

**Industrial Commission's Advisory Committee  
On Workers' Compensation  
Minutes  
May 9, 2012**

**Members Present**

Mike Haxby                      John Greenfield  
Gardner Skinner                Rian Van Leuven  
Roy Galbreath                  Jacki Royster  
Jasen Carrier                    Clay Atwood  
Susan Veltman

**Members Absent**

Senator John Andreason  
Representative Jeff Nessel  
James Arnold  
Paul Collins  
Steve Millard  
James Alcorn

**Industrial Commission**

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

**Opening Remarks:**

Chairman Jasen Carrier asked for a moment of silence for Advisory Committee member Dave Whaley who recently passed away. Mr. Whaley represented workers, was a charter member of the Advisory Committee, and was President of the Idaho AFL-CIO.

Members and public attendees were introduced.

**Minutes:**

The Minutes of February 8, 2012 were reviewed. Upon motion by Rian Van Leuven, seconded by Gardner Skinner, the Minutes were approved as written.

**Subcommittee Reports:**

§72-432, Attorney Fees – James Arnold, Chairman of the subcommittee was not able to attend, so there was no report.

Uninsured Employers Fund - James Kile, subcommittee Chairman, reported that the subcommittee has been very active, but has not been able to accomplish very much. Mr. Kile met with Roger Madsen, Director of the Department of Labor and the Commissioners to discuss forming a task force with approximately 10 to 12 persons representing labor and employees to find out if there is support for an uninsured employer's fund and where the start up funds and ongoing funding would come from. Funding continues to be the main stumbling block. Mr. Kile suggested the Commission's penalties could be used for at least a portion of the ongoing funding

or seed money to establish the fund, but the penalties alone would not be enough to maintain funding. Mr. Kile indicated that the subcommittee may need to look for several funding sources combined to maintain ongoing funding if an uninsured employers' fund is established.

Healthcare Panel for Annual Medical Fee Updates – Mike Haxby reported for subcommittee Chairman Steve Millard that the subcommittee has not met as yet. Mr. Haxby deferred to Medical Fee Schedule Analyst Patti Vaughn for more information medical fees. Ms. Vaughn reported that when the medical fee rules were presented to the legislature earlier this year, a couple of legislators asked for a reduction in the number of conversion factors for physicians. In response to their request, Ms. Vaughn has requested new data from the State Insurance Fund to facilitate updating the medical fee schedule.

Ms. Vaughn noted that the hospital fee schedule that went into effect January 1, 2012, has not resulted in controversy or confusion so far, and medical disputes have just been trickling in. One issue that has arisen is whether or not rehabilitation floors within larger hospitals qualify as a rehabilitation hospital facility for reimbursement. Ms. Vaughn is researching how other states and insurers reimburse. Another recent issue involves providers claiming that payers are inappropriately applying a discount under the name of a multi-plan contract with the provider. In response to those motions, Payers are not providing any evidence to support such a contract and those disputes are being awarded an additional 30% payment. Ms. Vaughn stated that the Commission needs to see evidence of such a contract if there is one if a payer is to prevail.

### **Issues:**

Lump Sum Settlement Template – Commissioner Baskin reported that the Commissioners have heard concerns expressed by the workers' compensation community about the length of processing time the Commission has been taking to approve Lump Sum Settlements (LSS). Commissioner Baskin noted that although some of the delays have been due to a high rate of employee turnover in Benefits, recent Supreme Court decisions have also contributed to the amount of information required in LSS's. It has taken time for Commission staff and constituents to be brought up to speed on these new requirements. Commissioner Baskin reported that the Commission is trying to make it easier for the parties to provide the information required under §72-404, to be in the best interest of all parties and in a more timely manner. Commissioner Baskin reviewed information the Commission will no longer require in LSS's and what new information the Commission will require. Commissioner Baskin stated that the changes Mr. McDougall will present were made to streamline the process and reduce the turnaround time by requesting more information be provided by attorneys upon submission of a LSS using the proposed template.

Scott McDougall presented the changes in the new test LSS template in a power point presentation and discussed and explained in detail the changes and why they were made. Attorneys will need to complete and submit the new template with the submitted lump sum settlement. The Commission wants to thoroughly vet the revisions made to the LSS form with both the claimant and defense sides of the workers' compensation section of the Idaho State Bar.

Mr. McDougall informed the members that the new form can be accessed and filled out online, printed off and submitted with the settlement, or sent by email as an attachment directly to the Benefits Department. The online LSS template will be available to several attorneys for testing and comment. Mr. McDougall also noted that correspondence, medical records, etc., can be submitted to the Commission in DVD form or as attachments in emails. Commissioner Baskin and Mr. McDougall responded to questions and stated that, if these forms are used consistently, the processing time for settlements will be faster. Several of the members volunteered to test the new forms (Gardner Skinner, Susan Veltman, John Greenfield, Alan Gardner, Mike Haxby, Darin Monroe, Woody Richards, Max Sheils) and will report back to the Commission any issues they encounter.

Discussion on Subcommittee Formation to Determine if Rule Changes Needed for Clarification of Current Regulations of Claims Administration – Alan Gardner suggested that the Advisory Committee may want to form a subcommittee to discuss possible rule changes to address some of the concerns that sureties and Third Party Adjusters have expressed to his office in regard to administrative reprimands by the Commission's Benefits Department. Mr. Gardner would like discussions on what is expected of his constituents in adjusting practices as he is concerned that some of the requirements by Benefits don't appear to have a basis in existing statutes or regulation. Mr. Haxby agreed that a subcommittee to clarify the guidelines required by the Commission would be extremely helpful.

Mr. Gardner has found that the common problem among his constituents has to do with the tone of the message being sent to sureties and TPA's by the Commission's Benefits Department. Mr. Gardner suggested that the Commissioners and Commission staff meet with Mr. Gardner, some of the insurers and TPA's that have voiced these concerns to discuss the issues and bring forth some ideas for a resolution. The Commissioners stated they are willing to have a meeting and Mr. Gardner can contact the Commission Secretary to set up the meeting.

Scott McDougall, Manager of the Benefits and Claims Department stated that his department has been a lot more active in looking into issues with sureties and adjusters, and has definitely been auditing and examining more files in the last six months. The Benefits Department has sent out more letters than in the past to sureties and TPA's detailing preliminary findings that appear to be out of compliance with the Commission's Administrative Rules and requesting a response in regard to those findings. Mr. McDougall sent out a letter in 2009 explaining the way the Commission's audits of TPA's and sureties would be conducted that included in-house reviews of file documents and notices. Mr. McDougall explained that findings letters are preliminary, and the Commission is just asking for an explanation regarding the finding. If a finding is fixed, or satisfactorily explained, the letter just goes in a file. Mr. McDougall noted that if findings of the same issue are being repeated, then the issue is brought before the Commissioners.

Rian Van Leuven wanted to note that from an injured employee's viewpoint, the Commission's Benefits Analysts are doing a great job in helping answer claimant's questions and in resolving some of their issues.

## **Updates:**

**Benefit Notification Letter** – John Greenfield reported that he has reviewed the notification letter that the Commission sends to claimants and has made several changes to the letter. Mr. Greenfield discussed the importance of this letter that goes out to claimants and would like to form a subcommittee. The subcommittee includes a representative of the State Insurance Fund, Woody Richards, the two defense lawyers Susan Veltman and Gardner Skinner, and two claimant lawyers John Greenfield and James Arnold, who will meet to approve a final draft of the benefit notification letter to be given to Scott McDougall to present to the Commissioners for approval.

**ISIF** - Jim Kile, Manager of the Industrial Special Indemnity Fund (ISIF) reported that the ISIF is receiving approximately four notices per month which is the same as last year, but complaints received are up 60% over last year at this time. ISIF is currently paying benefits to employees ranging from 45 – 75 years of age. Mr. Kile stated that the cash balance is slightly lower than last year and hopes the coming year-end adjustment will be minimal after decreasing FY 10 and FY11 assessment by 2% each year.

## **Industrial Commission Report:**

Commissioner Limbaugh reported that two pieces of legislation not proposed by the Commission were submitted to the legislature this year. The first was the peace officer and detention officer legislation that expands access to the fund. The legislation contains a sunset clause to expire in three years and the legislation was passed. Commissioner Limbaugh stated that the Commission is not sure how many more claims may result from this change, but if the fund is depleted, benefits will cease until the fund is replenished. The Peace Officer Fund receives monies from gifts, grants, donations and fines from criminal convictions, but is totally separate and does not affect the Commission's administration fund.

Commissioner Limbaugh stated that the second piece of legislation was submitted by the Professional Firefighters of Idaho that would have added a presumption of causation for firefighters who contract specific diseases including certain types of cancers. This legislation did not pass and the Commissioners are not aware of why the legislation was held in State Affairs.

Part of our budget this year, explained Commissioner Limbaugh, included an increase in employee compensation. The Commission was experiencing a 16 to 17 percent employee turnover with many of those employees taking jobs at other state agencies for more money. Jane McClaran, the Commission's Financial Officer worked along with Director Mindy Montgomery, and Human Resources Manager Dani Spurny to develop a plan to retain employees. The three of them reviewed every position at the Commission and compared their pay with the average pay of the same or similar positions in other agencies. Commissioner Limbaugh stated it was discovered that many of our employees were being paid much less than other state employees working in the same positions. Ms. McClaran sent a proposal to DFM to increase those employees who were being underpaid in comparison to employees in other state agencies in an effort to retain Commission employees. Ms. Montgomery, Ms. McClaran, and Ms. Spurny

deserve a great deal of thanks for their efforts in getting Commission employee pay commensurate with the rest of the Idaho state agencies.

#### Dave Whaley

Mr. Greenfield wanted to add a note of appreciation for the efforts of Dave Whaley who was a great representative for the Idaho AFL-CIO in many ways. Mr. Whaley always had a great interest and was a very active participant in the workers' compensation arena, on the Advisory Committee and on many subcommittees. Mr. Greenfield noted that Rian Van Leuven who has been a long time member of the Commission's Advisory Committee will represent the Idaho AFL-CIO very well.

#### Nominations Subcommittee

Chairman Carrier asked for volunteers to serve on the Nominations Subcommittee. Mike Haxby and Jacki Royster agreed to serve. Chairman Carrier also reviewed the positions open for the next election of members and encouraged the members to submit nominee information to the Commission Secretary for the expiring positions as soon as possible.

#### Attorney Issue

Rian Van Leuven expressed his concern regarding an attorney that is new to the workers' compensation arena who, it appears, has given incorrect information to a claimant regarding right to work laws. Mr. Van Leuven stated this was the only incident he knows of, but wanted the members to be aware that this has happened in case it becomes more prevalent.

The next meeting of the Advisory Committee is scheduled for August 15, 2012.

There being no further business, the meeting adjourned.