

Minutes

*Tennessee Advisory Council on Workers' Compensation
Monday, February 29, 2016 at 11:00 a.m. Central
Legislative Plaza, Room 30
301 Sixth Avenue North
Nashville, Tennessee 37243*

Members Present:

Voting Members

Chairlady Designee Alison Cleaves, Asst. General Counsel Treasury Department

Kerry Dove – on telephone

Bruce Fox - on telephone

John Garrett - on telephone

Bob Pitts

Gary Selvy – on telephone

Paul Shaffer – on telephone

Non-Voting Members

Jason Denton – on telephone

Abbie Hudgens

John Harris – on telephone

Mike Shinnick

Chairman Jimmy Eldridge

Lynn Schroeder, Administrator

The Chair Designee, Assistant General Counsel, Alison Cleaves, of the Tennessee Treasury Department called the meeting to Order at approximately 11:03 a.m. Central and, after the roll, introduced herself, expressed the Treasurer's regrets in not being able to attend as he is in Washington DC this week, then noted that the determination of Necessity Statement was required to permit the quorum to be established via teleconference. Ms. Schroeder read the resolution into the record: "This Council is statutorily required under T.C.A. §50-6-121, to make recommendations to the Senate Committee of Commerce & Labor and the House Committee and Subcommittee of Consumer and Human Resources relative to workers' compensation legislation. The Council needs to opine on Amendment 12479 to House Bill 2038 Senate Bill 1088 which will be considered by the Senate Committee on March 1, 2016. Because the Council needs to make a recommendation about this amendment before the March 1, 2016 Committee meeting, a physical quorum of the Council cannot meet in time, necessitating this teleconference meeting." The resolution was made a **motion** by Council member, Mr. Bob Pitts, **seconded** by Council member, Mr. Paul Shaffer, resulting in a **unanimous vote in favor** of

determining that a necessity existed and permitting a quorum to be established by voting members participation via telephone.

The Chair then turned to the first item on the agenda which was the approval of the minutes of the Advisory Council's February 22, 2016 meeting. Council member Mr. Bob Pitts **moved** for approval, Council member Mr. Gary Selvy **seconded** and a roll vote resulted in a **unanimous vote to approve** the minutes of the February 22, 2016 meeting.

The Chair then called the only item under new business on the agenda, that being **HB 2038 / SB 1880 AMD 012749** (Eldridge/Johnson).

Council member and House Committee Chairman Jimmy Eldridge, indicated he was carrying the bill, that the amendment makes the bill, and called upon legal counsel, Mr. Troy Haley, to speak relative to the amendment on the bill.

Mr. Haley, attorney and legislative liaison for the Bureau of Workers' Compensation ("BWC") wanted to clarify that the bill is not a Governor's administration bill. He indicated that the BWC has worked with the sponsors and with some constituent groups, assisted with clarification of the language, but certainly will defer to the will of the legislature on the bill. The bill would authorize the BWC to promulgate case management rules and rules for insurance adjusters. There are some rules already in progress on case management and on insurance adjusting, but the BWC needs legislative authority in order to proceed. The Chair asked if the Council members present or by phone had any questions of Mr. Haley, and none of the members had any further questions.

Next, Mr. David Broemel was recognized to speak and asked if the sponsor wanted to speak before him. Chairman Eldridge addressed Mr. Broemel and stated that he thought Mr. Broemel's issue with the bill was that it would be applied to Third Party Administrators ("TPAs"); however he wanted to hear Mr. Broemel's concerns in an attempt to resolve any outstanding issues.

Mr. David Broemel, on behalf of the American Insurance Association, indicated that his clients supported the intent of the legislation and understood what Chairman Eldridge was trying to accomplish. Mr. Broemel indicated that the insurance industry is presently spending 69 cents out of every claims' dollar on medical costs with 31 cents for indemnity to injured workers, which means that no one can say the industry is not spending enough money on medical benefits. Mr. Broemel further indicated that he and his client have the Chairman's concern expressed in this bill, which is that benefits be delivered timely and in a proper fashion. Mr. Broemel continued by indicating that he was at the Advisory Council meeting when Mr. Mark Gill testified about an unacceptable delay of medical care for his injured worker son, and agreed that it seems there may be one or two bad apples in the industry that need some attention and need to be sanctioned, but his clients believe that the idea of certification for case managers and their assistants goes too far. Mr. Broemel indicated that the BWC currently has

rules that are being reviewed by the Attorney General's office that address case management, and that Ms. Abbie Hudgens, Administrator of the BWC has done a great job with treatment guidelines. Mr. Broemel noted Ms. Hudgens' attention to rules and guidelines relative to benefits for the injured worker and suggested that the Council wait and see if those work and what affect they have, and come back later if we need further legislation. He suggested that this legislation may be expensive and cumbersome to implement by training and certifying case managers at this time and he believed there was not a demonstrable need to do so. The need lies in sanctioning the people who are not doing right, and his clients support that. As a final comment, Mr. Broemel indicated that because the amendment becomes effective upon becoming law, it would take quite some time for everyone to become compliant and for the BWC to come up with a certification program. As a result, he expressed some uncertainty that by having the amendment become effective immediately upon becoming a law, would belie the bill's purpose.

Council member Abbie Hudgens, Administrator of the BWC, thanked Mr. Broemel for his thoughtful comments and stated that his input was appreciated. She indicated the reason the BWC began developing guidelines and rules for case management was not because there were one or two bad apples, but that there was an uncomfortably large trend blurring the distinct roles of case manager and claims adjuster. Ms. Hudgens clarified that the BWC has received more and more complaints about case managers who were being required to do those things that a claims adjuster would do in order to get the work to be a case manager. Because of the pervasive nature of that practice, the BWC became concerned, which led to the rules that the BWC has promulgated. When the BWC's rules were being reviewed by the Attorney General's office, that Attorney General's Office indicated that in order for the rules to have a penalty provision to ensure compliance, the BWC needed legislation. Ms. Hudgens indicated that the rules relative to certification have already been promulgated with public hearings, leaving adequate time for people to get that certification. Since the case management rules have already been promulgated, the immediate effect of the amendment will not hasten the certification process that has a phase-in period by rule. As to the rules regarding claims adjusters, it is a problem that is pervasive that we have seen. There certainly are good TPA's, and each may have good and not-so-good claims' adjusters, but when we analyze the system, the problems that are causing more cost for both insurance companies and for employers is because of the excessive hoops that everyone must go through to get a claim processed. Accordingly, Ms. Hudgens contented that in the long run, health care provision will be better, claims will go more smoothly and there may be less adjustment cost if we can get everybody on board with good practices.

Mr. Broemel indicated that they were glad the BWC has promulgated the rules, participated in their creation and will comply; however, Mr. Broemel hoped that those rules will obviate the need for further legislation in the area. That was his client's concern.

Ms. Hudgens responded that we all know that rules that are on the books without any enforcement mechanism, are very easily ignored.

Mr. Pitts inquired of Ms. Hudgens if the bill establishes any new authority that had not been previously contemplated under the rules, that have been through public hearing, with the possible exception of having the authority to impose penalties.

Ms. Hudgens replied positively to Mr. Pitts inquiry, and noted that the rules on case management already included penalties, so it was certainly contemplated. It was with the advice of the attorney general's office that we learned that the BWC could not use penalties without legislation. The same would apply on the claims adjusters' issue.

Mr. Everett Sinor, with Brentwood Services addressed the Council noted that BWC had identified a problem which needed to be addressed and had included them, as a third party administrator, and others in the conversation. Mr. Sinor indicated that Brentwood Services is a licensed entity with the Department of Commerce & Insurance ("DC&I"), meaning that DC&I can take enforcement action against Brentwood Services if it does something wrong. The TPA rules only apply to TPAs who handle self-insured clients and the DC&I is only empowered to regulate those entities, which appear to be almost every TPA which is involved in this state. One of the things that concerns Brentwood Services is that TPAs will have enforcement authority in two different departments. The same concern arose when the silent PPO legislation was being debated. As a result, enforcement authority would be handled through the DC&I if you were a licensed. If you are not licensed, enforcement would be handled by the BWC. That was something which both the payor side and the provider side agreed upon. Mr. Sinor indicated on behalf of Brentwood Services, he would respectfully request that that same sort of thinking be reflected in this legislation. He stated that Brentwood Services does not want to be penalized for something their competitors have done wrong and did not think it is fair and does not reflect something which ought to be public policy in this State. All of Brentwood Services adjusters are in Tennessee and know the Tennessee rules, so it does not seem fair to us to compete with national companies who house adjusters in other states who handle Tennessee claims.

Ms. Hudgens asked to clarify a few of Mr. Sinor's points. She informed that the amended bill does not anticipate licensing adjusters. The BWC talked with the DC&I and DC&I does not have rules that apply to the individual work of individual claims' adjusters. BWC and DC&I are in the collegiate formation period of the rules. We are only looking to best practices. There should be no burden on you if you are following best practices. We are talking about certification and we are talking about penalties for egregious acts. While there are many TPAs that deal with self-insured employers, there are also a lot of insurance companies that have claims adjusters. The BWC is in a constant search for ways to make the workers' compensation system as efficient as possible and to reduce the friction in the system that cost insurers, and ultimately employers,

money that is not necessary and, over time, a number of these practices have come into the system. This bill proposes a pathway to make the system work better for everyone.

Mr. Sinor responded that he thought there were already claims handling standards which had been adopted by the BWC. He reiterated that there is currently enforcement authority at the DC&I for the prompt and fair handling of claims. It is not just limited to their rules, it is any rule to which a payor or a TPA are subject. He respectfully suggested that the authority to handle these issues already exists, and request that be looked into further before passage.

Ms. Hudgens indicated that the section that deals with claims handling practices is outdated and does not address the problems in the system. She reiterated that rules without any enforcement power are of little value.

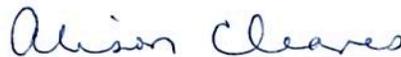
The Chair asked if any further audience members wished to speak. She then asked if any Council members present or on the phone wished to speak. Hearing none, she indicated she would entertain a motion.

Mr. Pitts indicated that it was his belief that if there were any major issues between the DC&I and the BWC, they would be successfully worked out, so **moved** that the bill be sent out with the recommendation of the Council for approval. Council member Bruce Fox **seconded** the motion. A roll vote resulted in a **unanimous decision to recommend approval of the bill as amended.**

The Chair thanked all the parties, asked if there was any other business to come before the Council, and seeing none, entertained a motion by Mr. Pitts to adjourn, seconded by several members on the phone, and the meeting was adjourned at approximately 11:35 without objection.



Lynn Schroeder, Administrator
Advisory Council on Workers'
Compensation



Alison Cleaves, State Treasurer Designee
Assistant General Counsel
State Treasury Department