

**Workers' Compensation Advisory Council
Meeting Minutes
September 6, 2012
Kneip Building Conference Room #3
Pierre, SD**

The Workers' Compensation Advisory Council met on Thursday, September 6, 2012, at the Kneip Building Conference Room #3 in Pierre, South Dakota.

Members Present: Paul Aylward, Randy Stainbrook, Carol Hinderaker, Connie Halverson, Chris Lien, Pam Roberts, Matt Michels (Sioux Falls DDN)

Members Absent: Guy Bender, Jeff Haase, Glenn Barber

Others Present: James Marsh, Amber Mulder, Larry Deiter, Deb Mortensen, Yvonne Taylor, Randy Moses, Patsy Mehlhaff, Joshua Anderson, Merle Scheiber, David Owen, Mark Anderson, Eric Ollila, Mary Weischedel, Robert Moss, Shawn Lyons, Lindsey Riter-Rapp, Julie Johnson, Mike Simpson, Janet Thron, Matthew Kremke, Larry Klaahsen, Chris Specht, Jennifer Andrisen Selzler, Charlie Larson, Katelynn Kunz, Bram Weidenaar, Darren Smith, Bob O'Connell, Robert Thimjon, Denise Gerch, Brad Wilson, Jodi Hammers, Mark East

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 June 26, 2012, meeting. Randy Stainbrook SECONDED. Motion Carried.

The first agenda item discussed was a review of claims data. Robert Moss with NCCI presented trend and cost data for South Dakota claims. James Marsh provided a breakdown of categories of medical care and expense as well as a breakdown of relevant costs to different types of cause of injury.

The second agenda item was the discussion and public input on issues for the 2012 Workers' Compensation Advisory Council report to the Governor and the Legislature.

Issue #1: Amend SDCL 62-7-10 changing the employee notice period from three working days to seven working days. Kelly Campbell with Property Casualty Insurers submitted correspondence proposing this issue. Michael Simpson of Julius and Simpson and Charles Larson of Boyce, Greenfield, Pashby and Welk testified on behalf of the State Bar's Workers' Compensation Committee as proponents. Francis Toscana with SDML Workers' Compensation Fund and Matt Parker with Parker Transfer & Storage submitted correspondence opposing this issue. David Owen, South Dakota Chamber of Commerce; Deb Mortensen, AGC; Bob Thimjon, Ramkota Companies; Bob O'Connell, Sioux Falls Chamber of Commerce; and Julie Johnson, Absolutely Aberdeen testified as opponents. The council was asked to consider testimony given at the June 26, 2012, meeting. Paul Aylward MOVED to recommend changing the notice period from three working days to seven working days. Randy Stainbrook SECONDED. Motion

Carried with 4 Yea (Aylward, Stainbrook, Halverson, Michels) and 2 Nay (Hinderaker, Lien).

Issue #2: Amend SDCL 62-1-1.1 “medical practitioner” definition to include out of state licensed practitioners. Kelly Campbell with Property Casualty Insurers submitted correspondence proposing this issue. Charles Larson and Michael Simpson, State Bar’s Workers’ Compensation Committee; Larry Klaahsen, Dakota Truck Underwriters/First Dakota Indemnity; and Bob Thimjon, Ramkota Companies testified as proponents. Eric Ollila, South Dakota State Employees Organization and Bram Weidenaar, Hoy Trial Lawyers testified as opponents. The council was again asked to consider testimony given at the June 26, 2012, meeting. Carol Hinderaker MOVED to recommend the “medical practitioner” definition be amended to include physicians not licensed in South Dakota. Connie Halverson SECONDED. Motion Carried with 4 Yea (Hinderaker, Halverson, Lien, Michels) and 2 Nay (Aylward, Stainbrook).

Issue #3: Amend SDCL 62-1-1.3 to allow other insurance to cover claims when workers’ compensation denies for any reason. Kelly Campbell with Property Casualty Insurers submitted correspondence proposing this issue. Randy Moses, Division of Insurance testified as a proponent and recommended using the language contained in HB1054 last year. James Marsh provided a brief overview of the current law and the amendment. Randy Stainbrook MOVED to recommend amending SDCL 62-1-1.3 to reflect as written in HB1054 last year, requiring other insurance to cover claims when workers’ compensation denies coverage for any reason. Connie Halverson SECONDED. Motion Carried unanimously.

The State Bar will be submitting these issues as two separate bills. Issues #1 and #2 will be combined and submitted separately from Issue #3.

Issue #4: Increase current workers’ compensation pay rates. James Marsh explained the applicable laws and provided a comparison of other states’ laws about the effect of cost of living adjustments on benefit rates. Larry Klaahsen, Dakota Truck Underwriters/First Dakota Indemnity testified as an opponent. No action was taken.

Issue #5: Amend SDCL 62-4-2 to reduce the seven day waiting period. James Marsh explained the applicable laws and provided a summary of other states’ laws pertaining to waiting periods. Larry Klaahsen, Dakota Truck Underwriters/First Dakota Indemnity testified as an opponent. No action was taken.

Issue #6: Amend SDCL 62-4-1.1 to expedite prompt payment of workers’ compensation benefits. James Marsh provided an overview of the current law. SDCL 62-4-10.1 imposes a 10 percent penalty on insurers who do not pay disability benefits within 10 days after they are due. Larry Klaahsen, Dakota Truck Underwriters/First Dakota Indemnity testified as an opponent. No action was taken.

Issue #7: Amend SDCL 62-1-1.2 to change the impairment guide from the AMA 4th edition to the 6th edition. James Marsh provided an overview and studies done by NCCI

and other states' workers compensation offices, showing an uncertain impact from the change. Matthew Kremke, MBA, Director of Advocacy and Janet Thron, Senior Acquisitions Editor with the American Medical Association testified and provided correspondence supporting a change to the 6th edition. Karla Murphy with the South Dakota State Medical Association submitted correspondence proposing this issue. Mark East, South Dakota State Medical Association testified as a proponent. Chris Lien MOVED to recommend amending SDCL 62-1-1.2 to change the impairment guide from the AMA 4th edition to the 6th edition. Carol Hinderaker SECONDED. Motion Carried unanimously.

The draft report to the Governor will be updated and a conference call will be scheduled to approve the final draft.

Chris Lien MOVED to adjourn. Paul Aylward SECONDED. Motion Carried.