

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

****MINUTES****

MEETING DATE: December 7, 2017
WCA Albuquerque office, 2410 Centre, Albuquerque, NM

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

1. Call to Order and Introductions: 10:37 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.
2. Approval of Agenda:
The agenda was approved on a motion from Kevin McGinley, seconded by Courtenay Eichorst.
3. Review of Minutes:
The minutes of October 26, 2017, were approved on a motion from Courtenay Eichorst, seconded by Dain Symes.
4. Director's Report:
WCA Director Darin Childers reported that the WCA's proposed budget has gone to the Legislative Finance Committee (LFC). The LFC responded sympathetically to the dilemma of monetary transfers taken out of the agency. The proposed FY 2019 budget would be a net increase of 3.5 percent (excluding the 1.5 million which will be transferred out to the Department of Workforce Solutions). The House Appropriations committee will review the budget next, and a vote will be taken on whether it is approved. Childers noted that a special request was made for appropriation of funds for third party research, which Rep. Crowder brought up at the Legislative Finance Committee.
In terms of personnel, there are 16 vacancies, eight of which are currently being filled. The current vacancy percentage is 6.5 percent.
The WCA has created a new Worker Guidebook. The guide is available online and had a small print run. Everyone was encouraged to read through the guide and let the agency know of any changes that ought to be made. Once changes are incorporated, there will be a larger print run.
The rulemaking process recently finished, with the focus on Part 4. (The rules are sectioned into 13 parts). The main change was to implement an e-filing system. There was also a proposed change made to the selection of a healthcare provider (HCP). Comments to this proposed change were universally negative. As a result, the HCP selection language will remain the same. Childers would like a system most people

can live with, so the issue will be revisited to see if a deadline for changes on HCP selection can be set in place.

There has been an increase in air ambulance billing disputes coming to the WCA. Because of federal regulations, maximum air ambulance fees cannot be set at the state level. As a result of that disconnect, air ambulance fees are skyrocketing. In the past, parties often settled disputes themselves. However, since parties now settle disputes less frequently, the WCA has become more involved in settling disputes. The director is trying to give parties better guidance, and is making determinations on the disputes. Lastly, there have been two police officers in recent local news who have expressed their negative views about workers' compensation to the media. The director believes any coverage about workers' compensation is good coverage, as even negative coverage allows the chance to explain workers' compensation. Workers' compensation can't be everything to everyone. The trick is to find a balance. As a result of the news stories, several legislators have reached out to the agency for information. PIO Diana Sandoval-Tapia would like to do a workers' compensation 101 with the news media. There have been a number of stories published where it is clear the reporter doesn't understand work comp. PIO will reach out to media to provide them with an overview of the system.

There was some discussion between Council member McGinley and Childers about whether or not to invite injured workers who were disgruntled with the workers' compensation system in to AC meetings. Childers noted that such meetings are fine as long as they are restricted to within the parameters of the legal process. Childers will reach out to the two officers and report back to AC.

McGinley asked if there was money in the budget for the study on workers' compensation in New Mexico, and Childers said the money is not in the budget per se but he has submitted a request to the legislative finance committee. If funds are available, they are usually issued. There was some discussion about the legality of asking for proposals for a study prior to having funds released.

5. Legislative Update:

Legislative Subcommittee Chair Kevin McGinley reported to the Council that members of the subcommittee – himself, Courtenay Eichhorst, and Dain Symes met with WCA General Counsel Lisa Liegeot. The council asked worker attorney Jeff Brown, adjuster Dan Gialamo and defense attorney Neysa Lyman to join the subcommittee. They have been working on a proposal to rewrite the assessment fee, and a memorial is proposed for a study on work comp in New Mexico. Rep. Randall Crowder pledged he could sponsor the bills. The assessment fee is covered in statute 52-5-19, which currently requires \$2.30 from employers for each employee, and \$2 from each employee covered by workers' compensation. The idea of the proposal is to lessen that amount of money to minimize fiscal sweeps. Wording would be inserted to specify the funds could be used "only for work designated by the director for workers' compensation needs and no other reason."

Copies of the draft proposal and memorial were passed out to the room. McGinley attended a meeting with legislative leaders, who said they didn't want any proposed WC legislation this year unless there was agreement between Business & Labor, as they plan to focus on budget issues. McGinley didn't want to take a year off, but

wants to continue to educate the legislature, and keep the momentum going. A memorial would be important, and would be to commission a study in 2018, with follow up studies every five years thereafter. The legislative subcommittee had just approved the proposal and memorial in a meeting prior to this council meeting. The memorial and proposal will go on to the legislature at this point.

6. Public Comment:

Merilee Dannemann, NM News Service, informed the Council that when the Advisory Council was first created, injured workers would sometimes go to the council to tell their stories. There was a period where the WCA went around the state to get input. Doing such a thing again might attract more voices. McGinley thought it would be good to invite injured workers, and to do outreach and try to get perspectives. Dannemann also said it would be good to explain to businesses that a fiscal analysis will be done prior to the proposal to change the assessment fee. She suggested it might be easier for businesses if the fee were changed to \$1.70 so the entire amount adds up to \$4. It would be simpler to understand and "sell."

Mike Hamsing of Builders Trust asked about the decision on the air ambulance case before the director and whether it could be discussed. The director said the case doesn't fall under the rules so he could discuss it freely. The decision came down to the answers to two issues. First, he needed to know if the air ambulance transport was reasonable and necessary, and second was the fee reasonable and necessary. The transport was necessary, but the fee appeared to be grossly excessive. The fee for transport was \$70k and the Medicare capped fee for the transport is about \$15k. Fees need to be supported by evidence, and the insurers had a lot of evidence to prove the fees were high, but the transport company had no evidence to support their fees. Often, companies overcharge insurers to make up for the low reimbursements from Medicare and Medicaid, and this appeared to be the case in this instance. A study done by the NM Office of the Superintendent of Insurance (OSI) noted that air ambulance fees have risen dramatically in the last few years, and the OSI recommended the WCA do something about the situation.

Roxanne Rivera from Albuquerque Builders/Contractors asked if the AC had discussed the option of keeping the assessment the same but asking for a reallocation of funds. McGinley replied the council was interested in right-sizing the fee. Rivera said the state would likely make up for the funds by transferring them from other agencies, or by passing them along as fees elsewhere.

Director Childers responded by saying that although he was philosophically on board to reset the amount of funds assessed, the timing was off. It would be better to make such changes during positive financial times. The agency's reserves are currently at a minimum or non-existent. The agency is captive to Taxation and Revenue, and how well they execute their collection of the fee. If Tax and Rev has good collections and enough staff, fees come in. He cautioned the Council about reducing the fee.

McGinley would like a fiscal report from the WCA on the assessment fee. Childers will provide one. Childers said that if the hope was to get the legislation passed this session, it wasn't likely, but if the council wanted to rally attention about the fee, then they should go ahead with the proposed legislation. There was some discussion between the director and council about how Tax and Rev collects the assessment fees.

7. **Advisory Council Action Items**

The council's annual report is due January 1, so they are putting the finishing touches on the report. There has been no news on filling the council employer vacancy. The director will review the annual report once the 2018 legislative efforts are included. Another change to the report would be changing the 2017 legislative session to the 2018 legislative session. Courtenay Eichorst made a motion to go with the report with the changes added. Dain Symes seconded.

Co-chair McGinley would like to adopt the two legislative initiatives and move forward with them, pending council approval. Courtenay Eichorst motioned to approve and Dain Symes seconded.

As was allowed last year, once the legislative proposals are approved, Kevin McGinley and James Magoffe will make changes to continue them through the legislative process. Courtenay Eichorst moved to approve that proposal, seconded by Dain Symes.

8. **Administrative and Scheduling:**

Next meeting is yet to be determined, and will take place at Hotel Santa Fe in Santa Fe. Diana Sandoval-Tapia will look into getting a meeting room for the legislative subcommittee and council for a meeting in late January or mid-February. January 29-February 2 was suggested as a good week.

On a motion from Symes, seconded by Eichorst, the meeting adjourned at 11:44 a.m.