

Meeting minutes: Workers' Compensation Advisory Council

Date: Dec. 14, 2022

Minutes prepared by: Alyssa Westergard, executive secretary to the Workers' Compensation Advisory Council

Location: Webex

Attendance

Members attended

Bernie Burnham

Bill Gschwind

Burt Johnson

Colin Beere

David Henrich

Doug Loon

Ed Reynoso

Gary Thaden

Maggie Hobbs

Matthew Schmidt

Robert Ryan

Jessica Stimac

Karen Kask-Meinke

Laura Alsidis

Lisa Wichterman

Laura Zajac

Michelle Doheny

Mike Hill

Nichole Sorenson

Patricia Munkel-Olson

Peggy Charpentier

Steven Gilmore

Steven Sullivan

Legislative liaisons attended

Sen. Paul Utke

DLI staff members attended

Commissioner Nicole Blissenbach

Assistant Commissioner Kate Daly

Ann Tart

Alyssa Westergard

Brian Mak

Brian Zaidman

Byron Millea

Christopher Leifeld

Donna Olson

Ender Kavas

Ethan Landy

Hared Mah

Jeanne Vogel

Jon Brothen

Josiah Moore

Visitors attended

Aaron Cocking

Adam Wolkoff, OAH

Alison Khan, WCRA

Amy Kockelman

Andrea Everling, MWCIA

Andrew Essling, MCIT

Andrew Morrison, KMCH Law

Anne Finn, LMC

Auntara De, MWCIA

Bette Zerwas, North Memorial

Brad Lehto, AFL-CIO

Carrie Jacobson, Brown and Carlson

Dan Dwight, Stinson LLP

Dan Greensweig, LMC

David Sullivan

Deb Norsten, SFM

Denise Dittrich, MSBA
Evan Cordes, Aafedt Forde, et. al.
Gary Westman
Helen Bassett
Helen Roberts
J. Wiatros
James Heer, WCRA
James McLean, HealthPartners
Jennifer Wolf, MWCIA
Jerry Sisk, Mottaz Law
Joe Schindler
Joel Carlson
Joel Carlson
John Kysylyczyn
Jon Kelly
Jonathan Boesche
Kathy Bray, SFM
Katie Kottenbrock, MNA
Kim Lewis, MSBA
Kirk Pederson
Laura Mundt, Mayo
Lauren Weaver, Stinson LLP

Lauryn Schothorst
Liam Biever, LMC
Mary Turner, MNA
Matt Massman, Minnesota Inter-County Association
Michael Lewis

Michael Tupy
Peter Lindquist, SFM
Sara Curtis, CorVel
Sara Payne
Sarah Groskreutz
Sarah Hunter, SFM
Shawn Stricker, SFM
Shawna Holewinski
Sophie Thaden
Stephanie Balmer, Falsani Balmer
Suzanna Kennedy, Stinson LLP
Tailin Tommerdahl
Tyler Treichel
Wendy Wulff
Will Freeman
William Keller

Call to order and roll call

Commissioner Nicole Blissenbach called the meeting to order at 9:32 a.m. A roll call was taken and 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.

Approval of the minutes and agenda

The commissioner asked for approval of the April 12, June 8, Aug. 10 and Nov. 9, 2022, minutes, as well as the Dec. 14 agenda. A verbal vote was taken and the motion passed.

Announcements

Assistant Commissioner Kate Daly gave an update about the MAJ and MDLA efforts regarding a joint proposal.

Agenda items

- 1. Minnesota Statutes 79A.04, Discretionary authority proposal – Jon Kelly, director of government affairs, Department of Commerce**

Jon Kelly presented a proposal relating to workers' compensation self-insureds that are subject to Chapter 11 bankruptcy. The proposed legislation would provide the Department of Commerce with discretionary authority to have a bankrupt private self-insurer's security be transferred to the Self-Insurers' Security Fund (SISF) when the private self-insurer continues to pay workers' compensation obligations under chapter 176. It would require self-insured employers to affirmatively give notice to the Department of Commerce if filing Chapter 11 and then have an initial meeting within 30 days of filing for bankruptcy with the Department of Commerce and SISF. This would allow the Department of Commerce and SISF to gain additional information regarding the self-insured employer's financial condition and plans regarding payment of outstanding workers' compensation claims. The proposal would also require a check-in between the Department of Labor and Industry (DLI) and the Department of Commerce regarding the bankrupt, private self-insured employer's payment of workers' compensation obligations under chapter 176.

Doug Loon asked if there would be more specific language or a proposal the Department of Commerce would be bringing to the council. Kelly responded that they are hoping to have a draft of the language for the council in January.

Maggie Hobbs asked why the proposal was presented now. Kelly responded that they are trying to be responsive to SISF because they have sought information around the financial condition of the self-insured employer and they are trying to find a solution that balances the continued payment of claims by self-insured employers and the need for SISF to see the information while also navigating the data practices act. Sara Payne, general counsel for the Department of Commerce, added they are also trying to make sure they are meeting the needs of both the employers and the workers, and have a more case-by-case approach, rather than applying a "one size fits all" approach.

Andy Morrison, counsel for SISF, noted SISF feels the concept in general is very good and the concept of requiring notice is excellent. However, since bankruptcy is complicated, he said he feels the language needed additional editing.

2. Post-traumatic stress disorder (PTSD) presumption – Mary Turner, president, Minnesota Nurses Association (MNA)

Mary Turner presented a proposal relating to nurses and the PTSD presumption. Currently, the PTSD presumption does not include nurses who work in hospitals and/or clinics. MNA's proposal would include those nurses in the list of occupations covered by the presumption.

Studies from 2020 and 2021 show nearly 50% of ICU nurses were at risk of having PTSD. COVID-19 cases and an increase in workplace violence are two of the main contributing factors to potential PTSD claims made by nurses. Turner said the difficulty and stress in trying to have PTSD claims approved is causing nurses to not file a workers' compensation claim, which – in turn – means nurses do not receive the treatment they need.

Hobbs asked for more information about whether nurses are currently able to assert successful PTSD claims without the presumption and the basis for PTSD denials. Turner responded that nurses are able to assert PTSD claims, but it is difficult to get PTSD claims approved. COVID-19 and PTSD claims are

especially hard to get approved because of the burden of trying to prove them. Katie Kottenbroch, also with MNA, expanded on the barriers nurses are facing when making PTSD claims and why a lot of nurses are choosing not to assert a claim.

Loon added that, perhaps, the presumption is not the solution and that a larger, longer-term solution is necessary for PTSD claims.

Bernie Burnham said the presumption is a good place to start, especially when nurses are finding quitting to be an easier solution than filing a claim and fighting to get it approved.

3. DLI housekeeping – Ethan Landy, DLI Office of General Counsel

Ethan Landy presented four technical statutory housekeeping proposals. The first part of the proposal related to definitions in Minn. Stat. section 176.011. The proposal would fix a cross-reference in the definition of “family farm” as the subdivision was renumbered. The proposal would also add a new definition for the term “relative value fee schedule” and add a cross-reference to the definition that Medicare uses.

The second part of the proposal dealt with the authority of the Rehabilitation Review Panel (RRP). The proposal would add appeals to commissioner orders related to qualified rehabilitation consultant (QRC) firms to be under the authority of RRP as well. There are two changes in Minn. Stat. section 176.111 that relate to a notice required for dependency benefit changes. The cross-reference would be to a new subdivision that instructs insurers how to notify dependents when there is a discontinuance or a change to benefits.

The final part of the proposal amends the language regarding inpatient hospital payments. There is no substantive change to how the language is applied, but this would clarify how to apply the language to inpatient bills.

4. HOFs timeliness and updated calculations – Lisa Wichterman, DLI medical policy specialist

Lisa Wichterman gave an update about the hospital outpatient fee schedule (HOFs) payment timeliness. According to the 2021 study done by DLI, hospitals reported 67% of their bills were paid timely and payors reported 92% of bills were paid timely.

Due to the large difference in timeliness percentages between hospitals and payors, DLI requested additional documentation regarding timeliness issue. The documentation revealed a high percentage of timeliness.

Hared Mah, DLI Research and Statistics, presented about the estimated cost effects of a proposed 10% reduction in total payments for outpatient hospital services.

5. COVID-19 workers’ compensation claims update – Brian Zaidman, DLI Research and Statistics

Brian Zaidman gave an update about COVID-19-related workers’ compensation claims. There were 48,680 total COVID-19 claims reported through Nov. 8, 2022. There have already been 8,080 COVID-19

indemnity claims in 2022, compared with 7,070 in all of 2021. The most recent activity showed a decrease in claims starting in August 2022.

Presumption worker denial rates were higher in March and May 2022 than during the January 2022 presumption gap. Sixty percent of all claims were from hospitals and nursing homes. Hospitals and nursing homes also had 64% of the paid COVID-19 claims. Registered nurses and nursing aides reported the most claims.

Other business

The next meeting will be Jan. 25, 2023, and the council will vote on some of the language presented today.

Adjournment

The meeting was adjourned at 11:35 a.m.

Respectfully submitted,
Alyssa Westergard, executive secretary