

**Industrial Commission's Advisory Committee
On Workers' Compensation
Minutes
February 13, 2013**

Members Present

Mike Haxby	John Greenfield
Rian Van Leuven	Susan Rhoades
Roy Galbreath	Clay Atwood
Jasen Carrier	Paul Collins
Susan Veltman	Steve Millard
James Alcorn	James Arnold
Larry Kenck	

Members Absent

Senator John Tippetts
Representative Douglas Hancey
Gardner Skinner

Industrial Commission

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

Opening Remarks:

Advisory Committee Chairman Roy Galbreath opened the meeting by asking for introductions of Advisory Committee members and public attendees.

Minutes:

The Minutes of November 8, 2012 were reviewed. Upon motion by Larry Kenck, seconded by Mike Haxby, the Minutes were unanimously approved as submitted.

Recognition Award – Senator Andreason

Senator Andreason was unable to attend the meeting, so Senator Andreason's Award will be given at the next scheduled Advisory Committee meeting.

Subcommittee Reports:

Uninsured Employers' Fund

Subcommittee Chairman James Kile presented an update from the task force committee on the ongoing issue of funding. He expressed concerns of the uncertainty of taxes rising 2.5% and what reception there will be for adding a few more cents to the fund. Mr. Kile handed out a two page chart to illustrate the increase in the number of filings and the fiscal year combinations of assessments, which will make for a busy year for the Commission. Mr. Kile also reported that monthly payments and litigation expenses are on the increase, but that cash intake is down. An additional impact to the system is the increase in the number of injured workers entering the system and that impact on the work force. The final figures will be available at the end of June,

the end of the fiscal year. He went on to explain that cases are coming in sooner because of the five-year statute of limitations imposed in 2009. So the interpretation of case processing is less likely to be a “wait and see” approach in payment of claimant’s benefits as you draw closer to the five years.

Public Comment:

Commissioner Maynard prompted a discussion of this chart showing an increase over last year.

Mr. Kile shared that the increase is in the number of settlement cases as carryovers from the end of last year that are then approved in the first part of the next year. He says that at this pace he will run out of money quickly.

Adjuster’s Issues

Mike Haxby, Employer Representative, reported that he was not able to attend the January 30th follow up meeting of the adjusters group but that Cindy Wiegel of his office sat in as his proxy. Ms. Wiegel provided him with the meeting highlights. The January 30th meeting was a continuation to review adjusting guidelines and rules in order to comply with some of the Commission’s procedures. He credits Al Gardner with initially spearheading coordination efforts of the adjusters and local insurance community to review the guidelines and rules. Mr. Haxby and the adjusting community appreciated the Commission re-circulating their 2009 Adjuster letter which identifies the top 6 or 7 adjusting rules and the importance of following those guidelines. Mr. Haxby provided a brief analogy of changes in 2012 Commission work flow practices that may have triggered some of the challenges by the adjusting community to adhere to the rules and guidelines, such as the Commission moving to more electronic data. He believes there was common ground met, and the IIC did a good job of welcoming feedback from the adjusting community. A clear target to resolve these goals was identified. Mr. Haxby added that there is diverse clientele within the adjusting community, and with that, there are different interests and different resources in Idaho which can be challenging. His overall impression from the January meeting was very positive, with lots of good information shared amongst attendees. He also felt the published newsletter was helpful to the entire process. The adjusting community will meet every quarter to make sure the lines of communication remain open.

Public Comment:

Commissioner Baskin indicated that the Commission will continue with in-state adjusting requirements because it’s good for the injured worker and it’s good for the system, and allows for transparency on the table.

Settlement Authority Delays

Mike Haxby reported that there is a common theme that re-emerges about delays in authority to settle and of the audit criteria. The Commission has brought these violations to the attention of the adjusting community. He attributes these violations in part to inadequate

personnel not having the authority to make claims decisions. He went on to commend Scott and his staff for taking an interest in clarifying the average weekly wage and keeping stats. He also says that because of the heightened scrutiny in the payment approval process, it's more difficult to get the approval of the summary of payment(s). He noted that a Form-1 looks clean but that not all workers work 40 hours/week. The goal of this meeting process is to reinforce some of the guidelines. He assured the Commission that they have the adjusting community's attention.

Public Comment:

Mr. Brad Eidam asked if there is an individual contact, remedy or process within the system for notification of when checks are not on time and for when an interruption in the physician referral process occurs.

Scott McDougall, Benefits Administration Manager of IIC Compensation Division, shared that his department is more "reactive" in responding to these inquiries because of the need for information and of the various individual claims. Mr. McDougall indicated that these issues should be brought to his and his staff's attention.

Mr. Haxby pointed out that the Commission operates under the analogy of "*where there is smoke, there is fire*," in terms of where they look. It's all part of the process. The goal is to get some of this stuff on the table and to reiterate the need for promptness and local decision-making in this process. He expressed his appreciation that the Commission has looked at the fee schedule and implementation of software; however, he says the "bar" is set high for sureties to pay bills in (30) days, to get them audited and get them done timely. He says everybody's working on it. He suggested that the adjusting community look at the published winter newsletter for getting clarification and guidance.

Mr. Haxby shared additional feedback in reference to the audit process. His personal view is that he prefers vagueness of the rules. He agrees adjusters should be prompt but to not define specific time frames. He reminded the Commission that no insurer is perfect. There will always be an incident where something gets paid late, where compensatory decisions are made and desk audits lend themselves to that. He appreciates the Commission's efforts and would like to see them address an industry standard for reasonableness in the summary of payments and date filings to maintain credibility.

Public Comment:

Scott McDougall shared his thoughts about the analogy of "*where there's smoke, there's fire*." He also is appreciative of the adjusting community taking notice of some of these audit issues that have come up with regard to "outliers" and the overall general involvement and feedback he and his staff have received. He says there needs to be more focus on getting people paid.

Chairman Galbreath reminded the Committee of the Commission's newsletter that is posted on the website that will provide additional information and guidance.

Commissioner Baskin followed up to his invitation to the insured claims community that a meeting every quarter might be in order, and that he is more than happy to do that if the insurance community thinks would be helpful, or to just be available as issues arise.

Mr. Haxby proposes a follow up meeting of the insured claims community in an effort to avoid issues being rehashed.

Chairman Baskin indicated no formal discussion would be necessary and suggested a fixed quarterly schedule.

Mr. Haxby suggests semi-annual time frame as an option to meet.

Public Comment:

Commissioner Limbaugh announces that the new IIC Chairman is Tom Baskin who will serve for the next two years. The new legislative representatives on the IIC Advisory Committee are Senator John Tippets, Chair of the Commerce & Human Resources Committee, Member of the Agricultural Affairs Committee and Member of the Resources & Environment Committee; and House Representative Doug Hancey of Eastern Idaho, who is a Member of the Commerce & Human Resources Committee, a Member of the Health & Welfare Committee, and a Member of the Local Government Committee.

Commissioner Limbaugh also expressed his gratitude to Nancy Beeson, who is retiring from the Commission, and thanked her for her years of service.

Status of Rules Presented to 2013 Legislature:

Commissioner Limbaugh provided updates on the rules that were submitted during this year's legislative session -- the *Peace Officer's Disability Fund (17.02.04)* and *Medical Fees (17.02.09)*. He reported that they met with legislators and that any questions about the peace officer's fund came directly from new members to the legislature; however, the rule did pass.

Mr. Limbaugh explained that the medical fee rules, *IDAPA 17.02.09*, had opposition from the pharmacy association as to using the average wholesale pricing indicator for dispensing fees used in Idaho, as compared to other states. Because of the opposition to the rule, the House tabled a vote on the rules until the issue of dispensing fees is resolved with the pharmacy association. Mr. Limbaugh shared that his group had contacted the Division of Financial Management and the Governor's office to talk about a temporary rule, and the temporary rule was adopted. Mr. Limbaugh further explained that the start date for the rule is July 1st so there is time for further discussion as requested by Senator Cameron. Steve Millard, Chair of the Healthcare Subcommittee, will coordinate a "round table" discussion with the pharmacy representatives and others to discuss the dispensing fees and present a number that is agreeable. Pam Eaton, Pharmacy Representative, has agreed to join our committee on an ongoing basis.

Commissioner Limbaugh provided an update on the proposed legislation to extend the temporary premium tax reduction from 2.5% to 2%, Idaho Code § 72-523. Mr. Limbaugh says he had received questions at the JPAC budget presentation about the fund balance being flat. The two-year change of statute had reduced the premium tax from 2.5% to 2% to collect semi-annually, and that collections for calendar 2012 were just completed under reduced rate in March. He went on to suggest that an additional two-year extension be added in and that the extension has to go through this legislative session since the current law ends this calendar year. Mr. Limbaugh indicated that if “we” are going to do this, then both chairs of the House and Senate, the Commerce & Human Resources Committees, will need bill sponsorship for the premium tax reduction. NCCI is setting the rate in July for 2014. The general thought is that the fund balance be reduced at a slow rate over a longer period time.

Public Comment:

Mike Taylor, NCCI Representative of the NW Region, shared his findings about the overall impact to medical costs in Idaho and the entire system. Mr. Taylor says there is shift in “surgical” to “general medicine” with less surgery and more treatment-based care. He suggests looking at temporary emergency rules and then informing the committee. He relayed some of NCCI’s research findings relative to overall costs for treatment – 60% medical and 40% indemnity – and that they are monitoring it over a long period of time. Mr. Taylor shared that NCCI was also asked to get involved in an ongoing problem of opiates and the death rate. NCCI released a research paper on its website of the full report that describes the costs of addictions applied to varying age groups. Mr. Taylor indicated that NCCI is looking into comparisons with states that use medical fee schedules as a method of cost containment vs. using outcome-based fee schedules to determine methods of cost containment. For states using outcome-based fee schedules it’s difficult to put a measure on them or to predict an outcome and where workers’ compensation will fit into the overall healthcare system and changes within Obama-care.

Judicial Rules of Practice and Procedure Updates:

Commissioner Baskin presented the principal high points of the proposed amendments to the current rules of practice and procedure and spoke only to changes that were significant and which would take effect:

JRP Rule 2, REPRESENTATION. Rule revised to define *pro se* representation can only be natural persons;

JRP Rule 4, FILING AND SERVICE. Rule revised to address the original Service-Complaint and original Service-Answer. Service of the complaint to be no later than (60) days of filing the complaint and service of the answer to be no later than (21) days from service of the complaint;

JRP Rule 6, DEFAULT. Rule revised to simplify and streamline the procedures for entering a default and the filing of a notice of default;

JRP Rule 10, HEARING PROCEDURE. Subsection C3, Exhibits, amends the provisions of exhibit copies in electronic format. This change was implemented because of several comments and concerns received from small practitioners. There was a misconception that this was a first step towards a mandatory provision for copies in electronic form only. Commissioner Baskin reassured the group that this was not the intent of the change in the rule. This was a process to deal with document storage.

Subsection E1, Post-hearing Depositions, was expanded to reflect the submission of expert testimony.

Subsection E4, Post-hearing Depositions, revised to reflect that all disability determinations are to be made as of the date of hearing. Mr. Baskin shared that this rule amendment is the result of an issue the Commission feels was created by the Supreme Court case of *Brown v. Home Depot*.

Subsection H4, Hearing Transcript and Deposition Procedure, is a reiteration that the Commission will not provide or pay for copies of pre- or post-hearing depositions. Commissioner Baskin said this amendment to the rule generated a lot of discussion.

JRP Rule 11, BRIEFS. Rule revised to specify font and spacing requirements.

JRP Rule 18, LUMP SUM SETTLEMENT AGREEMENTS. Rule was revised to require template information and a standard format for use by Commission staff in approving the lump sum settlement process. The Commission recognizes that the parties have latitude and freedom to write a lump sum settlement, but this revised language will facilitate a “speed up” of the process. Commissioner Baskin thanked practitioners who did the beta test for the Commission. Mr. Baskin also extended his appreciation to Brad Eidam who provided helpful comments to Scott McDougall and his staff.

JRP Rule 20, CHANGE OF PHYSICIAN. Commissioner Baskin indicated that this rule was revised to conform to what the practice has been in the defense to a petition for change of physician, where care is not reasonable.

Public Comment:

Commissioner Baskin indicated that a couple of other rule amendments were discussed but not considered for adoption. The rule requiring preparation of joint non-duplicative exhibits for submission to the Commission on date of hearing was discussed with referees. Also discussed, the filing of a notice to vacate a hearing when a case settled in those instances where long-distance travel is required by Commission staff, but in the final analysis we want to see cases settled.

Commissioner Baskin indicated that these were principal high points of the proposed amendments. He extended his appreciation to everybody who provided input and felt those suggestions were quite useful.

Public Comment:

Mike Haxby asked if there is a proposed time frame for when the rule amendments go into effect.

Commissioner Baskin indicated that the “target date” is set for May 8th.

Mr. Kile asked for some clarification from the Commission of the term “developed,” found at page 15 in Rule 10, Post-Hearing Deposition, subsection E4.

Commissioner Baskin indicated that if there is an ambiguity in the language, it will need to be cleared up.

Public Comment:

John Greenfield asked for clarification of Rule 18, the size of the template and any attachments for lump sum settlements.

Scott McDougall indicated the form is expandable but the submitted pages would be as required by the rule.

Other Issues/Announcements

Mr. Jim Alcorn, of the Idaho State Insurance Fund, announced that Julie Cooper is retiring after 35 years with State Insurance Fund. There is a retirement celebration in her honor scheduled for February 22nd @ noon.

Preparation for Future Meetings

Chairman Galbreath called for agenda items for the next meeting.

The next Advisory Committee meeting is scheduled for **May 8, 2013**.

There being no further business, the meeting was adjourned.