

Meeting minutes: Workers' Compensation Advisory Council

Date: Feb. 8, 2023
Minutes prepared by: Alyssa Westergard, Executive Secretary to the Workers' Compensation Advisory Council
Location: Department of Labor and Industry, Minnesota Room, 443 Lafayette Road N., St. Paul, MN 55155

Attendance

Members Attended

Bill Gschwind
Brad Lehto
Colin Beere
David Henrich
Doug Loon
Ed Reynoso
Gary Thaden
Maggie Hobbs
Matthew Schmidt
Robb Nelson
Robert Ryan
Representative Joe McDonald
Representative Dan Wolgamott

DLI Staff

Commissioner Nicole Blissenbach
Assistant Commissioner Kate Daly
Alyssa Westergard
Ann Tart
Brian Mak
Brian Zaidman
Carey Wagner
Christopher Leifeld
Donna Olson
Ender Kavas
Ethan Landy
Hared Mah
Jeanne Vogel
Jeff Hendrix
Jessica Stimac
Jon Brothen
Karen Kask-Meinke
Laura Zajac
Lila Zarins

Lisa Wichterman
Michelle Doheny
Nichole Sorenson
Pam Carlson
Steven Gilmore
Yuri Jelokov

Visitors

Aaron Cocking, IFM
Alison Khan, WCRA
Amy Kockelman
Andrea Everling, MWCIA
Andrew Essling, MCIT
Anne Finn, LMC
Ben Baglio, MNA
Bill McCarthy
Carrie Jacobson, Brown and Carlson
Carla Ferrucci, MAJ
Dan Dwight, Stinson LLP
Dan Greensweig, LMC
Dave Kaiser, SFM
Elizabeth Appel
Gary Westman
Hannah Alstead, Teamsters JC32
J. Wiatros
James Heer, WCRA
James McClean, HealthPartners
Jennifer Wolf, MWCIA
Jerry Sisk, MAJ
Jessica Stoeckman, SFM
John Hollick, SFM
John Kysylyczyn
Jon Kelly, Dept of Commerce
Julie Benfield, Trial Group North
Kara Huberty, LMC

Karen Ebert, MCIT
Kathy Bray, SFM
Katie Storms, Lind Jensen
Laura Mundt, Mayo
Lauren Weaver, Stinson LLP
Lauryn Schothorst, MN Chamber
Liam Biever, LMC
Mary Krinkle, MHA
Michael Lewis

Michael Tupy
Pat Kaluza
Rebecca Yang, WCRI
Sara Payne, Dept of Commerce
Sarah Hunter, SFM
Sarah Groskreutz
Scott Brener, MN Chamber
Shawna Holewinski
Suzanna Kennedy, Stinson LLP

Call to Order and Roll Call

Commissioner Blissenbach called the meeting to order at 9:45 a.m. A roll call was taken, and a quorum was present.

Approval of the Minutes and Agenda

Ed Reynoso made a motion to accept today's agenda, as well the minutes from December 14, 2022 and January 25, 2023. Colin Beere seconded the motion. Gary Thaden pointed out a typo in the minutes from January 25, 2023. The agenda and minutes were approved with the noted correction.

Announcements

Assistant Commissioner Daly informed the council that the MAJ and MDLA mediation sessions had ended without a joint legislative proposal. Daly thanked DLI mediators Patti Provencher and Steve Sullivan for their outstanding mediation services provided to the parties. Daly also thanked Brian Mak, DLI Director of the Alternative Dispute Resolution unit, for leading and coordinating a dispute certification workgroup with MAJ and MDLA.

Agenda Items

1. DLI response to HOFs presentation response from MHA – Kate Daly, Assistant Commissioner, DLI

Daly informed the council that DLI stands by the HOFs presentation presented in December and that DLI would not conduct an additional study.

Doug Loon opined that it may be in the interest of the council to hear back from the Minnesota Hospital Association (MHA) regarding DLI's decision. Daly said that she would reach out to MHA.

2. Minnesota Statute section 79A.04 – Jon Kelly, Director of Government Affairs, Minnesota Department of Commerce and Andy Morrison, General Counsel for Minnesota Self-Insurers Security Fund (SISF)

Kelly reported that the Department of Commerce made slight changes to its proposal at the request of SISF and that the parties had reached a mutual agreement. Morrison agreed on behalf of SISF.

Blissenbach requested a motion to accept the proposal and have it added to the package that will be put before the council for approval. Loon moved to accept the proposal and Colin Beere seconded. The motion carried.

3. DLI housekeeping matters – Ethan Landy, General Counsel, DLI

Landy presented DLI's revisions to Minnesota Statutes Sections 176.011, 176.102, 176.111, and 176.1362.

Landy also noted that DLI was repealing Minnesota Statute Section 176.223, which refers to the Prompt First Action Report. Landy explained that the report does not contain meaningful data due to functionality issues within Campus. DLI has been working to address that functionality in Campus. DLI will focus on obtaining meaningful and reliable data in other ways to replicate another version of the report.

Lehto was concerned about removing the report without knowing how the data will then be provided to the insurance community.

Loon asked about the insurance community's feedback. Daly replied that insurers seemed to be fine with repealing the report because the report no longer contained meaningful data. She also added that DLI still looking at the best ways to provide the data in alternative ways.

Lehto asked if the hospitals needed time to make the inpatient changes in their systems. Landy replied that this is not a substantive change, so he did not believe so. Blissenbach also clarified that notice goes out to stakeholders when changes are made.

Beere asked if a .239 request for conference could be made for a cessation of dependency benefits under subdivision 23. Landy responded that he did not believe that a .239 conference would be held for a cessation of dependency benefits, but he would confirm and report back to the council.

Henrich asked the reason for using calendar days instead of business days for subdivision 23, and if consideration is then taken for events such as holidays, when using calendar days, that would then take away from the 14 days allowed. Landy responded that 14 days is the timeframe given for written notice to be served, it doesn't affect the time someone has to then ask questions or object. Blissenbach noted that the department would look into the reasoning for using calendar days vs business days.

No vote was taken on any of DLI's proposals.

4. PTSD statistics presentation – Brian Zaidman, Research and Statistics, DLI

Zaidman presented on the trends in PTSD claim filing and acceptance from 2014 through 2021. He noted that numbers for 2022 are incomplete and preliminary because many claims take months to resolve. The number of claims made in 2014 through 2017 was level for all workers. In 2018, the number of PTSD claims made by workers who would be included in the presumption increased and increased further after the presumption went into effect. The number of claims then leveled off in 2021. The number of

denied claims among those occupations covered by the presumption increased substantially after the presumption took effect. Starting in 2018, and continuing after the presumption went into effect, the number of claims paid after an initial denial increased only for presumption claims. This trend continued into 2020, but then decreased in 2021.

Thaden asked for clarification on whether the claims being included were only indemnity claims. Zaidman replied that the data included all claims filed, whether they included indemnity or not.

Zaidman also presented statistics related to PTSD claims made by nurses compared to claims made by other healthcare workers and those covered by the presumption. Nurses filed few PTSD claims, but a smaller proportion of their claims were paid. Most PTSD claims with a denial are not paid, and no nurse claims have been paid following an initial denial since 2018.

Thaden asked if nurses covered by the presumption were in the nurse group or presumption group. Zaidman replied that they were in the nurse group, as their occupation information did not note if they worked for an institution or not.

Hobbs asked for clarification on the categories being evaluated, because some of them were labeled mental disorder and syndrome, not just PTSD. She wanted to know if some of the statistics might relate to mental disorders and syndromes not covered under chapter 176. Zaidman replied that it could be possible, as some claims come in as anxiety or stress and then are later found to be PTSD. Hobbs asked if it was possible that the claims were paid because there was a physical injury that accompanied the mental disorder. Zaidman responded that none of the claims used for this presentation had any sort of physical injury noted on the First Report of Injury.

Zaidman noted that few nurses' claims are paid with a settlement, whereas the majority of presumption claims are paid only by settlement.

Loon stated that perhaps we should be looking outside the workers' compensation system for more efficient ways to help injured workers.

Lehto commented that part of the issue is how long it takes to receive a PTSD a diagnosis. He also feels that the presumption was not working the way that Labor imagined it would, but he is not in favor of getting rid of the presumption. He agreed that maybe it needs to be reviewed or reworked.

Hobbs opined that Zaidman's presentation seemed to show that the presumption does not shorten the claims process for workers who are covered by the presumption, but instead appeared to lengthen the process and make it more complicated. In Hobbs's opinion, this delayed benefits. Gschwind agreed with Hobbs.

5. Labor Proposals for 2023 – Brad Lehto, Minnesota AFL-CIO

Lehto presented Labor’s proposals for 2023. The first proposal is to increase the Permanent Partial Disability (PPD) schedule. The second proposal is to add direct care bedside hospital and long-term care nurses to the PTSD rebuttable presumption definition. This proposal includes increased penalties for denials without good cause. Labor’s third proposal is to calculate the average weekly wage (AWW) based on *gross* earnings, which would include non-taxable contributions such as health insurance, pension, and 401K contributions. The fourth proposal seeks stronger penalties for denials and delays in payments under Minnesota Statutes Sections in 176.225 and 176.194. The fifth proposal raised is reforms to adverse examinations, including limiting employer and insurer delays to “good cause” and having doctors disclose the number of exams performed within a year, as well as the charge for the examinations. The last proposal is to remove the statutory cap on attorney fees.

Other Business

The next meeting will be held on March 8, 2023.

Adjournment

Bob Ryan moved to adjourn. Thaden seconded. The meeting adjourned at 11:41 am.

Respectfully submitted,

Alyssa Westergard, Executive Secretary