

Meeting Minutes
WORKERS' COMPENSATION ADVISORY COUNCIL
via Microsoft Teams Video Conference Call
July 12, 2021, 10:00 a.m. CDT

The meeting was called to order at 10:05 a.m. CDT by Chairman Scott Stern. Darcy Sorenson took roll call. A quorum was met.

Members Present: Russ Hohn, Jean Murphy, Jesse Smith, Randy Stainbrook, Chairman Scott Stern

Members Absent: Guy Bender, Brooke Bohnenkamp, Jason Dodson, Kory Rawstern

Others Present: Amber Mulder, Darcy Sorenson, Dawn Dovre, Chris Speck, Bob Mercer, Ryker Tieszen, Isabell Hernandez, Jason Pier, Sam Matson

Chairman Stern asked for a motion to approve the meeting agenda. Randy Stainbrook moved to approve. Jesse Smith seconded. Roll call was taken. **MOTION CARRIED** by 5-0 roll call vote.

Chairman Stern asked for a motion to approve the minutes of the July 1, 2020, meeting. Russ Hohn moved to approve. Jean Murphy seconded. **MOTION CARRIED** by 5-0 roll call vote.

Labor and Management Director Amber Mulder provided the Director's update. Mulder stated the state's workers' compensation system is functioning well and competes successfully with neighboring states. Effective July 1, 2021, through June 30, 2022, an overall average decrease of 0.9% was approved for the advisory loss costs in the voluntary market. An overall average rate level decrease of 1.0 percent was approved in the Assigned Risk Market from the previous year. This is the tenth consecutive decrease for loss costs in the voluntary insurance market. There was a moderate increase in claim frequency for the latest year. The indemnity and medical severity exhibit year-to-year variability, although both indicate upward trends when observed over the long-term.

Mulder stated that the Department brought no legislation impacting workers' compensation during the 2021 legislation session, however HB 1242, An Act to impose certain duties on providers of services under a case management plan of workers' compensation insurance policy and provide a penalty for a violation thereof, would have impacted the program. This legislation would have required providers of services to send correspondence to both employer/insurer as well as the employee, and prohibited misrepresentation of identity, credentials or duties by a provider to an employee under case management plan. This bill failed to make it out of the House Commerce and Energy Committee.

Mulder also reported South Dakota enacted HB 1046, An Act to limit liability for certain exposures to COVID-19. Section 6 of the bill created SDCL 21-68-6(3), which states the Act may not be construed to deem COVID-19 an occupational disease. Section 6 further states COVID-19 is not an occupational disease under state law.

Since the last Council meeting, Mulder said two workers' compensation cases harbored South Dakota Supreme Court decisions. *Billman v. Clarke Machine, Inc.* and *Sentry Insurance, A Mutual Company*, in which the Supreme Court reversed a circuit court ruling that affirmed the Department's finding an employee was not obviously unemployable and he failed to conduct a reasonable job search. In *Taylor Hughes v. Dakota Mill and Grain Inc.* and *Hartford Insurance*,

the Supreme Court affirmed a circuit court ruling that reversed the Department's finding that the injury was not compensable.

Chairman Stern opened the meeting for public comments.

Jason Pieper of Watertown South Dakota asked to be heard and stated he was the author of HB 1242 *"An Act to impose certain duties on providers of services under a case management plan of a workers' compensation insurance policy and provide a penalty for a violation thereof"*. from the 2021 Legislative session. Mr. Pieper stated he was before the WCAC today to accommodate the Legislative Committee request. Mr. Pieper shared his wife's experience as a schoolteacher who was injured by a student who threw a chair at her. Mr. Pieper recapped the medical treatment his wife received due to septic shock and sepsis as a result of being hit by the chair. Mr. Pieper then discussed how his wife's claim was denied by Claims Associates and two doctors and how he felt the process to determine compensability is not fair to the injured worker and he feels there is too much that happens without the injured worker involved. Mr. Pieper feels the state carries the financial burden in these cases and that in the end, his wife did sign-off on a settlement agreement that he felt could have been done much earlier in the process as opposed to dragging it out for four years.

Mr. Pieper wrapped up his comments by stating he felt the ALJ who handled her case and the DLR staff all treated her fairly and he felt she received a fair hearing.

Chairman Stern presented to the council dates for the next Council meeting. After a brief discussion, the Council agreed to meet in person on Wednesday, Nov. 17, 2021. Russ Hohn made a motion to approve the next meeting date of Nov. 17, 2021. Randy Stainbrook seconded the motion. **MOTION CARRIED** by 5-0 roll call vote. The time of the meeting is TBD.

The meeting was adjourned at 10:31 a.m. CDT.