

**South Dakota Department of Labor
Workers' Compensation Advisory Council
2010 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.

The National Council on Compensation Insurance (NCCI) reports the frequency of workers' compensation claims in South Dakota continues to decrease, though that decrease is leveling off. The severity of those claims, particularly the cost of medical treatment, continues to rise. This has been the trend for the past several years and is associated with the increasing age and experience of South Dakota's workforce.

South Dakota's base premium rates for Workers' Compensation insurance for 2010 – 2011 increased an average of 4.4 percent in the voluntary market, with a 15-point "swing" up and down (a maximum increase of 19.4 percent or decrease of 10.6 percent.) The involuntary or "assigned-risk" rates were increased by 5.8 percent. These base rates do not factor in "experience-modification" adjustments, which change some individual employers' premium rates based on their injury claims. The increases were the product of several unusually large claims paid during the five-year period used to calculate rates.

Council action for 2010 began with a meeting on August 23, 2010. The Council received the Division of Labor and Management report about the state of the system and 2010 workers' compensation legislation. The 2010 Legislature passed the provisions recommended by the Council to increase the maximum burial reimbursement from \$7,500 to \$10,000, and to allow insurers to apply the fee schedule of the state in which medical services are provided while prohibiting provider balance-billing.

Discussion items were established and public testimony was received on any items of interest by any person. The Council held its second meeting on October 5, 2010. Meeting minutes can be found at www.sdjobs.org. A summary of public testimony follows:

Public testimony was given by Mr. Doug Pavel and Mrs. Carol Pavel from Rapid City about the death of their son. The Pavels restated four issues which have been ongoing discussion items with the Council: (1) Increase the statutory burial reimbursement amount. The 2009 legislature increased the amount from \$5,000 to \$7,500, and the 2010 legislature increased the amount from \$7,500 to \$10,000. The Pavels are satisfied this issue has been addressed. (2) Improve the accountability, communication, and information process for insurance representatives' and nurse case managers consulting with victims of workers' compensation by requiring training. (3) Provide appropriate information or hand-outs that would be available during the consultation


process for family members of severely injured or deceased workers. (4) Provide monetary benefits to non-dependent family members of employees who suffer from a severe or fatal work injury.


The South Dakota Division of Insurance gathered information regarding the concerns raised by Doug and Carol Pavel in previous Council meetings. The Pavels alleged case manager Debates unintentionally, but incorrectly, told them they would be reimbursed for the travel expenses associated with staying with their son, and the Pavels were unable to communicate with Acuity afterward. (Acuity did not testify.) Director Merle Scheiber reported the following: (1) Scheiber reported Acuity Insurance adjusted the Pavels' claim and contracted with Alaris, a medical case management plan, to provide a nurse case manager, Stacy Debates. (2) Soon after their son Brian's injury, the Pavels retained an attorney. (3) Acuity's adjuster was informed of this representation. (4) As standard practice, Acuity no longer communicated with the Pavels, and only communicated through their attorney. (5) The attorney and Acuity communicated several times, and payment was made through the attorney. (6) Later on, the attorney no longer represented the Pavels, but Acuity was not notified and did not know counsel was no longer retained.

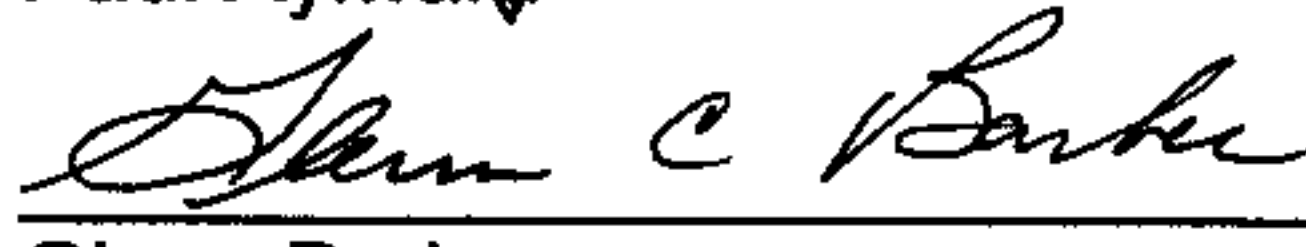
There was no further public testimony, suggestions, or comments on any other aspects of the workers' compensation system.

Respectfully submitted on October 5, 2010, by the Workers' Compensation Advisory Council.

Members:


Dennis Daugaard, Chair


Paul Aylward



Glenn Barber



Guy Bender



Jeff Haase



Connie Halverson


Carol Hinderaker


Chris Lien


Randy Stainbrook


Pamela S. Roberts


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