

**Industrial Commission's Advisory Committee
On Workers' Compensation
Minutes
May 13, 2015**

Members Present

Mike Batten, Chair
Mike Haxby
Gardner Skinner
John Greenfield
Susan Rhoades
Dr. Paul Collins
Susan Veltman
Representative Greg Chaney

Industrial Commission

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

Members Absent

James Arnold
Lisa Kidder Hrobsky
Larry Kenck
Roy Galbreath
Craig Mello
Senator John Tippetts

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 Members Connie Barnett and Aaron White were welcomed.

Minutes:

The Minutes of February 11, 2015 were presented for review and approval. Mr. Haxby moved to approve the minutes of February 11, 2015 as written, seconded by Dr. Collins. The minutes were approved as written.

Subcommittee Reports:

➤ **Healthcare – Med Fee Schedule IDAPA 17.0209 (Patti Vaughn).** (Members: *Chairperson Patti Vaughn, Mike Haxby, Brad Street, Larry Tisdale, Paulette Boyle, Teresa Cirelli, Woody Richards, Dr. Paul Collins, Pam Eaton; Ex-Officio: Senator Dan Schmidt; Industrial Commission: Commissioner Tom Limbaugh, Director Mindy Montgomery*) IIC Med Fee Analyst Patti Vaughn reported the Subcommittee met on two occasions since the February Advisory Committee meeting; and summarized the meeting discussions:

- March 17th Meeting.
 - The Subcommittee welcomed new members. The meeting was an informational discussion of the med fee schedule and discussion of the process and requirements for negotiated rulemaking.
 - The rulemaking process will need to start earlier to allow adequate time for public participation.
 - The role of the Subcommittee is unchanged since the Commission relies on the expertise of members.
 - The 2016 rulemaking discussions will include updating the physician fee schedule and review of the Medicare outpatient coding changes with Medicare C-APCs.
 - The Commission adopted a temporary rule to replace the rule that expires on July 1st.

- April 20th Meeting.
 - Ms. Vaughn presented a summary analysis of the 2014 physician data provided by the State Insurance Fund, which showed the data largely unchanged.
 - On-going Issue: Some family physicians are not charging the allowable fee schedule rate, which makes it difficult to raise the physician fees. The goal is to reduce the gap in the rate being paid between surgeons and family practitioners.
 - The WCRI National Report shows Idaho's fee schedule ranks 2nd highest in the nation for the allowable primary office visit code.
 - The question posed: How do we determine the appropriate rate for our market? The Subcommittee reviewed Montana's statutory language and agreed the Commission should propose similar legislation to have access to commercial insurance rates data for establishing rates in the med fee schedule. Montana and Idaho have common insurers who have accepted the Montana statute. The Commission is seeking support from commercial insurers for the proposed legislation.

Ms. Vaughn reported that there is a Negotiated Rulemaking Meeting scheduled for Tuesday June 2nd at 2:00pm that will include members of the Healthcare Subcommittee and public participants. The *Notice of Intent to Promulgate Rules – Negotiated Rulemaking* was published in the May Bulletin. We are currently in the response period for negotiated rulemaking.

➤ **Benefits & EDI Rules (Mike Haxby).** (Members: *Chairman Mike Haxby, Darin Monroe, Brad Eidam, Dan Stephens, Gard Skinner, Mike McPeck, 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 Benefits Rules and EDI Rules Subcommittees were combined to form one Subcommittee to vet applicable rules for meeting the National Standard for EDI Release 3.0 and for implementation in the next legislative session. Drafts of the several tables and the Implementation Guide posted to the Commission's website on or about April 14, 2015. The tables and guide will continue to be modified and updated.

Mr. Haxby is relatively pleased with the tables and implementation guide drafts; and thanked Mr. Dan Stephens and Commission staff Mary Stumpp and Matt Vook, and Deputy Attorney General Blair Jaynes for their review of the tables and identifying and listing the MTC codes currently applied in workers' compensation. The Commission has invested two or three years into the project, well ahead of the industry.

Mr. McDougall clarified that the coding for the reporting of medicals on the Summary of Payments (SOP) for EDI will be collapsed into one code, the same codes as currently required.

Mr. Haxby expressed some reluctance in working with two separate systems – EDI Release 3.0 and legacy claims reporting; however, he is optimistic that EDI reporting is the way of the future for data exchange. He encouraged claims administrators and insurance companies to become familiar with the national standards and processes for managing the different systems for reporting to the Industrial Commission. EDI Release 3.0 will go into effect July 1, 2017.

The Notices of Intent to Promulgate Rules – Negotiated Rulemaking published in the May Bulletin; the deadline for interested parties to provide comment to the Commission is May 27th.

Updates:

- **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:**

Mr. McDougall reported that drafts of the Tables and Implementation Guide for electronic exchange of information (“EDI”) posted to the Commission's website on or about April 14, 2015. The Commission understands it is a fairly complex system; and will continue to accept suggestions for the tables and guide. The Commission's continuing philosophy for implementing EDI is not to require anything in EDI that is not already being reported to the Industrial Commission. The agreement reached for older claims was to require certain MTC codes information be reported by letter to the Commission.

Mr. McDougall reported that IAIABC developed the National Standard for EDI; and Idaho selected portions of the standard to apply for the Idaho standard. Development of the Idaho standard for the tables has taken three years. Reporting to the Commission will be through a secure server. As changes are made by the National Standard, updates to the system will be made but may take up to six months to implement. The Commission will be responsible for updating the tables and collating the changes. A *Change Log* has been created for this purpose and will be available on the Commission's website.

Mr. McDougall reported that the mandate date for EDI Release 3.0 is July 1, 2107. There will be two systems -- legacy claims for FROIs filed prior to July 1, 2017, and FROIs filed via EDI as of July 1, 2017 with some exceptions. The Commission estimates that legacy claims will diminish after five years and 99% of all reporting will be through EDI.

Mr. McDougall reported that the Commission entered into negotiated rulemaking on the Benefits Rules for EDI. Director Montgomery and Mr. McDougall met with the Commission's Analyst who requested clarification of the rules amendments. The Commission was approved to go forward with the proposed rules and enable legislation to be approved immediately. The Commission submitted an RFP to the Department of Administration's Purchasing Division to obtain a vendor. There have also been some additions made to the Implementation Guide. There will be approximately 14 months to prepare for EDI implementation.

Mr. Haxby reminded insurers and claims administrators of their responsibility to obtain and configure the software to do the reporting based on the national standard. He expressed concern for smaller self-insured employers who will need to purchase software and come up with own solutions to comply.

New Proposed Legislation IC §72-803 and IC §72-803A – Medical Fee Schedule Authority:

Med Fee Analyst Patti Vaughn reported that the Commission is required under IC §72-803 to review annually the med fee schedule and set workers' compensation rates. The Commission has experienced an ongoing issue of a lack of data for setting workers' compensation rates in its med fee schedule; and is not privy to commercial insurers' rates data and is reluctant to rely on the data that is provided for a lack of transparency. The Healthcare Subcommittee agreed it was time to begin conversations with commercial insurers and adopt something similar language to that of the State of Montana, wherein statute requires that workers' compensation rates can not be greater than 10% above the top given group health insurers.

The Commission requested Deputy Attorney General Blair Jaynes to draft proposed language amendments to IC § 72-803, a copy of which is included in the materials packets. The first section on RVRBS was kept intact, but adds an additional provision that requires insurers or TPAs to provide group health information to the Commission. The information would be kept confidential and not released to third parties without the express prior written consent. The Commission could release a statistical analysis, so long as it does not reveal or allow the source to be readily apparent.

The Commission requested the Committee Members review of the proposed draft and provide comments to the Commission.

Mr. Richards agreed conceptually with the idea, but he felt that "often times the devil is in the details." He suggested the Commission set up a meeting with those health insurers who had voiced no real objections and had provided him their preliminary comments.

Mr. Haxby thanked Mr. Richards for his information and commended the stakeholders for their work on this issue over the past several years. His experience has been that healthcare reimbursement methods fluctuate and affect market costs; and that as much as 70% of workers' compensation claims go towards payments of medical costs. His experience also shows that there are many providers whose customary charge is less than the allowable charge; and our codes have some of the highest allowable rates. There will be upcoming changes made to the RSV tables that could make the current IDAPA rule obsolete. The State of Montana had faced the same issues as Idaho, but began enacting reforms in 2011. He expressed his support for the Commission to meet with commercial insurers on the proposed legislation; and encouraged fellow Committee members to offer their support as well.

Ms. Vaughn agreed there would be value in meeting with insurers to define the parameters; and concurred with Mr. Haxby's assessment. She was informed by her counterpart in Montana that their statute only requires insurers provide physician data, but hospital data is being provided on a voluntary basis; and Montana's reforms are working well.

The Commission will reach out to the commercial insurer group to set up a meeting and discuss the proposed legislation.

(Break.)

Industrial Commission Report:

Update: Industrial Commission Appellate Meeting (Commissioner Baskin).

Commissioner Baskin summarized the Supreme Court's decision for revising the Appellate Rules relating to appeals from any final decisions of the Industrial Commission, pursuant to IC §72-718. The Court's decision in *Jenson v Pillsbury* has created periodic issues when it's advantageous for parties to bifurcate hearings on cases. In *Jensen*, Attorney Alan Hull filed with the Court for a notice of appeal, pursuant to IC §72-735 that deals with enforcement of awards issued by the Commission. The Supreme Court felt there was some inequity in the current rule, and convened a Subcommittee led by Justices Burdick and Eismann that included attorneys from the workers' compensation arena: Brad Eidam, Dick Owen, Blake Hall, David Gardner, Jim Ford, the Commission's Referee Mike Powers and Commissioner Tom Baskin. The Subcommittee held a number of meetings. The ^{New} Rule 12.3 provides for an expedited appeals process; and appoints the Commission as the "gatekeeper" for appeals to the Supreme Court on the issue of threshold compensability.

Public Comments:

Dr. Collins opined that the new rule places more of a burden on the Commission.

Mr. Haxby expressed appreciation that the issue is very complex; however, he questioned the Court's decision giving full authority to the Commission to make decisions for appeal, as well as being the "gatekeeper" for appeals to the Supreme Court.

Commissioner Baskin reported that he recently learned that the new rule becomes effective July 1, 2015 by Order dated April 23, 2015 (*see* the handout provided in the materials of Rule 12.3). He is assured that the final work product captures most of the discussions of the Appellate Subcommittee. The Order and relevant information will be available in the Bar's June Advocate and electronically distributed in the next State Bar Bulletin.

Legislative Update (Commissioner Limbaugh):

Commissioner Limbaugh informed the Committee that the Commission is undertaking negotiated rulemaking and summarized the negotiated rulemaking process.

The following legislative update was provided:

Senate Bill 1168: Senate Bill 1168 passed resulting in a permanent reduction in the premium tax on workers' compensation policies from 2.5% to 2%. SB1168 was not initiated by the Commission; however, the Commission was invited by Senator Cameron to discuss the premium tax reduction. The March collections were higher than originally anticipated so the Commission had intended to run a late bill extending the tax reduction that was to expire in December. Initially the Commission had no concerns of the revenues; however, SB1192 was introduced where the Joint Finance Committee was requesting \$3M for appropriation from the Commission's dedicated fund to the Department of Labor for its industry sector grants program. The \$3M was a line-item veto by Governor Otter. The Governor's veto letter stated, "There is no logical or policy nexus between the Industrial Commission's program benefitting workers injured on the job and the Department of Labor's workforce development efforts."

Simultaneous to the introductions of SB1168 and SB1192, the State Insurance Fund filed for a refund of approximately \$760,000 in overpayment of premium taxes for FYs2012 and 2013; a refund of \$757,309 was issued to the State Fund.

The Commission is satisfied that the permanent reduction in premium tax for workers' compensation policies from 2.5% to 2% will not impact the administration fund. Last year's revenues came in a little above forecast; the Commission will continue to monitor the administration fund balance.

Senate Bill 1001 – Workplace Safety: SB1001 passed and will become law on July 1, 2015. This Committee assisted the Commission with the workplace safety legislation. The Commission will repeal its rules on safety and the logging safety rules. The Division of Building Safety will adopt new safety rules and logging safety rules within their purview. The safety program will continue to be funded from the Commission from the collections of premium tax.

Senate Bill 1075 - Clarification of Agricultural Workers: SB1075 clarifies that prisoners working in agricultural work are not employees covered under the Workers' Compensation Act. There is a federal program available under contract that requires agricultural employers to provide workers' compensation coverage for prisoners. The Commission opined that this could pave the way for tort action suits.

PFFI - FireFighters' Bill – IC §72-438 – Occupational Diseases: The Firefighters introduced legislation on the rebuttal presumption for cancers. Representative Hartgen, Chairman of the House Commerce HR Committee, held an open-discussion meeting on the legislation; and was desirous the bill be referred to the Office of Performance Evaluations for a study. Representative Cheney, a member of our Advisory Committee and also a member of the House Commerce HR Committee, expressed his support for an evaluation of the legislation. The Commission is not aware whether the bill was selected for analysis by the Office of Performance Evaluations. The Commission will follow up with Representative Hartgen whether there is plan next year on the firefighter's legislation.

Some Advisory Committee members expressed reluctance in forming another Subcommittee to further vet the issue.

Public Comments:

The question was posed: Was the permanent reduction from 2.5% to 2% in premium tax also included in assessments to self-insured employers? Commissioner Limbaugh assured the State Fund that was the case. The Commission encouraged use of the E-mod experience as a helpful tool for calculating premium tax.

Mr. George Parham of the State Insurance Fund clarified the justification for the Commission's refund to the State Fund on the overpayment in premium tax assessments for FYs 2012 and 2013. The Fund implemented new computer software that treated the deposit premium as a "collateral" deposit for which the Department of Insurance ("DOI") construed as a liability. The DOI stated in its Opinion of April 29th that the deposit was improperly regarded as a written premium and not subject to a tax, either by the Industrial Commission or the DOI; it was an overpayment; not an overage or a surplus.

Other Issues/Announcements:

Department of Insurance Rule Change (Mike Haxby). Mr. Haxby informed Members that the Department of Insurance amended its rule for independent adjusters to obtain continuing education requirements to secure and renew independent adjusting licensees. Independent adjusters will be required to obtain 24 hours of continuing education. Although the Commission's Annual Seminar offers continuing education credits, the adjusting community may be looking to the Commission for additional assistance in obtaining other educational credits.

NBI Advanced Workers' Compensation Seminar (James Kile). Mr. Kile announced that the National Business Institute is presenting a seminar designed for attorneys, insurers and practitioners of the workers' compensation arena on Thursday, July 16th. The course materials are designed for people who have a working knowledge of the workers' compensation system. The course also includes a special session on the workings of the Second Injury Fund. Mr. Kile will be joined by attorneys Eric Bailey and Alan Gardner. Registration pamphlets were provided to meeting attendees.

Preparation for Future Meetings:

Discussion was held of the elections and nominees process for positions whose terms expire this fall: Committee Chair, a one-year term; (1) Representative of Labor; (1) Employer Representative; (1) Insurance Representative; and (1) Representative of the Healthcare Community Representing Hospitals. Mr. White agreed to serve on the Nominations Subcommittee replacing Rian Van Leuven. Ms. Kilian will check on the availability of the Commission's conference room for June 11th, 22nd, or 24th; and distribute a meeting invitation to the Subcommittee to meet and develop a plan of action for upcoming elections.

Next Meeting Dates: **August 12, 2015 / November 18, 2015**

Recognition Award – Steve Millard (Commissioner R.D. Maynard, Chairman):

Commission Chairman R.D. Maynard presented Steve Millard with the Service Recognition Award for his dedication and service to the IIC Advisory Committee from 2000 through 2014. Chairman Maynard expressed his appreciation, on behalf of the Commission and the Committee, of Mr. Millard's assistance with implementing the medical fee schedule.

Mr. Millard thanked the Committee and the Commission for today's invitation and for the honor of serving. He attributed the success of the Advisory Committee to the leadership of its stakeholders. Mr. Millard's first experience with the Commission was before Commissioner Will Defenbach representing employers in unemployment claims for the Hospital Association. Mr. Millard is hopeful the Advisory Committee will continue in its role.

There being no further business, Mr. Skinner moved to adjourn the meeting, seconded by Mr. Haxby. The meeting was adjourned at 11:25 a.m.