

## Meeting minutes: Workers' Compensation Advisory Council

Date: March 10, 2021

Minutes prepared by: Executive secretary to the Workers' Compensation Advisory Council

Location: Webex meeting

### Attendance

#### Members attended

Jason Bartlett  
Colin Beere  
Dennis Galligan  
Maggie Hobbs  
Doug Loon  
Bill McCarthy  
Ed Reynoso  
Robert Ryan  
Gary Thaden  
Kevin Yakes

#### Legislative liaisons attended

Sen. Paul Utke  
Rep. Mike Sundin  
Rep. Tony Albright

#### DLI staff members attended

Commissioner Robertson  
Kate Berger  
David Berry  
Jon Brothen  
Pam Carlson  
Ralph Hapness  
Mike Hill  
Karen Kask-Meinke  
Ethan Landy  
Chris Leifeld  
Jessica Stimac  
Jeanne Vogel  
Lisa Wichterman  
Laura Zajac

#### Visitors attended

Deb Anger, LMC  
Liam Bieber, LMC  
Jonathan Boesche  
Kathy Bray, SFMIC  
Tina Burkholder, Monticello Schools  
Gary Carlson, LMC  
Lynn Carroll, WCRA  
Aaron Cocking, IFM  
Evan Cordes  
Buzz Cummins  
Susan Curley  
Sara Curtis, Corvel  
Antara De, MWCI  
Valerie Dosland  
Mary Dougherty, HealthEast  
Karen Ebert, MCIT  
Andrew Eilers  
Amy Erving, Mackinaw  
Andrew Essling, MCIT  
Jeremy Estenson  
Andrea Everling, MWCI  
Carla Ferrucci, MAJ  
Anne Green, ND  
Dan Greensweig  
Shep Harris, Fredrikson and Byron  
James Heer, WCRA  
Sarah Hunter  
Frankie Johnson  
Meg Kasting, SFMIC  
Suzanna Kennedy, Stinson

John Kysylyczyn  
Brad Lehto, AFL-CIO  
Tammy Lohmann, Department of Commerce  
Matt Massman  
Kristen McHenry  
Branden Miller, MWCIA  
Patricia Milun  
Jon Mocol, Minnesota Townships  
Laura Mundt, Mayo Clinic  
Deb Norsten, SFM  
Donna Olson  
Kim Olson  
Chris Parsons  
Patty Prentice, LMCIT  
Dan Pyan  
Meredith Redmond  
John Reich

Brian Rice  
Darin Richardson, LMC  
Helen Roberts  
  
Dean Salita  
Kirk Schneiderwind, MNMSBA  
Joe Schindler, MHA  
Jerry Sisk  
Lauren Schothorst, Minnesota Chamber of  
Commerce  
Jenny Starr, Office of Administrative Hearings  
David Sullivan, Minnesota House of Representatives  
Tyler Treichel, Stearns County  
Phil Vigliaturo, Department of Commerce  
Lauren Weaver, Stinson  
Gary Westman

## Call to order

Commissioner Roslyn Robertson called the meeting to order at 9:35 a.m. She announced that due to the state of Minnesota operating under the peacetime emergency due to the COVID-19 pandemic, today's meeting is online via the Webex platform. All votes will be taken by roll call and all handouts discussed are posted on the Department of Labor and Industry (DLI) website at [www.dli.mn.gov/about-department/boards-and-councils/workers-compensation-advisory-council](http://www.dli.mn.gov/about-department/boards-and-councils/workers-compensation-advisory-council).

## Meeting minutes and amended agenda

Robertson proposed the following changes to the agenda:

- Rep. Huot requested his proposal, HF 37 Education Presumption, be removed from the agenda;
- move the DLI proposal, "Billing injured workers penalty" to agenda item 2(g); and
- move Rep. Wolgamott's proposal, HF 1203 and SF1203 to agenda item 2(h).

Robertson asked for approval of the agenda with the proposed changes and of the minutes from the Feb. 24, 2021 meeting. Bill McCarthy moved and Gary Thaden seconded the motion to approve the minutes and agenda. A verbal vote was taken and the motion passed.

## Agenda items

### 1. Commissioner's update

Robertson said today's handouts were sent to members and the public regarding the proposals. The goal of today's meeting is to vote on the agreed-upon seven proposals and move the proposals to the Legislature to be included in the Workers' Compensation Advisory Council (WCAC) bill this legislative session.

### 2. Vote on DLI proposals – Commissioner Robertson and Ethan Landy, DLI Office of General Counsel

Staff members from DLI's Office of General Counsel gave a brief review of the proposals and were available for questions.

- a. Minimum compensation rate adjustment – Ethan Landy explained there is a clarification about "date of injury" from the most recent draft.
- b. Inpatient hospital (DRG) payment calculator – Landy explained a few technical items for adjustment.
- c. Ambulatory surgical center fee schedule – revised for March 10 meeting.
- d. Prohibited practices penalty amendments – revised for March 10 meeting.
- e. Prompt first action report – no revisions since first introduced.
- f. Subpoena of DLI employees prohibited – revised Feb. 24 to allow Vocational Rehabilitation unit (VRU) rehabilitation providers to be subpoenaed.
- g. Penalties for collecting payment of medical bills from injured workers – revised Feb. 24. Loon asked for confirmation that item (g) has been agreed to by the stakeholders. The commissioner indicated a recent letter from MHA has confirmed this; the letter will be added to these minutes.
- h. Extend the current COVID-19 presumption sunset date to Dec. 31, 2021. (Rep. Dan Wolgamott proposal, moved from item 3(b).)

#### *Discussion*

The commissioner said the extension date for the presumption language was agreed to by business and labor, changing the sunset date to Dec. 31, 2021. The original proposal had the sunset date extended to May 31, 2022. Doug Loon and McCarthy both said this was a compromise for both business and labor.

Ed Reynoso said he was disappointed and that, while he will vote in favor of this proposal, he feels the sunset date of the presumption should be further into the future. He feels the Legislature needs to go even further and let workers know they are supported by the state.

Loon said the vaccination issue was discussed (if a worker is unwilling to receive a vaccination he or she would not be covered under the presumption). All parties were not in agreement about that qualifier. He would like the proposal to get passed into law without amendments because it is a balanced approach to the issue. He said employers respect and have supported their workers in this pandemic. Sen. Paul Utke said he supports the efforts of this council and, while he doesn't necessarily agree with the presumption, he will support it because both business and labor made concessions and compromised on issues. He also pointed out that the funding for these matters is still not settled.

Rep. Wolgamott said he was disappointed WCAC did not support extending the presumption into 2022. He felt extending it into the 2022 legislative session would allow the Legislature to act, if necessary.

Thaden said he felt the agreement is a good compromise for both labor and business. He thought the requirement of getting a vaccination to get the presumption should have been included in the proposal. Maggie Hobbs said employers care deeply about their workers and have all felt the negative effects on both workers and business. She said with the vaccine rollout, the COVID-19 climate is changing and is more reason for optimism. She stressed that her company cares deeply for its workers.

Reynoso reiterated that some workers will still have to prove they contracted the virus at work and will get no coverage. He also expressed concern that teachers and bus drivers will be forced to go back to work and be exposed to the virus. Rep. Tony Albright said his experience in negotiations is they are never perfect and no one gets everything they want. In this instance, business and labor did reconcile some issues. He said there will be opportunities to adjust and amend in the future if circumstances change. He will support this at the Legislature. Rep. Mike Sundin would like this extended further, but feels it needs to move forward.

McCarthy made a motion to approve items 2(a) through 2(h) and Loon seconded the motion. A verbal roll call vote was taken and the motion passed.

### **3. Other proposals**

- a. *Repeal of North Dakota exclusive remedy*, proposed by Minnesota Association for Justice (MAJ) at the Jan. 13, 2021, WCAC meeting

It was decided no action will be taken at this time. Commissioner Robertson said this matter will be brought back next year. McCarthy said he would like further discussions about this issue to see how workers are affected. Loon said he would like to hear more from affected stakeholders and understand the issue more thoroughly. Thaden said there was confusing testimony regarding the ability of employers to get insurance coverage in Minnesota. He would like further information about this topic. The commissioner said more information will be provided when this is brought back to the council.

- b. *Rep. Wolgamott proposal – HF1203; SF1203 – Extend the sunset date for the workers’ compensation COVID-19 presumption to May 1, 2022*

This matter was moved to item 2(h).

- c. *Rep. John Huot proposal – HF37; SF105 – COVID-19 workers’ compensation presumption provided for education employee*

Rep. Huot requested this be removed from the agenda.

- d. *Sen. Gregory Clausen proposal – Presumption of occupational disease for firefighters with certain forms of cancer*

The commissioner noted there is a written submission from the Minnesota Association of Townships Insurance Trust on this proposal. This material was sent to the council and the public. McCarthy felt

there was not enough information now to make a decision. He would like more testimony. Loon agreed there was not enough information to make a determination. The commissioner said the proposal will be studied further and brought back to the council.

- e. Cost of copies of medical records, revised DLI proposal – DLI Office of General Counsel and DLI Compliance, Records and Training

The commissioner asked the council if there was discussion needed or a decision. DLI proposed some middle ground, but the parties could not come to agreement.

Loon said because there are many stakeholders and there was not agreement, business will need to consider further action. The commissioner said this issue will be brought back to WCAC at a later date.

- f. Additional DLI proposals
  - Penalties for collecting payment of medical bills from employees
    - Moved to agenda item 2 for vote
  - Permanent partial disability benefit adjustment

The commissioner said DLI will work with the insurance industry to find a solution because there is no agreement. Loon said it is a complex issue and there needs to be balance. McCarthy said he would like this to come back for discussion at a later date. The commissioner said this issue will have further study and discussion.

## Handouts only

- MWCIA summary of closed COVID-19 claims with indemnity payments and COVID-19 claims with medical information
- 2021 workers' compensation rates report

The report on workers' compensation rates in Minnesota from the Minnesota Department of Commerce to the Rate Oversight Commission, which is defined as the Workers' Compensation Advisory Council in Minnesota Statutes 79.52, compares the average rates charged by workers' compensation insurers in Minnesota to the pure premium base rates filed by the Minnesota Workers' Compensation Insurers Association (MWCIA).

## Other business

The commissioner said the next scheduled meeting is April 14, 2021. Because there was a vote today that will be the legislative package for 2021, there may not be a need for an April meeting. WCAC members will be notified.

## **Adjournment**

The commissioner called for adjournment of the meeting. Loon moved and Thaden seconded the motion to adjourn. A verbal roll call was taken and the motion passed. The meeting was adjourned at 10:45 a.m.

Respectfully submitted,  
Executive secretary