

**Industrial Commission's Advisory Committee
On Workers' Compensation
Minutes
November 8, 2012**

Members Present

Mike Haxby	John Greenfield
Gardner Skinner	Rian Van Leuven
Roy Galbreath	Clay Atwood
Jasen Carrier	Paul Collins
Susan Veltman	Steve Millard
James Alcorn	James Arnold (via teleconf)
Larry Kenck	Susan Rhoades

Members Absent

Senator John Andreason
Representative Jeff Nasset

Industrial Commission
Chairman Thomas E. Limbaugh
Commissioner Thomas P. Baskin
Commissioner R. D. Maynard
Director Mindy Montgomery

Opening Remarks:

New Chairman Roy Galbreath opened the meeting by asking for introductions of Advisory Committee members and public attendees.

Minutes:

The Minutes of August 15, 2012 were reviewed. Upon motion by Mike Haxby, seconded by Jasen Carrier, the Minutes were approved as written.

Subcommittee Reports:

Medical Fees – Steve Millard - (Steve Millard Chairman, James Alcorn, Commissioner Limbaugh, Director Mindy Montgomery, Patti Vaughn, Mike Haxby, Woody Richards, Therese Cirelli, and Larry Tisdale.) Mr. Millard reported that the subcommittee has not met since the last Advisory Committee meeting, and will probably not meet again until after the legislature adjourns. Dr. Collins noted that there was some discussion by the subcommittee that the Commission's direction should be toward a single conversion factor for physician reimbursement. Dr. Collins questioned whether any more discussion or action was taken in that regard. Mr. Millard stated that the subcommittee will continue to work on the changes discussed on a gradual basis.

Commissioner Baskin reported that the Commission received several comments at hearing on IDAPA 17.02.09. Some of the comments were on physician dispensing, third party repackaging, compounding, and the reduction of CPT groupings that reduced reimbursements to some physician services.

Commissioner Limbaugh noted that other comments were received from a few hand surgeons who were unhappy with the reduction amount of some of the conversion factors. Commissioner Limbaugh stated that the comment period has now passed for IDAPA 17.02.09, and the Commissioners will revisit the comments and written testimony, and may make some

adjustments prior to submitting IDAPA 17.02.09 as a pending rule. The pending rule will be submitted by the end of November to the Office of Administrative Rules for presentation to the 2013 legislature.

Uninsured Employers' Fund

Subcommittee Chairman James Kile reported that the Uninsured Employer's Fund Subcommittee has been pretty active. Several meetings have been held including his gathering of a task force of 10-12 people in the industry that met to generate some ideas on funding which has been and remains a problem. Some ideas were brought forth and a proposed draft was distributed to members of the UEF subcommittee. Some of the comments received were very positive, and other comments were very much against the proposed funding. Labor representatives were not in favor of assessing employees for funding. An agreeable source of funds remains a stumbling block. Mr. Kile reported that more changes need to be resolved before moving forward, and he proposes scheduling another task force meeting next month, but has no plans to propose any changes this legislative session.

Mike Haxby wanted Mr. Kile to be recognized for the huge undertaking he and this subcommittee have taken on. Bringing such a large group together and trying to establish guidelines and funding for an uninsured employers fund is a big task and Mr. Haxby thanked Mr. Kile for his efforts on this project.

Updates:

Industrial Special Indemnity Fund

Mr. Kile, Manager of the Industrial Special Indemnity Fund, (ISIF) handed out charts outlining ISIF's expenses for the year that affect the ISIF's annual assessments. The ISIF is funded by an assessment that is equal to double the ISIF's annual expenses less any remaining funds. Mr. Kile reported that attorney fees and lump sum settlement amounts are lower than in recent years, however, due to more claimants entering the system and an increase in the average weekly wage, annual payouts have dramatically increased. Over the last few years, Mr. Kile noted that decreases of 2-4% have been realized, however, the next assessment is projected to increase 8-9% due to the increase in overall expenses.

Judicial Rules of Practice and Procedure

Commissioner Baskin reported that meetings to hear comments regarding the proposed changes to the Judicial Rules of Practice and Procedure (JRP) have been scheduled for Boise, Idaho Falls and Coeur d'Alene. He noted that we do take input from the public very seriously, and if there are changes not addressed in the draft that someone would like to see addressed, the Commission would like to hear those suggestions as well. Commissioner Baskin reviewed the substantive changes being proposed and discussion was held. It was noted that the draft of the JRP changes will be available on the Commission's website or a copy will be sent upon request. Commissioner Baskin stated that written comments will be received until January 25, 2013.

Commissioner Baskin reported that the Idaho Falls and Coeur d'Alene Commission offices have videoconferencing capabilities that the Commissioners have used to hold attorney

fee hearings, and will use for these proceedings. Commissioner Baskin noted that he looks forward to the Referees and Commissioners conducting hearings via teleconferencing in the near future once all the details have been worked out.

Public Comment: (Proposed Legislation)

Kent Day, an attorney with Liberty Mutual Insurance, informed Advisory Committee members that a group of insurers may be submitting legislative changes affecting the Workers' Compensation Laws this legislative session. Mr. Day explained that Liberty was involved in a recent case where a claimant filed a complaint with the Commission a few days before the end of the five year statute of limitations; however, the defendants did not receive service of that complaint until two to three years later. Mr. Day met with other workers' compensation insurers to figure out how to prevent this type of event from happening again. Mr. Day stated that he, nor the other insurers, had any idea at the time that the Commission was contemplating revisions to the Judicial Rules that included "contemporaneous" service language. At his meeting, Mr. Day and the other insurers looked at District Court civil rules, and his group of insurers decided the best way to rectify the issue and ensure timeliness of service in the future was to propose changes to Idaho Code §72-706(6).

Mr. Day quoted the proposed language: "*Service of process of the application requesting a hearing shall be served on the surety for the employer or the employer within six months of making and filing an application requesting a hearing.*" Mr. Day stated that the majority of insurers at the meeting agreed that this change would be the easiest way to fix the service problem. Mr. Day noted that now that he knows Judicial Rule 4 is being changed, he will meet with the other insurers again to find out if the proposed Judicial rule change will suffice without legislative change.

James Arnold, attorney, commented that he didn't like the word "contemporaneous" used in the proposed changes to Judicial Rule 4, and agrees with Kent Day that there should be a fixed period of time to file service with all the parties. Mr. Arnold explained why the term "contemporaneous" is difficult at times to adhere to and he feels the term is too ambiguous. Mr. Arnold suggested that the rule state a definite time period for filing notices.

Public Comment:

Mr. Day suggested that the Commission may want to look at the possibility of staggering timelines for submission of exhibits which may be helpful in reducing duplicative exhibits. Mr. Arnold agreed. The Commissioners will take the suggestions under consideration.

Susan Veltman questioned whether the proposed change in Rule 10 regarding submission of exhibits in electronic format would be in lieu of paper. Commissioner Baskin responded in the affirmative.

Public Comment

James Kile, responding to the electronic submission of exhibits, stated that when he receives electronic copies of medical exhibits for the Second Injury Fund, his experience has been that the exhibits are totally disorganized with no table of contents, no tabs, and no

pagination on 250 to 2500 pages that are on one disc. Mr. Kile stated that his staff then has to make a paper copy and sort the copies which makes it extremely time consuming and costly to the ISIF.

Benefits Notification Letter:

Susan Veltman reported that the purpose of the Benefit Notification letter, which is sent to injured workers' by the Claims and Benefits Department after a first report of injury has been filed, is to inform injured workers of their rights in general. Ms. Veltman reviewed the latest changes made to the letter and noted that while the letter does not cover all the topics, it is hoped that the letter will give an injured worker some idea of what his rights are and whom to contact if they need further information. Discussion was held and other changes were suggested and made to the draft. The revised letter will be used by the Claims and Benefits Department as soon as possible.

Mr. Van Leuven suggested that whenever possible, he would like to see the Commission schedule training for physicians and employers to explain the workers' compensation laws and terminologies to assist them in understanding the workers' compensation program process. If education and training of more constituents improves the system, then Mr. Van Leuven opined that it should be done.

Adjusting Issues:

Mike Haxby reported that he and a group of adjusters met with the Commission a few months ago to discuss some of the adjusters' issues and concerns in complying with some of the Commission's procedures. Clarification of some of the Commission's guidelines for computing wages, audits and reporting were discussed with the Claims and Benefits Department as well as the Commissioners. Mr. Haxby stated that the group will meet again sometime in January to provide an update on how things are progressing and what issues have been resolved. Mr. Haxby stated that he recently contacted several adjusters who indicated to him that processes seem to be running more smoothly.

Mr. Haxby discussed the challenges of abiding by some of the Commission's rules and guideline interpretations with industry's rapid move to more electronic data processes. Mr. Haxby noted that out-of-state check writing waivers issued by the Commission have been helpful as most insurers don't turn check writing authority over to their adjusters. Mr. Haxby noted that some of the Commission's requirements are still behind in regard to the way insurance business is being done today.

In response, Commissioner Baskin stated that the Commission would like to meet with several of the adjusters to better understand insurance business processes, and where the industry is heading to help the Commission in figuring out how some of our processes may need adjusting to be more interconnected with the way industry is moving.

Industrial Commission Report:

Commission Chairman Tom Limbaugh reported that he wanted to make it clear that the Commission has no deadline for approving the proposed changes to the Judicial Rules, and that the Commission wants as much input as possible before finalizing the rules.

Chairman Limbaugh informed the members that another rule (17.02.04) other than the medical fee rule (17.02.09) has been submitted by the Commission this year. The Peace Officer and Detention Officer Temporary Disability Fund statute (§72-1104, Idaho Code) was amended by the Fraternal Order of Police last session and was approved by the legislature. The Commission had to author a temporary and proposed rule in 17.02.04 prior to July 1, 2012 in order to coincide with the statute change. That temporary rule has now been submitted as a pending rule. Chairman Limbaugh added that the statute language allows more access to the fund by including injuries incurred by officers that were caused by the actions of another person in the performance of their duties. The Commission is concerned that there could be a lot more claims filed as a result of this change.

Chairman Limbaugh reported that the Commission is nearing the end of the one half percent reduction (from 2.5 % to 2.0%) in the premium tax assessment. Unfortunately, our cash fund balance is not reducing. The Commission may talk with legislators about extending the reduction of the premium tax.

Mike Haxby noted that Oregon's 2012 study ranking workers' compensation costs for employers shows that Idaho has dropped considerably to 19th highest for workers' compensation insurance costs. Mr. Haxby stated that according to Oregon's study, it is costing employers more this year for workers' compensation insurance than it has over the last several years.

Preparation for Future Meetings:

The next Advisory Committee meeting is scheduled for February 6, 2013.

There being no further business, the meeting was adjourned.