

**Industrial Commission's Advisory Committee
On Workers' Compensation
Minutes
November 6, 2013**

Members Present

Mike Haxby	John Greenfield
Rian Van Leuven	Steve Millard
Gardner Skinner	Susan Rhoades
Susan Veltman	Roy Galbreath
James Alcorn	James Arnold
Larry Kenck	Dr. Paul Collins
Robin Sexton	Mike Batten
Representative Douglas Hancey	

Members Absent

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 by introducing the new Advisory Committee members Mike Batten and Robin Sexton and asked for introductions of Advisory Committee members and public attendees.

Minutes:

The Minutes of August 14, 2013 were reviewed. Chairman Veltman entertained a motion to approve the minutes as written. Upon motion by Roy Galbreath, seconded by James Arnold and Steve Millard, the Minutes were unanimously approved as written.

Proposed Amendments to Statute IC §72-720 through IC §72-723 – Powers of Commission – Workplace Safety Responsibilities – Assemblage of Subcommittee:

Commissioner Tom Limbaugh presented for Committee consideration the assemblage of a Subcommittee on Workplace Safety. Commissioner Limbaugh explained that recently the Industrial Commission and the Division of Building Safety (“DBS”) have differing interpretations of the requirements of §72-720 regarding annual inspections of all political subdivisions. Mr. Limbaugh provided a historical outline of the Industrial Commission’s authority and responsibilities for workplace safety under IC §72-720 through §72-723, the DBS’ authority under IC §39-800(8), which includes language for the inspection of school facilities on an annual basis, and an overview of the Occupational Safety and Health Act enacted by Congress in 1970. Commissioner Limbaugh further reported that in reviewing the statute, there is no time requirement defined for these kinds of inspections and currently there are no proposed amendments to Title 72. Commissioner Limbaugh reported that DBS has requested additional funding from the Commission to accomplish these annual inspections of political subdivisions.

He explained that the funding source for inspections comes from the Commission's Administrative Fund through its collections of the Workers' Compensation Premium Tax. Mr. Limbaugh indicated that the Commission would like the following questions to be determined and solidified in statute:

- Where does the authority lie as far as safety in the state?
- What needs to be inspected? Schools? Cities? Counties? Cemetery Districts? Irrigation Districts? Highway Districts?
- How often should inspections take place?
- Who's going to do it?
- Who's going to pay for it?

Commissioner Limbaugh indicated that proposed legislation could take a year for vetting by stakeholders. He stated the Commission would like the Subcommittee comprised of representatives of employers, public sector cities and counties, and the Division of Building Safety.

Commissioner Baskin reiterated the Commission's purpose to convene a Subcommittee is to seek a resolution and clarification of the statutory obligation under §72-720 for the inspection of all political subdivisions. He further stated that DBS has an independent authority and obligation to inspect on an annual basis.

Mr. Millard expressed his interest to serve on the Subcommittee since his representative hospital clientele are inspected routinely.

Mr. Galbreath inquired if the Commission has contacted legislative representatives to participate in the process.

Commissioner Limbaugh indicated the Commission had not taken it to that level at this time, awaiting the outcome of today's discussions.

Mr. Haxby volunteered to follow up with his public sector contacts and determine their interest and provide feedback to the Subcommittee.

After additional review and discussion, Subcommittee members were selected as follows: *Jim Alcorn; Steve Millard; Woody Richards; Roy Galbreath, Chairman; Mike Batten; Jane McClaran; and Blair Jaynes.*

Industrial Commission Report:

IIC Annual Seminar – October 24, 2013. Commissioner Baskin reported that the Industrial Commission had a successful showing at the October 24th Commission Annual Seminar in Boise. He further reported that the keynote speaker was Dr. David Pate, CEO of St. Luke's Health System, who presented an informational viewpoint on the reformation of health services in Idaho.

IIC Processing of Lump Sum Settlements. Commissioner Baskin provided an update on the implementation of the Commission's internal processing of Lump Sum Settlements through the Benefits department, effective August 1, 2013. Commissioner Baskin explained the current lump sum settlement process, pursuant to IC §72-404. He further reported that the Commission has been tracking the LSS approval process for the months of August, September and October and the data indicates that the Commission is meeting the seven to ten day benchmark. Commissioner Baskin is optimistic that the mediation process will return to its historic intended function as a venue for settling the more difficult cases. He also invited anyone who is having problems with the LSS process to call on the Commission for clarification.

Mr. Greenfield indicated that the process is working well for him and appreciates the efforts of the Commission's Benefits department.

Redaction of Medical Records IC §72-432 – HIPA Concerns. Commissioner Baskin reported that a defense attorney had contacted the Commission of an issue with a Twin Falls medical facility that had redacted medical information from a "request for medical records," and the records were stamped "*Redacted Pursuant to IC §72-432.*" Commissioner Baskin reported that the Commission reviewed the statutory scheme of 42 CFR 164.512(L) and IC §72-432(11) and conducted an inquiry into the issue. The Commission gleaned from the medical provider that their decision to redact certain information was based on the concerns about HIPA disclosures and possible violations. Commissioner Baskin reported that a mutual consensus was reached with the provider, and the Commission is satisfied that the issue has been resolved. Commissioner Baskin explained that the Commission understands the position of providers is to err on the side of caution, but wanted to alert the practitioners and to remind them to contact the Commission if they are aware of a similar situation occurring in WC cases.

IIC Public Service Announcements ("PSA"). Commissioner Baskin reported that the Commission's Public Service Announcements have been implemented. He explained the PSAs focus is to educate the small business community of the importance of maintaining their Workers' Compensation coverage. He expressed the Commission's concern that in times of economic downturn, in particular small businesses, have a tendency to look for cost-savings alternatives and can be tempted not to pay their Workers' Compensation premiums.

Commissioner Baskin had no further Commission business to report and called for questions of the Committee.

Chairman Veltman reiterated how well the LSS process is working and thanked the Commission for alerting the attorneys to the possible HIPA issue.

Mr. Haxby thanked the Commission for their continued efforts in the processing of lump sum settlements and agrees with Mr. Greenfield that the process is working well.

Other Issues/Announcements

Bi-Annual Adjuster Meeting Dates (2013-2014):

Mr. Mike Haxby presented a summary update of the Adjusters' meetings held August 14, 2012 and January 30, 2013. He stated this meeting platform provides the adjusting community an opportunity to express their concerns and provide constructive resolutions. He reports that issues within the adjusting community of the last two years have, to his knowledge, been satisfactorily resolved. He reports that the Commission's Benefits' department has done a good job of getting information out to adjusters. He further reports that reinstatement of the surety audits and posting of the compliance audits has been beneficial and allows the adjusting community to focus on the top 20 or 25 issues the Commission deems most important but not "critical." He also reports that the Commission's *Newsletter* published in 2013 (a fall/winter newsletter and a spring/summer newsletter) is very helpful, and he is pleased to see that many of those articles are directly on point with issues raised by the adjusting community. He thanked the Commission in communicating their expectation of the processing of lump sum settlements. Mr. Haxby also reported that the next meeting of Adjusters is tentatively scheduled for December 10th. He will contact Adjusters about the meeting date, learn of any new issues, and determine the level of interest and need to convene bi-annually. He will prepare a meeting agenda and submit it to the Commission for posting on its website. Mr. Haxby called on the Advisory Committee for other issues or concerns to present at the next Adjusters' meeting.

Mr. Haxby had no further information from the adjusting community to report to the Committee.

Payment of Medical Bills on Denied Claims:

Defense Attorney Jon Bauman presented for the Committee's consideration the use, or lack thereof, of the federally mandated HCFA bill forms for the payment of Workers' Compensation medical bills on denied claims. He stated that the HCFA bill forms are a requirement of our IDAPA rule and the Commission's fee schedule and the HCFA forms allow sureties to process the bills efficiently. Mr. Bauman reported that he has been practicing Workers' Compensation for about 25 years, and that lately he's receiving ledger sheets from claimants that have no dates of service, no provider names, and only displays the "balance paid" and the "balance due" amounts. He further stated that the burden to obtain the necessary information, such as the doctor's chart notes, dates of service, and the dollar amounts, has shifted to the surety and this slows the process. He further stated that he has had to explain the usage of the HCFA bill forms to four different attorneys in the last few months.

Mr. Bauman did not ask for a rule change but requested the Commission to remind the legal community of the importance for using the HCFA bill forms so the payment of medical bills is timely and fewer claims would be sent to collections for non-payment.

Ms. Vaughn confirmed that the HCFA bill form and medical fee schedule go "hand-in-hand."

Chairman Veltman reminded the Committee that the IDAPA Rule requires the standardized use of the HCFA Bill forms for billing payors.

Mr. Millard indicated that Healthcare Financing Administration (HCFA) is now referred to as the Centers for Medicare and Medicaid Services and is a hospital-physician form CMS 1500.

Mr. Arnold responded with his opinion from the Claimants' bar regarding "accepted" vs. "denied" medical claims. He stated that for accepted claims, bills are received by claimants for procedures not paid for some period of time that is then triggered by receipt of a collection letter to the claimant and then brought to the attention of the surety for processing and payment. He stated that for some TPAs this occurs more often than for others. Mr. Arnold stated that for denied claims, he submits the full bill for processing and payment and then informs the surety of the exposure and is, therefore, not interested in the Commission's fee schedule. Mr. Arnold further stated that the job of Claimants' bar is to convince someone of the causal relationship; and the responsibility, therefore, for the payment of medical bills, lies with the surety or TPA to communicate with the doctors' offices.

Messrs. Haxby and McDougall offered further explanation of the HCFA bill process and fee dispute resolution process of denied payments for medical services.

Mr. Arnold reminded the Committee that the patient, ultimately, is responsible for the payment of medical bills. The patient signs a waiver stating responsibility for the payment of the medical bills.

Mr. Haxby stated that these are real issues and worthy of discussions, but from today's comments, it appears to be a small percentage of "outliers" not using the HCFA forms.

Chairman Veltman thanked Mr. Bauman for bringing the issue to the attention of the Committee.

Break taken.

Gap in Benefits Between Termination of TTD Benefits and Payment of PPI Benefits (James Arnold):

Mr. Arnold presented an issue of growing concern to him regarding time loss and the gap period between TTD termination and PPI payments that is creating a financial "hardship" when treating physicians release claimant but refuse to provide an impairment rating and are requesting other medical providers to conduct the impairment ratings. Mr. Arnold reported that this situation occurs in a relatively small number of cases. Mr. Arnold stated that often times he and his clients are not aware of the event until the surety letter arrives.

The Committee discussed at length the transition period between temporary benefits and permanent benefits and agreed that there are some cases that demonstrate a financial hardship for claimants in the "gap" period when no final assessment of impairment is provided to a claimant

and no ability to return to work exists. The Committee agreed that claimants are entitled to sure and certain relief under the law.

Representative Hancey inquired what, if any, recommendation(s) Mr. Arnold would make to the Committee.

Mr. Arnold reported that the current statute requires sureties to implement no change in benefits without a (15) days' notice in a change of status to provide claimants the full benefit, but in his experience the statute is ignored.

Chairman Veltman provided an additional scenario for a change of status when a claimant has reached maximum medical improvement and the treating doctor certifies that claimant can be released to light duty work.

Mr. Arnold clarified for the Committee that his issue and interpretation of the statute is relative to a claimant who is not physically able to return to work.

After further discussion and reading of the statute, IC §72-806 - Notice of Change of Status, by Commissioner Baskin, it was suggested that these cases be taken to hearing for a finding on the merits of the case.

Mr. Haxby expressed his appreciation of Mr. Arnold's stance on the issue and shared his thoughts on these unique circumstances and conditions from the perspective of the insurance industry. He also explained that in his experience, although there is no express rule that PPI be advanced in these unique circumstances, exceptions are made and advancements on payment of PPI is made in the gap period for these "hardship" claimants. He went on to explain that IIC rules provide that all information, including release dates and dates of payments, are provided to the Commission to approve the time loss that is paid in these cases.

Mr. Skinner reported that he is also seeing a trend where more often doctors are refusing to rate their own patients because of no self-objectivity and refer their patients to other doctors to perform the rating. He also stated that doctors have expressed their dislike of using the 6th Edition of the Guides.

Mr. Van Leuven expressed his concern for the injured employee and inquired if this gap period in benefits payments is also applied when there are several specialists involved in the care and treatment of a claimant.

Mr. Arnold indicated that the scenario as Mr. Van Leuven describes is a different issue and comprises a small microcosm of the whole system.

Mr. Haxby expressed his concern that there are more and more reduced income people waiting paycheck-to-paycheck, but is of the opinion that the issue is not specific to Workers' Compensation.

Chairman Veltman inquired if the Committee believes there is a need for a rule clarification. After discussion, no consensus was reached to pursue a rule clarification at this time.

Mr. Arnold thanked Mr. Skinner for his observations and reiterated his concern from Claimants' bar.

Chairman Veltman provided an explanation of when a patient reaches maximum medical improvement. Ms. Veltman thanked Mr. Arnold for bringing this issue to the Committee's attention.

Mr. Haxby reminded the Committee that the Newsletter and other guidance information are posted on the Commission's website.

Second Injury Fund – Claims Processing and Notice Provision IC §72-334 (James Kile):

Mr. Kile reported that he and his staff continue to receive voluminous amounts of medical records that have no relevancy, either in hard paper format or on disk, on second injury fund claims. He requested the Commission to inform the legal community of the importance of screening the information they are submitting to the Second Injury Fund. Mr. Kile expressed his appreciation to Mr. Greenfield and his staff for understanding the process and providing only relevant records, i.e., vocational records and IMEs, for a second injury claim.

Preparation for Future Meetings

Chairman Veltman called for agenda items for the next meeting.

Topics for Discussion at Next Meeting:

Mr. Arnold requested the Commission look at implementation of electronic documents filings of complaints and answers.

Commissioner Baskin reported that the Commission is looking at EDI 3 to launch January 1, 2016. He also reported that the Commission was reinvigorated at the last IAIABC Conference to proceed with a "paperless" measure, at least in terms of litigation filing, and believes this is an issue worth vetting through in more detail with this Committee. He also relayed that some states who reported going "live" were fraught with problems. Commissioner Baskin requested the Commission Secretary to include on the next meeting agenda discussion for the formation to convene a "*Subcommittee on Electronic Documents Filing*" for the purpose of vetting through procedural and processing issues for instituting electronic litigation documents filing with the Industrial Commission.

Dr. Collins requested that "*Future Medical Trends, Observations and Concerns*" be included on the next meeting agenda.

Chairman Veltman called for approval of the proposed 2014 Advisory Committee meeting schedule. Mr. Kenck moved to approve the proposed meeting schedule for 2014, seconded by Dr. Collins.

The Advisory Committee meeting schedule for 2014 was discussed and approved as follows:

February 12, 2014
April 16, 2014
August 13, 2014
November 12, 2014.

Chairman Veltman called for other issues or comments.

Mr. Millard requested that Robin Sexton and Angela Harter, as representative of employers, be included on the distribution list for the Subcommittee on Healthcare as discussed by the Subcommittee at its last meeting.

There being no further business, the meeting was adjourned.