

**Industrial Commission's Advisory Committee  
On Workers' Compensation  
Minutes  
February 11, 2015**

**Members Present**

Mike Batten, Chair  
James Arnold  
Mike Haxby  
Roy Galbreath  
Lisa Kidder Hrobsky  
Larry Kenck  
John Greenfield  
Craig Mello  
Susan Rhoades  
Dr. Paul Collins  
Susan Veltman  
Representative Greg Chaney

**Members Absent**

Gardner Skinner  
Senator John Tippetts

**Industrial Commission**

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

**Opening Remarks and Welcome New Member and Special Member:**

Chairman Mike Batten opened the meeting and called for introductions of Committee Members and public attendees. New Member Lisa Kidder Hrobsky and Special Member Representative Greg Chaney were welcomed to the Advisory Committee. ISIF Manager Jim Kile introduced the Fund's new assistant Kim Murphy.

**Minutes:**

The Minutes of November 12, 2014 were discussed. Mr. Kenck moved to approve the minutes of August 13, 2014 as written, seconded by Mr. Galbreath. The minutes were approved as written.

**Electronic Documents Filing:** (Members: *Chairman Commissioner Baskin; James Arnold; Alan Gardner; and Industrial Commission: Robert Butler, LaDawn Marsters and Cheri Ruch*)

Commissioner Baskin reported that the Subcommittee on Electronic Documents Filing met in December and reviewed the benefits for electronic documents filing and case management of the Commission's adjudication process. The Subcommittee reached consensus that the adjudication process would be eased by the Commission pursuing an inexpensive solution to accept items by email. The Commission is moving forward in that process. In addition, the Commission received an invitation from the Supreme Court to capitalize in the state-wide electronic case management and e-filing system, for implementation this year starting with Twin Falls County. Tyler Technologies is the contractor on the project. Former Court Justice Linda Copple-Trout is leading the project's roll out. The Commission will update the Committee of the status.

**Physician Depositions and Opinions:** (Members: *Chairman James Arnold., Alan Gardner, Mike Haxby, John Greenfield, Woody Richards, Rian VanLeuven, Teresa Cirelli;* Industrial Commission: *Commissioner R. D. Maynard, Patti Vaughn and Terrisa Wyatt*).

Mr. Arnold reported that the Subcommittee met February 10<sup>th</sup> and discussed the absence of physician participation and the unintended consequences to the WC system and litigation process. The following work assignments were identified: (1) IIC Rehabilitation staff will research physicians not currently participating; (2) Attorney Alan Gardner will reach out to St. Luke's General Counsel for physician participation on the Subcommittee; (3) IMA Director of Reimbursement Teresa Cirelli will reach out to the Board to include the Commission at the July Conference; (4) Commissioner Maynard will survey other jurisdictions' handling of this issue; (5) Public Information Specialist Dara Barney will compile materials for dissemination to the various medical groups and physician practices; and (6) Mr. Arnold will follow up with the Association of General Practitioners and the Society of Orthopedic Surgeons for Commission participation at its next conference. The Subcommittee vetted whether these litigation-associated costs should be included in the medical fee schedule; and reached consensus that it would be vetted as a last-resort. The Subcommittee will continue meeting and will move forward in providing physician education of the WC system.

Mr. Arnold thanked Public Information Specialist Dara Barney for her note-taking at the previous meeting.

**Public Comment:**

Dr. Collins opined that most physicians want a simplified and organized system.

Mr. Eidam suggested including two or three physicians familiar with the WC system on the educational visits to facilitate participation from reluctant physician groups.

**Benefits & EDI Rules – IDAPA Rules 17.0206, 17.0207, 17.0208, 17.0210 and 17.0211 (.051) and IC §72-602, §72-702, and §72-806:** (Members: *Chairman Mike Haxby, Darin Monroe, Brad Eidam, Dan Stephens, Gard Skinner, Mike McPeek, Woody Richards, Phil Barber, Rian VanLeuven, Dr. Paul Collins, Tamie Bremer;* Industrial Commission: *Commissioner R.D. Maynard, Commissioner Baskin, Blair Jaynes, Scott McDougall, Claire Sharp-Minert; Marry Stumpp, Faith Cox, and Matt Vook*).

Mr. Haxby reported that the Subcommittees on EDI Rules and Benefits Rules met in March 2014 to amend the Idaho statutes and IDAPA rules to allow the electronic reporting of claims. The separate Subcommittees were subsequently merged to one Benefits & EDI Rules Subcommittee at the last full Committee meeting. The newly merged Subcommittee met January 21<sup>st</sup> and 27<sup>th</sup>, 2015 and vetted the proposed rules and statutes amendments (*see* handout – Draft 4). EDI Release 3.0 is mandated to start January 1, 2017 for the reporting to the Commission of FROIs and SROIs. The Change of Status (“COS”) notices to the Commission will continue to be sent in paper format to injured workers and filed electronically with the Commission. All claims filed prior to January 1, 2017 will be legacy claims and claims filed subsequent will be EDI-only claims reported to the Commission. He summarized the Commission's proposed timeline and the

scope of work (*see* handout). The Request for Proposal is anticipated to go out this June. The Commission has identified 15 or 17 of the 45 national standard reporting conditions to what is currently reported in paper form to complete the Implementation Guide by late July. The Commission has not determined the amount of test data it will require. He expressed concern of the aggressive timeline and the “unknowns,” such as, ongoing training, associated IT costs, unknown vendor, and user-friendly website. He also expressed concern that low-volume carriers lack sufficient resources and could be burdened with the complexity of implementing EDI and understanding the IDAPA rules.

Mr. McDougall reported that training prior and subsequent to implementation of EDI Release 3.0 is built into the Request for Proposal.

**Public Comment:**

Sedgwick maintains its own test database for these types of data testing.

There was inquiry whether EDI implementation included the cessation of all paper filings to allow the electronic transmission of all information to injured workers or their representative(s).

Mr. Haxby reported that the Subcommittee did not discuss the cessation of all paper filings, nor discuss the inclusion of legacy claims as part of the electronic reporting system. The Commission reported that there are approximately 7,000 time-loss legacy claims in the system, which is roughly 16% of total claims. The proposed rule amendment of IDAPA Rule 17.0211.051 includes Mr. Kane’s requested language that would provide TPAs the ability to mail basic correspondence through out-of-state processing centers, but the reporting of a COS and any claims decision-making would remain a requirement of the in-state location.

There was inquiry whether insurers would be funding the project and any related costs to submit data. There was inquiry whether there is an impact to claimants or claimants’ counsel who individually file claims with the Commission and have incomplete insurer information.

Mr. McDougall reported that the selected vendor will be paid by the Commission’s dedicated funds. The Commission will continue to accept those individual claims and enter the insurer data through the portal system on behalf of non-insured employers, claimants or claimants counsel. EDI will provide the Commission an accurate, one-time data entry process.

Mr. Haxby reported that the insurance industry has pushed for underwriting insurer information on the FROIs and on all state reports well in advance of EDI. He thanked the Commission for the committed staff resources and leadership in moving forward with a paperless electronic environment. He also thanked the Subcommittee for their input in the initial rules drafting. The Subcommittee remains committed to completing the tasks for EDI reporting and will meet in May to vet the remaining rules amendments to bring to the full Committee for vetting and approval at its August meeting and presentation in the next legislative session.

***(Break.)***

## **Industrial Commission Report:**

### **Status of 2015 Legislation – Negotiated Rulemaking Pursuant to IC §67-5220.**

Commissioner Limbaugh reported that the Commission was admonished before the Senate Commerce & Human Resources Committee at the recent rules presentation for not using *negotiated rulemaking* and was reminded that it is feasible for agencies to conduct negotiated rulemaking. The Commission is not circumventing this Committee or the Subcommittees that it has relied on as “interested parties” for the past 15 years in its rulemaking process. The system has worked very well; but, as part of negotiated rulemaking, the Commission recognizes the need to involve “everyone” concurrently in the development of rules to maintain a good working process.

Commissioner Limbaugh will inform Representative Hartgen that the Commission will conduct negotiated rulemaking going forward when promulgating rules.

### **Legislative Update:**

Commissioner Limbaugh provided the following legislative update:

Senate Bill 1001 – Workplace Safety. Senate Bill 1001 (Workplace Safety) was printed and will be heard before the Senate Commerce & Human Resources Committee after completion of the rules presentations. The proposed bill took a year to develop. The Commission does not foresee any problems with passage of the bill.

Commissioner Limbaugh thanked Subcommittee Chairman Roy Galbreath and the various stakeholders for their patience and assistance vetting the bill’s language.

HB 55 - Peace Officer Disability Fund. House Bill 55 (Peace Officer and Detention Officer Temporary Disability Act) removes the sunset clause of the Peace Officer Fund. The new language would allow the creation a lot of claims of injuries sustained during training programs. Under the Fund’s current system some revenue is generated annually. The Peace Officers want to include benefits reimbursement in the Fund for officers injured on-the-job with time loss (TTD) of six months or more from work. The Peace Officers also envision adding salary maintenance costs for health and retirement benefits to the Fund that agencies currently cover. The Commission has not determined the amount of available Fund revenues for ongoing salary payments to an injured officer for a six-month period.

17.0209.032 Med Fees – Temporary Rule. The Commission adopted a temporary rule (Docket No. 17.02.09-1501) regarding payments of hospital outpatient and ambulatory surgery center services (ASC). There was not enough time for this Committee to vet the temporary rule in order to meet the 2015 legislative filing deadline. Commissioner Limbaugh deferred to Med Fee Analyst Patti Vaughn to elaborate.

Ms. Vaughn reported that the Commission submitted its proposed rule (Docket No. 17.02.09-1401) in the last rulemaking calendar. Subsequently, CMS finalized its outpatient

payment standards and introduced a new status indicator (J1). CMS is bundling more services into one payment and, as the rule language is currently written, would have significantly increased payments for certain surgical procedures. The temporary rule was made effective January 1, 2015 that extended the 2014 relative weights for the APCs to (i) avoid running into J1 indicators, (ii) to stabilize payments, and (iii) to allow time to revise the language.

The Commission desires alignment with the new Medicare policies and will be considering a permanent fix in the related rule language.

PFFI - Firefighters' Legislation. Commissioner Limbaugh reported that the Committee reached no consensus relating to the Firefighters' legislation as presented. Representative Hartgen, Chairman of the House Commerce & HR Committee ("House Committee"), is interested in the impact to first responders and held an informal meeting February 5<sup>th</sup> to gather information about workers' compensation for first responders. The House Committee will decide the direction and timing going forward; no legislation is scheduled this year. The Commission is not aware of any new legislation being presented to the IIC's Advisory Committee this year.

Representative Chaney who is a Member of the House Commerce & HR Committee reported that a broad spectrum of stakeholders testified and shared their perspectives of the issues. The meeting was very informative and the discussions resembled consensus of the issues moving forward.

Mr. Haxby was encouraged by the House Committee's willingness to address the issues.

Commissioner Limbaugh had no further legislative updates to report.

Update: Appellate Meeting with S. Ct. RE: IC §72-718 & I.A.R. 11B:

Commissioner Baskin reported that the Supreme Court organized an Appellate Subcommittee comprised of claimants' bar, defense bar, the Commission's Referee Mike Powers and Commissioner Baskin, and Justices Burdick and Eismann to find a mechanism for appeals of Commission decisions to the Supreme Court on the threshold issue of compensability. IC §72-718 and Idaho Appellate Rule 11B "mirror" each other. Commissioner Baskin summarized the Court's decision in *Jensen v. Pillsbury*. The Court is aware that the practice established in *Jensen* has periodically caused some issues when it is advantageous for the Commission and the parties to bifurcate hearings on cases.

The Court's two proposed rules amendments I.A.R. 11B and I.A.R. 12 (*see* handout) are exclusive in nature. I.A.R. 11B would allow an appeal from any interlocutory order that is final as to a threshold issue of compensability. I.A.R. 12 would relax the standards of permission by appeal and have the Commission be the gatekeeper of the types of interlocutory appeals to send forward to the Court. The question on the compensability threshold issue: \*What is the claimant's remedy under IC §72-735 to enforce an award of the Commission when an application to the district court can only be made from an order from which no appeal has been taken? \*Under §72-735, how can an order be enforced by a district court?

Stakeholders' comments reveal that claimant's bar generally opposes any change and defense bar generally favors the change.

Representative Chaney expressed concern of the potential bar to a judicial appeal from an administrative remedy.

Commissioner Baskin reported that appeals from the Commission to the Supreme Court are constitutionally mandated. The Supreme Court considered appeals to the Court of Appeals or appeals to a "special master," but opposed a constitutional change. The Court recognized the importance of these critical threshold appeals. The Appellate Subcommittee's next meeting is February 23<sup>rd</sup>. The members will review the stakeholder comments and learn more about the Court's designs to beneficially apply the rule or rules. The Court should issue a response this month.

Commissioner Baskin had no further report.

Update: EDI Claims Release 3.0: Mr. McDougall reported that the Commission's goal is to mandate EDI 3.0 by January 1, 2017 for the electronic reporting of FROIs and SROIs to the Commission to reduce and/or eliminate paper filings and duplicative data entry. The information reported in EDI is the same information currently being requested in paper form. The Commission recognizes that the preliminary EDI 3.0 schedule is aggressive; and understands that a missed milestone of more than a few days could add a year to the implementation date. The Commission is working diligently to complete the Request for Proposal and Purchase Service Order to select a vendor who will give input on the Implementation Guide. The EDI Rules Subcommittee has been working on the proposed rule amendments that will provide the details and incorporate by reference the Guide and the statutory amendments that enable EDI. The remaining issue is the low-volume entities.

Mr. McDougall thanked the Commission's IT Staff for their work the past five years in developing the tables for EDI. There are a few cell formatting issues that remain before the Implementation Guide is published to the Commission's website.

Update: Industrial Special Indemnity Fund: Mr. Kile presented the ISIF report and summarized its contents: The assessment is provided each year to the Commission and explains the funding mechanism. The past few years have stabilized, except for a few bumps. There have been a lot of claims this year; and the increase of monthly benefits continues to trend upwards. The system seems to be working well, and there is some cash remaining. Mr. Kile thanked everyone for their time and extended an invitation to contact him or Kim Murphy with specific questions.

There was no public comment.

### **Election(s) and Introductions of Nominee(s):**

Nominee information and election ballots were distributed to voting members of the Committee.

Subcommittee Chairman Galbreath presented the Nominations Subcommittee report. Two vacancies were created by the recent retirements and resignations to the Commission of Rian Van Leuven, as Representative of Labor; and James Alcorn, as Representative of the Insurance Industry. The Subcommittee concurred with Mr. Van Leuven's recommendation that Aaron White would be the logical replacement as Representative of Labor. Mr. White was introduced at the previous Committee meeting and accepted the nominee application. The Subcommittee concurred that it would be appropriate for someone from the State Fund to fulfill Mr. Alcorn's term as Representative of the Insurance Industry on the Committee. The Subcommittee reached out to Connie Barnett, the new Fund Manager, to fulfill the vacancy. Mr. Haxby moved to nominate Fund Manager Connie Barnett, as Representative of the Insurance Industry, to fulfill the vacancy; seconded by Ms. Veltman. Ms. Barnett accepted the nomination and thanked the members for the nomination and the opportunity to participate on the Committee. She provided a brief summary of her professional experience; and will provide the Commission Secretary her biographical information for the record.

The Nominations Subcommittee is not aware of other nominees interested in the two vacant positions. No additional nominations were submitted from the floor. There was discussion of the ballot process for write-in candidates. The ballots were collected.

Mr. Galbreath thanked everyone for their participation.

#### **Other Issues/Announcements:**

IIC Director Mindy Montgomery informed the members that the parking spaces at the St. Luke's building are no longer available for Commission use. The Commission is exploring parking alternatives at the parking lot next to the Ram Restaurant for visitors to the agency. The Commission will continue monitoring the parking situation and will post on its website a notice of the parking situation.

Ms. Montgomery thanked Commission staff for making spaces available for attendees of today's Committee meeting.

#### **Preparation for Future Meetings:**

##### Next Meeting Dates:

**May 13, 2015**  
**August 12, 2015**  
**November 18, 2015**

There being no further business, Mr. Arnold moved to adjourn the meeting, seconded by Mr. Galbreath.

The meeting was adjourned at 11:40 a.m.