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WORKERS' COMPENSATION  
ADVISORY COUNCIL MEETING

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KNEIP BUILDING  
700 GOVERNORS DRIVE  
PIERRE, SOUTH DAKOTA

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THURSDAY, AUGUST 21, 2008

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Reported by Leslie A. Hicks, RPR, PO Box 758, Fort Pierre, SD 57532-0758 (605) 223-7654

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THURSDAY, AUGUST 21, 2008

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CHAIRMAN DAUGAARD: All right. I'm going

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to call the meeting to order. Ask Sarah to call the

4

roll, please.

5

(Whereupon, roll call was taken and the

6

following members were present: Chairman Dennis

7

Daugaard, Secretary Pam Roberts, Secretary Paul Kinsman,

8

Carol Hinderaker, Connie Halverson, and Glenn Barber.)

9

CHAIRMAN DAUGAARD: And I know from

Monica

10

that Guy, Jeff, and Chris all called in to regret their

11

inability to come, and everyone else is here so we have

a

12

quorum.

13

Before we move to the minutes, I want to

14

call everyone's attention, there were two agendas

15

produced. The second agenda, the correct agenda, is the

16

agenda with no bullets under number six, so if you have

17

an agenda with bullet points under number six you have

18

the incorrect agenda. Does anyone need a correct

agenda?

19

MS. ROBERTS: I think this agenda was the

20

draft just sent to council members, a hard copy, and the

21 corrected one is the one that's been on the website that  
22 probably the public hearing people would have seen.

23 CHAIRMAN DAUGAARD: Very good. It would  
24 just be the council members. All right. Very good.

25 Begin with the minutes. I'm assuming we

□

3

1 all had a chance to read the minutes as they were  
2 produced of our last meeting in May. Any comments or  
3 questions or amendments to the minutes? If not, is

there

4 a motion to approve them?

5 MR. AYLWARD: I'll move approved.

6 CHAIRMAN DAUGAARD: Motion by Paul. Is  
7 there a second?

8 MS. HINDERAKER: Second.

9 CHAIRMAN DAUGAARD: Second by Carol. Any  
10 discussion? Those in favor say "aye," those opposed  
11 "nay."

12  
unanimously.)

(Whereupon, the motion passed

13 CHAIRMAN DAUGAARD: Motion carried.

14  
time

we have a full agenda. Are there any

15  
on

constraints that limit anyone's ability to participate

16  
this

the council? Anyone need to leave by a certain time

17 afternoon? Anyone? All right.

DDN 18 MS. ROBERTS: If I could clarify. The  
19 networks go off at 5 o'clock.

20 CHAIRMAN DAUGAARD: Yeah. I don't expect  
21 we'll go past five. And if there are items remaining on  
22 the agenda at 5 o'clock we'll postpone them until the  
23 next meeting. Is that agreeable to the council?

additions 24 Okay. All right. Are there any  
25 or corrections to the agenda as was posted? Seeing none

□  
4

1 then we'll --

and 2 MS. ROBERTS: Maybe I could add under d,  
3 other issues, we did get the email from -- from Fern,  
4 I think we all -- we e-mailed council members her two  
5 items. We already had the AMA Guidelines on there from  
6 the last meeting, but she sent a draft of the -- the  
7 terms.

8 CHAIRMAN DAUGAARD: Oh, the term limit  
9 proposal.

other 10 MS. ROBERTS: So that would be under  
11 issues then, at least that issue.

at 12 CHAIRMAN DAUGAARD: We did discuss that

13 the last meeting so I think there is a fair notice  
14 essentially that that might come up, so without  
objection  
15 we'll add that under d. we'll call it the term limits  
16 proposal. Any objection? Thank you for bringing that  
17 up.

18 All right. Then we'll take this as our  
19 amended agenda and we'll begin with item five. I don't  
20 have any opening remarks, except to thank everyone for  
21 coming, and we'll begin with item five, Scott Brener.

22 MS. ROBERTS: Scott is the former  
Secretary  
23 of Labor from the state of Minnesota and had some  
24 information I wanted him to share with us. He is now  
25 with -- maybe I'll let Scott introduce the position that

□  
5

1 you're in currently -- but he's a workers'  
2 compensation attorney by trade, and he has -- we've been  
3 talking about medical escalation and he has a  
4 presentation he would like to make.

5 MR. BRENER: Thank you, Madam Secretary.

6 CHAIRMAN DAUGAARD: I'd ask you to use  
the  
7 mic for the people remotely connected.

8 MR. BRENER: Sure. Thank you, Madam  
9 Secretary, Mr. Chair, members. My name is Scott

Brenner.

10 It is a pleasure to be here today. As Secretary Roberts  
11 indicated, we worked together in some capacities when I  
12 held the position of Commissioner of Labor in the state  
13 of Minnesota for the Governor, Tim Pawlenty. I held  
that  
14 role for four and a half years. During that time I was  
15 also President of the National Association of Labor  
16 Secretaries and also an officer for IAIABC, which is  
17 probably the largest workers' compensation association  
in  
18 at least North America if not the world these days so.  
19 A year ago, I left the administration and  
20 took a position as my current position where I'm a  
senior  
21 vice-president for SFM. It was initially the state fund  
22 of Minnesota. I'm proud to say one of our primary  
states  
23 we do business in as of July 1st is the state of South  
24 Dakota, so not only do I have historical relationships  
25 with government affairs, but now have business

□

6

1 relationships here in South Dakota.

2 with that I'm going to move right into my  
3 presentation because I know the agenda is tight today.  
4 This is a topic -- medical costs within workers'  
5 compensation is a topic that I kind of clinged onto

6 pretty much as soon as I was appointed commissioner back  
7 in April of 2003.

8 I was -- in my old days, 15 years ago, I  
9 was the general counsel of the Minnesota Department of  
10 Labor and Industry and focused a lot on comp policy at  
11 that point in time since that was a political -- kind of  
12 a heated piece of politics back in Minnesota in the  
13 mid-90's, where the focus is probably the same here,  
14 indemnity. When I was brought back into the Department  
15 in 2003, I looked at some numbers. They seemed a little  
16 odd to me as claims were going down, prices were going  
up  
17 as you'll see in a second. I started focusing on other  
18 factors that were driving that cost. I was frankly one  
19 of the earlier commissioners that started focusing on  
20 medical costs contained within workers' compensation. I  
21 have numbers from a couple years ago. Data tends to lag  
22 a bit in comp. This is just something I'm not pushing  
23 anything on anybody here today. It's just some elements  
24 with respect to medical costs containment in work comp  
25 that should this group be moving forward on it's

□

7

1 something to look to and something to think about as you  
2 move through the medical piece of comp. So, with that,  
3 let's get rolling.

All  
are  
4 All right. I got this -- there we go.  
5 right. Here's the context. This is context -- these  
6 Minnesota numbers for the most part throughout this  
7 presentation, but they are indicative of national trend  
8 lines, so although they are Minnesota specific I've  
9 looked at a lot of national data and the trend lines are  
10 very, very, very similar.

rates  
11 As probably the case is here, injury  
12 fell dramatically in Minnesota. Paid claims per 100  
13 full-time-equivalent workers as you can see were almost  
14 cut in half, and that number continues -- although it's  
15 flattening out to some degree -- is continuing to drop.  
16 However, system cost in Minnesota, again, have gone  
17 substantially up, although it's flattening to some  
degree  
18 recently because of some stuff I did as a labor  
19 commissioner. It is still seeing significant increase,  
20 although we're seeing claimants drop. That's initially  
21 what tweaked my interest in looking more deeply at the  
22 medical situation.

terms  
23 Now, there was an historical shift in  
24 of dollars paid out in work comp. Although, again, this  
25 is Minnesota numbers, these run almost exact to those of

□

1 national trend lines. In the early 90's -- and this is  
2 actually everywhere from 1991 when the first work comp  
3 system was established in Wisconsin -- the majority of  
4 dollars spent in benefits to workers as indemnity paid,  
5 lost time paid benefits. In about 2000, that historical  
6 payout shifted to where medical expense became the  
7 majority, the heavy driver of dollars in the work comp  
8 system. Now that's '05 numbers. The '08 numbers are  
9 closer to 60 percent, 60 cents on the dollar now in  
10 benefits paid is being paid with respect to medical  
11 benefits as opposed to indemnity benefits. We also know  
12 by doing studies nationally and in Minnesota that  
13 injuries cost quite a bit more in work comp than in  
14 general. I don't do comparisons in Medicare. Those  
15 aren't market driven numbers. In terms of market driven  
16 numbers payout those just show a variety of different  
17 procedures utilized in the comp system and the  
18 more you're paying in a comp arena than you are in the  
19 general healthcare world.

similar

percentage

20 So, again, I'm just kind of painting the  
21 picture. I'll move into specific examples, what we try  
22 to do to correct this.

23 Now we had some -- some medical cost  
24 containment items put into Minnesota law back in 1993,

25 which initially did assist -- there were other issues

□

9

1 that certainly assisted in dropping those claim costs,  
2 but the medical cost containment elements did assist in  
3 driving that number down. We saw 18.5 percent reduction  
4 in average medical cost per claim in 1992 to 1995. What  
5 we did in Minnesota in '93 for the most part was a  
6 provider fee schedule, which at the time took existing  
7 comp payout numbers and the legislature -- the  
8 legislative direction asked or mandated that we cut  
9 existing payout numbers by 15 percent, so we took  
10 existing payouts, cut it 15 percent and established the  
11 Minnesota fee schedule back in 1993. We instituted a  
12 managed care system for workers' compensation and also  
13 treatment parameters. We instituted at the time our own  
14 Minnesota treatment guidelines, which Wisconsin just  
15 adopted ours I guess about two years ago now.

16 Okay. Since '05 the picture of Minnesota  
17 has changed dramatically. You see a 72 percent increase  
18 in average medical cost per claim from 1995 to 2004.  
19 Again, I was appointed initially in 2003. That's the  
20 trend lines I was looking at.

21 months

So what I did within about a couple

22 of being appointed I established a work comp advisory

23 council. We have an advisory council similar to yours.  
24 I instituted a similar entity that focused exclusively  
25 medical cost containment. I led the debate in the

on

□

10

1 Department with some doctors and some public  
2 policymakers. I focused in on five principal areas.  
3 Wherever you go these tend to be the five principal war  
4 zones when it comes to medical cost parameters in the  
5 system. Provider reimbursement/fee schedule, how much  
6 you pay doctors, chiros, that tends to be a supply  
7 economic piece -- piece of the issue. Pharmaceuticals  
8 are the number one largest increase cost driver in the  
9 system. Again, tends to be on the more supply and

do

demand

10 side to it. Hospital costs, the third area. Hospitals  
11 have become the biggest chunk -- it's about \$0.40 on the  
12 dollar -- of medical expenses paid out in Minnesota

going

13 to the hospital community. About three percent hospital  
14 revenue, but in Minnesota at least counts about ten  
15 percent of profits. It is a huge issue in comp in  
16 Minnesota. The fourth area, which tends to be more of  
17 the demand, managed care component. And then, finally,  
18 again, primarily the demand side of the equation and

19 treatment parameters, the practice -- or best practice  
20 guidelines within the system. These are the five  
21 principal areas that at least I focused on. I think  
22 traditionally speaking these are the five central areas  
23 to any effective managed care -- or medical costs  
24 containment system within one's work comp system.

25 All right. Let's look first at provider

□

11

1 reimbursement/fee schedule. I know there is a fee  
2 schedule in place in South Dakota. The two issues at  
3 least I was confronted with that were practical with  
4 respect to our fee schedule in Minnesota were these two,  
5 inflationary spiral. That is what you index your fee  
6 schedule to, how do you index it, what's the escalator.  
7 Second, the service coverage, and this we'll go into in

a

8 second. How do you update, how do you keep your fee  
9 schedule current to account for new medical procedures  
10 that are coming in and old ones that are going out? How  
11 do you keep it updated?

12 All right. This is the problem that I

saw

13 when I walked in in '03 with the Minnesota fee schedule.  
14 My predecessors had applied the Minnesota fee schedule

to

15 SAWW, the Statewide Average Weekly Wage. As most of us

16  
particularly

know, the SAWW was increasing at rapid pace,

17 in the 90's, although it has slowed down in. It was in  
18 the upper to 7, 8, 9 percent a year in the 1990's. So  
19 the running parallel to that you saw 7, 8, 9 percent  
20 escalation to the Minnesota fee schedule. So although  
21 that fee schedule is not compared to 185 percent of  
22 Medicare back in '93, it had rapidly gone way beyond  
23 that. So what I did -- and I have discretion as a  
24 commissioner to do this -- I reevaluated that escalation  
25 point, took it off the SAWW and placed it on the PPI-P,

□

12

1 the Producers Price Index For Physicians, which tends to  
2 be a much slower indicator. As a result you see in the  
3 blue line we were able to stop a lot of that fee  
schedule  
4 escalation. I'm not here to say the PPI-P is the best  
5 thing for everybody. It's an issue to look to in  
6 establishing a fee schedule, how are you going to handle  
7 the escalation points.

8 Okay. This was the second issue, the  
9 second problem we were having in Minnesota with our fee  
10 schedule. Again, our fee schedule was established in  
11 1993. The way our statute was drafted in that period  
was  
12 that any alterations to that fee schedule had to go

13 through the traditional APA rule making process, and as  
14 I'm sure Secretary Roberts can account to, that is a  
very  
15 burdensome, costly, timely, inefficient way of keeping  
16 fee schedules adopted. By the time you actually go  
17 through the APA process and the money you spend on the  
18 APA process the fee schedule is outdated again. We had  
lost  
19 lost through process erosion, technology erosion, we  
20 about 27 percent of the effectiveness of the fee  
21 schedule. We had a lot of outdated surgical allowances  
22 built into that premised on the 1993 fee schedule work.  
23 There was a lot of new stuff we weren't able to update.  
24 Just this year, in '08, our legislature on the advice of  
the  
25 the Department of Labor and Industry was able to give

the  
□  
13

1 Department authority to adopt fee schedule changes that  
2 would expedite rule making processes similar to how I  
3 used to adopt OSHA standards from the feds. It's quick,  
4 easy, cheap, based off Medicare, and allows for a much  
5 more contemporary fee schedule.

6 All right. Next issue. That was fee  
7 schedules, number 1, first area. Secondary,  
8 pharmaceuticals. Huge problem in comp. Total drug  
9 costs/claims have increased 76 percent -- that's above

10 inflation -- since 1997. We've seen a 137 percent  
11 increase for out-patient meds. Number of claimants  
12 receiving meds is up 14.4 percent. Cost of meds up  
13 53.7 percent. And at the time work comp paid 100  
percent  
14 of the sticker price. We're seeing two elements.  
supply  
15 side problems, costs are going up way too fast. And  
16 demand side problems, more pills issued per person than  
17 we had in prior years. So it was kind of a two-pronged  
18 animal and we were paying in 100 percent, which I don't  
19 know any other system -- at least in Minnesota -- I  
don't  
20 know of any other system that pays 100 percent of AWP,  
so  
21 this is what we did.  
22 well, medical prices rising, same type of  
23 graph, just shows the rate of growth.  
24 Same thing with our fee schedule. We  
were  
25 using all generic, which was passed a lot time ago. We

□

14

1 were using a lot of generics. We were having problems  
2 with drug costs and utilization.

3 This is what we did. We developed a new  
4 pharmacy fee schedule. I have created -- to maintain a  
5 little peace in the valley with PBM's, I left the

maximum

6 fee at 100 percent AWP plus \$5.14. At the same time I  
7 was trying to encourage the marketplace to move into an  
8 electronic transactional approach to handling meds or  
9 pharmaceuticals, and so what I did I reduced it  
10 88 percent AWP plus \$3.65, which is actually still  
fairly  
11 liberal, but it's the best we could get in Minnesota at  
12 the time for electronic transaction. Once it's done in  
13 the marketplace in Minnesota even if you're not  
14 electronically transacting pharmaceuticals work the  
15 marketplace is pretty much because of -- because of  
16 negotiation pressure has kind of moved to at least  
17 88 percent AWP. We were able to get it down 12 points,  
18 and at the same time encouraging electronic  
transactions.

19 CHAIRMAN DAUGAARD: What's AWP?

20 MR. BRENER: Average Wholesale Price.  
It's  
21 the price historically the drug markets place their  
22 pricing off of.

23 Now that handled the supply side of the  
24 equation, the pricing side. And demand side of the  
25 equation if you push supply price on the utilization  
bump  
□

15

1 it will balloon the other way. I was trying to squeeze

2 from both sides. What we have done we established --  
3 we're in the process -- the Department is still in the  
4 process of finalizing these things. Most of these have  
5 been finalized. We created -- we extended, we broadened  
6 our treatment parameters to now include pharmaceuticals.  
7 We took the five heaviest classes of drugs, narcotics,  
8 steroids, those type of things, and we established best  
9 practice guidelines, how many, how long, so forth. And  
10 so on that you should be prescribing these type of meds  
11 not only to curb the price to a reasonable level but  
also  
12 curb demand, curb the appetite down a little bit. All  
13 right. That's the pharmaceuticals.

14 The next big area of work has been  
15 hospitals. This has been an ongoing issue in Minnesota.  
16 It is one that I kind of stuck my neck out in front of  
17 and they're still in a heavy negotiation period with  
18 hospitals trying to do something.

19 As reflected here more services are being  
20 provided by hospitals than ever before in comp.  
Hospital  
21 charges have risen faster than those of other providers.  
22 Only a small proportion of hospital services are subject  
23 to meaningful cost controls. In Minnesota we fee  
24 schedule very little with respect to hospitals. And the  
25 other problem in Minnesota hospitals is it's statutory.

□

If 1 Under Department rules I can kind of work through it.  
work 2 it was statutory it's a much more difficult thing to  
3 through.

4 And under Minnesota statute small  
5 hospitals, which are defined in Minnesota law as those  
billed 6 with 100 beds or less, are paid out at 100 percent  
of 7 charges, so whatever they're charging they're paid out  
8 100 percent. It's not the ratio, it's what they're  
9 charging. If you're a large hospital you're paid out  
it 10 85 percent. Whereas, in the general healthcare market  
11 tends to be in Minnesota this is pretty standard in the  
12 low 60's, so if you're charging 100 bucks the general  
13 healthcare is paying you out at about \$62, 60 to 65 it  
14 tends to be. Medicare, Medicaid obviously are much,  
much 15 lower, between 35 and 40 percent.

16 This was the problem we were facing. We  
17 had a very small fee schedule as it related to  
hospitals,  
for 18 all the small hospitals. And there's no fee schedule  
19 in-patient services even in large hospitals so we were  
--  
20 we had a problem.



17 bills at the same hospital for the same procedure within  
18 a given calendar year you can aggregate that data together  
19 and pay out at that level. Up until about two years ago  
20 no one was able to correctly amalgamate the data to come  
21 up with prevailing charges. It's been hard to  
implement.

22 The other issue associated with  
hospitals,  
23 which has been extremely problematic, and now that I  
24 actually see the bills coming in into our insurance  
25 company is the issue of surgical implants. Surgical

18

1 implants are a huge, huge revenue source for the  
hospital  
2 industry. And many of the bills I see at SFM, the  
markup  
3 is up around 300 percent from manufacturer to what we  
get  
4 billed by the hospital for a surgical implant. I think,  
5 as we all know, surgical implants are being used more  
and  
6 more often with backs and other forms of work comp  
7 medical use. So the thought there was to limit the  
8 markup. Many states are moving to this approach. And  
9 I've seen everything from no markup at all up to about  
10 30 percent is the highest I've seen nationwide. This an  
11 approach many, many states are moving to. Give them a

12 fair markup, but don't let them go beyond that -- that  
13 markup price. But this is a huge, huge revenue source  
14 for hospitals. If you look at insurance company numbers  
15 it's a huge, huge payout number.

16 All right. Now let's move to the fourth  
17 area that -- of focus, and that was managed care. You  
18 know, there are proponents and there are opponents of  
19 managed care and I'm not to debate the managed care  
20 process. The thought was to institute a managed care  
21 system in workers' compensation that would be unique to  
22 workers' compensation market in Minnesota. In 1993, the  
23 legislature and the Department of Labor and Industry  
24 there worked out a managed care system for comp. I can  
25 tell you straight forward it's been a terrible system

and  
□

19

1 hasn't worked at all in Minnesota for a couple reasons,  
2 which I'm going to outline here. As you can see, the  
3 number of plans dropped from 10 in '95 to three. It may  
4 be only at two now actually for several reasons. There  
5 was statutory language which disallowed the plans from  
6 negotiating payments with network providers. The whole  
7 theory behind managed care is to allow for the  
8 negotiation of rates, volume discounts. Our law  
9 specifically -- just within the workers' compensation

10 arena disallows the negotiation of rates. Providers can  
11 say this is what I want and this is what you have to pay  
12 even in the managed care system. There was no cafeteria  
13 plan allowance in the Minnesota managed care process.  
14 The plans were required to provide a large set of  
15 services even if it was duplicative to what other people  
16 provided. It became very costly. And then, finally,  
17 another problem to our process was that employees  
weren't  
18 required to use the network.

19 Research in a number of states shows that  
20 managed care reduces both medical and indemnity costs  
21 with the same functional outcomes. WCRI, the big boys  
in  
22 work comp, researched this. There's been up to  
23 15 percent reduction in costs due to negotiation of  
fees.  
24 when you allow for negotiation of fees that shouldn't be  
25 a big surprise. In other states costs are up to 10

□  
20

1 percent lower when employees are required to use the  
2 network even if only for a short time period.

3 These are some possible solutions to  
4 working through at least what we've seen are problems in  
5 the managed care. Allow plans to negotiate rates. Let  
6 plans tailor services to clients. That is establishing

7 more of a cafeteria style approach to managed care  
8 services. And require employees to use a network. Not  
9 necessarily for life, but at least from an entry point  
10 perspective.

11 All right. The five -- fifth and final  
12 area I want to cover here is treatment parameters. I  
13 guess best practice guidelines although, again, when we  
14 established these in 1993 they were starting to erode  
15 several reasons. Inadequate/inconsistent application.  
16 The problem we had there was primarily the court system.  
17 The court system just wasn't necessarily applying --  
18 though they were requiring -- they were required to  
19 them, the court system were finding ways to get around  
20 our treatment parameters. Rebuttal presumption in the  
21 law saying we will presume these are reasonable and  
22 necessary unless you can rebut that. Secondly, did not  
23 address new treatment technologies. Same issue with the  
24 fee schedule, APA process, update the treatment  
25 parameters. By the time we updated them they were no

for

even

apply

□

21

1 longer up-to-date again. And then some -- they  
2 weren't -- simply weren't broad enough to cover common  
3 injury types. Those are the issues we had.



1 report. Most of us at the table went to the NCCI  
2 explanation of South Dakota workers' comp system and  
what  
3 they told us there if you'll go back. Maybe, Scott, I  
4 could get you to go back to the first couple pages where  
5 you're talking about Minnesota, the context, I think  
it's  
6 page two of your report. I was looking at our report  
7 from NCCI. You council members all have a copy of the  
8 updated one. Next one. The next slide, Scott.

9 MR. BRENER: Okay.

10 MS. ROBERTS: That one. You see in 2005  
in  
11 Minnesota medical was 57.8 percent of the workers' comp  
12 system and wages 42 percent. In -- what NCCI told us is  
13 that nationwide that runs about 60 percent, so Minnesota  
14 is pretty close. But in South Dakota 72 percent of the  
15 money in our workers' comp system is actually paid to  
16 medical providers so I looked at that as being skewed.  
17 That happened last fall. It had risen quite a bit from  
18 the year previously. It raised a flag to me that that's  
19 something we need to look at. I talked to Scott and he  
20 was talking about some of the things they had done in  
21 Minnesota, brought up the pharmaceuticals. For  
instance,  
22 in South Dakota I just want to be clear here, I'm not  
23 talking about trying to take -- to cut down any benefit

24 for -- or medical expense for injured workers, I'm  
25 talking about saving the money from medical providers.

I  
□

23

1 mean, there -- we really don't have a good system of  
2 negotiating with those medical providers. Most  
insurance  
3 companies do that. In South Dakota we have a fee  
4 schedule that's been in place since 1996. We do not  
have  
5 a pharmaceuticals schedule. So workers and insurance --  
6 you know, the workers' comp system is paying for even  
7 nongeneric prescriptions. We aren't requiring them to  
go  
8 to generic. We all have health insurance and understand  
9 the savings that can be had. When you're talking about  
10 limited amount of money in workers' compensation I hate  
11 seeing that going to pharmaceutical companies for the  
12 nongeneric prescriptions that can be ordered and paid  
for  
13 through our system. We also -- what were the other  
14 three? We have a managed care system in place. Our  
15 hospitals, if you go to page 11 of this NCCI report that  
16 you council members have, and there's copies for  
audience  
17 members if you want, Monica. We're talking about the  
18 NCCI report. If you go to page 11. And this is just  
for

19 South Dakota and it says in that narrative that "Medical  
20 costs comprise over 70 percent of total costs in South  
21 Dakota as compared to 60 percent" -- that's not the one.  
22 There was a hospital one later on. I'll find it.  
23 Anyway, it basically targets in the NCCI report we are  
24 not doing anything on the hospital side of things.  
25 Basically what our system does is any hospital bill

□

24

1 that's presented for payment gets a 20-percent discount,  
2 and that's what paid through the workers' compensation  
3 system. But, I mean, they could present any bill that  
4 they want and it's just a 20-percent discount. I think  
5 other states, including Minnesota, are looking at that.

6 MR. BRENER: I'm trying to get down -- I  
7 was trying to get down to general healthcare areas,  
8 was about 20 percent.

which

9 MS. ROBERTS: Right. So, you know,  
10 been a commissioner of personnel we worked on the state  
11 employee health insurance benefits. I know that there  
12 some work that could be done to negotiate with hospitals  
13 and other medical providers so that the workers' comp  
14 system isn't paying an inordinate amount of the -- of

having

is

the

15 medical system of South Dakota, higher than, you know,  
16 insurance companies. Am I making sense here? Okay.

asked

17 Good. So, anyway, it was a red flag in my mind. I  
18 Scott to present what he had done in Minnesota, to throw  
19 it out for discussion purposes and just know that it's  
20 something that I think the Department of Labor needs to  
21 continue to look into and possibly come forward in the  
22 future with some -- some other ideas.

23 MR. BRENER: Let me say from a political  
24 perspective in Minnesota this has not been an employee  
25 versus employer issue. I mean, this was tackling the

□

25

1 medical issues in a broad-based system, the teamsters,  
2 ICO, union groups frankly, as well as the business  
3 groups. So it became -- our advisory council, much like  
4 yours, was comprised of employer, employee members. We  
5 had strong support from the advisory council. From a  
6 legislative perspective it became more of advisory  
7 council versus the provider community. And at the same  
8 time we weren't trying to gouge anybody. I mean, I was  
9 trying to get to general healthcare. I don't believe in  
10 pushing it down to Medicare, Medicaid, then you'll have  
11 an access issue. Certainly general healthcare with the  
12 small bump to that there will not be access issues I can

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13 tell you from looking at a lot of data.

14 MS. ROBERTS: No. We would never want to  
15 become an access issue. Thank you.

16 MR. BRENER: Thanks.

17 MS. ROBERTS: Food for thought, Mr. Chair  
18 and members of the council.

19 CHAIRMAN DAUGAARD: I'll just react. I  
20 think it's important for the council probably at every  
21 meeting to have some information that elevates our level  
22 of understanding as council members so we can make  
23 informed intelligent decisions about issues that are  
24 brought to us, and the NCCI report should help us  
25 identify where South Dakota is out of the norm. They

□

26

1 should help us as council members and the public as well  
2 identify those areas where we should be looking to see  
3 why we are out of the norm, is it good or is it bad and  
4 should something be done.

for

5 MR. BARBER: It's really not a surprise  
6 the drug companies to have people try to negotiate with  
7 them. I think the Veterans Administration, for example,  
8 negotiates their prices significantly down, more use of  
9 generic drugs, but, gosh, there's a tremendous savings  
10 going that way. Why can't we as a group designate that

11 any person that requires treatment would be able to  
12 purchase those drugs but a special agreement we set up  
as  
13 a work comp group. It just makes sense. Why we should  
14 be paying 100 percent is ridiculous.  
15  
-- CHAIRMAN DAUGAARD: Okay. Well, I don't  
16 I don't know if there's any specific action we're  
looking  
17 to take or just, again, it's an opportunity for us to  
18 understand what's the situation in workers' comp in our  
19 area. It might be something that the administration  
will  
20 end up promoting or offering to change or looking at  
21 changing. I don't see -- I see our role as the workers'  
22 Comp Advisory Council to react to proposals from others  
23 and advise the Governor about how those proposals should  
24 be -- what kind of response should be made. And so,  
25 again, I think some overall education is good every

time.  
□

27

1 MS. HINDERAKER: Mr. Chairman, what has  
2 been the stance of the workers' compensation insurers in  
3 South Dakota? Have they -- I mean, have they approached  
4 the Department, for example, to say why can't you  
5 negotiate these prices in South Dakota? Surely some of  
6 those insurers also insure in Minnesota where they have

a

7 much --

8 MR. MARSH: Do you want me to respond to  
9 that?

10 CHAIRMAN DAUGAARD: James, if you would.  
11 You're in a better position than I.

12 discussion

MR. MARSH: Well, we did have a

--

13 relative to drug costs, in particular. The Department

14 I did a lot of research back in the late 90's, early  
15 2000's about the idea of establishing a drug schedule  
16 similar to what they're talking about. Ultimately, we  
17 abandoned it for a multitude of reasons. First one was  
18 that when you look at the ability to negotiate prices  
19 with drug companies that's the key. And the way we set  
20 up our schedule it took a hit to pharmacies, instead of  
21 manufacturers who drive most of the costs of the drugs.  
22 So it was like someone coming to me and saying, well, I  
23 want you to reduce the cost of Coumadin by 50 cents and  
24 we would say that's going to come out of the

pharmacist's

25 instead of the manufacturer's pocket who collects most

of  
□

28

1 the profit. Because health insurance probably  
2 constitutes -- in government programs probably

3 constitutes 90 and 95 percent of the reimbursement for  
4 drugs, whereas work comp is 2 to 5 they had no leverage.  
5 I mean, it wasn't possible to negotiate these prices.  
6 That was one issue.

7 And the other one was coming up with a  
8 standard that would make sense. We tried various types  
9 of models. Probably the one suggested in this program  
10 about the best. We would look at average wholesale  
11 and mark and contain fee.

is

price

12 CHAIRMAN DAUGAARD: Dispensing fixed  
13 price.

price.

14 MR. MARSH: Yeah. Which basically  
15 reimburses the pharmacist. We couldn't come up with a  
16 number that everybody could live with. We were  
17 told let's go back to UCR and go with that. Maybe it's  
18 an issue that needs to be revisited is drug cost

basically

changes.

19 MR. KINSMAN: James, wouldn't it make

sense

20 even if you're not negotiating can't you mandate that  
21 generics be used without affecting any negotiating issue  
22 unless they can establish some reason for the name brand  
23 drug similar to what the State Health Lab does?

24 MR. MARSH: That issue didn't come up

with

25 that round of discussions about the fee schedule or drug  
26 fee schedule. One matter that was discussed with me by

□

29

the

well,

be

then

1 the insurance industry was the fact that, well, since  
2 law calls for reimbursement of reasonable and necessary  
3 expense they -- the insurance company can then say,  
4 if it costs me \$20 to buy a particular drug using the  
5 brand name and the exact same drug can be purchased for  
6 \$5 as a generic then the insurance company should only  
7 responsible to reimburse the \$5. Some carriers have  
8 taken that and said we'll pay \$5. As a result there's  
9 been a change in behavior, which fixes the problem. But  
10 the degree to which that happens, I don't know.

11 MS. ROBERTS: I think it's worthwhile for  
12 us to go and do some research and possibly look at  
13 piggybacking with what Bureau of Personnel is doing. As  
14 a state employee, you know, that pharmaceuticals plan is  
15 negotiated. I never see it and it just takes care of  
any

couldn't

that

16 pharmaceuticals that the employees have. Why we  
17 do that, maybe piggybacking with that to save a lot of  
18 expense. Again, it was a red flag to me and I think  
19 it's incumbent on us to do a little research and come  
20 back to the commission or the council next year with

some

21 kind of discussion. If even at this council level you  
22 would like to participate in a work group just let me  
23 know after the meeting. We'll be happy to have you sit  
24 in and walk with us through this maze.

25 CHAIRMAN DAUGAARD: I think that's

□

30

1 excellent. Be great. Any other comments or discussion  
2 on that agenda item?

3 Okay. The next item on the agenda is  
4 number six. I'm looking for my correct agenda. Here we  
5 are. The workers' Compensation  
6 misclassified/undocumented workers issue, and the  
7 Division of Insurance is here to give us a presentation  
8 on that.

9 MR. SCHEIBER: Good afternoon. Thank  
you,

10 Mr. Chairman. Merle Scheiber with the Division of  
11 Insurance. And also with me today -- we're going to  
12 break this presentation into two parts -- we've got Andy  
13 Fergel also with me from the Division of Insurance who's  
14 going to talk about the insurance fraud unit, which Andy  
15 heads up and supervises for us.

16 what you have in front of you --  
hopefully

17 everyone's got it. It's not in color. It's a pretty

that 18 black-and-white one. Scott, you did a better job on  
19 than I did so.

20 Okay. What you have in front of you here  
21 is just a quick presentation we put together on  
22 classification and rating. Hopefully most of us here  
23 probably are familiar with it, but we'll detail that a  
24 little bit. What we've done is we've done a very, very  
25 over simplification of an example. And I want you to

□

31

1 remember that we used Employer A, Employer B when we get  
2 to it. What that does, it basically says that the  
3 classifications we have used are the finite. These are  
4 the two employers in the country that would be using it.  
5 We want to oversimplify the impact that  
6 misclassifications would have on it, namely carpentry  
and 7 clerical. What you have -- there we go.

8 How are work comp premiums calculated?

we

9 have a voluntary market and residual market. Basically  
10 what you've got there, the loss cost factors are  
assigned 11 to each classification by NCCI. We went to lost cost  
ten 12 years ago, maybe even longer, instead of base rates.  
13 we'll get into the second page how they are calculated.

14 Then carriers, insurance companies, load their loss cost  
15 multiplier to their classifications. These can include  
16 loss adjustment expense, underwriting expenses. These  
17 are followed up by the Division, so if an individual  
18 insurance company wants to change the loss cause it has  
19 to file with the Division of Insurance. It has to be  
20 approved by us. Each covered employer's experience mod  
21 is then applied. The individual employer then is rated  
22 on how well they do at lost control, number of losses  
23 they have, severity of losses, etcetera, accumulates  
24 their experience modification. Right now the rates that  
25 were approved by the Division of Insurance on July 1,

□

32

1 2008 applicable to the individual employers are based on  
2 their experience for '04, '05, '06.

the

3 Then on the residual market you combine  
4 first two bullet points on the voluntary side. That's  
5 where you get the base rates. The employer's experience  
6 mod is applied.

development

7 On the next page you have where  
8 of loss cost comes from. I won't go through that. You  
9 all have that there. Obviously, claim frequency, claim  
10 severity, and trending is analyzed for both South Dakota

11 and nationally. The national numbers aren't quite as  
12 important as the local South Dakota numbers, but they  
are  
13 applied to the whole composite or the lost cost on each  
14 individual classification. South Dakota recently as a  
15 side note did because we were a small state and we were  
16 affected adversely by large losses we do go to a  
17 five-year development balance that out and average it  
18 better less fluctuations in loss cost. And it has  
helped  
19 tremendously so.

20 Then, of course, like I said, the lost  
cost  
21 filings are submitted to Division of Insurance every  
22 July 1st. This year if I'm correct it was a minus .5  
23 percent on the voluntary market and plus .6 percent on  
24 the residual market. That's an average now, okay.  
25 That's average of all the classes. There's an

individual  
□

33

1 swing limit that applied to each individual class that  
2 can't go up or down more than 15 percent. That is low  
3 compared to some other states.

4 Classification/rating example. We have  
two  
5 employers, A and B, with identical payroll and  
6 classifications. Employer A will be the one that

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7 misclassifies, and Employer B correctly classifies.

what

8 we're going to assume overall is a 75 percent loss ratio  
9 of claims paid to premiums.

10 The rating example of Employer A, the  
11 actual payroll you'll see there for the clerical  
12 classification and also see the carpentry, which is what  
13 we used, carpentry and single family residential. You  
14 see what they reported there. Basically they took the  
15 carpentry class in the payroll and put it up into the  
16 clerical side there, which is incorrect.

17 And these are the claims Employer A does  
18 have, okay. Employee 1 was injured for \$100,000. This  
19 employee actually though is the carpenter out there  
20 should be correctly classified at 5645 instead of  
21 clerical. Employee 2 has a \$50,000 claim and is  
22 classified correctly, and so is Employee 3. We're  
23 assuming all claims are compensable and paid as medical.

24 Employer B is not much different,  
25 obviously, other than actual and reported payroll.

□

34

1 And then Employer B has these particular  
2 losses here, which are all attributed to the 5645, which  
3 is the carpentry classification.

and

4 And here you go, you got a claims paid

5 premiums and whole claims paid for the Employer A and B,  
6 you add up what we just showed you was \$200,000. And  
the  
7 premium needed for 75 percent loss ratio is 22. We're  
8 making an extreme example so you can see the impact.  
9 Those are the two employers once again that have this  
10 particular classification like nationally only two that  
11 have so you'll see greater impact later on. What you'll  
12 see there the premium that was needed for 8810 should  
the  
13 actual payrolls been what they reported but we know  
14 they're not, \$140,000 there in premium that should be  
15 allocated to the clerical classification is -- is  
16 \$6,666 -- here we go. Thanks, Paul. Then you got  
17 premium needed for the 5645, carpentry, \$126,666, and  
18 premium that should be allocated to 5645 is \$260,000.

19 Then you got premiums based upon Employer  
A  
20 and B classification. Employer A, if you notice at the  
21 bottom it says, "Assumes incorrectly reported payroll."  
22 Remember these here are the incorrect payrolls reported.  
23 You got the 8810 class at -- ends up being 63.63 rate.  
24 If you remember it was \$0.42. This is the impact.  
25 Remember it's an extreme example again. This is what

□

35

1 would actually impact with the incorrect reporting.

Then

at 2 actually 5645 would go up to \$48.72, and total premium  
3 \$143,766. Employer B would be the same, 63.63. We've  
4 taken everybody's experience collectively. We're taking  
5 everybody's experience within that class and that's what  
6 sets the rate.

7 And here's actually the correct one.  
8 Employer A, if you receive the difference in 63.63 you  
9 got 8.33, and 5645 would go up to \$65, and that would  
10 apply to Employer B also at that particular point.

saying 11 MS. ROBERTS: Basically what you're  
say 12 if I -- if I am kind of being fraudulent in trying to  
for 13 my employees are different than they are I get dinged  
saying? 14 it through our rating system; is that what you're

the 15 MR. SCHEIBER: The claims determined --  
16 claims are paid regardless of where they're classified  
17 at.

18 MS. ROBERTS: Premium wise.

19 MR. SCHEIBER: Premium wise, correct.

20 MS. ROBERTS: Mr. Chair. The discussion  
21 last meeting was that -- was that employers are  
22 misclassifying employees and it's causing a problem with  
23 the system, and I didn't really understand if they

24 thought employer -- employees were being impacted or  
25 what. But my concern was that the employers were being

□

36

1 impacted because some were being honest and some were  
2 not. What you're saying is the system really checks  
3 out --

that

out.

4 MR. SCHEIBER: The system checks that

5 But what you have -- your inconsistencies then are  
6 between the classifications, and if that particular  
7 employer happens to have that classification or  
8 composure, yes, they would be, the discrepancy between  
9 the classes that are incorrectly reported. So the

system

10 itself is going to take care of the employees, but the  
11 employer is allocated differently depending on the  
12 classification.

13 MR. AYLWARD: Mr. Chairman. If I  
14 understood some of the stuff I've read, the cost to the  
15 system is -- is if employers are intentionally reporting  
16 to the wrong classification there's a cost to the system  
17 because they're not paying in the correct rate and the  
18 system is paying out under -- whatever the cost would be  
19 as -- such as if the carpenter gets injured the employer  
20 who intentionally reported them as a secretary only paid

21 a certain amount, but the costs were actually greater  
22 than what was paid in. And you're saying that that's  
23 going to average out.

24 MR. SCHEIBER: Well, the costs are  
25 obviously -- yeah, the costs are the same and get

□

37

1 averaged out based on experience. Remember, take these  
2 two guys as example of the whole rule of everything.

The

3 system balances itself out and now will charge both  
4 employers the 63.63 rate versus what they should have  
5 based on the experience here, so the premium -- I mean,  
6 the premium is there as needed, obviously, but you can't  
7 get -- you wouldn't be able to go \$0.42 to 63.63 rate in  
8 the real world.

9 MR. AYLWARD: The point is one employer

by

10 reporting wrong could have the effect of raising the  
11 rates for the honest employer.

12 MR. SCHEIBER: That is correct. It is  
13 adversely affecting the system. Yes, you could say it's  
14 an imbalance between the employers, which is part of the  
15 system. The system itself still is paying the employee.  
16 The system is still going by lost development, all those  
17 things and then it's recalculating what particular rate  
18 should be charged to those particular classifications

19 should there not be discovery of the impropriety of the  
20 reporting.

21  
though,

MR. AYLWARD: But that's the point

22 it's a cost to the honest employer, it's going to raise  
23 his cost.

24 MR. SCHEIBER: Right. You're correct.  
25 You're correct, Paul.

□  
38

of

1 MR. ROBERTS: I guess my interpretation  
2 the discussion last -- last meeting was that it was a  
3 cost to the system. I guess this clarifies it a little  
4 bit more to me.

5 MR. AYLWARD: To me that is a cost to the  
6 system.

7 MS. ROBERTS: Of course, that injured  
8 employee is the same -- whether or not he's classified  
9 correctly or not he's getting paid and so the system  
10 would be paying the same amount of money. That's what  
11 I -- what I was trying to discern last meeting like was  
12 there an imbalance there.

13  
that  
14  
the

MR. SCHEIBER: Let's use this example  
we got here. It's a \$0.42 rate. When you say, Paul,

15 system, the system will only allow for discrepancies or  
16 false reporting to remember the swing limit I just said.  
17 From 15 percent, that's what South Dakota has chosen, so  
18 in the event this was real and this 88.10 go from \$0.42  
19 to 63.63 we couldn't do it. That individual can only go  
20 up 15 percent because of the swing limit.

21 MS. ROBERTS: Is that when the fraud unit  
22 comes in if there's an employer that's consistently --

23 MR. SCHEIBER: To be honest -- I'll let  
24 Andy cover that. To be honest, as the Division of  
25 Insurance receives the complaints we don't get those

□

39

1 complaints. I think the next two slides will tell you  
2 what the industry does with some of these folks. After  
3 that really we may get a complaint, but we never get a  
4 followup from the insurance company. To be honest with  
5 you, if you've got an employer or agent consistently  
6 false reporting, they're not associated with that  
7 company, usually they cancel.

8 MR. BARBER: You covered part of my  
9 question. But what -- if a person has been dishonest in  
10 reporting wrong the next year there's adjustment to  
11 up part of that.

catch

12 MR. SCHEIBER: Correct. That's one of

the

13 next slides here. This will answer your question.

14 MR. BARBER: Okay.

15 MR. SCHEIBER: It's called the -- okay.

16 No. We got one back. Sorry. Button happy today.

17 Anyway, your next one should say, "Employer Audits."

18 This is what they do. The insurers themselves they will

of

19 annually audit their insureds. It depends on the size

20 the account. The ones I'm familiar with it was over

21 5,000 they would get an audit. Under 5,000, self-audit

22 every year, and then they'd have every third year catch

23 up and do a physical audit or telephone audit or

24 something like that. The insurance companies constantly

insureds.  
□

25 with our work comp progress are doing audits on

40

1 what will happen if the individual has a  
misappropriation

2 of classes they will change it. If there's a dispute

3 we'll get into the next slide what NCCI will do. They

4 have a recourse themselves. With the insured what the

5 insurance company will do is adjust those

6 classifications, put the correct payroll in there and

days

7 bill them for the audit amount. They've got so many

8 to do that, 60 or 90 days. Also, they will audit --

9 endorse the new policy and if they don't pay that we in  
10 statute can cancel for nonpayment of premium or for  
11 misrepresentation of premiums. I was in the industry  
for  
12 25 years. They do it, the ones I worked for. Does that  
13 answer your question?

14 MR. BARBER: Yes.

15 MR. SCHEIBER: That's what actually this  
16 is.

17 And then the next page, which is the last  
18 page -- no. This is what NCCI does. Obviously, if an  
19 employer -- sorry. Okay. For the people in Rapid City,  
20 it's the NCCI page here. For some reason I am  
21 electronically dysfunctional today. Okay.

22 MS. ROBERTS: Quick finger.

23 MR. SCHEIBER: I'm on the NCCI audits  
here.  
24 If the employer does have dispute with this, NCCI  
25 determines, and what the insurer is to use for that

□

41

1 classification there is resource for that employer to  
2 correct that. We get very few of those, but we have one  
3 for the first time. We're going to have a hearing on  
4 something like this. In general, NCCI and the insurance  
5 company are typically corrected with the operations  
based

on 6 on the number of audits or in-depth audit they perform  
7 that individual insured.

8 Then the last page is treatment of  
9 independent contractors. And, obviously, the treatment  
10 of independent contractors is always state-by-state, and  
11 Scott can probably elude to it too in Minnesota. It is  
12 an ongoing issue. Typically, the Department of Labor  
13 does have -- you'll see there in the second bullet -- it  
14 does have some tests that will help define when an  
15 independent contractor is in a particular situation and  
16 these are just a few of them. And what it really  
amounts  
17 to is that an independent contractor is basically  
18 responsible for their own work comp and for the work  
comp  
19 on their employees if they meet one of these tests.  
This  
20 is what this is all saying there.

21 And that's it. Is there any questions  
22 other than about my electronic skills?

23 CHAIRMAN DAUGAARD: Yes, Paul.

24 MR. AYLWARD: Mr. Chairman. We just  
25 recently had another quest on this and I did call Merle

□  
42

1 about it. I don't handle any of the -- our bills, but  
2 our office manager handles all the workers' comp

3 insurance and all of our bills. She got our workers'  
4 comp bill and she does these self-audits and all that.  
5 well, she saw that she was classified the same as I was,  
6 which to her was wrong, she shouldn't have been. So she  
7 called the insurance agent and he said, yeah, that's  
8 wrong, should be the other way. He said, I'll change  
it.  
9 well, then we get the next bill and it's the same, same  
10 thing. She calls him again. Long story, I called  
Merle.  
11 He said your insurance should take care of that, if they  
12 don't, let me know and we'll look into it. They finally  
13 did get it straightened out after a lot of hours of  
14 working on it. It came someplace from the audit. The  
15 auditor said she should be classified the same as a  
union  
16 representative, which is -- instead of a secretary,  
which  
17 is a lot lower rate. If she hadn't been watching that I  
18 would have just paid the bill. Here's the premium, pay  
19 it. Now, wasn't a whole lot of money, but it was just,  
20 you know, two employees. So I wonder if that's  
happening  
21 to places, to employers, who just get their bill and pay  
22 it. Maybe it's something employers need to make sure  
23 that they're being charged the right rate. And it took  
24 her a long time to get that straightened out. She  
25 finally did. We spent way more money on her getting it

□

43

1       straightened out than on what the premium would have  
2       cost. It was a matter of principle.

3                       MR. SCHEIBER: Paul makes a good point.  
4       All employers shouldn't question, but review and  
5       scrutinize the audits. It takes more time than money.

I

6       don't know about Scott's company. More times than not  
7       there is an independent auditor that they're using or  
8       independent auditing firm, who can talk to the  
9       underwriter, read the file. All those independent  
10      auditors are getting is a request for audit. They're  
11      given specific guidelines how to look at auto dealers  
12      salesman and go back and forth. There's always issues  
13      classifications like that. You should review it  
14      extensively because it is coming from an independent  
15      source usually.

and

on

amount

16                      MR. AYLWARD: Large employers would  
17      to a large amount of money.

18                      MR. SCHEIBER: Right. It does.

the

19                      MR. KINSMAN: Merle, how subjective is  
20      decision to what classification you should or should not  
21      be in?

22 MR. SCHEIBER: We have a Scopes manual  
that

23 NCCI puts out and it's lengthy about the  
classifications.

24 Usually, the underwriters and the insurance agent  
25 themselves are pretty much on the same level, but a lot

44

1 of times there are certain cases or classes they don't  
2 know what kind classification individual employees  
should  
3 be in. In particular, if they're doing two different  
4 functions. It allows for payroll division in that. So  
5 really the Scopes manual by NCCI is what it's called.  
6 It's very detailed, you know, outlines it very well. So  
7 it is -- it isn't supposed to be subjective, but yet it  
8 can be.

9 CHAIRMAN DAUGAARD: Any other questions?  
10 Merle, thank you very much.

11 MR. SCHEIBER: Thank you.

12 MS. ROBERTS: Thank you.

13 CHAIRMAN DAUGAARD: If nothing further on  
14 that issue then we'll move to -- excuse me. Andy,  
you're  
15 going to talk about the fraud division, excuse me.  
16 Getting ahead of myself. Beg your pardon.

17 MR. FERGEL: Mr. Chairman and members of  
18 the council. I won't take a whole lot of your time

19 because it seems to me that the discussion that you just  
20 had probably answered a lot of the questions. I think  
my  
21 primary purpose here today now is just to let you know  
22 that South Dakota does have an insurance fraud  
prevention  
23 unit in that fraudulent instances if we receive a  
24 referral we would certainly investigate those things.

25 First of all, I guess I'll briefly  
□  
45

1 introduce myself. I'm Andy Fergel, and I am with the  
2 Department of Revenue and Regulation, and I'm chief  
legal  
3 counsel for the Department. As part of my duties I  
4 supervise the insurance fraud prevention unit.

5 The mission statement of the fraud unit  
is  
6 to confront the problem of insurance fraud in the State  
7 of South Dakota by prevention, investigation, and  
8 prosecution of fraudulent insurance acts.

9 Just a few fraud unit facts. We -- the  
10 fraud unit was created in 1999 by an act of the  
11 legislature, and it's been fully staffed since October  
of  
12 that same year. The fraud unit is funded by an  
13 assessment against all insurance companies who have a  
14 certificate of authority to do business in the State of

15 South Dakota, and that is a dedicated fund. The unit  
16 does not use any general funds in its operation. It is  
a  
17 law enforcement and prosecuting agency, and we  
18 investigate fraud throughout the entire state and  
19 cooperate with other insurance fraud or other law  
20 enforcement agencies in that pursuit.

21 The duties of the fraud unit as I see  
them  
22 are prevention, investigation, and prosecution, with  
23 prevention being the most important. We do prevention  
24 activities by doing presentations somewhat like this  
do  
25 here. By publicizing the convictions that we get. We  
□  
46

1 press releases to publicize those matters when we get a  
2 conviction. And we also produce some educational  
3 materials, some of which has been passed out to you  
today  
4 from the National Insurance Crime Bureau. And we  
produce  
5 some in-house also that we take along when we do  
6 presentations for employers, employees, insurance  
7 companies, and agents to get from the unit.

8 Today we're somewhat talking about  
workers'  
9 compensation fraud and I'm not going to read that

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10 paragraph that's up there. I think the group here knows  
11 what that is.

12 It is unlawful for an employer to  
willfully 13 misrepresent or not disclose information to an insurer  
to 14 obtain insurance at lower rates; to make or cause to be  
15 made any knowingly false statement for the purpose of  
16 obtaining or denying compensation; to fail to report  
17 earnings during the payment of compensation benefits and  
18 to knowingly assist and abet, solicit, or conspire or  
19 coerce an employee to willfully misrepresent their  
status 20 as a corporate officer or independent contractor to  
21 decrease premiums.

22 The next slide here talks about spotting  
23 employer fraud, and there's just a few bullet points  
24 there that I listed. And Merle kind of went through a  
25 good example for you earlier that I think highlighted

□  
47

1 some activities that would indicate employer fraud.  
2 Also, the very colorful handout that I gave you from  
3 NICB, on the sixth page of that particular handout they  
4 talk about specific indicators of employer workmen's  
5 compensation premium fraud. And there is a whole sheet  
6 there front and back. And I won't go through all of

7 those, but at your leisure you can go ahead and read  
8 them. It is a useful tool that NICB puts out. Also  
9 included in that is a bunch of other indicators  
10 concerning the other types of insurance fraud. I  
figured  
11 since I was coming here anyway that I give you that  
12 material and you could contact the unit if you have a  
13 referral to make.

14 Merle went through how a couple of  
15 insurance fraud or premium fraud scams work so I'm not  
16 going to go through these two examples I have here  
17 because Merle did a -- in his live presentation kind of  
18 went through a very detailed example.

19 The next two slides are slides that  
20 indicate the applicable South Dakota statutes that deal  
21 with this type of fraud, the statutes that we would  
22 prosecute under if we investigated a matter and were  
23 going to take somebody to court or to trial to prove up  
a  
24 case. The two that I've cited there are in Chapter 58.  
25 That's the insurance code here in South Dakota. And

□

48

1 depending on the amount that we're talking about being  
2 stolen through fraud, we can get up to a Class Four  
3 Felony.

4 If the amount of money that we're talking  
Page 54

a 5 about is greater than \$1,000, we would be talking about  
6 felony and that would come with up to ten years of  
7 penitentiary time, plus a \$20,000 fine. I guess I  
should 8 say and/or a \$20,000 fine, restitution. And then the  
9 Class One Misdemeanor is from about \$400 to \$1,000. And  
10 a person could receive up to a year in jail for that  
11 particular level of crime. And a Class Two Misdemeanor,  
12 less than \$400. And those levels are consistent with  
our 13 general theft statutes in the Code. There's also theft  
14 statutes that may comply concerning insurance fraud,  
15 particularly premium fraud, that a prosecutor also could  
16 pursue.

17 Just a few fraud units statistics  
18 concerning workmen's compensation fraud. Our total  
19 number of workmen's compensation referrals since the  
unit 20 has been established has been 163. Of those 163  
21 referrals on our system, we have seven indicated as  
22 premium fraud referrals. Now, that may be a -- you  
know, 23 that may indicate about a 4 or 5 percent of our  
referrals 24 concerning premium fraud. That's a little overstated  
25 because of those seven premium fraud referrals -- I just

□

1 have my notes here -- two of them we did not have  
2 jurisdiction over to investigate because the employers  
3 were not operating in South Dakota. Two of the  
referrals  
4 concerned complaints that employers did not carry  
5 workmen's compensation insurance. As we know, in South  
6 Dakota it's not a mandatory insurance coverage that you  
7 have to have. However, you'll be responsible for taking  
8 care of your employees if they do get injured on the  
job.

9 Two referrals in 2004 involved allegations that  
10 businesses did not report all revenue and were lying to  
11 the insurance companies. Those were investigated and we  
12 did find that those two referrals or allegations were  
13 unfounded. And one referral concerned an employer  
14 illegally paying his employees as independent  
contractors  
15 to avoid paying workmen's comp insurance premiums. That  
16 was also investigated and it was determined to be  
17 unfounded.

18 So we receive very few referrals  
concerning  
19 this type of fraud. The majority of the workmen's  
20 compensation fraud referrals deal with employees who  
have  
21 been injured, malingering, and those types of things.  
22 And those usually come from neighbors or friends or  
23 fellow employees who contact the fraud unit and tell us,

24 hey, so-and-so is out of work and supposedly receiving  
25 workmen's compensation benefits but they're paying their

□

50

1 driveway this week. We do not receive a bunch of  
premium 2 fraud referrals.

3 Again, the work of the insurance fraud  
4 prevention unit is referral driven so if we do receive a  
5 referral we certainly would investigate it. I think  
that

6 if we were going to receive a referral on premium fraud  
7 we would receive a lot of those from insurance  
companies,  
8 the carriers, but that just has not been the case. We  
9 have not seen referrals coming from carriers at all.

10 But if you would like to make a referral  
to  
11 the insurance fraud prevention unit you can call, write,  
12 or visit us at the Anderson Building at 445 East Capital  
13 Avenue. The insurance fraud prevention unit is listed  
14 there at 773-6325. And we do have a report form that

the

15 secretary will fill out if you call in or if you write  
in  
16 with some information. Also, you can contact us online.  
17 We ask that you provide copies of documents to support a  
18 claim if you have any. The online reporting of a

right

19 referral is the preferred method because you can go

out

20 there to the website, click on the link. There's two

look

21 different forms that you can choose to fill out, fill

22 the appropriate one and we will have an investigator

23 at the matter.

24 Unless there's any questions, that's the

□

25 brief presentation that I have for you today.

51

1 MR. BARBER: I have just one question.

2 MR. FERGEL: Yes.

too.

3 MR. BARBER: This is just a question,

4 would it be helpful for an employer to have a -- a list

5 of -- of things that an employee should and shouldn't do

6 that can be passed out? Like these things that went

7 through some of these items here, things that will get

8 you in trouble for doing this and this and that, if they

9 had a printout. Because these guys can kind of be

10 thinking about sometimes I can cheat in a lot of ways.

11 If they had a list of what's really going to get them in

12 trouble I think it might head off some things.

time

13 MR. FERGEL: I think education at any

tool.

14 is useful, and I think that would be an educational

15 In fact, the fraud unit has provided certain companies  
16 that have asked for that specific type of information to  
17 give to their employees, we've -- we've provided that  
18 specific information, pamphlets to hand out to them. Or  
19 for -- also insurance companies have asked us for that  
20 type of information to give to employers and employees.  
21 And if you contact the fraud unit we'd be glad to get  
22 that to you at any time.

23 MR. BARBER: Thank you.

24 CHAIRMAN DAUGAARD: Andy, what did you  
say  
□  
25 is your number of referrals versus those that are

52

1 workers' comp referrals? Or did you say that?

2 MR. FERGEL: We had 163 total workmen's  
3 compensation fraud referrals. Of those --

4 CHAIRMAN DAUGAARD: During one year?

5 MR. FERGEL: No.

6 CHAIRMAN DAUGAARD: Since you've been  
7 formed?

8 MR. FERGEL: Since the unit has come into  
9 existence.

10 CHAIRMAN DAUGAARD: Okay.

11 MR. FERGEL: And of those 163, 7 of them  
12 were labeled or classified premium fraud referrals in

the

13 workmen's compensation fraud area, and I kind of went  
14 through, you know, what we found during those  
15 investigations or what we were able to do or not do.

16 CHAIRMAN DAUGAARD: And then how many  
17 claims -- maybe you didn't -- did say this -- how many  
18 claims that were not workers' comp fraud claims, other?

19 MR. FERGEL: We've about 990 total claims  
20 since the unit has come into existence and so --

21 CHAIRMAN DAUGAARD: About 15 percent.

22 MR. FERGEL: Right. I'd say -- rounds up  
23 to 16, but yes, around 15 percent.

24 CHAIRMAN DAUGAARD: Thank you.

25 MR. FERGEL: Thank you.

□

53

1 CHAIRMAN DAUGAARD: I know we had this  
2 presentation by the insurance fraud unit once before,  
3 I think it was good to hear it again, especially in the  
4 context of some of the questions that were raised at the  
5 last meeting.

but

6 Let's move now then to agenda item seven,  
7 the workers' Compensation Advisory Council E-lets.

Dawn

8 is here.

9 MS. DOVRE: I'm Dawn Dovre, public  
Page 60

10 information officer for the Department of Labor. At the  
11 last council meeting the Department was asked to look  
12 into ways that we can more efficiently and effectively  
13 provide notices and updates to the public when new  
14 information comes up with the workers' compensation  
15 system. So we looked into this and decided to use a  
16 similar approach of what we use to distribute e-Labor  
17 which is using e-lets or e-mails. We have over 500  
18 subscribers to that and we haven't had any problems  
since  
19 we started using that so we'd like to do a similar  
system  
20 for the workers' compensation program. And so what  
we'll  
21 do is collect a database of e-mails of any interested  
22 parties who would like to receive updates when any  
23 changes are made to the website , when any notices are  
24 posted and that sort of thing. We do have a list  
started  
25 already that includes council members and some other

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1 interested parties. And in addition to that we'll send  
2 out a memo to people who over the years have indicated  
3 interest in the work comp system, inviting them to send  
4 us e-mail addresses so they can be added to the  
database.

5 Lastly, the Department has a new website which will be

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6 launching around September 2nd. It will have a special  
7 feature where people can subscribe online to receive  
8 e-lert notices. When you go to the home page it's right  
9 up front very easy to find, one-click button, submit  
10 their e-mails and they're dumped into our database.

From

e-mail

any

11 there every time we make updates we'll send out an  
12 to the list indicating what link has been updated and  
13 other highlights that we'd like to make.

say

14 CHAIRMAN DAUGAARD: Dawn, when did you  
15 that would be released, the new website?

16 MS. DOVRE: September 2nd is the  
17 anticipated launch date.

18 CHAIRMAN DAUGAARD: Oh. So very soon?

19 MS. DOVRE: Uh-huh.

20 MS. ROBERTS: I had Monica pass around a  
21 sheet so anybody here that wants to get that e-lert just  
22 put your e-mail address on there and we'll make sure you  
23 get added to the list also.

are

24 CHAIRMAN DAUGAARD: The council members  
25 already on it?

□

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1 MS. DOVRE: Uh-huh.  
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2 MS. ROBERTS: Thanks for that suggestion.

3 CHAIRMAN DAUGAARD: Thank you for acting.

4 Appreciate it.

5 MS. DOVRE: You're welcome.

6 CHAIRMAN DAUGAARD: Any questions of  
Dawn?

7 All right. Thank you, Dawn.

8 All right. Now let's move to item eight,  
9 time frame/process to remediate a workers' compensation  
10 case. There was some discussion about this last  
meeting.

11 I think it would be helpful to have the council be  
12 educated a little bit about it.

13 MR. MARSH: Just very briefly. I won't  
14 reinvent the wheel. In the NCCI report you received  
with  
I  
time  
it  
15 your materials, on page six of that gives actually what  
16 thought was a fairly convenient outline of our -- of  
17 frames and necessary elements of the claim process, as  
18 goes through both mediation and workers' compensation  
19 hearing, petition process. So really if you have any  
20 particular questions about that certainly ask them.

21 In any case, I did have the opportunity  
to  
see  
22 go through a review of our files on a random basis to  
23 how we're doing, what kind of timeliness we're actually

24 achieving, and discovered that 90 percent of the cases  
25 that have been presented to us have not continued for

□

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1 more than two years, which I must say I was rather  
2 pleasantly surprised at. The great majority of files  
3 simply settle. The others taken to hearing are heard  
4 promptly. The other cases beyond the two-year deadline  
5 were prolonged in Circuit Court or Supreme Court appeal,  
6 which we basically have no control over anyway. So I

was

7 quite satisfied in terms of the time limits of hearing  
8 process we've been effective.

9 CHAIRMAN DAUGAARD: Two years seems like

a

10 long time to me to resolve something. And I'm wondering  
11 if -- if -- how does that compare with other states. Do  
12 you have any sense of that?

13 MR. MARSH: It's actually fairly common  
14 when it gets to the litigated stage of a case. Most  
15 state cases involve permanent total disability claims so  
16 we have somebody who's been out there, has not worked

for

17 a substantial period of time, their medical treatment

has

18 been extensive, many times involving a surgery,  
typically

19 the back. There are pain complaints that have to be

20 evaluated by pain managers or vocational experts. I  
21 guess because we're in a transition phase because the  
22 judge has taken over the cases, honestly, I have a stack  
23 on my desk this high. It's one file. It's about  
24 two-thirds of that is medical records, depositions,  
25 interrogatories. Really when it comes down to the

□

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1 scheduling of them and ultimate disposition that process  
2 happens fairly quickly. If you have a judge, both sides  
3 say they're ready to go, the hearing can be set up  
within  
4 a couple of months, depending on the schedules of the  
5 attorneys and the judge. All the preliminaries are what  
6 really takes a lot of time.

7 what I -- what I would report to you is  
8 that our department judges order in any given month as  
9 many as 70 orders a month. There are only like three  
10 judges doing it. So they're on the phone on a regular  
11 basis dealing with discovery procedures, motions to  
12 compel, motions for requests for admissions. Really not  
13 much different than a small level Circuit Court trial.  
14 As an attorney you can understand how long that process  
15 can take. Talking about personal injury cases where  
16 we're talking about couple of years outside. That's not  
17 all that unpleasant of a performance record so.

18 MR. KINSMAN: James, do you have any idea  
19 on claims that don't go to hearing, you get petitions  
20 filed with your agency, what that kind of turn-around  
21 time that aren't going to hearing?

22 MR. MARSH: Wow. I was very pleasantly  
23 surprised at that. For the great majority that settle,  
24 they're settling 5 to 6 months on the outside. I was  
25 seeing a number of times that they resolved within a

□

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1 month, maybe two. The answer's filed, boom, settlement  
2 comes in. So, yeah, I was -- I wasn't expecting us to  
be  
3 doing as well as we did frankly.

by

4 MR. KINSMAN: That time frame is driven  
5 your office, that time frame is driven by the claimants  
6 and the claimant's attorney and the insurance and the  
7 insurance company's attorney.

we're

8 MR. MARSH: That's right. As is when  
9 looking something going two years. By in large they're  
10 the ones asking for that additional time.

11 MR. KINSMAN: On average when you have a  
12 case that comes before one of your administrative law  
13 judges and they have -- obviously, there are more simple  
14 cases and then there's all that stuff that takes longer,

15 but on average once the briefs have been filed with the  
16 ALJ what kind of turn-around time -- do you have a  
17 guideline that you try and meet once the file is  
complete  
18 and closed as to how much time your -- your  
19 administrative law judge has to actually issue the  
20 decision?

21 MR. MARSH: The law requires that a  
22 decision be issued within 30 days after final brief.  
23 Because our files have become so complicated that's --  
24 that's a goal we attempt to achieve. We don't always  
get  
25 there. But it is something we strive for.

□

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1 MR. KINSMAN: As a general rule it's  
2 30 days.

3 MR. MARSH: Right.

4 CHAIRMAN DAUGAARD: James, on that -- on  
5 that NCCI summary outline, it says that if an employer  
6 and employee reach a compensation agreement one of the  
7 parties must file a memoranda of agreement. And then  
8 there's no disagreement obviously that by its term  
9 they've agreed. How many memorandums of agreement get  
10 filed in a course of a year versus go to some dispute  
11 resolution?

think

12 MR. MARSH: Thousands. At last -- I

13 the last number averages somewhere around 100, 110 a  
14 month so.

of

15 CHAIRMAN DAUGAARD: Okay. Any questions  
16 James? All right. Well, thank you for that review.

back

17 It's 2:30. Let's just take a ten-minute  
18 break and go no longer than that and then we'll come

says

19 and move into the public hearing portion. Is that  
20 agreeable? Ten minutes. The clock on the wall here

minutes.

21 nearly 2:30. Let's be back at 2:40. Okay. Ten

22 (Whereupon, the meeting was in recess at  
23 2:27 p.m., and subsequently reconvened at 2:40 p.m., and  
24 the following proceedings were had and entered of  
25 record:)

□

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1 CHAIRMAN DAUGAARD: All right. I'll call  
2 the meeting back to order.

be

3 As we move into the public hearing side,  
4 Paul asked a good question while in recess. Is there  
5 anyone connected at the Sioux Falls DDN site? You may

you

6 on mute and can hear us and see us, but we cannot see

7 nor hear you if you are there. Is there anyone at the  
8 Sioux Falls site?

9 UNIDENTIFIED SPEAKER: Good afternoon.  
we

10 have been here since the beginning. Can you hear us  
now?

11 CHAIRMAN DAUGAARD: We see you now and  
hear

12 you. Just curious and glad to have you here.

13 All right. We're going to enter into the  
14 public hearing part of the meeting and we're going to  
15 begin with the Pavel issues. Am I pronouncing your name  
16 correctly?

17 MR. PAVEL: Yes, sir. It's actually  
18 Pavel, but either is acceptable.

19 CHAIRMAN DAUGAARD: We'll address the  
20 issues raised by the Pavels at our last meeting. Let me  
21 say at the outset in reading through the materials again  
22 and reminding myself by reading the minutes, I just have  
23 to make the comment that if this would have happened to  
24 me -- to my son -- and I have a son who's 21, he's an  
25 adult, he's unmarried, He has no dependents. I can

□

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1 imagine this very thing happening to me and my family

and

2 how devastating it would be and how -- well, the word

3 "devastating" is used probably too much. But it would

4 be -- it would be so tragic I know to our family, and I  
5 can't -- I cannot imagine what you must have gone  
6 through. So let me just say that whatever the policy  
7 decisions that may be made by this group, whatever  
8 discussions we may have, I know that I am not alone in  
9 expressing condolence to your family and how deeply  
sorry  
10 we are that this happened because it would be tragic.

It

11 was tragic so.

the

12 All right. With that, let's begin with

ask

13 first item, which is the general treatment of  
14 nondependents, and I think James has a fairly good  
15 overview of -- of the law in general and I would just  
16 him if he would to set the stage for us again to the  
17 extent that you might have to reread some of the  
18 materials. I think it would be helpful in any case.  
19 Let's do that if you would.

20 MR. MARSH: All right. The workers'  
21 compensation system does provide benefits for -- for  
22 dependents and heirs of people who die in work-related  
23 accidents. Historically, South Dakota has not done that  
24 for nondependents. The -- as I came to research this I  
25 frankly had not spent a lot of time on it until this

□

1 issue came up. As it's indicated in your notes, the  
2 primary reason, as I understand it, why most states,  
3 probably over 40 of them, do not provide specific  
4 benefits for nondependents is because workers' comp was  
5 intended to be a substitute for some other type of  
social  
6 insurance, if there were people who were being injured  
on  
7 the job who ultimately were ending up as what we call  
now  
8 the -- the Social Services system or Social Security  
9 system and were unaccounted for. But were there no  
10 dependents then that was not an issue anymore. It did  
11 not mirror the personal injury system in that way  
because  
12 the standard for determining when there was  
13 responsibility was also different, that was a tradeoff.  
14 In order for a person to establish their  
15 right to workers' compensation benefits they did not  
have  
16 to prove any kind of negligence or fault, which is a  
17 substantial thing, particularly in a workplace accident.  
18 That means that an employer does not have a defense of  
19 contributory negligence, assumption of the risk, or any  
20 of the other secondary issues that pile in in a personal  
21 injury lawsuit. That was part of the tradeoff that for  
22 those, for the select group of people, if you will, that  
23 were entitled to protection of the workers' compensation

24 law that the main goal was to -- to replace that loss as  
25 much as possible without necessarily having it look like

□

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in

1 a personal injury system. And that to some respect --

2 some respects is why now dependents were never included  
3 in the formula.

4 Now there are a handful of states that do  
5 that. There are about six or seven that in the event  
6 there are no other dependents at all, a nondependent,  
7 such as a parent, a grandparent, can receive a limited  
8 fixed amount of benefits, depending on the state. There  
9 are a couple of states in this region that do that. The  
10 vast majority do not. I guess that's about what I was  
11 able to find from my research.

the

the

12 CHAIRMAN DAUGAARD: Talking just about  
13 general philosophy of workers' comp law as displacing

14 ability of the worker to claim a negligence and  
15 displacing or removing the ability of the employer to  
16 defend on grounds of contributory negligence or

a

17 assumption of risk, and then disallowing a dependent  
18 from -- I'm talking about dependents now -- disallowing

19 dependent from undertaking or the injured worker from

20 undertaking a negligence lawsuit against the employer,  
21 how does that square with say a wrongful death action  
22 where the -- the claimant in a wrongful death action --  
23 let's say it's the estate or the heirs who represent the  
24 estate, as a matter of public policy they -- they're not  
25 benefited by the workers' compensation system to the

□

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1 extent they're not dependents. This would be  
2 nondependents is what I'm talking about. To the extent  
3 they're not benefited by the workers' compensation  
system  
4 yet they are impacted by the statutory prohibition  
5 against a wrongful death action, I'm wondering if you've  
6 got the prohibition but no corresponding benefits as you  
7 have in the injured worker or dependent of injured  
worker  
8 situation.

in

9 MR. MARSH: It's true if you look at it  
10 that way that there is a class of people who are  
11 prohibited from taking legal action against an employer  
12 and do not correspondingly receive anything, if you  
will,  
13 in turn. What the -- that's my understanding of the  
14 tradeoff being because no fault has to be demonstrated.  
15 You can see the complexities involved if we were to  
16 reintroduce a fault notion, for example, into claims by

would  
17 nondependents. You know, a fault doesn't have to be  
18 proven by an injured worker, but, you know, a fault  
19 have to be demonstrated by an heir, or by a nondependent  
20 heir rather, and you've taken that claim away, that  
21 responsibility away too on the part of the heir to come  
22 forward and establish some type of fault on the part of  
23 the employer. So it would almost be necessary to  
24 establish two different tiers of proof, no fault for the  
25 employee or fault for the employer. Or, like I say,

what  
□

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cases  
1 a handful of states have done, there is a loss here we  
2 need to recognize and, you know, limited numbers of  
3 and so it should be compensated just by some formula  
4 method.

5 CHAIRMAN DAUGAARD: All right. Any  
6 questions or comments about the overarching general  
7 treatment of nondependents in the policy as it exists in  
8 state law before we move onto the more specific  
9 suggestions or questions? Paul.

the

10 MR. AYLWARD: We do have provisions in  
11 law that if the spouse or other dependent was dependent  
12 upon the injured or the deceased worker then they would

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13 be entitled to a portion of the death benefit.

14 MR. MARSH: Yes. Yes. A spouse, for  
15 example, is entitled to receive a weekly benefit for the  
16 rest of her life or his life. The -- until they're  
17 remarried and then there's two years of benefits paid in  
18 a lump sum. Children receive \$50 a month until they're  
19 18. And they receive a scholarship benefit besides that  
20 up to \$2,000 a year for up to five years.

part 21 MR. AYLWARD: But parents can receive  
22 of that benefit if they were dependent upon the worker?

23 MR. MARSH: Yes.

24 CHAIRMAN DAUGAARD: In those states where  
25 there is a death benefit available to nondependents in

66

1 the case of a worker fatality, it's limited, is it to  
2 certain nondependents parents only?

3 MR. MARSH: Right.

4 CHAIRMAN DAUGAARD: Is it parents only?

5 MR. MARSH: Depends on the state. Some  
6 extend is to grandparents. Very rarely to, I guess,  
7 extended people such as aunts or uncles. It's generally  
8 immediate family members.

9 CHAIRMAN DAUGAARD: And if there are  
10 relatives or even -- if there's relatives who are

11 dependent upon the deceased worker, regardless of their  
12 degree of blood relationship, if you've got a third  
13 cousin living with you and dependent upon you and you're  
14 killed then they would be entitled under our law,  
15 wouldn't they, for workers' comp?

16 MR. MARSH: Yes. They describe those as  
17 collateral heirs. Collateral heirs would be entitled to  
18 receive benefits to the degree of their dependency.

19 CHAIRMAN DAUGAARD: Okay. Any other  
20 questions about this overarching policy? Paul.

21 MR. KINSMAN: James, the states that do  
22 allow a nondependent benefit in the case of a fatality,  
23 is the benefit a lump sum limited benefit or how is it  
24 structured? Is it part of a weekly benefit like you  
25 a dependent or a lump sum?

were

□

67

1 MR. MARSH: It's a one-time payment in a  
2 lump sum, and the amounts vary from one state had 2,  
3 3,000, up to Minnesota which has like 60,000. It's kind  
4 of all over the place.

5 CHAIRMAN DAUGAARD: How many -- excuse  
6 me -- anyone else -- how many worker fatalities do we  
7 have where nondependents are the heirs? There are no  
8 dependents I should say in a sense.

9 MR. MARSH: We did a brief survey of that  
10 over a couple of years time. That was 3 or 4 years  
back.

11 I think those numbers probably hold. The figure runs  
12 about a third. So if we have say 20 fatalities in a  
13 year, which is pretty typical, you'll see nondependent  
14 cases in about 5 or 6.

15 CHAIRMAN DAUGAARD: Say that again.

16 MR. MARSH: A typical year you'll have 20  
17 actual worker fatalities reported to us. Of that total  
18 about 5 or 6 involved no dependents.

19 CHAIRMAN DAUGAARD: Thank you. Any  
20 questions? Any members of the public that would like to  
21 offer some comments on this? Paul.

22 MR. AYLWARD: Is there any figures the  
23 average benefit that a -- that an injured -- or in a  
24 fatality the survivors receive?

25 MR. MARSH: I don't have that with me,  
but  
□

68

1 we could easily obtain that information.

2 MR. PAVEL: Mr. Chair.

3 CHAIRMAN DAUGAARD: Yes.

4 MR. PAVEL: First of all, maybe we'll be  
5 given an opportunity after -- after you're done with  
6 these for us just to make a few comments, and I can hold  
Page 77

7 mine until then if you prefer.

8 CHAIRMAN DAUGAARD: Not at all.

9 MR. PAVEL: Or did you want me to handle  
10 each one individually?

11 CHAIRMAN DAUGAARD: I'd say, yes. I  
would  
12 say that would be easiest for us to deal with.

13 MR. PAVEL: Okay. Thank you. And,  
again,

14 I know you're rushed for time so I'll make this brief.  
I

15 appreciate your comment, Mr. Lieutenant Governor, about  
16 the prohibition but not the benefit. That is exactly  
our

17 point. With the specific law -- and I believe it's  
South

18 Dakota 62-3-2 -- I believe is from what's been related  
to

19 us is the one that says the prohibition part of it.

20 There is -- to a nondependent situation there is no

21 benefit and yet we're prohibited from having anyone even

22 hear our case to see even if we're due a benefit.  
That's

23 our point and I wish to relay that. Thank you.

24 CHAIRMAN DAUGAARD: Thank you, sir. Any  
25 other members of the public want to offer comments at

□

69

1 this point? All right. Hearing none, we'll go onto

item

2 number two, training for insurance representatives.

3 MS. CHAMBERLAIN: I would like to speak,  
4 please.

5 CHAIRMAN DAUGAARD: Before we get there,  
6 I'm going to ask James to -- if he would set the stage  
7 and then I'll call on you. Thank you for your patience.

8 provided

MR. MARSH: The information that's

9 have

in my report basically indicates that many states do

10 licensing requirements for adjustors. They do not  
11 necessarily have training requirements for adjustors.

12 meet

Adjustors have to pass an examination. They have to

13 certain basic requirements of each law that show an  
14 understanding of the areas in which they are going to  
15 provide adjusting services. Many times those adjustors  
16 are able to piggyback, if you will, on the insurance  
17 company that they work for. The insurance company  
18 receives the general licensure and the adjustor is  
19 allowed a pass. It's assumed the insurance company is  
20 going to educate them about their rules. In some cases  
21 there are so-called public adjustors who adjust directly  
22 for insurer policyholders.

23 But in any case as in our state, and  
24 certainly the folks in the insurance division can answer  
25 this better than I can, at the moment there's no

specific  
□

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1 requirement for adjustor licensure. They're shaking  
2 their head no. I got that right.

3 As far as workers' compensation  
4 specifically, apparently, you know, there are no states  
5 that require actual training for workers' compensation  
6 adjustors. It's also my understanding that the national  
7 understanding of insurance commissioners is in the  
8 process of acquiring an act for training in general. I  
9 haven't had a chance to see if it deals with workers'  
10 comp at all, the degree to which it provides consistency  
11 then between what we do and what other states do. I  
12 can't speak to that because I haven't seen it. They  
13 haven't been releasing drafts of it yet. In any case,  
14 that's about where things stand. There are arguments on  
15 both sides, as I understand, for and against this  
16 licensing training.

17 MR. MOSES: We'll get you a copy of the  
18 model.

19 MR. MARSH: Okay.

had

20 CHAIRMAN DAUGAARD: All right. And we  
21 someone in Sioux Falls wanting to offer some testimony.  
22 Are there any questions from the council first before we

082108 WCAC Meeting Transcript.txt  
23 do that?

24 MR. STAINBROOK: Can you get the workers'  
25 compensation like this overview or regular workers' comp

□  
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have 1 handbook? Can you get that in like a small -- do we  
2 that like in a small pocket type book?

3 MR. MARSH: I don't know.

4 MR. AYLWARD: Just this size, I think.

5 MS. HINDERAKER: I think this is all we  
6 have.

7 MS. ROBERTS: It's also on the website if  
8 you don't want to have a printed document. Does that  
9 help?

they 10 MR. STAINBROOK: I was just curious if  
11 had like a small pocket size book that, you know, if  
12 companies want to purchase them or if I wanted to  
13 purchase them to hand out to people on job sites or  
14 whatever, if they were available.

15 MR. MARSH: We don't have a smaller size,  
16 no, but we can make as many copies of the bigger one  
17 available to you as you want.

18 CHAIRMAN DAUGAARD: Again, the status in  
19 South Dakota, your review talked about some states  
20 require this, other states that. The condition in South

21 Dakota is?

22 MR. MARSH: None.

23 CHAIRMAN DAUGAARD: No requirements?

24 MR. MARSH: Right.

25 CHAIRMAN DAUGAARD: Okay. Any other

□

72

1 questions or comments by the council?

2 Okay. And now in Sioux Falls. Thank you  
3 for your patience. Would you identify yourself for the  
4 secretary.

5 MS. CHAMBERLAIN: My name is Cheryl  
6 Chamberlain. And the question that I have -- it's kind  
7 of a question with the age 18 for nondependents. Since  
8 there are many parents that are single parents, if they  
9 were to lose their parent would the benefit continue

onto

10 them as well or would they -- because they've reached  
11 age of 18 not be allowed any benefit by the workers'  
12 compensation system and be like the Pavel family?

the

13 MR. MARSH: Do you want me to address

that?

14 CHAIRMAN DAUGAARD: Yes.

15 MR. MARSH: In the case of dependency if

a

16 child survives a fatality and the spouse is -- becomes

17 ineligible for a variety of reasons the spouse and the  
18 child is the next one in line to receive the benefit.  
19 They're entitled to receive that weekly benefit until  
20 they're 22 if going to college. And they'll receive \$50  
21 a month up until they're 18 on top of that weekly  
22 benefit. If the spouse is still in a position to claim  
23 benefits she gets the whole thing. If they're in a case  
24 of nondependents there isn't any minimum age limit.

They

25 just don't receive benefits at all.

□

73

when

1 MS. CHAMBERLAIN: I would like to see  
2 the council considers this how to go about changing this  
3 or incorporated in that children that are in their 19,  
4 20, 21 years or whatever it be considered the same as a  
5 parent, if they lose a parent because of a work comp  
6 accident.

And

7 CHAIRMAN DAUGAARD: Okay. I see what  
8 you're -- I see what you're getting at. All right.  
9 Any -- anything -- anything further on the training?

10 we can come back to any specific proposals that any  
11 council member would like to offer up. Anyone in Rapid  
12 that wanted to offer --

Pavel

13 MR. PAVEL: Mr. Chair. This is Doug

14 again. When we first presented this I mention the word  
15 "training," but as Mr. Marsh pointed out, whether it's  
16 licensing, training, whatever, the one thing that we  
want  
17 to, I guess, have everyone understand is we don't blame  
18 the young lady that met with us in the intensive care  
19 unit when we were with our son. I'm sure that she  
20 certainly meant well. But just as Mr. Marsh pointed out  
21 doing the research the laws vary greatly from  
22 state-to-state and the rules vary greatly from  
23 state-to-state. And, of course, the insurance companies  
24 cross state lines so their representatives may not  
25 necessarily be from South Dakota. And our point there

is  
□

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1 if they're going to work in South Dakota give them some  
2 kind of tool to help them to deal with the family. And,  
3 frankly, if the word that we would have received that  
day  
4 was I hate to tell you folks this, but according to  
south  
5 Dakota law you will get no benefit, that would have  
6 helped us because we actually turned down help from  
7 friends and family in Sioux Falls to stay with them and  
8 such under the auspice well keep our receipts, we'll be  
9 okay. And so however you folks you want to consider

082108 WCAC Meeting Transcript.txt  
10 resolving that, whether there be licensing, a brochure,  
11 or whatever, that's our point. Thank you.

12 CHAIRMAN DAUGAARD: Thank you, Mr. Pavel.  
13 Any other public comment or testimony on the training  
for  
14 insurance representatives, number two under a? Yes,  
15 Carol.

16 MS. HINDERAKER: Could I ask -- Mr.  
Pavel,  
17 and Mr. Dugaard said it beautifully, but you have my  
18 condolences as well.

19 MR. PAVEL: Thank you.

20 MS. HINDERAKER: Was it a person from the  
21 insurance company who met with you?

22 MR. PAVEL: No. I believe she mentioned  
23 she was not -- I don't want to mention the name of the  
24 insurance company.

25 MS. HINDERAKER: I wouldn't ask you to.

□  
75

1 MR. PAVEL: She was not with the company.  
2 From our understanding she was a private contractor or  
--  
3 I'm sorry -- she was a contractor doing the work for the  
4 insurance company.

5 MS. HINDERAKER: I see. I see.

6 MR. PAVEL: Whether she was the sole  
person

7 or whatever, she was working or was the representative  
8 through a contract from our understanding.

9 MS. HINDERAKER: All right.

10 CHAIRMAN DAUGAARD: Like an independent  
11 adjustor, would that be --

12 MR. PAVEL: Exactly, sir. That would be  
13 exactly right, sir.

14 CHAIRMAN DAUGAARD: Okay. Thank you.

All

15 right. Anyone else? Any other questions or remarks?

16 All right. Again, we will go onto number  
17 three, reimbursement and compensation for nondependent  
18 family members. This in a way is a revisitation of  
19 number one to a certain degree.

20 MR. MARSH: Again, it looks like I kind

of

21 jumped the gun there. Essentially just to reiterate

what

22 we came up with there, seven states currently pay any  
23 form of benefit to deceased claimant who has no  
24 dependents, usually the approach is to pay a flat

amount,

25 ranging from \$3,000 in Maine to \$60,000 in Minnesota;

□

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1 Montana allows a \$3,000 payment to surviving parents,

and

2 allows a maximum of \$25,000 of travel expenses to be

used

3 as a matched to those funds raised by community service  
4 organizations to help defray the cost of travel and  
5 lodging expense; North Dakota pays a formula of five  
6 percent, the amount calculated for TTD up to \$12,500 to  
7 nondependent children. We have a provision actually  
8 somewhat similar to that where if a person has children  
9 but they are not their dependents as a result of some  
10 type of domestic order then they are entitled under a  
11 formula to receive a share of the benefit even though  
12 they aren't "dependent children." If there are no such  
13 children the surviving parent and siblings receive the  
14 funds. If it goes on from there to grandparents. I  
15 interviewed those states to find out what their  
16 legislatures had considered in deciding to add this  
17 provision in the law. Basically they weren't able to  
18 tell me. It was something that was on the books for 30,  
19 40 years and they had no institutional knowledge of it.  
20 That's basically what I was able to find.

you.

21 CHAIRMAN DAUGAARD: All right. Thank  
22 Any questions or comments from the council of James?  
23 comments from either Rapid City or Sioux Falls?

Any

wait.

24 MR. PAVEL: Yes, Mr. Chairman. I'll  
25 Go ahead.

□

1                   CHAIRMAN DAUGAARD: Go ahead in Sioux  
2 Falls.

3                   MS. CHAMBERLAIN: The thing that I'd like  
4 to remind the council is when somebody goes to work and  
5 ends up dying and if they have a spouse that has an  
6 income of 30 to \$40,000 that the spouse automatically  
7 loses, and if it's children the same thing and we need  
8 consider that. People don't go to work to get hurt.  
9 They don't go to work to die. And to not take care of  
10 them or give them something for their loss we really  
11 to look at what we're doing to people more than the  
12 dollar amount. That's all I have to say.

13                   CHAIRMAN DAUGAARD: All right. Thank  
14 Mr. Pavel.

15                   MR. PAVEL: Yes, Mr. Chair. Thank you.  
16 And what the gal in Sioux Falls just stated we would, of  
17 course, completely concur with it. South Dakota being a  
18 state of what, 8, 900,000, we're small enough to still  
19 care about people and each other, and I hope we don't  
20 lose focus of that. On this particular item, item  
21 three, the reimbursement, as the Chair pointed out, it  
22 a bit coincidental to item number one. Item number one

23 is really meant to address -- and I -- I neglected to  
24 mention and I apologize -- there is a method -- and,  
25 Mr. Marsh, you can correct me if I'm wrong or any other

□

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1 legal expert -- there would be a punitive damages, so to  
2 speak, if it was proven that the act was intentional.  
3 That seems to kind of be the standard that the legal  
4 community is using. And to me that would be sort of an  
5 aggravated assault if the worker survives or a homicide  
6 or manslaughter, whatever, if the worker dies, and then  
7 that's the only way nondependents can currently get any  
8 compensation. And if I'm wrong please someone point  
9 out to me, although that's what our attorneys pointed  
10 to us, that it has to be the intent business.

that  
out

11 The issue on number three is, again, the  
12 travel expenses and motel rooms and such like that. And  
13 as I pointed out back in May, folks, we aren't looking

--

14 if we do make some kind of change or if we're  
15 recommending some kind of change to you folks as the  
16 council, we're not looking for something that would work  
17 perhaps in all cases. If someone breaks an arm I don't  
18 think that someone should get paid to travel across the  
19 state to go visit them and console them. It would have

20 to be something pretty serious. I don't know how we  
21 would write that into the law. That's when the  
22 compensation, of course, would kick in for travel,  
meals.  
23 we, fortunately, could afford it, but I can think of  
some  
24 folks that probably couldn't afford to go back without  
25 getting some donations from someone, and that to me is  
□  
79

1 sad. Thank you.

2 CHAIRMAN DAUGAARD: Thank you, Mr. Pavel.

3 You're right, there is distinction, I guess, in the  
first  
4 point we're talking about should the workers'  
5 compensation system provide compensation to  
nondependents  
6 of workers who are fatally killed on the job. And the  
7 second -- or the item three we're talking about whether  
8 nondependent family members should be reimbursed for  
9 expenses to deal with the aftermath of such a situation,  
10 whether it's during the hospital phase or after the  
death  
11 and through the funeral, that sort of thing. Thank you  
12 for distinguishing that for me.

13 Any questions or comments about that? I  
14 had a question. And, that is, these states that you  
15 identify in number three, the seven states, there's

those

16 that pay a flat amount to the claimant's estate really  
17 have nothing to do with reimbursement per se except to  
18 the extent that it's intended to cover in part or in  
some  
19 cases more than in Minnesota maybe the expenses for  
20 travel and funeral arrangements, things like that. And  
21 so it looks to me like in Maine where they're paying  
22 \$3,000 that's maybe a form of reimbursement almost for  
23 funeral expenses or part of them and the travel related  
24 to that. Whereas, if you get to 63,500 in Kentucky or  
25 60,000 in Minnesota that's probably reimbursement in

part  
□

80

1 and a flat-out compensation in part. would everyone  
2 agree with that?

3 MR. MARSH: I think that's accurate, yes.

4 CHAIRMAN DAUGAARD: Okay. North Dakota,

it

5 looks like it's also -- depending upon how the five  
6 percent up to -- up to 12,500, that's, again, depending  
7 upon the funeral and travel expenses. That's probably  
8 more of a reimbursement than a compensation would be the  
9 way I'd judge that.

10 MR. BARBER: Seems like this could get to  
11 be very, very complicated to determine who and what is

082108 WCAC Meeting Transcript.txt  
12 entitled. Look at some of these descriptions here. I  
13 don't know how you'd arrive at a fair equity.

14 CHAIRMAN DAUGAARD: Any other comments?  
15 would you shut the door, please, Fern.  
16 Thank you. Thank you very much. Thank you, Fern.

17 I guess four is, again, somewhat related  
to  
18 a reimbursement, nature of reimbursement so it's similar  
in  
19 to number three, even though three is kind of a hybrid  
20 looking at the other states.

21 MS. ROBERTS: Four would cover anybody  
that  
22 died as a result of a work injury. I mean, it's the  
23 death benefit.

24 CHAIRMAN DAUGAARD: So regardless of  
25 whether there's dependents or nondependents that  
survive,  
□

81

1 the death benefit is paid under number four and that  
2 South Dakota does.

3 MR. MARSH: Right.

4 CHAIRMAN DAUGAARD: And right now the --  
I  
5 am doing your job, James.

6 MR. MARSH: That's okay.

7 CHAIRMAN DAUGAARD: Quote four for us.

8 MR. MARSH: Well, every state basically  
has  
9 some kind of provision for burial expenses. Some of  
them  
10 appear to be reasonable. Some of them, such as  
11 Mississippi that only pays \$2,000, look to be a little  
12 unreasonable. But South Dakota in looking at the range  
13 of states and their reimbursements is somewhere in the  
14 middle. We currently provide for \$5,000 burial expense,  
15 plus transportation. That's similar to what most states  
16 in our region do. I just listed those for you. In  
Iowa,  
17 the maximum is 7,500; Minnesota is a bit more again,  
18 15,000; Montana, 4,000; Nebraska, 6,500; North Dakota,  
19 also 6,500; and Wyoming, 10,000. One distinction  
between  
20 our law and some of those states, the transportation  
21 expense is included in the maximum, so while 5,000 may  
22 appear to be lower compared to some of our neighbors  
it's  
23 actually similar if you consider transportation costs.  
24 I did contact the South Dakota Funeral  
25 Directors Association to get kind of current range for  
□  
82  
1 that for a typical funeral in different parts of the  
2 state. Their numbers were frankly all over the place.  
3 But I think a fair benchmark based on the statistics  
that

4 I saw for them for what could be considered a standard  
5 service, nothing flashy, if you will, was somewhere in  
6 the range of 65 and \$7,500, which is more than our  
7 current maximum. But, you know, that was -- I wasn't  
8 sure how, you know, how far off we were from the right  
9 mark. That gives an idea anyway where we are.

10 CHAIRMAN DAUGAARD: Any questions or  
11 remarks by the council members? All right. Any --  
12 anything from the public? Mr. Pavel has --

13 MR. PAVEL: Yes.

14 CHAIRMAN DAUGAARD: We'll go Sioux Falls  
15 first and then Mr. Pavel if you wish. Go ahead in Sioux  
16 Falls.

17 MS. CHAMBERLAIN: With the burial expense  
18 limit or averaging about \$6,500, with the Pavel family  
19 they had to get their son from the east side of the  
state  
20 all to the west side of the state with his accident.

And

need

21 I think that when we consider the burial expenses we  
22 to make sure that we cover a -- a decent burial, as well  
23 as have the expenses for the family to get the body home  
24 and themselves. And so if we could look at raising that  
25 \$5,000 burial expense I think that would be the proper

□

1 thing to do.

else 2 CHAIRMAN DAUGAARD: Thank you. Anyone  
3 in Sioux Falls? Mr. Pavel.

figure 4 MR. PAVEL: Thank you, sir. And, yes, to  
5 clarify we did receive the mileage. They used the  
6 directly from the funeral director that we utilized on  
7 the east side of the state and he figured it and so we  
8 did get the compensation for that. And I guess I  
9 probably want to clarify that. The -- the issue there

is 10 that has -- and, Mr. Marsh, again, you can help me out  
11 here perhaps -- but I understand that figure hasn't been  
12 reviewed by the legislature since 1990. And so I -- our  
13 point there is I guess maybe it's been awhile, or 2003

or 14 whatever. I can't recall for sure in our conversation  
15 that I had with him by phone. I guess what we're asking  
16 for there is maybe it's just time to review it. And we  
17 don't expect to be completely a hundred percent  
18 reimbursed, so to speak, or paid back for the funeral,  
19 but 5,000, at least the ones that we used, pretty much  
20 covered -- well, they did a nice job, but it didn't

cover 21 nearly half of it so. I'm sorry, not nearly all of it  
22 so. So if it could be reviewed we would appreciate it.

23 CHAIRMAN DAUGAARD: Thank you, sir.

24  
Pavel's

MR. MARSH: Just to respond to Mr.

25  
changed  
□

request for the date. The last time this law was

84

1 was in 1996, so it's been 12 years.

2 CHAIRMAN DAUGAARD: Any other comments or  
3 remarks from the public? All right. Well, taking the

--

4 I'm going to take the easy course first and I'm going to  
5 ask the council to consider resolution to increase the  
6 burial expenses number. James backgrounding information  
7 for us clarified that South Dakota's law at present is  
8 \$5,000, plus transportation expenses for the body. And  
9 applying the inflation rate since '96, when it last  
10 changed, would move up the 5,000 to 7,100. And then  
11 James also surveyed the South Dakota Funeral Directors  
12 Association about what would be a reasonable cost for a  
13 simple service, some extras, and he estimated around  
14 \$7,500 there, so I'm going to use that number.

is

15 Again, you look at 20 fatalities. This

that

16 not a significant increase in cost to the system. It's  
17 already a policy of the state. It simply recognizes

the

18 costs have changed and the ordinary inflation rate is

19 correct inflator or the amount of actual survey response

20 from the Funeral Directors Association I'm going to go  
21 with that number and I would like the council to  
consider  
22 resolution to increase -- to change the South Dakota law  
23 to make it 7,500, plus the necessary travel expenses for  
24 the body.

25 MR. AYLWARD: I would make a motion that  
we  
□

85

1 recommend to the Governor to change 62-4-16 from 5,000  
to  
2 7,500.

3 MR. BARBER: I would second that.

4 CHAIRMAN DAUGAARD: All right.  
Discussion

5 on that motion? Any discussion? Paul.

6 MR. AYLWARD: I -- I meant to contact our  
7 local funeral homes to get those figures. I thought  
8 maybe it would be higher than 7,500. The last funeral  
9 that I had anything to do with helping pay for was my  
10 mother-in-law and that's over two years ago and it was  
11 more around the \$10,000, and it was by no means an  
12 extravagant funeral. We may be a little low at 7,500,  
13 but if that's the figures -- I don't know how they  
14 arrived at that, but I just know from personal  
experience

15 that a couple years ago it was closer to 10,000 for not  
Page 97

16 an extravagant funeral.

17 CHAIRMAN DAUGAARD: Glenn.

18 MR. BARBER: Anything we would recommend  
19 today would have to be approved by the legislature.

20 CHAIRMAN DAUGAARD: Right. All we are is  
21 an advisory recommending body.

22 MR. BARBER: Perhaps with the discussion  
23 that might follow we might get more current data from  
the interested parties. It would be helpful.

24 CHAIRMAN DAUGAARD: Yeah.

□

86

1 MR. BARBER: Perhaps it will be higher.

2 CHAIRMAN DAUGAARD: Yeah. I think this  
3 puts the issue into play, if you will.

4 MR. BARBER: Right.

5 CHAIRMAN DAUGAARD: And it's subject to  
6 amendment and acceptance to rejection or acceptance by  
7 the legislature. Any further discussion? Those in  
favor say "aye." The secretary will call the roll.

9 MS. TREBESCH: Paul.

10 MR. AYLWARD: Aye.

11 MS. TREBESCH: Randy.

12 MR. STAINBROOK: Aye.

13 MS. TREBESCH: Carol.  
14 MS. HINDERAKER: Aye.  
15 MS. TREBESCH: Connie.  
16 MS. HALVERSON: Aye.  
17 MS. TREBESCH: Glenn.  
18 MR. BARBER: Aye.  
19 MS. TREBESCH: Dennis.  
20 CHAIRMAN DAUGAARD: Aye. Motion carries.  
21 Is there any motion or discussion on any of these -- of  
22 the other items that I guess -- let's deal with the  
23 training issue. Any comments or discussion about the  
24 training issue? And I'm just going to that because,  
25 again, it's an easier issue to deal with. Paul.

□

87

some

1 MR. AYLWARD: I was trying to look in  
2 of the information that we were given about the comments  
3 from Mr. Pavel and his family and information that they  
4 had heard from other people who had similar experiences  
5 with the system of unanswered phone calls, unanswered  
6 correspondence and, you know, no one can imagine what  
7 that's like unless you've been through it. I haven't,  
8 thank God. Is there some way that we could -- I guess I  
9 would like to propose that we put into law some type of  
10 penalty for employers or insurance companies that fail

a

to

11 respond. And I don't know what limits you would put on  
12 or what type of penalties, but there seems to be need to  
13 be something that would prompt or compel employers and  
14 insurance companies to at least respond. And I can't  
15 find the information I had, but I believe it was in the  
16 Pavels' information that said they -- the insurance  
17 company did not even respond.

that

18 CHAIRMAN DAUGAARD: Is that -- I take  
19 as a motion.

20 MR. AYLWARD: I'll make a motion.

21 CHAIRMAN DAUGAARD: Okay. Sarah, do you  
22 have the language okay?

23 MS. TREBESCH: I think so.

24 CHAIRMAN DAUGAARD: Do you want to read  
25 that back?

□

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1 MS. TREBESCH: Paul moved to impose a  
2 penalty to insurance companies if they do not respond in  
3 a timely manner; is that correct?

4 CHAIRMAN DAUGAARD: Is there a second?

5 MR. STAINBROOK: I'll second that.

6 CHAIRMAN DAUGAARD: Have discussion.

7 MS. ROBERTS: I guess I would have a

8 question. Is there -- is there some kind of a  
9 requirement in law if insurance agents don't respond? I  
10 mean, I would think that that would be something that's  
11 already there. If not, maybe we should look at it.

12 MR. MOSES: I'll try and respond.

13 CHAIRMAN DAUGAARD: Yeah. Randy.

14 MR. MOSES: Randy Moses, Division of  
15 Insurance. There is a general requirement in statute  
16 regarding claims of any kind, including work comp, that  
17 requires companies to adopt and adhere to reasonable  
18 standards for prompt investigation of claims and that

the

19 initial -- an inquiry for a claim must be responded to  
20 within I believe it's 30 days, but so there's some real  
21 general standards in statute, but nothing specific to  
22 address that unanswered phone call kind of a situation.

23 MR. KINSMAN: Randy, is there a penalty  
24 associated with it if they violate that standard?

25 MR. MOSES: The statute is set up if the

□

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1 company is put on notice and failed to corrective notice  
2 it would be a violation of statute and given -- there is  
3 another section of the Code deals with violation by  
4 insurance companies. Basically what it would boil down  
5 to it could be grounds to suspension, revocation of the

6 license and/or a monetary penalty not exceeding 25,000  
7 per violation.

8 CHAIRMAN DAUGAARD: Thank you, Randy.  
9 Other discussion?

10 MR. BARBER: Kind of think we need a  
11 recommendation to put --

12 CHAIRMAN DAUGAARD: What was that, Glenn?

13 MR. BARBER: I would almost think we need  
14 to move that up for notification time as far as initial  
15 response of some kind of a contact --

16 MR. KLAAHSEN: Mr. Chairman.

17 CHAIRMAN DAUGAARD: Yes.

18 MR. KLAAHSEN: Larry Klaahsen from Dakota  
19 Truck Underwriters in Sioux Falls.

20 CHAIRMAN DAUGAARD: Yes, Larry.

21 MR. KLAAHSEN: Just a comment. You know,  
22 trying to determine when someone returns or doesn't  
23 return a call, that's pretty, I think pretty nebulous,  
24 pretty hard to determine. You know, one suggestion  
might  
□  
90  
25 be is there are quite a number of states require an

the  
1 in-state adjustor. As a matter of fact, the state --  
2 state and employers requires their claims to be adjusted  
3 by an in-state adjustor so that might be something to

4 consider.

if

5 CHAIRMAN DAUGAARD: I guess I'm not sure  
6 you're responding to the issue about unresponsive --

7 MR. KLAAHSEN: I am.

8 CHAIRMAN DAUGAARD: -- claims management.

find

9 MR. KLAAHSEN: Yeah. I think what you  
10 is when you have folks in state that understand the laws  
11 you have much better response and much better educated  
12 adjustors. We have -- as an insurance company there are  
13 quite a number of states that we do business in that  
14 require we provide an in-state adjustor for those claims  
15 that are handled and that's the point, I guess. South  
16 Dakota maybe would want to consider the same option.

or

17 CHAIRMAN DAUGAARD: In the case that --  
18 in the fact situation that gave rise to this, the Pavel  
19 situation, the independent adjustor, was that adjustor  
20 state or out of state, do you know, Mr. Pavel?

in

to

21 MR. PAVEL: Yes, sir. She -- according  
22 her business card she was South Dakota, she was in South  
23 Dakota. However, because of what we received from her  
24 and that she was not in her words, "well, I'm not  
25 too well in this," we tried to get ahold of the

trained

□

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1 out-of-state company and that's where we didn't get any  
2 response. And I --

call.

3 UNIDENTIFIED SPEAKER: She told us to

registered

4 MR. PAVEL: She actually told us to call  
5 the company. We did. And we wrote a letter. I have to  
6 admit we didn't send a certified letter. We sent a  
7 normal letter. To go along with the proposal, there  
8 perhaps should be just education to the public if you're  
9 having trouble make sure you send certified or

10 letter, whatever. Then if they don't respond that would  
11 handle the issue if whether they respond or not. Just a  
12 thought. Thank you.

the

13 CHAIRMAN DAUGAARD: Thank you. We're  
14 talking about a couple different things here. One -- at  
15 least two. Maybe there's three. One is the education  
16 level or the knowledge level of the adjustor handling

through

17 claim. And then another one that's addressed by Paul's  
18 proposal is the failure of the company to respond  
19 inquiries from a claimant. And that could be completely  
20 different.

21 MS. ROBERTS: And then the third one was  
22 now changing the subject to using an in-state adjustor.

23 That would be a whole new issue using an in-state  
24 adjustor.

25 CHAIRMAN DAUGAARD: In state versus out

of  
□  
92

1 state. Paul.

2 MR. AYLWARD: Mr. Chairman, if I may, on  
3 page three of the letter that Mr. Pavel wrote, I found  
4 what I was referring to. He says that something as  
5 simple as the insurance companies returning phone calls  
6 or answering correspondence instead of ignoring the  
7 family letters should be insisted upon. From speaking  
8 with others who had the opportunity to not receive the  
9 benefits of the so-called fair workers' compensation  
10 system when we mention that the insurance companies  
11 ignored our one letter and two phone calls they told us  
12 we had just scratched the surface, we should have  
13 expected to make 8 to 10 calls and sent several letters  
14 as they have had to do. Why is this accepted practice  
15 and why aren't people being held accountable? And  
that's  
16 why I made the motion.

17 CHAIRMAN DAUGAARD: And I remember that  
18 from the letter also. I guess I would like us to stick  
19 to the issue as raised by Paul, the motion as raised by  
20 Paul. And, again, sort of in the nature of a

Legislative

21 proposal. So are there proponents of that that want to  
22 offer support for that or opponents to that that want to  
23 offer opposition to the proposal as stated by Paul?

24 MS. HINDERAKER: Mr. Chairman.

25 CHAIRMAN DAUGAARD: Yes.

□

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1 MS. HINDERAKER: While I'm totally in  
2 concert with what Paul is aiming at, I believe, I think  
3 in any business the customer or the claimant, whatever,  
4 deserves the courtesy of a prompt response and an  
5 accurate response. With all due respect, Paul, I think  
6 the -- the statement of the motion that a penalty be  
7 applied if there's no timely response is very difficult  
8 for us to define. And I guess my question is are we  
9 really ready to vote on this? Would we have to refine  
10 that before we presented it to the legislature? I don't  
11 know what a timely response is and, you know, I think  
12 it's quite vague.

13 CHAIRMAN DAUGAARD: I think that's fair.  
14 Those two things occurred to me as well, Paul.

15 MR. AYLWARD: If I may.

16 CHAIRMAN DAUGAARD: Yes.

17 MR. AYLWARD: Yes, it's vague. I guess I  
18 was voting on -- or asking for a vote on the concept of

19 putting together some type of language that would be  
20 inverted into the law. Yeah, you couldn't put that into  
21 law. You would have to put timelines and penalties and  
22 those type of things. But to just say that they should  
23 do it, they all agree that they should do it, but if you  
24 don't put in penalties or enforcement nothing's going to  
25 change.

□

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has 1 MS. HINDERAKER: But I think Mr. Moses  
2 indicated that essentially it exists in law in practice,  
3 it's a matter of enforcement or management of that. I  
4 don't know that there's anything that we can do that's  
5 going to change how it actually functions.

6 MR. AYLWARD: Well, I guess I would  
7 disagree. Mr. Moses was probably the only one in this  
8 room that knew it existed. Maybe James. I surely  
9 know. Evidently, the people who have had injured  
workers 10 don't know. If we had something in this law at least  
11 there's a place for them to look.

12 CHAIRMAN DAUGAARD: So -- go ahead.  
Mike, 13 do you want to offer some thoughts? Please identify  
14 yourself for Sarah's benefit.

I'm 15 MR. SHAW: Thank you. I'm Mike Shaw.

16 an attorney in Pierre and I -- I represent Property  
17 Casualty Insurance Association of America. Property  
18 Casualty Insurance has the largest book of work comp  
19 carriers in the State of South Dakota.

20 CHAIRMAN DAUGAARD: You have to speak up,  
21 Mike, please.

22 MR. SHAW: I'm a little concerned about  
23 going down this road, Paul, for several reasons. One,  
24 Carol, I share your concerns that you voiced. Two, I  
was 25 aware of the statutes that Mr. Moses referred to and I

□

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1 think a lot of people who work in the insurance industry  
2 are aware of the unfair claims practices act. It  
already 3 exists and its application goes to not only work comp  
4 carriers but life carriers and health carriers and  
5 property casualty carriers as well, it's across the  
6 board. And I'm -- I was sitting here thinking and I --  
7 and I -- I share everyone's sympathy for the Pavels and  
8 what happened to them, but you guys have heard one case,  
9 and I know -- I know he says that other people tell him  
10 that. But in court that's hearsay and, you know,  
there's 11 a reason for that. I mean, you need -- you need to know

12 what your facts are before you react, okay? And I think  
13 reacting on one case scenario might not be the best  
14 judgment here.

15 The other thing is if you're going to  
16 insert penalties in the law I'm aware of work comp cases  
17 where -- where the claims representative or the  
insurance  
18 company has gone to the claimant and said, hey, I need  
19 some information from you and they don't get back to  
20 them. Should there be penalties, monetary penalties,  
21 based on the employee in that scenario, you know? I  
22 mean, it cuts both ways. Before you start entering  
23 penalties I would just urge a little caution. And if  
you  
24 think this is a problem, find out if it truly is a  
25 problem before you start making recommendations for  
□

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1 penalties under the law. That's all I had. I'd sure be  
2 happy to try to answer any questions.

3 CHAIRMAN DAUGAARD: Any questions? Thank  
4 you.

5 MR. PAVEL: Mr. Chair. Might I add  
6 something, please. This is Mr. Pavel.

7 CHAIRMAN DAUGAARD: Yes, sir. You are  
8 welcome to do so.

9 MR. PAVEL: First of all, I have to thank  
10 you, Mr. Kinsman, for your stance on this. And I -- I  
11 understand what the gentleman, the attorney, just said.  
12 Yes, we are one case. I have been -- I'm a retired law  
13 enforcement officer. I know very well about hearsay.  
14 I'm not a lawyer, but I've been in court and such. So  
15 perhaps if there was just -- I guess my point and then  
16 I'll move on. The people in the business know the law,  
17 but the rest of us being customers don't. And how do we  
18 get that message so that if we knew that we could go to  
19 the -- that there was something in the law that we could  
20 call Pierre and say, hey, folks, help us get this  
company  
21 to respond to us. That would have helped, but we don't  
22 know. And personally without paying \$200 an hour we're  
23 not going to get an attorney really to talk to us  
because  
24 of the -- the fact that we have no case because of the  
25 willful situation. So that's the dilemma that we're in.

□

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1 we're ignorant in that respect. What can -- what can we  
2 do to get the information to the public to make this  
flow  
3 better? Thank you.

4 CHAIRMAN DAUGAARD: Thank you. Those are  
5 good comments. Fern, would you like to offer some

082108 WCAC Meeting Transcript.txt  
6 thoughts?

7 MS. JOHNSON: I would. Thank you,  
8 Mr. Chairman.

9 MS. ROBERTS: Mr. Chair, I wanted Mr.  
Pavel  
10 to know it was Paul Aylward that was speaking and made  
11 the motion, not Paul Kinsman.

12 MR. PAVEL: Sorry about that. I was just  
13 looking at my list.

14 MR. AYLWARD: Too many Paul's.

15 CHAIRMAN DAUGAARD: Too many Paul's.

16 MS. JOHNSON: Mr. Chair. Fern Johnson  
with  
17 South Dakota Injured workers Coalition and on my own  
18 behalf. If you want to take into consideration the  
House

19 bill that was passed, 1037, last year, which addresses  
20 what Paul has made his motion on is really similar to  
21 something that could be definitively done in that  
22 category on this issue. It's real simple. If they're  
23 not processing the claim like this bill that was passed  
24 is law that was passed, a properly submitted bill, which  
25 the Department of Labor set up administrative rules, a

□  
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1 guide of what is a properly submitted bill, essentially  
2 it's a written request. Then if it's not processed on a

3 timely manner like the law states and the administrative  
4 rule basically covers, then they're subject to a \$500  
5 fine. It's really pretty simple, and if they're not  
6 processing it, if they are processing the claim they  
7 don't need to worry about a \$500 fine. The whole point  
8 here is to deter so that these claims are processed. So  
9 my -- my point is to mirror it -- the bill that just --  
10 the law that just got passed under 62-4-1.

11 CHAIRMAN DAUGAARD: Any questions? Thank  
12 you, Fern. Any other proponents or opponents?

13 MS. ROBERTS: Mr. Chair and Paul, maybe  
14 you -- would you like us to put together some research  
15 and come back next meeting possibly on this before we  
16 take action on this motion?

17 MR. AYLWARD: Are we going to have  
another  
18 meeting?

19 MS. ROBERTS: We talked about if there  
was  
20 new issues that the public commented on.

21 MR. AYLWARD: If we're going to have  
22 another meeting I'd be glad to put it in.

23 MS. ROBERTS: I don't know if there's a  
lot  
24 to do. Maybe we put something in writing and get it  
25 together in writing if that would be helpful.

□

1 MR. AYLWARD: Sure.

2 CHAIRMAN DAUGAARD: I support that notion  
3 as well. As Randy pointed out there, there are some  
4 statutory provisions in the law right now that provide  
5 for penalties for attention to claims, but Mr. Pavel's  
6 point was it doesn't matter whether they're in law now

or

7 we put a new one in law again, if there's 1 or 2 or 5  
8 provisions in law, if no one knows about it or if

there's

9 not some means for self-enforcement to somehow be  
10 triggered we can put a hundred provisions in the law and  
11 if no one knows they're there and can't enforce them  
12 they're of no use.

13 I would ask that the Department not only  
14 look at whether there's existing law that could be  
15 amended, but also whether there's some means by which a  
16 person without knowledge of the law who is not getting a  
17 response will somehow either become aware or the  
18 Department will become aware or somehow there's a means  
19 that that will be self-enforcing, if there is some way

to

20 do that. And there may be no way to do that. If your  
21 creative minds can think of something that would appeal  
22 to me anyway. And I would think that is something we  
23 should pursue.

24 MS. ROBERTS: I really think it's

probably

25 a Division of Insurance and Department of Revenue issue,  
□  
100

1 but we will work with them and bring something back.

2 CHAIRMAN DAUGAARD: I'll make a motion  
then

3 that we defer action on the motion as it's presented  
4 until the next meeting.

5 MS. HINDERAKER: Second.

6 CHAIRMAN DAUGAARD: Any discussion on the  
7 motion to defer? Those in favor say "aye," those  
opposed

8 "nay."

9 (Whereupon, the motion passed  
unanimously.)

10 CHAIRMAN DAUGAARD: We'll defer that to  
the

11 next meeting and the Department will see what we can  
12 bring back.

13 All right. Now we are at the discussion  
of

14 reimbursement of expenses beyond the burial,  
15 reimbursement of expenses or provision of compensation  
16 for nondependent family members. I'm just going to say  
17 at the outset, again, it seems to me that the public  
18 policy of South Dakota at present at least gives some  
19 attention to nondependents in the burial expense

statute.

20 Now, you might answer that by saying, well, if no one  
21 provides for burial expenses and the family -- the  
22 nondependents choose not to, then the county ends up  
23 paying that, and so it's really neither here nor there  
24 whether that statutes exists. One way or the other the  
25 state could be saddled with that expense. So -- or the

□

101

1 government could.

2 But it seems to me as a matter of public  
3 policy it's unjust to deprive nondependents from an  
4 action for negligence when -- when there is no means to  
5 include them in the workers' comp system. It doesn't  
6 make sense to me. So now where do you draw the line?  
7 Some states have drawn it on parents. Some have gone  
8 beyond that to siblings or grandparents. And how much  
9 money is probably an arbitrary decision because the  
10 workers' comp system seems to me is built upon the  
11 that we want to provide for a social net for the  
12 dependents of someone who's killed. And if there are no  
13 dependents then there is no social burden, but at the  
14 same time it ignores what the state in another public  
15 policy acknowledges in the negligence system, the state  
16 as a body recognizes that surviving family members who  
17 are not dependent but who are heirs could have a

notion

wrongful

18 death claim and they acknowledge that's based out of the  
19 loss of love and affection and those kinds of things and  
20 that is in our state public policy. We have that in our  
21 negligence system. So why -- why the workers' comp  
22 system scoops those people in and deprives them of a  
23 negligence claim without providing a corresponding  
24 payment for the loss of that right to bring claim seems  
25 to me is wrong. So we either should restore it to them

□

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1 and let them bring a wrongful death action, or by  
2 depriving from them -- depriving them of it we should  
3 give them some compensation for the deprivation of that.  
4 That's my view. And I don't know if I'm ready to say  
5 here's my proposal, but that's my philosophy. I'll  
6 that out. Any other thoughts?

throw

7 MS. HINDERAKER: I would make a motion to  
8 ask the Department to make a recommendation with regard  
9 to this issue. Mr. Marsh obviously has more information  
10 about it and maybe a little more background. I think if  
11 they could draft some kind of a proposal or -- or  
12 that we do nothing, at least we'd have something to  
13 with.

propose

start

14 CHAIRMAN DAUGAARD: The other thing --  
15 thank you for that, Carol. Excuse me. Is there a  
16 second?

17 MS. HALVERSON: Second.

call

18 CHAIRMAN DAUGAARD: Discussion? I'll  
19 on myself. You know, another thought that occurred to

me

20 motivation

21 as I was considering this issue is what is our  
22 here in making a change. One motivation could be to  
23 compensate the nondependent family member. Another  
24 motivation could be to incent employers to change. Now

a

25 flat payment to a nondependent family member will  
essentially be borne by the entire system and is very

□

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1 unlikely to produce change by an employer. Now, I don't  
2 know, maybe I'm wrong about that. Maybe it affects  
3 experience rating and somehow does end up jumping up  
4 their premium a considerable amount. I'm not smart  
5 enough to do the math in my head the way Merle just  
6 buzzed right through that.

their

7 MR. SCHEIBER: It took me hours.

we

8 CHAIRMAN DAUGAARD: It seems to me that

9 might want the Department to consider if we can achieve  
Page 117

10 both ends rather than just the one end, should that be  
11 borne by the system or should there be some penalty on  
12 the employer beyond an experience rating adjustment. I  
13 don't know. Maybe not. Maybe again if we're going to  
14 scoop them in and we're going to avoid this fault  
finding  
15 issue maybe there's no negligence at all. Again,  
16 remember we're considering any fatality. Maybe there  
was  
17 absolutely no negligence at all. Maybe every safety  
18 precaution was taken and more. So, I don't know, I  
guess  
19 I'm talking out of both sides of my mouth here. Paul.

20 MR. AYLWARD: James, in your research  
21 does -- do these payments differentiate where it comes  
22 from? Is it due by the employer or does it come through  
23 the system or --

24 MR. MARSH: It comes through the system  
25 from the insurance carrier for the employer.

□

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1 MR. AYLWARD: All of it?

2 MR. MARSH: Yeah.

3 MR. AYLWARD: There's no penalty to the  
4 employer?

5 MR. MARSH: No.

6 CHAIRMAN DAUGAARD: As I raised it and  
Page 118

7 started talking out loud, I'm always assuming that the  
8 employer has negligently done something that resulted in  
9 a fatality. And, again, it could be that all kinds of  
10 safety measures were taken and there is a fatality  
11 nonetheless. And so to impose it on every employer in  
12 the case of a fatality ignores that distinction. Seems  
13 to me then we're back to, oh, we penalize the guys that  
14 are negligent, oh, wait a minute, now we're back in the  
15 negligence system. So I guess as I think it through

it's

16 probably the wrong comment to make and it probably  
should

17 be just simply a factor in the system and not -- not a  
18 penalty on any given employer because --

19 MS. ROBERTS: It's a no-fault system.

20 CHAIRMAN DAUGAARD: Yeah, it's a no-fault  
21 system. If those nondependent survivors are going to be  
22 included in the no-fault system then we ignore fault,  
23 period. We ignore fault. And it does come back to

haunt

24 the experience rating so there is some -- some change to  
25 the employer who's effected.

□

105

1 MR. KINSMAN: Just for clarification,  
were  
2 you talking about reimbursement or reimbursement and

3 compensation? There's kind of one of the general --  
4 number one general treatment of nondependents and then  
5 there's reimbursement for expenses and then compensation  
6 for the loss. If we're talking about reimbursement I  
7 think that's one thing. If we're talking about how  
8 dependents are either included in the system or not  
9 included in the system I think you have -- have the  
10 option of a flat fee, you have an option of giving a  
11 nondependent some type of monthly benefit for some  
period  
12 of time. Remember we're talking about potentially. I  
13 think the discussion was what about a single parent  
whose  
14 child is not dependent upon them but is the only  
15 surviving relative and they lose that parent. I mean,  
16 we're talking about not just parents but other  
categories  
17 of nondependents who are direct blood relatives.  
18 The other issue that we've not talked  
about  
19 and it dovetails with what you're talking about and it's  
20 a pretty big step, but if there is no corresponding  
21 benefits to nondependents under the work comp system,  
22 then should we be changing the law as to nondependents  
so  
23 that the negligence action is not included.  
24 CHAIRMAN DAUGAARD: Yeah, that would be  
the  
25 opposite approach. Yep.

□

1                   MR. KINSMAN: That's a huge step to take  
2 because obviously employers look at the system and they  
3 need some kind of consistency as to what -- what my  
4 liabilities are. They know under the workers'  
5 compensation system that it's a no-fault system if a  
6 worker gets injured here's what my liabilities are.  
7 Insurance companies know what those liabilities are. If  
8 there is a situation where you define the fact that --  
9 that you have a fatality but you have no dependents who  
10 will be paid under the work comp system, then the  
11 insurance companies need to understand that they're  
12 subject to the normal negligence statutes in that  
13 particular case and then take appropriate actions to  
14 cover themselves and the employers.

15                   CHAIRMAN DAUGAARD: Yeah. I would -- I  
16 guess -- and those are very good comments. It seems to  
17 me that, again, if we give attention to the negligence  
18 system and wrongful death actions and by whom might a  
19 wrongful death action be brought, those are the  
20 categories of nondependents that it seems to me should  
21 be entitled to some fault compensation from the workers'  
22 comp system if they're precluded from bringing that  
23 wrongful death action. Those are the people so if a

24 wrongful death action lies to be brought by the estate  
25 then who are the heirs of that estate. That's the group

□

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1 that should receive or share in whatever benefit the  
2 workers' comp system might provide under this new  
3 thinking or as you said another approach would be to  
4 simply say that in the case of a fatality non --  
5 nondependents may bring a cause of action if they could  
6 have done so under wrongful death, they can now.

They're

7 not precluded. So it seems to me it's one or the other,  
8 but we shouldn't have a hybrid, they get no benefit but  
9 yet they're precluded from a benefits action.

I

10 Now, in answer to your question about am  
11 suggesting a -- a reimbursement of expenses or a flat  
12 dollar amount, I was thinking more of a flat dollar  
13 amount more in the nature of a wrongful death award, and  
14 what amount that should be I haven't thought about it.  
15 One of the reasons I asked how many fatalities we have  
16 and how many of those involve nondependents, I was  
17 trying  
18 to assess what would be the impact upon the overall  
19 system of a change like this. And I don't -- my  
20 impression is it wouldn't be significant. But to those  
families involved it would be significant.

21 MR. AYLWARD: Mr. Chairman.

22 CHAIRMAN DAUGAARD: Yes.

23 MR. AYLWARD: Maybe James can answer a

a 24 question for me. In the case of a death where there is

a

25 dependent spouse, what is the compensation?

□

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1 MR. MARSH: The spouse receives a

2 temporary -- what amounts to a temporary total  
disability

3 check from now for the rest of their lives.

4 MR. AYLWARD: So if the employee was  
making

5 \$30,000 a year they would get two-thirds?

6 MR. MARSH: As a ballpark two-thirds of  
7 that, 20,000 a year.

8 MR. BARBER: The rest of their life or  
9 until they're remarried.

10 MR. MARSH: Right.

11 MR. AYLWARD: Then they get a two-year --

12 MS. ROBERTS: That's for loss of income.

13 CHAIRMAN DAUGAARD: In the case of  
14 nondependents you're compensated for the loss of  
15 affection and that sort of thing, which generally  
doesn't

16 translate into a monthly payment for life but more of a  
17 lump sum.

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sense

18 MR. AYLWARD: I was trying to give a

19 of --

--

20 CHAIRMAN DAUGAARD: I didn't mean have a

an

21 MR. AYLWARD: How much -- when a -- when

22 employee dies and there are no surviving dependents the

23 system does not have to pay in a case of \$30,000 the 20.

is.

24 CHAIRMAN DAUGAARD: Versus where there

□

25 MR. AYLWARD: There is where there is.

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1 CHAIRMAN DAUGAARD: It's serendipitous,  
2 where there's a spouse and there's not. That's a good  
3 point. Thank you, Paul. Well, I can't recall whether I  
4 stated this in the form of a motion, but I guess I would  
5 move that the --

6 MS. ROBERTS: We have a motion from her.

motion

7 CHAIRMAN DAUGAARD: Carol did make a

8 and there was a second. Who made that? Connie. Thank  
9 you. Further discussion. Sarah, would you restate the  
10 motion as Carol made that.

11 MS. TREBESCH: Carol moved to have --

12 MR. PAVEL: Mr. Chair.

13 CHAIRMAN DAUGAARD: Just one second,  
Page 124

14 Mr. Pavel, please.

15 MS. TREBESCH: Carol moved to have the  
16 Department make a proposal to bring forth -- or bring  
17 forth a proposal in regard to that.

18 CHAIRMAN DAUGAARD: Okay.

19 MS. HINDERAKER: Or not to make a  
proposal,  
20 but to make their recommendation.

21 CHAIRMAN DAUGAARD: To make a  
22 recommendation. All right. Mr. Pavel.

23 MR. PAVEL: Thank you, Mr. Chair. You  
24 know, this one, believe it or not, if you can believe  
25 this, sir, or not, we have really tried to think of both

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1 sides of this picture. Just as this discussion is going  
2 right now, we had the same discussion as a family. As I  
3 made mention in the letter there, I've had some  
4 experience helping to draft legislation for the state

and

5 I know it's very, very complicated when you step out on  
6 some of these very difficult matters so I appreciate the  
7 dilemma that you folks are in and the dilemma that  
8 Mr. Marsh and the Department of Labor will be in and the  
9 Secretary also. The issue -- if we're -- if we could  
10 mention what we're trying to accomplish and then you can

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11 take it or leave it.

12 The issue came up of -- and I'm sorry I  
13 can't remember who made the statement about forcing a  
14 change with the employers, what is going to make a  
change  
15 to make South Dakota a safer place to work. And, again,  
16 I had a conversation with someone. I know the name.  
I'm  
17 not going to mention it. But his frustration -- and  
he's  
18 part of the industry -- his frustration was that he just  
19 cannot get employers to listen to him to make a change  
on  
20 safety. He just cannot get them to think that safety is  
21 important because they're willing to take a chance. And  
22 in many, many other instances in this unfortunate world  
23 that we live in the only ways sometimes to make a change  
24 is to slam somebody with a lawsuit and they're made an  
25 example of or whatever the case may be. Maybe not even

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1 that. If they ignore an OSHA regulation they don't have  
2 to pay \$1,875 fine, which was the case in our son's  
3 situation.

4 what's remarkable to me is somebody  
5 mentioned that if they don't do something on the  
6 insurance side they can be fined up to \$25,000, but yet  
7 if you take the life of a worker, unless it's -- unless

8 it's intentional you're probably you're -- this is OSHA  
9 regulations -- it will be no more than \$7,000.

10 I guess here's the point, folks. When  
11 we're trying to effect change what are we trying to do,  
12 we're trying to change things so families in South  
Dakota  
13 don't have to go through what we're going through. The  
14 dilemma that you folks are in, do you set an amount, are  
15 these folks should they even be compensated. Give us  
our  
16 day in court. Let's let the legal system that's worked  
17 in this country for many years decide that. We're  
18 prohibited from even having that option because South  
19 Dakota law says that we can't take action. Thank you.

20 CHAIRMAN DAUGAARD: So I guess what I'm  
21 hearing you say, Mr. Pavel, is rather than including  
22 nondependents in the workers' comp no fault system it  
23 seems more appropriate to you to allow those  
24 nondependents to have their day in court in the -- in  
the  
25 fault system and not -- and remove to prohibition from  
--  
□

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1 from -- and in that case I guess I'm trying to think  
2 of -- again, there's no corresponding benefit being  
3 provided or being included in the system so it simply

4 would allow nondependents in the case of worker  
5 fatalities to bring wrongful death actions. Is that  
what  
6 I'm hearing?

7 MR. PAVEL: Yes, sir, that's exactly it.  
8 And I certainly don't expect you folks to make a motion  
9 on that today. You know, I'm sure there's folks out  
10 there if they're hearing this they're standing up and  
11 down stomping, oh my God, this is going to be terrible  
12 and everything else. I really think it deserves some  
13 research on the Department of Labor. And, again, I  
14 would -- as I mention in the letter, I would just offer  
15 our assistance just to sit down with someone one-on-one  
16 and say, okay, this is what we really mean. So, yes.  
17 Yes, sir, Lieutenant Governor, you are exactly on track.

18 CHAIRMAN DAUGAARD: All right. I guess  
the  
19 motion again --

20 MR. BARBER: Call the question.

21 CHAIRMAN DAUGAARD: The motion as it  
stands  
22 right now is to ask the Department to come back with  
some  
23 possible approaches, and then we've kind of outlined  
some  
24 of the variables. And, again, one would be to include  
25 nondependents in the case of -- in the case of a worker  
□

1 death in the workers' comp system and provide for some  
2 compensation for the loss of affection. That does not  
3 motivate employers to change. Mr. Pavel's preference  
was  
4 to remove the prohibition against a wrongful death  
action  
5 by nondependents in a worker death situation. And so I  
6 guess I'd ask the Department to come back with some  
7 alternatives. Those in favor of that motion say "aye,"  
8 those opposed "no."

9 (Whereupon, the motion passed  
unanimously.)

10 CHAIRMAN DAUGAARD: Motion carries.

11 All right. Let's move on now to 9b, the  
12 AMA Guideline for measurement of permanent impairment.  
13 James, you want to set the stage for that.

14 MR. MARSH: All right. Currently our law  
15 requires permanent impairment for permanent partial  
16 disability awards to be measured by the fourth edition  
to  
17 the AMA Guide for permanent impairment. That's been on  
18 the books -- was originally published about 1990, '91.  
19 The fifth was debated in the legislature changing it to  
20 the most current edition was ultimately rejected. And  
21 since then really no attempt, no concrete attempt, has  
22 been made to change the edition to anything subsequent.  
23 Last November, the sixth edition of the Guide came out

24 and we had been waiting for that in terms of making a  
25 recommendation to this council to see what should or

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1 shouldn't be done, hoping that maybe this would be a  
2 simple way of moving forward.

fraught

3 Unfortunately, the sixth edition is  
4 with as many complications as the fifth apparently was.  
5 There are several states in the country that have  
6 interestingly -- I've never seen this before --

basically

7 said they moved regulation otherwise to reject the sixth  
8 specifically instead of saying we'll take the sixth,  
9 we'll say no to the sixth. Their logic was, as I  
10 understand it, that we don't have enough data on what

the

more

11 sixth is going to do in terms of changing ratings or  
12 accurately reflecting how much impairment a person has  
13 to be able to depend on it as a reliable source.

to

about

14 In looking at -- I've seen some graphs of  
15 this thing and, like I say, it looks like it's about 600  
16 pages long compared to the fourth edition, which is  
17 2 or 250. It's a massive document. It covers all kinds  
18 of fairly complicated measurements that doctors are  
19 expected to follow routinely, kind of a cookie cutter

20 kind of approach. And so the end result is that we have  
21 a kind of an up-in-the-air situation as far as proposing  
22 it changing the impairment guides.

23 when the fifth was originally proposed it  
24 was priced by -- by NCCI and they indicated that it  
would  
25 probably change our rates by 1 or 2 percent, which is  
one  
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1 of the reasons it was, as I understand it, ultimately  
2 rejected. But that's basically where we are. We are  
3 still waiting to see, you know, even -- we had the  
IAIABC  
4 take a look at it, which Mr. Brenner referred to earlier  
5 he's a member of, and basically they arrived at the same  
6 conclusion, that it is going to be about a year post  
7 publication before the sixth edition they would have a  
8 good enough handle on it in the physician community and  
9 insurance community to be able to say if it's a workable  
10 thing to depend on or not so.

11 CHAIRMAN DAUGAARD: Okay. Questions or  
12 comments of James by any council member? All right. I  
13 know, Fern, you had a proposal to bring the change from  
14 the fourth to the fifth edition. Do you want to talk  
15 about that?

16 MS. JOHNSON: I do. Do I need to  
Page 131

announce

17 who I am again?

18 CHAIRMAN DAUGAARD: Sarah, you've got  
that.

19 MS. JOHNSON: Fern Johnson. Like  
20 Mr. Brenner talk about, if any of you remember the  
21 disabilities doesn't cover them all under the AMA under  
22 the fourth. Under the fifth edition it covers a vast  
23 variety currently of what injured workers or people even  
24 in personal injury accidents are experiencing. So with  
25 that the fifth edition -- I might want to say that the

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1 sixth edition I strongly oppose. In my research  
2 attorneys from other states and work comp people that  
3 handle work comp and even Department of Labor strongly  
4 don't like the sixth edition for various reasons. I'm  
5 not going to go into those at this point. It will take  
6 further research to provide you that information. Like  
7 he just said, the fifth edition is being adopted by the  
8 majority of the states, and they have since 2001 when it  
9 was first published. I believe it was published in  
10 January of 2001. But most states have adopted that and  
11 they're doing fine.

12 In Minnesota, and I don't know, Mr.  
Brenner

13 did not discuss what edition they use, but Minnesota is  
Page 132

14 graded -- has been graded A in handling work comp for  
15 many years. So with that that fifth edition also covers  
16 the medical fee schedule. There's a branch long arm of  
17 the medical fee schedule and you guys were talking about  
18 that. So if the fifth edition is adopted and you're  
19 already talking about changing the medical fee schedule  
20 that comes into play with that, you know, it adjusts  
21 things as far as the providers are concerned.

22 mentioned

Secondly, or last basically, you  
23 about the NCCI talking about how it would -- cause for,  
24 you know, an increase of one percent. However, the  
25 current fourth edition with the impairment ratings are

at  
□

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based

1 48 percent. Workers' comp is 66 and two-thirds, so  
2 on information -- inflation and cost factors we are very  
3 low at 48 percent when it should be at 66 and  
two-thirds.

two-thirds.

4 And my understanding this fifth edition with the new  
5 disability injury types that are propagated within those  
6 guidelines cover it up to the inflation rate and  
7 compensates -- allows compensation impairment rating at  
8 66 and two-thirds where it should be.

9 Fern?

CHAIRMAN DAUGAARD: Any questions for

I 10 MS. ROBERTS: I just asked -- we don't --  
11 mean, it's -- what it is is the doctors use that for  
12 impairment rating and the system does the payment. I  
13 don't understand what you're talking about how the fee  
14 schedule and all that. I asked James does that make  
15 sense and your answer was?

16 MR. MARSH: I'm not sure that it does, at  
17 least to me. There are differences in how impairment  
18 ratings -- the end result of impairment ratings in the  
19 fifth edition versus fourth edition. Most are  
minuscule.

20 There are exceptions however because the fifth edition  
21 rates pain specifically and the fourth edition doesn't.  
22 And that's a little -- it's a little black magic as far  
23 as I'm concerned. But, you know, there are areas,  
24 particularly when it comes to rating of forearms for  
25 things like carpal tunnel, repetitive use, where the

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1 fifth edition strays quite a bit from the fourth.  
2 Apparently that was part of the explanation for why the  
3 price impact would be different. Otherwise, basically  
4 the same.

again 5 CHAIRMAN DAUGAARD: Could you explain

6 the 48 versus 66, what -- what's the point you were  
Page 134

7 making?

8 MS. JOHNSON: The fourth edition when you  
9 go through for impairment ratings basically lists the  
10 schedule of disabilities, 10 percent forearm, 20 percent  
11 for leg or whatever, okay. That basically comes to  
12 48 percent under the fourth edition, how they determine  
13 it.

14 CHAIRMAN DAUGAARD: What do you mean that  
15 comes to 48 percent?

16 MS. JOHNSON: well, the 10 percent  
17 impairment what they're doing is 10 percent of your --  
18 say you're rated at 15 percent -- well, under schedule

19 you got 10 percent specifically for a leg, okay? If  
20 you're familiar with all of that. That 10 percent is 10  
21 percent of what wages -- I don't know how to explain  
22 to you. I visited with the guy from the NCCI and this  
23 in the reports of the NCCI, and I can provide you with  
24 this information later of my justification of where I'm  
25 coming from on that and also my research of what I've

about

--

this

is

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1 come up with how it affiliates with the long arm of the  
2 medical fee schedule. We don't have time to discuss all

I 3 of it. It will just basically confuse you further. If  
4 gave you the information of where I'm coming from, you  
5 can read it, decipher it for yourself and say okay I  
6 understand where she's coming from.

7 CHAIRMAN DAUGAARD: That would be helpful  
8 to me.

9 MS. ROBERTS: And to the Department.

do 10 CHAIRMAN DAUGAARD: Yeah. Why don't we  
11 that and then we'll -- we'll hold that item for -- is  
12 that agreeable to hold that item? I'm seeing nods.  
13 We'll wait for that information from you.

14 MS. JOHNSON: Thank you.

15 CHAIRMAN DAUGAARD: Anybody else want to  
16 make any comments or offer any remarks with regard to  
17 movement from the fourth to the fifth edition?

18 MR. STAINBROOK: Does this committee  
19 recommend --

20 MS. CHAMBERLAIN: I would, please.

21 MR. STAINBROOK: Did this committee  
22 recommend the fifth edition last time it went to the  
23 legislature?

24 MS. ROBERTS: No. It was a bill that  
25 somebody else brought and it was defeated.

□

1  
remark

CHAIRMAN DAUGAARD: Yes. You had a

2 in Sioux Falls.

3  
the

MS. CHAMBERLAIN: I would just say with

4 work comp system in its -- the AMA guidelines that it

5 uses is so different that if I was in a car accident or

6 any other kind of accident I am just judged so

7 differently than with the work comp system, and not to

8 keep it current and updated is an injustice to the

9 workers. My name was Cheryl Chamberlain for the lady.

10 CHAIRMAN DAUGAARD: Cheryl, you're urging

11 the council to adopt the fifth edition; do I understand

12 you right?

13 MS. CHAMBERLAIN: Yes, I am.

14 CHAIRMAN DAUGAARD: Thank you. Any other

15 comments or remarks?

16 MR. KINSMAN: If we're going to look at

17 doing this and reading Fern's stuff, she made a comment

18 that most states have adopted the fifth edition. Could

19 you take a look and see how many of those states have

20 actually done so so we know?

21  
that,

MR. MARSH: I can give you a table on

22 yes.

23 CHAIRMAN DAUGAARD: Thank you, Paul.

24 That's a good recommendation. Any other comments or

25

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1 All right. Then let's move on to 9c, the  
2 fire fighter issue. Mitch, do you want to offer  
3 something? I'm going to also make some preliminary  
4 comments that this was offered up after the deadline for  
5 posting had passed, and my philosophy in the way this  
6 council should operate is we should take public  
testimony  
7 when it's available and it's going to be available today  
8 and we're going to take it under advisement and we'll be  
9 educated and we'll understand what you're proposing, but  
10 I want to suggest to the council we should not take  
11 action but rather move this to the next meeting so,  
12 again, the public can be aware. The public was unaware  
13 because the deadline had passed, the agenda was sent out  
14 at the last minute. I don't think the public had enough  
15 notice that this was going to be on the agenda in time  
16 for appropriate responses to be offered. Does that seem  
17 fair to you, gentlemen?

18 MR. RICHTER: That's very fair,  
19 Mr. Chairman. And I was going to comment as well. Let  
20 me introduce myself. Mitch Richter here with the  
21 Professional Fire Fighters of South Dakota. Because you  
22 are missing three members today and it did not get  
posted

23 probably adequately we are still in the process -- I  
24 understand there is probably some opposition, but we're  
25 working with the opposition and the proponents of this

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1 legislation. It is still somewhat of a draft form, but  
2 it's the concept, I think, that we're looking at for  
3 approval or to move forward with, more a concept rather  
4 than certain particular legislation.

5 CHAIRMAN DAUGAARD: Okay.

6 MR. RICHTER: Okay. Thank you. Yes.

7 The -- what I bring forward today is a piece of  
8 legislation that we would like to introduce during the  
9 legislative session. And that is an act to establish a  
10 presumption regarding occupational disease disabilities  
11 of certain fire fighters. And that would be for the  
12 professional fire fighters. There's professional fire  
13 fighters in Watertown, Mitchell, Sioux Falls, Rapid  
City,  
14 Aberdeen, and the Air Guard in Sioux Falls. Those six  
15 departments are full-time staff, paid fire fighters for  
16 the -- that work in the state of South Dakota.

17 This legislation has been introduced in  
18 30-plus states. The rest of the states have -- are in  
19 the process of doing what we're going through here today  
20 and during the legislative session to introduce this

type

21 of legislation. And what this does is takes the  
22 assumption that if a fire fighter comes upon an accident  
23 and later ends up with some type of blood-borne pathogen  
24 disease it was assumed that he got that during the  
25 accident or the people that he was -- or she was working

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1 on at that time. When the U.S. government did a study,  
2 OSHA, to determine blood-borne pathogen standards they  
3 found that 98 percent of EMT's and 80 percent of fire  
4 fighters became exposed to blood-borne pathogens through  
5 their line of work, things like TB, HIV, hepatitis, and  
6 other types of diseases.

7 Keep in mind that this legislation it has  
8 to be -- it will have to be documented and the employer  
9 can ask that the employee take a prescreening so that  
10 they know when they're hired that there is no evidence

of

11 any of the diseases that we're talking about in this  
12 particular legislation.

13 You know, hospitals, clinics, those types  
14 of institutions, have procedures and protocols to deal  
15 with these types of diseases when they receive a  
patient.

16 When the fire fighter comes upon the scene of an  
accident

17 or goes into a burning house or those types of scenarios  
18 that they're placed in, although they have protocols to  
19 deal with blood and those types of situations, it's --  
20 it's a first response. It's maybe they get cut, maybe  
21 they get stuck by a needle. There's other things that  
22 could happen that are outside of the general protocol.  
23 So that's one of the reasons we bring this legislation  
24 forward.

25 It's public safety. When these folks are

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1 in contact with these types of illnesses and they don't  
2 realize it they have an opportunity to pass it onto  
their  
3 family, their co-workers, expose the general public just  
4 in general. And in today's society where you can get  
5 halfway across the world in less than 24 hours, other  
6 countries health standards are not near as high as ours,  
7 vaccinations are nearly as common as what we have today.  
8 The news report is that there's 131 cases of measles in  
9 the United States. That comes to us because  
vaccinations  
10 are not prevalent in other countries for measles and now  
11 it's -- it's going to be a concern of the health  
12 department.

of

13 So those types of things, those are some

14 the reasons we bring the bill forward for your  
15 consideration. We do have a couple of fire fighters  
16 here, one from Aberdeen and one from Watertown, that can  
17 give you some real life experiences and justifications.

18 CHAIRMAN DAUGAARD: Thank you.

19 MR. RICHTER: Thank you.

20 CHAIRMAN DAUGAARD: Take your testimony,  
21 sir.

22 MR. SINGER: Mr. Chairman, members of the  
23 committee, my name is Rob Singer. I'm a Lieutenant with  
24 the Aberdeen Fire Department, also with the Professional  
25 Fire Fighters Association, as well as I'm a paramedic.

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1 We ask that you strongly look at this because fire  
2 fighting has changed. We don't just put out fires  
3 anymore. We do crash rescue with airports. We do EMS  
4 first response, some do ambulance transporting, hazmat.  
5 So we respond to basically everything.

6 The problem is that we have no way --  
it's

7 very, very difficult to document an exposure when you're  
8 dealing with infectious disease. It's not like you go  
9 on -- I'll give you an example. You go on an ambulance  
10 call, the subject has got a cough. We're not capable of  
11 diagnosing what this individual has in the field. We

12 don't have those instruments, and we don't have the  
13 follow-up capabilities. It's not in a hospital where  
14 they get all the tests and they find out later on what  
it  
15 is. We might never find out. The problem is how do you  
16 document that, so the person coughed. You know, do you  
17 document every single time you go out on a call. That's  
18 the reason for the presumption. You have to assume --  
19 that's the reason we picked the career fire fighters.  
It  
20 is our primarily occupation to respond to these type of  
21 emergencies. The difficulty is nailing down which  
22 patient this has occurred to. So for that primary  
reason  
23 we ask that it be a presumptive.

24 Like Mitch had stated, this is being  
25 adopted by many, many states, a majority of the states,

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1 and, you know, we're just seeking to have those  
2 protections in place. You know, it's our job to protect  
3 the public as a general. We're just asking that you  
4 protect the protectors because fire fighters in general  
5 are not asking for above and beyond any additional  
6 treatment. We just want that protection that is already  
7 in place but what we have a difficult time proving. And  
8 it's because of the nature of our job it's -- it's

9 probably never going to be proved and you look at it we  
10 probably only have a few career fire fighters, about 600  
11 across the state. And maybe the director could tell us  
12 roughly how many claims he gets of infectious diseases a  
13 year. I'm sure it's small.

14 we take every precaution possible. We do  
15 training throughout the year on infectious disease, as  
16 well as trying to prevent cancer and everything else.  
17 You know, we're constantly analyzing the best PPE, the  
18 personal protective equipment, available on the market.  
19 We use goggles, masks, everything that we possibly can.  
20 Because of the nature of our job it's very, very  
21 difficult.

22 If I'm going down to rescue somebody and  
23 they vomit all over me or because of the blood exposure  
24 it gets all over, it doesn't matter if you have goggles  
25 on, you'll still get it in your eyes if it's large

enough  
□

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1 volume. You're not always going to be gowned up fully.  
2 You know, things happen. And to say that this is, you  
3 know, just part of your job, that, yep, you're going to,  
4 you know, it's your responsibility, part of the job to  
5 catch an infectious disease, it's not. We make every  
6 effort possible to do the best we can not to catch this,

we

7 and I assure you we're not looking for anything great,  
8 are looking for the protections somewhat provided here  
9 and we have difficulty providing. By no means are we  
10 going to try to catch the disease to try and increase  
11 your coverage. We're just asking for adequate coverage.  
12 I'd be happy to answer any questions.

13 CHAIRMAN DAUGAARD: Are there any  
14 questions? You are in Aberdeen?

15 MR. SINGER: Yes, sir.

16 CHAIRMAN DAUGAARD: Do you know Roger  
17 Bortman?

18 MR. SINGER: Yes, I do.

19 CHAIRMAN DAUGAARD: You don't associate  
20 with him, do you?

21 MR. SINGER: He's a former boss of mine,  
22 so.

23 CHAIRMAN DAUGAARD: Thank you for your  
24 testimony.

25 MR. SINGER: Thank you, sir.

□

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1 CHAIRMAN DAUGAARD: Thank you for your  
2 time.

3 MR. MACKLEY: Mr. Chair and fellow  
4 councilman, Tyler Mackley, Lieutenant with Watertown

5 Fire/Rescue, also a paramedic. And I think you've heard  
6 good speeches from the other two individuals. I  
7 basically was going to give you some instances of  
8 examples if I could. I've been with the department in  
9 Watertown for 15 years and a very active paramedic for  
10 12 years.

11 In 12 years, I've had three separate  
cases  
12 of handling infant children into the ER that have come  
13 back with bacterial meningitis. And part of this in  
what  
14 we're talking about is we have no way of knowing a lot  
of  
15 the times until it's too late. And for a person in my  
16 job when we get a phone call several hours later from  
the  
17 hospital that says you need to come up here and start  
18 this medication for the next two weeks until we can get  
19 this clarified, you know, suddenly I'm up at the  
20 hospital, now I'm on medication and, you know, the  
21 process is taking its time in going through to find out  
22 exactly what string it was or whatnot. And then the  
23 question that I always have when that happens is, well,  
24 do I dare go home and see my wife and kids? Am I going  
25 to take this home with me and infect them? Three

□  
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1 separate times I've had that happen.

my  
2 I've had an individual with a member of  
3 department just this last week, he was exposed to a  
4 patient with a blood-borne pathogen and anyway he  
5 reported it, did the things -- everything was done  
6 properly and basically it happened in the early morning,  
7 Saturday morning. So the hospital basically did the --  
8 did the test kits to test for HIV and the blood-borne  
9 pathogens and stuff like that. Apparently there was  
some  
10 problems in doing that. He got his results within hours  
11 saying that he was tested negative for all the stuff.  
12 However, the patient that he was working on, he did  
13 not -- he was not informed until Monday at about 4:30 in  
14 the evening that basically everything had come back  
15 negative on the patient. So he sat all weekend not  
16 knowing what exactly he had been exposed to. And, of  
17 course, he has a wife and kids at home, too. So, I  
mean,  
18 there's a lot of different ways that this stuff comes  
19 into effect.

20 Another instance that I was going to give  
21 you guys for an example was a lot of times we work very,  
22 very closely with law enforcement and stuff. Sometimes  
23 you get calls such as suicides. You don't think of  
24 things like this, but I've been on several different  
25 suicides that it's a gunshot type suicide. And when you

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1 run into the house to see -- to do your job a lot of  
2 times there's not really much we do in those cases, but  
3 when you run into the house in those instances you  
4 suddenly have all this blood-borne pathogens and  
5 everything just floating in the air due to the incident  
6 in the call. I can tell you I was in -- one of the  
7 officer always told me, you know, you might want to  
8 about it before you run in there, you really want to get  
9 covered up and get a mask and cover your eyes and  
10 everything because it's just floating in the air right  
11 there so.

think

12 Anyway, that's basically what I was going  
13 to give as my input for the conversation. Any other  
14 questions I'd be glad to answer, too.

15 CHAIRMAN DAUGAARD: Are there any  
16 questions?

17 MR. BARBER: I have a question. You are  
18 career fire fighter?

a

19 MR. MACKLEY: Yes.

20 MR. BARBER: These small towns in South  
21 Dakota just have volunteer fire departments.

22 MR. MACKLEY: Yes.

23 MR. BARBER: How are those people covered  
Page 148

24 when they're out working fighting a fire? Is there a  
25 blanket workers' comp policy over those guys?

□

131

1 MR. MARSH: Yeah.

2 MR. BARBER: So this kind of also --  
that's

3 another issue, but it comes under the same legislation  
as

4 far as --

5 MR. AYLWARD: No. Just professional fire  
6 fighters.

7 MR. BARBER: This is only professional.  
If

8 this becomes a law would it affect other fire fighters?

9 MS. ROBERTS: No. Their proposal would  
10 only cover full-time.

11 MR. MACKLEY: If I could try to help  
12 answer. The reason why the professional fire fighters,  
13 that we're coming to you is that this is our full-time  
14 job. So, you know, our -- our job isn't to have another  
15 job and then answer the call as the volunteers do.

we're

16 simply there every day going to all of these calls. We  
17 don't have a choice in the matter of what calls come up  
18 and what we -- we get to respond to so.

19 MR. BARBER: Yeah. I understand.

20

MR. MACKLEY: If that helps any.

21

CHAIRMAN DAUGAARD: Any other questions?

guy

22

MR. BARBER: I was just thinking of the

23

that lives in the little town that has to take care of

24

the fire.

25

MR. MACKLEY: Thank you.

□

132

1

CHAIRMAN DAUGAARD: Thank you very much.

I

2

had a question for James. Under the law right now if

I'm

3

a worker in a hospital or some other environment where I

4

contract a disease, an infectious disease, that's shown

5

to have occurred during my employment, is that

6

compensable under workers' comp?

7

MR. MARSH: The test in those cases is

8

whether the exposure is procurable. If I'm a nurse that

9

runs blood test that's part of the game, if you will.

10

That exposure would be covered. If I'm a secretary in

11

the main floor of the hospital and I get exposed to it,

12

it's probably not occupational disease because it's not

13

procurable to the occupation of being a secretary.

14

CHAIRMAN DAUGAARD: In the case of the

15

hospitals environment it's probably a little -- I think

16

the point was being made in the testimony it's a little

17 easier to prove incurred in the course of employment  
18 versus your fire fighter maybe is a little scattered  
19 among the population, a little tougher to prove so  
that's  
20 the request for the presumption. I follow. Any other  
21 proponents of this, this legislation? Any opponents?  
22 Any questions by the council or comments by the council  
23 members? Again, I propose that we put this on the  
agenda  
24 for our next meeting and give public notice that it's  
25 going to be on the agenda. Post the terms of the bill

133

1 being offered and then --  
2 MR. SHAW: will we be allowed comment  
next  
3 time? I haven't seen the legislation.  
4 CHAIRMAN DAUGAARD: Most certainly.  
we'll  
5 take it up anew. Just that these gentlemen were here  
and  
6 ready to testify and we want to be informed to the  
extent  
7 we can be.  
8 MR. AYLWARD: Just one question. Has  
this  
9 been passed in 30 states or introduced?  
10 MR. RICHTER: It's been passed in more  
than  
11 30 states.

12 MR. AYLWARD: In more than 30 states.

13 Thank you.

14 CHAIRMAN DAUGAARD: Any other questions  
or  
15 comments? Without objection, we'll place this on the  
16 agenda for our next meeting.

17 We have other issues as an item, and I  
18 believe it's fair to include the term limit proposal  
19 which was raised at the last meeting and which was  
20 discussed to some degree. Fern has sent the Department,  
21 and I think everyone should on the council have a  
22 specific proposal that deals with what I'm going to call  
23 term limits. And that is an amendment to 62-2-7. Does  
24 anyone not have a copy of that from the council? Anyone  
25 not have that? I have one page.

□  
134

1 MS. ROBERTS: Monica has copies.

2 CHAIRMAN DAUGAARD: Is there more than  
one  
3 page or just one page?

4 MS. ROBERTS: Just one page.

5 CHAIRMAN DAUGAARD: I've got it. Fern,  
do  
6 you want to come forward and offer your testimony in  
7 support of this?

8 MS. JOHNSON: Fern Johnson again. I  
Page 152

guess

9 I'd kind of like to see what, you know, asking a council  
10 is kind of like asking legislatures to increase their  
11 wages, so it's kind of a conflict of interest for each  
12 you to even vote on a position. It's like, you know, my  
13 term limits are going to get changed and I'll no longer  
14 be on it. This proposal does not preclude each member  
15 from not being on the council at another time. The big  
16 thing is there's nothing wrong with a change. Certainly  
17 each of you have, you know, been presented with so many  
18 issues and you're very well qualified being on the  
19 council for many years of the work comp system.

However,

20 there are many individuals that are very familiar with  
21 workers' compensation also and would like to serve on  
22 committee, and their versatility of their ideas, their  
23 input, you know, should be welcome and they should be  
24 given the opportunity to serve on the council. These  
25 ideas can promote a lot of changes that may be of some

new

□

135

So

1 good just as well as the councilman that are on here.  
2 many of them that have requested to be on it they're not  
3 on it.

4 So I guess what is the criteria that the  
5 Governor establishes of appointing people? Now, I know  
6 there's new people that want and have requested to be on  
7 the council so what is the criteria of appointing  
8 existing staff or -- I call you staff because you're  
9 for it -- versus somebody else that is willing to serve  
10 on the committee? I guess I have questions back at you,  
11 you know.

paid

12 CHAIRMAN DAUGAARD: Well, does anybody  
13 to respond?

wish

14 MR. AYLWARD: I want my pay. I don't  
15 we get any pay.

think

16 MR. BARBER: No pay.

volunteer?

17 MS. JOHNSON: No pay? It's all  
18 No expenses paid?

19 MR. BARBER: Mileage, yeah.

20 CHAIRMAN DAUGAARD: It's out of gratuity.

Cutting

21 MR. BARBER: I have one question.

22 it back from 8 to 6, I'm wondering if like today we've  
23 got --

24 CHAIRMAN DAUGAARD: Three gone.

25 MR. BARBER: Situations happen that you

□

1 can't be there and I'm wondering if reducing the number  
2 of people would be beneficial to the goodness of the --  
3 for the effectiveness of the organization. Be my only  
4 question.

5 MS. JOHNSON: May I respond, Mr. Chair?

6 CHAIRMAN DAUGAARD: Yes.

7 MS. JOHNSON: I respect that, Glenn.

8 why -- why 8? why not 10? why not 12? You know, the  
9 work load here -- I don't know whether -- you talk about  
10 work groups so do you meet together on certain issues  
11 that you're discussing proposals from the following year  
12 and current and also into the future? Do you get  
13 together as a work group to sift out these and promote  
14 your ideas and what have you? So if you do do that you  
15 know your experience is very beneficial. So I guess my  
16 point is why eight? You know, the history of when the  
17 work Comp Advisory Council started I believe it was

nine.

18 And I stand to be corrected and then it was changed back  
19 to eight.

20 MS. ROBERTS: I think it's still nine.

21 MS. JOHNSON: It's nine?

22 MS. ROBERTS: Yeah, he's nine.

23 MS. JOHNSON: well, I address that issue  
24 too. In all due respect, Lieutenant Governor.

25 CHAIRMAN DAUGAARD: Any other questions?  
Page 155

□

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1 Yes, Paul.

2 MR. AYLWARD: When I read through this,  
3 Fern, I'm probably seeing it wrong, but it says that --  
4 that terms shall be three years.

5 MS. JOHNSON: Mr. Chair.

6 CHAIRMAN DAUGAARD: Yes. Please respond.

7 MS. JOHNSON: It does say three years and  
8 it -- seeing that was part of the debate or argument,  
or,

9 you know, the discussion last meeting was a three-year  
10 term. You know, most committees and even board of  
11 directors do not serve a lifetime on a committee, you  
12 know, they're -- it doesn't mean it's perpetuity. My  
13 point there and extending further onto that was to  
define

14 it so it is not running in perpetuity. I just addressed  
15 you can be on the committee three years, be off three  
16 years, and then go back on it again. My whole point is  
17 there's nothing wrong with a change. People want  
change.

18 There's nothing wrong with new ideas being brought to  
the  
19 table. There's a lot of qualified people that can serve  
20 on this committee. Out of due respect to each of you,  
21 doesn't mean that they couldn't do the same job. It's

22 just they don't have the opportunity. So I guess I'll  
23 address again what is the criteria.

24 MR. AYLWARD: I -- I don't disagree with  
25 that. My -- I just was unsure of how you put this

□

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1 together. You said the term limit -- or the term is  
2 three years. You'll divide the six members into two  
3 groups and then each group has three members and then  
4 term of the members of each group expires at the end of  
5 three years.

the

6 MS. JOHNSON: Mr. Chair.

7 CHAIRMAN DAUGAARD: Yes.

that

8 MS. JOHNSON: What -- what I meant by

9 -- and it doesn't mean that that's set in stone, Paul.

10 MR. AYLWARD: It would be set in stone if  
11 it's in law.

trying

12 MS. JOHNSON: Well, we can define that a  
13 little better if you can get the grasp of what I'm  
14 to do. The term is already three years, okay. And also  
15 I believe it expresses in there that three-year term can  
16 be -- there's new appointments, okay? So each group and  
17 you can't remove how many? No more than three.

18 MR. AYLWARD: Well, you said you get no

19 more than two members expiring each year, but then you  
20 divide the groups into two groups of three and they  
21 expire at the end of three years. I just didn't know  
how  
22 that works.

23 MS. JOHNSON: Correct. You're not taking  
24 out more than two people so you still have a quorum of  
25 five. You have a quorum of four. What is a quorum?

□

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1 what is your quorum? What do you have to have for a  
2 quorum?

making

3 CHAIRMAN DAUGAARD: The point she's  
4 on one hand the amendment being proposed says two  
5 members' term expires each year. It says that. Two  
6 members' term expires each year. Then the next two  
7 sentences you say each group expires at the end of three  
8 years. So you've got three people expiring at once in  
9 one sentence and you've got two people expiring at once  
10 in another sentence.

11 MS. JOHNSON: I said that's not set in  
12 stone. My whole point is, three people are in each  
13 group. Every fourth year the first group is a new  
14 appointment so you still have the remaining three,  
15 however, if the Governor has not appointed -- he has to  
16 appoint the one -- he has one year to appoint a new

17 member on there. That must be done within one year.  
18 You're still remaining -- still having three members on  
19 the committee. And the existing three members that are  
20 going to be displaced he has one year to displace them  
21 and they serve until he has displaced them, but he's got  
22 one year to do it. He doesn't have -- he can't, okay,  
23 I'm going to renew your new appointment here, you know,  
24 at the time -- each time everybody, you know, expires in  
25 three years. Unless you can go to -- there could be

□

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1 another proposal where it can go in a staggering effect.  
2 You can stagger it.

3 CHAIRMAN DAUGAARD: Well, let's -- let's  
4 dispense with the questions about the way this is  
written  
5 because I think the way it's written is -- is -- needs  
to  
6 be corrected if this philosophy is moved forward at all  
7 because there are clearly some drafting errors. Is  
there  
8 any debate on the philosophy of term limits? Let's move  
9 to that. Any questions of Fern? Let's ask questions of  
10 Fern. Fern, I just remind you, you're not here to ask  
11 questions of us. We're here to ask questions of you  
12 about a proposal you're bringing. Any questions by the  
13 council of Fern? All right. Any discussion by the

14  
forward?

council? Does anyone wish to move this proposal

15  
certainly

And, Fern, I think you're right on that there's

16 less motivation among this group than there might be  
17 among a group of legislators hearing it directly.

22  
things

18 MR. BARBER: My only comment would be  
19 maintaining a balance between, for example, organized  
20 labor and private sector so we have a balance of  
21 representation that way. Keep that in mind, if we cut  
22 the numbers too tight we get to a smaller group so  
23 get out -- could get out of balance.

□

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24 MS. JOHNSON: Mr. Chair. I agree with  
25 that. Six is not, you know, it's not set in stone. You

1 know, you guys work with each other. How -- what would  
2 be a problem with increasing it to 10 people, you know.  
3 Since they're not paid State's not expending any funds  
4 for it other than the -- you know, other than the  
5 traveling expenses.

6 CHAIRMAN DAUGAARD: Okay. Any other  
7 comments? Does any member wish to move to take this  
8 forward? Is there a motion by anyone? Paul.

9 MR. AYLWARD: Well, just a comment, I  
10 guess. I understand what Fern's saying, but it's, you

11 know, kind of, you know, I guess I wouldn't mind getting  
12 rid of this job, but I'm not sure I'm in favor of doing  
13 it this way. I was -- my appointment was recommended by  
14 the South Dakota AFL-CIO, so we have internal ways of I  
15 can get off here if I want to. We have two spots, you  
16 know, that we can recommend to the Governor. I mean, he  
17 has the authority to appoint them. I guess I don't have  
18 any problems changing the makeup of the committee. It's  
19 still the Governor's choice of who goes on here so, you  
20 know.

21 MR. BARBER: I think it can change every  
22 re-election. Every time you get a new Governor it could  
23 possibly change.

24 MR. STAINBROOK: I guess what Paul said,  
25 you know, I probably serve on here, you know, if the

□

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1 Governor wants to change that's -- that's fine. I too  
2 serve at the discretion of the AFL-CIO, who asked if I  
3 would sit on here as a labor appointee so. It  
4 certainly -- they have the authority of putting two  
5 people on the workers' comp council and so if they have  
6 somebody else from Labor that would want to serve,  
that's  
7 fine with me.

8 CHAIRMAN DAUGAARD: Well, I guess I'll  
Page 161

just

to

this

9 comment that I think there are benefits and detriments  
10 serving. I'm sure there are days that we are around  
11 table and learn and enjoy the learning opportunity, and  
12 then there are other days that it's not pleasant sitting  
13 around this table. It's not something that we choose to  
14 do maybe. But at the same time someone has to do this  
15 and now the question is should there be by virtue of a  
16 statute periodic turnover faster than there exists  
17 already by virtue of change of administration, and my  
18 personal philosophy is that we gain in our understanding  
19 and knowledge.

compensation

ahead

□

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20 I remember the very first meeting of this  
21 group that I attended and how inadequate to the task I  
22 felt because I knew so little about workers'  
23 law in South Dakota, and I'm a lawyer, and so in  
24 philosophy I should at least start out a little bit  
25 of the norm and I just have learned a lot as we went and

1 I'm still learning at every meeting. I wonder if the  
2 commission turned over every three years and you do try  
3 and divide it up between employers and employees if  
4 you're going to have people struggling. And by the time

5 they get to the point where they can knowledgeably make  
6 judgments on some of the issues that come before us  
7 they're off. So I would -- I'd oppose this for that  
8 reason.

9 I do believe that, Fern, your suggestion  
10 that people have new ideas, there were new ideas brought  
11 to the table at our last meeting and discussed at length  
12 today and they are still in play. So just because  
13 something is a new idea just -- excuse me -- just  
because  
14 you've got old members serving we can -- we can learn  
new  
15 tricks, I think, and new ideas are not necessarily  
better  
16 or more knowledgeably judged by someone who is new  
17 themselves. In fact, I would say less likely that they  
18 would knowledgeably judge a new idea just by virtue of  
19 themselves being new. So my -- my opinion is this  
should  
20 not be brought forward.

21 Does any member wish to make a motion to  
22 bring it forward? Seeing none, you're surely welcome  
to  
23 bring this on your own. And I'm sure the legislature  
24 would understand perfectly that the workers' Comp  
Council  
25 did not bring it forward at your request.

□

1 MS. JOHNSON: One last thing, Mr. Chair.

2 CHAIRMAN DAUGAARD: Yes.

3 MS. JOHNSON: I would like the record to  
4 reflect that I am open to changing the versions I've  
5 presented here and then move forward before the  
6 legislation with a new proposal.

7 CHAIRMAN DAUGAARD: I hope the members  
8 understood I think the language flaws can easily be  
9 corrected. It's just the philosophy is what I oppose so  
10 a corrected language version wouldn't change my  
11 opposition. And I'm hoping that's the way the council  
12 acted today, in opposition to the philosophy and not the  
13 specific language. All right. That --

14 MS. ROBERTS: Mr. Chair. If I could  
15 clarify, the record would be a verbatim transcript  
that's  
16 on the internet. It's verbatim.

17 CHAIRMAN DAUGAARD: What you just said  
will  
18 be what's on the internet. Thank you, Fern, for  
bringing  
19 that forward.

20 MS. JOHNSON: Thank you.

21 CHAIRMAN DAUGAARD: The last item on the  
22 agenda is the meeting date. And let's just review  
23 quickly the things that we have yet to determine. We've  
24 got -- we've got the three items. We dispensed with the

25 burial expenses matter under 9a4. But the other three

--  
□

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1 maybe 1 and 3 are sort of combined are still on the  
2 table. That would be on the next meetings agenda. And  
3 then the AMA Guide to the extent that Fern is going to  
4 provide more information to us, and James is going to  
5 provide a table to us about what states have adopted the  
6 fifth version. That's still on the table. And then the  
7 fire fighter issue that Mitch Richter brought before us  
8 is also on the agenda for the next meeting.

9 MS. ROBERTS: We also have somebody in  
10 Sioux Falls. If we have not concluded our public  
hearing

11 I think there was somebody in Sioux Falls that had  
12 another issue.

13 CHAIRMAN DAUGAARD: Excuse me. I'm  
sorry.

14 Mark, did you have something? Pam said you did.

15 MR. ANDERSON: This is Mark Anderson in  
16 Sioux Falls. I have a couple issues and they just came  
17 to my attention so I couldn't really get them on your  
18 agenda so I would like to have at least a chance to talk  
19 about it a little bit and maybe by the next meeting we  
20 can propose some language.

21 CHAIRMAN DAUGAARD: Okay.

with

22 MR. ANDERSON: I'm not sure what to do  
23 the issue that James brought up where he said 90 percent  
24 of his claims are settled in two years -- within two  
25 years, so I would like to give you a couple of examples

□

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cases

1 of what kind of impact that has. I have two affidavits  
2 from a couple of people and kind of runs down their  
3 of what happened. I'm going to try and make it as quick  
4 and simple as I can.

the

disability

5 In the one case the guy was injured on  
6 30th of August in '07. Effectively his claim was denied  
7 9-17-07. Up until 9-16, he received temporary  
8 payments. Okay. Once his claim was denied then he went  
9 on sick leave, which he received until November 11th of  
10 '07. So from that day until his case was settled in  
11 mediation on April 23rd of '08, he got nothing. And on  
12 January 20th of '08, his insurance expired so on that  
13 date he -- his health insurance expired so on that date  
14 he had to begin paying a \$773 monthly premium. Now, he  
15 did return to work on March -- in March of '08, and he  
16 got four hours a day pay.

or

17 And my point of this whole discussion --

the 18 presentation is the fact that the claim 90 percent of  
19 claims are settled within two years does not provide for  
20 the time when this guy and his family got absolutely  
21 nothing. Now, his -- his case went to mediation and I  
22 can't talk about the settlement amount because that's  
one 23 of the preclusions in the settlement is nobody can bring  
24 that up again. But suffice it to say that when his case  
25 was finally settled he got less in that settlement than  
□

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1 would have covered his claim over that time. And so I'm  
2 not sure how to address that.

3 I've got one more case. And in this  
4 particular case the guy was injured on 3-3 of '07, his  
5 claim was covered until 11-28 of '07 --

6 CHAIRMAN DAUGAARD: Mark, I'm just going  
to 7 interrupt. The DDN shuts down in four minutes. I want  
8 you to be aware of that.

9 MR. ANDERSON: Okay. Okay. So the point  
10 of this -- the points of this case this guy ended up on  
11 sick leave. He got -- instead of getting his work comp  
12 stuff, payment, which would be \$460 a week, he got \$303  
13 sick pay. When his case was settled in mediation he  
14 didn't get anywhere near that amount in mediation.

15 People are being forced to settle cases  
16 because they're being starved to death is my point. I'm  
17 not sure how to address that. I'd like to have the  
18 to bring that up at the next meeting, some kind of  
19 legislation to propose.

20 The other issue is there are claims that  
21 there are claims that recur and those people's payments  
22 are -- are settled based on the old claim so what's  
23 happened in this other case an individual -- the  
24 difference between what he would have received on the  
25 original claim and when it -- when he was reinjured or

1 came up again was \$172. I'd like to have that at the  
2 next hearing if possible.

3 MS. ROBERTS: Thank you, Mark. This  
4 council goes on into the next year and the typical  
5 schedule that we have is that we outline new issues in  
6 the first meeting, we have public testimony the second  
7 hearing, and then we come to our conclusions. And so we  
8 kind of opened the door a little bit by adding a couple  
9 little new issues for this public hearing because we got  
10 it ahead of time. We ask that all information come in

082108 WCAC Meeting Transcript.txt  
11 least five days ahead of time.

12  
don't

12 what I would like to suggest, Mark, I  
13 want to shut you off at this point, that this maybe is  
14 starting up the agenda for the next year's council. We  
15 have to have a report done on October 1st and submitted  
16 to the Governor and the legislature. I don't know that  
17 we can give -- when it's kind of a thrown-out suggestion  
18 like this without, you know, the other couple new items  
19 had some specific legislation that we could discuss at  
20 this meeting. If -- if I could just throw that out to  
21 the council that we maybe put this on as an agenda item  
22 for the 2009 report and we start this at the top of our  
23 agenda for that next year.

24  
us

24 CHAIRMAN DAUGAARD: If you want to give  
25 some information in the meantime, you know, the earlier

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--

1 the better, or I'd suggest that you might even want to  
2 you might even want to hold that until before the next  
3 year's agenda begins so that it's fresh in our minds  
when  
4 we begin the discussion. But Pam's right, it's too late  
5 in the game.

6  
that.

6 MR. ANDERSON: I have no problem with

7 CHAIRMAN DAUGAARD: Okay.

8 MS. ROBERTS: Thank you.

9 MR. ANDERSON: That works for me.

10 CHAIRMAN DAUGAARD: Thank you for  
bringing

11 that up. And I apologize for the short time frame.  
It's

12 just that the agenda took a little longer than we  
thought

13 it would today.

14 Let's move now to the next meeting date.

15 Paul.

16 MR. AYLWARD: I'm sorry, if I may. When  
we

17 were talking about the issues of the Pavels when I was

18 looking through the law and it was brought up about

19 dependent children getting the \$50 payment, that seems

20 really, really low. Is it too late to look at that  
issue

21 of -- it's 62-4-13. And it was in the issues that we

22 looked at already.

23 CHAIRMAN DAUGAARD: It's a matter of the

24 dollar compensation that's automatically provided under

25 the scheduled payments.

□

150

1 MR. AYLWARD: Yeah. It's a \$50 extra

2 payment to the dependent children under 18. That's what

082108 WCAC Meeting Transcript.txt  
3 that law says or that section of the law.

4 MS. ROBERTS: We could expand our  
5 discussion on that nondependent since we're talking  
6 expense. It's the same statute. It's kind of an easy  
7 fix, if you'd like.

8 CHAIRMAN DAUGAARD: Thank you. Now let's  
9 go to the next meeting date.

10 MS. ROBERTS: If I could throw out. We  
11 really should have 30 days notice so people who are  
12 interested in this process have 30 days to kind of get  
13 their stuff around. 30 days notice and we'd like to get  
14 something done by October 1st. So last week of  
September  
15 if that can work.

16 CHAIRMAN DAUGAARD: You're talking about  
17 the week beginning Monday, the 22nd?

18 MS. ROBERTS: I am.

19 CHAIRMAN DAUGAARD: I could do it on the  
20 22nd or 23rd. I could not do it on any of the other  
21 three days.

22 MS. ROBERTS: You guys okay for the 22nd  
or  
23 23rd? Could you do it by DDN?

24 CHAIRMAN DAUGAARD: I could do the 24th  
by  
25 DDN.

□  
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1  
probably

MR. STAINBROOK: Actually, I could

2 do it on the 23rd. I'll just get somebody to take my  
3 place.

4 MR. AYLWARD: 23rd works for me.

5 CHAIRMAN DAUGAARD: Glenn.

6 MR. BARBER: I could do 23rd.

7 CHAIRMAN DAUGAARD: Paul. Carol.

8 MS. ROBERTS: The Department of Labor has  
9 meetings that morning, but we could do the afternoon.

10 CHAIRMAN DAUGAARD: 1 o'clock. 1 o'clock  
11 on the 23rd.

12  
we

MS. ROBERTS: In this room. If we -- if

13 can get the networks we will. And we'll let everybody

14  
schedule

know that. But I don't know -- we can't get the

15 for the networks right now so.

16 CHAIRMAN DAUGAARD: Yep.

17 MS. ROBERTS: Then we'll check with the

18 other ones. But the 23rd in the afternoon is like the

19  
22nd?

only time for you, Randy, you couldn't do it on the

20 Because I could throw that out to the other members then

21 in case one of them has a conflict.

22  
on

MR. STAINBROOK: I could try and make it

23 the 22nd. See what they have. They have the -- I could

24 probably make the 22nd work too if we have to.

25 MS. ROBERTS: We'll try for the afternoon

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1 of the 23rd for sure. And then see with the other four  
2 members that are absent if --

3 CHAIRMAN DAUGAARD: If we could get a  
4 couple extra people on the other day then we should  
5 probably divert to that, the 22nd. Randy, thanks for  
6 being flexible. Without objection I'll declare the  
7 meeting adjourned. Any objections to being adjourned?  
8 Thank you, everyone.

9 (Whereupon, the proceedings were  
concluded  
10 at 5:00 p.m.)

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C E R T I F I C A T E

STATE OF SOUTH DAKOTA    )  
  )SS.  
COUNTY OF HUGHES         )

I, Leslie A. Hicks, RPR, Official Court Reporter for the State of South Dakota, residing in Pierre, South Dakota, do hereby certify:

That I was duly authorized to and did report the testimony and evidence in the above-entitled cause;

I further certify that the foregoing of this transcript represents a true and accurate transcription of my stenotype notes.

Dated this 17th day of September, 2008.

\_\_\_\_\_  
Leslie A. Hicks, RPR  
Official Court Reporter

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