

**WORKERS' COMPENSATION ADVISORY COUNCIL
MINUTES ~ MAY 14, 2007~ MEETING [11:00 A.M.]
FIRST FLOOR HEARING ROOM
ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE**

The meeting was called to order at 11:00 a.m. by Mr. Dale Sims, State Treasurer. A quorum of voting members was not physically present; therefore it was necessary to conduct the meeting electronically. The following lists each member of the Advisory Council and indicates whether they attended the meeting:

***CHAIR:** Dale Sims, State Treasurer - Present

***VOTING MEMBERS:**

Employee Representatives

- > Jack A. Gatlin - Attended electronically by telephone
- > Jerry Lee - Attended electronically by telephone
- > Othal Smith, Jr. - Attended electronically by telephone

Employer Representatives

- > Thomas Hayes - Absent
- > Bob Pitts - Present
- > Gary Selvy - Present

***NONVOTING MEMBERS:**

- Kitty Boyte [TDLA representative] - Present
- Tony Farmer [TTLA representative] - Attended electronically by telephone
- Kenny McBride [local governments representative] - Absent
- Jerry Mayo [insurance companies representative] - Absent
- Sam Murrell, MD [health care providers representative -TMA] - Absent
- A. Gregory Ramos [TBA representative] - Attended electronically by telephone
- David Stout [health care providers representative-THA] - Absent

***EX OFFICIO MEMBERS**

- Commissioner Leslie A. Newman - Designee was present.
- Commissioner James G. Neeley - Present

The Workers' Compensation Advisory Council met to consider proposed amendments to SB 1775 (Southerland) and SB 445 (Burchett). The issues addressed by these proposed amendments were discussed by the Council at its meeting on April 20, 2007.

ACTION: The following summarizes the comments of the Council concerning the proposed amendments:

▶ **AMENDED** **SB 1775 by Southerland / HB 2128 by Fitzhugh**

Comments of the Advisory Council

*Section 1 of Amendment

Related to receipt of unemployment benefits and temporary disability benefits for the same time period.

The members of the Advisory Council believed this amendatory language would codify what has been the general practice of the Department of Labor and Workforce Development to recover unemployment benefits received for a period when the employee also receives temporary disability benefits.

*Section 2 of the Amendment

Related to penalties against the parties or representatives for failure to mediate in good faith at benefit review conferences.

The Advisory Council expressed concerns regarding the subjective nature of a specialist's determination that the parties or their representatives have not mediated in good faith in face of the mandatory penalty language ("shall"). The representative of the Tennessee Defense Lawyers Association, Kitty Boyte, had concerns that in those instances where an employer/insurer has denied a claim and the Department has subsequently ordered the payment of benefits the employer or attorney will be subject to a fine if they continue to press their denial of the claim and refuse to offer to settle the claim at the mediation.

The voting members of the Council were in agreement that there is nothing wrong with all parties and their representatives being subject to the requirement to mediate in good faith as it puts everyone under the same need to respond to the mandatory mediation process honorably. However, the voting members expressed concern that the mandatory penalty language ("shall") may cause problems because a specialist is required to file comments concerning the failure to mediate in good faith which is forwarded to some other department employee who determines the penalty. The members unanimously agreed that it would be better if the penalty provision is permissive ("may") rather than mandatory.

▶ **AMENDED** **SB 445 by Burchett / HB 454 by Hackworth**

Comments of the Advisory Council

The Advisory Council members indicated their understanding that the proposed amendment is a result of negotiations among the interested parties and believed all parties are in agreement with this proposal.

However, the Advisory Council members suggested that the language in Section 1(a) that refers to “rates ***other than*** those provided under the workers’ compensation medical fee schedule” may be problematic as the present Medical Fee Schedule Rules prohibit payments to medical care providers in excess of the rates set by the fee schedule. Therefore, the Advisory Council members concurred that it would be better if the language were changed to read “rates ***lower than*** those provided under the workers’ compensation medical fee schedule” in order to comply with the current Medical Fee Schedule Rules.

The meeting was adjourned at Noon.