

Minutes: Workers' Compensation Insurers' Task Force

Date: May 22, 2019

Minutes prepared by: Carrie Rohling

Location: Minnesota Department of Labor and Industry

Attendance

Members present

Natalie Haefner
Lee Ingrassia
Michael Johns (via telephone)
Michael Joyce
Meg Kasting
Stacy Kohlhofer
Bobbi Pearson (via telephone)
Rob Rangel
Michael Schneider (via telephone)
Cheryl Tabbert
Gary Westman

Members absent

Mary Abraham
Sean Curran
Robert Johnson
Cindy Van Eyll
John Wiatros

Visitors and staff members present

Kate Berger
David Berry
Jon Brothen
Valerie Brophy
Pam Carlson
Ralph Hapness
Karen Kask-Meinke
Ethan Landy
Nancy Leppink
Chris Leifeld
Brad Morse
Donna Olson
Melissa Parish
Roslyn Robertson
Lisa Smith
Julie Soderlund
Jeanne Vogel
Lisa Wichterman
Laura Zajac

Call to order

The meeting was called to order at 9:02 a.m. by co-chairman Rob Rangel. Announcements and introductions were made.

Approval of the agenda

The agenda was approved by all.

Approval of the minutes

Meg Kasting moved to accept the March 20, 2019, meeting minutes. Stacy Kohlnhofer seconded, all approved and the motion passed.

Department and legislative update

Deputy Commissioner Roslyn Robertson introduced herself to the group and provided safety announcements. She indicated the renovation of the 443 Lafayette Road N. building is complete and went well.

Robertson shared her background, indicating she worked for the Department of Labor and Industry (DLI) for 30 years as director of Labor Standards and Minneosta OSHA Workplace Safety Consultation, and as assistant commissioner of workplace services. She is newer to workers' compensation and will continue to depend and work with reliable staff members.

DLI's efforts paid off at the Legislature, where the agency's bills passed. The initiative to advance the discussion of wage theft was granted and the Legislature approved more than \$3 million. The program will keep employers accountable to ensure all wages owed to an employee are paid and to protect workers against unlawful deductions. This is a major legislative accomplishment.

DLI Commissioner Nancy Leppink has a process for strategic compliance that will address both the symptoms and the root causes. The OSHA conformity language was not successful this legislative session; DLI will work with federal OSHA to figure out the next steps. DLI received resources as an appropriation to upgrade the IT system. There was an agreement to fund a youth training program and the PIPELINE program. Rangel asked when the wage theft enforcement program would be up and running. Robertson said it has already started, with two staff members committed. The goal is to have a much broader impact by not dealing solely with complaints, but by being more proactive with the employer. There will be another assistant commissioner starting in mid-June who will handle enforcement and develop compliance. DLI will be hiring 13 to 15 additional labor investigators. Rangel asked if there will be a fine and penalty structure; Robertson said there are already penalties and fines in place.

Hospital outpatient fee schedule

Ethan Landy provided an overview of the hospital outpatient fee schedule (HOFS) – how the calculations are done and the statutory language. The 2018 legislation tasked DLI to create two conversion factors: one for large hospitals; and, essentially, two for smaller hospitals. Minnesota Statutes 176.1364 states the two conversion factors would be to balance the system based on size. [See slides.]

David Berry presented the conversion factors and discussed the outpatient payment system under the old system and then under HOFS. Berry explained that John Wiatros' examples of 200%+ bills, given at the Workers' Compensation Insurers' Task Force (WCITF) meeting in March, are true representations of bills payable under the new system, but are also part of a larger, complex picture.

Michael Schneider asked if the examples could inflate an employer's insurance modification rate. Berry said the examples could be an issue that would affect an employer with a small number of cases that happen to fall into that category. Schneider asked if these examples could be addressed with future legislative changes since the statute indicates the system would be reviewed.

Landy said DLI will be conducting a study analyzing the timeliness and payment amounts. Kasting asked if the calculation conversation factor was done annually. Lisa Wichterman said this is done annually, with the inflation adjustment reviewed every three years. Lee Ingrassia said rural employers are subject to small hospitals all the time, which poses a geographical concern. Wichterman reviewed HOFs bills, contrary to Wiatros' examples, that paid less than the billed amount (example: J1 procedures). Natalie Haefner asked where an employer can find a HOFs explanation. Wichterman is available to answer questions at lisa.wichterman@state.mn.us.

Cheryl Tabbert asked about J1 procedures. Wichterman said J1 is a surgical procedure. The list of services table is on the DLI website at www.dli.mn.gov/sites/default/files/pdf/fees_HOFs_decision_J1.pdf. Schneider said insurers in smaller towns should look at if they are near a larger hospital, to avoid the high charges. Wichterman said insurers cannot direct care. Schneider said it would only pertain to the same doctor who practices at both. Haefner said Mayo Clinic was refunding money with the higher bills. Landy said insurers should make the accurate payments and not accept refunds. Kohnhofer, from Mayo Clinic, confirmed it is no longer returning payments. Gary Westman said there must be some way to communicate why insurers are paying an amount greater than the billed amount. Wichterman advised the group to cite Minnesota Statutes 176.1364, subdivision 4.

Workers' Compensation Modernization Program update

Brad Morse (DLI) and Valerie Brophy (CapTech) presented to the group about the Workers' Compensation Modernization Program (WCMP).

WCMP is developing access for injured workers, insurers and attorneys. Morse said the electronic data interchange (EDI) guide has been posted on DLI's website for a few months. He advises insurers to ensure their technical teams review the guide, so DLI can have all necessary feedback. The guide will be finalized in late July. Currently, the project is on track and will go-live summer 2020.

Any insurer that plans to submit via EDI (claims reporting) should contact DLI to discuss any potential problems. In February and March, DLI will be testing with insurers. Summer 2020 is when DLI will sync-up from paper processes to electronic. One hundred seventy-five training partners and 400 insurance carriers will have to adapt. The change will take a lot of coordination and effort. Insurers' claims systems and business processes will need to be built before they are tested with DLI.

Kasting asked when EDI UR updates were expected. Morse said DLI will build a plan and that July 2020 is the likely timeframe.

Rangel asked if there are volunteers for super-user groups. Brophy said there was a great response and a meeting was scheduled today; additional volunteers can contact Brophy. External stakeholder groups are set up and Morse listed the group types. The Insurance Advisory Committee is dedicated to the claims process and how

to train and provide awareness for the system. The insurance carriers can also provide information to the injured workers.

Morse reviewed the governance structure and how decisionmaking occurs within WCMP. If an insurer is submitting feedback and there is a delay, understand everything is being considered and there is a process to go through. The insurers group will be heavily involved in the testing and WCMP expects a lot of feedback. Kasting asked if there is anywhere on the website to post and view feedback; Morse said not yet. There is some tracking being done internally via SharePoint. Rangel asked who is doing the employee testing; Morse stated testers are 18 employees from DLI who are not involved in workers' compensation.

Minnesota Supreme Court decision: Johnson v. Darchuk's Fabrication, Inc.

Ethan Landy reviewed the recent decision and provided a handout. Treatment parameters did not apply in this matter. Treatment parameters apply to an injury after liability has been established, but do not apply when liability for the compensation benefits owed for an injury has been denied. The employer contested its obligation to pay for medical treatment for an employee injury that the employer admits is covered by the workers' compensation act but has not "denied liability for the injury." This decision was reversed and remanded.

Other business

None

Adjournment

The meeting was adjourned 10:31 a.m.