

**Industrial Commission's Advisory Committee
On Workers' Compensation
Minutes
May 11, 2016**

Members Present

Dr. Paul Collins, Chair
James Arnold
Connie Barnett
Mike Batten
Roy Galbreath
Mike Haxby
Dane Higdem
Craig Mello
Gardner Skinner
John Greenfield
Susan Veltman
Aaron White
Brian Whitlock

Ex-Officio: Senator Jim Patrick
Representative Greg Chaney

Members Absent

Larry Kenck

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.

Minutes:

The Minutes of February 10, 2016 were presented for review and approval. Ms. Veltman moved to approve the minutes of February 10, 2016 as written, seconded by Mr. Galbreath. The minutes were approved as written.

Subcommittee Reports:

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

Ms. Vaughn reported the Subcommittee met on March 7 and April 14, 2016 and summarized the meeting discussions as follows:

March 7, 2016 Meeting.

- The Subcommittee was updated on the FY17 medical fee rules approved in the last legislative session; and an explanation was provided for extending the temporary rule to July 1st.

- The Commission has received complaints of identical rehabilitation services being paid at two different fee schedules from hospitals and clinics. The Commission plans to move forward with an RFP for an actuary service to benchmark the Commission's fee schedules using commercial carrier data because of the lack of access to hospital and clinics data.

- General discussion was held on the use of opioids and compound drugs. However, no further action was requested from the Subcommittee. Several parties agreed to submit data.

April 14, 2016 Meeting.

- The State Insurance Fund supplied CY15 physician data to the Commission; a summary of the data findings was shared with the Subcommittee. The average charge for the most common office visit code had increased 3%, but remained about 4% below the current fee schedule allowable.

- The Subcommittee reviewed rehabilitation data. Eighty percent (80%) of billed units were by clinics and not facilities. Hospitals were averaging 30 units per claim. The average bill per claim was about \$2,600.

- No total claims data was available on the physicians and clinics to make any comparisons.

- The Idaho Hospital Association offered to research the costs of providing rehabilitation services and identify an appropriate multiplier that would quantify the extra costs incurred by hospitals for these rehabilitation services.

- The Idaho Medical Association proposed adopting a new code for separate payments of physician reports (similar to Colorado). Some Subcommittee members questioned whether the proposal would affect physician participation in the deposition process and whether it would impact the Commission's Rehab Consultants who rely on physicians to review job site evaluations and light-duty restrictions. The Commission has no funding source to pay for completion of those report forms.

The Healthcare Subcommittee meets next on May 24, 2016 and will vet the findings on the rehabilitation services at hospitals from the Idaho Hospital Association; and the Idaho Medical Association's proposal for a new code for separate payments of physician reports.

This concluded Ms. Vaughn's report to the Committee.

➤ Securities Valuation – Summary on Assessing the Market Value of Security Deposits, dated May 11, 2016 (Nick Landry). (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, Edylene Ohman and Laura Steffler.*)

Issue: During a volatile market period, if a surety becomes insolvent prior to a bond's maturity date, the return on investment of the bond price would be lower than the original par value at the time of purchase. Securities deposits should reflect the liabilities of the insurance companies.

Commissioner Limbaugh presented a summary report of the first meeting of the Securities Valuation Subcommittee held on March 14, 2016 on behalf of the Subcommittee's Chairperson Nick Landry. Mr. Landry prepared a memo that outlines the talking point discussions of the first meeting on an issue first brought to the Commission's attention by Representative Neil Anderson (*see* handout in the meeting materials).

Summary:

- The State Treasurer and the Department of Insurance each reconcile par value of securities pursuant to custodial agreements with the banks.
- The Treasurer's Office reconciles securities twice a year.
- The Department of Insurance monitors the value of securities of domestic insurers on a quarterly basis.
 - The Commission is not a party to these custodial agreements.
 - An alternative solution for securities deposits is in the form of short-term bonds, since they fluctuate less in periods of rising interest rates.
 - Senator Patrick posed the question: *What's the ongoing cost to monitor these bonds on a consistent basis?* The Commission at this time has not prepared a cost analysis for personnel, equipment and other miscellaneous operational needs and is unaware of the many different securities on deposit.
 - The State Treasurer's office informed the Commission they are willing to assist with further investigation of the issue but lacks the manpower and the funding within their department to monitor the market values of the approximate 450 companies.
 - Commissioner Limbaugh suggested the banks, through their custodial agreement(s), may be the appropriate party to provide the market value information of securities deposits to the State Treasurer's office.
 - The IDAPA rule requires self-insureds self monitor their securities for market value.
 - The Commission is concerned with the lack of access to the Guaranty Fund of the insolvent self-insured employer.

A subsequent Securities Valuation Subcommittee meeting will be scheduled sometime in September. Individuals interested in attending were instructed to notify Commission Secretary Beth Kilian.

Commissioner Limbaugh had no further Subcommittee report on Mr. Landry's behalf.

➤ 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 McPeck; Woody Richards; Paulette Boyle; Teresa Cirelli; Commissioner Tom Baskin; and Scott McDougall*)

Commissioner Baskin led with a summary of the Subcommittee's purpose in meeting and summarized the preliminary draft rules language as vetted by the Subcommittee (see handouts in the meeting packets).

Questions addressed: *When does the clock start to run? Would the Commission be critical of a surety who has failed to take action within (28) days of the date the employer learns of the accident, if employer failed to notify surety within 30 days? What happens to the medical bills that claimant may be incurring after the period of denial?*

The following was reviewed:

- The statutory language of IC § 72-304 and § 72-317.
- The weekly payment of benefits, as required under IC §72-317, historically has not happened, either because of industry practice or by convention. The Commission would consider 'waiving' the application of requiring the biweekly payment of TTD benefits payments, TPD benefits on an other than bi-weekly basis, and PPI benefits every (28) days as consistent with current practice.
- Some members of the adjusting community expressed concern that the surety or TPA could be at risk on an audit finding of meeting the (28) day filing requirement and be unduly burdened for lack of timely notice from employer of an accident or occupational disease.
- The Commission suggested denying the claim as a "default" filing would give surety or its TPA the additional time to conduct its due diligence investigation of the claim.

Consensus reached for recommendation to the Advisory Committee on the following:

- Expand the first payment of PPI payments to be made within (14) days of the date of the report establishing the rating, making those payments retroactive to the date of medical stability.
- Allow the calculation of TPD benefits by reference to the actual pay period used by the employer. (Currently, these benefits are required to be paid on a weekly basis; most employers, however, pay on a bi-weekly or monthly basis.)
- Notice of Change of Status would be required whenever there is an acceptance of a claim, denial of a claim or some change of status of a claim, including medical-only claims.
- IDAPA Rule 17.02.04.281 would require the averaging of two or more impairment ratings for the same injury by different physicians. If a surety declines to average ratings, then surety will notify claimant of his right to contest the surety's decision with the Industrial Commission.

Outstanding issue: No consensus reached by the Subcommittee on **the length of time for the surety (or its third party administrator) to accept or deny a claim.** The Subcommittee was requested to further vet implementing in rule the (28) day requirement that surety take action on acceptance or denial of a claim within (28) days of the date the employer is first apprised of the accident or occupational disease, consistent with the requirements of IC § 72-307. The Commission's current practice runs counter-intuitive to IC § 72-307.

Subcommittee members were provided an opportunity following the Subcommittee meeting to comment on the draft rules as presented. Messrs. McPeck and Eidam requested the Commission further consider the time period for compensability determination.

IIC Benefits Audit Guidelines.

Commissioner Baskin reported the Commission has engaged the services of a contractor to begin drafting audit guidelines. Those audit guidelines will be vetted with individuals who have an interest.

Mr. McDougall clarified the Commission's position to separate the responsibility between the surety and in-state adjuster on a finding of non-promptness for determination of compensability. He suggested the following language for an audit response letter: "*Such an audit finding will result in remedial action directed to the surety solely and to reiterate with surety the requirements of prompt reporting.*" The Commission maintains the responsibility to educate policyholders and employers to report promptly lies with their surety.

Commissioner Baskin thanked Mr. Haxby for his leadership on the Subcommittee and reiterated the Subcommittee had reached good consensus on the amendments, except on the (28) day rule. He called on the Advisory Committee for further discussion and recommendation, in particular on the issue of the acceptance or denial of the claim. If no consensus is reached today, the negotiated rulemaking process will satisfy the concerns expressed in the Subcommittee meeting and at today's Committee meeting. There was no further Subcommittee report.

Discussion held on employer's responsibility for submitting a report of injury on med-only incidents. Commissioner Baskin relayed that the statute is unambiguous.

Mr. Haxby also thanked Subcommittee members for their participation. He was in agreement with most of the rules changes presented by Commissioner Baskin as vetted by the Subcommittee. He conceded many claims are straight forward and accepted within (14) days. From an auditing perspective, he requested additional consideration for the (28) day requirement, whether weekends and holidays are also included in calculating the 28 days as part of the audit process. Mr. Haxby is interested in working with the Commission on these issues so the expected audit process is understood by all participants. Mr. Haxby is opposed to the suggestion that adjusters use a default of *denying a claim*; he considers that default action would have a negative impact on business and is a bad business practice.

Ms. Veltman concurred with Mr. Haxby that many cases are straight-forward and compensability decisions can generally be made within (14) days. However, there are factual scenarios, such as a back injury claim, that can make the analogy difficult for calculating the time frame for a compensability determination.

The Committee discussed the application of *Neel*.

Mr. Arnold opined the problem is a relatively small number of claims or circumstances; and there are specific laws that exist in triggering when a claim becomes a claim. The best interest of the injured worker is of primary consideration.

(Public comment.)

Mr. McPeek elaborated on his email comments as circulated to the Subcommittee members. Because the Subcommittee had not considered when meeting to retain the (10) day reporting requirement that employer has to submit a Form-1, under IC § 72-602, he proposed two time frames for the adjuster to act: 1) When employer had met the statutory requirement of having filed their written report within (10) days; and 2) When an adjuster had no notice until the (10) day time frame was exhausted (a shorter time).

Mr. Eidam concurred with Mr. McPeek's assessment of the problem and his suggestions on the time frame. He expressed concern that any proposal to extend the time beyond (28) days is counter-productive and imposes a large financial burden on an injured worker. Mr. Eidam would not favor penalizing a surety or TPA because of the failed actions of an employer as administratively applied and favors a change in the Commission's audit standards to that effect. The responsibility for educating the employer lies with the surety, in his opinion.

Mr. Gardner suggested the Commission focus more on the regulations and preparation of audit guidelines, if the proposed regulatory changes are more consistent with audit procedures.

Mr. Galbreath suggested the Commission consider an alternative option that "*The claim remains under investigation for cause*." This option '*for cause*' allows additional time for investigation on the part of the adjuster. If the expectation is that a decision on compensability of a claim can be made in ten days, then he wants the decision made in ten days. He posed the question: *Is twenty-eight days sufficient time for determining compensability in the case of a non-communicative injured worker who is unable to sign a medical authorization?*

Mr. Haxby concurred with Mr. McPeek's proposal of having two time frames; and proposed the time frame '*to start the clock running*' should be from the date the claim is received by the TPA. For individuals doing the adjusting work, audit guidelines would be helpful. He recalls the Commission in the past added this acceptance of the (28) days from the date of notification in the audit criteria.

Ms. Veltman inquired whether the Subcommittee also considered the difference between indemnity and medical benefits in its discussions, due to surety's potential exposure to pay weekly income benefits and of *Neel* concerns.

Mr. Haxby recalled the Subcommittee's main focus was on issues that were a result of the adjusters' meetings and any proposed solutions remained within the status quo. The Subcommittee did not address all of the specific details.

Deputy Attorney General Blair Jaynes proposed modifying Mr. McPeek's suggestion on the parallel time frame periods to be (10) days for the employer to give notice under IC § 72-602,

and then (18) days after notice by employer to surety or surety's agent of an injury or occupational disease.

Commissioner Limbaugh reported that the state of Utah uses a three-tiered reporting process requiring employers' filing of the first report of injury within seven (7) days of notice of the injury, accident or occupational disease. The surety then has (21) days for a determination of the claim after receiving notice from employer. When there is a delay in adjusting the claim notice is required stating the reason for the delay.

Mr. Haxby would not want any conflicts created by the proposed change in regulation affecting the process for implementation of EDI Release 3.0 occurring July 1, 2017. The Subcommittee's next step will be working on IC § 72-806 for incorporation of the MTC codes, the triggering event codes for EDI 3.0 implementation.

Ms. Martin (Travelers Ins.) sees the issue as two-fold and proposed, for purposes of the audit guidelines, the two issues are separated as follows: (a) **prompt claims reporting** from the employer; and (b) **prompt claims handling** on the part of the surety or TPA. Ms. Martin will provide the Commission a copy of Montana's regulatory requirement that includes language for a '*reservation of rights*' option allowing adjusters time to complete due diligence of a claim. Oregon's regulatory requirements are similar to Montana.

Senator Patrick would favor a plan similar to Utah; and would also favor flexibility in the rule for claims where compensability determination is not able to be made in (28) days.

Mr. Skinner requested the Subcommittee reconvene and review the solutions reached by Montana, Oregon and Utah on the compensability determination on acceptance or denial of a claim; Messrs. Haxby and Richards concurred.

Mr. McPeck concurred the Subcommittee should reconvene and also requested the Subcommittee vet the statutory changes on the authority for the payment of compensation during an investigative time period; and address further the issue of an employer who willfully fails to timely report an accident or occupational disease to (a) *extend the statute of limitations during the time employer failed to file a report*; (b) *enforce the criminal penalty for the intentional or willful failure to file first reports of injury*; and (c) *award of attorneys fees for an unreasonable delay aspect under IC§ 72-806* for recommendation to this Committee.

Mr. Haxby inquired whether the Commission could move forward with part of the rules amendments and vet further with the Subcommittee the remaining issue of the (28) day time period for determination of the compensability of a claim; and subsequently return to this Committee with a recommendation.

Discussion was held on the negotiated rulemaking process.

The **Subcommittee reached consensus to reconvene sometime during the week of May 23 – 27, 2016**. Commission Secretary Beth Kilian will work with the Subcommittee members on a date and time and will distribute the meeting notice to members.

The Commission will, if feasible, initiate negotiated rulemaking subsequent to the Subcommittee meeting. Commissioner Limbaugh reminded members that September 2nd is the moratorium on all proposed rules submissions for consideration in the next legislative session.

(Break.)

Industrial Commission Report:

➤ Introduction of New Public Information Specialist Nick Stout. Director Mindy Montgomery introduced the Commission's new Public Information Specialist Nick Stout. Mr. Stout has a background in history and creative writing and will be a welcome addition to the Commission as we move into Idaho's centennial year (1917–2017) for Worker's Compensation.

Mr. Stout provided a summary background of his professional experience and is looking forward to working with the Committee in the future.

➤ Outcome of 2016 Legislative Session. The Commission presented no legislation this session. However, Commissioner Limbaugh summarized the legislation affecting Worker's Compensation that passed this legislative session.

HB501 amended existing law to revise acceptable security instruments for worker's compensation insurers. The legislature had included an emergency clause in the bill and the new law went into effect March 30, 2016. The Commission will be distributing a memorandum with the new information to all insurance companies.

Commissioner Limbaugh had no further report.

Updates:

Commissioner Maynard (IIC Chairman) spoke on the IAIABC's national effort to look at the issue of high deductible policies and summarized the meeting discussions of the NAIC and IAIABC Joint Task Force Committee he attended earlier this month at the NCCI Annual Conference. (Note: The Wisconsin jurisdiction does not accept deductible policies.)

Other Issues/Announcements:

Dr. Collins informed members that the orthopedic surgeons have been studying the uses and abuses of narcotic opioids. He and Larry Tisdale (IHA) have been collaborating on the issue and the issue of the costs for rehab services at hospitals and a recommendation for consideration by the Healthcare Subcommittee will be forthcoming.

Mr. Galbreath announced the Nominations Subcommittee has been in contact with incumbents who are up for re-election at the August Committee meeting. The names of other interested persons will be provided to the Commission for the August elections ballots.

Preparation for Future Meetings:

Next Meeting Dates: August 10, 2016; and November 9, 2016

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

There being no further business, the meeting adjourned at 11:32am.