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South Carolina -- Commission Agrees to Push Ahead With Mediation Mandate: Top [01/19/12]

By Michael Whiteley, Eastern Bureau Chief

The South Carolina Workers' Compensation Commission (WCC) will go forward with a proposed regulation mandating mediation in certain workers' compensation cases and will attempt to provide a final version to lawmakers before the end of the 2012 session, the panel's executive director said on Wednesday.

Gary Cannon, WCC's executive director, said the seven-member commission voted unanimously at a business meeting on Wednesday to publish a draft of the workers' compensation mediation regulation in the State Register on Feb. 26 and take public comments through March 26.

The commission will review a second draft of the proposed regulation at a meeting in April and has scheduled a public hearing for May 29, with hopes of submitting the regulation for approval by the South Carolina Legislature during the first week of June.

State law gives legislators 120 legislative days to approve proposed regulations, deny them or allow them to take effect without action.

"With all the people who have been involved in this, at this point, we don't see any opposition," Cannon said. "We've gone ahead and put the meetings on the calendar to expedite the process."

The proposed regulations would provide the first South Carolina mandate for mediation in the workers' compensation system. The rules would require mediation in cases involving occupational illnesses, third-party liens, mental/mental claims and injuries involving concurrent jurisdiction between state workers' compensation statutes and the Federal Longshore and Harbor Workers' Compensation Act.

The proposed regulations also would require mediation in cases involving multiple workers and permanent total disability.

Individual commissioners would have the authority to mandate meditation in any disputed workers' compensation claim. The proposal came from an ad hoc committee composed of 24 claimants' and defense attorneys.

Commissioner Derrick Williams, who launched the initiative last fall, said the commission is following the lead of the South Carolina Court of Appeals, which launched a voluntary mediation program for workers' compensation appeals on Nov. 1, 2011.

"Part of the reason for this is that we've seen an increase in cases involving more complex issues that are more like civil litigation," Williams said in an interview last week. "Mediation is mandatory in civil cases in most of the venues in this state."

Williams said one focus will be on multiple claims that are filed after manufacturing plants close in the state.

"They're almost tort cases. When a plant closes, you have may have hundreds of possible claims. The system's not set up for that."

He said commissioners have ordered mediations in select cases with no clear regulatory authority to do so. He said about 90% of the cases involving a mediator have resulted in settlements. In those cases, parties have generally split the cost.

The proposed regulation would give parties 10 days to select a mediator after an order is issued. Mediation would have to be completed within 60 days. Stan Lacy, a defense attorney and certified mediator, said mediators generally charge \$250 an hour for their services in South Carolina.

"I've been hearing from both sides that they want mediation," Williams said. "This regulation makes it explicit that any commissioner has the authority to order a mediator."

Williams said he expects mediations also to focus on cases of permanent total disability involving back injuries or injuries to multiple body parts.

The proposed regulation has the support of Injured Workers' Advocates, a claimants' bar group, and the South Carolina Small Business Chamber of Commerce.

Small Business Chamber President Frank Knapp said on Wednesday that employers see the move as a cost-saving measure. Knapp, Lacy and Cannon said on Wednesday they've seen no opposition to the plan from lawmakers, who convened for the 2012 session on Jan. 10.

"Obviously, all the payers seem to think it's a good thing to go to mediation. Folks are concerned about workers' compensation costs and litigation. It seems like a good way for the system to control costs," Knapp said.

If lawmakers fail to act on the proposed regulations late during the 2012 session, the regulations would be held over for further review by lawmakers in January 2013.

A memorandum issued by Williams and the proposed regulations are here.

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