

**Industrial Commission's Advisory Committee
On Workers' Compensation
Minutes
November 10, 2015**

Members Present

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

Members Absent

Roy Galbreath
Dane Higdem
Representative Greg Chaney

Industrial Commission

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

Opening Remarks and Welcome New Member and Special Member:

Chairman Dr. Paul Collins opened the meeting with a humorous introduction and welcomed new members Brian Whitlock and Dane Higdem. Mr. Whitlock of the Idaho Hospital Association primarily represents hospitals. Mr. Higdem of Glanbia, Inc. represents employers; but could not attend today's meeting.

Mr. Whitlock briefly spoke of his experiences since beginning with the Idaho Hospital Association.

Committee Members and public attendees were introduced.

Minutes:

The Minutes of August 12, 2015 were presented for review and approval. Ms. Veltman moved to approve the minutes of August 12, 2015 as written, seconded by Messrs. Skinner and Kenck. The minutes were approved as written.

Industrial Commission Report:

➤ **Status of Med Fee Rules Submissions IDAPA 17.0209 (Patti Vaughn).**

The Commission's Med Fee Analyst Patti Vaughn presented an update on the status of the proposed medical fee rules amendments. She reported that Negotiated Rulemaking was conducted for the medical fee schedule. She reported that the rules' amendments were published in the October 7th Bulletin and contained no changes from when the Committee last met. No

comments or requests for hearing were received by the Commission by the October 28, 2015 deadline. The pending med fee rule will need to be adopted and submitted to the office of Administrative Rules Coordinator no later than Friday, November 27, 2015 for publication in the January 6, 2016 Bulletin for presentation in the 2016 Legislature.

Ms. Vaughn summarized the rule changes as follows:

- No changes to the physician conversion factors.
- The standard for reimbursement on rehabilitation hospitals was changed to be the same as for other non-critical access hospitals.
- Hospital out-patient procedures will be paid based on the presence or absence of the J-1 status indicator for the new comprehensive APCs.
- A provision was added to adopt the coding guidelines published by the Centers for Medicare and Medicaid Services (“CMS”) and the American Medical Association to also apply to facilities.

Ms. Vaughn reported that CMS finalized its proposed rule that has created a conflict with the language in our rule. Idaho’s legislative calendar does not sync with the CMS rules legislation calendar. Issues involving medical payments will continue to be resolved through the Commission’s Med Fee dispute process.

The Commission will continue to work with hospitals and stakeholders for a workable solution.

The Healthcare Subcommittee will need to convene next year; however, no meeting dates were scheduled. Negotiated rulemaking would also need to be conducted.

➤ **NCCI Medical Data Report – September 2015 (4th Edition)**

Ms. Vaughn summarized the September Issue of the NCCI Medical Data Report (4th Edition). The Report provides data on developing trends of costs for medical services and offers a benchmark for region and countrywide.

Ms. Vaughn encouraged members to review the charts at pages 4, 9, 17, 19, 40 and 53; and summarized the report as follows:

- Idaho’s average payments are higher than for region and national average payments.
- E&M codes office visits with new and established patients are coded on a level system. A lower level code is going to be a lower level service provided. A higher level code is a higher level service provided.
- E&M Code 99213 represents 42% of all E&M transactions. The average payment in Idaho for Code 99213 was \$123. The Med Fee schedule allows payment at \$142.80, which is higher than region and countrywide.
- Idaho has a higher percentage of transactions for mid-level codes 99203 and 99213. Idaho has a lower percentage of transactions for higher-level codes 99204 and 99214. This validates the amounts for reimbursement on office visits may be a coding issue.

- Hospital charts do not offer as much detail for comparison, due to the wide variation of hospital billing procedures across the country.
- Payments for the top 10 drugs showed Idaho comparable to region and countrywide.
- Idaho's average payments per paid diagnosis are comparable to region and countrywide.

Chairman Collins suggested that physicians have been advised to bill at lower levels to avoid any perception by Medicare of 'overbilling' practices.

Mr. Arnold observed this Committee has addressed this issue in the past relative to the lack of physician participation in the workers' compensation process. He suggested the Commission work with medical practitioners experienced in the workers' compensation arena to provide educational opportunities to new physicians and medical office staff.

Ms. Barnett reported that the State Fund does not currently have an area for educating physicians; however, the Fund does meet with physicians on an issue-by-issue basis. Ms. Barnett sees value in the Fund offering educational training to medical providers' billing staff on billing of worker's compensation claims. The Fund may pursue this educational opportunity over the next year or two year period.

Ms. Vaughn reported that representatives of the Commission's Benefits, Rehabilitation and Med Fee divisions conducted an outreach effort with medical offices to give a broad overview on worker's compensation. Ms. Vaughn did not recall receiving any specific inquiries about coding. The question routinely posed: *How do I get this paid the way it's supposed to be paid?* She reported that medical billers have access to resources on billing codes. She further reported that coding systems should be standard for all healthcare providers.

Mr. Kenck opined there would be value in having the Commission explore the creation of a program to train medical staff responsible for coding of workers' compensation patient claims.

Ms. Vaughn had no further report to the Committee.

➤ **IC § 72-803 - Med Fee Schedule Authority (Commissioner Tom Baskin).**

Commissioner Baskin provided a status update of the proposed amendment to IC §72-803 that would require non-occupational health insurers to provide commercial data to the Commission for use in setting the medical fee schedule that was presented to this Committee at its last full meeting.

Commissioner Baskin summarized the issue as follows:

The Commission is obligated to review the medical fee schedule annually. The long-standing obstacle for the Commission is the lack of access to commercial carrier data to assist the Commission in its annual analysis for setting the medical fee schedule. Providers tell the Commission that worker's compensation requires more staff time and additional paperwork; therefore, providers should be compensated at a higher rate than non-occupational providers.

On August 28, 2015 Commissioner Baskin and Ms. Vaughn met with the Idaho Chapter of the International Association of Healthcare Practitioners (IAHP) and their attorney Steve Thomas to review the Commission's proposed statutory amendment to IC §72-803. IAHP expressed concern that, since there are just five commercial carriers in Idaho, the proposed statutory amendment would allow access to payment information that is deemed proprietary. The Commission also provided a copy of Montana's statutory language to IAHP. Montana was successful in its reform efforts to obtain commercial data in setting his fee schedule.

Mr. Thomas provided the name of an actuarial service the Commission could consider contracting. *Milliman* has a national presence and has established relationships with the non-occupational insurers the Commission is seeking information.

Mr. Batten shared his personal experience using *Milliman*; and opined *Milliman* did an excellent job.

The Commission will hold in abeyance any proposed amendments to IC §72-803, or formation of a subcommittee, pending the Commission's additional research of an actuarial service. The Commission will continue to update the Committee of the status.

➤ **Update: Guidance Memorandum of Deductible Policies (Commissioner Tom Baskin):**

Commissioner Baskin provided a summary background of the Commission's Guidance Memorandum of Large Deductible Policies dated 15 Jun 2015 ("Memo") and the issues presented to the Commission as part of an audit process under §72-306.

In 1993 Idaho law allowed for the writing of deductible policies. The Commission has found instances of employers, who are insured under a deductible policy, adjusting claims and directing the payments of benefits to claimants and payments to providers. The Commission was concerned enough with these practices that it was deemed appropriate to reiterate to sureties and TPAs the provisions of IC §72-306A and the Commission's expectations. Sureties were requested to signify their understanding of the requirements for writing deductible policies in Idaho under §72-306A. The Commission expressed concern that timely benefits payments be made to the injured worker; and that all other elements of the Idaho Worker's Compensation law be satisfied. Under a deductible policy, every dollar comes from the surety who is always responsible for the payments; and then subsequently seeks reimbursement from the employer up to the deductible amount. All claims are adjusted either by the surety who writes the policy or by the surety's designated TPA. Employers are not allowed to get involved in the adjusting of claims. Claimants are entitled to a sure and certain remedy under the worker's compensation law.

The Commission received responses to its Guidance Memorandum from national surety groups who expressed concern with the Guidance Memorandum and the Commission's interpretation of §72-306. The Commission, therefore, invited these surety groups to meet with the Commission on November 3, 2015. The group discussion included the following:

- The long-standing relationships between larger national employers and their TPAs could result in undue influence by employers in the adjusting decisions. Attendees conceded that it is responsibility of the surety to control what the TPAs do in adjusting claims.
- Under the requirements of §72-306A, the surety is required to pay the deductible amount, then seek reimbursement from the employer. For the past 20 years, a business model has evolved nationally that envisions employers setting up loss-escrow accounts with their TPAs to pay claims benefits. The model provides the ability for employers to replenish the escrow account, which could lead employers to have more engagement and involvement in the payments, or non-payment, of benefits.
- This escrow model is counter-intuitive to Idaho's worker's compensation statutory requirements.
- Meeting participants assured the Commission that employers' undue influence of benefits payments or the directing of claims adjusting does not occur within their organizations.

The Commission reached no conclusion at the meeting and would continue to take the issue under advisement.

(Public Comment)

Mr. Barber, who represents AIA in Idaho, further explained the loss-escrow account model. The model account is a multi-state fund and the drawing on it is relatively small. The account is periodically replenished and managed by the surety's TPA, who may or may not be chosen by the employer. The surety groups attending the meeting conceded that employers should not be adjusting claims and should not be directing the payments of claims. The surety groups were in agreement that there are a few 'outliers' not reporting correctly and those occurrences are being addressed.

Mr. Skinner would not be in support of this kind of escrow model that allowed for the regular deposit of smaller amounts of money to the escrow account.

Mr. Arnold shared his own experiences of attorneys having difficulty obtaining authority; and payments not being made timely.

The Commission did not seek a recommendation from the Committee, and will continue monitoring these issues.

➤ **Negotiated Rulemaking – IDAPA Rules 17.0206, 17.0207, 17.0208, 17.0210 and 17.0211 (.051) and IC §72-602, §72-702, and §72-806 (Scott McDougall).**

Mr. McDougall provided handouts and presented a status update of the proposed Benefits Rules amendments. The amendments are primarily for the enablement and enactment of EDI claims reporting in the state of Idaho. Mr. McDougall reported that the Commission, along with a 14-member Subcommittee of this body, has worked on EDI for over five years and has worked on EDI rules for two years. The Commission entered into negotiated rulemaking and submitted its rules for consideration by the legislature in the upcoming session.

Commission Secretary Beth Kilian confirmed that no comments were received during the comment period and the time for public hearings requests has passed.

Mr. McDougall reported that the vendor selection will occur subsequent to the legislature's approval of the proposed EDI rules. The Commission will submit the RFP to the Department of Administration's Purchasing division in the spring, depending on final approval of the rules amendments by the legislature.

Mr. Haxby inquired if claims administrators can begin utilizing the current EDI 3.0 Implementation Guide matrix, as posted on the Commission's website, to finalize their configurations.

Mr. McDougall reported that the Commission continues to make internal improvements to the Tables and the Implementation Guide. The Change Log reflects the changes that have been approved. Mr. McDougall cautioned users against programming their systems, pending final outcome of the rules approval by the legislature.

He further reported, in response to Mr. Arnold's inquiry, that EDI 3.0 does not encompass electronic filing of medical documents, nor provides for the filing of judicial documentation through the Commission's Adjudication Division.

Commissioner Limbaugh reported that any decision of the Commission to move towards adoption of an electronic filing system has been held in abeyance pending further exploration and vetting of the State's electronic filing system. The Commission may adopt the State's electronic filing system after fully vetting its system and process.

(Break.)

Updates:

➤ **Industrial Special Indemnity Fund – FY15 Annual Report - James Kile.**

Mr. Kile provided a handout of the ISIF Fiscal Year 2015 Annual Report and summarized its content. Filings are down 25% for the calendar year (*see* page 4). The Fund has been very aggressive in its defense of the requirements under IC §72-332. The Fund has adopted a hybrid model for making payments on lump sum settlements; initially, a cash payment will be made and payments deferred during the SSD period to sustain the liquidity of the Fund (*see* page 6). The traditional LSS payment has been impacted by the increased number of complex cases and the aging workforce. *See* page 8 for the monthly payouts. Mr. Kile reported there is an upward trend on the Average Weekly State Wage ("AWSW"); the AWSW will be increased to \$32 per week. Mr. Kile opined there will be a big impact to employers and sureties next year on assessments (*see* page 11). Last year's total weekly wage was \$689; the 2016 total weekly wage calculation will be \$721.

Since all sureties pay a portion of assessments into the Second Injury Fund, Mr. Haxby inquired whether the Commission has taken a position on what to do with sureties that have

failed to report claims accurately, or have failed to report all premium taxes and policy assessments correctly.

The Commission recognized the ongoing issue; and opined that the premium assessment could go lower, if 'everyone' paid their equal share.

Mr. Kile opined that the Commission is in a tenuous position and many times lacks sufficient knowledge of a surety's lack of reporting until there's an injury.

Chairman Collins thanked Mr. Kile for his report.

Preparation for Future Meetings:

Next Meeting Dates:

February 10, 2016; May 11, 2016; August 10, 2016; and November 9, 2016

Mr. Kenck moved to adjourn, seconded by Mr. Skinner.

There being no further business, the meeting adjourned at 10:56 a.m.