

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

WORKERS' COMPENSATION REVIEW COMMITTEE

Tuesday, October 21, 2014
Harvest Room, State Capitol
Bismarck, North Dakota

Senator Lonnie J. Laffen, Chairman, called the meeting to order at 2:00 p.m.

Members present: Senators Lonnie J. Laffen, Tom Campbell, George B. Sinner; Representatives Bill Amerman, Curtiss Kreun, Gary R. Sukut

Others present: See [Appendix A](#)

It was moved by Representative Kreun, seconded by Senator Campbell, and carried on a voice vote that the minutes of the September 8, 2014, meeting be approved as distributed.

Chairman Laffen said he plans on the committee completing its work for the interim by the end of the day's meeting. He said that Mr. Malcolm Dodge, Sedgwick Claims Management Services, Inc., will attend and participate by telephone.

The committee had the opportunity to discuss the Workforce Safety and Insurance (WSI) [performance evaluation](#) that was presented at the September 8, 2014, committee meeting. Committee Counsel distributed an email and a document ([Appendix B](#)) related to workers' compensation coverage of volunteer firefighters for posttraumatic stress disorder (PTSD) and the WSI designated medical provider program, which were provided by Mr. Dodge in the way of followup to the WSI performance evaluation presented at the previous meeting.

BILL DRAFTS**Job Offers**

The committee reviewed the second draft of a bill draft [[15.0264.02000](#)] relating to the workers' compensation burden of proof for offers of employment. Chairman Laffen explained this version of the bill draft added the requirement that the job offer be provided by registered mail.

Representative Kreun and Senators Sinner and Campbell discussed whether the bill draft language could be clarified.

In response to a question from Representative Amerman, Chairman Laffen said the bill draft was prepared in response to issues raised during the workers' compensation claim review the committee performed at the July 1, 2014, committee meeting.

It was moved by Senator Sinner, seconded by Senator Campbell, and carried on a roll call vote that the bill draft relating to workers' compensation burden of proof for offers of employment be amended to provide "For purposes of this subsection, proof of offer of employment must be established by an employer's written offer to the employee by registered mail." Senators Laffen, Campbell, and Sinner and Representatives Amerman, Kreun, and Sukut voted "aye." No negative votes were cast.

It was moved by Representative Kreun, seconded by Representative Sukut, and carried on a roll call vote that the bill draft, as amended, relating to workers' compensation burden of proof for offers of employment be approved and recommended to the Legislative Management. Senators Laffen, Campbell, and Sinner and Representatives Amerman, Kreun, and Sukut voted "aye." No negative votes were cast.

Posttraumatic Stress Disorder

The committee reviewed a bill draft [[15.0316.02000](#)] relating to workers' compensation posttraumatic stress disorder coverage for first responders.

Representative Amerman clarified that the committee is considering the bill draft as a result of a recommendation made in the WSI performance evaluation. He voiced concern that WSI is essentially transferring

its burden of complying with this recommendation by having the committee consider whether to recommend this bill draft.

In response to a question from Representative Amerman, Mr. Timothy Wahlin, Workforce Safety and Insurance, said the WSI Board of Directors has not made a recommendation on this bill draft and the bill draft has not yet been presented to the Governor; therefore, he is not able to report whether WSI will support or oppose the bill draft.

In response to a question from Senator Sinner, Mr. Wahlin said there have been numerous discussions and emails among staff regarding the PTSD bill draft. He said concerns of which he is aware relating to the bill draft are the same concerns that are raised any time benefits for psychological benefits are discussed. He said that in looking at how other states have addressed PTSD, there appears to be a significant split between those states that provide coverage for PTSD and those that do not. Although WSI is still in the process of determining the fiscal impact of providing coverage for PTSD, he said, the initial data indicates there would not be any significant financial impact for expanding this coverage to include PTSD as provided under the bill draft.

Mr. Dodge said as reported in the WSI performance evaluation, approximately 30 percent of states do not provide injury to the psyche without an accompanying physical injury and approximately 70 percent of the states provide some coverage for these injuries to the psyche regardless of whether accompanied by physical injury. Furthermore, he said, as provided in the WSI performance evaluation, workers' compensation coverage for PTSD typically falls into three categories of circumstances--PTSD that occurs to victims of violent crime, PTSD that results in the course of employment as a first responder, and PTSD that occurs as a result of unusual and extraordinary events.

Senator Campbell said he struggles with expanding workers' compensation coverage to include PTSD.

Chairman Laffen said he also struggles with expanding workers' compensation coverage to include PTSD. He said although this bill draft seems well-crafted, he is concerned if the Legislative Assembly expands this coverage for first responders as provided in this bill draft, over time the law will be amended to expand the coverage even further.

Representative Amerman said as the bill draft is written, it seems restrictive enough to limit WSI's liability and seems like a good start to address workers' compensation coverage of mental injury. He said sooner or later, North Dakota will have to deal with providing coverage of PTSD, as 70 percent of the states already provide this coverage.

Representative Sukut reminded the committee that multiple times over the years the Legislative Assembly has considered whether to expand workers' compensation coverage to include PTSD.

Representative Amerman said as the committee sits in this small room, with a small number of people in attendance, it may feel easy to kill this bill draft and not recommend it to the Legislative Management. However, he said, this topic deserves further discussion by interested persons. He said this issue is not going to go away and is like other ideas that eventually gain traction.

Representative Kreun said WSI has not completed its work on the matter of coverage of PTSD, as the WSI Executive Board and the Governor have not had the opportunity to review the bill draft and to take a position on the bill draft. For this bill draft to be successful, he said, it will be important to have the support of WSI.

Representative Amerman said not only has WSI not completed the process of reviewing the bill draft, but WSI has failed to comply with the WSI performance evaluation recommendations.

It was moved by Senator Sinner, seconded by Representative Amerman, and failed on a roll call vote that the bill draft relating to workers' compensation coverage of PTSD for first responders be approved and recommended to the Legislative Management. Senator Sinner and Representative Amerman voted "aye." Senators Laffen and Campbell and Representatives Kreun and Sukut voted "nay."

Chronic Opioid Therapy Treatment

The committee reviewed a bill draft [[15.0317.01000](#)] that would provide standards for workers' compensation coverage of chronic opioid therapy treatment.

Mr. Wahlin said the two most recent WSI performance evaluations have recommended WSI revise its policies and procedures relating to the use of narcotics.

In response to a question from Chairman Laffen, Mr. Wahlin said under the current law, WSI provides coverage for chronic opioid therapy treatment; however, this bill draft seeks to establish parameters for this coverage.

In response to a question from Representative Amerman, Mr. Wahlin said in determining whether an injured worker meets the requirements for chronic opioid therapy treatment, WSI would look for documentation in the providers' records. He said this bill draft is similar to the 2011 legislation addressing chronic opioid therapy treatment in that the bill draft defines what medical conditions would qualify as "chronic," requires the treatment result in increased functioning, and requires that the injured worker be subject to drug testing.

In response to a question from Representative Sukut, Mr. Wahlin said the nature of long-term opioid use is that an injured worker may become dependent on the medication.

In response to a question from Chairman Laffen, Mr. Wahlin said to his knowledge, all states have workers' compensation laws that provide medical benefits coverage. He said he is not aware of any state that does not provide coverage for opioids.

In response to a question from Representative Amerman, Mr. Wahlin said although the WSI Executive Board and the Governor have not had an opportunity to review the bill draft, he expects the board will support this bill draft because the board supported the 2011 legislation.

In response to a question from Senator Campbell, Mr. Wahlin said his recollection is that in 2011, the bill draft failed in the second house. He said the testimony in opposition to the bill draft included the concern WSI was interjecting itself too far into the patient/doctor relationship.

Representative Sukut said he expects it would be difficult to dictate what actually takes place between a doctor and a patient; however, it is possible for the state to dictate for what WSI will pay.

Mr. Dodge said he thinks the bill draft has some merit, as it allows WSI to make sure WSI treatment protocols are followed. He said he suggests the pain management contract the injured worker signs include the terms of the law upfront so there is full disclosure and expectations are clear.

Mr. Dodge said if WSI is faced with discontinuing coverage of chronic opioid therapy treatment after a long period of coverage, WSI might want to consider coverage of detoxification treatment.

It was moved by Representative Kreun, seconded by Senator Campbell, and carried on a roll call vote that the bill draft relating to workers' compensation coverage of chronic opioid therapy treatment be approved and recommended to the Legislative Management. Senators Laffen, Campbell, and Sinner and Representatives Amerman, Kreun, and Sukut voted "aye." No negative votes were cast.

It was moved by Representative Kreun, seconded by Representative Sukut, and carried on a roll call vote, that the Chairman and the Legislative Council staff be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Management. Senators Laffen, Campbell, and Sinner and Representatives Amerman, Kreun, and Sukut voted "aye." No negative votes were cast.

It was moved by Senator Campbell, seconded by Representative Kreun, and carried on a voice vote that the committee be adjourned sine die.

No further business appearing, Chairman Laffen adjourned the meeting sine die at 3:00 p.m.

Jennifer S. N. Clark
Counsel

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