

Meeting minutes: Workers' Compensation Advisory Council

Date: Nov. 8, 2023

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
Bernie Burnham
Colin Beere
David Henrich
Ed Reynoso
Gary Thaden
John Thorson
Laurn Schothorst
Maggie Hobbs
Matthew Schmidt
Robert Ryan
Rep. Joe McDonald
Sen. Jennifer McEwen
Sen. Paul Utke

DLI staff members attended

Commissioner Nicole Blissenbach
Assistant Commissioner Kate Daly
Alyssa Westergard
Bretta Hines
Brian Mak
Brian Zaidman
Emily Streier
Ender Kavas
Ethan Landy
Gretchen Longbehn
Hared Mah
Jessica Stimac
Jon Brothen
Josiah Moore

Katherine Drake
Laura Zajac
Michelle Doheny
Mike Hill
Pam Carlson
Peggy Charpentier
Yuri Jelokov

Visitors attended

Adam Wolkoff, Office of Administrative Hearings
Alison Khan, Workers' Compensation Reinsurance Association
Amy Kockelman
Andrea Rau, Winthrop
Andrew Essling, Minnesota Counties Intergovernmental Trust
Auntara De, Minnesota Workers' Compensation Insurers Association
Bill Rivers, WP Rivers and Associates
Brad Lehto, Minnesota AFL-CIO
Carrie Jacobson, Brown and Carlson
Carla Ferrucci, Minnesota Association for Justice
Dana Gerber, Atkinson Gerber
Daniel Gillis
Elizabeth Wright, ING Co International
James Heer, Workers' Compensation Reinsurance Association
Jessica Stoeckman, SFM Mutual Insurance
Joe Schindler, MHA
John Hollick, SFM Mutual Insurance
Karen Ebert, Minnesota Counties Intergovernmental Trust

Kate Moulton, Allina
Kathy Bray, SFM Mutual Insurance
Katie Storms, Minnesota Defense Lawyers
Association/Lind Jensen
Kristen Gyolai
Laura Mundt, Mayo Clinic
Mark Freeman, Tepinsky Law Group
Michael Tupy
Nadya Yarmolich, Meuser Law
Nicole Van Heel, Bauer Design Build

Patricia Milun, Office of Administrative Hearings
Paul Cassidy, Stinson LLP
Peter Lindquist, SFM Mutual Insurance
Rebecca Yang, Workers' Compensation Research
Institute
Sarah Groskreutz
Sarah Psick, Psick Capital Solutions
Tiffany Gustin, Minnesota State Bar Association
Tiffany Grzybowski

Call to order and roll call

Commissioner Nicole Blissenbach called the meeting to order at 9:35 a.m. A roll call was taken and a quorum was present.

Approval of the minutes and agenda

Gary Thaden moved to accept today's agenda, as well as the minutes from April 20 and Sept. 13, 2023. Bernie Burnham seconded the motion. A roll call vote was taken and the motion carried.

Announcements

Commissioner Blissenbach noted she and several others at the meeting had attended the Minnesota Work Comp Forum and it had been very successful. She added the forum recognized the important work of the council and passed along the gratitude she felt was expressed.

Assistant Commissioner Kate Daly thanked Colin Beere and Maggie Hobbs for sitting on a panel with her at the forum. She then updated the council about the post-traumatic stress disorder (PTSD) study, noting the contract with the University of Minnesota was being signed today. She also introduced two new DLI employees who were hired to assist with the study: Emily Streier, a legal analyst with the Office of General Counsel; and Katherine Drake, a research analyst specialist with Research and Statistics. Daly informed the council a webpage for the study has been created on the Department of Labor and Industry (DLI) website and there is a link to sign up to receive email updates.

Agenda items

1. **Workers' Compensation System Report – Hared Mah, Research and Statistics, DLI**

Hared Mah addressed the council and gave an overview of the *Minnesota Workers' Compensation System Report*. He began by giving an overview of the entire report. The primary data sources for the system report are DLI's claims database (limited to claims without lost time or paid indemnity benefits)

and the Minnesota Workers' Compensation Insurers Association (MWCIA). Mah explained many report statistics are by year of injury. To make statistics comparable over time, they are projected ("developed") to a uniform maturity. He also noted 2020 and 2021 statistics were affected by the COVID-19 pandemic and changes in the economy, such as a reduction in employment and data system transition.

Mah offered additional detail about several items. He noted claim rates declined nearly continually for the past 20 years; however, there was a large increase in the indemnity claim rate in 2020 and 2021 due to the influx of COVID-19 claims, which reversed the long-term downward trend in indemnity claim rate. For non-COVID-19 claims in 2021, the estimated indemnity claim rate was 0.94 claims per 100 full-time-equivalent (FTE) workers, the medical-only claim rate was 2.2 and the total claim rate was 3.2. Mah explained the cost of Minnesota's workers' compensation system per \$100 of payroll follows a cycle of about 10 years, with alternating low and high points. The workers' compensation system cost per \$100 of payroll includes components for insured and self-insured employers.

He also said medical benefits are the largest expense to the workers' compensation system; however, the share of medical benefits was down from 35% and the share of indemnity benefits was up from 29% in 2019. The total benefit payments accounted for 67% of the total system cost. In 2021, the proportion of claims with total disability benefits decreased, while all other benefits increased relative to 2020. Temporary partial disability benefits have steadily declined since 2001.

Mah explained the number of claim petition filings in the DLI database increased by 16% from 2017 to 2019, then decreased by 29% from 2019 to 2022. Mah also said COVID-19 claims appear to have affected the 2020 and 2021 denial rates. Although the COVID-19 presumption enabled many first responders, corrections workers and health care workers to receive workers' compensation benefits, the denial rate for COVID-19 claims was 39%, significantly higher than the 24% rate for non-COVID-19 claims in 2021 (23% versus 16% in 2020).

2. Minnesota Defense Lawyers Association response to Minnesota Association for Justice legislative proposals – Katie Storms, Lind, Jensen, Sullivan and Peterson; and Carrie Jacobson, Brown and Carlson

Katie Storms and Carrie Jacobson addressed the council and thanked the members for the opportunity to provide a response to the Minnesota Association for Justice's (MAJ) legislative proposals from the prior meeting.

Storms began by saying the Minnesota Defense Lawyers Association (MDLA) felt an agreement could be reached on the issue of expedited hearings. MDLA proposed expedited hearings be limited to penalties on technical issues only. These would be limited to penalties that might arise under Minnesota Statutes section 176.221, for late payment on the commencement of benefits.

Jacobson addressed the availability of court certified reporters. While MDLA has no objection to the provision of court certified reporters, they sought clarification about the cost and whether a reporter would be offered for all appearances or only those on the record. One proposed solution was for the cost to be split equally.

MDLA does not support an independent cause of action for employees to collect on bills that have been extinguished. However, MDLA believed that the data showing how often a provider attempts to collect from the injured worker after their interest has been extinguished, as well as data showing the percentage of claims where an injured worker is unable to treat with a particular provider, would be invaluable in furthering discussions regarding these issues. MDLA also supported inviting input and commentary from providers for insight to the barriers faced when attempting to intervene on a workers' compensation case.

MDLA questioned the removal of the attorney fee cap but indicated there was room for discussion. MDLA would like to see more data surrounding the issue, such as the number of cases tried versus the number of cases settled and the attorney fees paid versus objections filed.

MDLA declined further discussion about combining temporary total and temporary partial disability benefits. MDLA believes combining the two indemnity periods discourages a return to work, which is the goal of the Workers' Compensation Act.

MDLA also declined to further discuss removal of the *Ewing* letter and the inclusion of fringe benefits in the calculation of the average weekly wage. MDLA believed there is room for discussion about reviewing the average weekly wage statute in part, because it is difficult for an injured worker to continue to bear the cost of their personal health insurance when they are only receiving two-thirds of their average weekly wage.

MDLA asked to hear from providers to fully understand the basis for all of the challenges seen in obtaining an independent medical evaluation.

MDLA's legislative proposals address the following:

- using the intoxication defense as a mitigation rather than a bar to benefits;
- advancing employer-directed medical care;
- revising settlements for individual insurers;
- extending the deadline for filing an answer to a claim petition to be consistent with civil courts;
- extending the time for filing deadline to 11:59 p.m. to be consistent with civil courts;
- adding language to Minn. Stat. section 176.361 for intervention negotiations in good faith; and
- mandating unredacted medical authorizations and allowing the suspension of benefits or a Motion to Compel without litigation.

Other business

The next Workers' Compensation Advisory Council meeting is tentatively scheduled for Dec. 13, 2023.

Adjournment

Thaden moved to adjourn the meeting and Lauryn Schothorst seconded. A roll call vote was taken and the meeting was adjourned at 11:07 a.m.

Respectfully submitted,
Alyssa Westergard, executive secretary