

2019 Annual Report:

Advisory Council on Workers' Compensation and Occupational Disease Disablement

Presented to:

The Honorable

Michelle Lujan Grisham, Governor

The Honorable Russell Toal,
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 Commerce & Economic

Development Committee

Chair, House Judiciary



Submitted by:

Courtenay Eichhorst, Chair

Kevin J. McGinley, Vice Chair

Darrell Deaguero, Member

Sharon Pedroncelli, Member

Sara Ranney, Member

Lillian Santillanes, Member

Annual Report of the Advisory Council on Workers' Compensation and Occupational Disease Disablement - 2019

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.

Council Members

The Workers' Compensation Act requires that the Advisory Council on Workers' Compensation and Occupational Disease Disablement consist of three employer representatives and three worker representatives. It is important that appointments to the Workers' Compensation Advisory Council comply with the Workers' Compensation Act in identifying qualified leadership and in maintaining the essential balance between employer and worker interests to ensure the long-term integrity of the workers' compensation system for New Mexico.

In addition to the six appointed members, the Director of the Workers' Compensation Administration serves as an ex officio, non-voting member. In August, 2019, four newly appointed members joined the Council.

Darrell Deaguero and Sara Ranney will represent labor, while Sharon Pedroncelli and Lillian Santillanes will represent business. Deaguero is president of Laborers Union, Local 16, the construction workers' union. Ranney is with the International Association of Firefighters Local 244, and is an engine company lieutenant. Pedroncelli is president and chief financial officer at McDade-Woodcock, Inc., a commercial electrical, instrumentation and control contractor. Santillanes is vice president of Structural Services, Inc., a steel erection firm.

Labor representative Courtenay Eichhorst was reappointed by Gov. Lujan Grisham and business representative Kevin McGinley will continue to serve out his unexpired term. Council Chair Eichhorst is business manager of U.A. Local 412 and Council Vice Chair McGinley is president of McGinley Construction, Inc., a residential and commercial remodeling firm.

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.*

2019 Legislative Efforts

In the 2019 60-day legislative session, one House bill related to workers' compensation passed both houses. HB 324 – PTSD as a Firefighter Employment Condition, was sent to Gov. Michelle Lujan Grisham, who signed it into law on April 2, 2019.

HB 324, introduced by Rep. Deborah A. Armstrong (D- Bernalillo) and Melanie A. Stansbury (D- Bernalillo) amends the Occupational Disease and Disablement Law to add post-traumatic stress disorder (PTSD) to a the list of conditions presumed to be caused by the occupation of firefighter. With the presumed assumption, an employer/insurer would authorize medical treatment for PTSD diagnosed by a physician or psychologist, mirroring language of HB 324 Section 1C. As with all presumptions, under HB 324, a claim of firefighter PTSD is rebuttable. The bill also changes references of "disease" to "condition."

Reallocation of Funds

Over the last 14 years, more than \$37 million has been transferred out of the WCA to other agency funds (according to WCA audited financial statements, 2005-2019). The Council continues to oppose the issue of reallocating funds taken from the workers' compensation assessment, which is supposed to be for purposes of funding the workers' compensation system. For FY 2019, the legislature approved a \$1.25 million transfer to DWS, and has approved \$1.05 million to be transferred from the WCA fund to DWS for FY 2020. This follows a long pattern of fund sweeps. In Fiscal Year 2018, \$1.5 million was transferred to the New Mexico Department of Workforce Solutions (DWS). In FY 2017, legislative transfers included \$1.5 million to DWS, and \$8.75 million to the State General Fund. In FY 2016, the WCA was directed to transfer \$2,048,200 dollars from its operational budget to the Department of Workforce Solutions (DWFS), representing an increase of \$1,148,200 over the transfer in FY 2015. (Source: NM WCA 2019, 2018, 2017 annual reports).

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. These funds are raised through assessments on workers and

employers and the Council feel strongly the money should stay with WCA for the betterment of both workers and employers. While we understand that at the start of the recession it may have been necessary, this should have been a temporary necessity. We respectfully request that these transfers stop this next budget year.

2020 Legislative Initiatives

The Advisory Council does not plan on taking on any regulatory issues during the upcoming short, fiscal legislative session, but will continue to follow industry issues that may arise.

Independent Study of Disability Benefits in the New Mexico Workers' Compensation System

The New Mexico Workers' Compensation Administration, with the full endorsement of the Advisory Council, attempted to pursue an independent study with the hope to address the following question: How can we improve the way we calculate and compensate permanent disability for workers' compensation in New Mexico to result in easier-to-understand, more consistent benefit amounts without significantly raising system-wide costs?

Following the proposal period in which only one proposal was received, it was apparent that the funding allocated was not adequate as the quote came in significantly higher than the approved \$250,000 special appropriation. This Council would support continued efforts and a larger allocation for completion of an independent study in the near future.

Workers Compensation Advisory Council and Director Appointments

The Workers' Compensation Act requires the appointment of a Director of the Workers' Compensation Administration to a term of five years with the consent of the Senate, on the basis of administrative ability, education, training and experience relevant to the prescribed duties of the office. It is important that the appointment of the Director of the Workers' Compensation Administration be a qualified leader to carry out the public policy purpose of the Workers' Compensation Act to administer and enforce the Workers' Compensation Act and "...to provide a workers' benefit system ...to assure the quick and efficient delivery of indemnity and medical benefits to injured and disabled workers at a reasonable cost to the employers."

We would like to congratulate Director Loretta Lopez. She has undertaken the transition with a willingness to listen to all stakeholders. We are ready to assist her with the great workers' compensation environment in New Mexico. You can help us achieve this by stopping the transfer of the workers' compensation assessment, which is supposed to be for purposes of funding the workers' compensation system. Having full discretion to utilize the WCA Fund without deductions should allow Director Lopez to take the WCA to a new level of support and service to the employees and employers of New Mexico.

Lastly, we would like to extend our appreciation to former WCA Deputy Director Verily Jones. The Council members worked closely with Jones prior to the appointment of Director Loretta Lopez.

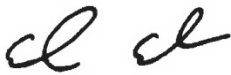
Conclusion

The New Mexico Workers' Compensation Administration is stable at this time. We, the members of the Advisory Council on Workers' Compensation and Occupational Disease Disablement are dedicated to remaining responsive to the dynamic challenges of the overall system.

This report was approved via email communication on December 12, 2019.

Respectfully submitted:

Courtenay Eichhorst



Kevin J. McGinley



Darrell Deaguero



Sharon Pedroncelli



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