

STATE OF NEW MEXICO
ADVISORY COUNCIL ON WORKERS' COMPENSATION
AND OCCUPATIONAL DISEASE DISABLEMENT

****MINUTES****

MEETING DATE: January 31, 2018
Hotel Santa Fe, 1510 Paseo del Peralta, Santa Fe, NM

Members Present: Kevin McGinley, Courtenay Eichorst, Tara Bonestroo, Taylor Horst and
Director Darin Childers, as ex-officio.
Members absent: James Magoffe, Dain Symes.

1. Call to Order and Introductions: 9:34 a.m.
Vice-chair Kevin McGinley stood in for Chairman James Magoffe, who was absent. Kevin McGinley called the meeting to order and introductions were made. Vice-chair McGinley introduced Tara Bonestroo, the council's newest board member, who represents employers. Ms. Bonestroo has a dairy farm in Portales.
2. Approval of Agenda:
The agenda was approved on a motion from Taylor Horst, seconded by Courtenay Eichorst.
3. Review of Minutes:
The minutes of December 7, 2017, were approved on a motion from Courtenay Eichorst, seconded by Kevin McGinley.
4. Director's Report:
WCA Director Darin Childers provided a recap on the past year. He reminded everyone that this would be his last year as director. He promised to work toward a smooth transition. To look back at the agency's past performance, he relies on statistics. First, he looks at the Annual Expenditure Report (AER), a requirement for payors that provides the WCA with the amount of expenditures for the prior year. He expects 335 AER reports in total. As of 1/26/2018, about one-third of the reports had been submitted, which is similar to the rate of submission for the prior year. AER reports are due by February 15. Of the one-third submitted, insurers reported \$101.4 million in expenditures. So far, there have been seven cannabis claims for a total of \$8,277. The second place he looks for statistics is with the agency's internal management report. According to the reports, in 2017 complaints went down 10 percent from 2016. The mediation rate was 68 percent, down one percent from the prior year. There were 88 trials, a small number when considering there were about 40,000 workers' compensation claims. On the downside, the average time for a case to get to trial is 721 days. There were 27 fatalities reported so far for 2017. This number is subject to revision, and dependent on submission of data within the required time frame. In 2016, there were 43 fatalities. Last year, the employer compliance bureau investigated 5,080 businesses to ensure they carried workers' compensation insurance if required to do so. Most of those contacts to businesses

were through phone calls. Some of those employers are required to attend a hearing for non-compliance, at which time they are given a penalty. Very rarely does the agency shut a business down with a temporary restraining order.

The Self-Insurance Guaranty Fund (SIGF) has a balance of \$4,237,000. This fund covers costs for injured workers when a business is closed. The fund is regulated by the Self-Insurance Guaranty Board.

On the matter of personnel, there is a new mediation bureau chief. Former chief Bonnie Stepleton is now at the New Mexico Court of Appeals, and in her place, long-time WCA mediator Sarah Karni has been promoted. There is currently a 5.7 percent vacancy rate, with seven out of 122 positions vacant. Two of the positions are in the process of being filled.

E-filing became mandatory January 1, 2018. Complaints about the new system have been minimal, and the agency is at work ironing out kinks.

The House Finance Committee looked at the agency's budget two weeks ago. It passed through, though there was some debate on the issue of fund transfers to other state agencies. For FY19, the committee lowered the amount transferred to the Department of Workforce Solutions, from the \$1.5M transferred last year to \$1.25M this year. There was some discussion in the committee about lowering the assessment fee.

Carol Cloer had a question about the \$4M balance in the SIGF. Does it go up that much per year? If so, wouldn't the WCA have plenty of funding? Director Childers explained how the SIGF funds are restricted, and that they are separate from the WCA's funding. He provided an overview of the funds the WCA oversees, to include the Uninsured Employers' Fund (UEF), which also has restricted funds. There are two restricted funds and the WCA's funds from the assessment fee. The bulk of operations come from the WCA fund, which in FY17 was swept clean. The concern with limiting the assessment fee, as proposed by the Advisory Council, is that it works if the agency has extra money, but if there isn't extra money, having a reduced fee puts the agency's budget in a bind.

Merilee Danneman discussed SIGF history. SI was really important when Furr's Supermarkets went into bankruptcy. As a self-insured employer, they tried to move funds out from the workers' comp fund. The WCA stopped Furr's so the SI fund was not raided.

Vice-chair McGinley asked the director to explain the WCA's relationship to insurance. Childers explained there are three choices for workers' compensation insurance: the commercial market, a self-insured pool, and an individual self-insured group. Mike Hamsing from Builders Trust added that self-insurers are overseen by the WCA but the OSI oversees the group's execution of claims.

Vice-chair McGinley asked if the WCA was staffed sufficiently at 122 full time employees, or if it needed more. He wondered if the assessment fee was appropriate,

and wanted to ensure there was enough funding for both personnel and ongoing best practices studies. There was discussion about when transfers began to come out of the WCA for other state agencies, 31M in the past 10 years. Director Childers noted there was \$250,000 appropriated to do a study this year. He gave an overview of the agency's revenue streams which include the assessment fee, and any imposed penalties from rule breaking.

5. Legislative Update:

Legislative Subcommittee Chair Kevin McGinley reported that HB 82 was introduced by Rep. Randall Crowder. The bill was an attempt to right size the assessment fee, more of a message bill, to make clear the money should be used for what it is assessed for. The bill was sent to the rules committee and is not expected to make it out of committee. Courtenay Eichorst and McGinley agreed that the legislative committee needs to begin work earlier to introduce bills to legislators. Memorial 5 was also introduced by Rep. Crowder, and requests the WCA commission a study of best practices in 2018 and every five years thereafter. Eichorst noted the legislators liked the memorial, but not the lack of specifics. Labor representatives feared that statutes would be changed to accommodate the memorial requirements. They wanted to know where and how the studies would be conducted. They wanted to ensure the states compared to New Mexico in any study would be as close an apples to apples comparison as possible. Maggie Karpuk suggested that Colorado be used in any comparisons in studies. Other suggestions for future studies could include looking at WCRI newsletters and publications from academic institutions, like the data from the Bureau of Business and Economic Research (BBER) at UNM. Eichorst would like to take the memorial back to the legislature next year. Taylor Horst wondered if the 250k appropriated for a study the prior year was not enough. That money wasn't spent on a study because in FY16, the WCA had to cut its budget by 1M, which killed the study. The money was used to shore up the budget for essentials. McGinley reported that he has asked a senator to consider doing a Senate memorial to match the House memorial, and he is waiting to hear back. He and Eichorst would like to get started on a memorial for next year's session.

6. Break

7. Public Comment:

There was no public comment.

8. Advisory Council Action Items

The council wants to go forward with a memorial for studies to be done at regular intervals. The sooner it is worked on, the sooner it will be useful at next year's 60 day legislative session. In April, the council will discuss what to do for the next legislature. They will also discuss getting people onto a legislative committee.

Taylor Horst moved that the Advisory Council choose to follow the open meetings resolution. Courtney Eichorst seconded. The council was unanimous in its approval.

9. **Administrative and Scheduling:**

The next meeting will take place on Thursday, April 19, at 9:30 a.m. at the WCA main office, 2410 Centre SE in Albuquerque.

On a motion from Eichorst, seconded by Horst, the meeting adjourned at 10:44 a.m.

DRAFT