

Meeting minutes: Workers' Compensation Advisory Council

Date: Nov. 13, 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
Colin Beere
Walter Frederickson
Russell Hess
Maggie Hobbs
Brad Lehto
Doug Loon
Robert Ryan
Gary Thaden
Kevin Yakes

Legislative liaisons attended

Senator Paul Utke
Representative Mike Sundin

DLI staff members attended

Sandy Barnes
Kate Berger
Jon Brothen
Mike Hill
Lorelei Hoyer
Karen Kask-Meinke
Nancy Leppink
Brad Morse
Jessica Stimac
Jeanne Vogel
Brian Zaidman
Laura Zajac

Visitors attended

Kathy Bray, SFM
Joel Carlson, MAJ
Aaron Cocking, IFM
Buzz Cummins, SISF
Sara Curtis, CorVel
Katie Friend, CorVel
Carla Ferrucci, MAJ
Kevin Gregerson, UCWCP
Shep Harris, MSIG/MATIT
Bob Johnson, Insurance Federation Minnesota
Katie McCulloch, SFM
Patty Milun, Workers' Compensation Court of Appeals
Brandon Miller, MWCIA
Phil Moosbrugger, Department of Commerce
Laura Mundt, Mayo Clinic
Melissa Nelson, APM Health
Deb Norsten, SFM
Kim Olson, Medical Services Review Board
Lauren Schothorst, Minnesota Chamber of Commerce
Sandy Stoddard, UCWCP
Shawn Stricker, SFM
Sophie Thaden, MMCA
Lauren Weaver, Stinson
Gary Westman, Department of Administration
Bette Zerwas, North Memorial

Call to order and roll call

Commissioner Nancy Leppink called the meeting to order at 9:45 a.m. A verbal roll call was taken and a quorum was present.

Approval of the minutes and agenda

Leppink asked for approval of the minutes from the most recent Workers' Compensation Advisory Council (WCAC) meeting. Gary Thaden moved to approve the minutes from the Oct. 9, 2019 meeting; Doug Loon seconded the motion; and all voted in favor of the motion. Leppink asked to amend today's agenda by moving item (a) to the end of the legislative proposals, thereby discussing (a) after item (f). In addition, she made a change to the agenda that replaces Chris Leifeld with Jon Brothen (also with the Compliance, Records and Training work unit) to speak on behalf of item (f). Loon moved to accept the two changes to the agenda, Brad Lehto seconded the motion and all voted in favor of the motion to modify the agenda.

Announcements

The commissioner announced the Department of Labor and Industry (DLI) will have the remaining proposals for review before WCAC at the Dec. 11 meeting. That will allow at least five weeks between the December meeting and the Jan. 22 meeting for any follow-up work that needs to be done. She proposed the council's goal of all recommendations to the Legislature be completed by the Jan. 22 meeting. In addition to the proposals today, the other proposals for Dec. 11 will be clarification of the presumption definition related to correctional officers and other security officers that was proposed by Ed Reynoso.

The commissioner asked for questions and feedback concerning this time table; there were none.

Thaden disclosed that for items (b) and (c) on the agenda concerning MWCIA and UCWCP, it should be noted he is on the board of directors for both of those organizations.

Agenda items

I. Legislative Proposals

(b) Insurance verification data, Minnesota Statutes § 176.185 – Laura Zajac, DLI Office of General Counsel; and Brandon Miller, Minnesota Workers' Compensation Insurance Association (MWCIA)

Brandon Miller provided a brief background about MWCIA. The group is responsible for collecting insurance policy and loss information from carriers. All carriers authorized to write insurance in Minnesota must be a member of MWCIA and must report policy information. The purpose of gathering this information is to assist employers in the areas of risk and loss in the workers' compensation arena. The purpose of the proposal is to restrict access of this information from commercial use.

Zajac presented WCAC with key components of the proposed legislation:

- clarifies what insurance policy data reported to DLI by MWCIA is public and how it may be requested for insurance purposes;
- describes how the public can request information for insurance purposes;
- allows other entities listed on the same insurance policy as the employer to be disclosed;
- prohibits the use of disclosed data for the use of commercial purposes and the definition is the sale or use of insurance coverage data for marketing or profit, clarifying the data will be not used for resale or profit; an
- sub-item (e) will be clarified to state MWCIA has a private right of action against a private party who is using the information for improper purposes.

The proposed legislation is attached to these minutes.

(c) Union Construction Workers' Compensation Program (UCWCP) access to Work Comp Campus, Minnesota Statutes § 176.231 – Kate Berger, DLI Office of General Council; and Kevin Gregerson, UCWCP

Kevin Gregerson gave a brief overview about UCWCP. The organization allows unionized employers and unions to collectively bargain in contract negotiations. UCWCP has legal jurisdiction over a workers' compensation claim from one of its member employers when it is filed, through the life of the claim. The proposal would allow UCWCP to have access to Work Comp Campus files for claims covered by UCWCP.

Maggie Hobbs asked how UCWCP currently gets information about its claims. Gregerson answered, the insurance carriers that are partners in the program send the information to UCWCP currently. The proposal will allow UCWCP to receive up-to-date information with access to Work Comp Campus.

The proposed legislation is attached to these minutes.

(d) Improper service, Minnesota Statutes § 176.275; personal service, Minnesota Statutes § 176.285; and payments to estate, Minnesota Statutes § 176.111 – Laura Zajac and Kate Berger, DLI Office of General Council

Zajac and Berger presented key components of the proposal.

Improper service, Minnesota Statutes § 176.275:

- identifies obligations of senders, recipients and agencies when a party to a claim files a document in the incorrect file or sends a document to a recipient not entitled to receive the document; and
- clarifies that the agency must promptly correct its files upon discovery and notify the recipient and the subject whose data was improperly released.

Personal service, Minnesota Statutes § 176.285:

- allows personal service of documents in addition to service by U.S. mail.

Payments to estate, Minnesota Statutes § 176.111:

- allows payment to the employee's estate by affidavit of collection of personal property as an alternative to a personal representative; and
- provides an alternate, simplified process for payment to the estate when there are no dependents.

Questions posed regarding estate payments included: what is a "collection of personal property"; who is a legal heir; and what if there is more than one heir.

Zajac and Berger responded: If a person has a will, then the designated person would qualify as a beneficiary of the estate. The legal will would trump the law regarding who would inherit any benefits. If there is no will, then it would leave out that person. If they do not fall into one of the categories, then the estate proceeds would follow what the law states. This only applies where there are no dependents and a payment is simply made to the deceased individual's estate. The collection of personal property would be accompanied by an affidavit attesting there is a legal entitlement.

Loon commented that, perhaps, the insurance carriers could add more clarity to this by providing their requirements for payments in this type of situation. Leppink added DLI will get some answers before bringing this back Dec. 11.

(e) Special Compensation Fund reimbursement for medication, Minnesota Statutes § 176.135 – Kate Berger and Lorelei Hoyer, DLI Office of General Council; and Karen Kask-Meinke, DLI Special Compensation Fund (SCF)

Kask-Meinke provided highlights of the proposal:

- prohibits SCF from reimbursing a payer under the second-injury fund for charges that exceed the pharmacy usual and customary charge for medication under the workers' compensation pharmacy fee schedule;
- ensures the fund does not pay the insurer or self-insured employer for administrative fees charged to the payer of those benefits; and
- requires all requests for reimbursement be accompanied by the dispensing pharmacy's invoice.

Hobbs asked why the second-injury fund would not reimburse; if a pharmacy benefit manager (PBM) is needed on the claim file, why would that not be a proper reimbursement? Kask-Meinke responded SCF was created to reimburse medical expenses and indemnity, not administrative costs. SCF does not reimburse a pharmacy benefit manager or an independent medical examination (IME), even though in some cases DLI will agree to negotiate the cost of an IME. Hoyer explained SCF, by statute, only reimburses medical and indemnity; the statute does not cover administrative fees, attorneys' fees or other costs associated with the claim. There was discussion about a recent Minnesota workers' compensation case, Colton v. SCF, et al.

related to pharmacy reimbursement. The commissioner said the Colton decision will be distributed to WCAC members.

The legislative proposal is attached to these minutes for the record.

At 10:50 a.m., Loon left the meeting and was replaced by his alternate, Lauren Schothorst.

(f) Penalties for billing injured workers, Minnesota Statutes § 176.136 – DLI Office of General Council; and Jon Brothen, Compliance, Records and Training

Highlights of the proposal included:

- establishing a penalty against a health care provider that collects or attempts to collect an unpaid bill from an injured employee; and
- a health care provider includes any person acting on behalf of a health care provider in collecting or attempting to collect from an injured employee.

This proposal stems from complaints from both injured workers and insurance companies who are receiving bills from health care providers in violation of the law. Many times, the providers are sending these unpaid bills to collection agencies. DLI is often contacted by either an injured worker or the third-party administrator (TPA) who are unable to stop the provider's billing.

Schothorst asked how often this occurs and whether the incorrect billing could be inadvertent by the provider. Jon Brothen explained that by the time the complaint gets to DLI, there have been multiple billings received by the worker and the provider has been notified their billing is incorrect.

Schothorst commented that there could still be an allowance for reconciliation before a penalty is assessed, to provide time for correction. Kate Berger said most of these situations are repeated to more than one employee by the same provider. The commissioner said most, if not all, of the time, DLI has heard from the insurer or employee; the provider has already been notified. The goal is still to get the behavior to stop, not to get the penalty. Lehto commented he frequently gets calls from injured union workers who continue to get billed from providers. He often calls providers himself to get them to stop billing the injured worker. He felt this unlawful billing is done on a consistent basis usually by repeat providers.

Leppink said DLI will be contacting the health care provider group to get their input regarding the proposal, in addition to changing the penalty amount to "up to \$500" to give DLI some discretion. She also said DLI can gather specific statistics and give the council a sampling of recent months or years of cases to have a sense of how many times DLI is contacted and whether this action continued after notification by an employee or an insurer.

The proposal will come back to the Dec. 11 meeting after modifications.

The legislative proposal is attached to these minutes for the record.

Agenda modification – item (a) was moved below item (f).

(a) Workers' Compensation Modernization Program (WCMP) revisions – DLI Office of General Council; and Jon Brothen, of Compliance, Records and Training

Proposed changes in response to the suggestions from the Oct. 9, 2019 WCAC meeting:

- more information was requested about the qualified rehabilitation consultant (QRC) intern description, which is addressed in the amended proposal; and
- the term "intern" was added to the heading.

Berger added DLI is revising Minnesota Rules to reflect some changes to the QRC intern registration requirements. The rules will need to be adopted by the commissioner. The DLI website has more information regarding the timeline for adoption and any hearings about Minnesota Rules.

The commissioner asked the council that because of the lengthy meeting, if the last item on the agenda, Presentation about the 2017 Workers' Compensation System Report, should be postponed to the next meeting. Thaden moved and Lehto seconded to amend the agenda and postpone the presentation. A vote was taken and the motion passed.

Other business

The commissioner said today's proposals will come back for review with some answers to the questions that were posed. This will be included in the full packet of legislative proposals. The other proposal from Reynoso concerning occupational disease and the presumption will also be brought back to the Dec. 11 meeting.

The date of the next meeting is Dec. 11.

Adjournment

The meeting adjourned at 11:55 am.

Respectfully submitted,
Executive secretary