

**Workers' Compensation Advisory Council Meeting**

**Friday, May 06, 2011; 9:30 a.m.**

**LWC Training Center, Baton Rouge**

**Meeting began about 9:45 a.m.**

**Chair and Members Attending (see separate sign-in sheet):**

Wes Hataway – Director, OWCA

Cherie Pinac – FARA

Charles Davoli – attorney, labor representative

Ken Hawkins – plaintiff attorney

Jim Patterson – La. Assn. of Business & Industry (LABI)

Troy Prevot – LUBA

Michael Morris – Home Builders' SIF

Greg Hubachek – Workers' Compensation LLC

Dr. Dan Gallagher - LSMS

**Others attending (see separate sign-in sheet)**

**In addition, attending from OWCA:**

Larry White

Gwen Dugas

**Handouts:**

1. meeting agenda, including 2011 legislation discussion
2. copies of: HB 535 (Lafonta), SB 143 (Quinn), HB 502 (Ponti), HB 518 (LeBas)

**Discussion:**

**First** item is HB 535 – Lafonta – creates Workplace Fraud Prevention Act. Scratch for now.

**Second** is SB 143 – Quinn, regarding certain unanticipated bonus payments from determination of average weekly wage. Postpone discussion until later.

**Third** is HB 518 – LeBas. Troy Prevot reports on the activities of his task force. They have looked at Title 40, re: remittances. He says their proposal give LeBas 90% of what he's asking for, i.e., the payee will know what he's being paid for. The bill is filed under Title 22.

Prevot will send a copy of the proposed rule change to other Council members.

Hataway says he will get with Rep. LeBas next week and add it to the next meeting's agenda.

**Fourth** is the task force on vocational rehabilitation, Jim Patterson reporting. Patterson is working on consensus among task force members, but for the time being, he is keeping the details to himself. He plans to meet next Tuesday and Thursday, May 10 and 12, and has set a deadline of next Thursday for the group to reach consensus. If so, he will report back to the Advisory Council. The Council can then deliberate for two weeks and get any resulting bill to a sponsor by the first week of June. Patterson comments that there's not a lot of trust among the parties, but he's insistent they continue to work together.

Dr. Gallagher comments that he's hearing that a two-day Functional Capacity Evaluation (FCE) is getting to be the norm, whereas it used to be five days.

Davoli comments that "you get what you pay for," and that often physical therapists, occupational therapists are constrained by what the payers are willing to pay for. The idea is to spend more up front for a quality FCE, which reduces expenses on the back end.

Hawkins suggests a standard whereby an FCE must be completed within 48 hours or it must be repeated, at no extra charge.

**Next item** is the task force on undocumented workers, Davoli reporting. He says he tried to call a meeting of the task force members for earlier this morning, but was unsuccessful.

He says that they've gotten good information from Mississippi and learned that e-verify is only one part of the solution. He describes it as a two-edged sword, in that there must be disincentives for employers to hire the undocumented in the first place, but also sanctions and penalties if they do.

Davoli says he has some proposals, but is not ready to present them to the Council. He also says he is getting amazing pushback from the construction industry.

Dr. Gallagher then asks what happens when an undocumented worker is injured on the job. Several people respond that the injury is compensable. Morris adds that the Homebuilders' SIF doesn't want members who go around picking up undocumented workers at random and using them.

**Next item,** Council returns to agenda item SB 143 – Quinn, concerning what is counted in calculating AWW. Davoli is the first to say he doesn't like it; it will create all sorts of problems and obscure the current bright line of what is (and is not) included in AWW.

Hawkins points out that relatively few employees in Louisiana have written contracts; those who do tend to be high earners.

Several comment they're not sure what problem Quinn's bill is trying to solve, so Hawkins says he will call her and try to have an answer for the next Council meeting.

In the meantime, however, Patterson suggests the Council go on record as opposing the bill. A vote is taken; the result is "unfavorable."

**Other business:**

Patterson wants to take a position on the other bills under discussion also. Briefly,

--HB 518 (LeBas) – oppose

--HB 502 (Ponti) – defer

Prevot wants to recognize the contribution of the LWCC on the e-billing project.

Davoli asks about the SAS (?) project, specifically what is the status of the software on fraud prevention? Larry White responds that they still need data from other agencies, e.g., Revenue, DMV, Secretary of State, DSS. Also LWC's U.I. is about to issue a press release.

**Public comment:**

Someone asks for an update on the medical treatment guidelines and Hataway responds the window for public comment ends May 21.

Davoli also asks about a deadline on the Hearings rules. Hataway responds that he'll have to check into that and get back with him.

**Next meeting:** Friday, May 20, 2011; 9:30 a.m., at LABI, if it's available

**Adjourn** approx. 10:45 a.m.