

## Meeting minutes: Workers' Compensation Advisory Council

Date: Feb. 10, 2021

Minutes prepared by: Executive secretary to the Workers' Compensation Advisory Council (WCAC)

Location: Webex meeting

### Attendance

#### Members attended

Jeff Horner

Colin Beere

Walt Frederickson

Maggie Hobbs

Doug Loon

Bill McCarthy

Ed Reynoso

Robert Ryan

Gary Thaden

#### Legislative liaisons attended

Sen. Paul Utke

Rep. Mike Sundin

Rep. Tony Albright

#### DLI staff members attended

Sandra Barnes

Kate Berger

David Berry

Jon Brothen

Pam Carlson

Richard Davis

Ralph Hapness

Mike Hill

Karen Kask-Meinke

Ethan Landy

Melissa Parish

Jessica Stimac

Lisa Wichterman

Laura Zajac

#### Visitors attended

Jennifer Bean

David Bergman

Liam Biever

Jonathan Boesche

Raymond Bohn

Lynn Carroll

Aaron Cocking, IFM

Denise Collins

Evan Cordes

Susan Curley

Antara De

Karen Ebert, MCIT

Amy Erving

Andrew Essling, MCIT

Jeremy Estenson

Andrea Everling

Carla Ferrucci, MAJ

James Heer, WCRA

John Hollick

Meg Kasting, SFMIC

Suzanna Kennedy, Stinson

John Kysylyczyn

Brad Lehto, AFL-CIO

Branden Miller, MWCIA

Phil Moosbrugger, Department of Commerce

Deb Norsten, SFM

Kim Olson

Patty Prentice, LMCIT

John Reich

Lauren Schothorst, Minnesota Chamber of Commerce

Lauren Weaver, Stinson

Gary Westman

Adam Wolkoff

## Call to order and roll call

Commissioner Roslyn Robertson called the meeting to order at 9:30 a.m. Several members were not able to join the Webex meeting because of technical problems. Staff members were able to resend the Webex information and, at 9:40 a.m., a majority of the members were present in the meeting. A verbal roll call was taken and a quorum was present.

## Approval of the minutes and agenda

Commissioner Robertson said the Department of Labor and Industry (DLI) legal staff has determined this body can approve both agenda and minutes with one motion and approval of the council. This action will allow for the meeting to run a little quicker with one motion. Robertson asked for approval of the minutes from the Jan. 13, 2021, meeting and today's agenda. Doug Loon moved and Bill McCarthy seconded the motion to approve the minutes and agenda. A verbal vote was taken and the motion passed.

## Agenda items

- 1) Commissioner Robertson gave a department update.

There are two more meetings of WCAC before legislative committee deadlines. The next two meetings, Feb. 24 and March 10, are to discuss and vote on the proposals of this body.

She indicated the department has had hearings at the Legislature concerning budget overviews this session. There are 12 budget proposals included in the governor's budget, DLI has four policy proposals, that were reviewed at the Jan. 13 meeting.

Robertson gave a Work Comp Campus update to the WCAC. Highlights include the following.

- a) There were incremental improvements to the system for both internal and external stakeholders.
  - b) There were challenges at the roll-out; however, the system is improving every day.
  - c) Electronic data submission has stabilized.
  - d) Surveys have been sent to external stakeholders to determine the major concerns of the system. The department continues assessing the feedback and will continue to make improvements based on those concerns.
  - e) DLI is moving to a monthly system release schedule.
- 2) Legislator proposal – HF37 – a COVID-19 workers' compensation presumption provided for education employees (see [www.revisor.mn.gov/bills/bill.php?f=HF37&b=house&y=2021&ssn=0](http://www.revisor.mn.gov/bills/bill.php?f=HF37&b=house&y=2021&ssn=0)).

Rep. John Huot presented his proposal and explained this would expand the workers' compensation presumption to include school employees who may contract COVID-19 in the workplace.

- a) Sen. Paul Utke asked about funding for this expansion of presumption and how this will be paid. Meg Luger Nicolai, Education Minnesota, responded that education employees can be covered in the same way childcare workers and health care workers are covered through the presumption.
- b) Loon said he would like to hear from those parties who would be affected financially by extending this presumption. Those parties would include employers, such as local entities and school districts, that need to weigh in on this decision.
- c) McCarthy said there was to be a working group put together by the Legislature that would address the financial impact and determine where the money would come from to pay for benefits. The group's proposal was to go before the special session of the Legislature. Because there was no special committee to study the issue, Rep. Tony Albright said there were numerous discussions. The Legislature needed to understand the magnitude of the situation before funding was determined. Albright suggested the parties can collaborate if a group needs to be formed to study funding. Ed Reynoso said if teachers are forced to go back to the classroom, the state should provide protection for their physical and financial health.
- d) Nicolai said this is a limited bill and that because of the vaccination, this bill has a sunset date and will not go on indefinitely. Colin Beere said there was sufficient information from DLI concerning the claims and the financial impact on the industry.
- e) Discussion continued about the question of employees who may refuse to get the vaccination and whether they are still given the presumption under the workers' compensation law.

Commissioner Robertson said there is not a vote today but asked the council who else needs to be included in this discussion so an informed decision can be made?

- 3) Legislator proposal – HFXXX – to extend the sunset date for the workers' compensation COVID-19 presumption to May 1, 2022.

Rep. Dan Wolgamott said his bill will extend the sunset date of the presumption language to protect the frontline workers. He is proposing it be extended to May 1, 2022.

Brian Rice, an attorney with a fire fighter organization, addressed the council. He said that less than 10 months ago, a coalition of groups came together to pass this presumption for the frontline workers. He said it is critical an extension is provided to protect the frontline workers for another year, to May 1, 2022. He suggested the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act dollars can be used to pay for some of this protection. Albright said this extension needs to have bipartisan support in terms of balance for the parties. McCarthy felt the sunset date of the legislation may need to be extended even further beyond 2022. Loon said the agreement that was struck last year was a good compromise; the sunset date was part of that balance. He asked to hear from those impacted parties who would bear the burden of the funding.

The proposal is attached to these minutes.

- 4) Legislator proposal – SF122 – modifying data service organizations; authorizing rulemaking (see [www.revisor.mn.gov/bills/bill.php?f=SF122&b=senate&y=2021&ssn=0](http://www.revisor.mn.gov/bills/bill.php?f=SF122&b=senate&y=2021&ssn=0)).

Utke explained that while this proposal is not amending Chapter 176, it does impact workers' compensation. It impacts Chapter 79 and concerns data service organizations and rulemaking. Its purpose will be to improve accuracy and facilitates better competition across carriers in the state, for small carriers. In Minnesota, the data service organization is the Minnesota Workers' Compensation Insurers Association (MWCIA). Aaron Cocking, Insurance Federation of Minnesota, said the bill allows MWCIA to collect and include three data points in its annual ratemaking reports, including losses developed to their ultimate level, trends and loss adjusting expenses. Minnesota is the only state that currently does not allow ratemaking reports to include losses developed to their ultimate level.

5) DLI proposals and presentations

- a) **Fee schedule updates:** Ethan Landy, DLI Office of General Counsel, presented the amendment to Minnesota Statutes 176.1363, Ambulatory Surgical Center Payment. He explained these changes have been presented to the hospital association and the insurers prior to this meeting. These changes will help prevent errors in the study because it clarifies what information should be included and what should not.

The proposal is attached to the minutes.

- b) **Subpoenas of DLI employees:** Kate Berger, DLI Office of General Counsel, said this proposal provides a limitation to DLI employees from being subpoenaed in a workers' compensation enforcement proceeding.

Maggie Hobbs asked about any similar prohibitions at the federal level and other states' laws concerning subpoenas. Additional information was suggested.

The proposal is attached to the minutes.

- c) **Penalties and prohibited practices:** Berger and DLI Compliance, Records and Training (CRT) explained this proposal provides for penalties for improper collection of medical bills from an injured worker. A similar previous proposal was presented to WCAC in February 2020. Revisions were made based on recommendations by WCAC. Berger provided a summation of complaints received by the department from injured workers incorrectly billed by medical facilities.

Loon asked that while bad behavior should be addressed when it occurs, who and what mechanisms determine the appropriate level of penalties?

The proposal is attached to the minutes.

- d) **Campus clean-up:** Berger and DLI CRT explained this proposal clarifies extension of the dates for issuance of reports to insurers. Instead, DLI will publish a report on its website for the insurer to download and even have the capacity to sort and filter information.

The proposal is attached to the minutes.

- e) **Permanent partial disability (PPD) adjustment:** David Berry, DLI Research and Statistics explained PPD benefit growth compared with wage and price growth. The adjustment is needed to keep pace with these factors.

McCarthy wanted clarification that because PPD did not keep pace with wage and price growth, does this mean benefits to injured workers did not increase? Berry said that was correct.

Loon said there needs to be more thought and consideration given to this proposal because there was a change to fee schedules and benefit increases a few years ago. He would like the council to study this matter prior to making a decision.

The proposal is attached to the minutes.

- f) **Minimum compensation rate adjustment:** DLI Research and Statistics' Brian Zaidman's presentation was tabled because of time constraints. This will be brought to the council at the next meeting.

## Other business

The commissioner said next week DLI staff members will identify stakeholders who need to be part of this decision concerning these proposals. She is hopeful WCAC will get enough information and feedback to move the DLI proposals to the Legislature this year. Reynoso asked that WCAC take action on the first two legislative proposals (the education worker presumption and the extension of the deadline for the presumption to 2022) at the next meeting.

## Adjournment

The commissioner called for adjournment of the meeting and members verbally approved. The meeting was adjourned at 12:07 p.m.

Respectfully submitted,  
Executive secretary