



STATE OF NEW MEXICO

ADVISORY COUNCIL

ON

WORKERS' COMPENSATION

AND

OCCUPATIONAL

DISEASE DISABLEMENT

ANNUAL REPORT 2009

PRESENTED TO:

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GOVERNOR

THE HONORABLE MORRIS J. CHAVEZ,  
SUPERINTENDENT OF INSURANCE

AND:

SENATE PRESIDENT PRO-TEMPORE

SPEAKER OF THE HOUSE

SENATE MAJORITY FLOOR LEADER

HOUSE MAJORITY FLOOR LEADER

SENATE MINORITY FLOOR LEADER

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## Annual Report of the Advisory Council on Workers' Compensation and Occupational Disease Disablement - 2009

The Advisory Council on Workers' Compensation and Occupational Disease Disablement is a statutory body created by the Workers' Compensation Law of New Mexico, whose members are appointed by the Governor to represent employers and workers. Our duty is to report annually to the Governor and Legislature concerning the state of the workers' compensation system and to make recommendations regarding rules and legislation.

### **Mission**

*The mission of the Advisory Council on Workers' Compensation and Occupational Disease Disablement is:*

- *to monitor the performance of the workers' compensation and occupational disease disablement system; and*
  - *to make recommendations to the Governor, Legislature, regulatory agencies and participating industries, related to the adoption of rules and legislation and the method and form of statistical data collections;*
- in order to assure the quick and efficient delivery of indemnity and medical benefits to injured and disabled workers at a reasonable cost to employers.*

A part of the major legislative reform of the workers' compensation system was to create the Advisory Council to review potential amendments to the Act. The Council listens to all parties, obtains available data, and seeks to determine the cost and benefit to the system that may occur by any amendment. The Council endeavors to build a consensus among business and labor, and any other effected stakeholders, on any change to the Act before making any recommendation to the Governor and Legislature.

The success of our system is based on the law itself. The challenge is to sustain a system that balances the needs of workers and employers fairly. The Advisory Council is one of the mechanisms created by the Legislature to accomplish this objective.

This year New Mexico had several workers' compensation issues that included firefighter benefits, lump sum settlements, attorney fees and the farm and ranch exemption presented to the State Legislature at the 2009 session to amend the New Mexico Workers' Compensation Act. Of these, two major amendments were passed by the Legislature and signed into law by Governor Bill Richardson in April.

Senate Bill 76, ***Lump Sum and Disputed Claims Settlements***, was developed in response to the New Mexico Supreme Court's opinion, Summerville v. Southwest Firebird and Builder's Trust. The bill amends the Workers' Compensation Act to allow a worker and the employer to resolve a claim for injury as long as all parties are in full agreement of the appropriateness of the resolution with a lump sum payment and the settlement is approved by a workers' compensation judge. This permits disputed claims

to be settled by the agreement of all parties, in a manner that provides certain benefits to the worker while allowing the insurance company to close out the claim at a predictable cost. The change expands the provisions under which a claim can be paid out in a lump sum to the worker under the Act. Claims that can be settled by mutual agreement avoid the time and cost of litigation. It provides finality and self-determination to workers while still under the jurisdiction of the Workers' Compensation Administration. SB 76 went into effect on July 1, 2009.

Senate Bill 303, *Presumptive Causation for Firefighters*, amends the Workers' Compensation Act to create a presumption that certain illnesses contracted by municipal fire fighters as defined in the Public Employees Retirement Act are caused as a result of their employment. These illnesses are specified forms of cancer linked to minimum years of service and illnesses diagnosed through exposure as a result of their duties. This does not include pre-existing illnesses which are excluded from coverage. The presumption is rebuttable in all instances by the employer. SB 303 becomes effective on July 1, 2010.

**Recommendations for the 2010 Legislative Session are:**

The Advisory Council **supports:**

- Clarifying prohibited drug and alcohol use under the Workers' Compensation Act.

**Summary of positions on specific issues:**

**The Advisory Council will support:**

The Workers' Compensation Administration (WCA) has proposed changes to 52-1-12, 52-1-12.1 and 52-1-11 to clarify language in the Workers' Compensation Act that applies to drug use and alcohol intoxication. Section 52-1-12 currently prohibits benefits when the worker's injury or death is solely occasioned by intoxication or the use or misuse of a depressant, stimulant or hallucinogenic drug as defined by the Drug, Device and Cosmetic Act (DDCA) or narcotics under the Controlled Substances Act (CSA). The legislature amended the DDCA and removed these definitions. The Court of Appeals ruled that since the DDCA did not contain definitions for amphetamines or methamphetamines, Section 52-1-12 did not apply.

Proposed amendments are language changes that would clarify the Act and strengthen public policy regarding drug and alcohol misuse in the workplace.

**Premiums**

In filing requests approved by the Department of Insurance, overall rate reductions of 6.7 percent were approved for the voluntary market for 2009 that went into effect on January 1, 2009. Overall rate reductions of 4.5 percent have been approved for the voluntary market for 2010 that will go into effect on January 1, 2010. There was a premium reduction of 1.3 percent for the assigned risk pool in 2009 that was effective on

January 1, 2009. A 0.9 percent overall premium reduction has been approved for 2010 for the Assigned Risk Pool that will be effective on January 1, 2010. This is the fourth year in a row that New Mexico has been able to enact rate reductions for workers' compensation premiums. New Mexico businesses had an overall 5.2 percent reduction in work-related accidents leading to a better overall experience rating.

Not all businesses are eligible for these premium reductions. Businesses with a poor safety record and a high number or severity of work-related injuries will continue to pay premiums based on their individual experience.

This reduction follows the release of the *2009 State Report Cards for Workers' Comp.* put out from a national study conducted by the Work Loss Data Institute. The report includes the New Mexico workers' compensation system in the six states that scored an A.

### **Status Report on the Workers' Compensation Administration**

The New Mexico Workers' Compensation Administration (WCA) has been fully engaged to achieve its primary goal: a better workplace for New Mexicans through responsive and effective services. The WCA's key customers are New Mexico's workers and employers.

To accomplish its mandate to provide excellent services to New Mexicans under the Workers' Compensation Act and to maintain balance in the system, the WCA maintains its culture through the WCA's:

#### **Vision:**

One team, one goal: A better New Mexico for Workers and Employers.

#### **Mission:**

To assure the quick and efficient delivery of indemnity and medical benefits to injured and disabled workers at a reasonable cost to employers.

#### **Core Values:**

Used in all internal and external interactions: **RESPECT:**

**Respect, Ethics, Service, Professionalism, Excellence, Courtesy, Teamwork.**

#### **Pillars of the WCA:**

The WCA has identified four "pillars" as the foundation to support the WCA's ultimate responsibilities:

- 1) Promote safety in the workplace.
- 2) Ensure compliance with the Workers' Compensation Act.
- 3) Resolve Workers' Compensation disputes accurately and timely.
- 4) Ensure balance is maintained in the Workers' Compensation System.

**Rule changes enacted:**


The Workers' Compensation Administration has enacted certain rule changes for implementation of the Workers' Compensation Act. The following changes are effective on December 31, 2009.

- Mileage per diem increase for injured workers who are required to travel 15 miles or over to appointments from \$0.32 a mile to \$ 0.40 a mile. This will help to close the gap of the current rate with federal and state increases.


- The pilot program to treat eligibility and compensability for Uninsured Employer's Fund (UEF) claims the same as any other workers' compensation claim has proven to be very successful. The program has proven to be more efficient and streamlines the UEF process and will be continued on a permanent basis.

**Conclusion:** The New Mexico Workers' Compensation Administration is stable and continues to remain responsive to the dynamic challenges of the overall system.


Respectfully submitted,


  
Nick Kapnison,  
Chair

  
Jude McMullan,  
Vice Chair

  
Mike Anaya,  
Member

  
Emily Kane  
Member

  
Mark G. Henderson,  
Member

  
Fidel A. Muñoz,  
Member