

Workers' Compensation Advisory Council
Meeting minutes
Oct. 10, 2012

Members

Walt Frederickson
Elaine Garry
Russell Hess
Rep. Andrea Kieffer
Shar Knutson
Brad Lehto
Rep. Tim Mahoney
David Olson
Susan Olson
Ed Reynoso
Rob Ryan
Dawn Soleta
Gary Thaden

Members absent

Glen Johnson
Robert Lux
Sen. Ted Lillie
Sen. Ken Kelash

DLI staff members

Kate Berger
Deputy Commissioner Kris Eiden
Kathy Hanson
Wendy Legge
Mark McCrea
Phil Moosbrugger
Donna Olson
Commissioner Ken Peterson
John Rajkowski
Jessica Stimac
Jim Vogel
Lisa Wichterman

Visitors

Craig Anderson
Karen Clayton-Ebert
Meg Kasting
Nancy Meyer
Asst. Chief Judge Tim O'Malley
Tim Wiering

I. Call to order and roll call

The meeting was called to order by Commissioner Ken Peterson at 9:45 a.m. Commissioner Peterson welcomed the council, including four newly appointed members: Elaine Garry, Russell Hess, Robert Ryan and Dawn Soleta. Instead of roll call, members of the council introduced themselves.

II. Announcements

The announcements were read.

III. Approval of meeting minutes

Ed Reynoso moved to approve the May 9, 2012, meeting minutes as presented, seconded by Shar Knutson. All approved, motion carried.

IV. Approval of agenda

Dawn Soleta moved to approve the Oct. 10, 2012 agenda, seconded by Susan Olson. All approved, motion carried.

V. Agenda items

a. 2013 Workers' Compensation Summit and the 100th anniversary of workers' compensation in Minnesota

Commissioner Peterson presented the following information. In 1913, the Legislature approved the first workers' compensation law for Minnesota. Commissioner Peterson indicated DLI would like to commemorate this event during the 2013 Workers' Compensation Summit. Members can forward ideas to the department for how to emphasize and celebrate the event during the conference. Two options are being considered for the 2013 summit: a one-day conference in the metropolitan area or a two-day conference in Greater Minnesota. Members are to let Commissioner Peterson know their preference.

b. OAH case management system update

Assistant Chief Judge Tim O'Malley presented the following information. In July 2011, the legislative session appropriated funding to the Office of Administrative Hearings (OAH) to build a new case management system. The goal was to replace outdated technology to a single software application for all divisions of OAH, including workers' compensation. Electronic filing is a goal stated by the Minnesota Supreme Court to enhance reporting capabilities and to increase accountability.

Judge O'Malley stated that it took OAH several months to get the contract signed and to identify vendors. A series of meetings took place to work out the technical requirements, customize software, train the staff working with DLI and other groups. In September, the financial module was put into place. Clients are billed for OAH staff time through this system.

The Administrative Law Division's case management system went live this week (October). The vendors are on site to troubleshoot issues as they arise.

December is the targeted month for the workers' compensation case management system to go live. This date may go beyond December into January. If it does go into January or February, the contract was built to buffer a delay, because the funding is good through June. This phased approach was designed for workers' compensation to be last on the project list, due to its complexity and of it being inter-related with the most agencies.

Within the past six months, more than 70 issues have been identified and dozens of meetings have taken place with DLI's technical and business support, workers' compensation staff, the commissioner and the deputy commissioner. Of these issues, only three or four remain outstanding. The program is on track and within budget.

A small amount of the appropriated funding was returned by OAH to DLI to pay for a computer programming consultant.

c. Mandatory electronic filing of First Report of injury data

Jessica Stimac used a PowerPoint presentation and shared the following information.

DLI currently receives approximately 30,000 First Report of Injury (FROI) forms a year. Approximately 30 percent of those are received via electronic data interchange (EDI). DLI currently has 40 EDI trading partners, consisting of insurers, self-insured employers and third-party administrators. DLI has been accepting FROI form voluntary electronic submissions since 1993.

According to data from the International Association of Industrial Accident Boards and Commissions (IAIABC) website, 23 jurisdictions currently mandate the submission of first report data electronically and six jurisdictions have indicated intent to mandate within the next three years.

There are many benefits to electronic submission of FROI data, including the reduction of paper handling by both the reporting entities and DLI, increased efficiency, facilitation of timely reporting of injuries to the department and streamlining business processes through the use of technology.

DLI will offer two methods for submission. EDI, which pulls data elements from the reporting entity's system, transporting the data into DLI's system and creating a FROI form and casefile in DLI's system. This method will be predominantly used by those who submit multiple FROI forms annually, because this is an automatic transmission. The other method is an eFROI Web portal (for those who submit few FROI forms yearly). Reporting entities will log into a Web portal, enter and submit the data elements that are transported to DLI's system, which creates a FROI form and casefile.

A notification was sent Aug. 29, 2012, informing various stakeholders of DLI's intent to mandate EDI by Jan. 1, 2014. Letters were sent to all entities handling claims in Minnesota; email messages were sent to the *COMPACT* subscriber list, the adjusters email list and OAH's attorney listservs; and the information was published on DLI's website. The final publication announcement was placed on the IAIABC's blog and DLI announced its intent to mandate at the IAIABC convention last week. No negative feedback has been received.

More information is available on DLI's website at www.dli.mn.gov/WC/Edi.asp, which includes key dates, frequently asked questions, the current implementation guide and contact information. Inquiries sent to dli.edi@state.mn.us will be received by four or five staff members from both the technical and the business areas. Members can request a copy of the draft FROI form by contacting Stimac.

DLI is in the process of updating the current FROI form. The data fields on the current form do not directly correspond with data elements that are being received electronically. The form is being updated to include additional fields that more accurately reflect what the department is receiving.

Key dates are outlined below.

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|-----------------------|-----------------------------------------------------------------------------------------------------------|
| Aug. 29, 2012 | Initial announcement of mandating electronic filing for First Report of Injury (FROI) form |
| Sept. 10, 2012 | Freeze testing for new trading partners |
| Nov. 1, 2012 | Notification to mandate electronic filing of FROI forms on Jan. 1, 2014 |
| March 1, 2013 | Begin testing EDI requirement changes specified in the implementation guide with current trading partners |
| May 1, 2013 | Testing begins with new EDI trading partners on a voluntary basis |
| July 1, 2013 | Testing of the eFROI Web portal, via the DLI website, begins on a voluntary basis |
| Oct. 1, 2013 | Cut-off date to begin testing for all eFROI and EDI trading partners |
| Dec. 1, 2013 | Completion date for testing of all eFROI and EDI trading partners |
| Jan. 1, 2014 | Electronic filing of FROI forms for reporting entities will be required |

Rep. Tim Mahoney asked what impact the changes would have on small businesses. Stimac stated no change was being made in Minnesota that would require the small employer to file a FROI form with the department. A small-business employer with employees is required to have insurance coverage. The employer will continue to complete a FROI form, submit it to their insurance company and the insurance company is responsible to file the FROI form with DLI. Minnesota Statutes 176.231 identifies who the reporting entity is and describes its requirement to file the FROI data to DLI. Minnesota has no intention of requiring a small employer that has insurance coverage to file FROI data with DLI; the only difference to a small employer is the design or format of the FROI form.

Commissioner Peterson stated that if there is any occurrence of an insurer requiring a small-business employer to file the FROI data directly to the department, DLI will follow up with that insurer to ascertain they follow the correct procedure, so as not to burden a small-business employer.

d. WCAC's role as Rate Oversight Commission

Deputy Commissioner Kris Eiden presented the following information. Minnesota Statutes sections 79.55 and 79.61 relate to the role of the WCAC as the Rate Oversight Commission. The role pertains specifically to the following agenda item, the 2013

Minnesota Workers' Compensation Insurers Association (MWCIA) ratemaking report. MWCIA is a data service organization that gathers and analyzes data from insurance companies writing workers' compensation coverage in Minnesota. It analyzes the data annually and establishes the pure premium rates for classifications. The pure premium rate is the rate for workers' compensation that covers losses. It doesn't include the insurance company administrative expenses or profit. MWCIA gathers data, prepares a report and files it with the WCAC and the Minnesota Department of Commerce commissioner.

WCAC has certain responsibilities with respect to the annual filing made by MWCIA. A handout, included in members' folders, describes the WCAC responsibilities under Minnesota law as the Rate Oversight Commission. This statute was modified in the mid-1990s to require WCAC to serve this function. In the 1990s, WCAC retained an actuary to review MWCIA's report, at an approximate cost of \$12,000, and continued that for several years. That practice ended in 2007 and, after reviewing the files, it is unclear what WCAC did following 2007.

Craig Anderson, an actuary of MWCIA, was invited to provide an executive summary of MWCIA's report that was filed with the Department of Commerce and the WCAC. Deputy Commissioner Eiden stated it is WCAC's responsibility, if it wishes, to submit a report to the commissioner of the Department of Commerce, if the council believes the pure premium levels MWCIA has established are excessive, inadequate or unfairly discriminatory, or if the report is incomplete. If that submission is made to the Department of Commerce commissioner, he or she then takes steps outlined on the form.

Deputy Commissioner Eiden further stated that Nancy Meyers, the actuary with the Department of Commerce, has reviewed the submission and was present to give her observations about the report and to answer questions from WCAC members.

Commissioner Peterson clarified the statute allows WCAC to exercise this action or not.

Gary Thaden pointed out he has been appointed by the commissioner of the Department of Commerce to serve as a public member of the MWCIA board of directors and, in 2012 through 2013, he is the chairman of the MWCIA board of directors.

e. MWCIA 2013 Minnesota ratemaking report

Craig Anderson, MWCIA, presented the following information. A copy of the executive summary of the most recent ratemaking report was provided to WCAC members. The report has been produced annually since 1984 and the most recent report was made available to insurance carriers Aug. 10, 2012. The ratemaking report contains average workers' compensation indicated pure premium base rates from Minnesota-only experience and is prepared in compliance with Minnesota Statutes, sections 79.55 and 79.61 and several related regulations.

The report is available on MWCIA's website, in hard copy, on data discs, on Excel spreadsheets and in any way the industry would like to use the data. The pure premium

base-rate level is an arbitrary level that is defined by statute. It may or may not provide foundation for individual insurance companies' bottom line premiums as they may be quoted or priced in the marketplace. Pure premiums do not include factors for additional increases in payments or reserves for claims that are still in the system after eight years. They do not include factors or parameters for changes in claim payment patterns between the time the data was collected and the time the actual pure premiums would be in place; and they don't include information or factors for Minnesota-specific taxes or assessments, such as the Special Compensation Fund assessment, provisions for possible terrorism or catastrophic loss, claims adjustment expenses or any other insurance company's specific operating expenses. These six factors can be substantial in impacting base rates.

The 2013 report reflects an overall average decrease of 0.08 percent from the 2011 to 2012 base-rate level. This change was based on a review of the most recent insurance company financial experience: two policy years and two accident years of data are used. The most recent accumulated and aggregated data in Minnesota was from policy-years 2009 and 2010, and accident-years 2010 and 2011.

The primary driver responsible for keeping costs relatively stable and predictable is lost-time case frequency. After many years of significant increases in case frequency in Minnesota, the changes in the average case counts per \$1 million, of standard earned premium, have settled during the past several years, with an average annual decrease of 1 percent between 2004 to 2010. As indemnity claims have become less prevalent and more predictable, Minnesota has experienced a phenomenon that is not uncommon countrywide: projections to the medical portion of the ultimate lost-dollars are now about 67 percent of the lost-claim dollars in Minnesota.

Medical severity is the culprit. It is believed the average cost of a lost-time medical case has increased more than 75 percent since the turn of the century.

The indemnity and medical loss proportion dichotomy is evident in case reserve movement. On the indemnity side, a takedown in indemnity reserves is being seen of about \$60 million during the decade, while on the medical side, reserves have increased by \$600 million during that same time period. At present, the case reserves (on known claims) the carriers are carrying for future claims: about 60 percent of those are associated with expected medical costs. The net medical case reserves have increased almost 150 percent during that time period.

Minnesota workers' compensation continues to be relatively predictable. Insured premium volume continues to drop, due to the recession, and case frequency changes are stabilizing after years of fairly healthy decreases. Medical average cost increases are slowing as well, but medical reserve case strengthening continues as new and more expensive medical cases arise. The combination of characteristics tend to keep the system fairly healthy, but with the medical piece moving the way it does it is something that must continue to be watched and may be a harbinger for things in the future.

Nancy Meyer, Department of Commerce actuary, presented the following. The Department of Commerce is required to prepare a report for WCAC. The actuary has not done so in awhile, but that will be rectified in the near future. The report will indicate the ratemaking report MWCIA produces with the pure premium base rates is used primarily by insurance companies to set relationships between the class rates. The ratemaking report will have some effect on the overall rate level insurance companies use, but basically insurance companies will look to their own experience to determine where to set their rates. The statute requires a comparison between the pure premium rate changes and rate changes that companies make. That comparison is not really useful. The changes made may track together or they could be quite different. Companies are going to look at what is happening to their current book of business when they set their rates.

If WCAC has some function as a Rate Oversight Commission, we need to think seriously about numbers that would be more useful. The Department of Commerce believes the market looks competitive. There are more than 200 companies writing. It's not concentrated, because the largest writer has about 10 percent of the market. Currently, no problems are seen in the insurance market or on the horizon. There appears to be quite a variation in the filed rate, so that employers should have some choices in what they do and where they can purchase insurance.

Competition keeps rates at a reasonable level. We have a slight concern about the residual market. The premium written in that market seems to be growing quite a bit and the Department of Commerce will be keeping an eye on it.

David Olson stated he is interested in the recommendations to receive better data from the Department of Commerce.

Meyer further explained that losses grow and companies estimate what those losses will cost. Growth is what companies expect. Some cases will settle for less, some settle for more. New treatments impact costs. As costs are increasing, the number of claims are dropping, partly due to a shift in industry (more clerical workers), improved safety in the more dangerous occupations (manufacturing and construction) and the decrease in construction activity.

Anderson stated MWCIA looked at trends in the overall statewide insured payroll and premium in the construction industry group: payroll was well over 5 percent of the market mid-decade (\$4 billion) and now it is well under 4 percent (under \$3 billion). The same significant erosion of dollars in payroll and premium is seen with manufacturing industry groups. Claims will follow suit. It is what is expected due to job and wage reductions.

Commissioner Peterson stated that the Department of Commerce actuary's report must be filed with WCAC before March 1, 2013. WCAC will review the report and Meyer will be invited to return to the WCAC to discuss the next step in the process.

f. Departmental legislation.

Commissioner Peterson provided an overview of the following legislative changes the department is considering.

1. An oversight to the cost-of-living adjustment was made in the statute. The cost-of-living adjustment for some workers' dependents was left out. The department doesn't believe the addition will cause any significant additional costs.
2. Current law permits the department to sample data from insurers to see if there is compliance with law. The statute uses the term "six sigma," which is used in manufacturing but doesn't apply to analyzing data in workers' compensation. The department would like to delete this phrase.
3. Under the law, DLI must investigate any complaint made about a qualified rehabilitation consultant (QRC). It leads to some baseless complaints from QRCs against their competitors. DLI has about 300 QRCs in its system. The department would like discretion to investigate these complaints. The department receives an average of 15 to 20 complaints a year.
4. A Minnesota Supreme Court decision was made this summer regarding supplying genetic information of young children. Under the Genetic Information Law, the government cannot accept, ask for or receive genetic information regarding individuals without their permission. The department has received medical reports about injured workers for the past 40 years. It appears to the agency that it would need to redact any genetic information from 40 years worth of casefiles, which would be a difficult undertaking. DLI would like to amend the law to make the department's Safety and Workers' Compensation Division an exception from the law.

Rep. Mahoney stated that a number of government relations professionals in attendance at today's meeting sat through some of the genetic testing testimony at the Capitol. This exception needs to be worded very carefully because it could be a "Pandora's box" of issues. Perhaps it could be reclassified as private data versus changing the language. Commissioner Peterson stated he understands the privacy concern regarding genetics. Rep. Mahoney stated Minnesota hospitals are required to destroy files, unless a person or descendant was found and willing to sign a release. Deputy Commissioner Eiden stated the lawsuit was generated as a result of a state agency using and sharing blood from newborns. She indicated that some department staff members believe the decision is so broad it could apply to all passing references to a family history of heart disease. The department wants to be absolutely sure it won't have to go through each and every casefile to redact these incidental references.

Walt Frederickson stated there is a huge difference in making family history references versus pulling out genetic markers for the future. We have to differentiate what information is private and what is not.

5. The Special Compensation Fund (SCF) pays benefits in cases of uninsured employers. The procedure in case settlements with injured employees is that DLI contacts the uninsured employer and, when there is no objection or response by them to the settlement agreement, the settlement is achieved. SCF then attempts to

get reimbursement from the employer. Wendy Leege, General Counsel director, further stated DLI has a number of attorneys representing SCF. What occurs at times, which takes a significant amount of attorney time, is the attorney involved in the case deals with the employee and the employee's counsel and a settlement is negotiated without any participation by the uninsured employer. SCF gives notice of the proposed settlement to the employer, but in these cases, there is no response whatsoever. Settlement is made with the employee. SCF serves a copy of the settlement agreement, along with a Petition for Reimbursement to the employer, and it's at that point that the employer contacts DLI to raise its concerns. DLI wants to prevent this practice of having the employer raising concerns or objecting *after* the settlement. The employer has the right to object to the settlement, but when they chose not to respond or participate during settlement negotiations, they should be found to have waived their right to raise defenses (the employee was not injured, was not really an employee, etc.).

DLI would like to develop language and create a notification to the employer that would describe the consequences if the employer declines to participate in settlement negotiations and that they would waive their right to object after the fact.

Commissioner Peterson indicated the department would bring these items back to the council as updates occur.

VI. Tentative meeting schedule for 2012: Dec. 12.

VII. WCAC decided there will be **no** November meeting. (November 14 caucuses could meet, if needed, but meetings would not be at DLI.)

VIII. Adjournment

Ed Reynoso moved to adjourn, seconded by Shar Knutson. All approved and the motion carried. The WCAC meeting was adjourned at 11 a.m.

Respectfully submitted,
Pamela McLaughlin
Executive Secretary