

Meeting minutes: Workers' Compensation Advisory Council

Date: Feb. 12, 2025

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

Attendance

Members attended

Bill Gschwind
Bob Ryan
Brad Lehto
Burt Johnson
Colin Beere
David Henrich
Gary Thaden
John Thorson
Lauryn Schothorst
Maggie Hobbs
Matthew Schmidt
Sen. Jennifer McEwen

DLI staff members attended

Commissioner Nicole Blissenbach
Assistant Commissioner Jessica Stimac
Alyssa Westergard
Alexis Johnson
April Del Castillo
Bretta Hines
Brian Zaidman
Denise Holmes
Donna Olson
Emily Streier
Ender Kavas
Ethan Landy
Hared Mah
Jeanne Vogel
Joe Lolich
Jon Brothen
Karen Kask-Meinke
Laura Zajac
Lisa Wichterman

Melissa Parish
Michael Gray
Michelle Doheny
Nichole Sorenson
Sandy Stoddard
Sonya Herr

Visitors attended

Alison Khan, WCRA
Andrew Essling, MCIT
Andrew Morrison, KMCH Law
Andrea Everling, MWCIA
Angie Andresen, SFM
Auntara De, MWCIA
Brian Bart, SFM
Carla Ferrucci, MNAJ
Dan Dwight, Stinson
Dana Gerber, Atkinson Gerber
Daniel Gillis, Minnesota Senate
Deb Norsten, Hennepin County
Evan Cordes, WCRA
Jennifer Wolf, MWCIA
John Hollick, SFM
John Kysylczyn, K Solutions LLC
John Wiatros, Meadowbrook
Jon Boesche, NFIB
Kara Huberty, LMC
Kate Moulton, Allina
Kathryn H. Carlson, Workers' Compensation Court
of Appeals
Nicole Van Heel, Bauer DB
Rebecca Yang, WCRI
Shep Harris, Fredrickson Byron
Shikha Srivastava, WNINS

Steve Scharfenberg, SFM
Steven Hollander, Vocational Rehabilitation
Associates

Tiffany Gustin, Minnesota MSBA
William Keller, Anoka County

Call to order and roll call

Commissioner Nicole Blissenbach called the meeting to order at 9:50 a.m. A roll call was taken and a quorum was present.

Approval of the minutes and agenda

Brad Lehto moved to accept today's agenda and the minutes from the Dec. 11, 2024 meeting. Gary Thaden seconded the motion. A roll call vote was taken and the motion carried.

Announcements

Commissioner Blissenbach thanked council members for attending the House and Senate Labor Committee meeting. She noted a different approach was taken this year and a few case scenarios were highlighted coming out of the Vocational Rehabilitation unit (VRU), the Compliance, Records and Training (CRT) unit and the Special Compensation Fund (SCF) unit. Commissioner Blissenbach felt the information was met with some good feedback from legislators, as well as stakeholders. She also noted she expects to start doing budget presentations in the next couple of weeks. The other topic Commissioner Blissenbach highlighted was the misclassification bill that passed last year and, thus, created the misclassification partnership. She is hoping they will be on the schedule to present to the labor committees soon.

Assistant Commissioner Jessica Stimac gave a brief update about the post-traumatic stress disorder (PTSD) study the Department of Labor and Industry (DLI) is working on with the University of Minnesota. She said the team will be conducting one-on-one interviews of stakeholders, mostly employers and injured workers, in the coming weeks. She also noted the information from the interviews is meant to provide context to the data, not to wholly advise the report. She added the report is due by Aug. 1.

Assistant Commissioner Stimac also said Lisa Wichterman, who was DLI's medical policy specialist, has filled the role of ombudsman and DLI will be hiring behind Wichterman to fill the role of medical policy specialist. DLI is also working on hiring a resource to help with processing of their annual claims for reimbursement. Assistant Commissioner Stimac extended her gratitude to the insurers that have worked with DLI to streamline submissions for those claims.

Assistant Commissioner Stimac also noted DLI has been doing a lot of work on the vocational rehabilitation front and they will have a budget ask this year. If approved by the Legislature, it will not affect the assessment rate.

Agenda items

1. DLI legislative proposals

Laura Zajac, Ethan Landy and Bretta Hines, from DLI's Office of General Counsel, presented DLI's revised proposals to the council. Zajac began with a change to the definition of "employee," found in Minnesota Statutes section 176.011, subdivision 9(a)(17). Zajac explained that a stakeholder brought this law to their attention by noting there was a broken cross reference to a provision of Minn. Stat. chapter 256B that had been repealed. DLI is proposing an update to the language to fix that reference, but also to

reflect the changes in personal care assistant (PCA) service models that have been made over the years. The change seeks to clarify that the PCA agency is the employer for purposes of obtaining and maintaining workers' compensation insurance when it is the employer and, in the budget models, the fiscal management service provider must require and verify the insurance is in place in keeping with current practice in its responsibilities.

Hines presented the next change, which is one that was proposed at the previous council meeting, adding a clarifying cross reference to the executive officer of a corporation definition. Hines said that after the feedback from the council, they went back to the stakeholders and determined the issue lies specifically with the definition of an executive officer and how different entities are interpreting that definition. The proposed solution is adding a new reference that links the two parts of the workers' compensation exclusion to executive officers as executive officers defined in the definitions under Minn. Stat. 176.011, subd. 11.

Landy discussed a proposed change to Minn. Stat. 176.135, subd. 1, that goes in tandem with changes to Minn. Stat. 176.361 subd. 2. He noted the only change here is in paragraph (b), stating "the employers shall pay for the reasonable value of nursing services provided by a member of the employee's family *or household*." Landy said the reason for adding the term "household" was based on stakeholder feedback and review of case law when this situation has come up. This then ties in with the change to Minn. Stat. 176.361, subd. 2, by making it so that a family member providing nursing services would not have to follow the intervention process in the same way other parties have to do. The suggested change would allow for that member of the family or their household to assert a claim for reimbursement even if they did not intervene properly.

Landy went on to discuss the next proposed change to Minn. Stat. 176.175. He noted there were due process considerations brought up by stakeholders last session related to debt collection language across the board in statute and a prior case in Minnesota bankruptcy court that questioned the constitutionality of property exemptions with unlimited dollar amounts. He added that because the Legislature made a change to chapter 176 in this area, they thought it was appropriate to bring back before the council this year. They are suggesting the dollar cap be raised from \$1 million to \$5 million for high-cost claims.

Thaden suggested the cap be increased to \$10 million instead of \$5 million, because it will most likely need to be reconsidered in the future due to inflation and rising costs of medical care.

Hines presented the final proposal to the council, which is a change to Minn. Stat. 176.361, subd. 1(a), to help streamline the intervention process, as well as make sure potential intervenors are receiving all the information they need to determine if they have an intervention claim. Instead of providing all pleadings, they are proposing limiting it to orders that have been issued by the Office of Administrative Hearings (OAH) or DLI, or anything currently pending before the court, and other pleadings that are not responses to demands for discovery, other motions to intervene or notices of right to intervene.

2. Discussion: Workers' compensation insurance premium fraud prevention

Burt Johnson addressed the council regarding fraud in the construction industry. He noted the issue of workers' compensation insurance premium fraud in the construction industry is widespread and has gained media attention. The crux of the issue is misclassification of employees as independent contractors. Misclassification of employees as independent contractors gives unfair competitive advantages to certain employers. Johnson said he feels collaborative efforts between insurers, the Department of Commerce and DLI are needed to gather and store information to prevent fraud and ensure a level playing field. Johnson noted off-the-books payroll makes it difficult to accurately quantify the problem, but examples of the business model do exist.

Council members discussed the issue and asked questions to get a better idea of how information would be gathered and who would be responsible for gathering it. They also discussed what could be done to try to regulate the process more at the front end to try to stop the fraud from occurring, rather than trying to enforce it after the fact, and without overburdening compliant individuals and companies.

Other business

The next Workers' Compensation Advisory Council meeting is scheduled for March 26, 2025.

Adjournment

Bob Ryan moved to adjourn the meeting and Thaden seconded. A roll call vote was taken and the meeting was adjourned at 11:17 a.m.

Respectfully submitted,
Alyssa Westergard, executive secretary