

## Meeting minutes: Workers' Compensation Advisory Council

Date: Oct. 13, 2021

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

Location: Webex meeting

### Attendance

#### Members attended

Jason Bartlett  
Maggie Hobbs  
Lauryn Schothorst  
Sophie Thaden  
Kevin Yakes  
Colin Beere  
Walter Fredrickson  
Bill McCarthy  
Edward Reynoso  
Robert Ryan  
Joel Smith  
Bill Gschwind

#### Legislative liaisons attended

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

#### DLI staff members attended

Commissioner Roslyn Robertson  
Ethan Landy  
Jessica Stimac  
Laura Zajac  
David Berry  
Brian Zaidman  
Lisa Wichterman  
Gretchen Longbehn  
Laura Zajac  
Julie Klejewski  
Elizabeth Cole  
Karen Kask-Meinke

Ender Kavas  
Chris Leifeld  
Donna Olson  
Brian Mak  
Angelina Nguyen

#### Visitors attended

Brad Lehto, AFL-CIO  
Lauren Weaver  
Adam Wolkoff  
Ann Tart  
Jerry Sisk  
Lynn Carroll, Workers' Compensation Reinsurance  
Association  
Deb Norsten  
John Kysylczyn  
Jonathan Boesche  
John Hollick  
Sarah Hunter  
Jenny Starr, Office of Administrative Hearings  
James McClean, HealthPartners  
James Heer  
Gary Carlson  
Kari Schaffer  
Andrea Everling  
Bill Keller  
Dan Greensweig  
Aaron Cocking, IFM  
John Wiatros  
Anna Shimanski  
Suzanna Kennedy  
Adam Fowler

Dalton Danielson  
Kathy Bray  
Denise Collins, Office of Administrative Hearings  
Gary Westman, Department of Administration  
Evan Cordes  
Carla Ferrucci, Minnesota Association for Justice  
Andrew Essling  
Brandon Miller  
Karen Ebert, Minnesota Counties  
Intergovernmental Trust

Laura Mundt  
Anne Finn  
Joel Carlson  
Daniel Gillis, Minnesota Senate  
Stephanie Balmer  
Anne Finn  
Meg Kasting  
Matt Massman

## Call to order

Commissioner Roslyn Robertson called the meeting to order at 9:31 a.m. A verbal roll call was taken and a quorum was present.

## Meeting statement

This meeting is remote due to the ongoing COVID-19 health pandemic. Minnesota Statutes, section 13D.021, of the Open Meeting Law, allows for remote meetings when an in-person meeting is “not practical or prudent because of a health pandemic or an emergency declared under Chapter 12.” It is not practical or prudent to hold an in-person meeting because, consistent with Minnesota Department of Health (MDH) guidance, the usual meeting place is not open to the public due to the COVID-19 pandemic.

## Meeting minutes and agenda

The commissioner asked for approval of the minutes from the March 10 and Sept. 8, 2021 meetings, as well as the Oct. 13, 2021 agenda. A verbal roll call was taken and the motion passed.

## Commissioner’s update

Commissioner Robertson provided a brief update, noting the Department of Labor and Industry (DLI) is preparing for the coming legislative session and preliminary proposals are being developed in anticipation of deadlines, including addressing supplemental budget requests. The commissioner noted the renovation project at DLI is near completion. She also reminded the council members that, according to Minnesota Management and Budget (MMB) guidance, DLI would not be reopening to more employees and the general public until at least January 2022.

## Agenda items

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

Brian Zaidman presented about current trends in presumption claims. As of Oct. 4, 2021, more than 23,000 COVID-19 workers' compensation claims have been reported. Total workers' compensation claims in 2021 are rivaling what was seen through most of 2020. There are now 16,000 accepted COVID-19 indemnity claims. Each year there are approximately 22,000 total indemnity claims reported; in the most recent 12-month period, October 2020 through September 2021, there have been 43,000 claims reported. COVID-19 accounted for 40% of those claims.

Zaidman discussed claims of those workers covered by the presumption. There has been an increase among all of the groups covered by the presumption, but health care workers comprise approximately 74% of all COVID-19 presumption claims.

Zaidman presented information about the trend for denial rates of claims. Presumption workers have a higher percentage of accepted claims, and file more claims overall, while non-presumption workers have a higher percentage of denied claims. The non-presumption group reached a peak of denied claims in July 2020; the denial rate has fallen, but it is still about 60% for this group. For the presumption group, the denial rate fell to 10% to 20% from fall 2020 through July 2021; there has recently been an increase in denied claims for the presumption group, which needs to be looked at more closely. When looking at claims by health care workers, most exposures reported are non-work-related exposures, which may be why the denial rate is higher.

Zaidman also reported about primary liability determination cases, indicating claims that are sometimes initially denied may be accepted at a later point. He also conveyed that the presumption classification did not affect the amount of indemnity benefits paid; the average was almost the same between the non-presumption and the presumption groups.

Maggie Hobbs asked how many of the reported claims by health care workers were compensable, with or without the presumption, and what the impact of the presumption change makes on the compensability of claims of health care workers. Lauryn Schothorst asked about any data on denied claims being contested; Zaidman indicated that data was not currently available. The commissioner said DLI would look deeper into the claims initially denied, at a future meeting. Hobbs asked if it was known how many claimants were vaccinated versus unvaccinated; Zaidman said this information was not collected by MDH. Bill McCarthy said he hoped the council would extend the COVID-19 presumption another year. The commissioner said there would be a COVID-19 update at every meeting and encouraged questions from the council members to incorporate into future updates.

## **2. Permanent partial disability reform – David Berry, DLI Research and Statistics, and Ethan Landy, DLI Office of General Counsel**

David Berry provided an update about the permanent partial disability (PPD) benefit presentation he gave in early 2021. The presentation compared PPD benefit growth to wage and price growth, showed the effect of the rising statewide average weekly wage (SAWW) on PPD benefits relative to payroll and workers' compensation, and outlined the cost effects of different alternatives for raising the PPD benefits.

Hobbs asked about PPD benefits relative to payroll dollars, the effect of claim frequency on this number and, if fewer workplace injuries are occurring or being reported, what effect that has on the amount of benefits paid. The commissioner indicated DLI could provide more information about the history of decisions related to PPD to assist the council in understanding the current proposal. McCarthy said Brad Lehto could also speak to the history of this matter and that, hopefully, this matter can move forward.

Ethan Landy presented updated proposed language. He noted the new language followed up on the requests made during the previous meeting for more options and clarity about PPD benefit amounts. Landy briefly discussed the possible percentages included in the proposal. Schothorst asked if there was any work being done regarding system efficiencies and cost savings to address the full picture of the end-package. The commissioner said that as these proposals are addressed, the balance of DLI's approach would be seen in the outcome and encouraged further input about specific areas of concern.

## **3. Hospital outpatient fee schedule report – David Berry, DLI Research and Statistics, and Lisa Wichterman, Compliance Records and Training**

Berry provided additional information about the hospital outpatient fee schedule (HOFS) reports presented in January. Lisa Wichterman noted there is often an issue with timeliness because of a discrepancy about the date of receipt of the invoice. DLI is reviewing common claims from the report in more detail to gather more information about this issue. The commissioner noted this continues to be an area of interest for both caucuses and there will be a deeper dive to continue to determine what can be done to address timeliness of payments and the impact on adjustments to benefits.

## **Other business**

The commissioner said the next meeting is Nov. 10, 2021.

## **Adjournment**

The commissioner called for adjournment of the meeting. McCarthy moved and Bob Ryan 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