Commissioner's Recommendation

Minnesota Workers' Compensation Advisory Council

December 2008

December 2008

443 Lafayette Road N.
St. Paul, MN 55155-4307
Phone: 1-800-DIAL-DLI
(1-800-342-5354)
Phone: (651) 284-5005
TTY: (651) 297-4198

Contents

(continued)

---

* **NOTE: The WCAC Work Group on Employer Choice of Physician/Benefits** and **The WCAC Work Group on Billing-Auditing (Subgroup on Repricing Industry)** were not submitted in time to be included in this book. **Please see Supplemental Information.**

December 2008

Dear WCAC Member:

Thank you for your continued leadership, valuable participation and service to our Minnesota Workers' Compensation Advisory Council (WCAC).

Oliver Wendell Holmes once said, "It's not so much where we stand today, but in what direction we're heading." I am thankful for your approval of the 2008 legislative bill. This was the right step and we were able to chip away at needed reforms. This bill takes us in the right direction.

I commend your willingness to work hand-in-hand this year with our various stakeholders. Your reforms will make our workers' compensation system better serve our two most important stakeholders—the injured employee and the employer that pays the workers' compensation premium.

Throughout this year, we have deepened our knowledge and research of Minnesota's and other states' models of workers' compensation reforms. This we have done together as a result of significant outreach, peer review and listening, and targeting reform discussions through your leadership.

I speak wholeheartedly about the importance of balance in legislative decisions. Balance is crucial and so is the necessity to understand the impact and consequences of decisions. While I appreciate the varied constituencies many of you represent, as a WCAC member you are charged with the responsibility of advising me, the Commissioner of the Department of Labor and Industry, about matters of workers' compensation and to submit recommendations for proposed changes to the workers' compensation statutes to the proper legislative committees.

Your recommendations must be supported by a majority of business and labor members. Balance is key and so, if properly reached, your legislative recommendations should offer both provisions you find acceptable and also provisions you find unacceptable.

To help us prepare for our legislative package for 2009, I submit to you my formal recommendations.

These recommendations include a summary of the past year with regard to my outreach as Commissioner, the statistical evaluation of our State's workers' compensation system, the specific policy recommendations from the work groups, and specific Department-driven policy recommendations for internal improvement of our system delivery and performance.

Thank you for your willingness to serve and for your leadership in achieving reform.

Steve Sviggum
Commissioner

Commissioner's Introductory Statement

"If there is dissatisfaction with the status quo, good. If there is ferment, so much the better. If there is restlessness, I am pleased. Then let there be ideas, and hard thought, and hard work."
Hubert H. Humphrey

Introduction:

There are several factors to be considered today in the management of workers' compensation claims that were not apparent in the past. Some of these issues include: the impact of the aging workforce, varying work habits and expectations of new generations entering the workforce, the impact of health and wellness programs, and the importance of safety and accident prevention.

At the same time our attention must continue to focus on medical cost management and treatment utilization with evidence-based procedures as the guide for appropriateness. While Minnesota has not yet reached the nexus of a crisis situation in our workers' compensation system, we are facing a challenging time. Reforms are necessary to refocus our systematic principles and priorities; we must return to a balanced approach and create effective, efficient systems and processes.

A system out of balance creates inadequate care for employees and forces businesses to not act competitively on the bottom line in meeting today's market demands. We must act soon to sustain a balanced system for the two most important parties: the injured employee and the injured employee's employer.

In 2009, we need to bring balanced policy reforms and departmental internal initiatives to our workers' compensation system. We need reforms that will strengthen "the interactive process," develop and guide incentives for "early return-to-work and stay-at-work," and assert Minnesota's traditional roots as a state to live in and work in. Let us establish "best practices to achieve excellence in workers' compensation management."

The Interactive Process:

The primary goal of the Minnesota Department of Labor and Industry (DLI) is to keep employees safe and healthy at their place of work. "Everyone should go home at night the same way they come to work in the morning" is more than a goal; it is what we are all about. No one thinks he or she will be the one to "fall" today at work. Unfortunately, workplace accidents do occur.

First and foremost, when an employee suffers an unfortunate workplace injury we, policy decision makers and employers, need to understand that navigating our workers' compensation system is not a one way street. We need to cultivate an interactive culture and process to help injured employees get the proper heath care services they require and return the injured employee back-to-work to stay-at-work with gainful suitable employment as quickly as possible. Our workers' compensation system should place more trust in the injured employee; it should follow our nation's justice system that believes people are telling the truth until proven otherwise.

Unfortunately, in today's workers' compensation system, various conflicting special interests have emerged and supplanted the best interests of the injured employee and his or her employer in the implementation of the system.

We can all recall the personal horror stories about workers' compensation and become distracted by the burgeoning costs of workers' compensation system and programs. However, it is important to remember the goal of return to work: to help injured employees find suitable and gainful employment while focusing on the best interests of the employer and the employee, not the competing special interests.

In this interactive process, it is our responsibility to engage in a good faith, flexible, and interactive discussion with the injured employee so that together the parties can identify needs and offer solutions for potential accommodations that weigh the employee's abilities to his or her disabilities.

Early Return To Work (RTW) and Stay At Work (SAW):

Most sophisticated employers are ahead of the game on RTW and SAW. They understand the importance of coordinating and offering return to work opportunities and light duty accommodations for injured employees. We need to establish a culture that encourages return-to-work regardless of the type of injury.

"RTW" should mean "return-to-work" with sooner almost always equaling better for both the injured employee and the employer who pays the workers' compensation premium. Together we need to change the environment setting forth expectations for the injured employee, medical treating provider and employer for circumstances, predictors, and perceived severity of workplace variables to allow for early return modified employment. A disability should never become prolonged and workers' compensation should not be for life.

Long-term research shows the importance of coordinated and encouraged return-to-work incentive and performance-based programs. There is evidence that early contact with the worker, work accommodation offers, contact between the health provider and workplace, active communication to employee about return-to-work process, ergonomic work site visits, and presence of labor-management cooperation for return-to-work coordination including a written return-to-work program in place are all components essential for success.

Best Practices To Achieve Excellence In Workers' Compensation Management:

A balanced legislation reform package must measure views from different perspectives, adopt balanced approaches, and set measurable goals. System-wide improvements that exemplify best practices are needed for competence and effectiveness.

Therefore, the following recommendations will be brought forth to establish:

- Increased focus
- Greater visibility
- Stronger collaboration
- Unity of providers and payers
- Improved efficiency
- Less costly confrontation, and
- Mutual goals and performance.

Commissioner's Outreach 2008
Listening. Gathering. Balancing.

Commissioner Outreach Meetings December 2007 – December 2008:

Abbott Northwestern Hospital
ACLT
AFL CIO
AFSCME
AGC Safety Committee
Allina Hospitals and Clinics
American Crystal Sugar
ASSE
BAE Systems
Berkley Risk
Broadspire
Builders Association of Minnesota
Builders and Contractors Self Insurance Fund
Builders Group
Care Providers of Minnesota
Carpenters Apprenticeship
CCMSI
CorVel
Fairview Health Systems
Federated Insurance
Flint Hills Resources
Ford Local Union Workers
General Mills
HealthPartners
Hormel Foods
IBEW
Judy Guab and Associates
Labor Contractors Council
Labor Users Contractors
Lakewalk Surgery Center
Liberty Mutual
LP
MAPE
Mayo Clinic
Meadowbrook Insurance
Mesabi Nugget
Minnesota Ambulatory Healthcare Consortium
Minnesota Ambulatory Surgery Center Association
Minnesota Association of Builders and Contractors
Minnesota Association of Machinists and Aerospace Workers
Minnesota Association of Residential Subcontractors
Minnesota Beverage Association
Minnesota Chamber of Commerce
Minnesota Chiropractic Association

Minnesota Grocers Association
Minnesota Hospital Association
Minnesota Medical Association
Minnesota Medical Management Association
Minnesota National Electrical Contractors Association
Minnesota Nurses Association
Minnesota Physical Therapists Association
Minnesota Pipe Trades Association
Minnesota Power
Minnesota Safety Council
Minnesota State Building and Construction Trades Council
Minnesota Surgery Center
Minnesota Trial Lawyers
Minnesota Trucking Association
Moorhead Rotary
MWCIA
NAIOP
NFIB
Northwestern Health Sciences University
O'Hara and Associates
Regions Hospital
Riverwood Healthcare Center
Rochester Meat Company
Ryt-Way Industries
SFM
SISF
St. Cloud Hospital
St. Mary's Hospital, Duluth
Superior Plumbing
Taylor Corporation
Teamsters
The Builders Group
Thrivent Financial
Twin Cities Orthopedics, PA
Vinland Center
WCRA
Western National Mutual Insurance
Wis-Pak
Xcel Energy

443 Lafayette Road N.
St. Paul, Minnesota 55155
www.doli.state.mn.us

MINNESOTA DEPARTMENT OF LABOR & INDUSTRY

(651) 284-5005
1-800-DIAL-DLI
TTY: (651) 297-4198

July 21, 2008

I trust you and your family are doing well and enjoying a beautiful Minnesota summer of parades, golfing, and baseball games! It's my sincere hope that you will call upon me personally if I can ever be of any assistance to you. Thank you for your continued service to Minnesota and your constituents.

Today, I write to give you a brief summary (or half-way report) of the Workers' Compensation Advisory Council (WCAC) Work Groups focusing on our much needed workers' compensation policy reforms for your upcoming legislative session.

Workers' compensation reforms are widespread across the nation and while I can tell you that Minnesota leads in some innovative ways, we also are behind significantly in other reform areas. Unfortunately, in today's workers' compensation system, conflicting special interests have emerged and supplanted the best interests of injured employees and their employers in the implementation of today's system.

To that end, this spring, I appointed four working groups to work on significant reform to our workers' compensation laws and system. These working groups will directly report recommendations to our WCAC. Unlike any other legislation, precedent and history makes the WCAC legislative bill un-amendable once it reaches the Capitol. Each of the working groups has both legislative members and WCAC members to keep our process streamlined and reach our shared goals of bringing needed reform to the system.

For these working groups nothing is "on the table or off the table", but are charged with changing the system. Their goal is to best serve the injured workers and businesses that pay the premium and that is good for Minnesota. Our workers' compensation system is not in crisis but can be greatly improved and perform better in the best interests of our primary stakeholders.

Please allow me to extend my individual appreciation to your colleagues: Senator Tom Bakk, Representative Bob Gunther, Representative Mike Nelson and new WCAC member Senator Joe Gimse for their personal and team-based dedication, balanced commitment, and steady leadership to continue working hand-in-hand with our work groups. Each of them has been at the table with open minds, a willingness to bring folks together, and the keen ability to never lose sight of the importance of protecting the safety and well being of our employees..

These work groups have rolled up their sleeves and I am thrilled to report to you that much consensus has been reached. In fact, I have purposely pulled myself from the table to empower them and am very impressed with the work group members' dedication and leadership to reach balanced and cooperative policy recommendations. These work groups are meeting monthly and focusing on these areas of reform: medical billing and reimbursement, the repricing industry, vocational rehabilitation, and employer choice of provider/extended worker benefits.

There is a significant amount of common ground amongst the stakeholder committee members. The obvious goal is to work that common ground into reform decisions that will be a win-win policy decision for you as a legislator.

In addition, DLI invited workers' compensation experts and leaders from states who have engaged in significant reforms to come and share their perspectives and give guidance to the work groups. From California to Nebraska, members had the chance to hear first-hand from these in-the-know leaders and learn from their states' experiences.

Here is a quick update about each work group for your review:

Repricing Work Group:

This work group is charged to review the need for a professional code of conduct and regulation of the repricing industry within the Minnesota workers' compensation system. This work group has been extremely active, has had lively discussions, and some suggestions for reform. One recommendation from this work group will be a new billing process in Minnesota called the 15-15-15.

This new process will put in place a much more efficient medical billing process by requiring faster reimbursement. It also creates an expedited medical dispute resolution step and tougher penalties for insurers and providers for failure to comply. Vital to this process is a 45-day total billing cycle, from the first receipt of bill to final payment. This process includes a one-time medical document action request.

Billing Auditing Work Group:

Inpatient medical costs have skyrocketed in Minnesota's workers' compensation system.

This work group has reached significant consensus among the medical providers and payers on the need for a new billing system for inpatient hospital billing and costs. Currently, Minnesota statutes allow for 85 percent or up to 100 percent of usual and customary charges for inpatient hospital care and some ambulatory surgery care. However, the subsequent prevailing charge application and third party bill reducing actions have increased the number of contested and litigated medical disputes leaving the actual payments for less than the 85/100 percent amount.

This work group broke into caucuses and came back to the table with an almost identical issue list: DRG (ACS) Medicare Plus billing, a change in ambulatory surgery center reimbursement, and dealing with implant changes. I envision that we will not have an agreement on billing and implants until the two are joined together—it's a package deal. The package deal would also include the simpler, timelier billing process mentioned above.

In exchange for the 15-15-15 billing process, medical care costs would have a reduced reimbursement rate.

Vocational Rehabilitation Work Group:

I want to be very clear: vocational rehabilitation is needed in our workers' compensation system, but our system ought to pay for performance, and not for plans that never end. Research has shown the longer injured employees are away from work, the greater the likelihood they will never return to his or her pre-injury job.

Some would argue that our current VR statutes and their current use seem to encourage the creation and prolonged use of rehabilitation plans that do not serve the injured employee's best
interests. In 2006, Minnesota's total cost of vocational rehabilitation services provided to 5,360 claimants exceeded $41 million. Yet, Department statistics show only 62 percent of the program participants had jobs at the time of their plan closure. By most standards, that is performance that needs improvement.

One possible incentive program would be to offer employers a discount percentage in their workers' compensation premiums if they establish a balanced labor and employer return to work committee. The committee's charge would be

to strengthen and show outcomes of the employer who creates and offers light-duty positions that meet certain employment classifications and satisfactions.

Another possible incentive would be pay for performance for QRCs. Since we pay-for-performance in other areas of our lives, I am troubled that we do not expect the same in vocational rehabilitation. Pay-for-performance monetary bonus structures could help to give a bump in career placement and extra monetary encouragement to successfully help an injured employee find employment.

Employer Choice of Provider/Benefits:

Any reforms must be balanced. Minnesota currently offers an employee the choice of physician (provider) with some restrictions but mostly the workers' compensation system offers an unlimited number of physician changes. This work group, which is the last one to make its recommendation to the WCAC, is beginning the discussion of how we can make the first step toward building the trust between the employee and employer for an employer choice of physician model. Some injured worker system benefits (for example, continuation of health care benefits) could be enhanced if reforms bring real savings in the system.

While we have a good workers' compensation system in Minnesota and are not at crisis point, we all believe now is the time to make necessary reforms. To be perfectly clear and hope you will agree, these two groups: the injured worker and their employer, are the two most important stakeholders in this system. Any system—or changes in the system—should be measured against increased performance and benefit to the injured worker and the employer.

Again, I owe tremendous thanks to Senator Bakk, Representative Gunther, Representative Nelson, and Senator Gimse. Thank you for all you do and for your encouragement. As dictated by law, the WCAC will be the decision makers for potential system improvements and reform based legislation for 2009.

I have been traveling throughout our state listening to concerns and speaking about our workers' compensation system. I will continue to do so and my office will call you when we are in your districts.

In addition, I would be honored to meet with you one-on-one and to share with you more about the workers' compensation reforms for 2009. Please call me at (651) 284-5010 or email me at steve.sviggum@state.mn.us and I will accommodate your schedule.

Take care and I wish you all the best! Also, please call if there are any questions from you or your constituents.

Sincerely,

Steve Sviggum
Commissioner

Workers' compensation reform outreach

Workers' Compensation Advisory Council
Work Group on Vocational Rehabilitation

WCAC Vocational Rehabilitation Workgroup
Recommendation Report

The Vocational Rehabilitation Work Group recommends the following to the Workers' Compensation Advisory Council (WCAC).

1. DLI will increase the monitoring of QRCs and insurers who do not comply with the Vocational Rehabilitation statutory and rule requirements and if necessary additional discipline actions from thus (monitoring) will be taken.

2. Provide injured workers with more info through the website and with a DVD for newly injured workers, sent with the "Employee's Guide to the Minnesota Workers' Compensation System" guide book.

3. Job Placement services limited to 6 months in duration from the time the Job Placement Plan and Agreement Form is signed. Additionally, during this six month period, the placement service hours are limited to no more than 20 per month. Any exceptions to the duration and time limits would need to be pre-approved by the claim payer in writing. Limiting job placement in such a manner would also offer the opportunity for the parties to consider other options, such as skills enhancement, retraining and further job search. If any services are rendered prior to pre-approval, the QRC and Job Placement Vendor forfeit all rights to payment of those services. However, if approval is requested for a rehabilitation service and there is no response to that request within 15 days, the requested service is deemed to have been approved.

4. Amend Minnesota Rule 5220.1900 subp. 9 to read "or unapproved" and to add the fifteen day deemed approved language so Rule might read something like this: Collection prohibited. No rehabilitation provider shall attempt to collect a fee or reimbursement for a charge for which there was no preapproval, or which was unnecessary or unreasonable service from any party, including the employee, another insurer, the special compensation fund, or any government program. However, if approval is requested for a rehabilitation service and there is no response to that request within 15 days, the requested service is deemed to have been approved.

5. The Department of Labor and Industry will hold any Rehabilitation conference within ten work days of receipt of any Rehabilitation Request. Services to the injured worker would continue during this time until a decision is rendered.

6. QRCs are not allowed to operate in the capacity of a disability case manager.

7. The Rehabilitation Review Panel (RRP) should revise the Notice of Rehabilitation Plan Closure (R-8) as a method to collect better data as to why a case closed. There is a need for more accurate data on case closure.

Commissioner's Recommendations

Innovative. Practical. Motivated.

Retraining Reimbursement:

Knowledge and skills equal more career opportunities. Education and retraining is a commitment of investment to both-- the injured employee's and employer's future. The world is changing rapidly. More and more jobs require education beyond high school. Graduates of technical schools, apprenticeship programs and college graduates have more jobs to choose from than those who do not pursue education beyond high school.

I believe that retraining should be offered more frequently in our workers' compensation system. However, I also believe that retraining should not be used by some as a negotiation strategy to simply increase settlement amounts with the injured employee never receiving the retraining after a settlement agreement.

If we truly are supportive of increasing retraining and believe in the benefits of education then I have a solution to strengthen our current system.

After consultation with their qualified rehabilitation counselor, if an injured employee takes personal responsibility upon themselves to enhance their own education by applying and succeeding in post secondary education courses, then an employer should reimburse the tuition costs. My plan is very similar to tuition reimbursement policies offered by many Minnesota employers today.

Legislative Recommendation: In order to receive reimbursement, all classes must be directly related to their current position or must directly enhance the employee's potential for advancement or be assessed prior by their qualified rehabilitation consultant on a case-by-case basis. For graded courses, injured employees must receive a grade of "C" or better in order to receive reimbursement. Reimbursement will be 100% of the tuition for approved courses (not to exceed the cost of courses at state community colleges for undergraduate courses or the University of Minnesota for graduate courses). Additional financial aid received, such as Veteran's benefits, grants or scholarships must be reported and will be used to offset the reimbursement. A maximum of twelve (12) credit hours will be reimbursed each academic quarter. Fees, books and other supplies are therefore also reimbursable.

Upon completion of the class, the injured employee must submit the original grade slip and fee payment receipt to their qualified rehabilitation consultant or insurer if they do not have an assigned QRC who will process their request for reimbursement. Payment is required within 60 days of receipt per standards from education institution's tuition deferment plans. Employer provided educational assistance will be taxed according to applicable federal and state laws. The presumption will be if the injured employee takes the personal initiative that retraining is appropriate, given not going back to preinjury employee, then tuition reimbursement should happen.

Commissioner's Care Driven Recommendations

Commissioner's Recommendations

Innovative. Superior Care. Focused Outcomes.

A. Passive Care and Services:

Currently, the medical treatment parameters allow a variety of different types of "passive care," which includes the types of treatment given by chiropractors, such as manipulation, acupressure, massage, traction, and various physical therapy treatments (so long as the treatment is within the chiropractor's scope of practice).

The treatment parameters permit "passive care" (including chiropractic treatments) for the first 12 weeks after a back or neck injury and for upper extremity injuries such as carpal tunnel syndrome. Each type of "passive care" modality has its own requirements. In general, the frequency of treatment should decrease during the 12 weeks.

After 12 weeks, the rules permit an additional 12 treatments over 12 months if:

a) the employee is released to work or is permanently totally disabled; b) the additional treatment results in progressive improvement or maintenance of functional status achieved during the initial 12 weeks of passive care; c) the treatment is not given on a regularly scheduled basis; d) the provider documents a plan to encourage the employee's independence and decreased reliance on health care providers; e) the treatment includes active treatment modalities (such as exercise or education about body mechanics); and f) the additional 12 weeks does not delay any needed surgery or chronic pain evaluation.

In addition, after the initial 12 weeks plus 12 additional visits, additional passive care may be provided if it is prior approved by the insurer, commissioner or compensation judge based on documentation in the medical record of the effectiveness of further passive treatment in maintaining employability.

Furthermore, passive care may be provided for 8 to 12 weeks following surgery (depending on the type of surgery) and at any time that there is documentation of any of the following reasons for departure from any limitation in the treatment parameters:

a) for a documented medical complication; b) where previous treatment did not meet the standard of practice and the treatment parameters for the provider who ordered the treatment; c) where the treatment is necessary to assist the employee in the initial return to work where the employee's work activities place stress on the part of the body affected by the work injury; d) where the treatment meets two of three criteria of continuing improvement in subjective, objective or functional status; or e) where the employee has suffered an incapacitating exacerbation of his or her condition.

Finally, the Minnesota Supreme Court, in the *Jacka vs. Coca Cola* case, held that because the rules "cannot anticipate every exceptional circumstance, we acknowledge that a compensation judge may depart from the rules in those rare cases in which departure is necessary to obtain proper treatment."

Legislative Recommendation: Statutorily allow passive care therapy for 24 treatments or 12 weeks; whichever is greater. Require a treating physician to make medical referral and recommendation for further passive care therapy after the initial treatment period.

B. Improper Billing Practices:

The challenges of a workers' compensation claim can be overwhelming for an injured employee and their family. The employer and insurer are responsible for payment of medical care and services provided to the employee. Collection billing practices have been implemented against employees for their medical bills when a dispute arises between the provider and payer. This is unacceptable.

Legislative Recommendation: Provider cannot try to collect payment from the injured employee once the employee notifies the provider that he or she has filed a workers' compensation claim. The provider is liable for a penalty of $2,500 per billing episode and the employee is entitled to 50 percent of the total penalty. The remaining 50 percent of the penalty is for administrative costs of the medical dispute resolution process.

C. Treatment Parameters:

The treatment parameters are guidelines for the treatment of low back pain, neck pain, thoracic back pain and upper extremity disorders that have been in existence for over nine years. They cover diagnosis, conservative treatment, surgical treatment, inpatient hospitalization and chronic management. Currently, the treatment parameters are rule based and allow for treatments outside of the parameters, if circumstances warrant.

Legislative Recommendation: Make current treatment parameters statutorily enforced.

D. Raising the Bar On Safety:

Without question, the first concern should be employee safety and health.

The number of workplace injuries and illnesses continued to decline during 2004. The most recent occupational injury and illness figures show there were an estimated 105,500 recordable injury and illness cases in 2004; about 28,700 cases involved one or more days away from work. The comparable figures for 2003 were 111,600 total cases and 29,900 cases involved days away-from-work. There were 72 work related fatalities in 2005, down from 80 fatalities in 2004. Workplace injuries continue to be reduced both in total numbers and percentages of workers in the workforce.

Legislative Recommendation: If an employer's workers' compensation experience rating is 1.0 or greater, the employer is required to have an annual safety inspection and report the inspection's findings to DLI within 30 days. The inspection may be performed by a consultant, by an employer's insurer, or by a DLI workplace safety consultant.

Commissioner's Process Driven Recommendations

Commissioner's Recommendations

Streamlined. Efficient. Improved.

A. Improving Independent Medical Examinations:

Most physicians might tell you that they are uncomfortable with the independent medical examination process for the following reasons: they are too busy, they simply do not like it, do not know how, or are not professionally trained to do independent medical examinations.

The definitional difference between treating and evaluating physicians is critically important to determine the correct process to improve the independent medical examination. A treating physician is one who evaluates and recommends treatment and has an ongoing physician-patient relationship until the pathologic problem is either stabilized or has resolved. An evaluating physician is one who evaluates an individual's claim of disability or impairment, giving consideration not only to the medical information, but non-medical information that has an ultimate impact on the medical outcome. No traditional physician-patient relationship is established.

An independent medical examination is important to address the following issues: diagnosis, causal relationship, prognosis, work capacity, maximum medical improvement, permanent impairment rating, appropriateness of care, recommendations, future care needs, life expectancy, and apportionment.

Current Minnesota statutes require the employee to submit to examination by the employer's doctor in response to reasonable requests. The exam cannot be scheduled more than 150 miles from the employee's home unless the employer can show some reason why it must be farther away. In addition, the employee has the right to have his or her own doctor present. Also, the employee or the employee's representative (such as an attorney) has the right to see any report or written statement the employer's doctor produces from the exam.

Legislative Recommendation: Provide that the employer and employee are limited to one independent medical examination per accident and not one per medical specialty and require the insurer to pay for only one independent medical examination. If an injured employee prevails in a medical dispute, he or she is able to recoup independent medical examination costs from the insurer if the employee paid for an additional independent medical examination.

An independent medical examination must be performed by a medical physician or specialty health care provider in a licensed medical facility.

Require DLI to establish guidelines that include a published register of approved independent medical examiners.

B. Professional Code of Conduct (Repricing Industry):

As a recommendation of the Repricing Sub-Work Group, a professional code of conduct is necessary in today's workers' compensation system. This code of conduct will help alleviate the billing practices and frustrations shared by medical providers, employers, and insurers.

Legislative Recommendation: A code of conduct will be instituted for the repricing industry that requires:

1) document reduction using rules and/or statutes;
2) reason codes linked to a standardized list of more thorough explanations;
3) contact information on bill with toll-free number answered weekdays (excluding holidays) during regular business hours.

C. Litigation Streamlining:

For at least a decade, injured employees, employers, legislators, stakeholders, and regulators have complained that the process by which disputed workers' compensation claims in Minnesota are adjudicated and resolved has become ponderously slow, expensive, and plagued by a lack of consistency from office-to-office, judge-to-judge, and case-to-case.

Disputes often arise over issues such as whether an injury, in fact, occurred at work, whether medical treatment is necessary, and to what extent an injury poses long-term consequences for the employee.

The overall dispute rate increased from 15.3 percent of filed indemnity claims in 1997 to 18.7 percent in 2006, a 22 percent increase. Claimant attorney involvement has increased since 1997. From 1997 to 2006, the percentage of paid indemnity claims with claimant attorney fees rose from 14.6 percent to 17.9 percent. Total claimant attorney fees are estimated at $31 million for injury year 2006. This represents 1.9 percent of total workers' compensation system cost for that year.

Legislative Recommendation: Require workers' compensation judges to render a written decision within 30 days from the last day of the hearing or within 120 days if briefs are filed. This will require attorneys to file all briefs and reply briefs within 120 days time frame and not allow for repeated requests of extensions.

Allow the Commissioner to require all workers' compensation cases to a special expedited hearing if such case has not been resolved within two years from the first date of a requested hearing.

D. Enhanced ADR:

Proposed Mandatory ADR Process

A mandatory consideration system has been successfully used in Minnesota's State Court System for most civil disputes since 1994, when the Minnesota Supreme Court promulgated Rule 114. This rule requires attorneys to discuss mediation or other ADR process with their clients and advise the court of plans to use or not use ADR**.** Mandatory mediation is also required in the U.S. District Court for the district of Minnesota. Additionally, some type of mandatory ADR is now routinely used to address disputes involving motor vehicle transactions; credit card transactions; real estate purchase agreements; homeowner associations; farmer-lender disputes; medical malpractice claims; collective bargaining agreements; securities transactions; and many

other situations.

Under a mandatory ADR approach to Minnesota's workers' compensation system, no trial regarding a disputed issue can be scheduled or held at OAH until parties have made a good faith effort to resolve their dispute using an ADR Process, or until DLI determines that an ADR Process is not reasonable or appropriate. Several state workers' compensation systems have mandatory ADR including Georgia, Michigan, Florida, North Carolina, Tennessee, Texas, Nebraska and New Mexico.

Proposed Binding Arbitration

Binding arbitration has been widely used to resolve various legal disputes throughout the country for several decades. Under Minn. Stat. §176.191, subd. 5, binding arbitration has been permitted for certain apportionment issues in Minnesota's workers' compensation system since 1983. Binding arbitration is also frequently used in the Minnesota workers' compensation collective bargaining process governed by Minn. Stat. §176.1812.

Binding arbitration is permitted under some state workers' compensation systems. Workers' compensation systems are ideally suited to binding arbitration because of their categorical and structured benefit processes. Expanding binding arbitration in Minnesota's workers' compensation system would allow parties to have an additional and perhaps a less expensive option for adjudicating their disputes. Binding arbitration could also enable parties to fast-track the adjudication or their dispute. A statute authorizing binding arbitration could limit its application to situations in which both parties are represented by counsel and expressly consent to its use.

Over the past few years several DLI stakeholders have inquired if DLI ADR staff could arbitrate disputed workers' compensation claims. Statutory authority is needed to facilitate these requests.

<u>Legislative Recommendation:</u>

- Enact law requiring mandatory ADR consideration.
- Allow DLI to conduct binding arbitration of selected disputes.

Commissioner's Policy Driven Recommendations

Commissioner's Recommendations

Accountability. Lawfulness. Common Sense.

A. Illegal Aliens:

Consider this scenario: an undocumented alien applies for a job under false pretenses to gain employment in the United States. During his course of employment, the illegal employee sustains an injury and a workers' compensation claim is filed for medical treatment, loss of wages, and vocational rehabilitation including job retraining for a purpose of a return-to-work.

With an estimated 9.3 million illegal aliens in the United States and a majority of states failing to address aliens in previously written workers' compensation statues, the question of whether undocumented aliens should be awarded workers' compensation is being debated across the country.

Let me be as bold to say, illegal aliens should not be awarded full workers' compensation benefits. Such policy discriminates unfairly in favor of the undocumented worker, unjustly requiring the employer to pay more than he or she should to, essentially, reward that person for the illegal work activity.

I think we all would agree that the primary goal of workers' compensation programs is to return the injured employee to work as quickly as possible after receiving appropriate health care. Both the employer and the employee benefit from an injured employee's return to work.

When an illegal alien enters into the system, however, the principal objective of workers' compensation is lost and only the illegal alien benefits from workers' compensation programs. When applied to cases involving illegal aliens, the way in which workers' compensation statutes determine an injured employee's capacity to return to work is fundamentally flawed to privilege the undocumented worker. The return-to-work incentive, goal and importance is undermined for return-to-work in a job that is not possible.

Employers compensate injured employees for wages lost during the time in which employees are unable to work as a result of a work-related injury. Logically, once the employee regains the capacity to return-to-work, the employer may rightfully reduce its wage-replacement obligations. Correspondingly, if an employee never regains the ability to return to work, the injured worker is entitled to continual total workers' compensation to replace the wages they are permanently unable to earn. In the case of illegal aliens, however, the injured employee never recovers the ability to work, but not necessarily due to incapacitation caused by a work-related injury.

Compared to American or documented workers, of whom 75 percent return to work in less than a month following the injury, the legal reemployment rate for undocumented workers is zero percent, an unambiguous and costly discrepancy.

Notably, a few states have applied this common sense approach to workers' compensation benefits. Under Michigan law an employer is not liable for compensation in the form of wage-loss benefits for such a period

of time as the employee is unable to obtain or perform work because of imprisonment or commission of a crime. Similarly, the Kansas Supreme Court ruled that benefits to an illegal alien could be suspended on the basis of the "fraudulent and abusive" act the claimant committed when misrepresenting their identity. Additionally, in *Reinforced Earth Co. v. W.C.A.B. (Astudillo)*, the Pennsylvania Supreme Court has suspended workers' compensation benefits to an illegal alien on causation grounds, determining that wage-replacement benefits could be refused on the grounds that the claimant's disability was not caused by his workplace injury, but rather by his illegal status.

Legislative Recommendation: An illegal worker who sustains a workplace injury shall receive only medical care and services benefits provided by the employer for the treatment of the injury sustained.

B. Selling Narcotics on the Street:

The federal government states that 1 in 12 American workers report having used an illegal drug in the past 30 days. Rates of substance abuse are highest in restaurant, food service, and construction industries with reports indicating usage rates at 1 in 4 American workers.

Drug abusers are more likely to have multiple employers in a year than non-users, are absent more often, are involved in more than 30 over-the-road accidents and significant workplace accidents, are more likely to be impaired at work, and may engage in illegal activity at work. Drug users are almost four times as likely to be involved in a workplace accident as sober workers and five times as likely to file a workers' compensation claim, according to government data. Most alarming yet, a worker who is drug impaired places his or her fellow workers at severe risk.

However, it is true that employers can regulate employee behavior to maintain workplace safety. There is a trend in Minnesota showing that injured employees who are prescribed intensive narcotics such as Actiq may not be the actual users of their own prescriptions. After a treating physician completes a routine medical urine sample for the injured employee, the prescribed narcotic does not appear in the employee's sample. Instead, however, other street drugs do appear. Sometimes, the treating physician terminates the narcotic prescription and the injured employee finds a new physician and requests the prior prescribed narcotic. Thus, the cycle continues and continues.

Legislative Recommendation: For narcotic-only prescriptions, if a treating physician prescribes a narcotic prescription and a subsequent urine test indicates the injured employee's non-usage of that narcotic drug, the employer is not liable for future similar narcotic prescriptions by other medical physicians.

C. Fraudulent Behavior:

There is an expression that says, "it only takes one bad apple to ruin the entire barrel." We all can recite tremendous examples of poor employer and poor employee conduct in the workers' compensation system. While these claims are not in the majority, they have significant impact on our personal feelings about workers' compensation.

Aggressive management of workers' compensation claims is needed in today's system. Types of workers' compensation fraud includes fraudulent accident, false claim of disability, and false claim of medical with typically these types of circumstantial factors: accident occurs in an area of the plant where the claimant

would not normally be working; accident allegedly occurs shortly before layoff, termination, strike, end of project or seasonal work end; claimant is a short-term employee; several of claimant's family members are receiving workers' compensation; or income from workers' compensation collateral sources exceeds take home pay.

Health care provider fraud can be defined as such: multiple physicians are treating petitioner at single location with a series of cross referrals, injured worker does not recall having received the billed service, provider's medical reports read almost identically even though they are for different patients with different conditions, and same doctor(s) and attorney(s) are repeatedly associated with the similar questionable claims.

Legislative Recommendation: Fund a collaboration project between the Department of Labor and Industry and the Department of Commerce to work with district attorneys and other agencies necessary to identify and prosecute fraudulent criminal behavior and provide immunity for individuals reporting suspected fraud.

D. Fentanyl-Based Narcotics

A recent Prime Therapeutics study found significant patterns of "off-label" prescribing for Actiq. Actiq is a drug containing fentanyl and classified as a Schedule II substance by the Drug Enforcement Administration, in the same category as cocaine, opium, methamphetamine, and methadone, among patients taking the powerful painkilling "lollipop." Schedule II drugs have the highest potential for abuse and overdose. Actiq is notably reported to being 80 times as potent as morphine.

Prescribing Actiq according to FDA guidelines is important for patient safety reasons because of the drug's serious side effects, including its addictive nature. In addition, fentanyl has been linked to fatal respiratory complication. In 2004, there were an estimated 8,000 emergency room visits for fentanyl overdoses, according to the federal Substance Abuse and Mental Health Services Administration.

The study analyzed Actiq patient claims from a Midwestern commercial health plan from April through June 2005. Of the 95 patients who received prescriptions for the lollipop during that time, only 21 had a diagnosis of cancer or AIDS. In addition, only 10 of those 21 patients were taking a long-acting opioid painkiller. The study also found that more than 15 percent of Actiq prescriptions were for more than the FDA's recommended 120 lollipops per month, suggesting that some patients may be overusing the drug.

Under federal Medicare rules, off-label prescriptions written by doctors for their patients can be denied by insurers. However, patients can receive the drug if the drug is listed in one of three drug reference guides as useful for their condition.

Actiq had sales of $15 million in 2000 and by 2006, sales had grown to $471 million. Actiq is priced at $502 for a package of 30 sticks containing the smallest of doses. Reports show that Actiq accounts for more than $60 million in workers' compensation drug expenditures.

Legislative Recommendation: Similar to the FDA risk-management program, DLI will require Cephalon (Actiq's maker) to issue a report every three months to Minnesota-based physicians who prescribe and represent "off-label" usage greater than 15 percent of prescribing for worker's compensation patients. If so, DLI will require the maker to warn these doctors against the off-label use.

E. Intoxicated Employees at the Workplace

Pursuant to Minn. Stat. §176.021, subd. 1:

Every employer is liable for compensation according to the provisions of this chapter and is liable to pay compensation in every case of personal injury or death of an employee arising out of and in the course of employment without regard to the question of negligence. The burden of proof of these facts is upon the employee. If the injury was intentionally self-inflicted or the intoxication of the employee is the proximate cause of the injury, then the employer is not liable for compensation. The burden of proof of these facts is upon the employer.

Legislative Recommendation: If an employee is impaired from alcohol and if the blood alcohol concentration at the time of the injury is .08 or more, only the medical claim is compensable.

Indemnity benefits are reduced by 50 percent when alcohol and/or illegal drugs are present in the employee's blood at the time of an injury or accident.

F. Coverage of Minors Illegal Employment

Twenty-seven states recognize the importance and significance of combining child labor laws and workers' compensation. There are both federal and state child labor laws that employers must enforce. Currently, in Minnesota, a minor suffering a workplace injury may be entitled to maximum benefits if permanently totally disabled.

A minor under age 14 may not be employed, except as:

- a newspaper carrier (at least 11 years of age);
- in agriculture (at least 12 years of age with parental/guardian consent);
- an actor, actress or model;
- a youth athletic program referee (at least 11 years of age/guardian consent)

A minor less than 16 years of age may not work:

- before 7 a.m. or after 9 p.m. with the exception of a newspaper carrier;
- for more than 40 hours a week or more than eight hours per 24-hour period, except in agriculture;
- on school days during school hours, without an employment certificate issued by the school district superintendent (181A.05)

During the school year, federal law restricts hours to no later than 7 p.m., no more than three hours a day, and not more than 18 hours a week.

State Law: 16- and 17-year-old high school students may not work after 11 p.m. on evenings before school days or before 5 a.m. on school days. With written permission from a parent or guardian, these hours may be expanded to 11:30 p.m. and 4:30 a.m. No other limit is set for 16- and 17-year-olds.

Legislative Recommendation: If a minor suffers a workplace injury during illegal employment (breaking a child labor law), the minor is entitled to double compensation.

Commissioner's Employee and Employer Driven Recommendations

Commissioner's Recommendations

Focused. Balanced. Priority.

A. Increased Benefits:

The percentage of paid indemnity claims with claimant attorney fees rose from 14.6 percent in 1997 to 17.9 percent in 2006, a 22 percent increase. Workers' compensation cases that move to the litigation process drive up costs, escalate disputes and frustrations, and significantly delay the process for resolution.

Legislative Recommendation: Similar to another state's reform policy provision that was supported by labor and business, increase "take home" benefits for injured workers who avoid attorneys' fees through early resolution. If an employee resolves their claim within 30 business days without attorney representation, the employee is entitled to an additional 10% above the total claim. In addition, DLI will be responsible for educating the injured employee about the costs of attorney fees (including vocational rehabilitation and medical bill disputes).

B. Death Benefits: .

Currently, in Minn. Statutes Section §176.111, Sub. 21: Death benefits shall not exceed 100 percent of the deceased employee's weekly wage at the time of the injury causing his death, when the total weekly government survivor benefits and the State workers' compensation benefits are combined, nor be payable for any week in which the government benefits exceed such percentage. The spouse, children and/or other dependents of a worker who dies because of a work-related accident or occupational illness are eligible for dependency benefits. Workers' compensation insurance also pays burial expenses up to $15,000 for dates of injury on or after April 28, 2000. For injuries on or after April 28, 2000, payment is made to the estate, if the deceased has no dependents.

Legislative Recommendation: Increase death benefits from current statutory language for each surviving child to include a post-secondary educational benefit award of $10,000 to be invested in a pre-taxable income bearing account.

C. Value Added Fees:

Another portion of the statute that may have an indirect, but no less important, impact on excessive costs to our workers' compensation system are the provisions that allow for payment of a claimant's attorney's fees when they have prevailed on their claim. Minn. Stat. §176.081 governs the payment of attorney's fees and generally for the payment of attorney's fees on a contingency fee basis.

25 percent of the first $4,000 recovered
20 percent of the next $60,000 recovered for a maximum fee of $13,000.

Currently in place, and for example, the larger the disputed medical bill the greater the fees will be for the attorney. In those situations where the contingency method is insufficient to satisfy the time and effort of an attorney, the courts can assess fees on an hourly basis.

Legislative Recommendation: In admitted cases, attorneys will only make money on the amount they obtain for a client above the settlement offered by the employer. This encourages settlements on fair cases and discourages attorneys from taking bad cases.

Commissioner's System Driven Recommendations

Commissioner's Recommendations

Consistency. Neutral. Service First.

Housekeeping Legislative Recommendations:

1. Clarify the current rounding approach for Permanent Partial Disability. The present table does not take into account numbers that are not whole. This would incorporate the court decision.

2. Recovery of over paid employee benefits can not be applied as a credit against medical expense or a reduction in a penalty payable to the employee. This would incorporate a court decision.

3. Clarify when CSI, MIGA, SISF, and WCRA can and should be penalized. The performance expectation should be the same for all insurers within Minnesota.

4. Remove statutory language concerning continuing education of compensation judges as this is no longer applicable.

5. Require QRC's to verify workers' compensation insurance prior to recommending an employee to an employer.

6. Allow DLI to recover certain costs and Roraff and Heaton attorney fees from uninsured employers.

7. Provide consistency within regulations by requiring the same fatality reporting time period for OSHA and workers' compensation. At present, employers must call OSHA (DLI) within 24 hours and workers' compensation (DLI) within 48 hours.

8. Allow for 30 days to appeal a decision on behalf of the Special Compensation Fund in order to be consistent with other appeal rights within workers' compensation.

9. There is current conflicting language about dual filing requirements. Clarify where WCCA and OAH documents should be filed.

10. Clarify responsibility for rule making and decisions for electronic transfer of data as it relates to medical bills.

11. Require certification of all disputes before an attorney can be paid. This would enhance early intervention efforts and increase early mediations.

12. Establish a required medication program.

13. Develop a system to review insurer performance.

14. Allow for sharing of information with more state agencies.

15. Clarify that DLI staff cannot be subpoenaed concerning dispute certification.

Member Rosters
2008 Workers' Compensation Advisory Council
Work Groups

Provider Billing/Auditing WCAC Work Group

Dennis Ballinger
Vice President of Workers' Compensation Claims
Western National Mutual Insurance
5350 West 78th Street
Edina, Minnesota 55439
Phone Number: (952) 921-5638
Fax Number: (952) 921-3155
Email: dennis.ballinger@wnins.com

Michael Delfs
Chief Operating Officer
Riverwood Healthcare Center
200 Bunker Hill Drive
Aitkin, Minnesota 56431
Phone Number: (218) 429-1038
Fax Number:
Email: mdelfs@sisunet.org

Robert Johnson
President and Chief Executive Officer
Insurance Federation of Minnesota
Suite 208
400 Robert Street North
St. Paul, Minnesota 55101
Phone Number: (651) 303-8902
Fax Number: (651) 228-7369
Email: bjohnson@insurancemn.org

Andrew McCoy
Vice President of Revenue Management
Fairview Health Services
400 Stinson Boulevard Northeast
Minneapolis, Minnesota 55413
Phone Number: (612) 672-6594
Fax Number:
Email: amccoy2@fairview.org

Kathy Parsons
Director Of Managed Care
St. Cloud Hospital & CentraCare Health System
1406 Sixth Avenue North
St. Cloud, Minnesota 56303-1901
Phone Number: (320) 656-7060
Fax Number:
Email: parsonsk@centracare.com

Meredith Redmond
Claims Supervisor
Meadowbrook Insurance Group
P. O. Box 20025
Bloomington, Minnesota 55420
Phone Number: (952) 886-6212
Fax Number: (952) 346-9520
Email: mredmond@meadowbrook.com

Brian Rotty
Self-insured Employers Representative
Mayo Clinic
200 First Street Southwest
Rochester, Minnesota 55905
Phone Number: (507) 538-5020
Fax Number: (507) 538-5036
Email: rotty.brian@mayo.edu

Charlotte Schreiner
Director of Patient Financial Services
Regions Hospital
525 Park Street
St. Paul, Minnesota 55103
Phone Number: (651) 254-5656
Fax Number:
Email: charlotte.r.schreiner@healthpartners.com

Troy Simonson
Administrator
Twin Cities Orthopedic
Suite 900
6465 Wayzata Boulevard
St. Louis Park, Minnesota 55426
Phone Number: (952) 512-5600
Fax Number:
Email: troysimonson@tcomn.com

Peter Thrane, Attorney
Leonard, Street & Deinard
Minnesota Self-Insurers Association
Suite 2300
150 South Fifth Street
Minneapolis, Minnesota 55402
Phone Number: (612) 335-1779
Fax Number: (612) 335-1657
Email: pete.thrane@leonard.com

Bill Weisman
Claims Team Supervisor
Federated Insurance Company
P. O. Box 390850
Suite 450
7700 France Avenue South
Edina, Minnesota 55435-5879
Phone Number: (952) 831-4300
Fax Number: 866-636-8660
Email: wmweisman@fedins.com

WCAC Members:

The Honorable **Tom Bakk**
State Senator
226 State Capitol Building
75 Constitution Avenue
St. Paul, Minnesota 55155-1606
Phone: (651) 296-8881
Fax:
Email address: sen.tom.bakk@senate.mn

The Honorable **Michael Nelson**
State Representative
569 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, Minnesota 55155-1206
Phone: (651) 296-3751
Fax:
E-mail: rep.michael.nelson@house.mn

David Olson
President
Minnesota Chamber of Commerce
Suite 1500
400 Robert Street
St. Paul, Minnesota 55101
Phone Number: (651) 292-4655
Fax Number: (651) 292-4656
Email: dolson@mnchamber.com

Elizabeth Shogren, RN
Health and Safety Specialist
Minnesota Nurses Association
Suite 200
1625 Energy Park Drive
St. Paul, Minnesota 55108
Phone: (651) 646-4807
Fax: (651) 695-7000
Email: bettye.shogren@mnnurses.org
and: ecshogren@aol.com

Billing/Auditing Subgroup
Repricing Industry
WCAC Work Group

Rose Hatmaker
SFM Companies
Suite 700
3500 American Boulevard West
Bloomington, Minnesota 55431
Phone Number: (952) 838-4420
Fax Number:
Email: roseh@sfmic.com

Brian Hicks
Director of the Central Business Office
Minnesota Surgery Center, Ltd.
Suite 220
2104 Northdale Boulevard
Coon Rapids, Minnesota 55433
Phone Number: (763) 767-7164
Fax Number:
Email: bhicks@painphysicians.com

Sue Lanigan
HealthEast Care System
1700 University Avenue W.
St. Paul, Minnesota 55104
Phone Number: (651) 232-1180
Fax Number:
Email: slanigan@healtheast.org

Joe Majerus
Administrator
Lakewalk Surgery Center
Suite 100
1420 London Road
Duluth, Minnesota 55805
Phone Number:
Fax Number:
Email: jmajerus@lakewalk.com

James Oukrop
Health and Safety Administrator
HealthPartners
Mail Stop 21107G
P. O. Box 1309
Minneapolis, Minnesota 55440-1309
Phone Number: (612) 719-3505 (cell)
Fax Number: (952) 883-5633
Email: jim.j.oukrop@HealthPartners.com

Phil Rodgers, AIC
CCMSI
Suite 535
1100 Wayzata Boulevard
Minnetonka, Minnesota 55305
Phone Number: (952) 454-3244 (Cell)
Fax Number: (952) 847-2380
Email: prodgers@ccmsi.com

Scott Sexton, Esq.
Vice President, Regional Sales
CorVel Corporation
Suite 600
3001 Northeast Broadway Street
Minneapolis, Minnesota 55413
Phone Number: (612) 436-2439
Fax Number: (612) 436-2499
Email: scott_sexton@corvel.com

Lee Spelbrink
Minnesota Department of Commerce
Suite 500
85 Seventh Place East
St. Paul, Minnesota 55101
Phone Number: (651) 297-3866
Fax Number:
Email: lee.spelbrink@state.mn.us

Sarah Thapa
Park Nicollet
P. O. Box 650
Minneapolis, Minnesota 55440
Phone Number: (952) 993-1252
Fax Number:
Email: thapas@parknicollet.com

WCAC Members:

Mike Bredeck
903 Third Avenue
Madison, Minnesota 56256
Phone Number: (612) 910-0731 (Cell)
Fax Number: None
Email: mnboysstate@frontiernet.net

Ryan Holmes
560 Beverly Street
Wanamingo, Minnesota 55983
Phone Number: (507) 824-2969
Fax Number: None
Email: rholmes24@gmail.com

Employer Choice-Health Care Benefits WCAC Work Group

Julie Anderson
IAMAW
1010 Highway 96
Vadnais Heights, Minnesota 55127
Phone: (651) 207-1713
Email: janderson@iam77.org

Stan Daniels
United Steel Workers
2929 University Avenue, Suite 150
Minneapolis, Minnesota 55434
Phone: (651) 207-1713
Email: sdaniels@usw.org

Lisa Frenette
Builders Association of Minnesota
525 Park Street, Suite 150
St. Paul, Minnesota 55103
Phone: (651) 646-7959
Email: lisaf@bamn.org

Meg Kasting
State Fund Mutual
3500 West 80th Street
Bloomington, Minnesota 55431
Phone: (952) 838-4265
Email: megk@sfmic.com

Tom Koehler
IBEW 160
2522 Marshall Street NE
Minneapolis, Minnesota 55418
Phone: (612) 781-3126
Email: tgk@ibew160.org

Judy Kurki-Coleman
13320H - 58th Avenue North
Plymouth, Minnesota 55442
Phone: (763) 568-7290 (home)
Cell: (763) 354-4199
Email: jkc57@comcast.net

Jessica Looman
Laborers' District Council
81 East Little Canada Road
St. Paul, Minnesota 55117
Phone: (651) 653-9776
Email: jlooman@mnldc.org

Tim Lovaasen
CWA
10713 Cavell Road
Bloomington, Minnesota 55438
Phone: (952) 933-7953
Email: tim@cwamncouncil.org

Rob McKenzie
United Auto Workers
300 Wall Street. Suite 203
St. Paul, Minnesota 55101
Phone: (651) 222-3771
Email: rmcken@uaw.net

Greg Schultz
Director of Human Resources
Andrew Residence
1215 South Ninth Street
Minneapolis, Minnesota 55404-1710
Phone: (612) 333-0111
Email: gschultz@andrewres.com

Marsha Studer
Allina Health Systems
PO Box 43
Mail Route 10103
Minneapolis, Minnesota 55440-0043
Phone: (612) 262-4545
Email: marsha.studer@allina.com

Jerry Walthour
City of St. Paul
Office of Human Resources
400 City Hall Annex
25 West Fourth Street
St. Paul, Minnesota 55102
Phone: (651) 266-6531
Fax: (651) 266-8886
Email: jerry.walthour@ci.stpaul.mn.us

WCAC Members

The Honorable **Tom Bakk**
State Senator
226 State Capitol Building
75 Constitution Avenue
St. Paul, Minnesota 55155-1606
Phone: (651) 296-8881
Email: sen.tom.bakk@senate.mn

Jim Gander
1244 - 60th Avenue Northwest
Rochester, Minnesota 55901
Phone: (507) 289-0229
Email: jimgander@superior-plumbing.com

The Honorable **Bob Gunther**
State Representative
289 State Office Building
100 Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155-1206
Phone: (651) 296-3240
Fax: (651) 296-4307
Email: rep.bob.gunther@house.mn

Glen Johnson
4877 Sogn Valley Trail
Dennison, Minnesota 55018
Phone (Home): (507) 263-0885
Fax: (612) 788-1936
Email: ghjohnson@local49.org

Robert Lux
1209 French Creek Drive
Wayzata, Minnesota 55391
Phone: (612) 991-0381
Email: rclux@qwest.net

Ray Waldron
President
Minnesota AFL-CIO
175 Aurora Avenue
St. Paul, Minnesota 55103
Phone: (651) 227-7647
Fax: (651) 227-3801
Email: rwaldron@mnaflcio.org

Vocational Rehabilitation WCAC Work Group

Glenda Cartney
Minnesota Nurses Association
5427 Brittany Court
White Bear Lake, Minnesota 55110
Phone: (651) 653-7463
Email: cart7463@aol.com

Tim Collin
SFM Companies
3500 American Blvd. W., Suite 700
Bloomington, Minnesota 55431
Phone: (952) 838-4409
Cell: (612) 916-0699
Email: timc@comprehab.com

Carl Crimmins
President
Minnesota Pipe Trades Assn.
411 Main Street, Suite 309
St. Paul, Minnesota 55102
Phone: (651) 291-5001
Email: carlmnpipetrades@aol.com

Mike Donnelly
CorVel Corporation
3001 NE Broadway St., Suite 600
Minneapolis, Minnesota 55413
Phone: (612) 436-2446
Email: mike_donnelly@corvel.com

Judy Gaub
Judy Gaub Case Management
101 West Main Street
Crosby, Minnesota 56441
Phone: (800) 966-8313
Email: judygaub@emily.net

Natalie Haefner, RN
23 Cliff Ridge Court
Hudson, Wisconsin 54016
Phone: (715) 531-1293
Email: n.haefner@wcra.biz

Brad Lehto
Chief of Staff
MN. AFL-CIO
175 Aurora Avenue
St. Paul, Minnesota 55103
Phone: (651) 227-7647
Email: blehto@mnaflcio.org

Alissa O'Hara
Chicilo & O'Hara, Inc.
400 Village Center Dr., Suite 600
North Oaks, Minnesota 55127
Phone: (651) 483-5506
Email: alissaohara@comcast.net

Steven Hollander
Vocational Rehabilitation Assoc.
8700 West 36th Street, #110W
Minneapolis, Minnesota 55426
Phone: (952) 930-0692
Email: sahollander@comcast.net

Pete Parris
Political Director
Sheet Metal Workers Int'l Assn.
Local 10
1681 East Cope Avenue
Maplewood, Minnesota 55109
Phone: (651) 366-6416
Cell: (651) 269-1284
Email: pparris@smw10.org

Michele Spencer
Director of Insurance & Risk Mgmt.
ECUMEN
3530 Lexington Avenue North
Shoreview, Minnesota 55126
Phone: (651) 766-4334
Email: michelespencer@ecumen.org

Grant Welle
General Mills, Inc.
Number One General Mills Blvd.
Minneapolis, Minnesota 55426
Phone: (763) 764-2824
Email: grant.welle@genmills.com

Wayne Ellefson
Financial Secretary/Treasurer
UAW Local 683
4800 East River Road - M350
Fridley, Minnesota 55421
Phone: (763) 572-7527
Email: wayne.ellefson@baesystems.com

Don Gerdesmeier
J.C. 32 Drive Representative
3001 University Avenue SE
Minneapolis, Minnesota 55414
Phone: (612) 331-6767
Email: angelol@teamstersjc32.org

The Honorable **Joe Gimse**
State Senator
105 State Office Building
100 Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155-1206
Phone: (651) 296-3826
Email: sen.joe.gimse@senate.mn

Susan Olson
Corporate Attorney
Hormel Foods Corporation
1 Hormel Place
Austin, Minnesota 55912
Phone: (507) 437-5313
Email: smolson@hormel.com

Gary Thaden
Governmental Affairs Director
MN. Mechanical Constractors' Assn.
830 Transfer Road
St. Paul, Minnesota 55114
Phone: (651) 646-2121
Email: gthaden@gmail.com

Member Roster
The Department of Labor and Industry

DLI Staff:

Steve Sviggum
Commissioner
Minnesota Department of Labor and Industry
443 Lafayette Road North
St. Paul, Minnesota 55155
Phone: (651) 284-5010
Email: steve.sviggum@state.mn.us

Michael Houliston
Deputy Commissioner
Minnesota Department of Labor and Industry
443 Lafayette Road North
St. Paul, Minnesota 55155
Phone: (651) 284-5010
Email: michael.houliston@state.mn.us

John Rajkowski
Legislative Affairs
Minnesota Department of Labor and Industry
443 Lafayette Road North
St. Paul, Minnesota 55155
Phone: (651) 284-5103
Email: john.rajkowski@state.mn.us

Jayne Jones
Senior Executive Director
Minnesota Department of Labor and Industry
443 Lafayette Road North
St. Paul, Minnesota 55155
Phone: (651) 284-5526
Email: jayne.jones@state.mn.us

Patricia Todd
Assistant Commissioner
Workers' Compensation Division
Minnesota Department of Labor and Industry
443 Lafayette Road North
St. Paul, Minnesota 55155
Phone: (651) 284-5018
Email: patricia.todd@state.mn.us

Shawn Peterson
Director. Research and Statistics
Minnesota Department of Labor and Industry
443 Lafayette Road North
St. Paul, Minnesota 55155
Phone: (651) 284-5594
Email: shawn.peterson@state.mn.us

Carol Pankow
Executive Director
Claim Service Investigations
Workers' Compensation Division
Minnesota Department of Labor and Industry
443 Lafayette Road North
St. Paul, Minnesota 55155
Phone: (651) 284-5455
Email: carol.n.pankow@state.mn.us

Penny Grev
Director
Benefit Management and Resolution Unit
Minnesota Department of Labor and Industry
443 Lafayette Road North
St. Paul, Minnesota 55155
Phone: (651) 284-5450
Email: penny.grev.@state.mn.us

Mark McCrea
ADR Supervisor
Benefit Management and Resolution Unit
Minnesota Department of Labor and Industry
443 Lafayette Road North
St. Paul, Minnesota 55155
Phone: (651) 284-5229
Email: mark.mccrea@state.mn.us

Supplemental Information

Employer Choice / Health Care / Benefits Work Group
"Bringing Reform to the System"
Concepts Approved During the November 5, 2008 Meeting

- **State Occupational Injury Leave Act (OILA)**

  OILA is intended to provide job security and health care benefit continuation for employees with admitted claims governed by the provisions of the Workers' Compensation Collaborative, who are temporarily unable to work or are able to work in a partially disabled capacity.

  OILA only applies to claims in which initial liability regarding a personal injury or occupational disease causing incapacity over three (3) days has been admitted or established.

  A covered employer must grant an eligible employee up to a total of twelve weeks (12) of unpaid leave per compensable claim. The leave may be intermittent or continuous.

  Upon return from OILA leave an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits and other terms and conditions of employment.

  Covered employers are required to maintain health insurance coverage for employees on OILA leave whenever such insurance was provided before the leave was taken, and on the same terms as if the employees had continued to work.

- **Ombudsman for Injured Employees**

  Provide accurate information about rights and responsibilities.

  Provide training and outreach to injured workers and stakeholders to improve awareness and ensure that employees needing help have access to services.

  Receive complaints from employees and employers.

  Assist employees and employers in attempting to resolve disputes.

  Assist employees in filing requests for mediation or arbitration.

  The Ombudsman's duties are limited exclusively to claims governed by the WCC.

- **Full Wage Replacement for Medical Appointment Wage Loss Sustained by Employees Covered by the WCC**

  Employees incurring lost time for out-patient medical appointments would be reimbursed full wages instead of receiving temporary partial disability benefits.

- **Elimination of the Three Day Wait Period for Wage Loss Benefits**

  Employees participating in the WCC are not subject to the three calendar day wait period specified in Minn. Stat. §176.121.

- **Workers' Compensation Collaborative**

  Workers' Compensation Advisory Council is the trustee of the WCC.

  DLI is the administrator of the WCC.

  Exclusive panel of qualified primary care providers.

  Alternative Dispute Resolution process consisting of informal assistance, mediation and arbitration in-lieu of the statutory dispute resolution process.

  Exclusive vocational rehabilitation network.

  Neutral physician examiners to resolve medical and legal disputes.

  Stay-at-work and return-to-work programs.

  Annual report cards regarding satisfaction, costs, utilization, access, RTW, health outcomes and other factors.

  On-site audits will be used to assist in determining if employers are eligible to participate in the WCC.

  Ombudsman to assist employees and employers in resolving problems.

  Full wage replacement for wage loss incurred in attending medical appointments.

  Elimination of three-day wait period for wage loss benefits.

  Re-employment rights for employees with certain wage loss claims.

  Rights to maintain health care benefits during periods of approved leave.

- **Submission of Required Medical Data for Annual Survey**

All insurers shall submit medical and other data to DLI for a comparative analysis of costs, injury prevalence, quality of care, dispute resolution, access to care, satisfaction and outcomes.

- **Utilization of Qualified Medical Advisors by DLI and OAH**

  DLI and OAH are required to use qualified medical advisors in determining disputed legal issues.

- **Expanded Safety / Loss Prevention Education**

  DLI shall develop a plan to expand education regarding safety / loss prevention for all employers.

Commissioner's Additional Recommendations

Ground-Breaking. Pioneering. Modern.

A. Employer Tax Incentive For Return-To-Work Employees

As workers' compensation costs have increased, return to work programs and services have become increasingly more important and vital to the injured employee's overall success. Research has shown the longer an injured employee is totally away from work, the greater the likelihood they will never return to their pre-injury job. A total disability, even as short as two to three weeks, has statistically significant (and negative) impacts upon a successful return to work, regardless of the severity of the injury.

In 2006, Minnesota's total cost of vocational rehabilitation services exceeded $41 million with a projected 5,360 claimants injured in 2006 receiving vocational rehabilitation services. Yet, annual statistics show only 62 percent of the program participants had jobs at the time of their plan closure. By most standards, that is a failing grade at an enormous cost. Some of that percentage is due to settlement actions but still vocational rehabilitation costs.

One way to ameliorate the current system is to implement light duty or transitional employment that provides an opportunity for an injured worker to return to work and earn a wage while continuing to recover from his or her injuries. These plans are often integrated into the physical therapy regimen and are time-limited employment programs that last until the employee's healing has completed. Light-duty employment complements rehabilitation and avoids the risks associated with employees who are totally off work.

The best vocational rehabilitation plan might be quite simple: return to work/stay at work.

Legislative Recommendation: DLI will establish a pilot program with the Minnesota Department of Revenue that will provide a tax credit for return-to-work eligible wages paid by an employer to an employee. The credit is 10% of gross wages paid to the worker for not to exceed 180 days, up to $5,000 per worker and $25,000 per employer. The two agencies will set guidelines for any Minnesota based company that makes it possible for return-to-work quickly and safely.

B. Employer Tax Incentive For Workplace Modifications

Information collected by worker's compensation insurance companies reveal that companies that have implemented effective modified light duty programs to return employees injured as a result of a workplace accident significantly reduce the associated costs and eliminate most fraudulent claims.

Legislative Recommendation: DLI will establish a pilot program with the Minnesota Department of Revenue that will provide a tax credit for return-to-work workplace

modification expenses for an injured worker on light duty. The credit is 50% of expenses to modify a workplace for an injured worker on light duty, up to $1,000 per modification and $10,000 per employer. The two agencies will set guidelines for any Minnesota based company that makes it possible for return-to-work quickly and safely.