

**Workers' Compensation Advisory Council
Meeting Minutes
September 28, 2011
Kneip Building Conference Room #3
Pierre, SD**

The Workers' Compensation Advisory Council met on Wednesday, September 28, 2011, at the Kneip Building Conference Room #3 in Pierre, South Dakota.

Members Present: Matt Michels at Sioux Falls DDN site), Chair, Paul Aylward, Guy Bender, Glenn Barber, Connie Halverson, Carol Hinderaker, Chris Lien (at Spearfish DDN site), Pam Roberts, Randy Stainbrook

Members Absent: Jeff Haase

Others Present Pierre site: James Marsh, DLR; Deb Mortenson, AGC; Brad Wilson, Insurance Benefits; Mary Weischedel, BOP; Josh Anderson, Division of Insurance; Mallori Barnett, PCIAA; Bob Mercer, Newspapers; Teresa Boe, Berkley Risk; Patsy Mehlhaff, Division of Insurance; Sara Hyser, IW Pharmacy; Dan Nelson, Berkley Risk; Lynn Job, BOP; Dawn Dovre, DLR; Mackenzie Osadchuk, DLR; Randy Moses, Division of Insurance; Mike Shaw, PCIAA, Mike Taylor, NCCI

Others Presents at Sioux Falls DDN site: Chris Specht, AVERA; Mary Ireland, Stubbe and Associates; Danyell Skillman, RAS Company; Denise Geick, TLC; Mark Graphentten, ReliaMax; Bram Weidenaar, Hoy Trial Lawyers; Greg Kunz, RAS Company; Kristi Brandt, TLC

The meeting was called to order by Chairman Michels, and roll call was taken by secretary Kim Paxton. Glenn Barber MOVED approval of the minutes from the August 3, 2011, meeting. Connie Halverson SECONDED. Motion Carried.

The first agenda item discussed was the proposed workers' compensations rule changes from the Department of Labor and Regulation (DLR). James Marsh explained to the Council that the rules hearing will be held October 20, 2011, and the following subjects will be covered:

- Monthly reporting – insurers will be required to submit monthly benefit payment forms; James Marsh said insurers are only reporting 75 percent of payments currently.
- Fee Schedule simplification – the 400 pages of rules will be reduced to eight, with a small table.
- Treatment Standards – outdated treatment standards will be abolished.

The second agenda item was a presentation by Mike Taylor with NCCI and James Marsh with DLR on hospital claims costs.

Mike Taylor from NCCI handed out a four page report on SD Benefits Costs which included: Indemnity and Medical Splits; Average Indemnity Severity South Dakota and Nationwide Excess of Wage Growth; Average Medical Severity South Dakota and Nationwide Excess of Wage Growth; and Average Hospital Cost Per Day-All Types.

Mike Taylor explained that NCCI is currently studying the growth of prescription drug use.

More drugs are being prescribed, particularly Oxycodone. Additional information on their studies is available on their website, www.ncci.com. James Marsh will provide a link to the committee for NCCI's most recent study once he gets that information from Mike Taylor and the four slides are attached to the minutes and available on the DLR website.

Mike Taylor explained that South Dakota medical costs have exceeded disability costs consistently over the last 10 years. While disability costs have largely remained the same, medical costs keep rising because the workforce is aging and because older workers take longer to recover and are harder to get back to work when on medical restrictions. Indemnity costs have not risen in part because wages are relatively stable.

James Marsh handed out a table of Workers' Compensation Medical Expenses by category, 2001-2010. Medical costs spiked in 2007 and 2008, which Marsh attributed to several unusually large claims occurring during those years. Otherwise, no type of medical costs increased or decreased unexpectedly.

The Council proceeded to its action items.

Issue #1 was to change the required employee notice to an employer of a work injury from three days to seven days. Mike Shaw from PCIAA and Bram Weidenaar with Hoyt Trial Office testified as proponents. James Marsh explained some of the history of the three day notice requirement. Chris Specht with Avera Health Risk Management spoke in opposition. Paul Aylward MOVED the Council recommend the notice period be amended from three days to seven days, Randy Stainbrook SECONDED. Motion Carried unanimously.

Issue #2 was to amend the "medical practitioner" definition for workers' compensation cases to include out of state licensed practitioners. Mike Shaw from PCIAA and Mary Ireland with Stubbe and Associates testified as proponents. James Marsh explained the history of the law. Bram Weidenaar spoke in opposition. Carol Hinderaker MOVED the Council recommend the "medical practitioner" definition be amended to include out of state licensed practitioners. Guy Bender SECONDED. Motion Failed on a roll call vote with 4 Yea (Bender, Halverson, Hinderaker, Lien), 4 Nay (Aylward, Stainbrook, Barber, Michels), 1 absent (Haase).

Issue #3 was to amend the law requiring other insurance to cover claims when workers' compensation denies; present law only requires coverage when the denial is for the claim's work-relatedness. The amendment would require it for any denial. Mike Shaw of PCIAA testified as a proponent; there was no opposition testimony. Chris Lien MOVED the Council recommend other insurance be required to cover claims when workers compensation denies for any reason. Glenn Barber SECONDED. Motion Carried unanimously.

The last agenda item discussed was the 2011 Workers' Compensation Advisory Council draft report to the Governor and the Legislature. Monica Harding will schedule a conference call to review and approve the final report before it is submitted to the Governor and Legislature.

Paul Aylward MOVED to adjourn. Glenn Barber SECONDED. Motion Carried.

ITEMS FOR 2012:

Randy Moses with the state Division of Insurance requested the Council consider pharmacy benefit management companies working with workers' compensation insurers be licensed as third-party administrators.

Rex Hagg, an attorney with Whiting, Hagg, Hagg, Dorsey and Hagg, requested the Council study changing the guide used for evaluating permanent impairments from the AMA Guide, Fourth Edition to a newer edition.

Meeting adjourned at 2:45 p.m. (CDT)

Handouts were:

- Table from Mike Taylor NCCI-SD BENEFIT COSTS
- Letter from Julius & Simpson, L.L. P
- Workers' Compensation Medical Expenses from James Marsh