

To: Workers' Compensation Advisory Council

From: Tom Hart, Deputy Secretary of South Dakota Department of Labor and Regulation

Date: July 26, 2018

Subject: 2018 Division Report on the State Workers' Compensation System

This report is prepared for submission at the July 26, 2018, meeting of the Workers' Compensation Advisory Council.

Overall, our state's workers' compensation system is functioning well, and competes successfully with neighboring states. Average base rates for the voluntary insurance markets have decreased 7.0 percent, and assigned-risk rates have decreased 18.4 %, for the period from July 1, 2018, to June 30, 2019. This is the seventh year of decreases in the voluntary insurance market. Injury frequency continues to decrease and medical and indemnity severity increased slightly.

At the last Council meeting on October 30, 2017, there was discussion on a proposed "Bad Faith Legislation" brought by industry. The Council took no action on the proposal. The legislation failed to come out of the first committee. The only other workers' compensation legislation was brought by DLR via House Bill 1029. The bill increased the application fees for self-insured employers from \$2,000 to \$2,500. An administrative rule was attached to the bill to increase the fee to the current amount of \$2,250. The bill passed and was signed by the Governor. The increased fee became effective as of July 1, 2018.

There was one Supreme Court case that touches on workers' compensation since the last Council meeting. The SCOSD, in Lagler v. Menard, ruled that the Department's grant of a lump sum settlement payment was in error. Based on the decision, DLR has discussed with staff the mechanisms to determine the grant of a lump sum settlement payment.

There is no update on the case briefly discussed at the last council meeting that brings forth a constitutional challenge of SDCL 62-3-15(2), exempting farm and agricultural laborers from the workers' compensation laws. We shall report on any developments in these matters when they occur.

DLR conducted a public hearing on May 14, 2018, to update the medical fee schedule. The proposed rules updated the latest version of Optum 360 for Relative Values. The conversion factor in rules was updated with a .5% increase for most physician based services. This small increase is in response to our goal of reimbursing for 130% of

Medicare (last year the payments equaled 128%). A larger change was to certain CPT codes for Physical Therapists and Occupational Therapists. Some of their codes were deleted and replaced. The new codes had a significantly lower Relative Value. In response, we amended the Conversion Factor such CPT codes to provide such professions with a market rate reimbursement. The NCCI cost impact to the system was estimated at .1%. Representatives from PT provided public comments and requested additional changes during public comment. DLR appeared before the Interim Rules Review Committee and the medical fee schedule was approved and currently in place.

Many thanks again to the Council for this forum.

Tom Hart