
ANNUAL REPORT FOR 2010

STATE OF NEW MEXICO

ADVISORY COUNCIL
ON
WORKERS' COMPENSATION
AND
OCCUPATIONAL DISEASE DISABLEMENT

Presented To:

**The Honorable Bill Richardson,
Governor**

**The Honorable John G. Franchini,
Superintendent of Insurance**

**Nick Kapnison,
Chair**

**Jude McMullan,
Vice Chair**

**Mike Anaya,
Member**

**Mark G. Henderson,
Member**

**Emily Kane,
Member**

**Fidel A. Munoz,
Member**

**Glenn R. Smith
Ex Officio**

and

**Senate President Pro-Tempore
Speaker of the House
Senate Majority Floor Leader
House Majority Floor Leader
Senate Minority Floor Leader
House Minority Floor Leader
Chair, Senate Finance Committee
Chair, Senate Corporations and
Transportation Committee
Chair, House Appropriations and
Finance Committee
Chair, House Business and
Industry Committee
Chair, House Labor and
Human Resources Committee**

Annual Report of the Advisory Council on Workers' Compensation and Occupational Disease Disablement - 2010

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 affected 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.

The 2010, 30 day Legislative Session was confined to budget issues and did not address any workers' compensation issues. This year there have been several workers' compensation proposals introduced to amend the New Mexico Workers' Compensation Act.

Recommendations for the 2010 Legislative Session are:

The Advisory Council **supports:**

- Removing the exemption that excludes farm & ranch laborers from receiving mandatory workers' compensation coverage.
- Workers' Compensation Judge Selection Process - a proposal to make the selection, review and retention of workers' compensation judges follow

substantially the same process used to select metro and district court judges. It also extends the initial appointment time from one year to three years.

- Temporary Restraining Order Cost Recovery – Workers' Compensation Administration (WCA) initiative to recover costs now being paid by the WCA for enforcing the Act with employers who fail to provide workers' compensation insurance coverage to their employees when required by the Act.
- The concept of clarifying the Alcohol and Drug policy for determining workers' compensation benefits – such a proposal would clarify and consolidate three parts of the statute that have created ambiguity in determining benefits when alcohol and drugs may be a factor in a worker's injury (the New Mexico Court of Appeals has declared these sections of the Act are ambiguous.)

The Advisory Council does not support:

- Disqualification of Judges – proposal to remove or modify the right each party to a dispute currently has to challenge peremptorily a particular judge from sitting on a case.
- Amendments to the Health Care Provider Fee Schedule. - Removing from consideration Medicare and Medicaid scheduled costs in the formula when determining changes in the fee schedule. Permitting insurers and health care providers to negotiate rates higher than the scheduled amounts for procedures under certain circumstances.
- Removing the exemptions that excludes from mandatory workers' compensation coverage for private domestic servants and qualified real estate salespersons.

Premiums

In filing requests approved in recent years by the Department of Insurance, overall rate reductions were approved for the voluntary market and the assigned risk pool so that New Mexico has been able to enact rate reductions for workers' compensation premiums for four consecutive years in a row.

This year a filing increase of 4.2 percent was approved for the voluntary market with an effective date of January 1, 2011. The increase is based on the increase in benefits of the State Average Weekly Wage from \$666.02 to \$699.01, increases in certain procedures under the Health Care Provider Fee schedule, increased loss development, longer duration of claims, and return to work challenges. There was no filing for an increase or decrease for the assigned risk pool. The filing for 2010 stays the same for 2011 with no change. The annual filing adjustment is the base point insurance carriers use in their formulas to determine premiums.

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.

2010 Budgetary Consequences on the Agency:

Although a Special Funded agency through the Workers' Compensation Administration Fund, as a result of budget decisions over this past year, the WCA has reduced operational spending in line with General Fund state agencies.

In the 2009 Regular Legislative Session and 2009 First Special Session the agency was directed to provide from the Workers' Compensation Fund during the FY2010 operation budget year:

- \$691,000.00 to the Department of Workforce Solutions
- \$5,000,000.00 to the General Fund (regular session); and
- \$3,500,000.00 to the General Fund (special session)

The agency was also directed during the First Special Session to provide an additional \$1,000,000.000 from the Uninsured Employers Fund to the General Fund.

This year by direction of the Department of Finance and Administration, the WCA deleted thirteen full time employee (FTE) positions bringing the personnel fill authorization of the agency from 143 to 130 FTEs.

Impacts of the Hiring Freeze:

The WCA will be entering the Calendar year with 20 vacant FTE positions. Four positions that had been approved for exception to maintain mission and that were in the interview phase were stopped with the November 2010 suspension ordered by the

executive. Certain mission critical classified senior / technical positions (three due to retirement) will be vacant at the beginning of the year to include: Deputy Director of Internal Operations, Clerk of the Court, Chief Economist and Bureau Chief, Enforcement Bureau Chief and Attorney Mediator. The remaining vacancies are regulatory (compliance and safety), legal and administrative positions.


Rule changes enacted:

The following changes are effective on December 31, 2010.


Health Care Provider Fee Schedule: Amendment of Part 7 of the Rules to require authorization for procedures and referrals to be made within three business days for outpatient treatment and within twenty-four hours if the worker is hospitalized. Authorization for durable medical equipment is required within seventy-two hours, unless the worker is hospitalized and the authorization shall be given within twenty-four hours. There have been cases reported of a worker hospitalized for three days until a wheelchair was authorized and he could be released. The WCA's goal is to contain costs to the system and help ensure efficient treatment for the worker.

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

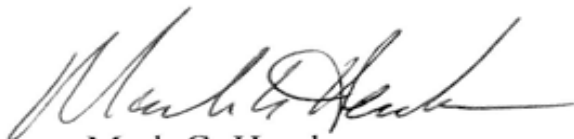
Respectfully submitted,



Nick Kapnison,
Chair


Jude McMullan,
Vice Chair


Mike Anaya,
Member


Emily Kane
Member


Mark G. Henderson,
Member


Fidel A. Muñoz,
Member