

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

****MINUTES****

MEETING DATE: February 10, 2022
Virtual via Zoom

Members Present: Courtenay Eichorst, Sara Ranney, Lillian Santillanes, Kevin McGinley, Darrell Deaguero, Marni Goodrich, and Director Robert Doucette, as ex-officio.

1. Call to Order and Introductions: 2:03 p.m.
2. Approval of agenda: Darrell Deaguero made a motion to approve, seconded by Kevin McGinley. Agenda approved.
3. Approval of minutes: Kevin McGinley made a motion to approve the minutes from November 4, 2021, seconded by Sara Ranney. Minutes approved.
4. Status of Agency report:
Director Robert Doucette introduced himself as the newly appointed director. When he came to the agency in early December 2021, there was a 23% personnel vacancy rate, which is now down to 15%. Positions are being examined for possible reclassification. One position is currently underway for an additional position in HR. The legislative session has started, and there is no workers' compensation legislation under consideration, and no dummy bills are in progress. The budget the agency wanted, which did not include the transfer of \$1 million to the Dept. of Workforce Solutions (DWS), did not make it, but the budget from the Legislative Finance Committee, which took \$1 million from the WCA, was approved, so the money was removed despite efforts otherwise. There is some progress, as in the past, there wasn't support from the Dept. Financial Administration to keep the \$1 million in the WCA, but now that support is there. There is also support from the DWS, which is a first. Doucette encouraged council members to talk to elected officials so that the \$1 million can be kept with the agency in the future, where it would be put to good use. There will be a 2.5% increase via the new budget, which will be put to good use, and the third HR person will be tasked with reviewing the current pay bands for agency employees to ensure they are appropriately compensated. Outreach is another area the director hopes to expand, once COVID is no longer an issue. He is an executive member of the IAIABC, the second New Mexican to ever be president of the board of that organization, something that will happen in two years. It is important for the agency to take up other peoples' ideas. At the end of March, the Colorado Workers' Compensation Administration is holding a forum, and the WCA will have some staff attend. Rather than reinvent things, the agency will implement other good ideas. Kevin McGinley wondered if some round table meetings could take place. The director said yes, but it depends on what happens in the state with the pandemic. He has begun the rules review process, and in early March stakeholders will be asked for input. For example, there was a consensus that mediations should happen via Zoom unless both parties agree to do otherwise. Also, it was agreed that all trials should

happen in person unless all parties agreed to have it happen in Zoom. If a rule is too controversial, he will put it aside so the majority of the easily agreed to rules can be instituted. It is always possible to go back to revisit a rule. Having talked to attorneys from both the worker and employer sides, there are some legislative initiatives that can be undertaken in the next years. For example, 21 out of 21 attorneys agreed the attorney fee cap should be increased. The director's door is open to everyone. Courtenay Eichorst wondered if a meeting would be possible at this time. Director Doucette thought the mask mandate must continue and until the numbers decline for a few weeks, it would be best not to meet in person.

5. Advisory Council Chair Report:

Chair Eichorst has closely watched the legislative session to ensure there is nothing that might adversely affect workers' compensation. The counsel is committed to ensuring that money at some point is no longer taken from workers' compensation. Eichorst suggested getting ready for the 2023 legislative session. The last few years of making it public about the sweep has had encouraging results. Because of the boom in the construction business, Eichorst asked Ronda Gilliland-Lopez to speak about the Mechanical Contractors Association (MCA), an organization that builds partnerships within the mechanical industry, and assists in educating within the industry relating to plumbing, heating, etc.

Rhonda Gilliland-Lopez presented a brief overview of insurance coverage and policies in New Mexico, focusin on owner-controlled and construction-controlled owner insurance programs. To provide background history, she noted that in 2003, there was an ad hoc group of business and labor representatives who would discuss potential workers' compensation legislation and then present to the Advisory Council. She provided background on the insurance protocols for those days, and how employers looked out for employees in their self-insured programs. The Owner-Controlled Insurance Programs (OSIP) and Contractor-Controlled Insurance Programs (CCIP) used by large employers at that time had control over claims, but businesses such as those in the MCA lost control over the administration of injured employee claims when OSIP and CCIP insurance administrators handled the claims. Most MCA businesses have an aggressive return-to-work policy for employees, hoping to get them back to work as soon as possible. There was a disconnect in that paradigm with OSIP/CCIP plans. Communications with employers from OSIP/CCIP was not robust with MCA employers, as the employers were not informed on the status of claims, or how they were affecting a business' insurance policies. MCA employers lost control over claims, and workers were taken off work for weeks at a time, a shift from the usual control MCA employers were used to. Experience modifiers are a ratio that over time help determine the cost of a contractor's insurance. Even though OSIP insurers were taking over medical and indemnity benefits, MCA subcontractors still took the hit on the experience modifiers. Because of the loss of control over e-mods, subcontractors were losing their ability to bid on contracts. MCA wanted to put a stop to that. The law was reviewed by the WCA and the Superintendent of Insurance, and they took it the legislature and lobbied for changes to the statute (see §52-1-4.2). (The statute was shared on the screen; see attached). Several OSIPs are coming into New Mexico with upcoming Intel and Facebook construction expansion projects. Any project that costs 150 million or more

over five years can be approved by the WCA and OSI to become an OSIP, and both construction projects do that. As stated in statute, rolling wraps are prohibited. In the past, there were not well-defined safety plans. The timely reporting of losses is also important for employers, and the OSIPs at that time were not reporting timely. In addition, once the OSIP/CCIP finished the project and left the state, the lifetime medical care would need to remain with the employee, and the changes to the statute allowed for that. Ms. Gilliland-Lopez stressed that open communication was imperative for all involved in a job site with OSIPs and CCIPs.

Marni Goodrich wondered if the 150 million was for GLM (workers' compensation) or GL (general liability) only. Ms. Gilliland-Lopez thought it had to be the 150 million altogether.

Kevin McGinley wondered if the statute needed to be changed. Ms. Gilliland-Lopez said the statute is already law, and she was simply asked by the AC chair to present the historic information.

Eichorst thanked Merilee Dannemann for the link to workers' compensation information provided last meeting.

6. Public comment:

Merrilee Danneman said she would have information for the next 60-day session. She noted that OSIPs can be problematic for small businesses, as they had been in the past. Mr. Eichorst asked that council members bring ideas to the next meeting. Mr. Doucette said if the council wanted to meet with the Superintendent of Insurance, to let him know, as he worked at the agency and he knows the Superintendent. The Superintendent sets the workers' compensation rate. In the 1990s, some functions of workers' compensation were left with the Public Regulation Commission, and he has discussed that with the Superintendent. The Superintendent is willing to have conversations about bringing boards back to the WCA.

Discussion ensued about having a meeting with the Superintendent of Insurance. Merilee Dannemann suggested the council members learn about the assigned risk pool if they talk to the Superintendent.

Director Doucette asked members to let him know what their questions would be prior to meeting with the Superintendent, through Chairman Eichorst.

7. Next meeting:

Thursday, April 21 at 2 p.m.

8. The meeting adjourned at 2:49 p.m., on a motion from Kevin McGinley, seconded by Darrell Deaguero.