

**Industrial Commission's Advisory Committee
On Workers' Compensation
Minutes
April 16, 2014**

Members Present

Susan Veltman, Chair
Jasen Carrier (for) Mike Haxby
Roy Galbreath
Craig Mello
Susan Rhoades
Larry Kenck
John Greenfield
Representative Douglas Hancey
James Arnold
Steve Millard
James Alcorn
Dr. Paul Collins
Mike Batten
Rian Van Leuven

Members Absent

Gardner Skinner
Mike Haxby
Senator John Tippetts

Industrial Commission

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

Opening Remarks:

Advisory Committee Chairman Susan Veltman opened the meeting and summarized the meeting process for public attendees. Ms. Veltman introduced new Committee Member Employer Representative Craig Mello of Agri-Beef; and introductions of Advisory Committee members and public attendees were held.

Minutes:

The Minutes of February 12, 2014 were reviewed. Chairman Veltman entertained a motion to approve the minutes as written. Upon motion by Roy Galbreath, seconded by Larry Kenck, the minutes were unanimously approved as written.

Updates:

Small Group Meeting RE: Future Medical Trends, Observations and Concerns; Epidural Steroid Injections and Spinal Cord Stimulators -Paul Collins, M.D. *(Dr. Paul Collins, Chair; Rian Van Leuven, Jamie Arnold; Mike Batten, Mike McPeek; Steve Millard; Representative Hancey; Woody Richards; IIC - Commissioner Baskin; Commissioner Maynard; Med Fee Analyst Patti Vaughn; Benefits Administration Manager Scott McDougall; Deputy Attorney General Blair Jayne.)*

Dr. Collins reported that the Small Group met on Tuesday, April 15th. It was well attended. The Small Group consensus is that further research of these types of procedures

needs to be conducted by Dr. Collins and Mr. Millard. Dr. Collins will report the data findings to the Advisory Committee at the August meeting. No Subcommittee will be formed at this time.

Industrial Commission Report

Commissioner Baskin reported on the activities of the Commission as follows:

➤ **Overview of Subcommittees.** The Workplace Safety Subcommittee met twice since the last meeting of the Advisory Committee with the view of delineating the responsibilities for workplace safety as between the Industrial Commission (“IIC”) and the Division of Building Safety (“DBS”), in amending the provisions of IC §72-720 through IC §72-723. The Subcommittee consensus was that the Commission should draft proposed language to essentially place all authority for workplace investigations of both the private and public sectors with DBS and out of the IIC’s jurisdiction. The Commission will provide a draft to the Division of Building Safety for review. The next Subcommittee meeting is scheduled for May 2, 2014 @ 9:00a.m.

➤ **Update: Medical Releases – Claimant Authorization Language – St. Luke’s.** The Commission met with St. Luke’s representatives, following the last Advisory Committee meeting, to resolve any remaining concerns St. Luke’s had with the medical release language on the IIC Complaint form and on some TPA forms that lack sufficient information. St. Luke’s requested the Commission to address the issue with the adjusting community. Med Fee Analyst Patti Vaughn has agreed to undertake further discussions with St. Luke’s and other medical providers with a similar issue, and compile a checklist of necessary information for a medical release form that can be disseminated to the adjusting community. The Commission believes this will allow the seamless processing of medical records by medical providers.

➤ **EDI Rules.** The Subcommittee on EDI Rules Release 3.0 has met at least twice since the last Advisory Committee meeting.

➤ **Electronic Documents Filing.** The Subcommittee on Electronic Documents Filing chose not to meet until the initial work on the electronic filings is completed by the Commission’s IT staff.

➤ **Proposed Legal Lender Legislation.** The Commission received from Mr. Starr Kelso and Representative Grant Burgoyne a request to present proposed legislation concerning legal financing in workers’ compensation claims. Commissioner Baskin provided a historical summary of the Commission’s decision of *OASIS Legal Finance L.L.C.* (January 2012) and explained that the business model utilized in OASIS was not permissible, pursuant to IC §72-802. The Commission is sympathetic to this issue and recognized that there is a significant class of claimants who have no other recourse or other means of income.

➤ **Premium Rates of Insurers and Self-Insured Employers for Nuclear Facilities.** Commissioner Baskin reported that the current issue deals with the assessment of

premium tax of a self-insured employer of a nuclear facility and is a separate issue from the legislation recently passed in the 2014 session; and is a business issue involving Battelle Energy Alliance (BEA) that operates a site in eastern Idaho for the Department of Energy. The Commission has been researching assigned risk rates and job classifications applicable to nuclear workers in terms of assessed premium taxes of self-insured employers; and is relying on the NCCI Scopes Manual in its research. The Commission is not skilled in this area and is struggling with determining the relative rates specific for nuclear workers.

The Commission remains concerned that the statute be equitable for both insurers and self-insured employers. The Commission is seeking insight of how best to proceed; or expert referrals in the field of premium auditing.

Subcommittee Reports:

Workplace Safety IC §72-720 through IC §72-723. Subcommittee Chairman Roy Galbreath reported that the Subcommittee on Workplace Safety met for a second time and a proposed draft was submitted to the Division of Building Safety for their review and comment. The Subcommittee reconvenes at 9:00am on Friday, May 2, 2014, and he will report to the Advisory Committee at the next scheduled meeting.

EDI Rules. On behalf of Subcommittee Chairman Mike Haxby, Mr. McDougall presented the paperless initiative of EDI Release 3.0, which is mandated for release on July 1, 2016. He provided handouts of the proposed amendments; and reported that the Subcommittee has held four subsequent meetings since the amendments were initially presented at the February meeting. He further reported that EDI 3.0 information is all-inclusive; removes the summary of payments requirements for time loss auditing by the Commission; and will incorporate secondary and subsequent reports of injury, including FROIs. He also reported that the Commission and five separate subcommittees have worked for more than three years developing tables, based on Idaho statutes and rules, for implementing EDI Release 3.0. He also reported that all information gathered for EDI 3.0 is the same as what is collected now in paper form. The implementation of EDI Release 3.0 will allow the Commission to collect less paper; have consistency in data entry and allow timely processing of data. One caveat to EDI Release 3.0 will be the completion of Idaho's Implementation Guide; and meetings on the Implementation Guide will begin next week.

Mr. McDougall reported that, other than minor housekeeping changes and after final approval of the Commission, the Commission intends to present this version in the next legislative session. He thanked Commission staff and the Subcommittee members for their contributions on the proposed rules and statutes amendments

Claims & Benefits Rules – IDAPA 17.02.04 IC §72-408. Mr. McDougall provided handouts of the proposed Claims & Benefits rules amendments. He reported that 98% of the changes are “housekeeping” to clarify definitions and are not part of the EDI process. Mr. McDougall reported that the issue of denied income benefits of injured workers has been increasing over the last year. The proposed amendments to IC §72-408 and amendments to IDAPA Rule 17.02.04 is an attempt to address the issue of granting income benefits to the

injured worker released to full-duty work but who misses work due to medical appointments deemed necessary by treating physicians during the “period of recovery.”

(Public Comment)

Discussion was held of what does and does not constitute the “period of recovery” and the statutory anticipation of the loss of wage earning capacity. It was suggested that issuance of a declaratory ruling in some cases of TTD compensation benefits might resolve the issue. There was general agreement with the proposed rule amendments; however, some members expressed concerns that the language is ambiguous and members requested approval to submit alternative language to the Subcommittee for their consideration. A request was also made to review the Subcommittee minutes that referenced the period of recovery language in Subsection 2. Mr. McDougall and Mr. Vook will review the Subcommittee minutes.

Mr. McDougall continued his summary of the proposed amendments and cited page 10 of the handout Subsection 012.03 – Rules Governing Insurance Carriers – Maintain Resident Idaho Office. He reported that the Subcommittee struggled with this issue of “full” authority to make decisions on workers’ compensation claims; full authority remains with the local adjuster.

Claims & Benefits Newsletter.

Mr. McDougall informed the Committee that circulation of the Claims & Benefits Newsletter is forthcoming.

Issue(s):

Obtaining Opinions from Medical Providers.

Mr. Arnold presented the issue of obtaining medical opinions on causation from treating physicians. He reported that there is an increase in the overall cost of claims by almost \$2,500 by having to obtain IMEs on almost every case; confirm the impairment; obtain restrictions; and get an opinion that the impairment and restrictions are causally related to the accident. He reported that his office has developed a model in an attempt to solve these problems. Mr. Arnold presented two proposals to “cure” the issue: (1) a required signature form to be completed by front-line physicians and other physicians in the chain of referral; or (2) the Commission provides a letter explaining the intent of the required signature form. Mr. Arnold opined that his proposals would benefit both the claimants and defense bars.

(Public Comment)

There was general agreement expressed that this issue exists and could, in part, be due to some medical ethics rule. It was suggested that opening up communication with the Idaho Medical Association could start the education process on this issue and increase physician involvement in the workers compensation process. It was also suggested that a pre-hearing conference could be a solution to narrow the scope of the problem.

Idaho is nationally ranked in the top 10 for across-the-board payments of medical treatment.

Committee members agreed in general that an issue exists but were not in agreement with the proposed “cure;” and would like the issue studied further by a Subcommittee.

Chairman Veltman called for formation of a Subcommittee. Subcommittee Members selected include: *James Arnold, Chairman; Alan Gardner; Woody Richards; John Greenfield; IMA - Teresa Cirelli; Jasen Carrier; Rian VanLeuven; R.D. Maynard; Patti Vaughn; and Terrisa Wyatt.*

Break taken.

Other Issues/Announcements:

Proposed Legislation – Authorization/Restriction of Legal Lenders in Workers’ Compensation Claims. Representative Grant Burgoyne presented a handout of the proposed legal lender legislation prepared by Mr. Starr Kelso. Representative Burgoyne summarized the content and intent of the proposed legislation is to allow a certain class of claimants, whose workers’ compensation claims are taking awhile to resolve and who have no access to other income by which to live, an opportunity to pledge all or a portion of their contingent claims. Representative Burgoyne reported that the draft language did not come from the lending industry; and the bill has two issues in it: (1) Is there an identifiable problem that needs to be fixed? (2) If the problem should be fixed, then are the concepts in the bill getting nearer the way to do it, or are there other more acceptable methods?

Representative Burgoyne and Mr. Kelso are seeking guidance from the Commission’s Advisory group whether or not the legislation is desirable and the form it should take.

(Public Comment)

There was discussion held to limit the repayment of the loan’s purchase price at 20%. Representative Burgoyne shared Mr. Kelso’s thought that 20% was reasonable and acceptable to the lending industry that is willing to lend on these contingent loans. Some members expressed concerns that the proposed legislation is similar to a payday loan environment; and could open up the playing field for third parties. It was suggested that the word “*compensation*” is too broad. It was further suggested that the legislation should be limited to settlement of claims. It was further suggested that the banking industry may be the appropriate venue to address the issue. Representative Burgoyne is sympathetic to the Commission’s concern that it be involved in something that felt like a payday loan environment; and he remains open to discussions of a different repayment percentage.

The Committee thanked Representative Burgoyne for bringing the proposed bill to the Committee’s attention. The Committee consensus is that a small problem exists and would

prefer, if there is a problem, to improve on the current system; and would also be open to further discussions on the proposed legislation.

2014 Legislative Update:

Commissioner Limbaugh reported that the IDAPA rules amendments passed this session. He also summarized the outcome of the following other legislation the Commission monitored:

Senate Bill 1359 – Exemption from Coverage. This bill passed the House and Senate. It adds an exemption from coverage of owners of sole proprietorships and family members working in the business under Workers’ Compensation, *see* Idaho Code §72-212. Signed into Law, effective 7/1/2014.

Senate Bill 1252a – Security for Payment of Compensation. This legislation was added by Senator Davis and replaced the security for compensation language that the Commission required. The bill allows an alternative means of securing self-insurance for contractors at the Idaho National Laboratory that have a cost reimbursement contract with the federal government through the Department of Energy. This bill eliminated the requirement for a three-year payroll history and eliminated the requirement for excess insurance coverage for employers qualified for self-insurance. Currently, the only self-insured at the INL is Battelle Energy Alliance. The Commission had required Battelle to deposit \$5,000,000 in securities with the Idaho State Treasurer for securing compensation. This legislation places the full faith and credit in the federal government and those securities will be released once this law takes effect. Signed into Law, effective 7/1/2014.

Commissioner Limbaugh also reported that this legislation does not govern the requirements for payments of premium tax under IC§ 72-523.

Senate Bill 1273 – Occupational Disease. The Firefighters’ bill passed in the Senate but was held in the House Committee. There is opposition of the House members and the Commission will continue to monitor this legislation next year. Held in Committee.

House Bill 549 – Education and Governmental Services. The Education bill passed in the House but failed on the Senate floor. This bill would have allowed an “opt-out” of risk management services from the state for colleges and universities. Failed this session.

Senate Bill 1244 – State Insurance Fund. The legislature in 1998 amended IC §72-904 to allow the State Insurance Fund to operate as an insurance company under the direction of the Idaho Department of Insurance. Senate Bill 1244 repealed most of the code passed in 1917 dealing with the State Insurance Fund (“Fund”) to allow the Fund to operate as intended within the 1998 amendments. Signed into Law, effective 7/1/2014.

Senate Bill 1269 – Insurance. The bill passed and provides an option to the Department of Insurance to utilize the Guaranty Association for claims handling service for

run-off insurers who sell property and casualty insurance. Signed into Law, effective 7/1/2014.

House Bill 396 – Uniform Controlled Substances. The bill requires prescribers of controlled substances to register with the Controlled Substances Prescriptions Database, also known as the prescription monitoring program (PMP). There is no cost to register. Signed into Law, effective 7/1/2014.

House Bill 497 - Hospitals. This was a concurrent House Resolution about hospital care and use of the hospital and medical claims data to improve cost and quality of health care. The bill requires the Department of Health and Welfare to work with stakeholders and form an advisory committee to develop a plan for health data and analysis. Referred to Health & Welfare.

The Commission had no other proposed legislation to present to the Committee.

Preparation for Future Meetings:

Topics for Discussion at Next Meeting:

Engage in discussion of the role of this Committee in policy change and legislation.

Next Meeting Dates:

August 13, 2014
November 12, 2014.

Chairman Veltman called for other issues or comments.

There being no further business, the meeting was adjourned.