IDAHO INDUSTRIAL COMMISSION
NEGOTIATED RULEMAKING – MED FEES
DOCKET # 17-0209-1701
(Second Session)
MEETING MINUTES
Monday, July 10, 2017
1:00 pm
700 S. Clearwater Ln., Boise, Idaho
1st Floor Conference Room

The Industrial Commission conducted a second session of negotiated rulemaking Re DOCKET # 17-0209-1701, pursuant to IC §§ 67-5220(1) and (2) and as authorized by IC §§ 72-508 and 72-803 on Monday, July 10, 2017.

Welcome & Introductions:

Benefits Administration Manager Patti Vaughn called the meeting to order at 1:00 pm, and led with introductions of attendees.

Attendees: (*See* public sign-in roster)

The following individuals participated:

Public Attendees: State Insurance Fund Representatives: Paulette Boyle, Stephanie Butler, Teresa Brown, and Lisa Kerns; Neuro Science Associates Lisa Jollif and Carrie Velez; Dr. Travis Kemp of Allied Orthopedics; Mike Haxby Idaho Intermountain Claims, Kim Clark and Tami Newhouse of St. Alphonsus; Attorney Phil Barber American Ins. Ass'n; Attorney Mike Kane Rep'g PCI; Cindy Keene and Seyra Lawrence of Catalyst Medical Group; Debbie Wensink, Sawtooth Surgery Center; Teresa Cirelli, Idaho Medical Association; Woody Richards, Attorney-Lobbyist; Angela Richards, Attorney-Lobbyist; and Milliman Representative David Lewis (*via* conference phone)

Industrial Commission: Chairman Tom Limbaugh; Commissioners Tom Baskin and R.D. Maynard; Director Mindy Montgomery; Benefits Administration Manager Patti Vaughn; Deputy Attorney General Blair Jaynes; Medical Program Analyst Michelle Wong; Administrative Assistant Kelley Bartholomew; Public Information Specialist Nick Stout

Purpose of Meeting:

Ms. Vaughn summarized the purpose for meeting is to conduct its annual review of the Commission's med fee schedule pursuant to IC §72-803 and obtain public comment for benchmarking the Idaho med fee schedule to commercial carrier rates. At the first session meeting, the Milliman report and tables for comparison were distributed and posted to the Commission's website. Ms. Vaughn took note of the diverse group representative of today's

meeting. The Commission does not have a rules draft; the Commission is seeking feedback whether to maintain the current fee schedule or to increase or decrease the med fee rates. The Commission will receive written comments through July 20th. The meeting minutes from the first session and today's minutes will be shared and posted to the Commission's website.

Materials:

The following handouts were provided to participants: (1) Notice of Negotiated Rulemaking (Idaho Administrative Bulletin June 7, 2017 – Vol. 17-6), (2) current IDAPA Rule 17.02.09; (3) a report prepared by Milliman dated May 15, 2017 Re: Idaho Commercial Reimbursement Benchmarking with Exhibits 1 through 4; (4) IIC-prepared Fee Schedule Comparison Tables 1 through 4; (5) the NCCI Idaho Medical Data Report, September 2016; (6) AGC written comments; (7) Chamber Alliance written comments; and (8) Patti Vaughn email response to IMA (Teresa Cirelli) regarding Milliman percentages contained in the May 15, 2017 report.

Ms. Vaughn next introduced Mr. David Lewis of Milliman. Mr. Lewis agreed to be available to address questions concerning the report that was prepared for the Industrial Commission.

Mr. Lewis confirmed for Ms. Cirelli that the list of codes identified in the NCCI 2016 report was used in the Milliman report.

Ms. Wensink inquired whether the report is reflective of local payers and insurance carriers by area and was it isolated to Idaho or the Pacific Northwest; or did Milliman conduct an analysis comparing Idaho to other states, such as California, Washington or New York? Mr. Lewis reported that TruVen produced the data on the payer information; the numbers were then adjusted to reflect FY16 Medicare allowable rates; the numbers were isolated to Idaho.

Mr. Richards had inquiries about the number of payers from Idaho; the number of payments on average on workers' comp claims within each category; and the number of workers' comp claims. Mr. Lewis replied that the payer information is not identifiable; however the data was provided by the employer groups in Idaho and shows quite a few payers reported in the market. The number of claims and service line levels are detailed in the data. Certain key fields were scrubbed. Milliman could provide the minimum utilizations to report for each claim. In the original report there are percentiles provided.

Ms. Cirelli asked if the top five payers for Idaho can be identified in the data. Mr. Lewis indicated the report does not identify the top five payers; however, the data comes from the employer groups in Idaho. He further explained that bill charges are unique to a provider; and further explained that Milliman uses a reversed-engineering method to show the live claims data set without showing the bill charges in the data set.

Ms. Cirelli inquired whether modifier 51 was included in the data. Milliman excluded payment level differentials in the amounts. Ms. Vaughn offered further explanation that when the contract was drafted it used non-adjusted charges; codes with modifiers were scrubbed.

Ms. Cirelli also inquired what portions were and were not reduced. She opined a better benchmark would identify the face value of the utilization codes. She went on to explain the modifier 51 code is used when there are multiple procedures and would mean fewer claims showing up in the utilization set. She asked if Milliman could share the number of times services for procedures used a modifier 51 in the frequency of the billing -- not a dollar amount. Mr. Lewis indicated the number could be provided.

Ms. Wensink opined that would skew the usage. Ms. Vaughn reported the number calculated is an average only on 100% of charge, not a reduced amount. Mr. Lewis confirmed the report was not focused on using modifier codes, those codes were excluded to not cause a problem with the codes, the remaining data can still report for a value.

Ms. Seyra Lawrence opined there are no payment incentives or adjustments. There is a high trend for incentive based methods for *payment v. fee-for-service* accounting or adjusting for that scenario. The industry is not seeing the true picture based on total cost of the care for that service.

Ms. Vaughn inquired if Ms. Lawrence had a recommendation of how to address in the Commission's med fee schedule. Ms. Lawrence recommended the Commission look at a value-based model for the WC medical fee schedule. She would have the total cost of care be analyzed on a collaborative level with government, commercial carriers, employers, workers. Have patient with 'skin in the game.' What are the incentives? She would not favor a reduction in the reimbursement schedule for Workers Compensation.

Mr. Lewis reported the results were not adjusting for that at all, solely off the data. He did agree with Ms. Lawrence's recommendation for industry to consider an incentive-based methodology for lowering costs. Ms. Vaughn reminded participants that workers' compensation patients are not responsible for a penny of the charges; the incentive would be for the injured worker to return to work. Ms. Lawrence questioned how strong the incentive is for the patient to return to work. There is a gap when there is no incentive. There currently is no cost-sharing burden to the patient. *What can we do to lower cost of care?* She suggested that industry needs to identify, on a regional basis, areas to lower costs and share that data with employers.

Ms. Boyle interjected the State Insurance Fund currently encourages employers to seek other measures for treatment. Ms. Lawrence asked what is the bonus to employers to generate risk sharing (split the cost) methods with the patient. Ms. Vaughn pointed out the bonus to employers is reflected in the premiums.

Mr. Lewis recognized Ms. Lawrence's point that a lot of work goes into assessing care, including the ongoing costs affecting the utilization levels of the procedure. We can still utilize the fee schedule.

Mr. Richards inquired if Ms. Lawrence has information of other states implementing incentive-based methods in workers' compensation for cost sharing with the injured worker. Ms. Lawrence has no information of states implementing incentive-based methods for workers' compensation patients; she would strongly encourage the industry to search other methods of managing costs, including the administrative functions. Staff commits a good amount of time filling out denials and other paperwork. We're still missing the reimbursement methodology.

Ms. Boyle understands the Commission is not looking to reduce the med fee schedule; the Commission is interested in knowing whether the med fee schedule should remain the same, increase it, or decrease it, depending on the reimbursement formula used. Mr. Richards recalled that in past Subcommittee meetings there were a variety of ideas vetted, including bringing parity for the costs of similar services of providers and further discussion whether making adjustments to the CPT codes to decrease the top multipliers would help in that regard. Everything is on the table, so anything is possible.

Ms. Vaughn interjected that the Commission will take stakeholder recommendations to the legislature. The Commission is not aware of legislation for incentive-based reimbursement models.

Mr. Richards inquired whether Ms. Lawrence is looking to the provider to manage the cost of care of workers' compensation patients or looking to the state to manage the care. Ms. Lawrence is looking for collaboration from across the industry. Ms. Keene of Lewiston Orthopaedics concurred there is a lack of "skin in the game" by patients; patients see first dollar coverage. In her experience she is seeing more and more patients with no desire to return to work – 'they' don't want to work; 'they' want to collect disability. Doctors are doing more depositions because of case decisions in workers' compensation. Ms. Keene had no firm numbers to share on the numbers of patients who are not willing to return to work, or the numbers of depositions doctors are giving.

Mr. Richards inquired whether the Medicare program is moving towards incentive-based outcomes in Idaho. Ms. Keene is aware Medicare would like a program implemented in Idaho that would provide more involvement between doctors and employers collaborating on the care management of patients for better patient outcomes.

Ms. Vaughn inquired what procedural standard the utilization cost would be based for achieving best patient outcomes -- implementing treatment guidelines, or by having evidence-based medicine guidelines. Ms. Keene said it would be for both because standardizing would lower the costs for patient care; although, the healthcare environment

is 'steering away' from evidence-based outcomes and is looking at utilization costs. Ms. Keene further explained that because so much emphasis has been placed on 'standardizing' services, such as MRI imaging, the physical examination of the patient has been removed. She suggested peer-to-peer requests (i.e., physician referral to physical therapist) as a utilization standard would be one attempt to balance the care of the patient. An x-ray is one-tenth the cost to that of an MRI.

Doctor Travis Kemp (Allied Orthopedics) opined that using evidence-based recommendations are 'hand cuffs' for the physician; the problem is in the available evidence. He also suggested that the costs for implants are one factor driving up costs.

Ms. Vaughn thanked Mr. Lewis for his contributions. Participants were asked to email additional questions regarding the Milliman report to Ms. Vaughn; she will coordinate getting those questions to Mr. Lewis for response. Ms. Vaughn opined that any suggestions for a new payment model would be a long-term discussion.

Ms. Lawrence read the Commission's Strategic Plan; she would like to see the Commission 'beef up' its educational outreach program and include cost-saving options as a starting point and the sharing of data with employers. She would also want to see administrative processes reviewed and more efficiency in reporting – increased electronic submissions for bill paying.

Ms. Vaughn reported if payers are agreeable e-billing can be used; however, there are some smaller, rural doctors that would be burdened with using an e-billing system.

Ms. Cirelli recalled one issue with e-billing had to do with the inability of attaching reports.

Ms. Lawrence reiterated that there needs to be incentive for patients to have 'skin in the game.'

Mr. Haxby (Intermountain Claims) inquired what method or guidelines would be associated with making the shift to medical guidelines in Idaho. The public comments from the Chamber Association and Association of General Contractors indicated that premiums are increased because of increasing costs of medical care of the injured worker; managing those costs would be in the interest of employers. Ms. Lawrence again would like the collaboration of the Commission working with employers in educating employees about the process and join in conversations to lower costs; one option is to offer an incentive to employees.

Mr. Richards agreed collaboration is a good point.

Ms. Wensink expressed her frustration that certain insurance companies never pay claims correctly. Many times the EOB will indicate the bill is being paid according to the

Commission's fee schedule. Making correct payments on the claims saves a lot of costs. She expressed her appreciation to the State Insurance Fund for their ability to pay claims correctly – 99% of the time they pay correctly.

Ms. Vaughn stated the med fee dispute process is an option to payers, especially for issues involving underpayments on claims. There are networks that error believing a PPO discount is applicable in a workers' comp claim; these bill reviewers generally are unfamiliar with Idaho's fee schedule.

Ms. Keene reported there has been one meeting with high-level representatives at the State level; it was a general discussion for a Medicaid value-for-payment model. No details for a resolution were discussed.

Ms. Cirelli understands more details will be released this fall; and inquired if the Industrial Commission was part of those discussions. Ms. Vaughn reported the Industrial Commission had not received an invitation to participate in those discussions. Mr. Richards reflected the State's legislative body is driving the topic.

Ms. Vaughn further explained that in worker's compensation claims the State is not the payer. What employers want is a valid question. She called on participants for their opinions whether any adjustments should be made to the med fee schedule and for possible amendments to the rule language at IDAPA 17.02.09.

Ms. Lisa Jolliff (NeuroScience Assoc.) favored maintaining the fee schedule or favored an increase to the med fee schedule.

St. Al's representatives Tami Newhouse and Kim Clark each favored keeping the med fee schedule "as is*;"* or favored an increase.

Ms. Vaughn shared the Commission's opinion that for most areas, the fee schedule is quite a bit above commercial carrier rates.

Teresa Cirelli (IMA) interjected that a couple of commercial carriers in 2015 started using incentive pay programs.

Ms. Vaughn asked how much is enough for the extra administrative work for a workers' comp patient. Mr. Richards asked if the commercial insurance carriers are requiring extra reports; if so, what additional payments would be needed for those extra reports. Ms. Cirelli said it is dependent on the practice. There is no data available to show how much each practice is receiving.

Ms. Keene said the total cost of care by practice should be included – gain sharing monies should be included.

Ms. Cirelli cited to the NCCI report that demonstrated that Idaho providers get injured workers back to work more so than in other states.

Commissioner Maynard said indemnity costs are way down; however, medical costs are getting higher. Time loss is less. Ms. Vaughn said Idaho has a Rehabilitation division to work with time of injury employers to get employees back to work. She encouraged folks to utilize the Commission's Rehabilitation division program.

Mr. Richards inquired whether the WCRI data report would be available to share with participants. Ms. Vaughn will be reaching out to WCRI for permission to share their report on rates of other states.

Ms. Jolliff asked the Commission whether they had a concern about the access to care, if the fee schedule were reduced. Ms. Vaughn responded that it is always a concern for the Commission.

Ms. Boyle reported the Fund has seen a lot of billing from physicians that have not billed at the fee schedule allowable rates; they bill well below the allowed amount. There needs to be more education to physicians on the allowable rates for workers' comp claim cases.

Ms. Cirelli shared that some practitioners believe it is against the law to bill up to the fee schedule in workers' compensation claim cases.

Mr. Haxby concurred there are private physicians billing well below the fee schedule.

Mr. Kane inquired if the Commission is looking for a rule change this year.

Ms. Vaughn indicated there is no draft text language to share. The Commission has not suggested any adjustment, up or down, to the fee schedule; the Commission is simply looking for a discussion and suggestions from participants whether an increase or decrease is appropriate to the fee schedule.

Ms. Cirelli stated the IMA's position would favor an increase in the fee schedule.

Ms. Boyle stated the Fund's position, based on prior meetings and information, would favor leaving the fee schedule 'as is,' and would not favor an increase to the med fee schedule.

Mr. Richards thanked the Industrial Commission for reviewing the schedule. It's a big job. He would be interested in collaboration amongst industry stakeholders to serve on a subcommittee of the Commission. He requested the Commission consider convening the

Healthcare Subcommittee long-term to vet new methodologies for lowering costs of patient care in workers' compensation cases.

Commissioner Limbaugh (IIC Chairman) explained the requirement, under IC 72-803, for the Commission to conduct an annual review of its med fee schedule. Since the legislature in 2006 made that decision, a Subcommittee, comprised of industry stakeholders, of the Commission's Advisory Committee had been meeting twice a year on the med fee rules and provided recommendations to the Commission. A year or so ago the Senate Commerce & Human Resource Committee determined that in the best interest of the public, agencies were instructed to conduct negotiated rulemaking. He further explained the Commission received appropriation from the legislature to move ahead with a Request for Proposal to contract a medical fee contractor. As we develop the RFP, we would consider different ideas in the proposal, such as the direction medical providers are headed on lowering costs for care, reimbursement methods. In the past, the State Insurance Fund has provided data. The Milliman report is a limited sampling. The Commission believes it will have a contractor on board by next year.

Mr. Richards opined the Subcommittee could still meet and adhere to the legislative intent by publishing a separate notice.

Ms. Vaughn confirmed the Commission has no language for a rule change and, again, are looking to this group for comments that the Commission will then evaluate. She called for further questions.

Ms. Vaughn summarized the next steps for the negotiated rulemaking process. The Commission will evaluate the comments; any additional written comments will be received through July 20th. If the Commission determines a rule change may be in order, language will be drafted and vetted by its Advisory Committee at the next meeting on August 9th. The Advisory Committee meeting is open to the public and any draft language would be shared at that time. Any proposed rules language would be submitted no later than September 1st and would be opened for written comment before any pending rule submission to the legislature with changes effective July 1, 2018. If there are no changes in the rule, the Commission will convene a Subcommittee to consider other methodologies for cost management.

Participants were advised to check the Commission's website for the information on this meeting and for comments received on the rulemaking.

Ms. Vaughn thanked participants for their comments.

There being no further discussion, the meeting adjourned at 2:32 pm.