

Meeting minutes: Workers' Compensation Advisory Council

Date: March 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 55155

Attendance

Members attended

Bernie Burnham
Bill Gschwind
Brad Lehto
Burt Johnson
Colin Beere
David Henrich
Doug Loon
Ed Reynoso
Gary Thaden
Maggie Hobbs
Matthew Schmidt
Robert Ryan
Rep. Dan Wolgamott
Rep. Joe McDonald
Sen. Jennifer McEwen

Jennifer Bucholz
Jerrica Walker
Jessica Stimac
JoAnn Jacobson
Josiah Moore
Laura Zajac
Lila Zarins
Lisa Wichterman
Melissa Parish
Nichole Sorenson
Pam Carlson
Ralph Hapness
Sharon Benkufsky
Sonya Herr
Steven Gilmore
Yuri Jelokov

DLI staff members attended

Commissioner Nicole Blissenbach
Assistant Commissioner Kate Daly
Alyssa Westergard
Ann Gilles
Ann Tart
Brian Mak
Brian Zaidman
Carey Wagner
Denise Holmes
Donna Olson
Ender Kavas
Ethan Landy
Hared Mah

Visitors attended

Aaron Cocking, IFM
Alison Khan, WCRA
Amy Kockelman
Andrea Everling, MWCIA
Andrew Essling, MCIT
Anna Kim, LMC
Auntara De, MWCIA
Beth Butler, Brown and Carlson
Brad Lehto, Minnesota AFL-CIO
Brian Ecker, USW
Carrie Jacobson, Brown and Carlson
Carla Ferrucci, MAJ
Darin Richardson, LMC

Evan Cordes, MDLA/Aafedt Forde
Gary Westman
Hannah Alstead, Teamsters JC32
J. Wiatros
Jenny Starr, Office of Administrative Hearings
Jerry Sisk, MAJ/Mottaz Law
Jessica Stoeckman, SFM
Joe Austin
Joe Schindler, MHA
John Hollick, SFM
Julie Benfield, Trial Group North
Kara Huberty, LMC
Karen Ebert, MCIT
Kathleen Moulton, Allina
Kathy Bray, SFM
Katie Storms, MDLA/Lind Jensen
Laura Mundt, Mayo

Lauryn Schothorst, Minnesota Chamber of
Commerce
Liam Bieber, LMC

Michael Lewis
Michael Tupy
P. Milun, Workers' Compensation Court of Appeals
Rebecca Yang, WCRI
Sarah Hunter, SFM
Sarah Groskreutz
Scott Brener, Minnesota Chamber of Commerce
Sophie Thaden
Susan Stewart
Suzanna Kennedy, Stinson LLP
Tom Mottaz, MAJ/Mottaz & Sisk
Tyler Treichel
Wendy Wulff

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.

Approval of the minutes and agenda

Doug Loon moved to accept today's agenda, as well the minutes from Feb. 8, 2023. Gary Thaden seconded the motion. A roll call vote was taken and the motion carried.

Announcements

Commissioner Blissenbach noted the council is still waiting on one more labor member appointment.

The commissioner also announced the statutory revisions from the Department of Commerce and SISF were sent to the revisor's office. The bill has been drafted and jacketed; the council will approve it after review by the Commerce Committee.

Agenda items

1. DLI housekeeping – Ethan Landy, general counsel, Department of Labor and Industry (DLI)

The commissioner asked for any additional discussion and there was none. Bernie Burnham moved to approve the proposal and Loon seconded. A roll call vote was taken and the motion carried.

2. Dispute certification proposal – Ethan Landy, general counsel, DLI

Ethan Landy introduced a proposal related to language in Minnesota Statutes section 176.081. Language was added to clarify issues that were raised by the Supreme Court regarding contingency fees for attorneys.

Landy noted DLI had a number of meetings and mediations with the Minnesota Association for Justice (MAJ) and the Minnesota Defense Lawyers Association (MDLA) during the past several months regarding the dispute certification process at DLI. DLI drafted language in to add timelines to the dispute process. The language includes a 30-day-timeline to certify a dispute, as long as DLI has information necessary to certify a dispute. The language also addresses non-emergency surgeries. A dispute will be certified within 45 days of a written request for a second opinion or independent medical exam.

Thaden asked if the language from lines 25-33 and then 34-37 should be included in the same section. He thought, structurally, it may make more sense to have them elsewhere.

Loon asked DLI's intentions with the proposal and if MAJ and MDLA approved the proposal. Commissioner Blissenbach and Assistant Commissioner Kate Daly responded that MAJ and MDLA would offer their positions at the meeting.

3. Minnesota Association for Justice legislative proposals – Thomas Mottaz, Mottaz & Sisk Injury Law

Thomas Mottaz said MAJ agreed with DLI's proposal to the dispute certification process, but with one caveat pertaining to the cost of obtaining medical records. MAJ proposed the employee's attorney have the right to recover their costs for obtaining medical records.

MAJ proposed a timeline on the approval process for non-emergency surgeries specifically when an independent medical examination (IME) is requested by the insurer. MAJ proposed an insurer have five days or a week to request the IME and that it then be completed within 45 days of that request. They also proposed the report be completed and distributed within 14 days.

MAJ argued for a change to the cost for medical record retrieval. There is currently a retrieval fee and a per page charge, even though most records are digital. MAJ suggests a \$10 retrieval fee, as opposed to a per page fee.

MAJ supports labor's proposals to increase the permanent partial disability (PPD) schedule to include fringe benefits in the average weekly wage calculations, to remove the cap on attorney fees and to increase penalties for frivolous denials of presumptive post-traumatic stress disorder (PTSD) claims.

Maggie Hobbs asked Mottaz his view about the delays in scheduling IMEs. Mottaz said he thought the main issue was there was no time requirement in the law. Hobbs expressed her concern with enforcing a time limit when insurers and defense attorneys do not have control over a doctor's availability.

4. Minnesota Defense Lawyers Association legislative proposals and response to MAJ proposals – Katie Storms of Lind, Jensen, Sullivan & Peterson and Evan Cordes of Aafedt, Forde, Gray, Monson & Hager, P.A.

Katie Storms said MDLA supported DLI's proposed language to the dispute certification process and agreed substantive changes would make the certification process more efficient and expedient.

MDLA opposed MAJ's recommendation to have insurers pay for obtaining medical records in a medical request.

Evan Cordes presented MDLA's proposals. MDLA's first proposal was a requirement that attorney fee statements be served on all parties, including counsel for the employer and insurer. This would make the statute consistent with Minnesota Rules 1415.3200, which requires service of parties in litigation, as well as consistent with Rules of Professional Conduct.

MDLA's second proposal was to allow expedited hearings by motion, rather than having them automatically scheduled under current statute. Storms explained that, in most cases, the reason for an answer not being filed timely is because of a simple error, such as an incorrect address or incorrect employer. Neither the employee nor the defense wants an expedited hearing.

MDLA's third proposal was to allow each side to introduce exhibits and evidence at an informal discontinuance hearing regarding wage loss. Currently, it is up to the judge's discretion what they will allow for exhibits. This proposal would help make things consistent across the board for all parties involved.

MDLA's fourth proposal was to update claim petition standards. According to MDLA, there are many claim petitions filed with incomplete or vague information.

MDLA's final proposal was to add a deadline to the receipt of medical authorizations. Storms said most delays in litigation are a result of not obtaining medical authorizations from employees in a timely manner. If authorizations are not received in a timely manner, an insurer and employer must file a motion to compel.

MDLA did not agree that a time limitation on conducting IMEs would improve the system. MDLA believed removing the cap on attorney fees would give less money to employees. As for labor's proposal to increase penalties, MDLA said the current penalties are sufficient.

Hobbs asked why employees do not return medical authorizations in a timely manner. Storms believed there were several factors and it was hard to pinpoint one specific reason.

Burt Johnson asked MDLA's position on a reasonable timeline or deadline for an IME. Storms replied MDLA was dealing with a shortage of qualified medical providers and the real issue was receiving the report in a timely manner.

Colin Beere asked for clarification regarding the proposal on .331 hearings. He believed requiring an employee to file a motion to request a hearing is putting an additional burden on them. Johnson agreed.

Other business

The next meeting will be April 20, 2023.

Adjournment

Burnham moved to adjourn the meeting and Ed Reynoso seconded the motion. A roll call vote was taken and the motion carried. The meeting was adjourned at 11:22 am.

Respectfully submitted,
Alyssa Westergard, executive secretary