

# Report to the Senate Commerce & Labor Committee from the Advisory Council on Workers' Compensation

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## Report of the Advisory Council on Workers' Compensation To the Senate Commerce & Labor Committee

**Jack Johnson, Chair**  
**Mark Green, 1<sup>st</sup> Vice-Chair**  
**Jim Tracy, 2<sup>nd</sup> Vice-Chair**

**Todd Gardenhire**  
**Dolores Gresham**  
**Steve Southerland**  
**Reginald Tate**  
**Bo Watson**  
**Ken Yager**

The Advisory Council on Workers' Compensation held a second meeting on February 29, 2016 to review pending workers' compensation bills, and, pursuant to T.C.A. §50-6-121(j), *"The advisory council on workers' compensation shall, within ten (10) days of each meeting it conducts, provide a summary of the meeting and a report of all actions taken and all actions recommended to be taken to each member of the consumer and human resources committee of the house of representatives and commerce and labor committee of the senate."* This is the report of that February 29, 2016 Council meeting for your review and information.

**SB 1880 / HB 2038 AMD# AMD 12749 (Johnson/Eldridge) The Advisory Council produced a unanimous decision to recommend approval of the bill as amended.**

Council member and Chairman Jimmy Eldridge, indicated he was carrying the bill, that the amendment makes the bill, and called upon his legal counsel, Mr. Troy Haley, to speak relative to the amendment on the bill.

Mr. Haley, attorney and legislative liaison for the Bureau of Workers' Compensation ("BWC") clarified that the bill is not a Governor's administration bill. He indicated that the BWC has worked with the sponsors and with some constituent groups, assisted with clarification of the language, but certainly will defer to the will of the legislature on the bill. The bill would authorize the BWC to promulgate case management rules and rules for insurance adjusters. There are some rules already in progress on case management and on insurance adjusting, but the BWC needs legislative authority in order to proceed.

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The Chair asked if the Council members present or by phone had any questions of Mr. Haley, and none of the members had any further questions.

Mr. David Broemel, (Counsel for the American Insurance Association), indicated that his clients supported the intent of the legislation and understood what Chairman Eldridge was trying to accomplish. Mr. Broemel indicated that the insurance industry is presently spending 69 cents out of every claims' dollar on medical costs with 31 cents for indemnity to injured workers, which means that no-one can say the industry is not spending enough money on medical benefits. Mr. Broemel further indicated that he and his client share the Chairman's concern expressed in this bill, which is that benefits be delivered timely and in a proper fashion. Mr. Broemel continued by indicating that he was at the Advisory Council meeting when Mr. Mark Gill testified about an unacceptable delay of medical care for his injured worker son, and agreed that it seems there may be one or two bad apples in the industry that need some attention and need to be sanctioned, but his clients believe that the idea of certification for case managers and their assistants goes too far. Mr. Broemel indicated that the BWC currently has rules that are being reviewed by the Attorney General's office that address case management, and that Ms. Abbie Hudgens, Council Member and Administrator of the BWC has done a great job with treatment guidelines. Mr. Broemel noted Ms. Hudgens' attention to rules and guidelines relative to benefits for the injured worker and suggested that the Council wait and see if those work and what affect they have, and come back later if we need further legislation. He suggested that this legislation may be expensive and cumbersome to implement by raining and certifying case managers at this time and he believed there was not a demonstrable need to do so. The need lies in sanctioning the people who are not doing right, and his clients support that. As a final comment, Mr. Broemel indicated that because the amendment becomes effective upon becoming law, it would take quite some time for everyone to become compliant and for the BWC to come up with a certification program. As a result, he expressed some uncertainty that by having the amendment become effective immediately upon becoming a law, would belie the bill's purpose.

Ms. Hudgens indicated the reason the BWC began developing guidelines and rules for case management was not because there were one or two bad apples, but that there was an uncomfortably large trend blurring the distinct roles of case manager and claims adjuster. Ms. Hudgens clarified that the BWC has received more and more complaints about case managers who were being required to do those things that a claims adjuster would do in order to get the work to be a case manager. Because of the pervasive nature of that practice, the BWC became concerned, which led to the rules that the BWC has promulgated. When the BWC's rules were being reviewed by the Attorney General's office, that Attorney General's Office indicated that in order for the rules to have a penalty provision to ensure compliance, the BWC needed legislation. Ms. Hudgens indicated that the rules relative to certification have already been promulgated with public hearings, leaving adequate time for people to get that certification. Since the case management rules have already been promulgated, the immediate effect of the amendment will not hasten the certification process that has a phase-in period by rule. As to the rules regarding claims adjusters, it is a problem that is pervasive that we have seen. There certainly are good TPA's, and each may have good and not-so-good claims' adjusters, but when we analyze the

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system, the problems that are causing more cost for both insurance companies and for employers is because of the excessive hoops that everyone must go through to get a claim processed. Accordingly, Ms. Hudgens contended that in the long run, health care provision will be better, claims will go more smoothly and there may be less adjustment cost if we can get everybody on board with good practices. Perhaps those rules will obviate the need for further legislation in the area.

Ms. Hudgens responded rules that are on the books without any enforcement mechanism, are very easily ignored. Council members Mr. Pitts and Ms. Hudgens discussed and agreed that the amended bill permitted the imposition of penalties for enforcement purposes.

Mr. Everett Sinor, (General Counsel for Brentwood Services) noted that BWC had identified a problem which needed to be addressed and had included them and others in the conversation. Mr. Sinor indicated that Brentwood Services is third party administrator that employs claims' adjusters, so when it sees an effort to determine how those persons should be regulated, it's certainly something with which Brentwood Services would want to be involved. Mr. Sinor indicated that Brentwood Services is a licensed entity with the Department of Commerce & Insurance ("DC&I"), meaning that DC&I can take enforcement action against Brentwood Services if it does something wrong. The TPA rules only apply to TPAs who handle self-insured clients and the DC&I is only empowered to regulate those entities, which appear to be almost every TPA which is involved in this state. One of the things that concerns Brentwood Services is that TPAs will now be subject to have enforcement authority in two different departments. This is something that concerned Brentwood Services when the silent PPO legislation was being debated. As a result, the payor side, and also the provider side, agreed that the way to handle enforcement authority was that if you were licensed by the DC&I, enforcement would be handled at that department. If you are not licensed by the DC&I, enforcement would be handled by the BWC. Mr. Sinor respectfully requested that that same sort of thinking be reflected in this legislation. Just because a competitor has done something bad, should not mean all TPAs should have to have all of our claims' adjusters licensed. Mr. Sinor indicated that Brentwood Services does not think it is fair and does not reflect something which ought to be public policy in this State.

Ms. Hudgens clarified that the amended bill does not anticipate licensing adjusters. The BWC talked with the DC&I, and DC&I does not have any rules that apply to the individual work of individual claims' adjusters. BWC and DC&I are in the collegiate formation period of the rules. We are only looking to best practices. There should be no burden on you if you are following best practices. We are talking about certification and we are talking about penalties for egregious acts. There should be no additional cost on TPAs. While there are many TPAs that deal with self-insured employers, there are also a lot of insurance companies that have claims adjusters. The BWC is in a constant search for ways to make the workers' compensation system as efficient as possible and to reduce the friction in the system that cost insurers, and ultimately employers, money that is not necessary and, over time, a number of these practices have come into the system. This bill proposes a pathway to make the system work better for everyone.

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Mr. Pitts (Employer Representative) indicated that it was his belief that if there were any major issues between the DC&I and the BWC, they would be successfully worked out, so **moved** that the bill be sent out to the Committee with the recommendation of the Council for approval. Council member Mr. Bruce Fox (Employee Representative) **seconded** the motion. A roll vote resulted in a **unanimous decision to recommend approval of the bill as amended.**