the lesser of $527 (60% of SAWW) or actual net wages. Minnesota's weekly minimum is the lesser of $130 or the workers actual weekly wage.
- The duration of TTD is capped at 130 weeks in Minnesota and 104 weeks in North Dakota.
- Both states provide COLAS based on the change in the SAWW. Minnesota caps COLAS at 3%. There is no cap in North Dakota.

Current System Issues and Advantages

- North Dakota employers operating in border towns (i.e. East Grand Forks, Moorhead or Breckenridge) with incidental exposure in Minnesota (delivering flowers, attendance at a conference, or working a short term construction job) face potential exposure in Minnesota. Likewise, Minnesota employers seek to enjoy short term coverage when they work in North Dakota.
- Employers in both states face regulatory entanglement for uninsured status in the other state.
- Duplicative workers compensation coverage in both states is cost prohibitive.
- Potential cost avoidance exists when they are filed with the jurisdiction in which the employer is covered which provides savings to both the Minnesota Special Compensation Fund and WSI.
- The system has worked well, facilitating commerce across the border.