

**Industrial Commission's Advisory Committee
On Workers' Compensation
Minutes
August 12, 2015**

Members Present

Mike Batten, Chair
James Arnold
Connie Barnett
Roy Galbreath
Mike Haxby
Larry Kenck
Gardner Skinner
John Greenfield
Dr. Paul Collins
Susan Veltman
Aaron White
Representative Greg Chaney

Members Absent

Craig Mello
Susan Rhoades
Senator John Tippetts

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 Mike Batten opened the meeting and called for introductions of Committee Members and public attendees.

Nominations Subcommittee Chairman Roy Galbreath requested a change in the agenda order to introduce and welcome Mr. Brian Whitlock, a nominee as a Representative of the Hospital Community on today's ballot for elections of new members.

Introduction of Brian Whitlock, Nominee as Representative of Hospitals:

Mr. Whitlock, who was recently appointed as the new Director of the Idaho Hospital Association, summarized his professional experience and background. He welcomed this opportunity to serve in an advisory capacity to this Committee and the Commission. Mr. Whitlock's bio was provided in the meeting packets.

Minutes:

The Minutes of May 13, 2015 were presented for review and approval. Dr. Collins moved to approve the minutes of May 13, 2015 as written, seconded by Ms. Veltman. The minutes were approved as written.

Updates:

- **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 presented the proposed Benefits Rules amendments, which are primarily for the enablement and enactment of EDI for claims handling in the state of Idaho. Handouts of the rule changes were provided. Mr. McDougall reported that Notices for Negotiated Rulemaking were published in the May Bulletin; and the Commission conducted Negotiated Rulemaking of the Benefits rules on June 11, 2015. The meeting was attended primarily by Subcommittee Members of this body, who also helped develop these rules, and by representatives of the State Insurance Fund. Comments received at the meeting were incorporated into the draft language. The Commission finalized negotiated rulemaking and posted on its website the letter closing negotiated rulemaking, a copy of the same is included in today's meeting materials.

Benefits staff met with the Office of the Administrative Rules Coordinator who endorsed the rules amendments and who also suggested the rules be alphabetized in Chapters 10 and 11.

➤ **EDI Implementation Guide.**

Mr. McDougall reported that the mandate for the electronic data interchange for claims in the state of Idaho is July 1, 2017. The Commission posted the draft EDI Implementation Guide, Version 1.1, to the IIC website three months ago, along with the technical tables; and most recently a new draft Version 1.2 of the Guide was posted, as well as a 'Change Log' that documents any substantive changes made to the Guide (last change was on April 16th) was also posted to the IIC website. The Commission's Benefits staff is working on different claims adjusting scenarios to demonstrate to partners the handling of a claim in EDI. The Commission plans to contract with a vendor for EDI submissions; and is working with the Division of Purchasing for their recommendations to the Request for Proposal.

Mr. McDougall clarified the Commission is not involved in the medical EDI process.

➤ **Negotiated Rulemaking – IDAPA Rules 17.0209 (Patti Vaughn).**

Ms. Vaughn presented the proposed rule amendments and summarized the Negotiated Rulemaking process for the Medical Fee Schedule. The Commission conducted meetings of Negotiated Rulemaking in Boise on June 2, 2015 and June 17, 2015. Participants included several physicians or their office staff; IHA representatives, who also helped distribute information to physicians interested in participating or attending; and anyone who contacted the Commission and requested participation were included in the distribution list and provided any updates. The Notice of Negotiated Rulemaking was published in the May Bulletin and meeting dates/times was posted to the IIC website. Pending further opportunity of this Committee to offer feedback, the Negotiated Rulemaking has remained opened.

Physician Fee Schedule. Ms. Vaughn reported as follows:

- Reduce the gap between Surgery Categories and Medicine Service Categories. Participants continued efforts to reduce the gap between the surgery categories and the medicine service categories. WCRI reported that amounts for office

visit codes under Idaho's Med Fee Schedule are the second highest in the nation. The State Fund data showed that the med fee schedule amount is higher than what most Idaho physicians are even billing; and that data was backed by NCCI's 2013 Report indicating that the typical office visit paid at \$123, but the allowable amount at the fee schedule rate is \$142.80. Idaho's rates are higher than what most other states are allowing for their med fee schedules under the EMI codes.

- WC Patient Care Creates Extra Paperwork. Some physicians expressed concern that worker's compensation patients require 'extra' paperwork for their care. It was suggested physicians use alternative codes for office visits in order to capture the additional time involved for their WC cases. However, there was recollection from some participants that when the physician fee rates were initially created, the reimbursement amounts for additional time spent by physicians on WC cases were accounted for in the fee rate. Some participants opined that proper coding for office visits could alleviate the issue for physicians.

- Conversion Factors. The table of conversion factors can be found at page 3 of IDAPA Rule 17.0209. The draft language does not include changes to the conversion factors.

- Out-of-State Physicians. The fee schedule has no provision specifically to address treatment by out-of-state physicians. The Commission set one standard under the med fee dispute process; payments of disputed medicals, includes out-of-state physicians, are typically at the Idaho med fee rates.

Hospitals and Other Facilities. Ms. Vaughn reported that due to a change in the market condition and perception of 'unfairness' to other hospitals providing similar services, participants reached an agreement to eliminate the exceptional standard, which allowed 90% of reasonable charge under the facilities portion for rehabilitation hospitals. She summarized the rule changes as follows:

- At page 2, the definition of 'Hospital' was amended to include 'rehabilitation' service.
- At page 2, the definition of 'Rehabilitation Hospital' was eliminated.
- A slight modification was made to a 'provider of rehabilitation services.'

Adoption and submission of the rule by the Commission needs to occur no later than September 4, 2015. The new rule and a summary of the changes will be posted to the Commission's website.

Ms. Vaughn requested further information or additional comments from the Advisory Committee be provided within the next few days. The Rehabilitation Hospital in Post Falls, Idaho has not been contacted about the proposed rule amendment.

It was suggested the Commission explore implementing a one-stop resource system that would allow Idaho to 'draw' from other states' fees and charges.

Acute Care Hospitals on Outpatient. Ms. Vaughn reported that Medicare has been increasing bundling of outpatient services into a single payment code. CMS adopted a new rule that introduced a new J-1 status code that would significantly increase payments for many orthopedic procedures when applied in our rule. Participants reviewed language to better align with the new rule changes adopted by CMS (*see* page 5 of the proposed draft rule). Ms. Vaughn summarized the issues and proposed rules amendments as follows:

- The Commission adopted a Temporary Rule extending the 2014 relative weights to allow time for a fix when a J-1 is introduced. Under the existing fee schedule two main procedures would be paid at 100%; a J-1 code would be paid at 100%, the first T code would also be paid at 100%, and the secondary T code would be reduced 50%.
- On June 17th, participants of Negotiated Rulemaking reached an agreement when there is a J-1 code, the first T code would be reduced; and the same treatment would apply for Q codes.
- On July 8th CMS released their 2016 proposed rule that includes another new status code for laboratory services. The new status code increases packaging of ancillary services that has created a conflict with the language in the current draft rule.
- On July 17th the Commission distributed a draft rule of the new potential conflict; and offered an additional Negotiated Rulemaking meeting, if interested parties requested one. The Commission received no response to the draft rules amendments; nor requests for an additional meeting.
- The draft rule needs to be submitted prior to September 4th; however, CMS has yet to finalize their rule.
- The current draft language could result in confusion of how payments should be made using the new status codes.

Suggestion to White-Wash Rule. Ms. Vaughn suggested white-washing the language, by adopting the APC System for outpatient services, similar to Montana's language.

- At the June 17th meeting, representatives of the hospitals expressed opposition to white-washing the language, specifically with respect to the T codes. However, St. Luke's Representative Kathy Ball volunteered to conduct an analysis and report to the Commission her findings. To date, the Commission has received no analysis from St. Luke's.
- The Commission will continue to operate under the 2014 weights.

Mr. Whitlock offered to reach out to St. Luke's representatives and learn the status of their analysis and what language in rule would be agreeable to the hospital.

The State Insurance Fund and Intermountain Claims expressed general agreement with white-washing the rule.

The Commission cautioned against simply white-washing the rule. Under Negotiated Rulemaking, the hospitals would need opportunity to conduct their analysis of the new status codes; and additional time would be granted for interested parties to participate. The Commission shared Mr. White's concern to have industry consensus before moving forward with the proposed rule amendments in the coming session.

Representative Cheney inquired whether white-washing the rule would generate higher expenses for insurers once the new Medicare codes are incorporated in the coming year.

The State Insurance Fund said the challenge will be in updating computer systems with the new industry codes, specifically with respect to the different J code layers. However, advance notice to programmers of industry code changes could decrease expenditures for insurers.

Discussion held whether the new CMS information changes the general consensus to accept the current rule language as presented today. Questions posed: Are payers going to know what to pay? Will hospitals know what they are going to receive?

Messrs. Kenck and Haxby are inclined to accept the current rules draft language; it will allow time for the new IHA representative to become familiar with the issues facing the Healthcare Subcommittee.

Mr. Jaynes opined "*It's better to live with the devil you know about, than the one you're not sure about.*"

Ms. Vaughn reported that if no changes were made to the existing rule language, then the payments would be inflated; essentially, J-1 and T codes would be paid at 100% and some ancillary services could be billed with the primary procedures.

Ms. Vaughn will provide other state language for Committee Members consideration.

- Temporary Rule 17.0209-1503. Ms. Vaughn reported that the Commission adopted a temporary rule that took effect July 1, 2015 and remains in effect to *sine die*, unless the legislature extends to next July.

Mr. Haxby favored adopting the proposed language knowing that programming changes need to be implemented to capture the 50% discount; Ms. Barnett agreed with his assessment of the situation.

General consensus was reached by Committee Members to adopt the rule in the current language form.

(Break.)

Industrial Special Indemnity Fund – James Kile.

Mr. Kile reported that the Second Injury Fund has seen a 20% increase in complaints from the previous year. Last year's assessment decreased 22%. CY2016 assessments are projected to be down another 7%. The SIF will be under budget for CY16, even with the activity and added expenses.

Mr. Kile presented an 'unusual,' 1997 SIF case summary, which Commissioners Maynard, Limbaugh and Baskin recused them from hearing. The criminal investigation included participation from the SIF, the Prosecutor's Office in Northern Idaho, and the Social Security Administration.

Mr. Kile encouraged individuals who have particular questions to contact him or his assistant Kim Murphy. He will be presenting the FY15 Annual Report at the November Committee Meeting.

Industrial Commission Report:

- **Re-designation of Workplace Safety Rules – IAPDA 17 Title 08, Chapters 1 thru 16 to IDAPA 17 Title 08, Chapters 1 thru 16; and IDAPA 17 Title 10, Chapter 1 to IDAPA 07 Title 09, Chapter 1 (Commissioner Tom Limbaugh).**

Commissioner Limbaugh summarized the legislative action that re-designated the Workplace Safety Rules from the Industrial Commission ("IIC") to the Division of Building Safety ("DBS"). The Office of Rules Coordinator administratively transferred all the logging and workplace safety rules from IIC to DBS; thereby, eliminating the need for the Commission to repeal those same rules. The rules published in the July 1st Bulletin beginning at page 64.

Commissioner Limbaugh thanked Subcommittee members who participated in the arduous process of working through the safety rules; and especially thanked Mr. Galbreath who chaired the Subcommittee.

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

Commissioner Baskin presented the proposed amendment to IC §72-803 that would give the Commission the authority to gather data from third-party group insurers in its annual review of the med fee schedule. The long-standing obstacle is the lack of access to commercial carrier data, which is considered proprietary. The Commission reviewed Montana's statutory reform that allows access to data from the largest group of health writers. Commissioner Baskin and Ms. Vaughn met with Steve Thomas, who represents the Idaho Chapter of the International Association of Healthcare Practitioners (IAHP), to discuss amending §72-803. IAHP expressed concern that the proposed statutory amendment would allow access to current payment information, since there are just five commercial players in Idaho. Commissioner Baskin and Ms. Vaughn are scheduled to meet with Mr. Thomas on August 28th to further address IAHP's concerns and reach some common ground. Mr. Thomas believes that IAHP does not likely have information that gets the results sought by the Commission.

Commissioner Baskin will update the Committee at the next meeting.

➤ **Update: Appellate Rules Amendment – Appellate Rule 12.3 (Commissioner Tom Baskin):**

Commissioner Baskin updated members of the new Appellate Rule 12.3 effective July 2015. The rules essentially anticipate the Commission as the ‘gatekeeper’ from which an interim appeal of a Commission case can be pursued before the Supreme Court. The rule changes will cause parties to rethink whether cases should be bifurcated. He summarized the case posed to the Supreme Court by Attorney Alan Hull, which raises the question whether to pay benefits in the interim on a denied case. Commissioner Baskin informed members that the Commission is considering, in cases which bifurcation is requested and ordered by the Commission, having defendants agree to pay benefits in the interim.

➤ **Update: Guidance Memorandum of Deductible Policies (Scott McDougall and Faith Cox):**

IIC Benefits Analyst Faith Cox provided a summary background of the Guidance Memorandum of Large Deductible Policies 15 Jun 2015 (“Memo”). The Memo’s purpose was to remind carriers of the requirements of writing deductible policies and of the in-state adjusting requirements applicable to all insurance carriers. Handouts of the Memo were provided in the meeting packets and posted to the Commission’s website. The Memo was mailed to 417 authorized insurance carriers; 150 of the insurance carriers authorized to write deductible policies indicated their compliance with IC §72-306A. The Memo was also mailed to 29 in-state claims administrators. The Commission also requested all authorized carriers and claims administrators to acknowledge receipt of the guidance memorandum and indicate their understanding of the requirements of §72-306A, or provide an action plan to the Commission by July 17, 2015. However, on July 17, 2015 the Commission granted a ‘blanket’ extension to September 1, 2015 for insurance carriers to respond; that extension was posted to the Commission’s website.

Ms. Cox provided the following additional information: (1) 282 signed responses have been received; (2) 198 sureties do not offer any form of deductible policy; (3) 64 of the 150 authorized sureties responded to and acknowledged they offer deductible policies and are in compliance with §72-306A; (4) Benefits staff is seeking further clarification from 18 companies that responded and who offer deductible policies; (5) 2014 audit findings identified two sureties that offer deductible policies but are not in compliance. One surety has submitted a detailed action plan; the second surety is preparing an action plan to submit by September 1st; (6) Two surety trade associations requested the Commission hold the blanket extension of September 1, 2015 in abeyance pending additional discussions and meetings, including a conversation with this Committee, before issuing a formal response to the surety trade associations; and (7) extensions were granted to approximately 40 carriers that requested additional time.

Ms. Veltman inquired about the Commission’s position whether settlement negotiations are considered adjusting of the claim.

Commissioner Baskin opined that the TPA or surety should be vested with full authority to resolve a claim, independent of the employer's input, and should seek reimbursement from the employer to settle a claim.

(Public Comment)

Mr. Barber, who represents AIA in Idaho, requested more time from the Commission for AIA to submit a response to the guidance memorandum. AIA has expressed concern that the Memo may be too confining in its interpretation of the statute; and, alternatively, there may be a need for legislation that serves policy purposes of the Commission and serves the business efficiencies of the insureds and employers. AIA will be requesting a meeting with the Commission and will include other interested insurers.

Ms. Cox agreed the legislation is antiquated; however, she opined the intent of the legislation did not consider high deductibles. Idaho is a file-and-use state. She reported that audit findings of several Idaho companies have shown WC policies offering \$5M per occurrence on deductible policies, and no aggregate limits.

Mr. Haxby inquired what stakeholders should be doing to help curtail this issue; and is there an expectation from the Commission of TPAs involvement in managing these claims.

Mr. Arnold opined that the statutory process is being subverted; enforcement of the statute should be expeditious, since claimant has a right to receive prompt and timely benefits payments.

(Public Comment)

Mr. Kane posed the question: What happens if you receive no response at all from companies?

Ms. Cox assured members that the Commission is willing to work with companies to help them develop an action plan. She also summarized the notification process undertaken by Benefits staff: A letter was sent first by regular United States Mail; then a second letter was sent by certified mail, return receipt; and if no response was received, Benefits would present the issue at an Administrative meeting for any further action of the Commission.

Mr. McDougall clarified the purpose of the Memo was to level the playing field.

Commissioner Baskin explained the workings of deductible policies.

Mr. Haxby requested the standard remain the same for all sureties; and thanked the Commission for clarifying some of the issues of high deductible policies.

➤ **IIC Annual Workers' Compensation Seminar – (Dara Barney):**

The Commission's Public Information Specialist Dara Barney announced the IIC Annual WC Seminar is scheduled for Thursday, October 29th. Early bird registration closes on October 1st. The Keynote Speaker is Tom Lynch. Other speakers include Mark Pew from PRIUM; Janelle Windell from CMS, who will speak on Medicare set-asides; and Bob Wilson of WC.com. Ms. Barney is applying for credits with the major reporting organizations, including the State Bar. Any questions regarding the conference should be directed to Ms. Barney.

Mr. Haxby thanked Ms. Barney for her assistance in applying for the independent adjusters credits.

New Proposed Legislation RE: Payments of Medical Services Be Made Directly to Physicians or Facilities IMA Resolution 109 - Teresa Cirelli, IMA:

Teresa Cirelli presented the IMA's Resolution 109 for vetting by the Committee. Handouts of the resolution were provided in the meeting packets and for public attendees. The Resolution was brought to the IMAs attention by Dr. DiBenedetto, who had a couple of cases where the patient received a lump sum settlement, and claimants' attorney advised claimant to file bankruptcy subsequent to attorney fees being paid. The Resolution was adopted by the IMA at its annual meeting this summer. The Resolution's language provides for medical providers to receive first-dollar payment for services upon issuance of a Lump Sum Settlement ("LSS), even for claims originally denied.

Mr. Arnold expressed concern that medical creditors would not be paid from LSS proceeds. His practice is to make contact with the physicians' offices on payment issues in an attempt to resolve the issue. He opined that Resolution 109 is too finite, and he could not support this legislation.

Commissioner Baskin explained that pursuant to IC §72-802 all proceeds in a LSS are paid to claimant; claimant is then responsible for satisfying claims of particular medical creditors. It's not in anybody's interest to settle without addressing §72-802.

Ms. Veltman sees the issue as a claimant's bar problem. She also proposed the IMA use different language for adjudicated cases. (*See Neel* decision.)

Dr. Collins does not believe this is a good solution, since this issue occurs in other medical cases other than in workers' compensation cases.

Mr. Haxby suggested Ms. Cirelli reach out to others who can dove-tail with *Neel*.

Ms. Cirelli reported that the IMA would be willing to submit a legislative proposal and work with a Subcommittee of the Commission's Advisory Committee. She thanked the Committee for hearing the issues.

Mr. Galbreath reported instances of patient identity theft and inquired if others have had the same issue.

Ms. Cirelli confirmed that patient identity theft is occurring in Idaho; employers and providers should be aware of the issue.

Elections of New Members: (Nominations Subcommittee Members: *Chairman Roy Galbreath, Mike Haxby, Susan Veltman, John Greenfield and Aaron White*)

Committee Chairman Mike Batten thanked the Advisory Committee and Commission for serving as Chairman of the Advisory Committee the past year. He expressed his enjoyment for the opportunity.

Introductions of Nominees. Subcommittee Chairman Galbreath reported that the Nominations Subcommittee met on June 1, 2015 to discuss a plan of action for filling positions up for elections. The following positions are on the election ballots: Mr. Larry Kenck, Representing Workers; Mr. Dane Higdem, Representing Employers; Ms. Connie Barnett Representing the Insurance Industry; and Mr. Brian Whitlock, primarily Representing Hospitals from the medical industry. Dr. Collins agreed to be a nominee for Chairman of the Advisory Committee. Special Member Senator John Tippetts has found another position; and the Commission is working to fill the vacancy left by his departure.

Mr. Higdem spoke briefly about his professional background; including his work in India and Australia.

Mr. Galbreath asked for other nominees; and there were none.

Election of Advisory Committee Members. Election ballots were distributed to the voting members of the Committee. Mr. Galbreath explained that the nominees who receive the most votes by the voting members of the Advisory Committee will have their names submitted to the Commissioners for approval at their next Administrative meeting.

Preparation for Future Meetings:

Next Meeting Dates:

November 10, 2015; February 10, 2016; May 11, 2016; August 10, 2016; and November 9, 2016

Chairman Batten commended the Commission for providing the sound system. Messrs. Greenfield and Skinner were also appreciative.

There being no further business, Mr. Arnold moved to adjourn, seconded by Ms. Veltman.

The meeting adjourned at 12:28 p.m.