

Meeting minutes: Workers' Compensation Advisory Council

Date: March 28, 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

Bill Gschwind
Brad Lehto
Burt Johnson
Colin Beere
David Henrich
Doug Loon
Hannah Alstead
John Thorson
Maggie Hobbs
Matthew Schmidt
Robert Ryan
Sen. Jennifer McEwen
Sen. Paul Utke

Jeanne Vogel
Jerrica Walker
Jessica Stimac
Jon Brothen
Josiah Moore
Julie Klejewski
Karen Kask-Meinke
Keith Maurer
Keith Rear
Laura Zajac
Lila Zarins
Lisa Wichterman
Michelle Doheny
Nichole Sorenson
Pam Carlson
Sharon Benkufsky
Sonya Herr
Steven Gilmore
Steve Moe
Yuri Jelokov

DLI staff members attended

Commissioner Nicole Blissenbach
Assistant Commissioner Kate Daly
Alyssa Westergard
Angela Douglas
Ann Tart
Brian Mak
Brian Zaidman
Carey Wagner
Chris Leifeld
Christie Ahern
Debra Heisick
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
Andrew Morrison, SISF
Anne Finn, LMC
Auntara De, MWCIA
Carrie Jacobson, Brown and Carlson
Carla Ferrucci, MAJ

Cheryle Nibbe, Berkely Risk
Dana Gerber, Atkinson Gerber
Daniel Walbruch, Berkely Risk
Darin Richardson, LMC
Gary Westman
J. Wiatros
Jessica Stoeckman, SFM
Jim Bartlett, Berkely Risk
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
Michael Lewis
Michael Tupy
Pat Kaluza
Ray Peterson, MAJ
Robin Simpson, Aafedt Forde, et al
Sarah Hunter, SFM
Scott Brener
Tom Atkinson, Atkinson Gerber
Tom Christenson, WCCA

Call to order and roll call

Department of Labor and Industry (DLI) Commissioner Nicole Blissenbach called the meeting to order at 9:35 a.m. A roll call was taken and a quorum was present.

Approval of the minutes and agenda

Brad Lehto moved to accept today's agenda, as well the minutes from March 8, 2023. Bob Ryan seconded the motion. A roll call vote was taken and the motion carried.

Announcements

Commissioner Blissenbach welcomed John Thorson to the council.

Agenda items

- 1. Statement from Robin Simpson, managing partner of Aafedt, Forde, Gray, Monson and Hager, P.A.**
Robin Simpson addressed the council and clarified a statement made by Evan Cordes, an attorney with the Aafedt Forde law firm. Cordes previously stated to the council that attorney Thomas Mottaz always filed petitions for excess attorney fees. Simpson said that statement was incorrect.
- 2. System efficiencies proposal – Ethan Landy, DLI Office of General Counsel**
Ethan Landy reviewed the dispute certification process language again, as few changes had been made.

He noted a change to Minnesota Statutes 176.135 regarding equipment specifically customized for an injured worker. One change is a plain language change and the other change is including line stating an item under this paragraph that is customized specifically for the injured worker is the property of the injured worker.

Landy noted changes to the section covering nonemergency surgery and second opinions. The amended language mirrors the rule language in Minnesota Rules part 5226.050, subpart 9.

Doug Loon asked for clarification about why “seven business days” is used versus “seven calendar days.” Landy said “business days” is what is used in the rule, so DLI is mirroring that for conformity.

Loon asked how often a dispute comes before the commissioner or a compensation judge. Assistant Commissioner Kate Daly said it rarely comes before the commissioner.

Landy addressed the amendments to medical records costs. DLI proposes a tiered, flat-fee pricing system, as well as having the provider send a price estimation prior to sending records. The proposal also clarifies prepayment is not allowed.

Burt Johnson thanked the department for its work on the proposals. He also said he would like to find out how flat fee systems work for both the providers and the industry, compared to a structured system such as DLI’s proposal.

Loon agreed the proposal was a good start. He asked if the proposal addressed multiple medical record requests; Landy said there was room for clarification for duplicate records. Loon also asked if it was possible for a petition to DLI for records greater than 4,600 pages. Commissioner Blissenbach and Assistant Commissioner Daly both agreed that records greater than 4,600 pages are rare.

Landy next addressed adverse examinations. DLI revised the language that the adverse report shall be served upon the employee and attorney no later than 14 calendar days from the report issuance. DLI also included language to clarify that the examination shall be completed and the report served within 120 days and an extension request must be made within that 120 days except in certain circumstances included in the proposed language.

Landy presented amended language in Minn. Stat. section 176.239. Landy noted DLI reached out to the Office of Administrative Hearings (OAH) about the changes, since the language impacts the compensation judges, and that OAH did not identify any immediate concerns after its initial review of the language.

The next section Landy covered was changes to claim petition standards. DLI added language to clarify the information that must be included on the claim petition, as well as to clarify that an incomplete petition may be stricken or dismissed. DLI changed the amount of time a stricken case remains on the calendar before a compensation judge may dismiss the case.

The final part of the proposal refers to Minn. Stat. 176.331 expedited hearings. The department revised the language to require a pretrial conference be set instead of a hearing.

3. Permanent partial disability presentation – Hared Mah, DLI Research and Statistics

Hared Mah presented about the projected increase in system cost resulting from indexing permanent partial disability (PPD) benefits. Mah began by showing the long-term downward trend in system cost

relative to payroll. Mah also pointed out PPD benefits have only been increased twice since 1983. Mah went on to show the how a one-time increase would contribute to the system cost in 2023 and compared different rates of increase for the following years.

Maggie Hobbs asked for additional statistics using higher percentages of growth to match the proposal that had been provided by labor.

Loon asked if lump-sum payments are factored in to the numbers and statistics that were presented. Mah replied they were.

David Henrich asked for clarification about whether the statistics presented showed the cost to the system overall or compared to payroll. Mah replied that just the first slide was comparing the system cost to payroll. The rest of the presentation was estimating system cost.

Loon requested a similar comparison using a PPD rate increase of 5%.

4. Business legislative proposals for 2023 – Doug Loon and Scott Brener, Minnesota Chamber of Commerce

Loon thanked the commissioner and said he felt there had been some healthy discussion between both sides about trying to find ways to make the system more efficient. He noted the Chamber of Commerce looks closely every year at the workers' compensation system and how it is running, compared to other states, as far as efficiency and cost.

Scott Brener described the proposals. The first proposal is a 5% one-time adjustment back to 2018. The second proposal is to amend the statute of limitations on workers' compensation claims three years across the board. Brener explained that in instances where a first report of injury (FROI) is not filed, the statute of limitations is currently six years. Business would like to standardize the process and make it three years for all instances. The next proposal would align the workers' compensation system similar to the Union Construction Workers' Compensation Program system with respect to the choice of provider. Another proposal is to have DLI conduct a broad-based study about post-traumatic stress disorder (PTSD) to best determine treatment protocols, financing and program placement. The next proposal is to create a new wage definition for injured seasonal workers. Business would also propose allowing a disability case manager as an alternative to a qualified rehabilitation consultant for vocational rehabilitation purposes, for up to six months post injury. The final proposal is to adopt firm timelines for the execution of medical authorizations, with consequences if not fulfilled.

Other business

The next meeting will be April 20, 2023.

Adjournment

Ryan moved to adjourn and Loon seconded the motion. A roll call vote was taken and the motion carried. The meeting was adjourned at 11:07 a.m.

Respectfully submitted,
Alyssa Westergard, executive secretary