

Council on Worker's Compensation  
Meeting Minutes  
Madison, Wisconsin  
February 25, 2004

Members present: Mr. Brand, Mr. Beiriger, Mr. Buchen, Ms. Connor, Mr. Gordon, Ms. Huntley-Cooper, Mr. Newby, Mr. Olson, Mr. Shaver, and Ms. Vetter

Excused: Ms. Gebheim, Mr. Welnak, Mr. Kent

Staff present: Mr. Conway, Mr. O'Malley, Mr. Shorey, and Ms. Knutson

1. **Call to Order.** Ms. Huntley-Cooper convened the meeting in accordance with Wisconsin's open meetings law.

2. **Minutes.** Ms. Vetter moved adoption of the minutes of the October 9, 2003 meeting; Mr. Beiringer seconded the motion. The motion was unanimously approved.

3. **2004 Meeting Schedule: The** next meeting will be July 22, 2004. A subsequent meeting will be held in October, the date to be determined. The videoconference public hearing will be held on December 8, 2004 and will originate in Madison with sites tentatively in Superior, Milwaukee, La Crosse, Wausau and Appleton or Green Bay.

4. **Council Member Appointments:** Ms. Huntley-Cooper welcomed Mr. Scott Shaver with Briggs and Stratton, Mr. Jeff Brandt with Corvel, and Ms. Laura Leitch with the Wisconsin Hospital Association as new appointments to the council.

5. **Subcommittee Appointments:** Ms. Huntley-Cooper indicated the council at the October 2003 meeting agreed to form two subcommittees to study the issues of health cost including prescription drugs, durable medical equipment and the impact of reducing the standard deviation, and permanent total disability benefit rates. Mr. Newby and Mr. Buchen had both submitted names for approval for the committee appointments. Mr. Newby indicated that due to staffing concerns, the committee should have no more than 8 members per committee with one or two council members appointed per committee. Mr. Metcalf, Wisconsin Manufacturers and Commerce, recommended the appointments of individuals outside the council as committee chairs.

Mr. Conway explained the topics for discussion in the subcommittees included high medical cost rates in Wisconsin. The agreed bill included a reduction in the standard deviation amounts contained in Wis. Stat. §102.16(2)(d). Mr. Metcalf stated that the Worker's Compensation Research Institute (WCRI) briefing contained data on health care costs in Wisconsin in comparison to other states. The data needs to be examined more closely to arrive at a consensus regarding its interpretation in comparison to other states' systems.

Mr. O'Malley indicated that 15 to 18 states were previously contacted at the request of the Council to obtain information concerning prescription drugs, durable medical equipment and hospital charges.

With regard to the permanent total disability benefit rate in Wisconsin, Mr. O'Malley advised that Wisconsin worker's compensation benefits are not indexed for cost of living increases. For the temporary total disability rate, Wis. Stat. §102.43(7) provides for an increase in the benefit rate if there is a renewed period of disability more than two years after the date of injury with a return to work period of at least ten days (with an exception for vocational rehabilitation retraining). Wis. Stat. §102.44 provides for supplemental benefits for injured workers who had older injuries and are receiving benefits at a low rate. The new statutory amendment will increase the maximum benefits for these individuals from \$202 to \$232 per week. The benefit rate is set on the date of injury for permanent total disability (PTD) benefits and the benefits are received for a lifetime. This results in a hardship for employees if they are receiving PTD benefits for a number of years. The method of payment of PTD benefits can be reviewed to determine an acceptable method to increase the benefit rate in a more systematic manner rather than just through period increases in supplemental benefits. The U.S. Chamber of Commerce has data available for benefit rates for various states. Some states do provide for escalation in benefit rates. Mr. Newby requested that this data be provided to the members of the subcommittee.

Ms. Huntley-Cooper stated that the division would define and summarize the charge for each subcommittee. She also requested that names of individuals expressing an interest in membership on the subcommittees be forwarded to her. Individuals who have expressed an interest to date include Ms. Kathy Prendill with Resource Medical Management, Mr. Russell Leonard, Mr. Glen Boyle with Midwest Comp Review, Ms. Leitch, Ms. Alice O'Connor, Mr. Bruce Olson and Mr. Ralph Herman with the Wisconsin Compensation Rating Bureau. Mr. Buchen and Mr. Newby will submit names of additional individuals to Ms. Huntley-Cooper.

Mr. Beiringer commented that a goal for the subcommittees is to make recommendations to incorporate into the agreed bill process for next year. Ms. Huntley-Cooper indicated that committee appointments should be finalized by mid-March. Mr. Conway indicated that the division would provide a staff person for each subcommittee to assist with gathering information.

**6. Correspondence/Appearance Requests:** Mr. Conway relayed that the department sent a letter to Rep. Nass and Senator Reynolds indicating the council was aware of and in agreement with the technical amendment to the agreed bill. The division had also responded to an inquiry from Senator Kanavas on behalf of a constituent. The division is providing an expedited hearing to Mr. Gustafson in response to his February 5, 2004 correspondence. Mr. O'Malley indicated that the division keeps a running list of suggestions from the public for law changes. Complaints by individuals to the Office of Commissioner of Insurance (OCI) regarding non-payment of worker's compensation

benefits are usually referred back to the Division for response. OCI has no jurisdiction over self-insured employers. Ms. Huntley-Cooper commented that sometimes people see the council as an appeal process for their individual claim. The division asks people to put their suggested law changes in writing. Mr. O'Malley will include Mr. Gustafson's suggested law change with regard to attorney's fees on the list for consideration by the council for the next agreed bill cycle.

Mr. O'Malley provided an update on the current status of the agreed bill. The Senate Committee in an Executive Session voted to move the bill to the floor for a vote. The bill hopefully will reach the full committee by March 11, 2004. The Assembly passed the bill on the last day of the floor period. The target date for the effective date of the agreed bill is April 1, 2004.

Mr. Metcalf recommended that the council make more of an effort with outreach to Legislative committee chairs and members seeking joint participation in the public hearing next year.

**7. Discussion of Council Protocol/Structure:** Mr. Conway led the discussion of Council Protocol/Structure.

1. Council Appointments: Information from labor and management is reviewed for consideration of new members. Names are forwarded to the Secretary's Office and the Secretary makes the appointment.

2. Conduct of Meetings: Minutes constitute a historical record of the meeting. If the council will go into closed session at the meeting (e.g. deliberations for the agreed bill), the division must provide specific notice. Mr. Buchen suggested that the division provide notice of the possibility of a closed caucus for every meeting. After some discussion, the council agreed that the initial response to interested persons should provide that the individual should submit their comments in writing. The council can invite the individual to appear before the council at a later meeting to provide oral comments.

3. Orientation of New Council Members: Materials will be provided to the council members.

4. Ongoing Updates to Council Members: The council is interested in receiving data reports from the division on an ongoing basis. Mr. Conway indicated that the division will review the minutes from past meetings and will provide the information requested by the council. This information will be provided to council members in paper and/or e-mail form.

5. Correspondence: Process already discussed in agenda item 8 above.

6. Agreed Bill Process: Date benchmarks will be developed and the process defined to keep the council on target for the bill to be passed in the fall of each odd-numbered year to become effective on January 1<sup>st</sup> of each even-numbered year.

7. Annual/Biennial Report of the Council: A biennial report is completed this time of year. The council will have input on the content of the report.

8. Other Items:

A. Council Archives: The division has archival information dating back to 1944. The division characterizes the council files as active files. Previously the department sent earlier minutes, handout materials and other documents to the State Record Center. The department has now received these materials back. The goal is to retain a permanent record on optical imaging. Attorneys sometimes review these materials when researching interpretation of laws. The issue of who is to be the custodian of these materials has not yet been decided.

B. Council Articles/By-Laws: Usually procedures are contained in by-laws. Mr. O'Malley indicated that according to Robert's Rules of Order, a majority of voting members usually constitutes a quorum. By custom/tradition, the council's decisions are unanimous. Mr. Leonard indicated that liaisons were appointed to the council following the 1989 legislative session. Mr. O'Malley indicated that a department memo discusses the role of liaisons and ex officio members. Mr. Newby suggested that a policy handbook be compiled containing the agreements or actions the council has taken in the past from the minutes. The handbook should be provided to new council members but it should not address technical issues. Mr. Conway indicated that topical areas of agreement could be presented at meetings for the Council to discuss and approve. These could be placed into a binder format. Mr. Beiringer suggested that for orientation purposes, the division should provide plain language explanations. The council agreed that the division could provide an electronic copy of the minutes in advance of meetings.

8. **Old Business**: None.

9. **New Business**: Mr. Metcalf raised the issue of the number of illegal aliens injured in Wisconsin and the impact on Uninsured Employers Fund (UEF) applications. Mr. Conway indicated that the division was assembling data on this issue. There have been 9 inquiries since 1996. Five employees have made a claim against the UEF with: 1 claim denied; 1 claim pending; 3 claims paid. In Wisconsin there is no provision in the law regarding paying benefits from the UEF to undocumented workers. There have been 700 inquiries with 500 applications, 9 workers undocumented and 4 workers had green cards.

The division will be participating in the WCRI meeting. Wisconsin was included in the worker survey.

**10. Adjournment:** Discussion on all agenda items concluded and the meeting was adjourned. The next meeting has been scheduled for July 22, 2004.