

Meeting minutes: Workers' Compensation Advisory Council

Date: Dec. 8, 2021

Minutes prepared by: Elizabeth Cole, executive secretary to the Workers' Compensation Advisory Council

Location: Webex meeting

Attendance

Members attended

Jason Bartlett
Maggie Hobbs
Doug Loon
Gary Thaden
Kevin Yakes
Bill McCarthy
Edward Reynoso
Robert Ryan
John Thorson

Legislative liaisons attended

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

DLI staff members attended

Commissioner Roslyn Robertson
Assistant Commissioner Kate Perushek
Assistant Commissioner Kate Daly
Ethan Landy
Jessica Stimac
Brian Zaidman
Chris Leifeld
Patricia Munkel-Olson
David Berry
Debra Jevne
Gretchen Longbehm
Laura Zajac
Julie Klejewski
Elizabeth Cole

Karen Kask-Meinke
Ender Kavas
Donna Olson
Jeanne Vogel
Mike Hill
James Honerman
Pam Carlson
Jon Brothen

Visitors attended

Brad Lehto, AFL-CIO
Lauryn Schothorst, Minnesota Chamber of Commerce
Sophie Thaden
Lauren Weaver
Adam Wolkoff, Office of Administrative Hearings
Ann Tart
Jerry Sisk, MAJ
Lynn Carroll, WCRA
Deb Norsten
John Kisylyczyn
Jonathan Boesche
Jenny Starr, Office of Administrative Hearings
James McClean, HealthPartners
Andrea Everling
Aaron Cocking, IFM
Suzanna Kennedy
Adam Fowler
Kathy Bray
Gary Westman, Department of Administration
Evan Cordes, MDLA
Carla Ferrucci, MAJ
Andrew Essling

Brandon Miller
Karen Ebert, MCIT
Laura Mundt
Joel Carlson
David Sullivan
Meg Kasting
James Heer
Tiffany Grzybowski
Philip Moosbrugger
Patricia Milun, Workers' Compensation Court of Appeals
Matt Massman

Shep Harris
Rebecca Yang
Auntara De
Bette Zerwas
Kara Huberty
Stephanie Balmer
Tyler Treichel
Paul Cassidy
Jon Brothen
Elise Busse
Shikah Srivastava
Jessica Stoeckman

Call to order

Commissioner Roslyn Robertson called the meeting to order at 9:31 a.m. A quorum was present. Pursuant to Minnesota Statutes § 13D.021, the meeting was held remotely because an in-person meeting was “not practical or prudent” due to the ongoing COVID-19 health pandemic.

Meeting minutes and agenda

The commissioner asked for approval of the minutes from the Oct. 13, 2021, meeting and for the Dec. 8, 2021, meeting agenda. A verbal vote was taken and the motion passed.

Commissioner's update

The commissioner provided a brief update to the council about various Department of Labor and Industry (DLI) matters. The department continues to wait on court action about the federal OSHA emergency temporary standard (ETS) requiring employers with 100 or more employees to be vaccinated against COVID-19 or to submit to weekly testing. Minnesota OSHA (MNOSHA) intends to follow the court's guidance; as a state-plann state, Minnesota is obligated to adopt any federal standard or adopt a standard that is at least as effective. MNOSHA intends to adopt the standard by reference if it is released; if it is struck down in court, there are no plans at this time to adopt a similar standard.

The commissioner also noted various employment opportunities currently available at DLI.

Agenda items

1. Introduction: Kathleen (Kate) Daly, assistant commissioner for workers' compensation

Commissioner Robertson introduced Kate Daly as the new assistant commissioner for the Workers' Compensation Division.

2. COVID-19 presumption – Brian Zaidman, DLI Research and Statistics

Brian Zaidman provided an update about COVID-19 workers' compensation claims filed through Nov. 17, 2021, and reminded the council that the COVID-19 presumption expires at the end of the year. DLI annually receives about 32,000 workers' compensation claims, 22,000 of which are lost-time claims; for the most recent 12-month period, ending in October, 17,000 of the 46,000 claims received have been COVID-19 claims. Zaidman also commented on the drop in the number of claims in the summer and noted that since the delta surge, claims have been rising again in both the presumption and non-presumption groups. Since October 2021, more than 85% of the COVID-19 claims were filed by workers covered in the presumption group; health care workers account for more than 75% of all COVID-19 claims. Denial rates for both presumption and non-presumption groups have declined, but denial rates are still three times higher among those in the non-presumption group. Zaidman also said about 25% of indemnity claims enter vocational rehabilitation; less than 1% of the COVID-19 claims have a vocational rehabilitation plan and those are used mainly for those in health care, with a few from the corrections presumption group. He also noted some employees were out significantly longer due to long-term symptoms and problems returning to work, and the vocational rehabilitation part of Minnesota's workers' compensation system is there to assist with workers transitioning back to employment.

Doug Loon thanked Zaidman for the report and asked if there was a common thread about why the denials were made. Zaidman said community spread is the primary reason for the denial determination, with close contact with family members with COVID-19 being another determining factor.

The council discussed extending the presumption for another year, given the approaching expiration date and the continued increase of worker and community exposure. Commissioner Robertson addressed the varying viewpoints and concerns expressed by members about the presumption expiration, the discussion of an extension, exposure in the workplace versus the community, as well as the vaccination status among those who are and are not covered under the presumption. Loon said further thought needs to occur about the eventual "off-ramp" markers for the presumption versus a date on the calendar. Robertson said continued dialogue and discussion about the presumption topic is necessary. Senator Paul Utke added that a funding mechanism should be addressed, along with the discussion of extending the presumption.

3. PPD adjustment – Brian Zaidman, DLI Research and Statistics, and Ethan Landy, DLI Office of General Counsel

Zaidman presented an update about options for the permanent partial disability (PPD) adjustment. He reminded the council there have been two increases to the schedule since 1983: in 2000, to account for a 14% adjustment; and again in 2018, for a 5% adjustment. The current proposal is for a one-time increase in PPD benefits beginning Oct. 1, 2022. Zaidman showed the impact of a 5%, 10%, 20%, 30% and 40% increase to PPD dollar-level values. As with other one-time increases, if there is no regular change to the PPD values, the value of the PPD benefits will decrease as wages increase, which will also decrease premiums. Ethan Landy added that these options were being presented in response to the feedback from the council for more information about the impact of PPD adjustments.

Bill McCarthy indicated labor would put together a proposal for the next meeting about this issue. Loon indicated that if there are benefit increases, it should be coupled and balanced with savings in the system as

well, so the system remains competitive. Loon indicated a proposal regarding system savings would be put forth by business as well.

4. Status report about MAJ and MDLA discussions – Jerry Sisk, Minnesota Association for Justice, and Evan Cordes, Minnesota Defense Lawyers Association

Jerry Sisk and Even Cordes provided a brief update to the council. Both said MAJ and MDLA continue to discuss proposed procedural amendments and they hoped to present a joint proposal at the next meeting.

Commissioner Robertson then asked the council to hold Jan. 26 for an additional meeting to finalize discussions, coordinate a proposal and prepare for a vote before session begins Jan. 31.

5. DLI cleanup proposals – Ethan Landy, DLI Office of General Counsel

Landy provided an update about previously addressed DLI proposals related to the Medical Services Review Board (MSRB) membership and the Minnesota Insurance Guaranty Association statutory language revisions.

Other business

Commissioner Robertson said the next meetings are scheduled for Jan. 12¹ and 26, 2022.

Adjournment

Commissioner Robertson called for adjournment of the meeting. Loon moved and McCarthy seconded a motion to adjourn. A verbal roll call was taken and the motion passed. The meeting was adjourned at 11:29 a.m.

Respectfully submitted,
Elizabeth Cole, executive secretary

¹Note: The Jan. 12 meeting was rescheduled to Jan. 13.