WORKERS' COMPENSATION ADVISORY COUNCIL
MINUTES ~ ~ MARCH 16, 2007 MEETING [9:30 A.M.]
HOUSE HEARING ROOM #29
LEGISLATIVE PLAZA
NASHVILLE, TENNESSEE

The meeting was called to order at 9:30 a.m. by Mr. Dale Sims, State Treasurer. A quorum of voting members was present; therefore it was not necessary to conduct the meeting electronically. The following lists each member of the Advisory Council and indicates whether they attended the meeting:

***CHAIR:** Dale Sims, State Treasurer - Present

***VOTING MEMBERS:**

Employee Representatives

> Jack A. Gatlin - Absent
> Jerry Lee - Present
> Othal Smith, Jr. - Present

Employer Representatives

> Thomas Hayes - Absent
> Bob Pitts - Present
> Gary Selvy - Present

***NONVOTING MEMBERS:**

Kitty Boyte [TDLA representative] - Present
Tony Farmer [TTLA representative] -Present
Kenny McBride [local governments representative] - Absent
Jerry Mayo [insurance companies representative] - Present
Sam Murrell, MD [health care providers representative -TMA] - Present
A. Gregory Ramos [TBA representative] - Present
David Stout [health care providers representative-THA] - Absent

***EX OFFICIO MEMBERS**

Commissioner Leslie A. Newman - Present
Commissioner James G. Neeley - Present

1. APPROVAL OF MINUTES

The draft minutes for the December 16, 2006, meeting were provided to the members for review. No corrections were suggested by any member.

>ACTION: **The minutes were unanimously approved by the voting members.**

2. REVIEW OF PROPOSED WORKERS' COMPENSATION LEGISLATION

Prior to the meeting, the members were provided a copy of an analysis of the workers' compensation bills filed this legislative session that the Council had been requested to review.

At the beginning of the discussion of legislation, Mr. Sims recognized Senator Bill Ketron and Mr. Chuck Bidek who spoke concerning four bills filed by Senator Ketron concerning the issue of sole proprietors and independent contractors in the construction business and one bill filed related to a review board for insurance appeals. Senator Ketron told the members it was his intent to work with interested parties to reach consensus on the issues and then to present a single bill for consideration. He requested that the Council not review and comment on the five bills at the meeting.

The Executive Director, Linda Hughes, explained each bill and the members were given an opportunity to discuss and provide comments concerning the bill. On some of the bills, the members did not make any official comments. During the discussion on SB496(Burchett)/HB1603(Overbey), representatives of the Tennessee Hospital Association told the Advisory Council the bill was filed as a caption bill to raise the issue with the Department of Labor and Workforce Development. Therefore, the Council did not make any official comments concerning this bill.

The following lists each bill reviewed, a brief synopsis of the proposed change in the law as explained by the Executive Director and the comments that were made by members of the Advisory Council.

*SB 149 by Southerland / HB 1319 by West

Proposed Change

SB 149 / HB 1319 adds a new section to Title 56 (Insurance), Chapter 5 (Rates and Rating Organizations, Part 3 (General Provisions). The bill requires the experience rating of each business to be based on the nature of the business, the business' loss run history and any other factor relevant to the business. The bill prohibits combining business entities (based on the percentage of ownership interest or upon supervisory control exercised over the businesses) for purposes of determining experience ratings.

COMMENTS OF ADVISORY COUNCIL MEMBERS:

EMPLOYEE REPRESENTATIVES:

Mr. Smith stated he does not support the bill".

INSURANCE COMPANY REPRESENTATIVE:

Mr. Mayo stated the bill confuses the issue and the industry is opposed to this bill.

EX OFFICIO MEMBERS

Commissioner Neeley indicated the issue is a lot broader than just workers' compensation regarding the position it puts the state in.

SB 1762 by Kyle / HB 1862 by Shepard

Proposed Change

SB 1762 / HB 1862 restricts the rulemaking authority granted by subsection (d) to rules implementing ONLY subsection (c), i.e., applicable to only workers' compensation. It deletes language that gave the Commissioner authority to promulgate rules "to effectuate the provisions of this section", i.e., the entire section 320 (all property and casualty insurance).

COMMENTS OF ADVISORY COUNCIL MEMBERS:

Mr. John Morris, Deputy Commissioner of the Department of Commerce and Insurance, explained the Department had recently held a public hearing on proposed rules for the appeal of complaints relating to the premiums assessed by insurance carriers. After some negative comments that the proposed rules were not very relevant to the entire property and casualty market the Department withdrew the proposed rules. He indicated the Department wants to work with the sponsors of the legislation to improve the language of the bill.

SB 2171 by Kyle / HB 1813 by McDonald

Proposed Change

SB 2141/ HB 1813 eliminates the "repeal provisions" of the Public Acts of 1996 and 2001 related to the advisory prospective loss costs system in Tennessee. Thus, the competitive pricing system for the workers' compensation insurance market in Tennessee will continue without any automatic repeal provisions.

COMMENTS OF ADVISORY COUNCIL MEMBERS:

All the Council members stated they were in favor of the continuation of the advisory prospective loss costs system.

SB 2241 by Kyle / HB 2322 by Odom

Proposed Change

SB 2241 / HB 2322 adds language to the definition of advisory prospective loss costs to include "any other filing concerning or affecting rates and rate making purposes that are mandated by federal law". The bill also amends §50-6-402 to require consultation with the Advisory Council concerning loss costs filings or "other such other filings include in the definition of advisory prospective loss cost filing.

COMMENTS OF ADVISORY COUNCIL MEMBERS:

Mr. John Morris, Deputy Commissioner of the Department of Commerce and Insurance, indicated it was the department's opinion that federally mandated filings are "loss costs filings" but this bill makes it clear statutorily they will be included in the definition.

All the members of the Advisory Council spoke favorably toward the bill.

SB 253 by Haynes / HB 73 by Turner, M.

SB 366 by Southerland / HB 655 by Hawk

Note: These bills are identical and were discussed together.

Proposed Change

SB 253 / HB 73 amends the code section that lists the types of employments not covered by Tennessee workers' compensation law to provide that Tennessee workers' compensation law does not apply to an alien - unless the alien was:

- lawfully admitted for permanent residence at the time "such services" were performed;
- lawfully present for the purposes of performing "such services"; or
- was permanently residing in the United States "under color of law" at the time the "services" were performed.

The bill also provides that any data or information that is required of persons applying for benefits to determine eligibility must be required of all applicants of benefits and declares that in order to deny benefits, the decision must be based on a preponderance of the evidence.

COMMENTS OF ADVISORY COUNCIL MEMBERS:

EMPLOYEE REPRESENTATIVES:

Mr. Smith stated, in his opinion, this is a "bad bill" because if it passes and the employee is permitted to sue the employer in tort, and this opens a tremendous amount of exposure for the employer. In addition, it is a problem already for ordinary English speaking employees to successfully prosecute a workers' compensation claim, let alone a tort action. He stated, "They (illegal aliens) are here; they are working; they should get workers' compensation benefits; the employer pays premium based on the wages paid to the employee and it does not matter where they come from.

Mr. Smith did not agree with Mr. Pitts' concerns regarding the PPD caps because he thought the employer should have a reason to look at the people they hire at the front end of the employment relationship. He does not favor an easy out on the disability caps issue. He stated he did not think the difference between a 1.5 multiplier cap and a 6 multiplier cap will make much difference in the system. Mr. Smith also stated the employers should be more careful to check the employee's documents prior to hiring the worker. He contended the bill is drafting a "fault bases" system into the "no-fault" workers' compensation system.

EMPLOYER REPRESENTATIVES:

Mr. Pitts stated his concerns with the bill is that if an undocumented worker solicits employment from an employer, knowing they are illegal and not eligible for employment and submits documents that appear valid, the employer - when it is learned following the injury that the worker is undocumented and cannot be employed - the employer will not be permitted to limit his exposure for permanent partial disability benefits (using the 1.5 multiplier cap) by returning the injured worker to the pre-injury employment.

ATTORNEY REPRESENTATIVES:

Mr. Ramos stated, in his opinion, the Tennessee workers' compensation law, since 1961, has included the words, "whether lawfully or unlawfully employed" following the words "any person". He stated he has successfully argued for years that this phrase mandates workers' compensation coverage for all immigrants working in Tennessee, whether documented or undocumented.

Mr. Ramos pointed out that if this bill is passed, the employer will lose the exclusive remedy rule and will lose protection from punitive damages. Also, the bill encourages employers to hire undocumented workers and pressure them not to submit claims for injuries on the job.

Mr. Ramos also stated the employer pays insurance premiums and the claim will be denied by carriers and this underscores a windfall to insurance companies. He said the insurance company should screen the employee's status at the beginning when the insurance is purchased by the employer.

Mr. Ramos agreed that Mr. Pitts had a legitimate concern with the application of the PPD caps when the employer is not permitted under Federal law to return the employee to pre-injury employment. With regard to the issue of the "multiplier caps", Mr. Ramos said employers can introduce evidence of undocumented worker status as evidence of a decrease in the employee's permanent partial disability.

INSURANCE COMPANY REPRESENTATIVE:

Mr. Mayo stated the insurance company will not reap a windfall for insurance provided to the employer of an undocumented worker. Whatever is not paid for workers' compensation benefits will be paid for defense costs on the tort side.

Mr. Mayo said the industry opposes the bill. He indicated this bill addresses a political issue and a federal issue that the sponsors are trying to solve by amending the workers' compensation law. Mr. Mayo indicated he agreed, if the employer is paying premiums for the worker, the employer should get the coverage and the worker should get the benefits.

HEALTH CARE PROVIDER REPRESENTATIVES:

Dr. Murrell stated the health care community is not in favor of the bill.

EX OFFICIO MEMBERS

Commissioner Neeley expressed reservations about the bill because public policy in Tennessee, since the adoption of workers' compensation, has been that workers' compensation is the exclusive remedy for a worker injured on the job.

SB 313 by Finney, R. / HB 247 by Hensley

Proposed Change

SB 313 / HB 247 changes the minimum charge from $10.00 to $20.00.

COMMENTS OF ADVISORY COUNCIL MEMBERS:

Mr. Sims requested the Executive Director to find out when the current charge of $10.00 was enacted and to include this information in the report to the General Assembly.

SB 1474 by McNally / HB 1518 by Hackworth

Proposed Change

SB 1474 / HB 1518 adds "or other approved provider" to the protection from liability afforded to physicians and hospitals.

SB 445 by Burchett / HB 454 by Hackworth

Proposed Change

SB 445 / HB 454 prohibits payment of fees lower than the Medical Fee Schedule unless there is a specific contract between the health care provider and the employer, trust, pool or insurer. It prohibits the assigning of the negotiated rates in the contract to any other party. If there is no contract between the specific medical care provider and the insurer/employer then the payment will be at the rates established by the Medical Fee Schedule. The bill specifically prohibits fees paid to a workers' compensation medical provider that are based on a contract or agreement negotiated on a commercial health insurance product line - UNLESS the contract clearly states the rates payable under commercial health insurance will also apply to workers' compensation services.

COMMENTS OF ADVISORY COUNCIL MEMBERS:

ATTORNEY REPRESENTATIVES:

Mr. Farmer stated he believes the bill is intended to address an ongoing problem in Knox County where an employer authorizes a physician to provide treatment to an injured worker and the physician bills for the services at the maximum rate allowed by the medical fee schedule. The insurance company then refuses to pay the maximum rate and says it has not authorized payment of the maximum rate. He believes the bill provides that unless the employer or insurer has an different agreement with the physician, then the employer/insurer has to pay the maximum rate authorized by the medical fee schedule. He does agree there may be some unintended ramifications as outlined by Commissioner Neeley and other council members related to third party contracts.

INSURANCE COMPANY REPRESENTATIVE:

Mr. Mayo says the bill will hurt self-insured employers as it prevents utilization of PPOs.

HEALTH CARE PROVIDER REPRESENTATIVES:

Dr. Murrell says this is a real problem for the medical care providers. The insurance companies are reimbursing a doctor/provider based on a negotiated network contract that applies to general health and the provider has not agreed to accept less than the amount allowed under the medical fee schedule. Dr. Murrell also noted a problem with reimbursement for the correct charge for a board certified physician; the carriers are reimbursing at rates permitted for non-board certified physicians.

Dr. Murrell also stated there is a problem where a network is developed for health treatment in non-workers compensation matters and the network wants to apply that contract to any later developed networks later developed for workers' compensation.

EX OFFICIO MEMBERS

Commissioner Neeley stated he believes the bill addresses "silent PPOs" (lot of individuals in health care industry in third tier below the medical fee schedule and trying to eliminate these individuals.

SB 322 by Haynes / HB 1818 by Hackworth

Proposed Change

SB 322 / HB 1818 adds a new section to the workers' compensation statute. If the following conditions are met, the Commissioner of Labor/WFD or designee is authorized to order benefits to be paid on an equal basis by carriers/self-insured employers:

- compensability is not disputed or a specialist has determined the claim to be compensable AND
- there is a dispute as to which entity is responsible to pay benefits to the injured workers when the
    - employer has changed carriers;
    - the employer was self-insured and is now insured; or
    - the employer who was insured, becomes self-insured

In addition, the bill provides that - upon agreement of the parties OR a court order as to which entity is responsible to pay benefits - the one responsible shall reimburse the party who was not responsible to pay benefits, all amounts paid to the employee plus interest.

COMMENTS OF ADVISORY COUNCIL MEMBERS:

EMPLOYEE REPRESENTATIVES:

Mr. Smith said this can be very detrimental to an injured worker when two carriers/self-insured employers are disputing who is responsible for payment of the claim.

ATTORNEY REPRESENTATIVES:

Ms. Boyte indicated there may be a problem when two carriers are arguing over a gradual injury - under this circumstance which panel is to apply. It is unclear how you split the responsibilities of the employer.

Mr. Farmer stated it is a problem for employees because it often takes the Department several months to obtain the information it feels is needed in order to make a decision as to which entity is liable to pay the workers' compensation benefits. In the meantime, the employee goes without medical treatment or indemnity benefits even though the injury is not being contested. He said a worker can lose their house while waiting for a decision from the Department.

Mr. Ramos said he likes this concept although the issue as to whose medical panel is to be used may need to be addressed.

INSURANCE COMPANY REPRESENTATIVE:

Mr. Mayo said injured workers should not be denied benefits when there is no doubt of the compensability. He suggested the bill should be amended to also provide for reimbursement of all medical expenses paid and all loss adjustment expenses incurred by the carrier/self-insured employer in addition to the benefits paid to the employee. He also expressed concern if one of the

SB 425 by Crutchfield / HB 1822 by Buck

Proposed Change

Section 1 of SB 425 / HB 1822 prohibits the social security offset from applying to death benefits.

Section 2 of the bill requires copies of all information available to a workers' compensation specialist when considering medical or temporary disability benefits to be provided to all parties, upon request. The bill make it clear this is not applicable to medication situations when information may be held confidential upon request of a party.

COMMENTS OF ADVISORY COUNCIL MEMBERS:

ATTORNEY REPRESENTATIVES:

Ms. Boyte said the social security offset is to prevent the receipt of double benefit.

Mr. Farmer said it is a real handicap for both sides in the procedures for the department to make a decision when a Request for Assistance has been submitted. Each side will present its position but has no idea what the other party has said about the claim. This causes significant fairness problems for both sides. The current process provides no transparency.

Mr. Ramos said he is in favor of both sections of the bill as they will improve the entire system.

EX OFFICIO MEMBERS

Commissioner Neeley stated there are approximately 5000 requests for assistance received by the department annually. The average file is about 45 pages. Therefore, there is a fiscal impact to the department as a result of Section 2.

SB 849 by Kilby / HB 1073 by Turner, M.
SB 857 by Kilby / HB 643 by Turner, M.

Note: These two bills are the same except the second one does not have a reference to Part (D) of the Federal Act. Part(D) no longer is in the Federal Act. However, the general analysis of the bill remains the same as in the previous bill. Therefore, the analysis for each was the same. The Advisory Council had reviewed and commented on these same bills in 2006 and had no further comments.

Proposed Change

The bills apply only to occupational diseases involving a disease or condition covered by the federal "Energy Employees Occupational Illness Compensation Program Act of 2000, parts (B), (D) or (E)". The bills make these diseases or conditions compensable as an occupational disease for Tennessee state workers' compensation benefits. The bill makes positive determination findings pursuant to the Federal Act conclusive proof as to causation for a state claim and prohibits an employer from raising issues related to: notice, causation, statute of limitations.

The bills provide they are not applicable to workers' compensation claims made by a state employee or by a municipal or county employee, whether it has accepted the Workers' Compensation Act or not. The bills also provide:

- neither the employee, employee's survivors/beneficiaries nor the employer shall be entitled to make a claim for benefits against the Second Injury Fund;
- there shall be no entitlement to medical benefits (past, present or future) for these diseases or conditions pursuant to *TCA* §50-6-204;
- state workers' compensation awards paid by reason of this law are not to be included in the employer's experience factors for changes in the employer's loss history to the extent the employer is reimbursed or indemnified by the federal government for benefits paid.

SB 1044 by Finney, L. / HB 1081 by Turner, M.

Proposed Change

SB 1044 / HB 1081 amends *TCA* §50-6-102(14)(C) by adding a new provision to apply to injuries occurring on/after 7-1-2007. It defines "maximum total benefit" to be 400 times 100 % of the state's average weekly wage (SAWW) which is set annually by the Division of Workers' Compensation. In addition, the bill excludes both temporary total disability and permanent partial disability from the definition of "maximum total benefit".

COMMENTS OF ADVISORY COUNCIL MEMBERS:

EMPLOYEE REPRESENTATIVES:

Mr. Smith says he believes the bill places the law as it was prior to 1992 and the bill will help only those most seriously injured workers.

ATTORNEY REPRESENTATIVES:

Mr. Farmer stated this bill will impact a very, very small percentage of claims (significantly less than 1% of the claims made annually in Tennessee) and of the people it does impact, it only effects the most seriously injured workers who are eligible for TTD and PPD for an extended period of time. It protects Tennessee's most seriously injured workers.

EX OFFICIO MEMBERS

Commissioner Neeley stated that he remembers when the maximum benefits were based on the maximum weekly benefit and the reforms did not change the law; rather, the courts' interpretation has changed the law from the state's maximum weekly rate to the employee's weekly compensation rate.

SB 1672 by Ramsey / HB 278 by Mumpower

Proposed Change

SB 1672 / HB 278 corrects an incorrect reference to the definition of "maximum total benefit".) The Council members had no comments on this bill.

SB 1775 by Southerland / HB 2128 by Fitzhugh

Proposed Change

SB 1775 / HB 2128 makes changes to various sections of *TCA* §50-6-241 to make the caps apply in situations where the employee acquires any employment at the same or greater pay - deleting the requirement that the pre-injury employer return the employee to work. The bill applies these multiplier changes to both the 1992 Act and the 2004 Act.

In addition, the bill also amends the sections applicable to reconsideration of the disability benefits when the employee is no longer employed by the pre-injury employer. The bill changes those sections by permitting the employee to seek reconsideration within 400 weeks (or the applicable number of weeks depending on the body part injured) from the day the employee acquires employment.

COMMENTS OF ADVISORY COUNCIL MEMBERS:

EMPLOYEE REPRESENTATIVES:

Mr. Smith stated the intent of the 1992 Reform Act that added the PPD caps was to give the employer who is willing to bring the injured employee back to work a break - lower PPD benefits.

ATTORNEY REPRESENTATIVES:

Ms. Boyte stated there should be no difference in the amount of PPD benefits awarded to an injured employee depending on whether the employer brings the employer back to work or the employee finds a job with another employer.

Mr. Farmer stated the intent of the PPD caps is to give an incentive to the employer to return the employee to the pre-injury employment.

Mr. Ramos suggested the current law regarding the time within which an action to seek reconsideration can be filed should remain one (1) year from the loss of the job, as provided in current law.

SB 1797 by Southerland / HB 2129 by Fitzhugh

Proposed Change

SB 1797 / HB 2129 deletes the provision of the 2004 Reform Act that prohibits the settlement of future medical benefits in permanent partial disability benefit cases for 3 years and prohibits the settlement of medical benefits in permanent total disability cases.

The bill also adds a definition of "repetitive injury" to the statute - "injury directly and solely caused by repetitive use of the affected body part". The bill requires the employee to prove he/she sustained a repetitive injury by clear and convincing evidence by competent ergonomic and medical evidence, that the injury is not the result of the aging process or the result of a congenital or developmental disorder.

COMMENTS OF ADVISORY COUNCIL MEMBERS:

EMPLOYEE REPRESENTATIVES:

Mr. Lee stated during the discussions regarding the 2004 Reform Act, a five year period was originally proposed and a reasonable compromise was reached to limit the time to three years. He indicated he still believes the three year period is a reasonable amount of time.

ATTORNEY REPRESENTATIVES:

Ms. Boyte agreed there are many situations where future medical benefits should not be closed but stated there are also situations where it is silly to keep the medical benefits open - for example, amputated finger, broken arm. She stated she did not think the bill is encouraging the closure of future medical benefits - instead it is allowing closure in situations where it is clear they should be closed.

Mr. Farmer said another public policy consideration to retain the prohibition against closing future medical benefits occurs in situations involving permanent total disability, it would be an impossible burden for employees of the Department of Labor and Workforce Development to attempt to advise claimants who are closing the right to future medical benefits about their obligations to Medicare in creating Medicare Set Aside Trusts that have to be created any time a third party's liability for medical benefits in the future has been terminated. The Set Aside involves application of a very sophisticated formula/process at the time of closure to determine how much money has to be paid to Medicare at the time of closure for Medicare's obligation in the future to provide medical treatment.

Mr. Ramos agreed with the points raised by Mr. Farmer with respect to permanent total disability benefits. Mr. Ramos stated that from a practical standpoint with respect to permanent partial disability cases, from a defense standpoint, more cases would be settled - especially highly disputed cases - if the parties were permitted to compromise the claim including the closure of future medical benefits. Mr. Ramos suggested the dollar threshold on claims that can close future medical benefits be increased.

EX OFFICIO MEMBERS

Commissioner Neeley stated during the last two years the Department has seen a number of cases that future medical benefits are being held open and all it does is require the insurance industry to keep its files open. He said there are certain cases where there is no impact to the employee if the future medical benefits are closed.

CHAIR:

Mr. Sims stated the difficulty arises in determining what the threshold should be for which claims can and cannot settle future medical benefits. He explained the original intent of the three year period was to avoid building in an incentive - in a borderline case - to induce, with dollars, an employee to take an action that is adverse to them and that the review process would not catch this situation. He said the proponents of this provision to prohibit settlement of future medical benefits was to avoid placing an employee in that position.

SB 1477 by Tracy / HB 1568 by Curtiss

Proposed Change

SB 1477 / HB 1568 clarifies the procedures to be used by the administrator/designee in reconsidering a specialist's order. The bill restricts the review to only the information that was available to the specialist who issued the order; requires the administrator/designee to determine whether the specialist's order was correct under the law; requires the issuance of a written order that fully resolves the issues in dispute. The administrator/designee is prohibited from sending the matter back to the specialist for further action on the issue. The bill requires the following:

- if the specialist's order is deemed to be correct, the order shall affirm the order and order the same action as contained in the specialist's order;
- if the specialist's order is deemed to be incorrect, the order shall reverse the specialist's order and include an order of the correct resolution of the issues - so the administrator/designee's order becomes the definitive order on the issue.

The bill makes it clear that any party may submit a new request for assistance following the resolution of the request for reconsideration by the administrator/designee based on new or additional information, facts or documents not originally considered by the specialist when the original order was issued.

COMMENTS OF ADVISORY COUNCIL MEMBERS:

ATTORNEY REPRESENTATIVES:

Mr. Ramos agreed another word needs to be used other than "reconsideration" and the word "review" is fine with him. He said it is important that this process not be confused with reconsideration of permanent partial disability .

SB 1805 by Tracy / HB 1569 by Curtiss

Proposed Change

SB 1805 / HB 1569 requires a workers' compensation specialist to make a determination that the injury sustained by the employee is a compensable workers' compensation injury (or that a prior order requires the benefits) prior to ordering the employer to provide either temporary disability benefits or medical benefits, specific medical treatment or a panel choice of physicians to the employee.

The bill deletes the current statute regarding the independent medical examiners registry and re-drafts the language by outlining in specific terms the conditions under which a party can request an examiner from the registry. The bill provides:

- employee may request the examination by a registry physician if the employer has provided the appropriate panel for the selection of a treating physician and the treating physician is either unwilling or unable to provide an impairment rating;
- employee may request the examination by a registry physician if the employee disagrees with an impairment rating given by the treating physician - chosen from the panel provided by the employer - and the employee has not also obtained an independent medical examination at his/her own expense;
- employee or employer may request the examination by a registry physician if the treating physician has issued an impairment rating and the employee has obtained his own independent evaluation;
- employer may request the examination by a registry physician if the employer has permitted the employee to select his own treating physician, without use of a panel, provided the employer has not had an independent evaluation conducted on the employee that resulted in an impairment rating.

The bill also requires the Department to advise employees - in plain and understandable language at the time the employee is first contacted following a report of a work-related injury - of the employee's rights to use the registry and that the department can assist in this request. The bill also requires the Commissioner of Labor/WFD to amend the current rules governing the independent medical examiners registry to be effective on January 1, 2008. The Commissioner is required to provide proposed rules to the Advisory Council before the proposed rules are sent to the Attorney General for review. The Council has 30 days from receipt to provide written comment. The Commissioner is required to provide the Council with any changes to the proposed rules suggested by the Attorney General prior to submitting the proposed rules to the Secretary of State.

COMMENTS OF ADVISORY COUNCIL MEMBERS:

ATTORNEY REPRESENTATIVES:

Ms. Boyte stated the 2004 Reform Act made the MIRR program applicable to only injuries that occurred on or after July 1, 2005. She questioned whether the bill changes the injury dates to which the MIRR program would be applicable.

With regard to the portion of the bill related to the authority of the specialist to order a panel

of physicians to be provided, Ms. Boyte noted the intent of the bill is to prohibit current practice of the workers' compensation specialists to order the employer to provide a panel of physicians so the physician can determine if the injury was work-related.

EX OFFICIO MEMBERS

With regard to the section of the bill regarding the specialists' ability to order medical or disability benefits, Commissioner Neeley noted the 2004 Reform Act provides that if a specialist makes a mistake then the Second Injury Fund reimburses the benefits paid by the party who was ordered to pay benefits.

Commissioner Neeley also noted when you open up the MIRR MIRR registry to anyone - even though the employer is required to pay for the Registry physician ($1,000) - this will cause a lot more people to be involved than has been before.. He indicated the Department had submitted a fiscal note regarding this bill.

SB 2259 by Kyle / HB 2307 by Turner, M./Odom

Proposed Change

SB 2259 / HB 2397 removes the references to payments to the Second Injury Fund in death cases. The bill also removes the monetary threshold for attorney fees the department can approve and removes subdivision (a)(2)(E) which mandates an escalation clause for the $10,000 limit on approval of attorney fees.

COMMENTS OF ADVISORY COUNCIL MEMBERS:

ATTORNEY REPRESENTATIVES:

Mr. Farmer noted the practical effect of the section permitting the Department to approve all attorney fees is the elimination of additional court costs and attorney fees paid by the employer and delay and inconvenience to the parties and attorneys. The current law that requires attorney fees above the threshold to be approved by a court causes additional expenses and delays for no practical purposes.

Mr. Ramos stated the $10,000 threshold amount for attorney fees should continue to be indexed annually based on change in the increase in the state's average weekly wage.

SB 446 by Burchett / HB 1635 by Ferguson

Proposed Change

SB 446 / HB 1635 requires one employer representative to be a representative from self-insured pools.

COMMENTS OF ADVISORY COUNCIL MEMBERS:

The Council members noted it is unclear what is meant by "self-insured pool". In the Advisory Council's history, there has always been a member of the Council that insured their workers' compensation liability through a pool.

SB 1043 by Finney, L. / HB 595 by Turner, M.

Proposed Change

SB 1043 / HB 595 deletes the chair and co-chair as ex officio, non voting members of the Advisory Council and substitutes the chair or co-chair of the standing committees of the House and Senate as ex officio, nonvoting members of the Council.

COMMENTS OF ADVISORY COUNCIL MEMBERS:

The Advisory Council members stated they defer to the General Assembly on all matters pertaining to the membership of the Council.

SB 1222 by Cooper / HB 1571 by Curtiss

Proposed Change

Section 1 of SB 1222/HB 1571 eliminates all ex officio, nonvoting members of the Workers' Compensation Advisory Council.

Section 2 of SB 1222/HB 1571 requires the rate service organization to file rules related to the recording and reporting of data pursuant to the uniform statistical plan, uniform experience rating plan and the uniform classification system with the Advisory Council before approval by the Commissioner of Commerce and Insurance.

COMMENTS OF ADVISORY COUNCIL MEMBERS:

The Advisory Council members stated they defer to the General Assembly on all matters pertaining to the membership and duties of the Council.

SB 1473 by Tracy / HB 1563 by Curtiss

Proposed Change

SB 1473 / HB 1563 deletes references to the following statutes that are no longer necessary:

- *TCA* § 50-6-204(c) references payment of an assessment to the Second Injury Fund in death cases that was repealed years ago.
- *TCA* § 50-6-205(b)(1) references the incorrect subdivision of the definition section of the workers' compensation law (*TCA* § 50-6-102).
- *TCA* § 50-6-208(f) is a section that authorized a pilot project for hiring outside attorneys to defend the Second Injury Fund. The pilot project is no longer in operation.

COMMENTS OF ADVISORY COUNCIL MEMBERS:

It was noted that in past years a bill had been filed by the chair and vice-chair of the Joint Committee to be used by the Council, if necessary. The bill, filed by these legislators because the Joint Committee had not yet met this session, addresses technical changes only.

SB 1884 by Jackson / HB 1138 by Buck

Proposed Change

SB 1884 / HB 1138 adds a new subsection to *TCA* §50-6-419 that requires the Commissioner of Labor/WFD to deliver any proposed revisions of the claims handling standards to the Advisory Council for comment within 45 days and requires the Commissioner to provide the special joint committee on workers' compensation with the proposed revisions for comment. These requirements will apply to any revision of the claims handling standards after July 1, 2007.

COMMENTS OF ADVISORY COUNCIL MEMBERS:

The Advisory Council members stated they defer to the General Assembly on all matters pertaining to the duties of the Council.

The meeting was adjourned by Mr. Sims at 1:15 p.m.