

Workers' Compensation Advisory Council
Meeting Minutes
June 26, 2012
Kneip Building Conference Room #3
Pierre, SD

The Workers' Compensation Advisory Council met on Tuesday, June 26, 2012, at the Kneip Building Conference Room #3 in Pierre, South Dakota.

Members Present: Paul Aylward, Randy Stainbrook, Guy Bender, Carol Hinderaker, Connie Halverson, Jeff Haase, Pam Roberts, Matt Michels

Members Absent: Chris Lien, Glenn Barber

Others Present: James Marsh, Amber Mulder, John Parker, Joshua Andersen, Julie Johnson, Doug Abraham, Alexis Yackly, Lindsey Riter-Rapp, Lynn Job, Bonnie Ackerman, Dawn Dovre, Patsy Mehlhaff, Shawn Lyons, Teresa Boe, Mike Simpson, Bob O'Connell, Charlie Larson, Mike McKnight, Chris Specht, Bram Weidenaar, Brad Wilson, Laurie Smith, Darren Smith, David Owen, Greg Kunz, Jodi Hammers, Larry Kloohsen, Jennifer Andrisen Selzler

The meeting was called to order by Chairman Michels, and roll call was taken by secretary Jaime Rutschke. Carol Hinderaker MOVED approval of the minutes from the September 28, 2011, and October 26, 2011, meetings. Guy Bender SECONDED. Motion carried.

The first agenda item discussed was the 2012 Division Report on the State Workers' Compensation System. James Marsh gave an overview of the Report.

The 2012 Legislature did not pass any legislation affecting workers' compensation. Two pieces of legislation were recommended by the Council, 1) changing the employee's notice period from three to seven days and 2) allowing other insurance to cover claims when workers' compensation coverage is denied for any reason. These were introduced as HB1054 and were defeated in the House Judiciary Committee 8-5. A third provision debated and rejected by the Council also went up as part of HB1054 and was defeated. The provision concerned the definition of a medical practitioner.

The Division of Labor and Management (DLM) amended its rules relative to physician fee schedules, application processes, and medical treatment standards. A rule amendment updating the physician fee schedule will be introduced.

The Division of Insurance (DOI) announced average base rates for the voluntary insurance market will decrease by 0.3 percent for the period from July 1, 2012 – June 30, 2013. Assigned-risk rates will increase slightly by 1.8 percent.

DLM will be watching the impact of two federal court cases: In re Prime Tanning-Hartland and Brown v Cassens Transport Company.

In re Prime Tanning-Hartland is a Chapter 11 bankruptcy, in which an employer, self-insured in at least two states, is attempting to use the bankruptcy process in unprecedented ways to substantially rewrite its obligations under those states' workers' compensation laws.

Brown v Cassens Transport Company was a federal civil lawsuit involving multiple plaintiffs who claimed Cassens colluded with a Michigan doctor and a third-party administrator to commit mail and wire fraud and deprive the plaintiffs of workers' compensation benefits. For the first time, the US Sixth Circuit Court of Appeals concluded the US Racketeer-Influenced and Corrupt Organizations laws (RICO) apply when parties act jointly to deprive workers' compensation claimants of benefits to which they are entitled, even if the claims were settled. The ruling may have an impact on the process and terms of settlements, as well as the complexity of discovery processes in litigated workers' compensation cases.

The second agenda item was the Declaratory Ruling on the Department of Labor and Regulation's Fee Schedule Rules on Hospitals. James Marsh provided a summary of the Declaratory Ruling. The ruling was issued on how workers' compensation fee maximums operate as to hospital therapy and radiology department charges.

The third agenda item was the 2012 Workers' Compensation Committee Report of the State Bar Association as presented by Mike Simpson and Charlie Larson.

Proposal one: Amend SDCL 62-7-10 (the employee notice statute) by changing the notice requirement from three business days to seven business days.

Proposal two: Amend SDCL 62-1-1.1 which defines a "medical practitioner," to include practitioners licensed outside South Dakota.

Proposal three: Amend SDCL 62-1-1.3 which states that coverage denied by workers' compensation (on the basis the claim is not work-related) is not excluded from other insurance coverage, to include coverage denials by workers' compensation on any other ground.

Because proposals one and two are a compromise amongst the State Bar Committee, they request the Council votes on these two proposals together and not divide them up. The difference between the proposals from last year to this year is the Committee wants proposals one and two combined and voted on together. Chairman Michels deferred action on this to the September 6, 2012, board meeting.

Testimony was provided by: Mike Simpson, Julius & Simpson; Charlie Larson, Boyce, Greenfield; Doug Abraham, May Adam Gerdes & Thompson; Bob O'Connell, SF Chamber of Commerce; David Owen, SD Chamber; Brad Wilson, Insurance Benefits;

Bram Weidenaar, Hoy Trial Lawyers; Julie Johnson, Absolutely Aberdeen; Lindsey Riter-Rapp, NFIB-SD; Shawn Lyons, SD Retailers Association.

The final agenda item was discussion on the 2012 Workers' Compensation Advisory Council report to the Governor and the Legislature. Public input was given by Darla Tielke via email and John Parker.

James Marsh provided general information relating to Darla Tielke's email. The law as it existed then stated you were capped at the rates and conditions that existed when you were injured. The law was changed shortly after Ms. Tielke's injury, referring to 62-7-33. Paul Aylward wanted to know what other states allow for Cola increases for permanent partial disability. Research will be done regarding Cola increases and will be brought back for consideration for the report at the September board meeting.

John Parker provided testimony on his letter to Governor Daugaard and his workers' compensation injury from 2008. Mr. Parker provided two issues that he would like to be addressed. 1) Amend SDCL 62-4-2 to reduce the seven day waiting period. 2) Amend SDCL 62-4-1.1 to expedite prompt payment of workers compensation benefits.

Chairman Michels asked for research to be done. 1) NCCI will be asked to provide a written opinion on the proposals from the SD State Bar Workers' Compensation Committee Report and if the proposals will result in rate increases. 2) NCCI and DLM will be asked to provide benefit cost data to show current trends.

The Council scheduled the next meeting for September 6, 2012, at 1:30 p.m. (CDT) at the Kneip Building, Conference Room 3, Pierre, SD.

Chairman Michels adjourned the meeting at 2:55 p.m. (CDT).