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MEETING NOTICE:

The Advisory Council on Workers' Compensation and Occupational Disease Disablement will meet at **9 a.m., Thursday, January 30** at Hotel Santa Fe, 1501 Paseo de Peralta, Santa Fe, N.M.

Download agenda at: <http://www.workerscomp.state.nm.us/advisory.php>

Save the Date!
 Settlement Week
 is scheduled for
 October 27 - 31,
 2014.

The New Mexico Workers' Compensation Administration Has a New Director

By Diana Sandoval-Tapia

Darin A. Childers was appointed director of the New Mexico Workers' Compensation Administration (WCA) by Gov. Susana Martinez and officially began on Dec. 2, 2013. Childers previously served as the agency general counsel since June 2011. He takes over the position formerly held by Ned S. Fuller, who left the WCA to be the litigation bureau chief for the state's Risk Management Division of the General Services Department.

Working for the agency as general counsel for the past two and half years has been advantageous, says Childers. "Ned allowed me to participate in things the attorney doesn't usually get to sit in on," he said, "such as meeting with doctors, business owners and other constituents, and considering ideas and complaints that were not necessarily a 'lawyer thing.'"

Childers hopes to continue the momentum begun by Fuller in changes and improvements at the WCA. For example, "Ned took great steps to improve the adjudication process," Childers said, "including moves towards an electronic filing and calendaring system." In order for a WCA electronic filing system to match other courts in the state, the agency will need to invest significantly in infrastructure improvements, he explained. Expedition of the agency's court and trial process is an ongoing priority, said Childers, who is considering some organizational changes in the dispute resolution area. The Dispute Resolution Bureau now has five judges and four mediators, along with critical support staff, all working toward a goal of resolving claims disputes. When parties do not settle claims through our mandatory mediation program or on their own, we want to make sure our judges have the resources they need to resolve them as expeditiously as possible.

Enforcement is another area Childers hopes to improve. "We need to do a better job of rooting out fraud. We need to get our enforcement staff out into the community, make people know they're there to take referrals." Childers said he hopes that the bureau will then start getting better quality referrals that the staff can follow, investigate, and potentially

prosecute, including bad faith claims. In regard to employer compliance, "the vast majority of businesses in this state do what's right – they buy in-



WCA Director Darin A. Childers

sure or otherwise get coverage," Childers said, but the law could also use some clarification to fix some ambiguities (for example in §52-1-6 and §52-1-7 of the Workers' Compensation Act regarding insurance coverage), and that could be helpful for how we use our enforcement resources, he said.

More areas of clarification of law Childers would like to see include the section on the Occupational Disease and Disablement law, and language regarding intoxication of workers and causation of injuries. Additionally, he would like to see more direct clarification, either from the courts or from the legislature, regarding the issue of insurance coverage for farm and ranch workers. The Act currently exempts farm and ranch workers from mandatory coverage, however a district court judge ruled in March of 2012 that the exemption excluding farm and ranch laborers from workers' compensation insurance coverage was an unconstitutional denial of equal protection for those workers. The state appealed on grounds that the district court did not have the authority over workers' compensation claims to order their reopening and that the court lacked subject matter jurisdiction over the lawsuit. The New Mexico Court of Appeals dismissed the appeal as moot after the three individuals plaintiffs settled their claims. Childers said the agency will continue to monitor individual cases going through the system, and that the agency will adapt as necessary depending on how those cases are decided. He also said he believes there is still room for the legislature to have its say on the issue of workers' compensation and the farm, ranch and dairy industry.

The New Mexico Workers' Compensation Administration Has a New Director

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Going forward as agency director, Childers hopes that other changes already made will help to reduce the number of small workers' compensation claims, namely, the implementation of the Official Disability Guidelines (ODG), which became effective in New Mexico July 1, 2013. The ODG guidelines help to define a standard of medical care, and provide "reasonable and necessary" guidelines for treatment, that shouldn't be denied by insurance adjusters in workers' compensation cases. "ODG does not deny providers from running their practice how they see fit," Childers explains, "it simply means that a provider may have to provide further explanation or justification of recommended treatment orders that fall outside of the defined ODG guidelines."

Another undertaking the WCA hopes to administer under Childers' direction is a formal study. The only other time the Administration has commissioned such a study was in 1999-2000, conducted by the RAND Corporation. The Administration has requested \$100,000 from the New Mexico Legislature for the study, and plans

to contract with an outside vendor to conduct the research. Possible areas for evaluation include return to work best practices; vocational rehabilitation programs; the pros/cons of lifetime benefits; and/or the evaluation of the permanent partial disability formula with respect to scheduled versus whole body injuries. The exact scope of the study will depend on funding approval.

Childers was born in Curitiba, Brazil, but grew up in Gaithersburg, Md. As a young man, he was introduced to New Mexico when his Boy Scout troop twice made the long trip from the East Coast to the Philmont Scout Ranch in Cimarron, N.M., for a two-week backpacking trip. He loved those experiences and looked forward to returning to New Mexico.

He attended Brigham Young University, in Provo, Utah. A member of the Church of Jesus Christ of Latter-day Saints, Childers interrupted his college studies to spend two years in Viña del Mar, Chile, serving a church mission. He earned a bachelor's degree in history, in 2005, and earned his juris doctor degree in 2008, graduating *cum laude*. Once back in school, he supported

himself by working first as a Spanish instructor and later as a law clerk in the Criminal Justice Division of the Utah Attorney General's Office. Childers moved to New Mexico following graduation and worked as an associate at the Albuquerque law firm of Allen, Shepherd, Lewis, Syra & Chapman, P.A., where he says about 50 percent of his practice was primarily workers' compensation and insurance defense litigation.

Childers is married to the former Jennifer Fairbanks and together they have three young children. In his spare time, he enjoys playing sports and spending time outdoors camping and hiking. He also enjoys working with youth, and has served in various capacities in the Boy Scouts of America program, including Scoutmaster and Troop Committee Chairman. Childers currently teaches an early morning religious education class for high school students.

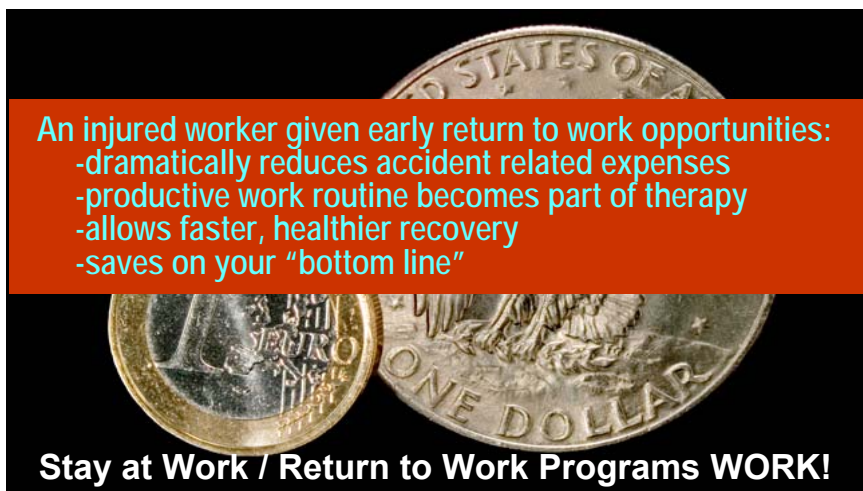
Childers is excited for this opportunity to serve as WCA director. He appreciates the good work WCA employees put in. He recognizes he has a lot to learn and indicates that he welcomes feedback and input from anyone who has it.

NM Workers' Comp. Adm. Quarterly Bulletin

Darin A. Childers Director
Diana Sandoval-Tapia, Editor/Designer

The Bulletin is published in January, April, July and October by the Economic Research Bureau of the New Mexico Workers' Compensation Administration. The Bulletin is available free of charge. Send changes of address and requests to receive the Bulletin to Diana Sandoval in the Economic Research Bureau, New Mexico Workers' Compensation Administration, diana.sandoval@state.nm.us.

Suggestions for articles are welcome; call Diana Sandoval-Tapia at (505) 841-6052. Recent issues of the Quarterly Bulletin can be viewed on the Internet at <http://workerscomp.state.nm.us/research/index.php>.



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What is the Advisory Council?

The Advisory Council on Workers' Compensation and Occupational Disease Disablement is a task force created by statute, comprised of six members, three representing workers and three representing employers. The primary role of the Council is to advise the governor and legislature on the status of the workers' compensation system in New Mexico. The Advisory Council meets several times a year on an irregular schedule. Scheduled meetings of the Council are announced on the WCA website, <http://www.workerscomp.state.nm.us/advisory.php>

New Mexico Workers' Compensation Administration Releases 2012 Annual Report

The New Mexico Workers' Compensation Administration's 2012 Annual Report was released in print and is also available electronically on the agency website (http://www.workerscomp.state.nm.us/research/ar12/wca_annual2012.pdf). The following is the executive summary.

In 2012, New Mexico state government and local governments reported 47,399 and 105,808 covered employment, respectively. Compared to 2011 these covered employment levels decreased by 2 percent and 0.9 percent, respectively. The private industries sector reported 602,387 covered employment in 2012, an increase of approximately 0.7 percent from 2011. State government reported 29-percent decrease in new indemnity claims from 2011; local governments decreased by 24 percent while the private industries sector reported 7 percent decrease, in new indemnity claims during the same period. The top five newly reported indemnity claims from both government, and private industries were from:

- health care and social assistance (13.8 percent of all new indemnity claims),
- construction (13.2 percent of all new indemnity claims),
- retail trade (13.0 percent of all new indemnity claims),
- public administration (11.7 percent of all new indemnity claims), and
- accommodation and food services (6.4 percent of all new indemnity claims).

For the combined private industries and government sectors, about 87.1 percent of the newly reported indemnity claims in 2012 came from the covered workforce of age group of 25-64 years, a decrease from 88.4 percent in 2011.

Self-Insured Coverage Increases

Self-insured coverage of workers in New Mexico continues to remain below the 2006 high levels. In 2012, the self-insured covered workforce was 248,588, representing 36.7 percent of the total covered workforce, and appears to be increasing after declining continuously from 2006 to 2009. In 2012, the voluntary and assigned-risk insurance markets covered 63.3 percent, or 428,391 out of the 676,979 of total covered workforce in New Mexico. Compared to the 2011 levels these numbers represented a 4.2-percent increase of the self-insured

covered workforce, and 10.7-percent decrease of the voluntary and assigned-risk coverage.

Total Paid Losses Costs Continue to Increase; Direct Earned Premiums Rise

In 2012, an estimated \$315.1 million was paid for workers' compensation services as paid losses. This amount was 9.9 percent higher than the \$286.8 million paid in 2011. The total number of claims covered by private carriers and self-insured entities increase by 4.9 percent from 44,551 in 2011, to 46,724 in 2012. NAIC sources indicate that during the one-year period insurers' direct earned premiums increased by 8.4 percent from \$229.2 million in 2011 to \$248.5 million in 2012. At the same time estimated payroll costs per \$100 of payroll also increased by 40.2 percent, possibly reflecting improving employment. The estimated paid losses per \$100 of payroll also increased by 9.3 percent. The average inpatient billed cost decreased by 8.4 percent from \$20,680 in 2011, to \$18,944 in 2012, while the average length of stay (days) in treatment facilities increased by 2.3 percent from 4.3 days in 2011 to 4.4 days in 2012. The average room rate for inpatients also decreased by 2.0 percent from \$1,384 in 2011 to \$1,356 in 2012. During the same one-year period the number of inpatient claims rose by 0.9 percent.

Employment Marginally Improving; Compensable Fatalities Decline

New Mexico experienced employment increase of 0.32 percent from 2011 to 2012. This followed a small increase from 2010 to 2011, after three years of continuous decline (2008 - 2010). During the year, First Report of Injury or Illness (E-1) filings declined by 7.8 percent. Indemnity claims increased by 1.1 percent. New medical-only claims decreased by 5.9 percent while updated and closed medical-only and indemnity claims increased by 30.8 percent. Total reported compensable fatalities decreased by 10.5 percent, from 19 in 2011, to 17 in 2012. This represented a 10.7-percent decrease in



compensable fatalities per 100,000 workers from 2.52 in 2011, to 2.25 in 2012.

Injuries and Occupations Follow Past Trends

Back injuries dominated claims for both male workers (10 percent of all claims) and female workers (6.5 percent of all claims) in 2012. Knee injuries were a close second (9 percent of all claims) for male workers, and for female (5 percent of all claims) workers. Multiple-other parts injuries were third (6.9 percent for males and 4.6 percent for females of all claims). Sprains, strains and tears dominated newly reported indemnity claims for both male (33.3 percent of all claims) and female (22.4 percent of all claims) workers. This category of the "nature of injury or illness" was followed by contusions (males = 8.6 percent; females = 5.4 percent) and then fractures (males = 7.1 percent; females = 2.9 percent of all indemnity claims). There were more newly reported indemnity claims involving the top three nature of injury or illness categories in 2012 (3,888) than in 2011 (3,878).

Irrespective of the type of injury or the body part injured, males in the age group

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45-54 years old (17.1 percent of all claims) reported more indemnity claims than any other age group. The age groups 35-44 years old (15.1 percent) and 25-34 years old (14.6 percent) were second and third, respectively, among male workers reporting indemnity claims. For female workers, most claims were also for the age group 45-54 years old (10.3 percent) with the age groups 35-44 years old (7.6 percent) and 55-64 years old (6.9 percent) coming in second and third, respectively. For male workers, the top three newly reported sources of injury or illness in 2012 were "persons, plants, animals and minerals" (16.7 percent); "structures and surfaces" (16.5 percent); and "parts and materials" (6.8 percent). For female workers, the top three injury sources were "structures and surfaces" (12.3 percent); "persons, plants, animals, and minerals" (11.7 percent); and "containers" (3.2 percent).

In 2012, Bernalillo County had the largest number of lost time claims (1,645 count = 35 percent of all claims), followed by Doña Ana County (383 count = 8.9 percent of all claims) and Santa Fe County (349 count = 7.4 percent of all lost time claims).

The top three occupations by claims filed by male workers in 2012 were:

- construction trade workers (11.2 percent of all claims),
- motor vehicle operators (8.3 percent of all claims) and
- other installation, maintenance, & repair occupations (5.3 percent of all claims).

For female workers, the top three occupations in 2012 for claims were:

- nursing, psychiatric, & home health aides (3.2 percent of all claims),
- retail sales workers (2.8 percent of all claims), and
- building cleaning and pest control workers (2.2 percent of all claims).

Inside the Workers' Compensation Administration: A Busy Year

The Clerk of the Court Bureau entered 55,405 legal documents into the WCA database in 2012. The bureau recorded 4,201 (adjusted to include additional types of lump sum filing) total complaints, an increase of 66 percent from 2011; 2,159 lump-sum petitions, an increase of 259.2 percent from 2011; and 2042 regular complaints, also an increase of 5.8 percent from 2011.

The Ombudsman program assisted in a total of 10,856 cases in 2012. This, however, represented a decrease of about 18 percent contacts compared to 2011. The contacts included 2921 submitted disputes or potentially resolvable cases, a decrease of 26.4 percent compared to 2011; and 988 resolved disputes without mediation or adjudication, a decrease of 25.7 percent compared to cases in 2011. The bulk of the contacts were, however, in the program's traditional role to inform, educate and assist injured workers or family members, employers, insurance providers, health care providers, attorneys and others about their rights and responsibilities under the Act establishing the New Mexico workers' compensation law.

The Office of the General Counsel handled 144 insurance coverage enforcement cases; 11 of the cases resulted in district court injunctive relief. There were four out-of-state health care provider approvals. The office also filed 13 district court actions to collect penalties, processed 59 records requests, 12 attorney withdrawals, and three recommended resolution appeals. The office of the General Counsel also filed four enforcement actions for violations of the New Mexico law, and promulgated four rules changes and one appeals defense.

The Medical Cost Containment Bureau conducted 583 individual admission reviews in 2012; 159 of these were emergency admissions. 1,511 days were authorized but

1,631 days were utilized by these admissions.

In 2012, the WCA's pre-trial resolutions accounted for about 83.9 percent of complaints. The median number of days from the date a complaint was filed to issuance of a recommended resolution was 58 days, a 5-percent improvement from 2011. About 67.7 percent (mediations only, disregarding cases settled prior to formal trial) of the 1,937 recommended resolutions issued were accepted by both parties, up from 66.7 percent of resolutions in 2011. The percentage of complaints that went to formal trial for resolution was 5.6 percent, up from 4.1 percent in 2011. There were 108 trial hearings, up from 79 in 2011. Workers' compensation (WC) judges approved 1,550 lump-sum dispositions, up from 1,513 in 2011. WC judges also improved their average days (67.7 days) from end of trial to issuing decisions. Only 52 of the cases decided by WC judges were appealed to the New Mexico Court of Appeals (COA). The COA returned 54 decisions in 2012. Of the 54 cases the COA issued 11 dismissals, 20 affirmations, three affirmations and remands, one reversal and remand, one complete reversal, two partial and 16 remanded.

The Economic Research Bureau documented 30,401 First Report of Injury or Illness (E-1) and 19,795 notices of benefit payments (E-6) in 2012. For both E-1 and E-6, these numbers represented 7.8 percent and 5.8-percent decrease, respectively, from 2011 levels. Electronic filing continued to dominate the other filing options (paper, internet) available to filers: 92.6 percent of E-1 forms and 86.8 percent of E-6 forms were filed through EDI. Paper filings continued to decline. The quality of E-1 and E-6 coding continued to improve, scoring above 96 percent accuracy in each case.

Workers' Compensation Administration Actively Collecting Annual Expenditure Reports

Collection of the New Mexico Workers' Compensation Administration's mandatory Annual Expenditure Reports (AER) for 2013 data has begun. Login credentials were sent out on January 15, 2014 by e-mail to those required to file.

Why does New Mexico require this information?

New Mexico State Law (NMSA Section 52-1-58) requires every workers' compensation insurance carrier and self-insured employer to report their annual expenditures to the New Mexico Workers' Compensation Administration (WCA). The Annual Expenditure Report (AER) is used to perform statistical analysis in order to monitor and improve the workers' compensation system in New Mexico.

Who is required to file an AER?

Every workers' compensation insurance carrier and self-insured employer, group, or pool making claim-related expenditures in a calendar year must file the AER. Carriers that no longer write workers' compensation policies and former self-insurers still must report annually as long as there are open claims that continue to be paid.

When is my AER due?

You must submit your report to the WCA by **March 15** each year. Your report will include information for the previous calendar year.

Can my company's third party administrator (TPA) file the AER for me?

Yes, a carrier or self-insurer may designate a TPA to file the AER on its behalf. The TPA will have a separate user name and

password. Please remember, however, the carrier or self-insurer is ultimately responsible for ensuring the report is filed correctly and on time.

I didn't receive an e-mail with login credentials. How do I register to use the NM Workers' Compensation AER Filing System?

Using your web browser, navigate to the WCA's Carrier Information page at <http://www.workerscomp.state.nm.us/carriers.php>, and select "Annual Expenditure Report Filing." Use the "New User" sign-up link and complete the registration web form, including all mandatory fields. Make sure to include an accurate telephone number and e-mail address because this information will be used to administer passwords.

What information is needed to complete the AER?

The AER includes information such as number of claims, payment totals for medical-only claims, and payment totals for indemnity claims. The AER requires that the payment totals be broken down by various categories. Detailed instructions are available on the AER filing site.

I have more questions. Who can I call?

You can call Leigh Martinez at (505) 841-6896, or e-mail her at leigh.martinez@state.nm.us, with any additional questions about the 2013 Annual Expenditure Report.

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