

Meeting Minutes
WORKERS' COMPENSATION ADVISORY COUNCIL
Missouri River Plaza, Sharpe Conference Room
123 W. Missouri Ave., Pierre
November 18, 2019, 1:30 p.m. CST

Chairman Scott Stern called the meeting to order at 1:30 p.m. CST. Roll call was taken by Patricia Saukel. A quorum was present.

Members Present: Chairman Scott Stern, Secretary Marcia Hultman, Russ Hohn (Conference Call Line), Randy Stainbrook, Jean Murphy, Kory Rawstern, Brooke Bohnenkamp, Jason Dodson, and Jesse Smith

Members Absent: Guy Bender

Others Present: Amber Mulder, Stephanie Paswaters, Susan Schulte (Conference Call Line), Raji Chadarevian (Conference Call Line), Donna Leslie (Conference Call Line) Matt Liegel, Patsy Mehlhaff, Jill Kruger, Mike Shaw, Nathan Sanderson, Deb Mortenson, Dawn Dovre, Sara Garbe, Sue Simons, Larry Klaahsen, Brad Wilson, Jennifer Andrisen-Selzler, and Patricia Saukel

DDN locations: Pierre, Rapid City, and Sioux Falls

After Council introductions, Chairman Stern opened discussion on the minutes from the meeting on October 9, 2018. A few changes were made. Chairman Stern then asked for a motion to approve the amended minutes of the October 9, 2018 meeting. Jason Dodson moved to approve. Jean Murphy seconded. **MOTION CARRIED.**

Labor and Management Director Amber Mulder provided the Director's update. The state workers' compensation system is functioning well and competes successfully with neighboring states. Effective July 1, 2019, through June 30, 2020, an overall average decrease of 11.9% was approved for the advisory loss costs in the voluntary market, and an overall average rate level decrease of 19.1% was approved in the Assigned Risk Market from the previous year. Due to the classification swing limit of 15%, the maximum increase per classification in the voluntary market is 3.1% and the maximum decrease per classification is 26.9% from the prior year loss costs. This is the eighth year of decreases in the voluntary insurance market. Injury frequency continues to decrease, and medical and indemnity severity increased slightly.

Mulder reminded the Council about the discussion during the October 9, 2018, meeting surrounding a proposed change to SDCL 62-4-53 to clarify the requirement for expert opinion when proving permanent total disability. The Council took no action on the proposal and no legislation was brought by industry. During the 2019 Legislative Session, SB 36 passed and was signed by Governor Noem on March 7, 2019. This Act revised the membership of the Workers' Compensation Advisory Council (WCAC) and allows Governor Noem to appoint the WCAC Chairperson.

Mulder reported there were no Supreme Court cases on workers' compensation since the last Council meeting. In the case of Bangston v. Charles Baker Farms regarding a constitutional challenge of SDCL 62-3-15(2), discussed at last year's Council meeting, the South Dakota Supreme Court issued a final ruling that the statute is constitutional.

The South Dakota State University (SDSU) Engineering Extension/South Dakota Occupational Safety and Health (OSHA) Consultation Program 2019 Activities Summary provided by Greg Derynck, Program Director, and presented by Mulder in his absence. Mulder provided background on the OSHA Consultation Program. The Council reviewed the performance numbers for Federal Fiscal Year 2019 for on-site visits to South Dakota employers, serious workplace hazards that were abated, air samples collected to determine employee exposure to air contaminants, noise exposure samples collected, and tested carbon monoxide levels. OSHA services available to employers in the state at their request include determination of compliance with OSHA regulations and consensus, comprehensive hazard evaluations, job safety analysis guidance, safety program audits, technical program development, and assistance with hazard controls selection and implementation.

Stephanie Paswaters, National Council on Compensation Insurance (NCCI) State Relations Executive based in Colorado shared the history and mission of NCCI. She introduced Susan Schulte and Raji Chadarevian of NCCI, who attended the meeting on the conference line.

Susan Schulte, NCCI Department of Labor Relations Executive, presented the October 2019 NCCI Medical Data Report for South Dakota. The report was from medical payments for services from January 1, 2018, through December 31, 2018. In 2018, over 270,000 transactions with more than \$54 million accounted for about 13,800 claims. Lump-sum settlements are not required to be reported and self-insured data was not included. Schulte navigated through the report and explained various charts and data. The hot topic this year was air ambulance transportation. The remainder of the report was a comparison of the last five years. No questions were offered.

Schulte reviewed the October 2019 Medical Data Report Opioid Utilization Supplement. Raji Chadarevian, NCCI Director of Medical Regulation Informatics, addressed morphine milligram equivalents (MME) compared to oxycodone pill equivalents (OPE), and explained the OPE data.

Russ Hohn asked NCCI to explain the geographical designation of the region. Schulte referred Hohn to the report for the state breakdown. Jean Murphy asked about the timeline for a person to become opioid-dependent. NCCI said it depended on the individual and referred to the Center for Disease Control and Prevention website. Jesse Smith noted a discrepancy between the region and South Dakota numbers. Chadarevian said to be mindful of the maturity of the claims. Chairman Stern asked if there was a link between the heavy use of opioids in South Dakota compared to the region. NCCI did not know. Jason Dodson asked if NCCI provides this information to companies and if the information drives cost back to policyholders. NCCI does provide the information to companies, but it does not affect costs to policyholders. At the Sioux Falls DDN location, Sue Simons and Larry Klaahsen of Risk Administration Services (RAS) questioned the air ambulance charges (private v. rural areas) in the medical report and noted a discrepancy from their claims. NCCI said the data was received from the carriers for 2018.

Chairman Stern opened for public comment. No public comment was brought forward. Secretary Hultman reminded the Council the public may bring issues related to workers' compensation to the Council. These issues are reviewed by DLR staff and can be considered for the legislation. The public is not required to bring related issues through WCAC or DLR to be considered for legislation. There are no recommendations for the 2020 Legislative Session.

Chairman Stern asked for any additional comments. Hohn referred to the opioid report and asked about the time frame on the distribution of opiates, specifically the maximum amount of time the pills can be distributed. Chadarevian said if the claim continues to be open, there is no

limitation. Smith asked if legislation should be introduced or if WCAC should be involved. Hultman said the Council is reactionary and DLR would be asked for input. DLR could then ask for the Council's input. The issue would have to wait until the 2021 Legislative Session. Hultman added issues for the coming year should be on the agenda for DLR to have time to investigate. Stern asked NCCI to give the Council additional details regarding the transportation data question.

Chairman Stern opened up discussion on the draft of the 2019 WCAC Annual Report. Mulder stated the report will be available at the next meeting. DLR will share it electronically. The Council did not identify specific items for the report.

Saukel said the proposed dates for the next meeting will be emailed to the Council members.

Chairman Stern entertained a motion to adjourn. Kory Rawstern moved to approve. Jesse Smith seconded. **MOTION CARRIED.**

Chairman Stern called the meeting adjourned at 2:47 p.m.

Patricia A. Saukel, Labor Program Assistant

Dated: 11/22/2019