

## Meeting minutes: Workers' Compensation Advisory Council

Date: Feb. 24, 2021

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

Location: Webex meeting

### Attendance

#### Members attended

Jason Bartlett  
Colin Beere  
Walt Frederickson  
Dennis Galligan  
Maggie Hobbs  
Doug Loon  
Bill McCarthy  
Ed Reynoso  
Robert Ryan  
Gary Thaden  
Kevin Yakes

#### Legislative liaisons attended

Senator Paul Utke  
Representative Mike Sundin  
Representative Tony Albright

#### DLI staff members attended

Commissioner Roslyn Robertson  
Kate Berger  
David Berry  
Pam Carlson  
Richard Davis  
Ralph Hapness  
James Honerman  
Karen Kask-Meinke?  
Ethan Landy  
Jessica Stimac  
Jeanne Vogel  
Lisa Wichterman  
Laura Zajac

#### Visitors attended

Chas Anderson  
Adam Axvig, MAFMIC  
Liam Bieber, LMC  
Kathy Bray, SFMIC  
Tina Burkholder, Monticello Schools  
Gary Carlson, LMC  
Joel Carlson  
Lynn Carroll, WCRA  
Aaron Cocking, IFM  
Evan Cordes  
Sara Curtis, Corvel  
Antara De, MWCI  
Valerie Dosland  
Mary Dougherty, HealthEast  
Karen Ebert, MCIT  
Kevion Ellis, EDMN  
Amy Erving, Mackinaw  
Andrew Essling, MCIT  
Andrea Everling, MWCI  
Carla Ferrucci, MAJ  
Adam Fowler, Optum  
Andy Gebhard, SFM  
Anne Green, ND  
Carol Hanson, SEIU Local 284  
Mike Happe, SFM  
Shep Harris, Fredrikson & Byron  
James Heer, WCRA  
Matt Hilgart, Minnesota Counties  
John Hollick, SFM  
Jeff Howe, Minnesota Senate  
Carrie Jacobson

Meg Kasting, SFMIC  
Suzanna Kennedy, Stinson  
Amy Kockelman, Minnesota State  
John Kysylyczyn  
Shiloh Larson, Messerli Kramer  
Brad Lehto, AFL-CIO  
Stephanie Lindgren, Minnesota Med  
Tammy Lohmann, Department of Commerce  
Brandon Miller, MWCIA  
Jon Mocol, MN Townships  
Phil Moosbrugger, Department of Commerce  
Andrew Morrison  
Tom Mottaz  
Laura Mundt, Mayo  
Deb Norsten, SFM  
Brianna Nyquist  
Donna Olson  
Kim Olson  
Patty Prentice, LMCIT  
Jason Rarick, Minnesota Senate  
Meredith Redmond  
John Reich  
James Reimann, Minnesota Phys.  
Margaret Reynolds, Cigna

Brian Rice  
Darin Richardson, LMC  
Kristen Rodgers  
Mark Rodgers Law Office  
Robyn Rowen  
Dean Salita  
Kirk Schneiderwind, MNMSBA  
Lauren Schothorst, Minnesota Chamber  
Barry Schumacher  
Chris Shapira, Fire Foundation  
Zach Sias, Minnesota Nurses  
Jenny Starr, chief judge  
Chris Stinson, SEIU Local  
David Sullivan, Minnesota House  
Deb Sundquist, Workers' Compensation Court of Appeals  
Sophie Thaden  
Tyler Treichel, Stearns Company  
Rick Varco, SEIU  
Phil Vigliaturo, Department of Commerce  
Lauren Weaver, Stinson  
Gary Westman  
Adam Wolkoff  
Debra Zorn, SFM

## Call to order and roll call

Commissioner Roslyn Robertson called the meeting to order at 10:05 a.m. A verbal roll call was taken and a quorum was present.

## Approval of the minutes and agenda

Robertson asked for approval of the minutes from the Feb. 10, 2021, meeting and today's agenda. Bill McCarthy moved and Gary Thaden seconded the motion to approve the minutes and agenda. A verbal vote was taken and the motion passed.

## Agenda items

1. Commissioner's update

Commissioner Robertson said because of the full agenda today she is asking for all those testifying to please limit speaking time to three minutes. The proposals today have all been previously presented to the Workers' Compensation Advisory Council (WCAC) at recent meetings, so the extent of the testimony

should be brief. She also said there are handouts that were sent to members and the public regarding the proposals.

2. Legislator proposal: Rep. Dan Wolgamott, HF 1203/SF1203, Extend the sunset date for the COVID-19 workers' compensation presumption to May 1, 2022.
  - a. Rep. Wolgamott asked that Brian Rice, of the Minnesota Professional Firefighters and AFSCME Corrections Officers, speak to the council on behalf of this proposal. Rice explained the date to extend the presumption needs to be extended because it has proved very effective for first responders and others. He would support the exception that if workers included in this presumption refuse the vaccination, they should not be included in the presumption law.
  - b. Aaron Cocking, Insurance Federation of Minnesota, said when this presumption law was passed initially last year, the insurance industry and business fully supported it. However, he feels it is too soon to extend the presumption because the vaccinations are rolling out and no one knows how the virus will progress or lessen in the next year.

Discussion – Loon said there seems to be no consensus, but the author and the proponents seem willing to compromise. Some of these bills are moving on at the Legislature, but there needs to be a comprehensive balance. McCarthy felt the council needs to put a package together and not delay. McCarthy supported the extension and asked that it move forward. Sen. Paul Utke said we need to figure out how to pay for these extensions. Funding was to be determined last April, but this did not occur. He said we need to determine how to fund the presumptions.

Commissioner Robertson said there will not be a vote today but wanted the council to hear all remaining proposals. There will be additional conversations before the next meeting. A vote will be taken at the next meeting of the council. There are several handouts that were sent and are available on the DLI website that address this issue.

3. Legislator proposal: Rep. John Huot, HF37, and Sen. Greg Clausen, SF105, COVID-19 presumption provided to education employees.
  - a. Sen. Clausen said the bill extends the original presumption to include education and school employees. As students return to the classroom, teachers and other school employees have been ordered to come back to the classroom. School employees are in close proximity to each other and the students.
  - b. Brian Zaidman, Department of Labor and Industry (DLI) Research and Statistics, presented data and costs of estimated effects of presumption on the number and cost of education worker claims. He said the numbers are not a prediction of what the numbers will look like, but rather what they could look like based on a number of different factors that could change.

Zaidman's presentation is attached to the minutes and were given to the members and public.

- c. Andrea Everling, MWCIA, spoke of the potential financial impact of the presumption if the education workers are included. This presumption may result in a 2.6% increase on the privately insured workers' compensation system. Also, she said the vaccination rollout should lessen the severity and contraction of the virus on all workers.
- d. Kirk Schneidawind, Minnesota School Board Association, said the presumption should not be expanded because more precautions are available to education workers, including social distancing, personal protection equipment (PPE) and, finally, the vaccination rollout. The bill has a retroactive effect and will cause increased costs to workers' compensation claims. In addition, this presumption change could also discourage school districts from opening the classrooms because of the inherent financial impact to the workers' compensation rates.
- e. Aaron Cocking, Insurance Federation of Minnesota, said workers' compensation was designed to protect workers from injuries and disease that were contracted on the job. One of the issues is the number of workers who contract the disease elsewhere and yet are paid out of the workers' compensation system. Also, by having a retroactive addition to this bill will mean some claims will have to be investigated from seven months ago, which makes it extremely difficult to prove where and when the virus was contracted. As educators are vaccinated, this bill will become unnecessary.
- f. Tina Burkholder, Monticello Public Schools, said one of her concerns is the bus drivers and workers who transport students. Some school districts contract transportation and the workers are not school district employees. Will this be a school district claim or the bus company claim? If there is a retroactive component, how does one determine when and where the virus was contracted? Also, would the schools be required to keep track of which workers declined getting a vaccine?
- g. Carol Hanson, SEIU Local 284, said since education employees are essential workers, they need to be included in this presumption. These workers continue to be on the front lines with children and, oftentimes, cannot socially distance. Examples are multiple virus exposures by some workers testing positive for the virus, but never aware of the workers' compensation benefits they are eligible to receive. Some fear reporting, because of having to prove it was contracted on the job. Education employees who work with special needs students and those younger than five years old find it difficult to socially distance and for students to wear a mask all day when they are working with them. School bus ventilation systems blow the air to the front and toward the driver. In addition, there are bus monitors who are also exposed on the bus.

Discussion: Maggie Hobbs questioned whether workers' compensation becomes the correct avenue for benefits for educators who contract COVID-19. She asked if they would qualify for disability benefits and what other options they have other than the presumption. Meg Lugar-Nikolai said, currently, if an educator gets COVID-19 through community spread, they will rely on their own health insurance to cover them and use any sick time or paid time off (PTO) for time away from work. It is the employee who is responsible for any illness or injury away from work. Burkholder said Monticello schools offer 15 sick days and, this year, approved an additional 10 days and they didn't have to prove it was contracted at the workplace.

Doug Loon pointed out the written submission from independent schools and Minnesota Catholic Conference indicating the financial strain of this expansion of the presumption will put more pressure on their already strained education systems. He would like to discuss the funding of the expansion and how it will get paid. McCarthy said labor supports this legislation and education workers should have been included in the original legislation.

4. Legislator proposal: Sen. Clausen, SF 1035, Presumption of occupational disease for firefighters with certain forms of cancer.
  - a. Sen. Clausen said firefighters are often denied workers' compensation benefits when they contract cancer, even though cancer-causing agents are nationally recognized as part of the many fires and chemicals that are present when firefighters are working on the job.
  - b. Chris Parsons, Minnesota Professional Fire Fighters, said his organization supports SF1035. He said employers often appeal and win cases against claims of firefighters who contract cancer. This presumption would cover the employee five years after leaving the job. Many states cover from five to 10 years. Minnesota law does not recognize line-of-duty deaths from cancer. Science data indicates every fire in a home produces a chemical or synthetic material.
  - c. Steve Shapira, Firefighter Cancer Support Network, explained he is a cancer survivor and continues to fight nonhodgkins lymphoma. He was denied immediately for workers' compensation benefits even though data shows firefighters develop this disease at a 51% greater rate than the general public. Seventy-six percent of firefighters who died last year had cancer.

Discussion: Rep. Tony Albright said the history of the Workers' Compensation Advisory Council (WCAC) has always been to get a consensus and to keep the integrity of the council. He has worked on many issues that were contentious, but the council came together to find common ground. He asked the authors of the bills today to not side step WCAC. There is still time to get consensus from WCAC and then from the Legislature. Loon pointed out the League of Minnesota Cities (LMC) letter and its concerns of costs and effects on the local governments' budgets before going forward.

5. Department of Labor and Industry, presentations and proposals
  - a. Minimum compensation rate adjustment – Brian Zaidman, Research and Statistics  
Brian Zaidman said the adjustment is meant to lift the benefit of the lowest-wage injured worker above the 67% standard benefit rate. He pointed out that the minimum benefit level has not been changed since Oct. 1, 2000. The proposal is to keep the minimum weekly benefit consistent with wages. He said increasing the benefit at the same rate as payroll is neutral to premium rates.
  - b. Permanent partial disability (PPD) benefit adjustment – David Berry, Research and Statistics  
David Berry said this proposal is amending Minnesota Statutes 176.101, subdivisions 1 and 5, to provide for adjustment to the minimum compensation rate and permanent partial disability schedule.

Discussion: Loon asked if that mean there is neutrality of cost to the system and where does the benefit increase come from? Berry said there is an increase of 8.5% to the system, but there have been savings

accruing every year. If the PPD benefit is increased, that savings would not accrue. Loon said there needs to be a closer look at the overall impact. McCarthy said he also agrees this needs to be looked at, but should be decided before the next meeting.

The updated presentations are attached to these minutes.

6. Department of Labor and Industry legislative proposals
  - a. Inpatient hospital (DRG) payment calculator, as revised, Ethen Landy, Office of General Counsel, presented the revised version of the language based on comments from the Feb. 10 WCAC meeting.

The revised language is attached.

- b. Subpoenas of DLI employees, Kate Berger, Office of General Counsel, presented revised language prohibiting DLI employees from being subpoenaed. Lines 38 through 41 have added language that qualified rehabilitation consultants (QRCs) can be subpoenaed. Kate Berger answered a question from council member Hobbs from the most recent meeting: How do other states and the federal government handle subpoenas of their employees in such cases? The federal government does not allow employee subpoenas unless approved by the solicitor general. Other states have a variety of requirements and prohibitions regarding this measure.

The revised language is attached to the minutes.

- c. Penalties and prohibited practices, Kate Berger, Office of General Council, said this proposal provides for penalties from providers for improper collection of medical bills from an injured worker. Revisions were made based on comments from the Feb. 10 WCAC meeting.

Discussion: Loon asked DLI staff members and stakeholders to review before going forward.

The revised proposal is attached to the minutes.

7. Cost of copies of medical records
  - a. Jim Reimann, Minnesota Medical Group Management Association, expressed concern that changing the fees for medical records will negate the compromise that is currently in the law. He says the current proposal is unreasonable and would place the burden on clinics and hospitals that spend vast amounts of time and resources on the medical records requests.

There were written submissions from the Minnesota Medical Association and the Ambulatory Surgery Center, which are attached.

8. Repeal of North Dakota exclusive remedy, proposed by the Minnesota Association for Justice (MAJ) at the Jan. 13, 2021 meeting.
  - a. Mark Rodgers, of Mark Rodgers law office, spoke to the council. He represents injured workers and explained the statute needs to be repealed. His concern is that Minnesota workers who work for a North Dakota company and are injured in Minnesota cannot receive Minnesota workers' compensation benefits from the Minnesota system, but must go through the North Dakota system.

He feels Minnesota workers are entitled to Minnesota benefits.

- b. Aaron Cocking, Insurance Federation of Minnesota, said this is not a Minnesota issue and North Dakota should be held accountable and change its law. He said the Minnesota workers' compensation system is designed for workers who work for Minnesota companies that fund the benefits.

Discussion: Loon said he feels this is not a Minnesota issue, but that North Dakota may need to change its law to accommodate these workers. Rodgers would like to speak further regarding this issue and will ask to come back to the council.

## **Other business**

The commissioner said the next scheduled meeting is March 10. DLI will meet with the caucus leadership for business and labor to determine issues for voting at the next meeting.

## **Adjournment**

The commissioner called for adjournment of the meeting. Loon moved, and Thaden seconded, a motion to adjourn. A verbal roll call was taken and the motion passed. The meeting was adjourned at 12:38 p.m.

Respectfully submitted,  
Executive secretary