

**South Dakota Department of Labor and Regulation
Workers' Compensation Advisory Council
2011 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 Matt Michels (chair), Paul Aylward, Glenn Barber, Guy Bender, Jeff Haase, Connie Halverson, Carol Hinderaker, Chris Lien, and Randy Stainbrook, and nonvoting member Department of Labor and Regulation (DLR) Secretary Pamela Roberts. The report is available to any interested person or groups and can be found on the DLR website at dlr.sd.gov.

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 2011 – 2012 increased an average of 1.2 percent in the voluntary market, with a 15-point "swing" up and down (a maximum increase of 16.2 percent or decrease of 13.8 percent). The involuntary or "assigned-risk" rates were decreased by 0.4 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 2011 began with a meeting on August 3, 2011. The Council received the Division of Labor and Management report about the state of the system.

Discussion items were established and public testimony was received on any items of interest by any person.

DLR briefed the Council on its proposed administrative rule changes. The rules would simplify the physician fee schedule, revise the registration process for medical case management plans, eliminate outdated treatment standards, and require insurers to complete DLR's monthly payment report form (DLM-107).

Larry Kucker, Benefits Administrator for the South Dakota Bureau of Personnel, provided information on South Dakota hospital charges and costs, asserting there is as much as a 70 percent difference between charges and costs. Mike Taylor from NCCI and James Marsh from DLR also provided reports about medical benefit costs.

The Council held its second meeting on September 28, 2011. A summary of Council actions at their meetings follows:

Issue #1: Employee notice periods.

Summary: The Council was asked to recommend amending SDCL 62-7-10, which requires an employee to report a workers' compensation injury claim in three business days; the proposal would increase the reporting period to seven days.

Public Testimony: The State Bar testified and presented correspondence suggesting the current notice period is too short, and that seven days is more reasonable without being excessive. This proposal from the Bar was the result of a compromise among plaintiff and defense counsel on the committee in conjunction with the proposal amending the definition of "medical practitioners" in Issue #2.

Council Action: Paul Aylward MOVED and Randy Stainbrook SECONDED that the Council recommend increasing the notice period from three to seven days; Motion PASSED unanimously.

Issue #2: Independent medical examinations by out of state practitioners.

Summary: The Council was asked to recommend amending SDCL 62-1-1.1, which defines "medical practitioners." This definition is used in statute SDCL 62-7-1, dealing with independent medical examinations. The proposal would eliminate the requirement that the practitioner be licensed specifically in South Dakota.

Public Testimony: Dennis Finch, of Finch Maks in Rapid City; Charles Larson, of Boyce, Greenfield, Pashby & Welk in Sioux Falls; Michael Simpson, of Julius and Simpson in Rapid City; and Members of the South Dakota State Bar's Workers' Compensation Committee (The Bar) testified and presented correspondence. Defense counsel asserted that independent medical examinations are increasingly difficult to obtain, and practitioners licensed in another state should be able to perform them. This was the other half of the committee compromise considered in Issue #1.

Council Action: Carol Hinderaker MOVED and Guy Bender SECONDED that the Council recommend the definition of medical practitioner be changed; Motion FAILED with 4 Yea (Bender, Halverson, Hinderaker, Lien) and 4 Nay (Aylward, Barber, Michels, Stainbrook).

Issue #3: Allowing other insurance to cover claims when workers' compensation coverage is denied for any reason.

Summary: The Council was asked to recommend amending SDCL 62-1-1.3, which requires other insurance to cover claims when workers' compensation denies coverage for lack of work-relatedness; the proposal would require other insurance to cover when workers' compensation denies coverage for any reason.

Public Testimony: The Bar testified and presented correspondence suggesting that employees can be denied insurance coverage for necessary medical treatment under both workers' compensation and other insurance under the current law, and the proposal would both simplify the rules and ensure employees' claims would be covered.

Council Action: Chris Lien MOVED and Glenn Barber SECONDED that the Council recommend other insurance cover when workers' compensation denies a claim for any reason; Motion PASSED unanimously.

Respectfully submitted on October 26, 2011, by the Workers' Compensation Advisory Council.