

**Industrial Commission's Advisory Committee  
On Workers' Compensation  
Minutes  
February 8, 2017**

**Members Present**

Craig Mello, Chair  
Dave Anderson  
James Arnold  
Connie Barnett  
Dr. Paul Collins  
Roy Galbreath  
Mike Haxby  
Dane Higdem  
Larry Kenck  
Gardner Skinner  
John Greenfield  
Susan Veltman  
Aaron White  
Ex-Officio: Senator Jim Patrick

**Members Absent**

Brian Whitlock  
R. D. Maynard, Commissioner

**Industrial Commission**

Thomas E. Limbaugh, Chairman  
Thomas P. Baskin, Commissioner  
Mindy Montgomery, Director

**Opening Remarks and Introductions:**

Chairman Craig Mello opened the meeting and led with introductions of Committee members and public attendees.

**Minutes:**

The Minutes of November 9, 2016 were presented for review and approval. Susan Veltman moved to approve the minutes of November 9, 2016 as written, seconded by Roy Galbreath. The minutes were adopted as written.

**Subcommittee Reports:**

➤ **Nominations Subcommittee (Roy Galbreath)** (Subcommittee Members: *Roy Galbreath, Chairperson; Mike Haxby, John Greenfield; Susan Veltman and Aaron White*)

Subcommittee Chairman Roy Galbreath presented an issue regarding formation of the Subcommittee that could lead to a conflict of interest for the nominations process. Mike Haxby, Susan Veltman and Roy Galbreath have terms expiring in August. Larry Kenck and Dane Higdem have terms expiring in 2018 and each has expressed an interest to serve and have agreed to be considered for nominations to serve on the Subcommittee. Mr. Galbreath invited other Committee members to contact the Nominations Subcommittee if they have an interest in serving on the Nominations Subcommittee. Mr. Galbreath had no further report.

## **Industrial Commission Report:**

Commission Chairman Tom Limbaugh conveyed Commissioner Maynard's apologies for his absence due to other commitments; and announced Commissioner Maynard was reappointed to the Commission for another six-year term. Senator Patrick announced the full Senate confirmed Commissioner Maynard's reappointment.

Update: Prompt Claims Servicing. Commissioner Limbaugh presented an update on the rules for prompt claims servicing. The final draft version of the rules were emailed to Subcommittee members in June; unfortunately, the Commission learned there was an issue with the transmission of that email, which delayed the Subcommittee in fully vetting and reaching consensus on the rules and further delayed submission of the rules package before the moratorium on rules submissions. The Commission sought approval from the Governor's office for a temporary rule and, because the request fell too close in proximity to the start of the legislative session, the temporary rule was placed on hold. In March month-end or early April, the Commission intends revisiting the temporary rule and does not anticipate an issue in getting the rules package approved, and then moving forward with negotiated rulemaking on a proposed rule.

Update: Audit Guidelines. The Commission has suggested revisions to a draft of the audit guidelines and anticipates the guidelines to be available for stakeholders concurrent to adoption of the temporary rules on prompt claims servicing.

Commissioner Limbaugh had no further report.

Update: EDI Release 3.0.

Patti Vaughn, Benefits Administration Manager for the Commission, reported on the status of EDI Release 3.0 for implementation effective July 1, 2107. She summarized the transition schedule as follows:

- January 25, 2017 - The selected vendor ISO rolled out EDI. The Commission posted the updated links for the Idaho Implementation Guide, version 1.4 of the Idaho requirement tables and the transition plan for trading partners to its website.
- February 1, 2017 - ISO representatives and Industrial Commission staff jointly presented an information session webinar. There were 104 participants. A recording of the webinar will be available on the ISO-hosted website for users.
- March 17, 2017 - Trading partners, including those already transmitting claims under Release 1.0, need to complete their registrations.
- May 5, 2017 through June 15, 2017 - The scheduled testing period for the transmission of FROI and SHROI data.
- May 5, 2017 - ISO will begin conducting training for trading partners.

Ms. Vaughn further reported on the two methods available to low-volume trading partners (100 claims or less), at *no-cost*, for electronic transmissions of FROIs and SHROIs through the web portal using either WC-Prism or SFTP, a flat file format. She acknowledged the

process would be cumbersome for larger-volume trading partners, but reiterated that it is an option. Trading partners that elect to contract *value-added services* for assistance with formatting and transmission of data may incur a fee for the cost of transmissions. The Commission will continue to post updates to its website and forward updates onto ISO for the ISO-hosted website. ISO has also been communicating with their contacts, other vendors and trading partners. The EDI Claims Committee is also distributing information to the IAIABC community. Any questions regarding registrations, technical issues and testing can be directed to [iicedi@iso.com](mailto:iicedi@iso.com).

Ms. Vaughn defined '*trading partner*' for purposes of EDI as the insurance carriers, self-insured employers, or third-party administrators who are required to report claims data to the Commission. Ms. Flores verified that Intermountain Claims would be completing the registration and trading partner agreement on behalf of Simplot. Ms. Vaughn further explained that the Commission would enter the FROI data into the system on behalf of the injured worker or counsel when an employer had failed to properly report.

Ms. Barnett expressed concern with the timeline for transitioning to EDI Release 3.0 and the compressed testing period. The timeline is too "aggressive" in her opinion. She summarized the challenges the State Fund has encountered in preparation for the transition, which led the State Fund to partner with ISO's value-added service. The State Fund anticipates meeting the July 1, 2017 deadline, but inquired whether the Commission entertained a "Plan B". Ms. Barnett was complimentary of the Commission on their efforts with the project.

Mr. Haxby concurred with Ms. Barnett's summation of the compressed time period for trading partners to adequately test their systems. Intermountain Claims also has plans to purchase the value-added services from ISO, because of their expertise with the sequencing logic. He expressed concern about the next level of training for users and staff, specifically identifying the appropriate codes to be used. He thanked the Commission for reaching out to stakeholders and acknowledged the Commission has appropriately notified insureds of any updates for EDI Release 3.0.

Mr. Kenck also expressed concern the Commission has no Plan B available for trading partners.

Ms. Vaughn addressed concerns relating to the timeline for testing systems. Commission staff has communicated the same "standard" for some time, even with the delay in announcing the project vendor, for carriers to be preparing their systems. The "standard" is a product of the IAIABC. There has been no communication from ISO-jurisdictional representatives to the Commission of their inability to implement EDI Release 3.0 by July 1, 2017. The Commission remains on schedule for implementation on that date. The Commission will evaluate issues as the testing period begins on May 5<sup>th</sup>. She also reported that ISO will be offering additional training.

Commissioner Limbaugh assured attendees that if issues surface between when the testing period begins on May 5<sup>th</sup> and during the testing period, the Commission would entertain suggestions for amending the rule to extend the mandate date of July 1, 2017.

Senator Patrick inquired about the Commission's plan and procedures for handling a potential data breach.

Ms. Vaughn reported the ISO contract includes a provision for cyber security liability. Commission I.T. Manager Robert Butler summarized in more detail the requirements for cyber security liability coverage contained in the RFP and the processes for notification to the public of any breach of data, pursuant to Idaho law.

*(Public Comment.)* Mr. McPeck inquired whether the State's cyber security liability insurance policy is in excess of the private vendor's policy. Mr. Butler believes it is an excess coverage under the vendor's own policy.

Chairman Mello requested clarification of potential consequences for failure to report a data breach. Mr. Butler summarized the legal requirements for disclosure and for notice to the public; and further reported the "*point of knowledge*" would be the triggering event for implementing the notice process when a breach has occurred.

Ms. Veltman requested the Commission clarify the filing procedure for a notice of a change of claim status subsequent to the implementation of EDI 3.0.

Ms. Vaughn summarized the reporting requirements for submitting the notice of a change of status using EDI 3.0. She clarified that the notice to the injured worker would still be required in paper form. She further clarified that legacy claims, deemed "filed" prior to July 1, 2017, are those claims received up to 5:00pm MST on June 30, 2017 and would remain in "paper" form. Claims received at 5:01 pm, and thereafter, on June 30, 2017, would be returned to the trading partner to be transferred to the Commission by EDI 3.0.

Mr. Arnold raised a separate issue of "*what constitutes the making of a claim.*" Commissioner Baskin concurred with Mr. Arnold there is no statutory definition of "*what constitutes the making of a claim.*" Commissioner Baskin suggested that because deadlines are set by the making of a claim, an eventual determination of the issue may be required.

Update: Medical Fee Study Request for Proposal ("RFP").

Ms. Vaughn presented an update on the status of the medical fee study. The Commission has been working for the past year to obtain access to group health commercial rates to serve as a benchmark for analysis of the Commission's med fee schedule. Upon legislative approval and appropriation in the Commission budget, RFP availability will move forward in FY20. In the interim, the Commission has been in discussions to contract a vendor who could provide limited information this spring for the FY19 rulemaking cycle. If there are members interested in reviewing the information prior to formal negotiated rulemaking, the Healthcare Subcommittee could be convened probably in June or July. There were no questions from Committee members or from public attendees.

Ms. Vaughn had no further report to the Committee.

Issuance of Subpoenas by Attorneys in WC Cases – Amendment to Judicial Rule of Procedure - Rule 9. Commissioner Tom Baskin summarized the issue of attorneys having authority to issue subpoenas in worker’s compensation cases, a topic brought to the attention of the Commission’s Referees from requests of attorneys who practice before the Commission. (*See* draft amendment to JRP Rule 9.) Commissioner Baskin met with Referees and the Commission’s Deputy Attorney General Blair Jaynes and reviewed the statutory language of the provisions of IC §72-709 and §72-714. The Commission concluded the statutory language provides the Commission with authority to conduct investigations; and would not specifically prohibit attorneys from issuing subpoenas under the statute. The Commission drafted provisions to Rule 9 authorizing Idaho licensed attorneys to issue subpoenas within the bounds permissible under statute; and would further require the parties to issue the subpoena no later than five (5) days prior to the hearing. The Commission considered concerns of abuses, and opined the filing of a motion to quash or motion for protective order would deal with these concerns. Commissioner Baskin reported this amendment is aimed at ‘fact’ witnesses and would not ‘fix’ the problem of the expert witness who refuses to appear without receiving an expert witness fee.

**(Public comment.)** Mr. Richards inquired whether the Commission considered identifying in rule the time period in ‘calendar’ or ‘business’ days.

Commissioner Baskin concurred that five ‘business’ days would be appropriate. He also addressed concerns relating to the imposition of sanctions for non-appearance on an issued subpoena; any sanctions would be handled by the Commission on a case-by-case basis.

Ms. Veltman inquired if the rule amendment would also authorize attorneys to issue subpoenas to obtain records.

Mr. Skinner expressed concern the amendment lacks proper notification to the other parties that a subpoena has been issued in a case.

Commissioner Baskin reported the language would also provide attorneys the authority to subpoena records; the Commission will have varying forms to accomplish that subpoena request. The Commission’s goal is to have the new Rule 9 language in place in the next month or so. He requested attendees to provide their opinion on the issue and to comment on the proposed draft language for amending the JRP Rule 9.

(Break taken.)

### **Updates:**

#### **Industrial Special Indemnity Fund (“ISIF”).**

Mr. Kile provided a handout of the ISIF CY2016 Annual Report and summarized the content: (a) The Fund continues to be aggressive in its defense of the Fund; (b) The filings of notices of intent and complaints continue on a downward trend; (c) The number of filed notices of intent within the same year as filed complaints has increased; (d) Cases continue to be more complex for several reasons, including an aging workforce, multiple pre-existing conditions, and

many overlapping MMI dates; (e) The ISIF settled 17 cases last year; 13 of which were settled by lump sum; and (f) Assessments are expected to decrease by 8%, about \$450,000, next year. Mr. Kile also reported the cost, on average, for pre-hearing cases is over \$60,000, which includes costs of attorneys' fees and settlement dollars; and payments to beneficiaries have been doubling every seven years. Mr. Kile expressed concern that if this trend continues, it could translate into greater costs on employers. Mr. Kile opined the ISIF was not intended for individuals working past retirement; the increase in the numbers of claims filed by older workers is directly impacting the system.

**(Public comment.)** Mr. Richards informed the Committee of proposed legislation relating to awards of attorneys fees (HB97); and inquired whether in Mr. Kile's opinion the legislation had an impact to the ISIF that would require the formation of a subcommittee to vet this issue. Mr. McPeck also inquired whether the ISIF had considered using a pre-litigation screening panel as a cost savings method in its case evaluations, similar to what is used for medical malpractice cases.

Mr. Kile addressed questions and concerns relating to violations of procedures and frivolous actions. He opined HB67 could create more litigation. The ISIF is not considering reforms to the system at this time. However, the ISIF could benefit from a summary judgment process or Rule 10 dismissal process where there is no *prima facie* evidence in a case. Mr. Kile ended his report by thanking Committee members for their time.

#### **Other Issues/Announcements:**

Commissioner Baskin introduced his new Law Clerk Sonnet Robinson to Committee members.

Public Information Specialist Nick Stout updated the Committee on the status of anticipated activities for Idaho's Worker's Compensation Centennial. Mr. Stout is coordinating with the Governor's office for a Proclamation signing at the Statehouse on March 16, 2017. Information for the Centennial will be shared on the Commission's website.

#### **Preparation for Future Meetings:**

Members will email Commission Secretary Beth Kilian topics for inclusion on the agenda for the May 10<sup>th</sup> meeting.

Next Meeting Dates: May 10, 2017; August 9, 2017; and November 8, 2017

Mr. Kenck moved to adjourn, seconded by Mr. Arnold.

There being no further business, the meeting adjourned at 11:05am.