

ADVISORY COUNCIL

The Advisory Council on Workers' Compensation and Occupational Disease Disablement was created by statute as part of the 1991 reform of the workers' compensation system. Its primary function has been to provide continuous monitoring of the workers' compensation system by representatives of the system's customers and beneficiaries, the employers and workers of New Mexico.

The Council officially came into existence in January 1991, the effective date of the Workers' Compensation Act (the Act). The Council includes three members representing employers and three members representing workers.

The statute requires the all-volunteer Council to meet at least twice a year in order to report annually to the governor, the superintendent of insurance, and the legislative leadership; and to appoint the members of a separate committee to approve health care providers who might serve as independent medical examiners for a workers' compensation case when necessary.

The statute also requires the Council to develop safety programs for employers whose annual workers' compensation insurance premium is less than \$5,000 (all those with larger premiums are subject to a safety inspection requirement). The Council has fulfilled that obligation through the publication, "How to Develop a Safety Program."

Beyond its statutory duties, the Council has no enforceable authority but has wide discretion to review, examine and comment on issues in the law, the regulations and the system. The Council has chosen to use that discretion to uphold the mutual interest of employers and workers. In the first few years following the 1991 Act, the Council heard numerous proposals from various interest groups and generally recommended staying with the principles of the reform. In addition, the Council began holding meetings in Santa Fe during the legislative session and reviewing all workers' compensation-related legislation. The Council's official opinions have had considerable influence in helping to pass or defeat legislative proposals.

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 Act. Of these, two major amendments: Lump Sum and Disputed Claims Settlements; and Presumptive Causation for Firefighters; that were supported by the Council were passed by the Legislature and signed into law (see WCA Annual Report 2009).

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

From the 2010 discussions the following recommendations were sent to the governor and legislators for the 2011 Legislative Session:

The Advisory Council supported:

- ❖ Removing the exemption that excludes farm and 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 extended the initial appointment time from one year to three years.

- ❖ Temporary Restraining Order Cost Recovery – A WCA initiative to recover costs being paid by the WCA to enforce 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 – the 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 did not recommend support of:

- ❖ Disqualification of Judges – proposal to remove or modify the right each party to a dispute has to peremptorily challenge 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. Allowing 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 workers and qualified real estate salespersons.

