

Workers' Compensation Insurers' Task Force
March 20, 2013

Members present

Lisa Albrecht for Cindy Van Eyll *via telephone*
Amanda Cox for Charles Bierman
Robert Farber
Margaret Kasting
David Oertli
Robert Rangel
Gary Westman

Members absent

Mary Abraham
Karen Clayton-Ebert
Robert Johnson
Claire McCoy
Susan Pilon
Ryan Shaughnessy
Laurie Simonsen
Cori Wentzlaff

Visitors and staff members present

Lisa Albrecht, QBE
Sandy Barnes
Kate Berger
Kris Eiden, Deputy Commissioner
Kathy Hansen
Chris Leifeld
Mark McCrea
Ken Peterson, Commissioner
Jessica Stimac

Call to order

The meeting was called to order at 9:06 a.m. by co-chairman Gary Westman. Announcements were made. Members introduced themselves.

Approval of the agenda

Meg Kasting moved to accept the agenda as presented. Rob Rangel seconded. All approved. Motion passed.

Approval of the minutes

Robert Farber moved to accept the Sept. 19, 2012, meeting minutes as presented. Rob Rangel seconded. All approved. Motion passed.

New business

Department update – Commissioner Ken Peterson

- The commissioner discussed the release of the department's strategic plan for fiscal-years 2013 through 2017, which is online at www.dli.mn.gov/Pdf/trategic_plan.pdf.

- The 2013 Workers' Compensation Summit will be Sept. 12, at the Crowne Plaza Hotel in St. Paul, Minn. Registration information will be sent to members and interested parties.

Workers' compensation housekeeping bill – Deputy Commissioner Kris Eiden

A copy of the Department of Labor and Industry's (DLI's) housekeeping bill was provided to the panel and Deputy Commissioner Kris Eiden gave a brief review about the following sections.

- **Section 1:** deals specifically with qualified rehabilitation consultants (QRCs), which gives the commissioner the discretion whether to investigate a complaint against a rehabilitation provider. Right now, the commissioner has to investigate every complaint. This gives the commissioner discretion when frivolous complaints are made.
- **Section 2:** deals with the department's authority to hold administrative conferences. Right now, the department holds conferences involving medical disputes if the amount in dispute is less than \$7,500. The amendment would remove that limit, because medical costs have gone up. This would be particularly beneficial to parties because it would give the commissioner the discretion to address all requested disputes between providers and payers.
- **Section 3:** arises out of a lawsuit the department was involved in with Home Insurance Company, which went bankrupt and then applied to be reimbursed from the Special Compensation Fund (SCF) for supplemental and second-injury benefits it claimed it had paid. The department had not previously reimbursed bankrupt companies. The court ruled in favor of Home Insurance Company, stating the company was able to collect from the SCF. This amendment would prevent an insolvent insurer from collecting from the SCF.
- **Section 4:** would exempt data the department maintains about injured workers from the definition of genetic information. That term is contained in the Genetic Privacy Act that prohibits state agencies from collecting, disseminating or storing genetic information. The department has 50 years of workers' compensation files in its custody. Because of questions treating-physicians ask injured workers about their family history, there is a chance that files contain genetic information. Based on the number of files the department has, it would be an unmanageable task to go through each one. Therefore, DLI files should be excluded from that definition, which is the purpose of Section 4.
- **Section 5:** pertains to the SCF payments, benefits and the medical costs for uninsured workers. Right now, when a worker's employer is not insured, SCF steps in and makes payments, then SCF pursues the employer for reimbursement. SCF notifies the employer before it makes any payment to the worker and it stays in touch with the employer throughout the process. What DLI has found is that some employers do not communicate with SCF and do not object to what SCF is doing (such as making a settlement with the injured worker). The employer "sits on the sidelines" through the process. It's not until SCF seeks reimbursement from the employer that the employer will raise defenses such as, "the injured worker was an independent contractor" or "this injury didn't occur during the course and scope of employment." This amendment requires employers to raise those issues before SCF enters into a settlement with the injured worker. These defenses are critical for SCF to know before it settles as well.
- **Section 6:** is merely a housekeeping item to remove the term "Six Sigma." The commissioner has the authority to audit insurers to make sure they are making payments as

required under the law. DLI can use a sample of records to do that sort of analysis, but the current law limits it to use “Six Sigma.” There are a number of methodologies DLI could use to do that kind of sampling and shouldn’t be restricted to one methodology.

- **Section 7:** was included at the request of Worker’s Compensation Court of Appeals (WCCA). Under the current law, workers’ compensation cases can settle at any point throughout the process, even after an administrative law judge has rendered a decision and the case is pending before the WCCA. The WCCA would like to send the case back to the Office of Administrative Hearings and have an administrative law judge approve that settlement. So, this change would authorize the sending of the case back to the Office of Administrative Hearings.

Review of the new First Report of Injury (FROI) form – Jessica Stimac

A copy of the new First Report of Injury (FROI) form was provided to the group and reviewed, focusing on the new language highlighted in yellow. FROI forms will be required to be electronically filed effective Jan. 1, 2014.

Proposed rules for EDI and eFROI – Kate Berger

Two handouts being referenced were included in member packets: 1) a letter mandating electronic filing of the FROI form; and 2) a draft FROI form. Minnesota has been accepting voluntary FROI form data via electronic data interchange (EDI) since 1993. Currently, 30 percent of FROI forms are received via EDI. According to the International Association of Industrial Accident Boards and Commissions (IAIABC), 23 states currently mandate electronic filing of FROI form data and six more states plan on mandating within the next three years. The benefits of electronic submission include decreased paper-handling by DLI and reporting entities, increased efficiency and more timely reporting of FROI form information to DLI.

The commissioner has the authority to mandate electronic filing of FROI forms pursuant to Minnesota Statutes §176.285 and Minnesota Rules 5220.2525. Stakeholders were informed of DLI’s intent via multi-media Aug. 29, 2012. Letters were sent to any entities handling Minnesota claims, to adjusters and to Office of Administrative Hearing attorneys; a notice was posted on DLI’s website; and information was posted on IAIABC’s blog. Very little feedback has been received, with no negative feedback.

Two options are available to reporting entities: EDI, especially for use by those that submit multiple FROI forms annually; and the Web-based FROI form, developed for entities that do not submit many FROI forms a year. EDI can require funds for programming and the Web-based FROI form is available for smaller companies that choose not to set aside funding to use EDI. One caveat to those options is the department cannot require an employee to file a FROI form electronically, so paper forms will continue to be collected.

Because DLI is conforming to a national standard developed by the IAIABC, the data it will be getting doesn’t correspond with the data fields of the current FROI form. Multiple changes have been made from the current form to capture the information received via EDI. This document is not only for department use, but also for reporting from employers to insurers. WCITF member comments about the new FROI form are due by the end of the month.

Key dates to remember:

- Aug. 29, 2012 – DLI notification was sent to multiple stakeholders;
- Sept. 10, 2012 – testing was frozen to any new trading partners;
- Nov. 1, 2012 – drop-dead date for DLI to finalize business processes;
- March 1, 2013 – testing requirements with existing trading partners;
- May 1, 2013 – voluntary testing with new trading partners;
- July 1, 2013 – anticipated rollout of the new FROI form;
- July 1, 2013 – voluntary testing of Web-based FROI form;
- Oct. 1, 2013 – new trading partners must have begun testing;
- Dec. 1 2013 – all testing completed; and
- Jan. 1, 2014 – implementation date.

Contact Jessica Stimac at (651) 284-5177 or Jim Vogel (651) 284-5265 or email questions to dli.edi@state.mn.us.

Fee schedule update – Kate Berger

There were statutory changes made a few years ago that require the department to update the medical fee schedule every three years. The update involves migrating the most recent relative value units (RVUs) from the Medicare tables into the department's tables. This requires checking all supporting rules for Medicare to ensure they haven't changed anything about how the RVUs are used. The tables should be done by October.

Pursuant to statute, the department also adjusts the conversion factor to make the update of the RVUs revenue-neutral. Simultaneously in October, the conversion factor is updated for any change in the producer price index.

Draft rules recommended by Medical Services Review Board regarding spinal pump/intrathecal drug delivery system – Kate Berger

The current parameter for lumbar fusion surgery requires a person to have failed conservative treatment and have a positive discogram at one or two levels before they could proceed to a lumbar fusion surgery. There's a substantive question of whether discography is worthwhile, which is being researched. But there's also the question of whether there are other process type changes the Medical Services Review Board (MSRB) would want to recommend to the evaluation of patients who are candidates for lumbar fusion surgery.

MSRB looked at (many years ago) requiring psychological evaluation along the same lines as MSRB has recommended for spinal cord stimulators and interthecal drug delivery systems. Another process type of change was the notion that patients should not be candidates for fusion surgery unless they have not only failed to have typical conservative management but have also been through an interdisciplinary intensive rehabilitation/medical management program. MSRB discussed whether to implement these diversions. Current procedures were compared and discussed, as were possible alternative approaches.

Dr. Bill Lohman will be drafting changes to the current treatment parameters.

Overview of Alternative Dispute Resolution unit – Amy Borgeson

A PowerPoint presentation was given describing the alternative dispute-resolution process and addressing the following areas: resolution by parties, early resolution, goals, authority to certify disputes, other statutory authority, administrative decisions, mediation programs, Office of Administration Hearings, the Workers' Compensation Court of Appeals and the Minnesota Supreme Court.

Reports/meeting schedule

- The most recent edition of *COMPACT* is online at www.dli.mn.gov/WC/Compact.asp.
- The WCITF meeting schedule, agenda and approved minutes are online at www.dli.mn.gov/Wcitf.asp.
- The 2013 meeting schedule is May 15, Sept. 18 and Nov. 20.
- The next meeting date is May 15, 2013.

Adjournment

The meeting was adjourned at 10:13 a.m.

Respectfully submitted,

Carrie Rohling

Executive Secretary