

**Industrial Commission's Advisory Committee
On Workers' Compensation
Minutes
August 13, 2014**

Members Present

Mike Haxby
Roy Galbreath
Craig Mello
Larry Kenck
John Greenfield
James Arnold
Steve Millard
James Alcorn
Gardner Skinner
Dr. Paul Collins
Mike Batten
Rian Van Leuven

Members Absent

Susan Veltman, Chair
Susan Rhoades
Senator John Tippetts
Representative Douglas Hancey

Industrial Commission

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

Opening Remarks:

Advisory Committee Member Mike Haxby opened the meeting on behalf of Chairman Susan Veltman and introduced public attendee Ms. Linda Timm of Optum Health, who participated by conference call. Mr. Haxby asked for introductions of Advisory Committee members and public attendees.

Minutes:

The Minutes of April 16, 2014 were reviewed. Mr. Arnold moved to approve the minutes of April 16, 2014 as written, seconded by Rian Van Leuven. The motion passed.

Subcommittee Reports:

Workplace Safety IC §72-720 through IC §72-723. (Members: *Chairman Roy Galbreath, Jim Alcorn, Woody Richards, Steve Millard, Mike Batten, Kelly Pearce, Suzanne Budge, Pam Eaton, Jerry Deckard, Tony Poinelli, Leon Duce, Justin Ruen, Alex LaBeau, Stuart Davis, Keith Bybee for Senator Shawn Keough; Industrial Commission: Commissioner Tom Baskin, Commissioner R.D. Maynard, Commissioner Tom Limbaugh, Director Mindy Montgomery, Financial Officer Jane McClaran, and Deputy Attorney General Blair Jaynes*). Chairman Galbreath reported that the Subcommittee was convened on May 2, 2014 to explore potential changes in statute regarding building safety and inspections. Mr. Galbreath reported that the **Subcommittee had a lively discussion and the consensus was that something needed to be done and that the Division of Building Safety and the Commission would work together towards a proposed legislative change.** He further reported that the Commission submitted proposed amendments to DBS who made additional

changes, and the two groups are ready to meet. The Subcommittee would like to meet within the next (45) days to review the proposed amendments.

Commissioner Limbaugh reminded the Committee that the deadline for submitting new legislation for the 2015 session has passed; but with the additional time it provides cities and counties an opportunity to obtain comments from constituents.

Healthcare – Med Fee Schedules. (Members: *Chairman Steve Millard, Angela Harter, Senator Dan Schmidt, Jim Alcorn, Larry Tisdale, Mike Haxby, Woody Richards, Pam Eaton, Dr. Paul Collins, Teresa Cirelli, Thomas Howell*, Industrial Commission: *Commissioner Tom Limbaugh, Director Mindy Montgomery, and Med Fee Analyst Patti Vaughn*). Chairman Steve Millard summarized the Subcommittee’s efforts of the past few years on the med fee schedule and thanked the Subcommittee members for their contributions. Mr. Millard reported that the Subcommittee met on June 25, 2014 and July 24, 2014 for the purpose of reviewing rates being paid for workers’ compensation claims at hospitals and for physicians.

Hospital Fees: Mr. Millard reported that the Subcommittee lacked sufficient, reliable in-state hospital data; other than the use of state-to-state comparisons. At the June 25th meeting, the Subcommittee agreed there was insufficient data to make any recommendations. On July 24th, the Subcommittee was provided some surety and additional hospital data comparing specific DRG numbers and CPT Codes of in-patient and out-patient payments to the most competitive commercial health payments; and the analysis showed that for MS-DRGs the workers’ compensation rates were 75% of the commercial health insurance rates, implants data was not included. Mr. Millard summarized the orthopedic CPT codes comparisons and reported that the WC rates were 103% of commercial insurance average payments. The E&M CPT codes rates showed workers’ compensation rates at 90% of the commercial health insurance rates. He also reported that the hospital rates data hasn’t changed since 2010. Some members felt the rates should be left the way they were; others called for an increase. Mr. Millard further reported that Idaho hospitals get paid 12% below their costs on Medicare, while hospitals in other states get paid more.

Mr. Millard reported that the Subcommittee consensus this year and recommendation to the full Committee is that the hospital rates be increased 2%.

Physician Fees: Mr. Millard reported that the Subcommittee also reviewed the physician fee schedule. He reported that the IMA presented their data to the members and recommended to the Subcommittee that the primary care doctors have an increase in their rates and leave the rest of the rates the same. He reported that the Subcommittee, in general, agreed that physicians would receive an increase based on the RBRVS System and the payment structure of the Workers’ Compensation fee schedule.

Mr. Millard reported that the Subcommittee recommended no increase in the physician fees for this year.

Public Comment:

Mr. Richards opined that if the doctors weren't billing at the current fee schedule amount, it would be a hard sell to the legislature to increase the physician rates.

Discussion held about whether physicians would partake in the 2% hospital increase as employees of the hospital. Ms. Vaughn clarified the payment procedure of hospital bills and use of the HCFA forms for payments of physician charges. She opined that the 2% hospital increase would not apply to physicians employed by hospitals.

Discussion held on Montana's 2011 statutory reforms giving their Workers' Compensation Commission the authority to collect commercial insurance rates information. Commissioner Limbaugh thanked Ms. Vaughn for her research on the Montana statute and reported that Montana's WC rates do not exceed commercial percentages of more than 10%.

Mr. Richards and Mr. Millard reported that HC Resolution 49 passed the legislature this year that allows workers to obtain healthcare data, which may lead to a healthcare database this group could use.

Mr. Haxby added that for state-to-state comparisons, Idaho ranked 1st and 2nd in the top 10 CPT Codes used; Idaho is one of the highest payables and doctors are only charging half of the allowable rates. He further thanked Senator Dan Schmidt, a physician who participated via phone call, and Mr. Alcorn for their beneficial insight.

The Committee felt that further research into the Montana statute and evaluation of their process would be beneficial and worthy of consideration by the Commission. Mr. Haxby opined that insurers may want to consider this cause.

Chairman Haxby called for a vote by the Advisory Committee on the Subcommittee's recommendations of the hospital and physician fee schedule. The Advisory Committee supported and recommended a 2% increase for the hospital fees for next year; no increase to the physician fees.

Physician Depositions and Opinions. (Members: *Chairman James Arnold, Alan Gardner, Jasen Carrier, John Greenfield, Woody Richards, Rian VanLeuven, Teresa Cirelli*, Industrial Commission: *Commissioner Tom Baskin, Commissioner R.D. Maynard, Patti Vaughn, and Terrisa Wyatt*). Chairman Arnold thanked the members for their participation at the June meeting. He reported that it was a good discussion on the issue of getting physicians primarily to participate in the litigation process at a reasonable cost. He reported that the Subcommittee had two discussion points: (1) Incorporate physician deposition fees into the medical fee schedule; and (2) Identify solutions for obtaining opinions as to causation from physicians who are reluctant or who refuse to provide opinions.

Chairman Arnold reported that the Subcommittee reviewed the subpoena process and discussed one-on-one educational visits with physicians that in the past did not provide positive results. The Subcommittee recommended a Commission forum with the IMA or other similar organization. Participating Subcommittee Member and the IMA's Director of Reimbursements Teresa Cirelli volunteered to open dialogue with the IMA for inclusion of a Commission forum

at the IMA's upcoming convention; however, the IMA program filled and the opportunity was no longer available for Commission participation for calendar year 2014.

Chairman Arnold reported that the Subcommittee defined the issues and will meet once or twice before the next Advisory Meeting to formulate a plan of action for educating physicians on the process and for Commission participation at future medical forums.

EDI Rules and IAIABC Implementation Guide. (Members: *Chairman Mike Haxby, Dr. Paul Collins, Tamie Bremer*; Industrial Commission: *Commissioner R.D. Maynard, Scott McDougall, Claire Sharp-Minert; Marry Stumpp, and Matt Vook*). Chairman Haxby thanked the Commission and IT Systems Analyst Mary Stump for the initial preparation of the EDI Release 3.0. Mr. Haxby reported that the Commission will be moving forward with the Release 3.0 mandate. He reported that Release 3.0 was implemented about ten years ago and in many states most insurers, TPAs and nationals are using EDI 3.0. He reported that EDI 3.0 has several data fields and event triggers to match all states' reporting requirements. He reported that 23 states continue to use EDI Release 1.0; and Iowa uses Release 2.0. He reported that the IAIABC Implementation Guide (808 pages of technical information) sets forth the national standards for EDI reporting established for each state. He reported that there has been a delay in preparation and use of the guide, but the Subcommittee is analyzing the specs and determining outcomes for stakeholders. Mr. Haxby recommended to stakeholders, such as Sedgwick James, the State Insurance Fund, and large national TPAs, to participate in the process on the Subcommittee.

Mr. Haxby expressed support of a modern data exchange that lessens the impact of paper files on the environment; and thanked Mr. McDougall for initiating rulemaking in this next legislative session.

Mr. McDougall reported that several Commission staff has been working on the Implementation Guide and the applicable administrative rules through the Subcommittee and the Advisory Committee. He also reported that the state specific Implementation Guide is to be updated before we proceed with rulemaking.

Mr. Haxby reported that the Subcommittee will not meet again until the Implementation Guide has been completed.

Claims & Benefits Rules – IDAPA 17.02.04 IC §72-408. (Members: *Chairman Scott McDougall, Mike Haxby, Darin Monroe, Brad Eidam, Dan Stephens, Gard Skinner, Mike McPeek, Woody Richards, Phil Barber, Rian VanLeuven*; Industrial Commission: *Commissioner Tom Baskin, Faith Cox, Blair Jaynes, and Matt Vook*) Chairman McDougall provided handouts of the proposed draft Claims & Benefits Rules Amendments, IDAPA 17.02.04, 17.02.10 AND 17.02.11. He reported that the Subcommittee met every three weeks and returned to this Advisory Committee some three or four months previous with a “somewhat” finalized rule amendment. He summarized the amendments and reported that the term “claims administrator” needed clarification in rule; EDI uses “*claims administrator*” as a term of art, and the Subcommittee found judicious as it creates the distinction of a claims administrator, as an entity, from a claims adjuster, who may be an individual examiner.

Mr. McDougall reported that since 1996 the Commission has used EDI Release 1.0 on a voluntary basis -- 67% of FROI.

Mr. Haxby requested clarification of the reporting entity for EDI.

Mr. McDougall reported that the dilemma is in the sink up between the two rules.

Mr. Haxby thanked all participants for their contributions on the Subcommittees.

Firefighters Proposed Legislation IC §72-438 – Occupation Diseases. (Richard Owen).

Mr. Owen thanked the Committee for the opportunity to return and present the new Firefighter legislation (*see* Handout) for the Committee's consideration and approval.

Mr. Owen provided a historical summary of the past legislative proposals that had been presented to this Committee and blocked in the legislature for the past three years. He summarized the draft legislation and reported that the Firefighters removed the "presumptive" language on causation and replaced it with the definition for "firefighter occupation disease" that confers a benefit to the Firefighter, like any other occupational disease defined in the statute. He further reported that the proposed language does not ask for an advantage that other workers, who already suffer an occupational disease in the state, already receive under the occupation disease definition; it puts the occupation of cancers of firemen on the same footing on all occupation diseases defined in the law. He further reported that causation would still have to be proved by injured workers. Mr. Owen reported that the medical history would be provided by doctors who conduct the medical history and perform the required physicals.

Discussion held on the proof and confirmation of a ten-year absence of tobacco use of professional firefighters.

Discussion held on the Meta-analysis studies provided by the Firefighters. Mr. Skinner requested an opportunity to re-evaluate the studies before he could feel comfortable with further discussion.

Discussion held on the bill's process in the 2014 legislative session on the presumptive language and removal of the reference to "volunteer firefighters." Mr. Owen opined that the new version could move through the House in the 2015 session with the removal of the "presumptive" language. Mr. Owen reported there were two reasons not to include the volunteers in the proposed language: (1) No funds available for the screening physicals; and (2) Too many variables of the volunteer's full-time employment. Mr. Owen reported that the Professional Firefighters continue to work with the volunteer firefighters, but the National Association is working with the new version.

Mr. Owen requested an invitation to return to the Committee in November for further debate on the proposed language and for a consensus vote to take the statutory amendment to the legislature this session.

Discussion held to re-convene the PFFI Subcommittee. Mr. Haxby requested the Commission Secretary to distribute the Meta-analysis studies to members of the PFFI Subcommittee and the full Committee.

The Committee consensus is to reconvene the PFFI Subcommittee to vet the new proposed statutory amendment prior to the November 2014 Advisory Committee meeting.

Updates:

Future Medical Trends – Cost Containment. (Members: *Chairman Paul Collins, M.D., Angela Harter, James Arnold, Mike Haxby, Mike McPeck, Mike Batten, Woody Richards, Representative Doug Hancey, Rian VanLeuven, Steve Millard, Teresa Cirelli; Industrial Commission: Commissioner Tom Baskin, Deputy Attorney General Blair Jaynes, Scott McDougall, and Patti Vaughn*). Dr. Collins reported that the Subcommittee held one meeting and had limited data to review. The Subcommittee suggested that he and Steve Millard meet independently to compile data and then convene a second Subcommittee meeting to analyze the data. Dr. Collins reported that he and Mr. Millard were not able to meet; and the Subcommittee has not reconvened and has taken no action for a recommendation to the Advisory Committee or the Commission to proceed on the issue. Dr. Collins suggested that the Commission consider accepting the Washington State Labor & Industry policy; giving the Commission authority to identify non-covered procedures that demonstrate poor outcomes for patients in workers compensation cases, such as spinal cord injections, epidural steroid injections, and other similar forms of treatment.

Discussion held to explore adopting evidence-based medicine guidelines similar to other states and the requirements for a statutory amendment or rule change. Mr. Jaynes reported that the Commission currently has no authority to establish treatment guidelines. The Committee recommended the Subcommittee reconvene and explore statutory amendment proposals.

(Break taken.)

Industrial Special Indemnity Fund – FY15 Assessments. (James Kile)

Mr. Kile provided a summary and handout of the ISIF FY15 Assessment and CY14 reports. He reported that notices of intent were up over 10% this last year; complaints are down approximately 20%. He predicted an increase in complaints for next year. Mr. Kile reported that lump sum settlements decreased due to implementation of a hybrid process in the payment of benefit distributions. Mr. Kile reported that there were six new beneficiaries added to the settlement process. He further reported that last year's assessments spiked up 37%; this year's assessments decreased 22%. He reported that employers should see a benefit in a lower premium. Mr. Kile reported that assessments for next year should be similar to years 2010 through 2013. Mr. Kile further reported that ISIF received two life-time beneficiaries this fiscal year. He reported that three claimants deaths occurred during the hearing process – one had gone to hearing and two waiting for hearing.

Other Announcements:

Mr. Haxby congratulated Christi Simon, the Commission's Employer Compliance Manager, on her retirement from the Commission after 38 years of service. He announced that the Advisory Committee is invited to her retirement party and invitations have been made available.

Industrial Commission Report:

On behalf of the entire Commission, Commissioner Baskin thanked Christi Simon for her 38 years of service with the Industrial Commission.

Commissioner Baskin reported on the following Commission activities:

Workplace Safety. Commissioner Baskin thanked the Chairman and members of the Workplace Safety Subcommittee on their contributions to the group discussions. He reported that, pursuant to IC §72-720 thru §72-723, the Commission is vested with the broad authority and responsibility over workplace safety. Commissioner Baskin briefly summarized the effects of the 1971 Amendments to the OSHA Act and OSHA's role in the private sector employer. He reported that the Commission does not have the staff or machinery to conduct inspections of public sector employers; and opined that the Division of Building Safety has more available resources. He further reported that the Commission has been working with DBS on revisions to the draft statutory amendments and wants to bring this to a conclusion.

IC § 72-301A-Self-insured Employer – Experience Modification Factor:

Commissioner Baskin reported that IC §72-301A was adopted by the legislature this past session and compelled the Commission to promulgate rules. He reported that employers who work at the INL site under a contract with the U.S. government and desire to apply for self-insurance will no longer be required to post security for self-insurance, obtain excess coverage, or maintain a \$4M average payroll. Commissioner Baskin referred to the draft handout and summarized the proposed language in the temporary and proposed IDAPA Rule 17.0211 that governs self-insured employers; the rule provides for an Experience Modification Factor ("E-mod") through NCCI.

Commissioner Baskin summarized the process undertaken by the Commission and Battelle Energy Alliance for determining an appropriate premium tax for self-insured employers applying for an E-mod at INL, pursuant to IC §72-523. He reported that the Commission has no in-house underwriting expertise but obtained assistance from the State Insurance Fund in determining appropriate job classifications and composite rate estimates for nuclear workers of BEA. He reported that the Commission historically has not applied an E-mod to self-insured employers, nor in the collections of premium tax of self-insured employers. Commissioner Baskin reported that the temporary and proposed rule allows for the application of an experience modification factor through NCCI. Commissioner Baskin reported that the temporary rule went into effect on July 1, 2014.

Commissioner Baskin thanked the Commission's Financial Officer Jane McClaran, IIC Fiscal Staff for their work with BEA and the State Insurance Fund on this project. He reported that the Commission's Fiscal Staff sent an informational letter to all Idaho self-insured employers explaining the E-mod application process through NCCI that included an explanation of the one-time, (90)-day grace period following the premium tax deadline on July 31, 2014. Commissioner Baskin reported that the NCCI application process takes approximately (45) days for completion. He further reported that the E-mod project is completed, and the Commission expects to receive additional applications from other contractors at the site.

IIC Annual Workers' Compensation Seminar. Commissioner Baskin introduced the Commission's new Public Information Specialist Dara Barney. Ms. Barney debriefed the Committee on the upcoming Annual Workers' Compensation Seminar, scheduled for October 23rd.

IDAPA Rule 17.0209 – Med Fees. Commissioner Baskin deferred to Ms. Vaughn to report on the proposed IDAPA Rule amendments the Commission is considering in the medical fee schedule for hospitals and physicians.

Ms. Vaughn summarized the proposed rules amendments, including a couple of additional changes the American Medical Association implemented a year ago for Medicare services. Ms. Vaughn reported that the AMA recoded the psychiatric diagnostic procedures, moving those CPT Code ranges from Medicine Group 2 to Medicine Group 1, which is a lower conversion factor. She reported that the change had been brought to the Commission's attention recently; and the Commission agreed that it could be a potential issue. She reported that the proposed change pays all psychiatric procedures under the same conversion factor.

Ms. Vaughn next summarized the proposed changes under the hospital outpatient fee schedule for certain diagnostic lab services. The current fee schedule had an assigned status code that allowed 75% of reasonable charge for diagnostic labs. She reported that on January 1st Medicare changed the status indicators that included the following changes: (1) Status code "N" items for diagnostic lab services not billed separately and bundled with another service; and (2) an "L1" modifier indicative that there's a stand-alone lab procedure - unrelated to anything done at the same facility on the same date - and reimbursable at what would be paid at 75% of reasonable charge.

Public Comment:

Discussion held about the Commission's payment dispute resolution process available to providers and payers. Ms. Vaughn reported that she also provides assistance to bill reviewers, claims adjusters, or providers who contact her.

There was no further discussion of the proposed rules amendments.

The Commission will move forward with the proposed rules amendments of IDAPA 17.02.09.

Elections of Advisory Committee Members:

Mr. Haxby thanked Ms. Veltman for her past work as Chairman of the Advisory Committee; and called for a report from the Nominations Committee.

Mr. Greenfield reported that the Nominations Subcommittee met and reviewed the nominations process. He reported that the incumbents all expressed an interest to remain on the Committee and ran unopposed. The Nominations Subcommittee nominated Mike Batten for Chairman of the Advisory Committee for next year.

Mr. Haxby informed the Committee that Mr. Millard is scheduled to retire from IHA at the end of the calendar year, and he is going to resign his position on the Advisory Committee. There will be a special ballot process at the November meeting to fill Mr. Millard's vacant position.

Mr. Greenfield expressed his admiration of Mr. Millard's leadership and thanked him for his years of service on the Advisory Committee.

Preparation for Future Meetings:

Discussion held of the next meeting topics.

Topics for Discussion at Next Meeting:

- PFFI Subcommittee - Firefighter Legislation
- Subcommittee Meeting on Future Med Trends - Cost Containment
- Workplace Safety Subcommittee
- Election by Special Ballot

Next Meeting Dates:

November 12, 2014.

Mr. Haxby called for other issues or comments.

There being no further business, the meeting was adjourned.