

Tennessee Advisory Council on Workers' Compensation
MINUTES
March 16, 2015, 3:00 p.m. Central
Legislative Plaza, Room 31
301 Sixth Avenue North
Nashville, Tennessee

Members Present:

Voting Members

Chair Designee, Christy Allen, Assistant Treasurer, Legal, Compliance & Audit

Kerry Dove

Bruce Fox

John Garrett

Bob Pitts

Gary Selvy

Paul Shaffer

Non-Voting Members

John Burleson

Dr. Graves

Abbie Hudgens

John Harris on phone

Lynn Lawyer

Jerry Mayo

Dr. Murrell on phone

Gregg Ramos

Mike Shinnick

Representative Jimmy Eldridge

Lynn Schroeder, Administrator

The Chair, Assistant Treasurer, Ms. Christy Allen, called the meeting to Order at 3:05 p.m. She noted that a physical quorum was present, and that some non-voting members were present on the phone.

The Chair expressed the regrets of the Treasurer in not being able to attend as he was in the Pension and Insurance Meeting several rooms down addressing a Treasury bill.

The Chair welcomed and congratulated Mr. Bruce Fox for his appointment as a voting member representing employees after eight years as an attorney representative on the Council, and Mr. John Garrett for his appointment to the Council as a voting employee representative.

The Chair called the next item on the agenda which was the approval of the Minutes of the Council's October 14, 2014 meeting. A motion to approve the minutes was made by Mr. Fox, seconded by Mr. Dove, and a roll call resulted in unanimous vote, thereby approving the minutes of the Council's October 14, 2014 meeting.

The Chair called the next item on the Agenda, that being **HB0094/SB0105**. Mr. Troy Haley, attorney and legislative liaison for the Division of Workers' Compensation, introduced Chief Judge Ken Switzer of the Court of Workers' Compensation Claims and Presiding Judge Marshall Davidson of the Workers' Compensation Appeals Board. He then gave a brief summary of the Division's administration bill. He indicated that the proposed bill was a clarification of the Reform Act of 2013 covering injuries after July 1, 2014 and includes corrections to inconsistencies in court procedures, filing fees and statutes of limitation.

Mr. Haley explained that under the language of the proposed bill, there are several sections wherein there are changes to the existing law:

- first, utilization review firms will be required to have Utilization Review Accreditation Commission (URAC) or the National Committee for Quality Assurance (NCQA) certification to improve overall medical treatment and provide a level playing field. The Division does not have the expertise or manpower to monitor utilization review providers;
- second, the definition of qualified physician for pain management purposes will now be the same as the Department of Health's pain management treatment guidelines;
- third, Second Injury Fund attorneys will be paid from the fund rather than the general fund;
- fourth, the Division of Workers' Compensation name would be changed to the Bureau of Workers' Compensation;
- fifth, the Court of workers' Compensation claims statute of limitations would be extended to two years if permanent partial disability payments were made to an employee in an attempt to settle a claim without the Court of Workers' Compensation approving that settlement;
- sixth, judges will be able to swear in witnesses, appoint guardians ad litem and enforce judgments on uninsured employers; and
- seventh, the Appeals Board duties and procedures are set forth in detail.

There was a question from John Garrett as to the reasoning of the addition of the appointment of guardians ad litem.

Mr. Haley explained that death cases previously had to be waived out to the court system. A death case presented itself this summer, which caused the Division to realize it was not properly addressed in the Code, so it needed to be added.

Dr. Murrell posed a question about the language regarding URAC and NCQA accreditation. He inquired if individual providers are accredited during reviews or if it will be accreditation of the UR organization that then has an internal means of accrediting their reviewers. He further inquired as to what makes them accredited.

Abbie Hudgens responded that it would not come up at each review, but that the certification/accreditation would be for the utilization review companies, which then renew, once every 3 years.

Mr. Haley added that accreditation services go onsite, do an investigation and provide assistance and that a fairly substantial fee is paid - \$35,000 for 3 year accreditation for URAC, \$22,000 for 2 year with NCQA. He indicated that 80% of the Tennessee providers are already accredited.

Dr. Murrell further asked for clarification that it was providers, not individuals, to which Mr. Haley responded in the affirmative.

Lynn Lawyer inquired as to why the statute of limitations was being extended to 2 years.

Mr. Haley responded that it had come to the Division's attention that some insurance carriers were sending out a check along with documents for 1x the rating, stating that this was the settlement, without it first being approved. It is possible that the other multipliers had not kicked in yet and if the one year statute of limitations ran from when that initial check was cut, it may be beyond that one year date when some additional benefits came due.

A **motion** made by Mr. Pitts to recommend approval to the General Assembly of the proposed bill. Mr. Pitts encouraged staff to consult with Workers' Compensation Counsel and make sure the standing committee understands the two points asked/answered.

Seconded by Mr. Fox and a roll call **resulted in a unanimous vote to recommend approval.**

The Chair called the next item on the agenda, that being **HB0178/SB0174**, which adds cancellation and reinstatement dates of workers' compensation policies to the list of 3 other items to be open to the public. Mr. Fox **moved** to recommend the bill for approval, which was **seconded** by Mr. Dove. The roll was called which resulted in a **unanimous vote for approval.**

The Chair called the next item on the agenda, that being **HB0316/SB0581**, was noted to be a caption bill so Council deferred recommendation until its next meeting.

The Chair called the next item on the agenda, that being **HB0558/SB0171**, which proposes language to specifically name the exempt construction service provider and independent contractor as exempt from premiums to clear up uncertainty. Additionally, it requires defense and loss adjustment expenses be included in the reporting. Ashley Arnold, of Insurors of Tennessee, spoke briefly about the bill and explained that this bill was being brought as a result of a Tennessee Court of Appeals case from last year, Continental Casualty Company vs. Theraco, Inc. Specifically, as stated this bill will slightly amend the language in supplementary rate definition and also the loss adjustment expense definition. She clarified that the defense costs incurred under a workers' compensation policy are already included in the rate determination and should not be collected through a separate premium charge. The intent of the bill is to qualify and codify how loss costs are calculated and to avoid full premiums being charged for person's who have been determined to be independent contractors. It does not change the seven factors for determining who is an independent contractor. Mr. Pitts **moved** for a positive recommendation to the bill. Roll resulted in a **unanimous vote for recommending** the bill.

The Chair called the next item on the agenda, that being **HB0589/SB1061**, which proposes that prescription drugs that have not been prescribed by a TN licensed physician be added to the list of drugs for purposes of drug testing in the workplace. Further language proposes that the employer be certain that the drug was in the employee's system at the time of the incident.

Ms. Hudgens indicated that she was unsure how an employer would know what drugs were prescribed by an out of state physician. She indicated that they may be the same drugs that are in the TDOT regulations and could result in creating more problems than it corrects.

Mr. Pitts inquired if a potential correction would be to make it clear that it is on Tennessee's drug list.

Ms. Hudgens indicated that it may not be more complicated than that. She further indicated that she was evaluating from a practical perspective how this would work itself out in the workplace; it could require the employer to do an investigation, and there is no indication that the employer would have knowledge of what drugs were provided by an out of state physician.

Mr. Fox asked for an explanation for what problem this bill was intended to address. He noted that there are multiple cities that are on state lines where medical treatment may be received from someone just across the state line and within the same metropolitan area, so he questioned where this language would leave those individuals.

Ms. Hudgens indicated that she did not know the intent but saw a potential problem from the language.

Mr. Pitts recommended, that in light of the fact that the Council needed more information, the bill be rolled to the next meeting to enable the Council to obtain additional information so as not to cause harm by taking uninformed action. Without objection, **consideration of the bill was deferred to the next meeting.**

The Chair called the next item on the agenda, that being **HB0654/SB0644**, Representative Eldridge indicated that it was not going to be run this year and was going to be reviewed this summer, so it was rolled to the next meeting.

The Chair called the next item on the agenda, that being **HB0821/SB0675**, which was noted to be a caption bill so the Council deferred recommendation until its next meeting.

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The Chair called the next item on the agenda, that being **HB1024/SB1255**, which was noted to be a caption bill so the Council deferred recommendation until its next meeting.

The Chair called the next item on the agenda, that being **HB1073/SB1328**. The bill proposes language that would allow entities that administer pharmacy benefits' programs for Tennessee Workers' Compensation to fall outside the definition of a pharmacy benefit plan or program and therefore be exempt from the requirements of itemized reporting on each individual claim under the Fair Disclosure of State Funded Payments for Pharmacists' Act.

Mr. Pitts inquired of Ms. Hudgens the position of the Division. Ms. Hudgens indicated that the Division deferred to the wisdom of the legislature. There was further discussion between the members that there are certain provisions related to TennCare expenditures that do not apply to workers' compensation, and this appeared to be a correction/clarification.

Council members asked to roll to the next meeting and ask the sponsor to be in attendance and for **consideration of the bill to be deferred to the next meeting.**

The Chair called the next item on the agenda, that being **HB1246/SB1247** which proposes language that a volunteer firefighter's wages, for the purpose of Title 50, Chapter 6, shall be determined by multiplying their call rate times 40 hours, regardless of the actual number of hours worked.

Mr. Fox **moved** for approval, which was **seconded** by Mr. Shaffer. Discussion was held by council members.

Mr. Fox answered inquiry and explained that the rate that would be used for 40 hours would be the same rate as that of a regular employee of the fire department.

Mr. Pitts inquired about the hourly rate, where it would come from and whether that determined compensation rate for workers' compensation injury calculations.

Mr. Fox responded in the affirmative that it would establish the injured worker's compensation rate for temporary total disability (TTD) and permanent partial disability (PPD).

Clarification was made by Mr. Pitts that the principal concern of the three employer representatives was the application of the 40 hour concept to part time volunteers.

Mr. Fox pointed out that if a new employee is injured on the first day of the job and necessarily has no wage history, that is the methodology presently utilized. The average weekly wage for a similarly situated employee is applied to that person. He stated that this bill would provide the same result.

A roll call vote resulted in the three employee representatives voting for and the three employer representatives voting against the bill, thereby resulting in **no recommendation from the Council.**

The Chair called the next item on the agenda, that being **HB0997/SB0721**, which proposes a Tennessee Option for financially stable employers with at least 100 employees that would enable them to opt out of Chapter 6 of Title 50 under which the Division of Workers' Compensation has oversight for workers' compensation benefits, and design their own employee injury benefit plan with certain minimum requirements and caps per individual and occurrence. The language of the bill also proposes to establish, within the TN Insurance guarantee association, a Tennessee Option guarantee fund as a separate account.

Senator Green presented the Tennessee Option bill, explained what the states of Texas and Oklahoma (where they currently have an option) are experiencing, and that is employee satisfaction that is higher and costs that are significantly lower. He informed that insurance rates per \$100 of payroll in Tennessee are about \$1.30 as compared to those employers in Texas who opt out, who are at 60 cents. It results in less than half the cost and better employee satisfaction. Companies retain the employee and shepherd the workers' compensation rehabilitation process helping the employee come back to work instead of an outside insurance company handling claims.

Senator Green explained that companies are managing their own workers' compensation in Texas where there are no minimum benefits; however, the liability risk is on the employer. In Oklahoma they did the opposite, established minimums identical to the state plan, but the employee had no recourse.

Senator Green indicated that this bill combined the best of those two states' plans and included minimums as well as an amendment to address those issues the Administration raised. He indicated that the amendment was being drafted in legal, and that although the Council has a summary, the amended bill is not yet available but may be available March 17, 2015. He informed that the amendment brings the benefits to a better level in many aspects than the current workers' compensation system. Senator Green indicated that employee satisfaction in Texas is exceptional.

Mr. Fox asked for clarification that the Council did not have the final version of the bill.

Senator Green responded that that was correct.

Representative Eldridge inquired if the amendment will remedy the issues presented by the lawsuit in Oklahoma.

Senator Green indicated that he was not certain of all the details of the Oklahoma lawsuit, but that others were present to answer legal details. He believed they had addressed all of the Administration's issues.

Mr. Mayo inquired as to why there was a need for this option when the Reform just took place and its effects are not yet known.

Sen. Green explained that there are industries that still would prefer the option regardless of the Reform.

Gregg Ramos also suggested that it would make sense to wait to see the effects of the reform.

Sen. Green stated that even if the Reform works perfectly, there are businesses in the state of Tennessee that want to have the same rights as the municipalities.

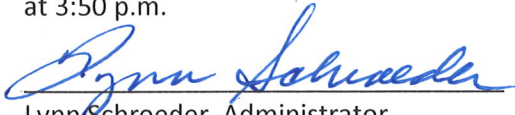
Mr. Ramos expressed an interested in the source of the studies that Senator Green cited that showed satisfaction of employees in Texas. Mr. Ramos indicated that he was a member of a nationwide workers' compensation attorneys group, and the reports he had seen from Texas are almost universally not a state of satisfaction, but in condemnation of the workers' compensation system indicating that it was almost totally ineffective for employees.

Sen. Green indicated that he would get Mr. Ramos that information.

Mr. Fox **moved** that in light of the fact that the Council did not have the final version of the bill in front of it, the Council defer any action on this bill or further discussion until it had the final version in front of it and an opportunity to evaluate and discuss it publicly. **Seconded** by Mr. Dove. Roll call resulted in a **unanimous decision to defer recommendation on the bill to the next meeting.**

The next item on the agenda was a request from Ms. Hudgens to establish a subcommittee that would develop a new set of measures to be brought back regarding the statistical analysis that is done every year. The Chair informed that the matter was discussed with Treasurer Lillard earlier and his recommendation was that rather than a subcommittee, Ms. Hudgens, Ms. Schroeder and the contractor, Mr. David Wilstermann, work together, consult with the members of the Council as appropriate, and bring back a recommendation for later consideration. There was no objection.

Chairman Allen called for any other business to come before the Council, and, seeing none, a **motion** to adjourn was made by Mr. Pitts, **seconded** by Mr. Fox, and the Council was **adjourned** at 3:50 p.m.



Lynn Schroeder, Administrator
Advisory Council on Workers'
Compensation



Christy Allen, Assistant State Treasurer
Legal, Compliance and Audit
Chairman Designee, Advisory Council on
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