

STATE OF TENNESSEE

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Advisory Council on Workers' Compensation

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Commissioner Karla Davis
Senator Jack Johnson
Representative Jimmy Eldridge

Lynn Ivanick, Administrator

Members:
J. Anthony Farmer
Jack A. Gatlin
Jerry Lee
Bob Pitts
Dan Pohlgeers
Gary Selvy
Paula Claytore
David Davenport
Bruce D. Fox
Keith B. Graves
Lynn Vo Lawyer
Kenny McBride
Jerry Mayo
Sam Murrel, M.D.
A.Gregory Ramos

MEMORANDUM

TO: Honorable Bill Haslam, Governor of Tennessee
Honorable Beth Harwell, Speaker of the House of Representatives
Honorable Ron Ramsey, Lieutenant Governor
Honorable Jack Johnson, Tennessee State Senator
Honorable Jimmy Eldridge, Tennessee State Representative

FROM: David H. Lillard, Jr., Tennessee State Treasurer and
Chairman, Advisory Council on Workers' Compensation

A handwritten signature in black ink, appearing to read "David H. Lillard, Jr.", written over the "FROM:" line.

SUBJECT: Annual Report FY2012 of the Advisory Council on Workers' Compensation

Pursuant to Tennessee Code Annotated §50-6-121(e), the Advisory Council on Workers' Compensation hereby issues the attached annual report reviewing its activities, findings and conclusions. If any assistance is required or inquiry arises regarding the report, please contact me at (615) 741-2956 or direct same to the Administrator of the Advisory Council, Lynn Ivanick, at (615) 741-4358 or Lynn.Ivanick@tn.gov.

*Tennessee Advisory Council
On
Workers' Compensation*

<http://treasury.tn.gov/claims/wcadvisory.html>



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ANNUAL REPORT FOR  
JULY 1, 2011 – JUNE 30, 2012  
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TENNESSEE TREASURY DEPARTMENT
STATE CAPITOL
NASHVILLE, TENNESSEE 37243-0225

David H. Lillard, Jr., State Treasurer, Chair
Lynn Ivanick, Administrator

STATE OF TENNESSEE
ADVISORY COUNCIL ON WORKERS' COMPENSATION
ANNUAL REPORT
JULY 1, 2011 – JUNE 30, 2012

Pursuant to *Tennessee Code Annotated* §50-6-121(e), the Advisory Council on Workers' Compensation hereby submits its annual report for July 1, 2011-June 30, 2012 including statistical reports and Tennessee workers' compensation data.

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**STATUTORY DUTIES AND RESPONSIBILITIES
OF THE TENNESSEE ADVISORY COUNCIL ON WORKERS'
COMPENSATION**

The Advisory Council on Workers' Compensation (the "Advisory Council" or "Council") was initially created by the General Assembly in 1992. The Workers' Compensation Reform Act of 1996 terminated the then existing Council and created a new Advisory Council on Workers' Compensation. Subsequent amendments, including the Reform Act of 2004, are recorded at *Tennessee Code Annotated* ("T.C.A.") §50-6-121, which also outlines the authority of the Council, its specific responsibilities and its general duties. Pursuant to Chapter Number 1087 of the Public Acts of 2010, the administration of the Council was transferred from the Tennessee Department of Labor & Workforce Development to the Tennessee Department of Treasury. This year, pursuant to Chapter Number 622 of the Public Acts of 2012, the existence of the Advisory Council was extended to June 30, 2016.

The Council is authorized to:

- Make recommendations to the Governor, the General Assembly, the Special Joint Committee on Workers' Compensation, the Senate Commerce, Labor and Agriculture Committee, the House Consumer and Employee Affairs Committee, the Commissioner of Labor and Workforce Development and the Commissioner of Commerce and Insurance relating to the enactment, promulgation or adoption of legislation or rules;
- Make recommendations to the Commissioner of Labor and Workforce Development and the Commissioner of Commerce and Insurance regarding the method and form of statistical data collection; and
- Monitor the performance of the workers' compensation system in the implementation of legislative directives and develop evaluations, statistical reports and other information from which the General Assembly may evaluate the impact of legislative changes to workers' compensation law.

Further responsibilities of the Advisory Council are provided in T.C.A. Titles 50 and 56. These provisions, among other things, direct the Council to provide the Commissioner of Commerce and Insurance with a recommendation regarding advisory prospective loss cost filings made by the National Council on Compensation Insurance, Inc. ("NCCI"), the authorized Tennessee rating bureau.

Advisory Council Members and Terms

The current Advisory Council is composed of seven (7) voting members, ten (10) non-voting members, and four (4) ex-officio members. The State Treasurer is the Chair and a voting member. Three (3) voting members represent employees, and three (3) voting members represent employers. The Chair may vote only on matters related to the administration of the Council or its research; the Chair is not permitted to vote on any matter that constitutes the making of a policy recommendation to the Governor or to the General Assembly.

The manner in which appointments to the Council are made has been revised by Chapter Number 622 of the Public Acts 2012. Instead of mandatorily choosing from a list of three (3) nominees provided by the specific organizations named in T.C.A. §50-6-121, the appointing authority is also permitted to consider suggested nominees from other interested organizations.

No new positions were added to the Advisory Council in 2011-2012, but several members' terms expired and new members were appointed.

The State of Tennessee thanks and appreciates the dedication and years of service of Katherine D. "Kitty" Boyte as the Tennessee Defense Lawyers representative and Stephen E. Johnson as the Health Care Provider representative of the Advisory Council on Workers' Compensation. Thanks and appreciation as well to Jerry Mayo, who continues to serve the Council as the insurance representative until such time as a successor is appointed.

Congratulations and welcome were extended this year to newly appointed Council members Lynn Vo Lawyer as the Tennessee Defense Lawyers' representative, Paula Claytore as the Health Care Provider representative, Sandra Fletchall as the Licensed Occupational Therapist representative, and returning member Abbie Hudgens, now as Designee for Commissioner Karla Davis of the Department of Labor & Workforce Development.

A debt of gratitude as well as congratulations to Gary Selvy for his service and reappointment to another term as a voting member representing employers and to Bruce Fox for his service and reappointment to another term as an attorney representing employees. Their professionalism and dedication are greatly appreciated.

A chart outlining the members of the Advisory Council on Workers' Compensation as of June 30, 2012 follows:

Advisory Council on Workers' Compensation's July 1, 2011-June 30, 2012 Report

NAME	MEMBER TYPE	REPRESENTING
David H. Lillard, Jr. State Treasurer	Chairman Administrative Voting Member	Ex Officio member
Bob Pitts	Voting Member	Employers
Daniel Pohlgeers	Voting Member	Employers
Gary Selvy	Voting Member	Employers
J. Anthony Farmer	Voting Member	Employees
Jack Gatlin	Voting Member	Employees
Jerry Lee	Voting Member	Employees
Mayor Kenny McBride	Nonvoting Member	Local Governments
Jerry Mayo	Nonvoting Member	Insurance Companies
Samuel E. Murrell, M.D.	Nonvoting Member	Tennessee Medical Association
Paula Claytore	Nonvoting Member	Tennessee Hospital Association
Keith B. Graves, D.C.	Nonvoting Member	Licensed TN Chiropractor
David Davenport	Nonvoting Member	Licensed TN Physical Therapist
Sandra Fletchall	Nonvoting Member	Licensed TN Occupational Therapist
Bruce D. Fox	Nonvoting Member	Tennessee Association for Justice
Lynn Vo Lawyer	Nonvoting Member	Tennessee Defense Lawyers Association
A. Gregory Ramos	Ex Officio Nonvoting Member	Tennessee Bar Association
Chairman, Senator Jack Johnson	Ex Officio Nonvoting Member	Senate Commerce, Labor and Agriculture Committee
Chairman, Representative Jimmy Eldridge	Ex Officio Nonvoting Member	House Consumer and Employee Affairs Committee

<p>Commissioner Karla Davis [Designee Alisa Malone] [Designee Abbie Hudgens] (1)</p>	<p>Ex Officio Nonvoting Member</p>	<p>Dept. of Labor & Workforce Development</p>
<p>Commissioner Julie Mix-McPeak [Designee, Mike R. Shinnick]</p>	<p>Ex Officio Nonvoting Member</p>	<p>Dept. of Commerce & Insurance</p>

(1) Alisa Malone, Deputy Commissioner served as Designee for the Commissioner of Labor & Workforce Development until the September 20, 2011 meeting.

Terms of the Non-Ex-Officio Members follow:

Term of Position

Voting

- J. Anthony Farmer** (July 1, 2010-June 30, 2014)
- Jack A. Gatlin** (July 1, 2010-June 30, 2014)
- Jerry Lee** (July 1, 2008-June 30, 2012)
- Bob Pitts** (July 1, 2010-June 30, 2014)
- Daniel Pohlgeers** (July 1, 2008-June 30, 2012)
- Gary Selvy** (July 1, 2012-June 30, 2016)

Non-Voting

- Paula Claytore** (July 1, 2011-June 30, 2015)
- David Davenport** (July 1, 2009-June 30, 2013)
- Sandra Fletchall** (July 1, 2009-June 30, 2013)
- Bruce D. Fox** (July 1, 2011-June 30, 2015)
- Keith B. Graves** (July 1, 2009-June 30, 2013)
- Lynn Vo Lawyer** (July 1, 2011-June 30, 2015)

Jerry Mayo	(July 1, 2007-June 30, 2011)
Kenny McBride	(July 1, 2009-June 30, 2013)
Sam Murrell	(July 1, 2010-June 30, 2014)
Gregory Ramos	(July 1, 2009-June 30, 2013)

ACTIVITIES OF THE ADVISORY COUNCIL

The Advisory Council is required by statute to meet at least two times per year. Throughout the July 1, 2011 - June 30, 2012 Council year, the Advisory Council met on five (5) occasions: August, 22, 2011; September 20, 2011; March 12, 2012; March 26, 2012; and May 24, 2012.

All approved meeting minutes may be viewed at the Advisory Council's website <http://treasury.tn.gov/claims/wcadvisory.html> under the Meetings tab. The agenda and video of each meeting is available at the same location.

Throughout the year, the Advisory Council considered several issues impacting the Tennessee workers' compensation system. The following is a synopsis of the subjects that received the most attention.

WORKERS' COMPENSATION CASELAW UPDATE

An annual case law update of the 2011 calendar year from the Tennessee Supreme Court including select cases from the Tennessee Supreme Court Workers' Compensation Panel was submitted by the Advisory Council to the General Assembly in January of 2012 and may be viewed at the Council's website.

In 2011, the Tennessee Supreme Court affirmed the limitation of using the impairment rating from the initial award or settlement for purposes of reconsideration of a claimant's workers' compensation claim after a lay off in *Lazar v. J. W. Aluminum*. Whether the Medical Impairment Rating Registry may be used after exhaustion of the administrative procedure and filing in court caused *Mansell v. Bridgestone* to be remanded to the trial court with instruction to inform the attorney general of the constitutional issue of separation of powers being raised so that it may be properly addressed by all parties. The absence of a meaningful return to work was explored by the Court in *Howell v. Nissan*, wherein it was determined sufficient that a claimant knew by personal experience that she would be unable to perform a more difficult job to which she was being assigned upon return from a workplace injury. In *Dixon v. Travelers*, the Court permitted coverage as a workers' compensation claim even though the injuring event was an Act of God

(tornado), since it determined that the claimant was subjected to more danger due to his employment and presence in a work vehicle. The detailed report, complete with citations, may be viewed in its entirety via the Advisory Council's website by going to <http://treasury.tn.gov/claims/wcac/ACWCSupremeCourtRpt2011.pdf>.

WORKERS' COMPENSATION LEGISLATION

During the second legislative session of the 107th Tennessee General Assembly, the Advisory Council reviewed and assisted with nine (9) bills which directly affected or touched upon the Tennessee Workers' Compensation Laws and were submitted to it by the Senate Commerce Labor and Agriculture Committee and House Consumer and Employee Affairs Committee. Two were recommended for passage by the Advisory Council, passed through the aforementioned Committees and the Tennessee General Assembly, and were signed into law by Governor Haslam on May 29, 2012. They were assigned Public Chapter Numbers by the Secretary of State as follows:

Public Chapter Number 1030

SB 2923 (*Overbey)-*HB 2808 (*Dennis). The Council recommended approval of this bill.

As enacted, the law clarifies that either party in a workers' compensation dispute may bring suit in the county in which the employee resided at the time of the injury when issues remain after the benefit review conference.

Prior law permitted either party to file in the county of claimant's residence, but did not specifically provide that the party file in the county of residence *at the time of injury*. The practical effect is to secure a venue in the event a claimant moves during the process. It is viewed as a return to the original intent of the law and was recommended for approval by the Council. Filing in the county where the injury occurred is still available to either party as well.

The second section of this new law reduces from \$100 to \$50 the maximum amount that the secretary of state may charge for certain fees concerning construction service providers and workers' compensation under T.C.A. §50-6-912. Similar language was originally the substance of SB 2691(*Haynes)-*HB 2706 (*Turner, M.) which sought total exemption of fees for sole proprietors and was addressed by the Advisory Council, but did not achieve a majority vote. The language was amended in line with comments of the Council, merged with SB 2923-HB 2808, and ultimately passed with language reducing, rather than eliminating, the fees for all applicants.

Public Chapter Number 1100

SB 3315 (*Johnson)-*HB 3372 (*White) The Council recommended approval of this bill.

As enacted, this new law specifies that if a treating physician determines that pain is persisting for an injured or disabled employee beyond an expected period for healing, then the treating physician, if the physician is a "qualified physician", may either prescribe or refer such employee for pain management, encompassing pharmacological, non-pharmacological and other approaches to manage chronic pain.

This has generally been referred to as the pain management bill and addresses several historical problems with pain management: the geographic distance between acceptable pain management doctors; concerns regarding prescription drug abuse; a revised definition of Utilization Review; and, termination language in contracts between injured employees and pain management physicians.

Other bills considered by the Council with their resulting recommendation or disposition are as follows:

SB 2691(*Haynes)-*HB 2706 (*Turner, M.) There was no recommendation from Council since it did not achieve a majority vote. This bill failed in the Senate and was taken off notice in the House on April 4, 2012. The Council's employer representatives had expressed concern about the original bill completely exempting sole proprietors from paying fees since it would unfairly provide preferential treatment to a very narrow portion of the business community and negatively affect the income from the fees required to support investigators to eliminate improper classification of employees. The employee representatives felt that many sole proprietors did not earn sufficient funds to justify a \$100 fee. It was suggested that a compromise might bring about reconsideration. The bill's language was later amended, merged with SB 2923-HB 2808 and passed reducing the fees for the exemption registry from \$100 to \$50 as shown above under Public Chapter 1030.

***SB 2830 (*Ketron)-HB 3806 (*White)**

The proposed bill would clearly indicate whether a state, county or municipal corporation is required to cover itself under of the workers' compensation statutes. The amendment would freeze those cities that have already opted to insure themselves under workers' compensation coverage, and not permit them to opt out. It further would require those governmental entities that previously were exempt or had opted out to cover themselves in the manner of their choice under the guidelines of workers' compensation law, but mandatorily in some fashion. There was a significant fiscal note attached, although it was permissive. This bill was assigned by its Senate sponsor to the General Subcommittee on March 27, 2012 and taken off notice in the House March 28, 2012. Expect to see the subject matter addressed in the next legislative session.

SB 3019 (*Campfield)-*HB 3250 (*Butt)

The Council voted against the original bill, as it was considered overly broad. The language was later amended along the lines of Council's input and recommendations. It generally requires employers who participate in the workers' compensation assigned risk plan and who pay a tabular surcharge of 20% or more to implement a drug-free workplace program. The amendment narrowed the language so as to only encompass those companies in the assigned risk plan that are larger and have had unfavorable experience ratings due to a high rate of accidents by comparison to others in their industry. This bill was moved by its Senate sponsors to the General Subcommittee for future evaluation on March 27, 2012 and taken off notice in the House. Expect to see a revised bill next session.

SB 3328 (*Ketron)-*HB 3537 (*Matheny)

The amended bill encompassed recommendations from the Employee Misclassification Advisory Task Force on permitting increased penalties and stop work orders via the Tennessee Department of Labor & Workforce Development for misclassification violations. The bill was taken off calendar for this session for further study.

SB 3370 (*Stewart)-*HB 3221 (*Odom)

This was a repeat of a bill proposing to allow licensed psychologists to provide impairment ratings in workers' compensation mental injury cases, which had been amended to include the use of American Medical Association Guidelines. It was taken off calendar by the sponsor.

SB 3676 (*Kyle)-*HB 3351 (*Miller L.)

This bill allowed the Department of Labor & Workforce Development 90 days instead of the present 60 to schedule a show cause hearing for an entity's failure to secure compensation coverage. The bill was sent to General Subcommittee by the Senate sponsor March 27, 2012 and taken off notice by the House on the same day.

The Advisory Council on Workers' Compensation Sunset Bill

A bill this session, not for consideration by the Council, but directly affecting its existence, was ***SB 2318 (*Bell)-HB 2527 (*Cobb)**. This bill regarded the extension of the termination date of the Advisory Council on Workers' Compensation (Sunset Law). The bill passed both the House and the Senate, was signed by Governor Haslam on March 23, 2012 and has been assigned Public Chapter 622 by the Secretary of State. Two adopted amendments to the bill extend the Council to June 30, 2016 and revise the provisions regarding appointments to the council. Specifically, instead of mandatorily choosing from a list of three nominees provided by the specific organizations named in T.C.A. §50-6-121, the appointing authority is also permitted to consider suggested nominees from other interested organizations.

NCCI LOSS COST FILINGS

The National Council on Compensation Insurance, Inc. ("NCCI") files advisory prospective loss cost and rating values with the Commissioner of the Department of Commerce and Insurance, who presents the same to the Advisory Council for recommendation before approving or modifying. The Advisory Council submits a written comment to the Commissioner for Advisory Prospective Loss Costs Filings pursuant to T.C.A. §50-6-402(b-d).

At its August 2011 meeting, the Council considered the annual report from Commissioner McPeak's Designee, Mr. Mike Shinnick, on the Workers' Compensation Market Conditions and Environment, which indicated on the positive side: the national company failure rate remains moderate; smallest Tennessee residual market rate in 11 years; market remained very competitive; and, improved investment returns in 2010. On the negative side: an 18 point Tennessee pure underwriting loss; first frequency increase in 13 years; NCCI describes today's market as "deteriorating"; and, the latest plan results are poorer than expected. The presentation with accompanying statistical graphs may be viewed in its entirety at

http://treasury.tn.gov/claims/documents/Market_Cond_Environ_Presentation.pdf

Mr. Thomas G. Redel, CPCU, Senior Vice President, AON Risk Services Central, which serves as the administrator of the Tennessee Assigned Risk Plan, presented an annual report regarding the Tennessee Assigned Risk Plan Data at the August meeting as well. He indicated that his presentation covered much of the same information as Mr. Shinnick's but that the information comes from a different data source. AON's database system is helpful to illustrate trending, although the database is not updated for policy changes; AON's data reflect that the 2009-2010 premiums went down by 9.4%. The report may be viewed at

<http://treasury.tn.gov/claims/documents/PRESENTATION-August-2011.pdf>

At its September 2011 meeting, the Council considered Mr. David Wilstermann's Statistical report on the 2010 Workers' Compensation Data from the Department of Labor & Workforce Development, which may be viewed at

<http://treasury.tn.gov/claims/documents/2011StatReport2010Data.pdf>,

and the supplement thereto may be viewed at

http://treasury.tn.gov/claims/wcac/ACWC_2010_Statistical_Supplement_1.pdf

NCCI's filing dated August 2, 2011 to be effective November 1, 2011 Law Only

On August 2, 2011, the National Council on Compensation Insurance (NCCI) submitted a proposed Advisory Prospective Law-Only Filing relative to medical fee schedule changes since 2009, with an effective date of November 1, 2011. NCCI proposed an overall increase of 6.3% to loss costs effective March 1, 2011.

The Advisory Council met again on September 20, 2011 to consider the filing as required by T.C.A. §50-6-402(b). Proposals with supporting trend selections, provisions for loss adjustment expenses, selection of loss development factors and class indications were presented for review. The Advisory Council received comments from its consulting actuary, Ms. Lisa Dennison of the firm By The Numbers Actuarial Consulting, Inc.; Mr. Kirt Dooley, actuary with NCCI; and the consulting actuary to the Department of Commerce and Insurance, Ms. Mary Frances Miller with Select Actuarial Services.

Mr. Dooley informed that the components of the recommended increase of 6.3% were:

- Increase of 2.1% for changes to the medical fee schedule in 2009
- Increase of 1.3% for changes to the medical fee schedule in 2010
- Increase of 2.8% for changes to the medical fee schedule in 2011

Ms. Dennison agreed the increase of 6.3% was actuarially sound. Further, the methodology used to determine the cost impact of the changes in the maximum allowable reimbursement was reasonable. Ms. Miller also noted that NCCI's 6.3% increase was actuarially sound.

After consideration of the presentations by the three actuaries, as well as the comments and discussion among the members, the voting members of the Council unanimously recommended adopting the NCCI's filing to become effective on November 1, 2011.

NCCI's filing dated August 19, 2011 to be effective March 1, 2012

On August 19, 2011, the NCCI submitted its annual Advisory Prospective Loss Costs Experience Filing, with an effective date of March 1, 2012. The NCCI proposed an overall increase of 1.6% from the loss costs that were to become effective November 1, 2011. The Advisory Council also considered this filing at its September 20, 2011 meeting, as required by T.C.A. §50-6-402(b). The Advisory Council members again received comments from their consulting actuary, Ms. Lisa Dennison of the firm By The Numbers Actuarial Consulting, Inc.; Mr. Kirt Dooley, actuary with NCCI; and the consulting actuary to the Department of Commerce and Insurance, Ms. Mary Frances Miller with Select Actuarial Services.

Mr. Dooley noted that the proposed overall aggregate increase of 1.6% in the proposed advisory prospective loss costs is comprised of an increase due to experience (1.1%), trend (1.3%) and benefits (0.4%) and a decrease in the development (-0.7%) and loss adjustment expense (-0.5%). Mr. Dooley described to the Council the methodology that was utilized by NCCI. The experience period (latest two years), loss methodology (paid plus case reserves) and loss development (five year average) were used. The tail factor for indemnity changed from 1.007 to 1.005, and the tail factor for medical changed from 1.042 to 1.032. The indemnity trend did not change, but the medical trend changed from 1.005 to 1.010. The loss adjustment expense (comprised of DCCE – Defense and Cost

Containment Expense and AOE – Adjusting and Other Expense) decreased from the current level of 20.3% of losses to 19.7%.

<http://treasury.tn.gov/claims/documents/2011NCCIPresentation.pdf>

Mr. Dooley also advised the Council that a calculation error was discovered since the report was issued. The overall increase should have been 1.8% instead of 1.6% but that NCCI, at its discretion, chose not to re-file the higher number. The issue is confined to the experience filing and has no impact on the November 1, 2011 filing or any previous loss cost filings submitted in Tennessee. An input for the filing, the distribution of monthly premium writings in Tennessee, was improperly calculated. This input is used in the calculation of on-level factors and the trend length. The combined impact on the March 1, 2012 loss cost filing would be an increase of 0.2%, resulting in the proposed statewide loss cost change of +1.8% instead of +1.6% in the absence of this issue.

Ms. Dennison stated the NCCI proposed increase of 1.6% for the Tennessee voluntary workers' compensation market had been reasonably calculated in accordance with actuarial standards of practice. However, Ms. Dennison noted one difference of opinion, that being the medical trend factor. Ms. Dennison believes that a medical trend factor of 0.5% is more appropriate than the 1.0% selected by NCCI. Using a medical trend factor of 0.5% produces an indication of an overall increase of 0.3% for the annual loss costs filing instead of the 1.6% increase as determined by NCCI.

<http://treasury.tn.gov/claims/documents/BTNACactuarialreport2011.pdf>

Ms. Miller also spoke to the Advisory Council concerning her review of the filing and explained that she agreed the increase of 1.6% was actuarially sound and that the reasonable range of the NCCI submission was from about 0.0% to about 1.8%, thereby putting the filed indication of 1.6% toward the upper end of that reasonable range. Ms. Miller noted that NCCI's 1.0% medical trend factor is not unreasonable but it is more likely to be on the high side than not. Changing the medical trend factor to 0.5% produces an indication of an overall increase of 0.2% for the annual loss costs filing instead of the 1.6% increase as determined by NCCI. Changing the medical trend factor to 0.0% produces an indication of an overall decrease of 0.1% for the annual loss costs filing instead of the 1.6% increase as determined by NCCI. Further, Ms. Miller recommended changing the loss adjustment expense to 19% rather than NCCI's 19.7%, which produces an indication of 0.9%. Such a change would be reflective of the downward development in the loss adjustment expense.

http://treasury.tn.gov/claims/wcac/SelectActuarialReport_9-20-11_ACWC_Mtg.pdf

After consideration of the presentations by the three actuaries, as well as the comments and discussion among the members, the voting members of the Council unanimously recommended adopting the NCCI's filing to become effective on March 1, 2012 for the voluntary market but adjusted for a medical trend factor of 0.5% instead of 1.0% and a loss adjustment expense of 19% instead of 19.7%. The Council felt that the reports and explanations by the actuarial firms presented a strong argument for adjusting NCCI's recommendation. NCCI agrees that the overall loss cost for Tennessee would be a negative 0.3% if the two recommendations were made.

NCCI's filing dated April 18, 2012 to be effective August 9, 2012

On April 19, 2012, the NCCI submitted a Law Only Filing, with a proposed effective date of August 1, 2012. The NCCI proposed an overall decrease of 5.1%. While the change in loss costs varied depending on the employer's classification, the average change in the five industry groups is: Manufacturing -4.9%; Contracting -5.1%; Office & Clerical -5.3%; Goods & Services -5.4%; and Miscellaneous -4.8%.

The Advisory Council met on May 24, 2012, to consider the filing as required by T.C.A. §50-6-402(b). After the initial presentation by NCCI Director and actuary Ms. Karen Ayres, the Advisory Council received comments from its consulting actuary, Ms. Mary Jean King of By the Numbers Actuarial Consulting, Inc. and Mr. Daniel Linton with Select Actuarial Services, the consulting actuary to the Department of Commerce and Insurance.

Ms. Ayres noted that the proposed overall aggregate decrease of 5.1% law only rate filing is comprised of a decrease due to both the annual change in Medicare update of January 1, 2012 and the proposed medical fee schedule rules changes of the Tennessee Department of Labor and Workforce Development, originally proposed to be effective June 10, 2012, but stayed by the Joint Government Operations Committee, resulting in a new effective date of August 9, 2012. Ms. Ayres described to the Council the methodology that was utilized by NCCI.

http://treasury.tn.gov/claims/wcac/TN_WCAC_Hearing_8-1-12_NCCI_report.pdf

Ms. Ayres also advised that the NCCI would work with the Department of Commerce and Insurance and amend its final rate pages to reflect any decision the Department may make with respect to an effective date.

Ms. King, the actuary under contract to the Advisory Council to review the NCCI filings, indicated that the NCCI proposed decrease of 5.1% for the Tennessee voluntary workers' compensation market had been reasonably calculated in accordance with actuarial standards of practice.

http://treasury.tn.gov/claims/wcac/tacwc5-24-12bynac_presentation.pdf

Mr. Linton, of Select Actuarial Services, addressed the Advisory Council on behalf of the Department of Commerce and Insurance, concerning its review of the filing and explained that the firm agreed the decrease of 5.1% was actuarially sound.

http://treasury.tn.gov/claims/wcac/SAS_Review_of_8_1_12_NCCI_filing.pdf

After consideration of the presentations by the three actuaries, as well as the comments and discussion among the members, the voting members of the Council unanimously recommended adopting the NCCI's filing to become effective on August 9, 2012 for the voluntary market.

PROPOSED CHANGES TO THE MEDICAL FEE SCHEDULE

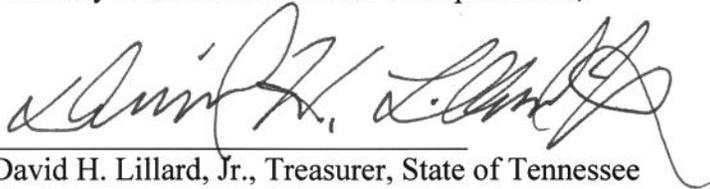
At the Council's August 2011 meeting, Mr. Landon Lackey presented information on the Department of a Labor and Workforce Development's (TDLWFD's) emergency rules and proposed permanent rule changes to the Medical Fee Schedule. In addition, Dr. David McCord and Mr. Nathan Green spoke to the Council to express concerns regarding the proposed rule changes.

At the Council's September 20, 2011 meeting, the proposed amendments were considered pursuant to T.C.A. §50-6-121(f)(1). Mr. Lackey answered question from Council members regarding the proposed amendments to the rules. The Advisory Council also heard public comments from Ms. Becky Farmer and Dr. Merrill White. Council members David Davenport and Dr. Keith Graves provided formal positions from their respective fields of practice. The Council did not make a formal recommendation but did vote to have the Council's comments made part of the record and sent to Commissioner Karla Davis of the Department of Labor & Workforce Development for her information and use for the Rulemaking Hearing scheduled for September 28, 2011 regarding the Proposed Changes to the Medical Fee Schedule. The information sent to the Commissioner in its entirety may be viewed at <http://treasury.tn.gov/claims/wcac/2011Commissioner-Davis.pdf>

CONCLUSION

The Workers' Compensation Advisory Council met on five (5) occasions from July 1, 2011-June 30, 2012. This Annual Report provides a synopsis of the topics considered during that time period. The Advisory Council appreciates the opportunity to be of service to the Governor and the General Assembly as well as the employees and employers of the great State of Tennessee.

Respectfully submitted on behalf of the
Advisory Council on Workers' Compensation,



David H. Lillard, Jr., Treasurer, State of Tennessee
Chairman