

**Industrial Commission's Advisory Committee  
On Workers' Compensation  
Minutes  
August 9, 2017**

**Members Present**

Craig Mello, Chair  
Dave Anderson  
James Arnold  
Connie Barnett  
Dr. Paul Collins  
Mike Haxby  
Dane Higdem  
Larry Kenck  
Gardner Skinner  
John Greenfield  
Susan Veltman  
Aaron White  
Brian Whitlock

**Members Absent**

Ray Anchustegui  
  
Ex-Officios: Senator Jim Patrick; and  
Representative Scott Syme

**Industrial Commission**

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

**Opening Remarks and Introductions:**

Chairman Craig Mello opened the meeting and led with introductions. Chairman Mello summarized his professional background and thanked Mr. Anchustegui for his willingness to complete Roy Galbreath's term on the Committee as an Employer Representative. Mr. Mello next requested introductions of Committee members and public attendees.

**Minutes:**

The Minutes of May 10, 2017 were presented for review and approval. Ms. Susan Veltman moved to approve the minutes of May 10, 2017 as written, seconded by Mr. Dane Higdem. The minutes were adopted as written.

Commissioner Tom Limbaugh, IIC Chairman, announced that Susan Veltman will not seek re-election to the Committee. He thanked her for her contributions, including her efforts as a member of the various subcommittees during her time on the Committee.

**Subcommittee Report(s):**

➤ Instate Adjusting Requirements Pursuant to IC §72-305. Commissioner Limbaugh, IIC Chairman, presented the report on the issue of instate adjusting requirements pursuant to IC § 72-305. Committee members were provided a copy of the June 26, 2017 minutes from the Subcommittee meeting in the handout of materials. Mr. Arnold was unable to attend the meeting; there were no representatives from the claimants' bar. Commissioner Limbaugh quoted Mr. Jim Werbeckes of Employers Holding, who said, "There was no appetite

for change at this time.” Subcommittee members present at the June 26, 2017 meeting concurred with Mr. Werbeckes’ sentiment. Mr. Werbeckes, Mike Kane, and Gary Strannigan were proposing a statutory change in Idaho to allow for out-of-state adjusting for Workers’ Compensation claims handling. Mr. Kane has not requested anything further of the Commission and we have no information at this time on future plans on the issue. The Commission is interested in hearing from the claimants’ bar on the issue. At present there are no plans for any further action of the Subcommittee.

Commissioner Limbaugh called on Committee members for further comment; there were none.

### **Industrial Commission Report:**

➤ Negotiated Rulemaking and Proposed Rule Changes – Prompt Claims Rules IDAPAs 17.02.04, 17.02.08, 17.02.10 & 17.02.11. Benefits Administration Manager Patti Vaughn provided handouts of the draft rules amendments. This update reflects the extensive work done by the Prompt Claims Servicing Subcommittee and by participants of the negotiated rulemaking sessions. The Subcommittee met multiple times over recent years. Two options of rule changes were drafted from their suggestions. The draft rules were distributed during two sessions of negotiated rulemaking that occurred on June 20<sup>th</sup> and June 29<sup>th</sup>. The “Option A” packet, previously submitted earlier this year as a temporary rules package to the Governor’s office, was rejected. The language in the “Option B” packet reflects modifications referencing how payments of permanent partial impairment (“PPI”) disability benefits would be paid, based on opinions from the Idaho Supreme Court that created ambiguity surrounding the payment of PPI disability benefits. The main focus of discussion during the negotiated rulemaking sessions was the statutory requirements under IC § 72-402, the issue of income benefits being issued within 28 days from the date of disability, even in some cases when an employer may not provide timely notice to the claims administrator. Concern was expressed regarding audit measurements and what would satisfy the statutory requirements. Some surety representatives stated that the current practice in the industry is to voluntarily issue payment within 28 days, even when compensability has not yet been determined. They described it as “The cleanest way to do it.” The Commission considered the oral and written testimony and subsequently adopted the proposed rules as presented today. These proposed rules will be submitted for publication in the October 4<sup>th</sup> Administrative Bulletin. Testimony offered before the rules are submitted will be considered by the Commission. At the request of Mr. Haxby, Ms. Vaughn summarized the changes in rules subsequent to the negotiated rulemaking sessions:

- IDAPA 17.02.08. An additional provision was included under that subsection 01 that requires a Change of Status Notice be issued whenever benefits are reduced to recover an overpayment in accordance with IC § 72-316.

- IDAPA 17.02.10. Under Subsection 09.a the last sentence was added, “*Nothing in this rule shall be construed as amending the requirement to start payment of income benefits no later than four (4) weeks (28 days) from the date of disability under the provisions of section 72-402, Idaho Code.*” This language differentiates between the making of an initial decision of either accepting or denying the claim within 30 days the claims administrator receives knowledge of the same; and the payments of income benefits to the injured worker be

made within 28 days from the date of disability. This change is also reflected in IDAPA 17.02.11.

Mr. Kenck requested explanation of the changes as they relate to recent rulings of the Idaho Supreme Court.

Ms. Vaughn explained that as a result of the ruling in *Corgatelli*, any reference to “permanent partial impairment” was changed to “permanent partial disability based on impairment” because impairment is a component of disability.

Dr. Collins expressed that in his experience, ratings can sometimes be ‘excessive’. He opined that ratings are being given by non-physician providers and averaging these types of impairment ratings would be inappropriate. He requested further explanation of the procedures in IDAPA 17.02.04 that would be in place for addressing ratings that are excessive in his opinion.

Ms. Vaughn reported the Commission’s expectation that the injured worker receives notice and advised of their rights to challenge a decision when the ratings had not been averaged.

➤ Negotiated Rulemaking – Med Fee Schedule – IDAPA 17.02.09. The Commission held two negotiated rulemaking sessions on the medical fees – June 22<sup>nd</sup> and July 10<sup>th</sup>. The report produced by *Milliman* for the Commission was distributed to participants of the sessions. NCCI identified the top procedures in Workers’ Compensation, and the report identified the average payment by commercial carriers for those procedures. The report confirmed that Idaho’s fee schedule rates are higher than the average commercial rates for similar services. Some of the participants revealed that both commercial and other government payers are now offering outcome based incentive-bonus payments; these same participants requested the Commission consider the long-term goal of adopting a similar methodology. Most testimony called for fee schedule to remain the same if not raised.

The Commission determined from the public comments that a proposed rule for medical fees would not be submitted this legislative session.

The Legislature appropriated funding to the Commission for an RFP for a consultant on the fee schedule this past spring.

Dr. Collins interjected that Idaho’s medical fee schedule is fluid and works well for Idaho.

Ms. Veltman requested confirmation that the modified rules are not currently in effect. Ms. Vaughn stated that the rules will not be effective until they have been approved by the Legislature in the up-and-coming session. In past discussions, the Commission intended these rules would be effective for auditing purposes going forward but still require adoption as permanent rules.

➤ Update: EDI Release 3.0. Ms. Vaughn presented an update on the status of EDI Release 3.0. The Commission remains on track for mandatory implementation on November 4,

2017. Testing of systems is underway and will continue until October 13, 2017. Version 1.7 of the Implementation Guide and the Tables were released and posted on the IIC EDI website on August 7, 2017. Stakeholders were reminded to visit the Commission's EDI website for updates. Ms. Vaughn reported the trading partner registration period ended March 17, 2017 but a number of sureties authorized to write Idaho Workers' Compensation insurance have not registered as trading partners. The Commission will continue efforts to reach out to sureties to complete these agreements. She reminded stakeholders that no First Reports of Injury submitted in paper form would be accepted by the Commission after November 4, 2017.

Mr. Haxby inquired whether the Commission would have an objection to stop Release 1.0 submissions a month in advance to the switch over to Release 3.0 for an entity like Intermountain Claims. He understands the burden on the Commission if they were to manually input that information from the FROIs.

Ms. Vaughn did not believe the Commission would object to suspension of those transmissions, so long as the "papers" were timely filed. It is in everyone's interest to make accommodations that facilitate an easier transition.

**Public Comment:** Lisa Kerns inquired about the new information that was released on the overpayment recovery process and no technical information on how to report that to the Commission. Ms. Vaughn is taking up the issue next on the Agenda.

➤ Announcement to Insurance Carriers and Claims Administrators of the Process for Recovery of Overpayments Pursuant to IC § 72-316. Ms. Vaughn provided a handout and summarized the intent of the announcement, which offers guidance to sureties on the process for obtaining a recovery of an overpayment previously paid to an injured worker. The announcement explains that 'Change of Status' ("COS") will now be considered the request for prior approval and will be deemed approved by the Commission's Benefits department as purely a ministerial function. However, the COS will remain subject to subsequent review by the Commission. EDI Release 3.0 does not provide for existing transactions to request prior approval. The COS will continue to be submitted on paper even after implementation of EDI Release 3.0. IC § 72-316 only allows for the recovery of overpayments by shortening the duration of future income benefits and does not provide for a reduction of weekly payments or by any kind of collections actions.

**Public Comment:** Ms. Shellie Martin opined that a request from the injured worker for a voluntary repayment for an overpayment seems appropriate; and asked for the Commission's opinion on the issue.

Ms. Vaughn opined there is no statutory basis for recovering an overpayment from the injured worker, if there are no future income benefits due. By shortening the duration of payments, a recovery for an overpayment would work in that instance.

**Public Comment:** Mr. Eidam summarized the current, more formal process as one that requires a party to file a request for hearing for a ruling on an overpayment. He requested further clarification of when the Commission would review the claimed overpayment; is the current

process being changed to a ministerial process by this ‘rubber stamping’ of the surety’s claim of an overpayment?

Ms. Vaughn reported the Commission had initial discussions for processing both litigated and non-litigated claims. The Commission determined it was appropriate to have one process where the COS notice would be issued to the Benefits department and would be deemed the prior request. This process would not address the adjudication process; only what is submitted through the Benefits department by way of the COS notice and would be subject to subsequent review. The EDI equivalent for the SOP would also be flagged and given proper review.

**Public Comment:** Ms. Kerns requested clarification on a technical issue for the reporting of the recovery of an overpayment in EDI, since the data element was removed.

Ms. Vaughn suggested Ms. Kerns submit her inquiry to IIC/ISO through the public email. The Commission had reviewed the definition of that benefit recovery code transaction; that definition is a report of something that has previously been completed. It may still be reported but would not be a transaction the Commission would consider a request for prior approval that is required.

**Public Comment:** Ms. Martin agreed the surety would receive an error in their system, if the rate was changed to show as an overpayment. The Commission would not be aware the surety made an overpayment if there is no available code to indicate an overpayment.

IT Program Analyst Mary Stumpp reported there are two transaction codes in the EDI standard to address overpayments. Unfortunately, there is no valid benefit credit code applicable for Idaho in the IAIABC EDI 3.0 standard for reporting of overpayments; therefore, that code for overpayments was removed from the valid values for submissions to the Commission. Idaho shares this issue with several other jurisdictions. Ms. Stumpp summarized the process for reporting an overpayment through EDI Release 3.0. The “other credit code” is a generic code definition that would not be specific to any particular type of payment and could apply to medical, indemnity, or any other benefits. For example, Intermountain Claims would report the payment on a final summary of payments and would be reported as either a sweep or an event, according to the TPA’s process, and would not be rejected. Ms. Stumpp also reported the issue of overpayments is being addressed in the IAIABC EDI Release 3.1 standard, but may not be implemented for another 18 months.

Mr. Haxby thanked Ms. Stumpp for the explanation. Discussion of the overpayment codes, i.e. Code 830. He suggested reducing the paid amount and posting the entry as a recovery credit through EDI as a possible approach to collecting an overpayment.

Ms. Martin asked if sureties would encounter problems when applying the overpayment to the impairment.

Ms. Stumpp responded that Commission analysts review it; it won’t be automatically rejected.

➤ Possible Legislation RE Treatment of Impairment & Disability – IC §§ 72-316, 72-408, and 72-422.

Commissioner Baskin presented draft language amending IC §§ 72-316, 72-408 and 72-422 for consideration and vetting by the Committee prior to the 2018 Legislative session. Commissioner Baskin provided handouts and summarized, reporting that there is agreement that the continued income stream for an injured worker should be maintained during the period of disability. The Supreme Court decisions in *Corgatelli*, *Davis*, and *Mayer v. TCP Holdings* have created confusion amongst industry stakeholders of the treatment of impairment and disability and whether sureties have the ability to seek credit against a subsequent award on total permanent disability. The Commission has concern that sureties will no longer be incentivized to pay impairment following these decisions. Currently under IC § 72-316, a surety cannot recoup an overpayment at the end of the period of disability (benefits are payable until death). To address these industry concerns, the Commission formed an *Ad hoc* Committee that met on three occasions to review the statutory language on the treatment of impairment and disability. The committee members from the claimants' and defense bars included *Jamie Arnold*, *Brad Eidam*, *Susan Veltman*, *Woody Richards*, *Mike McPeek*, and the *Commission's Deputy Attorney General Blair Jaynes*.

Commissioner Baskin reported the Commission believes the draft language as presented would allow income benefits characterized as PPI as a credit against the eventual award of permanent disability (*see* amended draft IC § 72-408) and further, as much as possible, provide sureties the ability to recoup the overpayment from date of MMI by maintaining the continued income stream for the injured worker. IC § 72-422 addresses PPI, which is a component part of a disability award; and the amended language attempts to address the PPI award to an eventual total disability figure by application of the surety.

Commissioner Baskin called first for further comments from the Committee; and second comments from public attendees.

**Public Comment:** Mr. McPeek interjected the *Ad hoc* Committee had consensus the language be as simple in nature as possible for presentation to the legislature, rather than consider each and every case scenario that might occur. Mr. Eidam, on behalf of Claimants' bar, concurred with Mr. McPeek's summation.

Mr. Haxby expressed his appreciation to the practitioners and the Commission for their efforts on the issue.

Mr. Arnold opined "bad" facts were presented in the cases of *Corgatelli* and *Davis* that resulted in a "bit of mayhem" in applying the current law; further, making it more difficult for parties to reach a settlement on a case. The *Ad hoc* Committee focused on restoring order in the Workers' Compensation industry before *Corgatelli*.

There were no further comments. Commissioner Baskin had no further report.

➤ Update: IIC Annual WC Seminar & Centennial.

Public Information Specialist Nick Stout presented an update on the IIC Annual WC Seminar scheduled for Thursday, October 26, 2017 at the Boise Centre East facility, located off Main Street and Capitol Blvd and provided a handout of the seminar brochure. Attendees can access the conference from the main building's 2<sup>nd</sup> floor via the skyway or through the first three floors of the Clearwater building. Registration is now open on the Commission's website. Early bird registration is \$110 and will expire on October 1, 2017; thereafter, the registration fee increases to \$130.

This year's Keynote Speaker is John Burton, Jr., who will speak on "National Development in Workers' Compensation Relevant for Idaho." Leslie Kelly Hall will speak on "The Future of Healthcare." Lisa McGrath will present on Social Media Law and its impact on workers' compensation cases. Dr. Ron Kristensen will present "Meniscal Injuries and Arthritic Knees." Becky Curtis will discuss ways of "Rethinking Pain-Management Paradigms." The case law review will be presented by Attorney Lora Rainey Breen and a second representative to be announced at a later date. Attorney Steve Berreter will present "Employment Law" in the afternoon.

Mr. Stout invited members or public attendees to visit the Commission's website or contact him directly for questions or additional information.

### **Updates:**

#### ➤ Industrial Special Indemnity Fund ("ISIF") – FY17 Report and FY18 Assessments.

Ms. Kim Murphy presented the ISIFs FY17 report and FY18 assessments report on behalf of Mr. Jim Kile. She summarized the report as follows:

- Notices of intent have decreased while complaints have increased 40%.
- The complexity of claims has increased since 2009. Older workers are returning to work in greater numbers. The ISIF currently has a claim of a man well into his 70s. The ISIF does a thorough and individualized analysis of these types of cases.
- Lump sum settlements have decreased to \$500,000.00 (*see* page 6); that amount is not fully accurate because ISIF continues settling claims that are not always a one-time payment but paid as an upfront payment with modified benefits. These benefits sometimes are guaranteed and may continue throughout a claimant's life expectancy.
- Social Security offsets continue to be a consideration for the industry.
- The legal costs have reduced overall.
- Since last year's assessment, the employer-sureties took a big hit, due in large part to a 4% increase in the Average State Wage (*see* page 12).
- There will be a 32% reduction in the 2018 assessment.

Ms. Murphy reported the Industrial Special Indemnity Fund is in good financial shape; she had no further report.

## **Other Issues/Announcements:**

### ➤ Discussion of Telehealth Legislation (SB1058) for Rulemaking Consideration.

Commissioner Limbaugh, IIC Chairman, opened a discussion of proposed telehealth legislation from Senator Keough in the last session for amending IC § 54-5701. Commissioner Limbaugh requested the Committee consider convening the Healthcare Subcommittee to address rulemaking for the reimbursement of telehealth services. Workers' Compensation was included in the first draft of the legislation; however, an amended bill removed Workers' Compensation. The second draft of the bill failed in the senate. Senator Keough asked the Commission to look at reimbursement for telehealth services as it exists in statute. The Commission's Benefits Department has received inquiries on coding for reimbursement for telehealth services.

Dr. Collins expressed his concern of medical decisions made by physicians residing outside Idaho.

Commissioner Limbaugh reported the Telehealth Act does not require physicians be licensed in Idaho however, Title 72 of the Idaho Code requires an Idaho license for treatment to be compensable.

Commissioner Baskin further explained IC § 72-102 which is different than the Idaho telehealth bill; and opined the Committee may need to address whether § 72-102 needs amending to be consistent with the Telehealth Act. He would be interested in hearing from self-insured employers and sureties whether it would be a burden or a benefit to the administration of medical services in the Workers' Compensation system.

Mr. McPeck interjected the Workers' Compensation system already pays for out-of-state care on patient referrals to the University of Utah, the St. Alphonsus' facility in Ontario, and for workers injured in Coeur d'Alene who may receive treatment in Spokane.

Commissioner Limbaugh suggested the treatment could be as far-reaching as outside the United States.

Mr. McPeck concurred with Dr. Collins' concerns and suggested refining some of the parameters for quality of care.

Mr. Kenck expressed his own concerns of workers being treated by non-physicians, such as a plant nurse picking up a phone and calling for treatment from Bangladesh.

Mr. Whitlock offered his own clarification of the legislation that may again be proposed in the next session. The issue is simply a coverage issue, not a licensure issue.

Ms. Veltman proposed the Committee be proactive and form a Subcommittee to vet the issue.



**Public Comment:** Mr. Richards interjected that the original intent of Senator Keough's bill was in terms of reimbursement levels that included workers' compensation; however, her main concern was health insurers. Mr. Richards had discussed with the Senator the mechanisms of the Commission's annual review of the physicians and hospital fee schedules, which led to the subsequent amended bill striking the workers' compensation portion. The Senator was comfortable that a mechanism already existed for reviewing medical fee issues.

Mr. Arnold opined any action would require a rule change. He posed the question: "*How do we access these doctors? Who pays for the extra expenses?*"

Mr. Whitlock explained the Senator wanted to get payers and providers in discussions over the coverage for reimbursement. He is unaware of any organized meeting by the payer and provider groups. He suspects Senator Keough will try again this session to bring legislation and would like a discussion by this group to vet the impact, if any, to the industry of similar legislation. He opined the Committee should be prepared to present language and address concerns relating to Workers' Compensation.

Dr. Collins reiterated further his concerns with the legislation.

After lengthy discussion the Committee agreed there are two different issues that should be vetted through the Advisory Committee's Healthcare Subcommittee: (1) the language in the Act; and (2) the varying reimbursement amounts for treatment from a physician or from a nurse practitioner.

Commissioner Limbaugh and Commission Secretary Beth Kilian will distribute an email with suggested dates to convene the Subcommittee. Dave Anderson requested to be included on the Healthcare Subcommittee.

**Public Comment:** Mr. Richards requested the Subcommittee also consider in the long-term medical treatment guidelines and best practices when it convenes.

**Committee Membership Nominations and Elections:** (Nominations Subcommittee Members: *Interim-Chairperson Susan Veltman, Mike Haxby, John Greenfield, and Aaron White*)

Election ballots were distributed to the voting members of the Committee. Mr. Craig Mello, Representing Employers, was erroneously placed on the ballot; his term on the Committee will expire in 2019.

Ms. Susan Veltman, Interim Chairperson of the Nominations Subcommittee, first thanked the Committee and the Commission for the honor of serving on the Advisory Committee and the various subcommittees.

Ms. Veltman next reported the Subcommittee met with incumbents who volunteered to be re-nominated to the Advisory Committee. She summarized the process for submission of names to the Commissioners for approval at their next Administrative meeting. The Subcommittee had the following recommendations for nominees for positions whose terms

expire. Mr. Aaron White, Representing Workers; Mr. Ray Anchustegui, Representing Employers, completed the remaining term of Roy Galbreath and expressed a willingness to continue on the Committee; Mr. Mike Haxby, Representing the Insurance Industry; Attorney Mike McPeck, Representative of Employers; Attorney James Arnold, Representative of Claimants. The Subcommittee recommendation of the new Committee Chairperson is Attorney James Arnold, who was a past chair on the Committee in 2008 - 2009.

The group discussed the terms of voting members.

On behalf of the Committee, Ms. Veltman extended her appreciation to Mr. Mello for his leadership this past year as the Committee Chairman. Ms. Veltman next opened the floor for other nominations.

Ms. Veltman had no further report.

### **Preparation and Topics for Discussion at the Next Meeting**

Next Meeting Date: November 8, 2017

There being no further discussion and no further business, Mr. Skinner moved to adjourn the meeting; seconded by Messrs. Kenck and White.

The meeting adjourned at 10:45 am.