

**South Dakota Department of Labor  
Workers' Compensation Advisory Council  
2009 Annual Report**

This document serves as the report of meetings, discussions, and recommendations of the Workers' Compensation Advisory Council, pursuant to SDCL § 62-2-10. Council members include Lt. Governor Dennis Daugaard (chair), Paul Aylward, Glenn Barber, Guy Bender, Jeff Haase, Connie Halverson, Carol Hinderaker, Chris Lien, and Randy Stainbrook, and nonvoting members Department of Labor (DOL) Secretary Pamela Roberts and Department of Revenue and Regulation Secretary Paul Kinsman. The report is available to any interested person or groups and can be found on the DOL website at [www.sdjobs.org](http://www.sdjobs.org).

Overall, South Dakota's workers' compensation system continues to be in good shape. Base premium rates for 2009-10 increased an average of 3.5 percent in the voluntary market, with a 15-point "swing" up and down (a maximum increase of 18.5 percent or decrease of 11.5 percent.) The involuntary or "assigned-risk" rates remained flat. These base rates do not factor in "experience-modification" adjustments, which change some individual employers' premium rates based on their injury claims.

Council action for 2009 began with a meeting on July 29, 2009. The Council received the Division of Labor and Management report about the state of the system and 2009 workers' compensation legislation. Discussion items were established and public testimony was received on any items of interest by any person.

The Council had its second meeting on September 29, 2009. Agendas and minutes for each meeting can be found at [www.sdjobs.org](http://www.sdjobs.org). A summary of Council actions at their meetings were as follows:

**Issue #1: Required training for insurance representatives.**

**Summary:** The Council continued discussions from 2008 on a recommendation that insurance representatives receive training in South Dakota workers' compensation laws and procedures before handling claims.

**Public Testimony:** Merle Scheiber, Director for the South Dakota Division of Insurance, testified that The National Association of Insurance Commissioners (NAIC) discussed a Guideline for adjuster licensure in the Fall of 2008. Only one state has adopted the Guideline. Doug Pavel renewed his concern that adjusters need mandatory training, and the families of workers who suffer workplace fatalities need access to correct information about workers' compensation benefits. Scheiber encouraged Pavel to request the Division of Insurance investigate his complaints.

**Council Action:** The Council unanimously agreed further action should await the Pavels' situation being investigated by the Division of Insurance, to determine what occurred, and whether it is an unusual situation among state insurers or one that requires corrective

action. The Division will also work with the workers' compensation carriers doing business in South Dakota and provide the Council with an overview of how a claim is typically handled.

### **Issue #2: Burial expenses.**

**Summary:** In 2008, the Council recommended the maximum burial reimbursement set in SDCL §62-4-16 be increased from \$5,000 to \$7,500. The 2009 Legislature adopted this change. Council member Aylward proposed that the Council look at recommending increasing this maximum to \$10,000.

**Public Testimony:** Aylward noted the state funeral directors reported to the 2009 Legislature the average cost of a basic South Dakota funeral was \$10,000.

**Council Action:** Paul Aylward MOVED that the Council recommend increasing the maximum burial reimbursement to \$10,000. SECONDED by Randy Stainbrook. Motion PASSED unanimously.

### **Issue #3: Applying medical fee schedules to out of state providers.**

**Summary:** The Department of Labor, by rule authorized by SDCL §62-7-8, determines the amount beyond which charges for workers' compensation medical services are excessive. The law does not specifically grant DOL the authority to set maximum reimbursements for out of state providers. It has been proposed the law be clarified and DOL apply the fee schedule used in the jurisdiction where the medical services were performed.

**Public Testimony:** Susan Simons, a Sioux Falls attorney speaking on behalf of Risk Administration Services and Dakota Truck Underwriters, proposed an amendment to §62-7-8 which would declare a medical fee excessive which exceeds the maximum amount allowed by the fee schedule of the state where service was provided. Cheryl Chamberlain, speaking on her own behalf, expressed concern that fees charged in excess of the fee schedule would be balance-billed against the employee. It was explained that DOL rules currently prohibit balance-billing for workers' compensation claims and there would be no negative impact to an injured worker.

**Council Action:** Glenn Barber MOVED that the Council support amending SDCL §62-7-8, unless it were demonstrated that employees would be adversely impacted by the proposal. SECONDED by Connie Halverson. Motion PASSED unanimously.

### **Issue #4: Prosecution costs.**

**Summary:** An employee can request a hearing before DOL when there is a dispute with an employer or insurer concerning benefits. It was asserted that attorneys are not handling these claims for employees because they are too expensive for the attorney to prosecute.

**Public Testimony:** Drew Johnson, an Aberdeen attorney speaking on his own behalf, testified about a workers' compensation case he handled in which the cost of medical depositions, participating in the hearing, and the appeal to circuit court were high, and in his view gave an unfair advantage to the defense.

**Council Action:** The Council asked Johnson to propose specific legislation for it to consider.

**Issue #5: Definition of work-related injury.**

**Summary:** SDCL §62-1-1(7) says a work injury must be proven by medical evidence, and the work injury must be a major contributing cause for the employee's claimed condition. It was asserted this definition needs to be changed.

**Public Testimony:** Drew Johnson testified he had a circuit judge rule in a workers' compensation case that medical evidence was required to show a work incident was "the precipitating event" for the employee's injury, and the cost burden of making that showing would be unnecessarily high.

**Council Action:** The Council asked Johnson to propose specific legislation for it to consider.

**Issue #6: Permanent disfigurement/disability.**

**Summary:** SDCL §62-4-6 says an employee is entitled to permanent disability benefits "for the specific medical impairment herein mentioned." Part 24 of that law compensates for permanent disfigurement "or permanent disability resulting from injury to any part of the body not hereinbefore listed." It is asserted the schedule of losses in the statute should specifically include the loss of female internal organs.

**Public Testimony:** Drew Johnson testified he had a circuit judge rule in a workers' compensation case that a woman having to have a hysterectomy as a result of a work injury could not collect permanent disability under 62-4-6(24), and the law should be amended to specifically provide for such a benefit.

**Council Action:** The Council asked Johnson to propose specific legislation for it to consider.



The Council sincerely appreciates the information and opinions it received at its meetings this year, and invites any member of the public with an interest in improving our state's workers compensation system to participate in the meetings to be scheduled for 2010. As required by SDCL §62-2-10, a copy of this report will be provided to the Governor and Legislature for their consideration.

Respectfully submitted on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by the Workers' Compensation Advisory Council.

Members:

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Dennis Daugaard, Chair

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Carol Hinderaker

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Paul Aylward

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Chris Lien

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Glenn Barber

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Randy Stainbrook

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Guy Bender

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Pamela Roberts

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Jeff Haase

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Paul Kinsman

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Connie Halverson