

Meeting Minutes: Workers' Compensation Advisory Council

Date: 08/14/2019
Minutes prepared by: Executive Secretary to the Workers' Compensation Advisory Council
Location: Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN 55155

Attendance

Members Attended

Jason Bartlett
Walter Frederickson
Lauryn Schothorst
Bill McCarthy
Gary Thaden
Russell Hess
Maggie Hobbs
Ed Reynoso
Robert Ryan
Kevin Yakes

Legislative Liaisons Attended

Senator Paul Utke

DLI Staff

David Berry
Pam Carlson
Ethan Landy
Chris Leifeld
Commissioner Leppink
Brad Morse
Karen Kask-Meinke
Deputy Commissioner Robertson
Jessica Stimac
Brian Zaidman
Laura Zajac

Visitors

Doug Anderson, PERA
Jon Boesche, Senate
Lynn Carroll, WCRA
Joel Carlson, MAJ
Evan Cordes MDLA
Michael Lewis, WCCA
Matt Hilgart, MN Counties
Karen Ebert, MCIT
James Heer, WCRA
Susan Lenczewski, LCPR
Patty Prentice, LMCIT
Brad Lehto – AFL-CIO
Gary Westman, Admin
Branden Miller, MWCA
Phil Moosbrugger, Commerce
Laura Mundt, Mayo
Deb Norsten, SFM
Kim Olson, LMC
Lauren Weaver, Stinson
Wendy Wulff
Amy Strens, PERA
Kathy Bray, SFM
David Sullivan, MN House

Call to Order and Roll Call

Commissioner Leppink called the meeting to order at 9:35 a.m.

A verbal Roll Call was taken and a quorum was present.

Approval of the Minutes

Commissioner Leppink asked for approval of the minutes from the last WCAC meeting. McCarthy moved to approve the minutes from the July 17, 2019 meeting, Thaden seconded the motion, and all voted in favor to approve the minutes.

Approval of the Agenda

Commissioner Leppink asked for approval of today's agenda. McCarthy made a motion to approve the agenda and it was seconded by Thaden. All voted in favor and the agenda was approved.

Announcements

The Commissioner announced that Jenny Starr has been appointed by the Governor as the new Chief Judge of Office of Administrative Hearings. Her current role has been as assistant commissioner of the Department of Revenue. Judge Starr will be taking her new post on Sept 3, 2019. The commissioner will be meeting with the newly appointed Chief Judge to discuss opportunities to address priorities for both agencies. Both departments are committed to move forward in building a bridge between the department's CAMPUS system and OAH's C-track system. The commissioner stated the department's goal for the project was to stay on time and on budget for CAMPUS.

The Commissioner announced that the first two items on the agenda (a) and (b) are coming back from last month with additional information to provide to the WCAC.

Agenda Items

a. Legislative Proposal – SF1109/HF478

The commissioner introduced Laura Zajac, Office of General Council. Zajac went through the proposed legislation that was brought before the WCAC at the July 17, 2019 meeting by Representative Urdahl and Matt Dougty, the founder of Firefighters with PTSD. The proposal does not amend Chapter 176, but establishes a grant program that would be administered by the Department of Health to address PTSD among fire fighters. The bill provides for a one-time appropriation of \$400,000 and grant recipients may use grants for three categories of firefighters suffering from PTSD. The first is to train service dogs, second to provide educational classes about PTSD to the spouses and families of grantees, and third to provide mental health services. At last month's council meeting, the department was asked to provide a briefing on the implications of the grant program and the status of the PTSD treatment rules and their potential interaction.

The 2018 the legislature enacted a provision that directed the Department to promulgate rules governing treatment of PTSD. The law directed that it was to use an expedited process and work in consultation with the Medical Services Review Board (MSRB). In July, the MSRB voted to recommend rule language to the commissioner. The next step in the process is for the department to publish a notice of intent to adopt the rules in the state register. It is estimated that could happen in October or November. If the department receives at

least 100 requests for hearing, the department must proceed through a full rulemaking process which involves a drafting of a statement of need and reasonableness (SONAR) and a rulemaking hearing. This would add about 8 months or one year to the process. That is the crucial point where the department would determine how long the rules would take to be enacted. With that potential timeline in mind, the department reviewed the grant program proposal to determine the interaction between the workers' comp system and the proposed grant program.

The key overlap is mental health services because PTSD treatment rules (recommended by the MSRB) provides for trauma-based psychotherapy treatment and treatment with medication which would fall under that mental health category. Zajac pointed out that the handout includes potential language that could be added to that proposal that would serve to clarify the interaction between the workers' comp system and the proposed grant program. The additional language would coordinate the grants issued by the department of health with benefits provided to injured workers who suffer from compensable PTSD through the work comp system. The new language essentially states that grant recipients who are health care providers can intervene in workers' compensation disputes for payment under the work comp system. These would be subject to the usual requirements that medical or psychological treatment be reasonable, necessary and causally related. Also included are references to any applicable workers' comp rules so that would include the PTSD treatment parameters when enacted, and the rules governing intervention. The Senate version of this bill is SF1109, which broadens the grant program to first responders and veterans, not only firefighters. Under the language, the health care provider grantee can choose to intervene. If they choose not to intervene, their interest would be extinguished which is the usual process. They could intervene for their entire bill under the fee schedule in which case, they would refund the grant program or they could intervene for their balance which is the difference between what workers' comp would pay and what they receive from the grant program.

Questions from the council:

McCarthy asked if workers compensation benefits would be reduced if the recipient receives a grant. Zajac responded no.

Thaden stated this seems to add another category as to who can intervene in the worker's comp case. He thought the manner in which it is written would change the role of the health care provider to become an advocate rather than providing medical expenses. Zajac said the intent was to limit this only to health care providers who would normally be allowed to intervene on the patient's behalf. Zajac said it is the intent that the intervening be the same as the current process.

Hobbs wondered how many of the grantees would fall under the definition of health care provider and what if the recipients of the grants were not health care providers but they are organizations that are active in trying to help with PTSD. She also questioned if service animals are included in the proposed treatment rules. Zajac said the rules are silent on the issue of service animals although an employee could make a claim for a service dog under the current workers' compensation system.

Bartlett asked if a claimant requested mental health services through the grant program, would they have to make a claim in workers' compensation. Zajac said the claimant would not have to make a workers' compensation claim.

Bartlett said because they have an intervention right, so essentially they would be getting mental health services under the grant but then the employer would be responsible to reimburse for it. Zajac said if it were compensable workers' comp claim, then the employer would be responsible for reimbursing if it met the requirements for treatment just as the current system works.

Bartlett asked about a managed care plan and if the treatment could happen outside of that. The employer may not be aware of the claim and then find out through an intervention at some point that there is a medical bill they are responsible for. Zajac said the situation where it might come up is if the claim is disputed and originally denied and there is a certified managed care plan so that the employee receives services through the grant program and then later the claim is accepted. If the employee was working through the managed plan when it was accepted, the employer would not be responsible for the reimbursing the outside grant programs because the managed plan limits the employee's options in terms of who can treat.

Thaden asked about the scenario if there was no insurer because the employer never bought insurance. These cases then go through the state system which is managed through the department of labor and industry. Could the department then try to get reimbursed through the Special Compensation Fund (SCF)? There is also the question of can the health care provider essentially get paid twice for the medical service?

Zajac said if the SCF picked up a compensable PTSD claim, then the SCF fund would be responsible for reimbursing the health care providers who are receive the grant through the intervention process. It would assume that one of the requirements of accepting the grant money would be that if you are later paid by workers' compensation, you must refund the grant.

Senator Utke said he would like to see language that includes a refund of money so there is not a double payment. The commissioner said the language will have to make a clear explanation about how this issue would be handled.

Schothorst said it would be helpful to hear from the authors of this bill and understand if their intent was to fill the fill the gap of those that are not covered by the workers compensation law and the treatment parameters. If true, this may not be related to chapter 176 and workers' comp altogether? Maybe the grant program should be focused on those who did not get coverage through workers' comp and struggling to find that treatment resource.

Commissioner wanted to clarify what was said and repeated some of the questions brought up:

- ask the authors of this bill is it their intent of this grant to fill gaps that are not met by other resources;
- give the authors feedback that has been brought forth during this meeting;
- there are differences in the house and senate bill as to who is eligible;
- are medical providers allowed to intervene and what is the scope of that intervention;
- needs provision to preclude double payments (grant and workers' compensation).

Utke said it may be prudent to wait until the rules are distributed by the MSRB. The rules may include some of the issues discussed. Also, he stressed that missing is also a system of education for workers for when first responders return to their work stations after a traumatic event. He thought this is a major issue of heading off

larger problems if the workers are able to talk about the events with their peers and possibly diffuse the situation.

The commissioner said the department can get the MSRB's proposed rules to the WCAC in the next couple of days and share the version approved. Keep in mind these are only the proposed rules adopted by the MSRB and they may be changed by the Governor's office before they are adopted.

In addition, the department will also consider the comments made to the language it has proposed today that has to do with making clear the intervention by the health care provider. This is to clarify that intervention is solely for the purposes of payment by the work' comp system for services that they provided consistent with the statute and rules. The scope of the intervention would be to advocate for getting paid for the medical services they have provided.

Commissioner said the department can come back with revised language and the department will advise the authors regarding the comments made related to scope of who should be covered in receiving grant benefits. After discussion and agreeing that the comments will be made to the authors rather than taking a vote at this time.

The commissioner said she will bring this back to the WCAC at the next meeting.

(b) Legislative Proposal SF2022/HF1738

The commissioner introduced Ethan Landy, Office of General Counsel, and Brian Zaidman, Research and Statistics Division. Landy explained the proposed bill was brought before the WCAC at the July 17 meeting. It is asking for a study of the adequacy of the current benefits considering workers' compensation benefits, disability and pension benefits. The bill calls for at least one public hearing and DLI was asked to cooperate in conducting this study. The council was asked to support this study to be conducted by PERA in cooperation of DLI to look at the sufficiency of compensation and how these two areas interact. At the end of the meeting, it was proposed that DLI would provide the council with an estimate of the department's perspective on what it would take to contribute to this study in terms of the times and costs. Briefly to summarize, DLI would analyze the information in our workers' compensation data bases regarding past police and fire permanent total disability (PTD) claims and create a spreadsheet that would calculate payment under various scenarios. A handout was distributed that describes the possible contribution DLI could make to a joint study lead by the Legislative Commission on Pensions and Retirement (LCPR). It is estimated this research would require about 60 hours of labor, not including meetings with the LCPR and PERA. This description does not include the contribution that would need to be made by LCPR or PERA. A search of the workers' compensation files for police and firefighter permanent total disability cases found 33 claims since 2005.

Some questions posed by the council:

Are there police officers not covered by PERA, such as the Minnesota State Patrol employees?

These officers are covered by the Minnesota State Retirement System (MSRS) and their laws are a bit different when considering an offset for benefits.

Thaden said the smaller pension funds should be included in any study.

Bartlett said 33 claims over 14 years seems like a small statistical sample. Zaidman responded that is all there is in the system that fits these criteria so even if the number is small, it might still reveal some answers going forward.

Thaden asked if there are police departments in the state where they have bargained for long term disability benefits. For instance, if they have bargained for long term disability benefits as a group, that might have an effect on what is done here.

Commissioner said this question can be a part of the other questions that can be asked before going forward with the study. There was discussion on how to proceed at this point. The commissioner has the authority to allocate the research through the department but if the legislature considers this as a priority, it would have resources and it also apprises the other partners that this is a priority. Thaden said he would prefer the WCAC wait for final language and it becomes part of the whole package.

Hess suggested the other pension plans that cover law enforcement should be included in the language in addition to the other disability programs. The advocates and authors of the bill can be made aware of these concerns.

Commissioner stated the department will engage with PERA and come up with a more comprehensive plan. She indicated she would appreciate the support of the labor reps for collective bargaining agreement information that would address this issue and whether they should be part of the study. The department can engage with the authors regarding the study and how MSRS, collective bargaining agreements, etc. will be affected. It will be reported back to the WCAC regarding this consultation and then will advise whether the authors are amenable to the revisions discussed today. It will be brought back at the next meeting or as soon as the department is able to give a report back to the WCAC.

c. Legislative Proposal – MN Statutes 176.011 Definitions

Ed Reynoso presented his proposal regarding Occupational disease. He stated this has been discussed in the last two years with this council. He believes there was an oversight in the law that included corrections officers, but didn't include county corrections officers in this language. He felt there is no difference between a state corrections officer and a county corrections officer. They have the same inherent risks and should be included in this occupational disease category. The correction to this would be similar with regard to PTSD language. Reynoso proposed that a change be made to the statute 176.011 (b) to delete state correctional officer and insert "officer employed by the state or a political subdivision at a corrections, detention, or secure treatment facility." This change would therefore include those officers employed by county and municipal entities in the state. Reynoso went on to say that he believes county workers were excluded from the original language of the bill and believes this was an oversight by the drafters of the bill. He does not know the fiscal impact of such a change will be because the number of those effected is not known at this time.

Questions from the council:

- Are the county correctional officers housed in correctional, detention, or treatment facilities?
- How many officers would be effected by this change?
- Is the definition of "officer" the same in each county or municipality;

Reynoso said the necessary language changes will be made to answer the above questions and brought back to the WCAC for consideration.

Commissioner said the department can inquire with MMB into what job titles are used to describe officers in state and political subdivision correctional detention and secured treatment facilities. It will be reported back to the council whether the terminology is appropriate. We can then take next steps at the next meeting.

d. Presentation on the 2017 Workers' Compensation System Report: Claim and Cost Detail (Chapter 3) – David Berry, DLI Research and Statistics Division

David Berry of the Department of Labor & Industry presented an overview of the 2017 Minnesota Workers' Compensation System Report and explained that the primary data included in this report includes DLI statistics and data from the MWCIA, among other sources. This annual report analyzes data to examine the size and cost of Minnesota's workers' compensation system and provides a foundation for further consideration. The purpose of the report is to describe statistically the current status and direction of workers' compensation in Minnesota and to offer explanations, where possible, for recent developments. Copies of the report were included in the members' packets and made available for visitors. The report is also available online at on the DLI website at: <https://www.dli.mn.gov/business/workers-compensation/work-comp-minnesota-workers-compensation-system-report>

The presentation is attached to these minutes.

e. Update on Workers' Compensation campus (Modernization Program)

Commissioner advised that the project continues to be on time and on budget. It is at the mid-point of the project. Therefore, the department continues to be confident that it will remain on budget and on time. At the next meeting staff will give an update. At that point, we will have crossed the mid-point so a more complete report in terms of internal integration can be given to the council. Also, the governor's office and some legislators will be invited in October to experience what a user tested process involves and also to get an update on where we are with the project.

Other Business

Commissioner indicated she will talk with the chairs of the two caucuses to better clarify how the WCAC will proceed with legislative proposals. From that point, the council can make final decisions as to whether the WCAC wants to recommend the proposals. At the next meeting the department will put forth some pieces of legislation, not the full package but will present the beginning pieces so that by October we will have the full package before the members. The department is sending out correspondence to the legislature and key members advising them that we are working on this tighter timeline encouraging them to bring any proposals to the WCAC sooner rather than later. We have also begun to communicate that to the Workers Compensation Bar Association so they are aware that we are moving forward the timeline schedule. By November we should have a clear idea of what the proposals are. We'll have a couple of months then to work through details and work with authors. Our goal will be to have the first week of January as to our recommendations to the legislature.

Adjournment

The meeting adjourned at 11:40 am.

Respectfully submitted,

Executive Secretary