

Idaho Industrial Commission
Negotiated Rulemaking Meeting
IDAPA 17.01.01 - Administrative Rules Under the Worker's Compensation Law (ZBR
Rewrite)
17.01.01.401-17.01.01.602
June 24, 2024
1:30 p.m. (MST)
Boise (Coral Room), Coeur D'Alene, Lewiston, Idaho Falls, Pocatello, Twin Falls

Opening Remarks:

Kamerron Slay opened the meeting at 1:30 p.m. Ms. Slay indicated a Court Reporter was presented for the meeting. Ms. Slay asked that anyone providing comments during this meeting identify themselves for the record each time. Ms. Slay indicated the meeting would be conducted in person and online.

Timeline/Comments:

Ms. Slay summarized the rulemaking process and the upcoming scheduled negotiated rulemaking meeting as detailed in the *May 1, 2024, Vol 24-5 Administrative Bulletin*. Ms. Slay provided tentative dates for the public hearings later this year. Ms. Slay indicated once the public hearing dates had been finalized, the Commission would publish them on the agency's website. Ms. Slay indicated the comment deadline for negotiated rulemaking was August 1st, and comments could be submitted to her e-mail. Ms. Slay indicated there would be another comment period for proposed language for the public hearings. Ms. Slay turned over the meeting to Commissioner Sharp to discuss the draft IDAPA language.

Draft Language Discussion:

Commissioner Sharp indicated that the meeting would focus on IDAPA *17.01.01.801* through *17.01.01.803*. Commissioner Sharp summarized changes to the draft language (*See Negotiated Rulemaking – June 24, 2024, and IDAPA 17.01.01 June 24, 2024, Draft*). Commissioner Sharp proposed *.801.01* be struck due to duplicative language. Mr. Kessinger commented that this statute is routinely ignored by sureties and indicated it would be in the best interest of the injured workers to keep it in the IDAPA. Mr. Monroe commented that he agreed with Mr. Kessinger but indicated that the goal of ZBR was to remove redundant language and understood why the Commission was proposing striking the language as could be found in statute. Mr. Wagner echoed the statement that this was already covered in statute, and it would be duplicative. Mr. Wagner therefore supported striking the duplicative language.

Commissioner Sharp moved to section *.801.02* and indicated no proposed change. Commissioner Sharp moved to section *.801.03* and indicated the Commission is proposing adding electronic correspondence as a valid form of notice within a 15-day time frame. Ms. Martin inquired if there was a conflict with the audit guidelines. Ms. Martin on sending a change of status for medical only claims for closures. Ms. Martin indicated the statute and the IDAPA that is currently written do not specifically identify that a change of status needs to be sent when there is

a closure, especially with med-only. Ms. Martin indicated that clarification on whether a notice is required for closing of a med only claim would be beneficial. Mr. Wagner indicated concern when sending out a change of notice statute for administrative closures as it confuses some injured workers into believing their case is closed. Mr. Kessinger agreed with Mr. Wagner's sentiment.

Commissioner Sharp moved to section *.801.04*, proposing striking *.04* as the requirement to attach the medical record in support of the change of status is contained in the statute. Mr. Kessinger expressed the same concern in *.801.04* as he did in *.801.01*. Mr. Monroe agreed with Mr. Kessinger.

Commissioner Sharp moved to section *.801.05*, proposing allowing notices to be sent electronically through the EDI portal. Mr. Wagner indicated clarification on the rule governing change of statute within 15-days, but many EDI requirements are 1 day would be beneficial. Mr. Wagner indicated it would help if both lined up. Ms. Vaughn indicated that *.801.03* is the requirement for timeline sending notice to the worker and *.801.05* is reporting to the Commission and some of the timelines are dictated by statute.

Commissioner Sharp moved to section *.802.01* and proposed striking the intro clause as unnecessary. Commissioner Sharp indicated there were no proposed changes to part *.802.02. a, b, or .c*. There were no comments. Commissioner Sharp moved to *.802.03* and proposed striking any reference to a lump sum settlement and replacing it with settlement agreements. Commissioner Sharp indicated an addition of a 14-day time frame for submission of fee agreements on *.b*. Mr. Monroe had concerns about the 14-day timeline. Mr. Kessinger echoed Mr. Monroe's concerns and inquired what problem the Commission is seeing that this would solve. Commissioner Sharp indicated that when multiple attorneys are involved, there have been disputes about attorney's fees and timelines of legal work completed. Ms. Martin indicated that an attorney fee dispute is likely holding up injured worker funds and would support a reasonable deadline. Ms. Vaughn indicated this problem arose after HB590 as attorney fees previously were approved contemporaneously with the settlement. Ms. Vaughn indicated 14 days was a suggestion, but the Commission was open to a different timeline and exemptions for good cause. Mr. Monroe indicated the ISB keeps track of trust accounts. Mr. Monroe indicated he wasn't opposed to the deadline but suggested 21 or 30 days. Mr. Kessinger indicated more than 14 days would be desirable and a waiver for good cause. Mr. Monroe inquired what the consequence would be if an attorney missed the deadline. Commissioner Sharp indicated currently there isn't a penalty in place for failure to meet the timeframe. Ms. Wilson agreed with Mr. Monroe and Mr. Kessinger and supported some sort of exception.

Commissioner Sharp moved to section *.801.04* and proposed striking *.04* for redundancy. Commissioner Sharp indicated there was no proposed change to *.801.05*. Commissioner Sharp inquired if there were additional comments. There were none. Commissioner Sharp turned the meeting over to Patti Vaughn, Benefits Administration Manager, to discuss medical fees.

Ms. Vaughn summarized proposed changes to *.803.01* to clarify acronyms that go with the AMA and medical reimbursement for services provided out-of-state.

Ms. Vaughn summarized changes to section .803.02 on RBRVS and duplicative language. Ms. Northrup indicated coding guidelines and payment policies are different things. Ms. Northrup commented that if the Commission is saying follow modifier 50 according to Medicare's modifier 50 definition and payment policy then it would be beneficial to say as such. Ms. Northrup indicated without that then we have no guidance on how we pay for these different modifiers differently. Ms. Northrup explained her comment further and provided an example for bill anesthesia. Ms. Northrup submitted written testimony that explained her comment further.

Ms. Vaughn spoke about incorporation by reference in rules and the coding guidelines of CMS and the AMA. Ms. Vaughn indicated it is important the Commission be able to adopt a standard that is universally known within the health care industry so that payors and providers can both communicate to each other what service was provided and be able to associate a reasonable charge or a reasonable payment with that service.

Ms. Northrup inquired about acceptable charge issue and reasonableness. Ms. Vaughn indicated the acceptable charge and reasonableness are defined earlier in the rule and generally the acceptable charge is the lower of the calculated fee schedule, the amount billed by provider, or the amount agreed to by written contract.

Ms. Vaughn summarized the change to .803.02.c regarding conversion factors. Ms. Vaughn indicated that the Commission engaged with Milliman to come up with the average commercial payments for services (*See, 2024 Milliman Report*). Ms. Vaughn indicated, based on the available evidence, the Commission's conversion factors do generally appear to remain well above the average Idaho commercial payments for the same service. Ms. Vaughn indicated at this time the Commission has not proposed any changes to these conversion factors. Ms. Vaughn asked if there were comments, there were none.

Ms. Vaughn summarized proposed changes to billing prescription drugs. Ms. Northrup commented on modifiers for CRNA and anesthesiology billing. Ms. Martin agreed with Ms. Northrup and indicated they receive the most pushback on anesthesia bills. Ms. Northrup commented that it would be beneficial to clarify is to identify whether the RVRBS non-facility or facility RVU's are determined, either facility or non-facility, is a Medicare determination under their coding guideline. Ms. Northrup commented recommending for relative weight values for work hardening conditioning codes impairment rating fees attaching it to the E&M conversion factor and an RVU for platelet rich plasma. Ms. Vaughn indicated the Ms. Northrup had provided written comments earlier in the day and they would be posted on the website.

Ms. Vaughn summarized the proposed changes to the fee schedule for hospitals and ambulatory surgery centers. Ms. Vaughn indicated there were no proposed changes. Ms. Northrup commented that for critical access hospitals inpatient she would leave critical access hospitals inpatients as a percentage of bill charges, drop the percentage on implantable hardware, and have a separate category for the outpatient side of critical access hospitals. Ms. Vaughn summarized the proposed changes to subsection. iii to clarify this follows the Medicare guidelines of reimbursing outpatient physical, occupational, and speech therapy services according to the allowable professional charge under the professional fee schedule in the IDAPA. Ms. Northrup commented

agreed with this proposal. Ms. Butler indicated that SIF supports the addition of subsection. iii for clarity and consistency.

Ms. Vaughn summarized the proposed change striking subsection *.803.02.b.ii*. Ms. Butler indicated that SIF supported the removal of the two stricken sections.

Ms. Vaughn indicated there were no proposed changes to the subsection. iii but a proposed deletion to subsection. iv to simplify it. Ms. Vaughn indicated that the proposal would eliminate this exception and allow according to the Medicare guidelines how Medicare pays it. Ms. Northrup commented on subsection *.803.02.b.iii*.

Ms. Vaughn indicated that there were no proposed changes in the sections allowing for additional payment for implantable hardware. There were no comments.

Ms. Vaughn summarized changes to section *.803.04* for acceptable charges for pharmacies. Ms. Northrup inquired about proposed fees for physician adjustment from a coding perspective. Ms. Vaughn indicated it's a procedure under the outpatient fee schedule, not pharmacies. Ms. Northrup suggested paying injectables by Average Sale Price.

Ms. Vaughn summarized proposed changes to *.803.05*. Ms. Northrup commented on defining physician/non-physician provider if they would be paid at the professional fee schedule or at the acceptable reasonable charge. Ms. Vaughn indicated that this section was for other providers than physicians, hospitals, or ambulatory surgery centers. Ms. Martin inquired where interpreters attending medical appointments fall in the fee schedule. Ms. Vaughn indicated that they don't have access to data to show what a reasonable charge for an interpreter. Ms. Martin indicated that the state has a fee that she would recommend. Ms. Northrup commented are "T" codes for interpreters for billing standard spectrum.

Ms. Vaughn summarized the changes to subsection *.06* regarding the medical fee dispute process. Ms. Vaughn indicated that there were no proposed changes at this time. Ms. Vaughn inquired if there were any questions. There were none.

Commissioner Sharp thanked participants for their feedback. Commissioner Sharp indicated the agency will continue to take written comments and comments would be posted on the agency's website. Commissioner Sharp indicated the next meeting would be on July 11th.

The meeting ended at 2:50 p.m.

List of Attendees:

1. Amy Berg, IIC
2. Angie Howe, IIC
3. Ann Young, IIC
4. Annaliese Hilgendorf, APCI
5. Chris Horton, IIC
6. Chris Wagener, Intermountain Claims
7. Christina Nelson, IIC
8. Claire Sharp, IIC
9. Colin Seele, IIC
10. Darin Monroe, Attorney – Injured Workers
11. Debra Northrup, Corvel
12. Emma Wilson, Attorney – Employer/Surety
13. George Gutierrez, IIC
14. Gina Robertson
15. John Hummel, IIC
16. Josh Scholer, Division of Financial Management
17. Kamerron Slay, IIC
18. Kassandra Lang
19. Kayla Pollard, IIC
20. Lene O’Dell
21. Matt Johnson, IIC
22. Matt Pappas, Attorney – Employer/Surety
23. Michael DeGraw, IIC
24. Michael Kessinger, Attorney – Injured Workers
25. Mike Cunningham, Idaho Medical Association
26. Patti Vaughn, IIC
27. Paul Jefferies, IIC
28. Rachel Misnick, IIC
29. Regina Pearson
30. Richelle Flores, IIC
31. Ryan Linnarz, IIC
32. Sara Brown, Veritas Advisor
33. Shana Barrowclough, Gallagher
34. Shannon Estlund, IIC
35. Shellie Martin, Travelers
36. Stephaine Butler, SIF
37. Tiffany Kidd, IIC
38. Teri Rose
39. Tom Limbaugh, IIC