

**Meeting Minutes**  
**WORKERS' COMPENSATION ADVISORY**  
**COUNCIL**

via Microsoft Teams Video Conference  
Call October 20, 2022, 10:00 a.m. CDT

The meeting was called to order at 10:00 a.m. CDT by Chairman Scott Stern. Darcy Sorenson took roll call. A quorum was met.

**Members Present:** Chairman Scott Stern, Brooke Bohnenkamp, Marcia Hultman Kate Lukkes, Kory Rawstern, and Randy Stainbrook.

Kory Rawstern, and Randy Stainbrook appeared via Teams Video Conference call.

**Members Absent:** Guy Bender and Russ Hohn, Jason Dodson, and Jesse Smith.

**Others Present:** Amber Mulder, Darcy Sorenson, Sarah Petrik, Doug Abraham, Tony Dorschner, Deb Mortenson, Gina Chapman, and Dan Nelson. Also, present via Teams Video Conference call were Micki Slykhuis, Justin G. Smith, Shawn Stricker, Representative Sue Peterson, Jason Pieper, Laura Hensley, Kristi Holm, Jennifer Andrisen Selezler, Susan Schulte, David Reiss, Holly Nagal, Patsy Mehlhaff, Brad Wilson, Matthew Weigel, Jessica Filler, Kristi Sandal, Clayton Grueb, Dick Tieszen, and Diana Johnson.

Chairman Stern asked for a motion to approve the minutes of the July 14, 2022, meeting. Council member Bohnenkamp moved to approve. Council member Rawstern seconded.  
**MOTION CARRIED** by 5-0 roll call vote.

Chairman Stern opened the floor to public comment, allowing Jason Pieper to speak. Mr. Pieper read a letter sent to Council submitted by his attorney Nancy Turback Berry regarding her proposal to reform South Dakota law to prevent nurse case managers from communicating secretly with injured workers' medical providers.

Chairman Stern then opened the floor to proponents of Mr. Pieper's proposal, hearing none, the floor was then opened to those who wanted to speak in opposition to the proposal.

Doug Abraham, representing American Property Casualty Insurance and the South Dakota Retailers Association, spoke in opposition to the proposed language stating first that the Council does not have to support this proposal in order for it to be brought during legislative session. He went on to state that this would not be a positive change. He explained that Nurse Case Managers are not always in the room and don't get all the information, and they play an important role in the treatment and need complete medical history, as well as the doctor. In conclusion, Mr. Abraham stated that it's not a good idea to make changes based on one person's bad experience.

Deb Mortensen of the Association of General Contractors spoke in opposition stating that those she represents are concerned that this will slow down treatment and delay return to work.

Representative Sue Peterson spoke in support saying that as a Representative she hears daily from people who need help. She said the Pieper case is not an isolated case and that Mr. Pieper's motives are good, he just wants to make the process better. She went on to state that she supports this change, and that Mr. Pieper does not need the Council to move this proposal forward but is going through a process set in place long ago.

Justin Smith of Woods Fuller Law Firm spoke in opposition stating the Nurse Case Manager fills a role to get the claimant back to work and is an intermediary. He stated that he hasn't seen evidence of "secret" communications and that we should not make laws on specific exceptions.

Mr. Pieper spoke stating that the Nurse Case Manager is the first person on the scene after an injury. He went on to say that the order of events favors the Nurse Case Manager and Insurer. Mr. Pieper also stated that the Nurse Case Manager reviews the medical records and decides on compensability. He stated all he is asking for is to get the documents between the doctor and Nurse Case Manager and you don't hear from other claimants because they have to sign a non-disclosure agreement or fear the repercussions. He concluded by stating that no one is saying a Nurse Case Manager cannot talk to providers or staff, just that the claimant wants copies of that communication and this proposal to go to the legislature.

Mr. Abraham clarified Mr. Pieper and stated the Nurse Case Manager does not handle claims or determine compensability - that is a claims adjuster's job.

Chairman Stern asked Mr. Pieper about the language in the proposal regarding written and oral communication. He also asked whether the claimant would benefit from being present for oral communications and whether that would slow down the process.

Jason Pieper stated that there is a flaw in the South Dakota system. The fiduciary, claims adjuster, and Nurse Case Manager all work in the same office. He concluded by stating that all he wants is for claimants to have copies of the 3 areas stated in the proposal.

Chairman Stern spoke directing his comment to the opponents, saying that transparency in government is important and asked why this would be a good thing for claimants to have this information.

Mr. Smith responded to Chairman Stern saying where is the evidence that they don't have transparency? He further stated the records show notations of communications between doctors and Nurse Case Managers and the claimant has access to their own records.

Mr. Abraham stated to Chairman Stern's question that all this information is discoverable and that the Administrative Law Judges make sure that happens. He further stated that settlement agreements are not forced on the claimant and that the Department of Labor and Regulation approves them. Finally, he stated that you need to weigh the evidence before we change this.

Representative Peterson spoke to the question of what would be harmful from not having the claimant present for oral communication stating that the Nurse Case Manager writes the notes from her perspective and the claimant should be there for those conversations and the oral piece (of the proposal) is important. She concluded by saying there needs to be balance, honoring the rights of claimants, and transparency. Right things sometimes cost money.

Council member Bohnenkamp asked about the accessibility of obtaining this information, to which Mr. Abraham stated that Administrative Law Judges issue orders for discovery. This is a basic request, and this information is in the file.

Council member Lukkes asked if the claimant needed an attorney to get this information. Mr. Abraham stated that getting the full case file happens when you get into the case. Further, he stated that everything is in the record, and documented in the file.

Secretary Hultman asked Mr. Pieper if he would say that having access to this information, some cases would not be contested? Mr. Pieper responded stating that is what this proposal is trying

to avoid. He further stated that had his wife had all the information, she would not have had to hearing.

Mr. Pieper said that by having this information it would save the Department of Labor and Regulation time and money. He mediated his wife's case twice and was offered settlements both times before they filed the Petition for Hearing. Finally, he said that had they had all the information they could have saved the state money.

Council member Rawstern spoke saying that with was an educational process for him. He stated that he agrees with Mr. Abraham who said people don't have to go through the Workers' Compensation Advisory Council, but why would we not support this to allow it to be looked at by the Legislators?

Chairman Stern responded to Council member Rawstern stating that while this Council isn't the Legislature, you feel both bodies bring value, so this should be reviewed. He reiterated what he heard Mr. Rawstern say, Advance with no recommendations so legislator can review? He then asked Council member Rawstern to restate his motion.

Council member Rawstern replied saying he moves to advance this proposal to the legislature for vetting. He further stated I move the council to support that this goes to the Legislative process to be vetted.

Council member Randy Stainbrook seconded the motion.

Council member Bohnenkamp states that just tells the legislature this needs to be looked at and we have no authority to do anything more.

Chairman Stern called for a vote on Council member Rawstern's motion to advance this proposal to the legislature without any recommendations from Council. **MOTION CARRIED** 5-0 roll call vote.

Susan Schulte, NCCI Department of Labor Relations Executive, presented the 2022 Medical Data Report for South Dakota. Ms. Schulte reviewed payments made for various items and talked about where South Dakota compares with Reginal and Countrywide. Ms. Schulte shared that they have a new medical data dashboard that is interactive and can be found at NCCI.com.

The 2022 Workers' Compensation Draft Report was presented by DLR Labor and Management Division Director Amber Mulder for review and discussion.

Chairman Stern entertained a motion to approve the report. Stainbrook moved to approve. Bohnenkamp seconded. **MOTION CARRIED** by 5-0 roll call vote.

Chairman Stern stated the next meeting will be in July. He asked Council members to submit dates they are available.

Chairman Stern asked for other business. Hearing none, he asked for a Motion to adjourn. Council member Lukkes made a motion to adjourn, and Council member Bohnenkamp seconded the motion. The meeting adjourned at 11:24 a.m.