

Advisory Council on Workers' Compensation and Occupational Disease Disablement

Annual Report 2015

Presented to:

**The Honorable Susana Martinez,
Governor**

**The Honorable John. G. Franchini,
Superintendent of Insurance**

and

**Senate President Pro – Tempore
Speaker of the House
Senate Majority Floor Leader
House Majority Floor Leader
Senate Minority Floor Leader
House Minority Floor Leader
Chair, Senate Finance Committee
Chair, Senate Judiciary
Chair, Senate Corporations and
Transportation Committee
Chair, House Appropriations and
Finance Committee
Chair, House Business and Employment
Committee
Chair, House Judiciary**

Submitted by:

**Kevin J. McGinley, Chair
James Magoffe, Vice Chair
Courtenay Eichhorst, Member
Taylor Horst, Member
Scott LeFevre, Member
Tom Willis, Member**



Annual Report of the Advisory Council on Workers' Compensation and Occupational Disease Disablement - 2015

The Advisory Council on Workers' Compensation and Occupational Disease Disablement is a statutory body created by the Workers' Compensation Law of New Mexico. Members are appointed by the Governor to represent both employers and workers. Our duty is to report annually to the Governor and Legislature concerning the state of the workers' compensation system and to make recommendations regarding rules and legislation.

Mission

The mission of the Advisory Council on Workers' Compensation and Occupational Disease Disablement is:

- to monitor the performance of the workers' compensation and occupational disease and disablement system;
- to make recommendations to the Governor, Legislature, regulatory agencies and participating industries, related to the adoption of rules and legislation and the method and form of statistical data collections;
- to ensure the quick and efficient delivery of indemnity and medical benefits to injured and disabled workers at a reasonable cost to employers.

A part of the major legislative reform of the workers' compensation system was to create the Advisory Council to review potential amendments to the Act. The Council listens to all parties, obtains available data, and seeks to determine the cost and benefit to the system that may occur by any amendment. The Council endeavors to build a consensus among business and labor, and any other affected stakeholders, on any change to the Act before making any recommendation to the Governor and Legislature.

The success of our system is based on the law itself. The challenge is to sustain a system that balances the needs of workers and employers fairly. The Advisory Council is one of the mechanisms created by the Legislature to accomplish this objective.

Council Members

The Council has six appointed members. The Director of the Workers' Compensation Administration serves as an ex officio, non-voting member. The Council is made up of three representatives from labor and three representatives from the business community.

There have been several changes with board member service this year. Melinda Joy Pattison, representing business, stepped down from her position at the April 10 council meeting, having served since October 2011. Governor Susana Martinez appointed Taylor Horst to the Advisory Council to replace Pattison; he will serve through April 2019. Horst is the risk management director for the New Mexico Association of Counties.

Dain Symes, who served on the board as a representative for labor, stepped down in September. Symes had served since January 2014. On November 13, the Governor announced that Courtenay

Eichhorst of Corrales will fill the labor seat on the council board through April 2019. Eichhorst is a training center instructor for UA Local 412.

Legislative Focus

The workers' compensation community spent much of 2015 pushing for clarity in the law so that implementation of the workers' compensation system runs more smoothly. A lack of clarity in the law has come about as a result of several appellate court cases.

An Advisory Council bill to clarify ambiguity on the limitations of benefits (Senate Bill 233) was passed by the Legislature and signed into law by Governor Susana Martinez on April 7, 2015. The bill amends the Workers' Compensation Act and the New Mexico Occupational Disease Disablement Law to clearly delineate the temporary disability indemnity benefit time limit, and to correct wording on time limitations for injuries that result in mental impairments.

Recommendations for the 2016 Legislative Session

The Advisory Council has several major recommendations for the 2016 legislative session. The council has put forward several proposed bills regarding workers' compensation. One addresses return to work benefits, and another addresses benefits when the injured worker was intoxicated at the time of injury. The Advisory Council respectfully asks for legislative leadership support on these critical issues. The council voted 4 to 1 at its November meeting in favor of supporting these bills.

The Council plans to once again address the issue of reallocating funds taken from the workers' compensation assessment, which is supposed to be for purposes of funding the workers' compensation system. Over the last 10 years, more than \$20 million has been transferred out of the WCA to other agency funds (according to WCA audited financial statements, 2005-2014). The Advisory Council stands firm in its belief the fund should be exclusively reserved and not be diverted from its intended purpose to support the workers and employers of New Mexico through the Workers' Compensation Administration. The Advisory Council voted unanimously in favor of keeping funds in the system.

The Advisory Council also unanimously supports appropriations for conducting a system study. It will introduce a bill next legislative session to request funding that will allow for such a study. The workers' compensation system has not been studied by a qualified third party entity for recommended improvements for nearly two decades, primarily due to lack of funding to commission an in-depth study.

The Council asked for leadership support on these critical issues in a letter to the Governor and members of the legislature.

Premiums

Loss costs reflect the workers' compensation market in New Mexico, which includes the assigned risk pool. The National Council on Compensation Insurance (NCCI) has set the rates which will become effective January 1, 2016 for new and renewal policies.

NCCI has filed the loss costs and rating values for New Mexico with the New Mexico Office of the Superintendent of Insurance. They provide a rationale for decreasing New Mexico's current loss cost level by an average of 6.2 percent. Experience shows there has been improvement, particularly in the most recent policy year. Lost time claim frequency continues to decrease. Indemnity costs have increased

in recent policy periods, while medical costs have been somewhat volatile.

According to NCCI, a plus or minus of 5 percent is considered actuarially stable.

Workers' Compensation rate history over the last eight years:

Voluntary	2009	2010	2011	2012	2013	2014	2015	2016
Market:	-6.7	-4.5	+4.2	+7.4	+5.1	+4.0	+2.3	-6.2
Assigned Risk Pool:	-1.3	-0.9	0.0	-5.0	0.0	+2.2	+3.3	-6.2

(Source: National Council on Compensation Insurance (NCCI) 2015 State Advisory Report)

The State Average Weekly Wage (SAWW) for benefits increased 2.7 percent to \$785.03 from \$764.18 in 2015, effective January 1, 2016.

Status of the Workers' Compensation Administration

The New Mexico Workers' Compensation Administration (WCA) has been fully engaged to meet its primary goal of making a better workplace for New Mexico through responsive and effective services. The WCA's mission is:

To assure the quick and efficient delivery of indemnity and medical benefits to injured workers at a reasonable cost to employers.

Budgetary Consequences on the Agency

The WCA budget remained flat at \$11.7 million in FY 2015.

In FY 2015, the WCA was directed to transfer \$1.2 million dollars from its operational budget to the Department of Workforce Solutions (DWFS). In FY 2016, the transfer amount was \$2 million. The annual WCA operational budget was therefore somewhat reduced, though the UEF funding was slightly up. There was a request to the Legislature to end the practice of annual fund transfers.

Some of the major initiatives the WCA accomplished in 2015:

- The agency made some significant new hires. Dana Chavez was promoted to Executive Deputy Director, after having served as Clerk of the Court Bureau Chief. She has been with the WCA in many capacities over a period of many years. Heather Jordan was named as her replacement. Jordan worked at the Bernalillo County Metropolitan Detention Center for 19 years. Judy Paquin was hired as Assistant General Counsel, having practiced as an attorney in Connecticut for 25 years. Bonnie Stepleton was named Mediation Supervisor, a new position in the Dispute Resolution Bureau. Khaled Ali took over as Self-Insurance and Regulatory Audit Bureau chief; he has worked in the department for 17 years. Staci Tullar, who has been with the agency for many years, was named the new Financial Manager. Richard Villafuerte is in the newly created position of Ombudsman Bureau Chief, having served for many years as an ombudsman. Victoria Wagner, RN, left the position of Bureau Chief of Medical Cost Containment and returned to step back into

the position. The current vacancy rate is at 5.69 percent. The agency attempts to fill vacant positions quickly and without a loss of services to the public.

- The agency encouraged the International Association of Industrial Accident Boards and Commissions made a bid to have the IAIABC conference held in Santa Fe in spring 2016. IAIABC is a large workers' compensation organization.
- The WCA Annual Report successfully moved from being published at the end of the year to being published at the end of the fiscal year. It will now be published annually in June, six months sooner than it had been published, making it timelier.
- The WCA has expanded its Risk Reduction Program, previously called the Extra Hazardous Employer Program. The agency identifies high accident employers and works with them to help reduce workplace accidents and reduce premiums.
- The WCA has established a reimbursement process for medical marijuana that provides clarity and control in workers' compensation injury cases. The rules contain eligibility requirements for reimbursement of medical cannabis. Compensation rates for medical cannabis were also set.
- The New Mexico Court of Appeals ruled that the provision of the statute excluding agricultural laborers from mandatory workers' compensation insurance coverage was unconstitutional. The Court made its ruling retroactive to March 30, 2012, the date the Second Judicial District Court ruled similarly. The agency has conducted ongoing outreach events in Albuquerque, Los Lunas, Taos, Portales, Deming, Silver City, Weed, Maxwell, and Roswell, for agricultural employers to explain the changes and answer questions on the ruling's impact. With the addition of public service announcements, aired statewide, outreach efforts have reached hundreds of people throughout the state.
- At the annual All-Hands Meeting, employees received awards for service. Rinda Dewhirst, a paralegal in the Office of General Counsel, was named Employee of the Year.
- The Uninsured Employers' Fund (UEF) set a goal to bring in \$240,000 (collected from uninsured employer reimbursement of benefits paid, plus penalties and interest) by the end of the fiscal year 2015, and met 99.7 percent of their goal. The money helps provide workers with medical and indemnity benefits, and comes from penalties and interest imposed on uninsured employers. The UEF has been at 183 percent of the bureau's average collections per month (\$10,890) over the past three years. This year's total was 2.09 times as much as collected in 2014. The UEF exists to provide benefits to injured workers whose employers were illegally uninsured at the time of their workplace injuries.
- As of October 1, 2015, the WCA has followed the lead of the Centers for Medicare and Medicaid Services and transitioned to the use of the International Classification of Diseases, 10th edition, Clinical Modification and Procedural Coding System (ICD-10) from ICD-9. Diagnostic coding will be consistent with this most current version.
- The WCA held its annual Settlement Week October 26 through October 30. Of the 99 scheduled conferences, 45 were settled, for a 45.5 percent settlement rate.
- Through the first three quarters of 2015, the WCA staff conducted 1,419 mediation conferences with a resolution rate of 68.2 percent. Another 138 "settlement conferences" also took place.
- The WCA submitted its appropriation request to the legislature for Fiscal Year 2017. The request totaled \$11,830,300. The annual budget was submitted to the Legislative Finance Committee. Funds were requested to commission a study similar to a 1990 RAND study to look at return to work issues and other workers' compensation issues. There was also a request to the Legislature to end the practice of funds transfer out of the WCA budget for use by the Department of Workforce Solutions.

- The proposed 2016 Medical Providers Fee Schedule was drafted and opened for public comment through August 14. The Fee Schedule is now published and will take effect January 1, 2016.
- WCA Director Darin Childers, Advisory Council Chair Kevin McGinley and/or Vice Chair James Magoffe have made presentations to several legislative committees, to include the Economic and Rural Development and the Jobs Council.

Rule changes enacted

The WCA made changes to the WCA Rules, effective October 1, 2015.

The WCA has promulgated revisions to parts 3, 4, 7, 8 and 9 of the Workers' Compensation Administration Rules, and has revised some of the mandatory and/or recommended forms used in filings.

The rule changes (and the director's response to public comment) can be seen on the "News and Announcements" page of the WCA's website. (<http://www.workerscomp.state.nm.us/news.php>)

New forms were also approved. The new forms can be found on the WCA website under "Mandatory Forms." The "Out of State Health Care Provider Affidavit" and "Order Granting Approval" forms, however, are found under "Recommended Forms."

Changes were made to the following forms:

- Form letter to Health Care Provider
- Petition for Lump Sum Debts
- Petition for Lump Sum Return to Work
- Summons for Petition for Lump Sum Payment
- Summons for Application to Director
- Application to Director
- Out of State Health Care Provider Affidavit and Order
- Workers' Compensation Complaint
- Application to Workers' Compensation Judge
- Joint Petition for Lump Sum Payment
- Medical Authorization

Conclusion

The New Mexico Workers' Compensation Administration is stable and working on initiatives to remain responsive to the dynamic challenges of the overall system and the current economic environment.

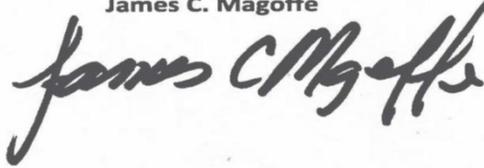
This report was approved by the Advisory Council on Workers' Compensation and Occupational Disease Disablement during a regular session on December 3, 2015.

Respectfully submitted:

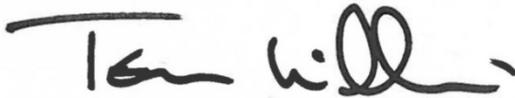
Kevin J. McGinley



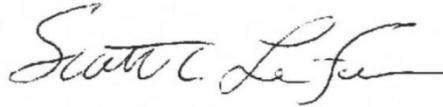
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