

**Industrial Commission's Advisory Committee
On Workers' Compensation
Minutes
August 10, 2016**

Members Present

Dr. Paul Collins, Chair
Connie Barnett
Roy Galbreath
Mike Haxby
Dane Higdem
Larry Kenck
Gardner Skinner
John Greenfield
Susan Veltman
Brian Whitlock

Ex-Officio: Senator Jim Patrick
Representative Greg Chaney

Members Absent

James Arnold
Craig Mello
Aaron White

Industrial Commission

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

Opening Remarks and Introductions:

Chairman Paul Collins opened the meeting with introductions of Committee members and public attendees.

Commissioner Baskin announced the news of Kristin Armstrong's (Boise, Idaho) third win of an Olympic Gold Medal in the Olympic Time Trial this morning.

Minutes:

The Minutes of May 11, 2016 were presented for review and approval. Mr. Galbreath moved to approve the minutes of May 11, 2016 as written, seconded by Mr. Whitlock. The minutes were approved as written.

Subcommittee Reports:

➤ **Securities Valuation Subcommittee.** (Subcommittee Members: *Nick Landry, Chairperson; Roy Galbreath; Gardner Skinner; Dane Higdem; Larry Kenck; Woody Richards; Commissioner Tom Limbaugh; Director Mindy Montgomery; Ex-officio Members: Representative Neil Anderson; Senator Jim Patrick; State Treasurer's Office: Angela Bonaminio, Edelene Ohman and Laura Steffler.*)

Subcommittee Chairperson Nick Landry presented an update on the status of the Statutory Deposit Valuation Subcommittee. The Subcommittee met in March to vet concerns of members of the state legislature that some statutory deposits held as collateral could be subject to interest rate risk in the event of a bankruptcy; and may not be sufficient in securing the remaining total unpaid liability of claims. A handout summarizing the history of the statutory

deposit requirements and further explanation for the Subcommittee's purpose was provided to the full Committee. Stakeholders discussed the internal processes of the Industrial Commission, the State Treasurers' office and third party custodians responsible for holding the statutory deposits.

In the months following the Subcommittee meeting, the Commission considered all regulatory and procedural options for addressing fluctuations in interest rates. Due to the small percentage of collateral with maturity periods over ten years, approximately 12.6%, the Commission opined that any changes to statute or the IDAPA rules at this time would not be necessary. The Commission, instead, will continue utilizing current procedures and internal resources for monitoring securities of sureties and employers that are at higher risk of insolvency. If there are significant increases in long-term debt held as collateral, the Commission will re-evaluate the present approach and advise the Advisory Committee.

No further Subcommittee meetings were scheduled at this time.

Mr. Landry thanked stakeholders, the special members of the state legislature and staff of the Treasurer's Office for their participation on the Subcommittee. There were no questions.

➤ **Healthcare.** (Subcommittee Members: *Patti Vaughn, Chairperson; Brad Street; Brian Whitlock; Larry Tisdale; Mike Haxby; Woody Richards; Pam Eaton; Dr. Paul Collins; Paulette Boyle; Teresa Cirelli; Ex-officio: Senator Dan Schmidt; IIC Commissioner Tom Limbaugh; IIC Director Mindy Montgomery*)

Chairperson Patti Vaughn presented an update of the May 24, 2016 Healthcare Subcommittee meeting. The group had continued discussion on the following issues:

- Use of Conversion factors for office visits. There is a perception that the conversion factors for office visits had been 'unfairly' frozen the last several years. The available data reflects that the Commission's fee schedule is higher than what most physicians were charging. Teresa Cirelli on behalf of the IMA Board presented a proposal to the Subcommittee that would pay physicians per report. The IMA Board had no recommendation to the Subcommittee. Some physicians continue operating under the previous standard of 'usual and customary' that prohibited physicians from charging more than they would charge group health carriers and before the RBRVs fee schedule was implemented. The Subcommittee agreed there is a need to further educate physicians on the Commission's fee schedule. At the request of Senator Schmidt, Ms. Vaughn reached out to Ms. Neva Santos of the Idaho Association of Family Physicians for participation. IAFP has agreed to work with the Subcommittee on these ongoing discussions.

Chairman Collins suggested the IHA could also do some educational outreach with physicians on the reimbursements under the Commission's fee schedule.

- Parity in Reimbursement for Rehabilitation Services. The Subcommittee discussed the need for more parity in reimbursement for rehabilitation services between hospital out-patient departments and rehabilitation clinics for similar services that are paid under two

different fee schedules. The Idaho Hospital Association suggested a multiplier of 1.2 above the physician fee schedule amount would be acceptable to hospitals, but also wanted an inflationary index attached with that multiplier of 1.2. The Subcommittee reached no consensus on the various indices that would be appropriately utilized. There was consensus reached that no further meetings would be convened on this topic for this rulemaking cycle.

- RFP for Actuary Service. The Commission continues its efforts towards issuance of an RFP to contract an actuary service to study group health payments as a benchmark for services under the Commission's Worker's Compensation fee schedule. Most likely the RFP will be preceded by a Request for Information from vendors; and that effort is currently in process.

Subsequent to the Subcommittee meeting, the Commission determined that no medical fee rules would move forward in this rulemaking cycle, pending outcome of the actuarial service and establishment of the market rates being available in the next rulemaking cycle.

There were no questions of the Committee or public attendees.

➤ **Prompt Claims Payments Regs. & Statutes (Mike Haxby) and New Proposed Rules Amendments – IDAPA 17.02.04 - Rules Governing Impairment Ratings; IDAPA – 17.02.08.061.01 - Notice of Change of Status; IDAPA 17.02.10.051.09-Prompt Claim Servicing; and IDAPA 17.02.11.051.09-Prompt Claim Servicing.** (Subcommittee Members: *Mike Haxby, Chairperson; Aaron White; Brad Eidam; Gardner Skinner; Holly Alderman; James Arnold; Jeanne James; John Greenfield; Mike McPeek; Woody Richards; Paulette Boyle; Teresa Cirelli; Commissioner Tom Baskin; and Scott McDougall*)

Commissioner Baskin thanked Mr. Haxby for his leadership on the Subcommittee. Handouts of the preliminary draft rules language were distributed. The Subcommittee vetted this language on May 23, 2016 and had reached general consensus on the language.

Commissioner Baskin then briefly summarized the IDAPA rules and the draft amended language as follows.

- TTD, TPD, PPD AND PPI Benefits Payments. The current IDAPAs define prompt claims handling as the payment of medical bills per the fee schedule and the payment of benefits on a weekly basis. At issue: Industry practices do not comport with the Commission's regulations. The Commission is unaware of anyone paying benefits on a weekly basis. The Commission crafted a regulation which would allow an automatic application for a waiver to pay TTD benefits on biweekly basis; TPD on an other than bi-weekly basis; and PPD and PPI benefits every (28) days. In addition, language was drafted that would require the payment of PPI benefits to commence within (14) days within the date of the report establishing a rating. The payment of benefits would be retroactive to the date of medical stability.

The Subcommittee had reached agreement that TPD benefits would be calculated by reference to the actual pay period used by the employer.

- Notice of Change of Status. The Commission opined that the injured worker should be advised of the acceptance or denial of a medical-only claim, so we expanded the scope requiring a notice of change of status to be sent to the injured worker upon acceptance of medical-only claims.

- Averaging ratings. Under rule, ratings are to be averaged; however, those averaged ratings are not always accurate, i.e., a treating physician gives a 10% rating and another physician gives a 30% rating. The Commission authorized the averaging of ratings but did not require sureties to average ratings when paying PPI benefits. If sureties choose not to average the ratings, sureties must advise and give notice to the injured worker of that fact.

The remaining outstanding issue: The time period with which the surety takes action to accept or deny a claim within a time certain. The Commission proposed in rule, and initially there had been agreement reached, that acceptance or denial of a claim take place within (28) days within the date the employer learned of the accident or occupational disease. Subsequently some Subcommittee members recanted and another Subcommittee meeting was held subsequent to the last Advisory Committee meeting. The Commission had received no further comment on the proposed new language that was distributed to all members of the Subcommittee.

Commissioner Baskin read the draft language of IC § 72-602 contained in the handout and went on to explain the reporting requirements under 72-602 by employers for submission of a FROI within ten (10) days. The Commission recognized that steps are needed to encourage a decision to be made sooner, rather than later, to have the report filed. The language anticipated the longest period in time an injured worker would wait to be advised of the acceptance or denial of the claim is (38) days.

The Commission had received no criticism or comment on the draft language when it was sent out in early June.

No consensus was reached by the Subcommittee on **the length of time for the surety (or its third party administrator) to accept or deny a claim.**

Commissioner Baskin reported the Commission did engage the services of a contractor to draft the audit guidelines. The Commission is in the process of reviewing the first draft. Commissioner Baskin had no further report of the Subcommittee and deferred to Mr. Haxby for further input on the Subcommittee meeting.

Mr. Haxby thanked all Subcommittee members for their input on the issue – a “*split the baby*” approach. He remains concerned on the (28) day language, but agreed the draft language is better than the current regulatory language. He further explained his ongoing concerns under the reservation of rights, in conjunction with the statutory interpretation of IC § 72-806 that requires the injured worker be informed when the claim is denied. Mr. Haxby agreed there was a lot of ‘give and take’ by members; the TPAs were well represented on the Subcommittee. He would, however, like to see further work on the (28) day language in light of EDI implementation in July 2017. Mr. Haxby is not interested in ‘undoing’ what has already been achieved.

Commissioner Limbaugh explained the Commission's position for delaying negotiated rulemaking this cycle. Because some disagreement remains on these rules and the time for entering into negotiated rulemaking has passed; the Commission felt it appropriate to forego negotiated rulemaking this cycle until the Subcommittee had general consensus for a complete rules package to submit through the process for next year. The Commission continues working on the issue.

Mr. Haxby thanked Subcommittee members for their participation; there was a good spirit of cooperation amongst the group. He especially thanked Attorney Brad Eidam for his time and effort at bridging the gap amongst stakeholders.

Mr. Galbreath expressed remaining concern on the (28) day reporting deadline; he does not want to be 'locked in stone' because some claims take longer on investigation. He proposed adding an exception language in the rules that would extend the (28) days for '*special circumstances*.'

Mr. Haxby reported the Commission provided the Subcommittee a copy of the Utah rules language. The Utah rules provide for a form notice for further investigation of a claim.

(Public comment.)

Ms. James opined the issue is two-fold: First, and foremost, the employer who delays reporting to the insurance carrier or TPA; and secondly, the claims handling by the surety or TPA once there is knowledge of a claim. She agreed the injured worker should receive notice the claim remains under investigation by the (28) days; and is further advised of the dispute process.

Mr. Whitlock asked whether a Utah form would require concurrence or approval from the Commission to grant a (21) day extension for filing; or is the filing of the form an 'automatic' (21) day extension to accept or deny the claim, relative to EDI submissions.

Mr. Haxby is not aware of the qualifications for reasonable diligence to request an extension. He opined that 95% of claims fall within these guidelines; it's the outliers that become the Commission's audit basis. He also requested the Commission review the language of IC § 72-602 to address what effect, if any, implementation of EDI will have in the rules language. He opined most employers understand their obligation for reporting within the (10) day time period; the bulk of claims received by his office are filed timely. He sees the issue as a small percentage, approximately 10% of policyholders that fail to comply.

Mr. McDougall addressed Mr. Haxby's concerns relative to EDI submissions.

Ms. Barnett would like the Commission to do an educational out reach program with employers on the (10) day reporting time frame. The State Insurance Fund includes in its initial policy packet information to policyholders the filing and reporting time frames. The State Fund would be willing to provide supplemental information in an attempt to educate policyholders on an ongoing basis.

Commissioner Maynard (Commission Chairman) opined the burden lies with the insurance company to inform employers of their obligations under the law. It would be difficult for the Commission to undertake notifying each and every employer. The Commission would be willing to assist as appropriate.

Ms. Veltman requested the Subcommittee also provide guidance on the trigger mechanism for a statute of limitations when a First Report of Injury is filed by someone other than the employer. *Will surety have (18) days to accept or deny the claim?*

Commissioner Baskin explained the obligations of employers and employees, pursuant to IC § 72-602 and § 72-701, to give notice of an accident or occupational disease.

Mr. Kenck sees the extension problematic for injured workers. He would favor language limiting the number of extensions by sureties and TPAs for “*further investigation of a claim.*”

Chairman Maynard reported there are some states requiring sureties to pay medical benefits and time loss pending any determination to accept or deny a claim.

Mr. Haxby thanked everyone for the additional comments.

After further review and discussion, consensus was reached to reconvene the Subcommittee to further vet this issue of the (28) day period for acceptance or denial of the claim for an accident or occupational disease before the next full Committee meeting in November. Commission Secretary Beth Kilian will check the Commission’s schedule and email a calendar invitation to Subcommittee members.

The Commission does not anticipate conducting negotiated rulemaking in this rulemaking cycle.

Industrial Commission Report:

Changes in Commission Staff (Director Mindy Montgomery). Director Mindy Montgomery announced staffing changes at the Commission. Crime Victims Bureau Chief George Gutierrez has accepted a position as the Deputy Administrator of Medicaid Program at Health & Welfare. On behalf of the Commission, she wished Mr. Gutierrez well in his new position. Kristi Abel has accepted the offer as the Commission’s next Bureau Chief. Ms. Abel was the first employee of the Crime Victims program since its inception.

In addition, Scott McDougall announced his retirement from the Commission but will remain on the Commission’s payroll until mid September. The Commission actively recruited his replacement and yesterday extended an offer to Patti Vaughn as the new Benefits Administration Manager. Ms. Vaughn began her work with the Commission in 2003, and began working as the Med Fee Schedule Analyst in 2007. She will continue in that role, continue to chair the Healthcare Subcommittee, as well as continuing to serve on the IAIABC Medical Issues Committee.

Mindy recognized Attorney Brad Eidam for assisting the Commission with the interviews for the Benefits Administration Manager position.

Update: EDI Release 3.0 Implementation (Scott McDougall). Mr. McDougall congratulated Patti Vaughn on her promotion. He then provided an update on the status of the EDI Release 3.0 ongoing project. The Request for Proposal has been published. The Commission's internal committee has met twice to review the proposals. There remain questions to the proposer that have yet to be answered. A meeting has been scheduled for next Wednesday to review the responses and make a decision whether the proposal is adequate.

Mr. McDougall recognized Mary Stumpp for her good work on EDI for the past 20 years and more recently her work on EDI Release Claims 3.0. He also recognized Richelle Flores for her contribution on the business end of EDI for past several months. He opined there should be no loss of institutional knowledge regarding EDI.

In his departing remarks, Mr. McDougall presented a humorous anecdote of one of his experiences at the Commission.

IIC Annual Worker's Compensation Seminar (Nick Stout). Public Information Specialist Nick Stout announced the Commission's Annual Worker's Compensation Seminar is scheduled for October 27, 2016 at the Boise Centre on the Grove. The "*Save the Date*" note cards were distributed to Committee members and public attendees. Registrations for the Seminar will open on August 22, 2016. The Keynote Speaker is Thomas Robinson, co-author for Larson's Workers Compensation Law, who will present "*Is the Worker's Compensation World Ready for the Gig Economy?*" Other speakers include Dr. Kathryn Mueller, who, among other positions, served as a section editor for the 6th edition of the AMA Guides to Evaluation of Permanent Impairment and will present "*Myth Busters: How Evidence Changes Medical Practice - Treatment Guidelines.*" Attorneys Mike McPeck and Bruce Skaug have agreed to present this year's Case Law Review.

Mr. Stout is applying for credits with the major reporting organizations, including the Idaho State Bar; and requested that any questions regarding the conference should be directed to him.

(Break.)

Updates: Industrial Special Indemnity Fund – FY16 Report & FY17 Assessments (James Kile)

Mr. Kile provided a handout of the ISIF FY16 Annual Report and FY17 Assessments and summarized the report.

- Sixty active cases currently
- Lump sum settlements have increased 8% from the previous year
- Cases closed by settlement have decreased from the previous year
- Two cases have gone to the Supreme Court

- 2016 had increased expenses on payment of claims
- 50% increase in CY17 Assessments

Mr. Kile has not noticed an impact to the ISIF by the Social Security Administration's treatment of disability offsets for worker's compensation benefits payments to claimants, similar to Medicare. In his experience, disability payments have not been denied to claimants.

Ms. Barnett reported the State Insurance Fund will be meeting with NCCI next week and will inquire about the Second Injury Fund on rate setting; the findings will be shared with claims administrators.

Elections (Nominations Subcommittee, Chairman Roy Galbreath):

Election ballots were distributed to the voting members of the Committee.

Mr. Galbreath, Chairman of the Nominations Subcommittee, reported the Subcommittee met a single time with incumbents who volunteered to be re-nominated to the Advisory Committee. The Subcommittee subsequently learned that Mike Batten, Representative of Workers, had retired and was no longer eligible to remain on the Committee. David Anderson, Plumbers & Pipefitters Local #648, was nominated to fill the vacancy. The Subcommittee recommendation of the new Committee Chairperson is Craig Mello. Mr. Mello of AgriBeef could not attend today's meeting due to work conflicts. The nominees who receive the most votes by the voting members of the Advisory Committee will have their names submitted to the Commissioners for approval at their next Administrative meeting.

Mr. Anderson spoke briefly of his professional and personal background and looks forward to serving on the Committee.

The floor was opened for other nominations.

Other Issues/Announcements:

Chairman Collins reported that he and Mr. Larry Tisdale continue working on the narcotics issue.

Preparation for Future Meetings:

Next Meeting Dates: November 9, 2016

Commissioner Baskin, on behalf of Commissioners Maynard and Limbaugh and the Advisory Committee Members, thanked Dr. Collins for his year of leadership in chairing the IIC Advisory Committee and his diligence in these diverse matters.

Mr. Kenck moved to adjourn, seconded by Ms. Veltman.

There being no further business, the meeting adjourned at 11:20am.