

## Meeting minutes: Workers' Compensation Advisory Council

Date: Jan. 13, 2022

Minutes prepared by: Elizabeth Cole, executive secretary to the Workers' Compensation Advisory Council

Location: Webex meeting

### Attendance

#### Members attended

Jason Bartlett  
Bill Gschwind  
Maggie Hobbs  
Doug Loon  
Sophie Thaden  
Kevin Yakes  
Colin Beere  
Bill McCarthy  
Edward Reynoso  
Robert Ryan  
John Thorson

#### Legislative liaisons attended

Sen. Jason Isaacson  
Rep. Tony Albright  
Rep. Mike Sundin  
Sen. Paul Utke

#### DLI staff members attended

Commissioner Roslyn Robertson  
Assistant Commissioner Kate Daly  
Assistant Commissioner Kate Perushek  
Ethan Landy  
Jessica Stimac  
Brian Zaidman  
Chris Leifeld  
Patricia Munkel-Olson  
Debra Jevne  
Gretchen Longbehn  
Laura Zajac  
Julie Klejewski

Elizabeth Cole  
Karen Kask-Meinke  
Donna Olson  
Jeanne Vogel  
Mike Hill  
Pam Carlson  
Jon Brothen  
Carey Wagner  
Ralph Hapness  
Angelina Nguyen  
Hared Mah  
Brian Mak  
Brad Morse  
Tyrone Spratt  
Ann Tart  
Melissa Parish

#### Visitors attended

Brad Lehto, AFL-CIO  
Lauryn Schothorst, Minnesota Chamber of Commerce  
Lauren Weaver  
Adam Wolkoff, Office of Administrative Hearings  
Jerry Sisk, MAJ  
Ray Peterson, MAJ  
Mary Turner, Minnesota Nurses Association  
Lynn Carroll, WCRA  
John Kysylyczyn  
Aaron Cocking, IFM  
Suzanna Kennedy  
Kathy Bray  
Gary Westman, Department of Administration  
Carla Ferrucci, MAJ  
Andrew Essling  
Karen Ebert, MCIT

Laura Mundt  
Joel Carlson  
David Sullivan  
James Heer  
Patricia Milun, Workers' Compensation Court of Appeals  
Rebecca Yang  
Auntara De  
Bette Zerwas  
Jessica Stoeckman  
Brandon Miller  
Debra Zorn  
Margaret Reynolds  
Amy Kockelman  
Jessica Nyman

Lena Gould  
Anne Finn  
Marta Zurn  
Rochelle Peyton  
Peter Lindquist  
Joe Schindler  
Carrie Jacobson  
Gerd Clabaugh  
John Wiatros  
Dan Greensweig  
Darin Richardson  
Gary Carlson  
Michael Lewis  
Andrew Morrison  
Terrence Miller

## **Call to order**

Commissioner Roslyn Robertson called the meeting to order at 9:33 a.m. A quorum was present. Pursuant to Minnesota Statutes § 13D.021, the meeting was held remotely because an in-person meeting was “not practical or prudent” due to the ongoing COVID-19 health pandemic.

## **Meeting minutes and agenda**

The commissioner asked for approval of the minutes from the Dec. 8, 2021 meeting and the agenda for the Jan. 13, 2022 meeting. A verbal vote was taken and the motion passed.

## **Commissioner's update**

Commissioner Robertson provided a brief update to the council about the Department of Labor and Industry's (DLI's) ongoing preparation for the coming legislative session, including the approval of supplemental budget items from the governor's office. The commissioner also noted this will be one of Bill McCarthy's last meetings with the Workers' Compensation Advisory Council (WCAC) as the labor chair. The commissioner thanked him for his many years of service and contributions to the council, as well as his many years of commitment to helping workers. Doug Loon also expressed his appreciation for McCarthy's service and his willingness to work with business.

## Agenda items

### 1. COVID-19 update and discussion: Brian Zaidman, DLI Research and Statistics

Brian Zaidman provided an update about COVID-19 workers' compensation claims. He also reminded the council the presumption exemption is not currently in effect; the information presented represented claims covered under the presumption from April 8, 2021, when the presumption coverage began, through Dec. 25, 2021. Since Zaidman's update in December 2021, more than 3,000 COVID-19 claims have been processed, approximately 450 COVID-19 claims a week. DLI can receive claims six- to seven-months later, so COVID-19 claims data continues to change. Since July 2021, 87% of COVID-19 claims have been covered by the presumption, the majority of which were submitted by health care workers. Health care workers account for 75% of the overall COVID-19 cases and 79% of the COVID-19 claims submitted since late November or early December 2021.

The denial rate has varied throughout the course of the pandemic for workers in both the presumption and the non-presumption groups. Denial rates for the non-presumption group have averaged around 60%, with the current denial rate approximately 22%. Denial rates for the presumption group remain low, around 10%. Information for December 2021 is still being processed and final numbers for this time period will be available in February 2022. Workers in the general medical, surgical, hospital and nursing care facilities comprise 62% of the COVID-19 claims paid. In the past six months, there has been an increase in COVID-19 claims from law enforcement personnel, a high percentage of which were accepted and paid. Conversely, there has been a decrease in COVID-19 claims from nursing home employees.

Zaidman provided information about the average temporary total disability for both the non-presumption and presumption groups in 2020 (two-week average) and 2021 (one-and-a-half-week average). Total indemnity payments for COVID-19 claims have been \$21 million since the onset of the pandemic, 95% of which has been paid to workers in the presumption group and 91% of which constituted temporary total disability.

Zaidman also provided the council with information from an MWCIA study of COVID-19 claims. For the COVID-19 claims analyzed, 38% of the submitted claims were for indemnity-benefits only; typically, only 1% of all claims submitted are indemnity only. The average payment for indemnity-only claims was \$1,000, while indemnity and medical claim payments averaged \$9,600, which is still much lower than the average of fully developed claims.

Zaidman reminded the council this is an early look at 2020 and the claims have to mature. COVID-19 claims have generally closed faster than non-COVID-19 claims; approximately 95% of the indemnity-only claims were closed within a matter of weeks. Zaidman also shared information from the Minnesota Department of Health (MDH) about the number of breakthrough cases of fully vaccinated health care workers. He said there is a coming presentation by the National Council on Compensation Insurance (NCCI) about the impact of COVID-19 on workers' compensation; information about how to attend the webinar will be provided to the council members.

The council had a brief discussion following the presentation and Zaidman answered questions from council members.

## **2. PPD adjustment presentation: Jerry Sisk and Ray Peterson, Minnesota Association for Justice**

Jerry Sisk and Ray Peterson, Minnesota Association for Justice (MAJ), presented labor's proposal to increase the permanent partial disability (PPD) schedule under Minn. Stat. § 176.101. According to labor, its proposal would restore PPD to where it would be if indexed for wages since 1983, which would be a 238% increase and provide a yearly cost-of-living adjustment (COLA) tied to the state average weekly wage (SAWW).

Peterson gave an overview of the history of PPD and provided a framework for understanding PPD. Before 1984, medical providers did not have a schedule to reference when assigning a disability rating to an injured worker and had to independently determine what percentage would be assigned for the loss of use and function. Due to the widely varying percentages of disability rates that were assigned by medical professionals, many of which were disputed, the Legislature decided to address how PPD would be calculated in the 1984 legislative session. The 1984 legislative session resulted in the adoption of a PPD schedule, which employs percentage ratings assigned to the body as a whole, instead of calculating compensation to the employee based on weekly earnings.

Peterson noted the PPD dollar amounts have increased a couple of times, but those increases did not result in a significant increase in payment for those in the lower end of the schedule.

Sisk and Peterson summarized labor's reasons for supporting an increase to the PPD rating schedule of 238%, noting this would follow the original legislative intent. They also described the benefit of adding a COLA based on the SAWW to get PPD ratings and corresponding compensation back to where it should be for injured workers functional loss of use and impairment.

Loon thanked Sisk and Peterson for their presentation. He reminded the council members that consideration of proposals that involve significant benefit increases should include a discussion about how to create a more efficient and effective workers' compensation system that meets the needs of all parties, while balancing costs and efficiencies in the system. He also said that for future consideration of this proposal, other parties' testimony should be brought forth to be considered.

Bob Ryan asked if other workers in the workers' compensation system receive COLAs as well. Sisk said they do, other benefits within the workers' compensation system have a COLA, such as average weekly wages for an injured worker for indemnity payments, whether temporary total, temporary partial or permanent total. Jason Bartlett asked Sisk and Peterson to elaborate about the statement that the intent of the Legislature was not followed. Sisk said the current statute does not account for the current cost-of-living piece, which should be considered.

## **3. Minnesota Nurses Association presentation about the post-traumatic stress disorder presumption: Mary Turner, president, Minnesota Nurses Association**

Mary Turner, an intensive-care nurse at North Memorial Health Hospital and current president of the Minnesota Nurses Association (MNA), spoke to the council about the effects of the pandemic on nurses'

well-being, the dire need for nurses to be covered by the post-traumatic stress disorder (PTSD) presumption and the impact of the pandemic on the future health care workforce.

McCarthy thanked Turner for her presentation and acknowledged that when the PTSD presumption was passed, hospital nurses should have been included.

#### **4. Workers' compensation single filing-system report: Brad Morse, DLI Workers' Compensation Modernization Program**

Brad Morse, DLI Workers' Compensation Modernization Program, gave a presentation about the workers' compensation single filing-system report. He introduced Tyrone Spratt, Minnesota IT Services (MNIT), who has played a crucial role in the implementation of Work Comp Campus and who is helping to guide and shape the requirements of how the system moves forward. The presentation was in response to last year's report, which focused on the integration of Campus and C-Track. The report provided a status update and verified the systems are working appropriately.

Morse indicated DLI and the Office of Administrative Hearings (OAH) do not recommend pursuing a single filing-system. He described the reasons for this recommendation, including that any changes to the system lacked benefit and values changes would be costly, and that replacing the system would be disruptive. He also noted that both OAH and DLI believe there are current system investments that must be met to improve C-Track and Campus.

#### **5. DLI cleanup proposals: Ethan Landy, Office of General Counsel**

Ethan Landy, DLI Office of General Counsel, provided an update about the DLI cleanup proposals. The amendments Landy discussed are technical and concern filing location requirements. The amendments clarify sections in the statute related to a single filing-system. Landy reminded the council about another DLI cleanup proposal presented at the December 2021 meeting, related to the Medical Services Review Board health care provider members and the Minnesota Insurance Guaranty Association.

## **Other business**

Commissioner Robertson said the next meeting is Jan. 26, 2022.

## **Adjournment**

Commissioner Robertson called for adjournment of the meeting. McCarthy moved and Loon seconded a motion to adjourn. A verbal roll call was taken and the motion passed. The meeting was adjourned at 11:28 a.m.

Respectfully submitted,  
Elizabeth Cole, executive secretary