

To: Workers' Compensation Advisory Council

From: Amber L. Mulder, Director of Labor and Management, South Dakota Department of Labor and Regulation

Date: July 14, 2022

Subject: 2022 Division Report on the State Workers' Compensation System

This report is prepared for submission at the July 14, 2022, meeting of the Workers' Compensation Advisory Council.

Overall, our state's workers' compensation system is functioning well, and competes successfully with neighboring states.

Effective July 1, 2022, through June 30, 2023, an overall average decrease of 7.3% was approved for the advisory loss costs in the voluntary market. An overall average rate level decrease of 5.9% was approved in the Assigned Risk Market from the previous year. This is the eleventh consecutive decrease for loss costs in the voluntary insurance market.

There was a moderate decrease in claim frequency for the latest year. The indemnity and medical severity exhibit year-to-year variability, although both indicate relatively stable trends when observed over the long-term.

The Department brought no legislation impacting workers' compensation during the 2022 legislative session.

SB 70, An Act to modify the amount of time to report an injury for workers' compensation, would have impacted the program. This legislation would have changed the requirement for an employee to provide written notice of an injury from three business days to 30 days after its occurrence. This bill failed to make it out of the Senate Commerce and Energy Committee.

Although they would not have directly impacted this program, two other Senate Bills were introduced concerning workers' compensation and worker safety. These bills were SB 92, An Act to require that taxpayer funded pool arrangements providing workers' compensation coverage demonstrate financial stability, reliable management, and fair pricing and SB 145, an Act to provide protections and workplace safety for meat and poultry processing workers. Neither bill made it out of the Senate Commerce and Energy Committee.

There has been one South Dakota Supreme Court ruling since we last met.

In *Dittman v. Rapid City School District and Dakota Truck Underwriters*, the South Dakota Supreme Court affirmed the Department on two issues and reversed and remanded our grant of summary judgment on a third issue related to compensation for treatment from an out-of-network provider.

In this case, after claimant sustained a work injury, and it was decided she was not a candidate for surgery at Black Hills Orthopedic & Spine Center, she took it upon herself to conduct her own research and found a surgeon in Colorado. Her treating doctor was familiar with the Colorado surgeon and submitted a surgical consultation request that was denied by employer/insurer on the grounds it was a second opinion, and the cost should be covered by Claimant. Claimant appealed on the issue of whether the referral was covered by workers' compensation.

The three issues on appeal were:

1. Whether the Department erred when it determined Dr. Vonderau made a referral to Dr. Corenman.
2. Whether the Department erred in granting Employer and Insurer's motion for summary judgment.
3. Whether the Department erred by not including Dittman's bonuses when calculating her average weekly wage.

Thank you to the Council for this forum.

Amber L. Mulder