

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

November 9, 2011
Department of Industrial Accidents
1 Congress Street, Suite 100
Boston, MA 02114-2017

Council Members Present: Chairman Mickey Long; Vice-Chairman Edmund C. Corcoran, Jr.; David Powell (Kevin Hurstadt); Stephen Joyce; Stephen Falvey; Bernard Mulholland; Todd Johnson; John Regan; Antonio Frias (Ines Leonardo); Dennis Hines; Maydad Cohen, Executive Office of Labor and Workforce Development (EOLWD).

Also Present: Director Philip L. Hillman; Reuben Kantor, Director of Operations; William Tattan, General Council; Jack Defina, CFO; William Taupier, First Deputy Director of Administration; Ray Marchand, Director of Investigations; Diane Neelon, Executive Director, Health Care Services Board; Bob Ford, Acting Budget Director, EOLWD; Ellen Keefe, Workers' Compensation Rating & Inspection Bureau of Massachusetts; Michael Kelley, AIM Mutual Insurance Company.

Advisory Council Staff: William S. Monnin-Browder; Evelyn Flanagan; Christina Peura.

Absent: William Corley; Teri McHugh; John Pulgini; Executive Office of Housing and Economic Development

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update – William Taupier, Deputy Director of Administration
- Vital Statistics – William Taupier, Deputy Director of Administration

Action Items

- Minutes – October 12, 2011

Health Care Services Board (HCSB) Update on Utilization Review – Diane Neelon, Executive Director, HCSB

Concerns and Recommendations Discussion

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Mickey Long began the meeting at 9:00 A.M. Chairman Long introduced and welcomed the Council's new Executive Director, William S. Monnin-Browder.

DIA UPDATE

Chairman Long asked that the DIA to provide the Judicial Update.

Judicial Update

Mr. William Taupier stated that the DIA currently has three judges offline, which is adding to the actual waiting time for conferences. He indicated that the current wait time is about 14 weeks. He

stated that the DIA is hoping to have the new Senior Judge in place before the next Council meeting, at which point the new Senior Judge would begin providing the Judicial Update.

Council Member Bernard Mulholland stated that the current wait time from conciliation to conference is worrisome. He explained that one of his clients, whose conciliation was 13 weeks ago, had not had a conference and is not receiving compensation.

Chairman Mickey Long noted that both employers and injured workers are disserved by waits of 14 weeks and that he would like the wait time to be decreased to the four to six week range. The Chairman stated that when he first was appointed to the Council, the wait times were high, but successful efforts were made to get them down to record lows. He expressed concern that they seem to be trending upward again.

Director Philip Hillman explained that part of the problem is the need to get more judges online—a process that is currently in the works. He stated that the DIA was turning the corner on the circumstances surrounding the situation, which will drive the numbers down.

Director of Operations Reuben Kantor stated that, from conversations with the judges, they believe that things run most smoothly when the wait time between conciliation and conference is around eight to ten weeks. Mr. Kantor noted that 75% of conferences move to hearing, therefore, if conferences are frontloaded, it backs up the impartial queue.

Council Member Mulholland stated that he recognized the impartial system was a concern, given that there were fewer doctors on the roster to perform the exams. However, he indicated that the big issue for the bar is concerned with is getting to a judge as quickly as possible. Mr. Mulholland stated that it would be preferable to wait between conference and hearing, than to wait for conference.

Vital Statistics

Mr. Taupier updated Advisory Council members on the information contained within the DIA's vital statistic report for November 2011. He offered the following statistics: Conference Queue: 808; Hearing Queue: 750; Reviewing Board Inventory: 42; Impartial Exams for FY' 12 (to date): 1,445 (16 waivers); Exam Fees Collected for FY' 12: \$542,775; Impartial Medical Examinations in FY' 11: 4,295 (48 waivers); Exam Fees Collected in FY' 11: \$1,560,963.

Mr. Taupier updated Advisory Council members on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in October: 234 (23 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY' 12 (to date): 942; fine collection for October 2011: \$90,750; total fines in FY' 12 (to date): \$388,550; SWOs issued in FY' 11: 2,972; total fines collected in FY' 11: \$1,228,525; compliance checks for October 2011: 4,759; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 3,843 (FY' 12).

Vice-Chairman Edmund Corcoran circulated an article concerning Michael Powers, the former owner of a temporary employment agency in Stoughton who been sentenced to seven years in prison for his role in running a \$30 million under-the-table payroll scheme. Vice-Chairman Corcoran noted that the owner had substantial unreported taxes and unpaid workers' compensation premiums.

Mr. Taupier continued the update of the monthly vital statistics by offering the following statistics: total number of cases filed in October 2011: 1,038; total number of cases filed in FY' 12 (to date): 4,060; total number of cases filed in FY' 11: 12,589; total number of First Report of Injury Forms (FRI) filed in October 2011: 2,414; total number of FRI filed online in October 2011: 806 (33%);

total number of FRI filed in FY' 12: (to date): 9,935 (910 online); total number of FRI filed in FY' 11: 30,820 (9,482 online).

Mr. Taupier proceeded with his update on uninsured claims (§65), offering the following numbers: total number of §65 claims reported in FY' 12 (to date): 37; total amount of §65 claims paid by the Trust Fund in FY' 12 (to date): \$2,202,222; total number of §65 claims filed in FY' 11: 118; total amount of §65 claims paid by the Trust Fund in FY' 11: \$7,666,940; total recovery efforts against uninsured employers FY' 12: \$389,654; total recovery efforts against uninsured employers FY' 11: \$1,329,919.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A), stating the following: total amount of §37/37A petitions paid in FY' 12 (to date): \$2,696,670; total amount paid on these claims in FY' 11: \$19,582,396; total COLA reimbursements to insurers in FY' 12 (to date): \$222,838; total COLA reimbursements to insurers in FY' 11: \$14,917,381.

General Counsel William Tattan stated that the DIA was working on having a full complement of attorneys for the Civil Litigation Unit and that a new manager had been hired to run the unit. He also noted that one DIA attorney, whose main function was the recovery of money in the Civil Litigation Unit, was out on medical leave. Mr. Tattan also stated that they were currently interviewing other candidates to replace an attorney who left in July.

Mr. Tattan informed Council members that the agency does not hire outside counsel because of problems that arose with the practice in the past. He also stated that the Attorney General is opposed to the agency hiring attorneys from out of state. He indicated that the need to hire out of state counsel arises when there is a judgment that must be enforced in another state.

Chairman Long stated that unenforced judgments could represent a significant amount of money. He noted that if the Council knew the numbers, it could consider drafting a letter to the Attorney General, who has always been responsive to the members of this Council, regarding the issue. Chairman Long offered that, if the Administration would like the Council to do so, the Council would consider sending such a letter to the Attorney General.

Mr. Taupier reported that as of October 2011, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 244 (194 DIA employees, 50 WCTF employees). The DIA is authorized to have 283.2 payroll positions (including all full and part-time positions).

Council Member Mulholland stated that at the last meeting there had been discussion about downsizing stenographers and administrative assistants. He indicated that he was aware that downsizing had been put on hold for the time being, but requested the DIA update the Council on what the thought process was on reducing personnel.

Director Hillman explained that there was no change from last month's Council meeting on personnel, other than that the input received by the Administration at that meeting had been incorporated into the ongoing discussion.

In response to an inquiry from Council Member Mulholland regarding unemployment insurance costs to DIA in the event of layoffs, Chief of Staff Maydad Cohen explained the DIA would not be charged a direct dollar for dollar amount for unemployment costs. Instead, he explained, there is a fund for public employers, similar to the fund that exists for private employers.

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY'12 (to date): \$952,928; total referral fees collected in FY'11: \$3,730,233; total first report fines in FY'12 (to date): \$36,100; total first report fines in FY'11: \$137,905; total assessment collections in FY'12 (to date): \$27,403,434; total assessment collections in FY'11: \$80,880,887; total SWO fines in FY'12 (to date): \$491,013; total SWO fines in FY'11: \$1,836,225.

Council Member John Regan indicated that last month, there was a discussion about the amounts budgeted from various trust funds and the actual expenditures from said funds. He expressed concern that the annual budgeted amounts have, from 2007 forward, run well in excess of the actual numbers. He inquired as to the reasons why the projections were so high and questioned the impact on the assessment. He stated that it is time to act in acknowledgement of the trend, keeping in mind that there is a mechanism in place if problems occur to ensure that the agency is not without resources in the event of a catastrophe.

Jack Defina, CFO, explained that the budget process is based on projections made at a time when the agency is still a few months away from the end of the year, so, when the projection is made, the actual amount is not yet available. Regarding the assessment rate, Mr. Defina stated that the calculation is not based solely on the agency's input and that outside consultants are brought in to evaluate the numbers. He explained that the agency tries to be conservative to make sure the fund is always covered. Mr. Defina stated that amounts budgeted, but not spent, go back into the fund and are part of the calculation used to determine the assessment rate for the subsequent year.

Chairman Long asked why the agency was letting the money accumulate in the Trust Fund instead of kicking it back to the employers, based on prior reduction in the assessment.

General Counsel Tattan explained that, while there may be money budgeted one year in the trust fund that is not spent, the difference is not accumulated in the trust fund. He stated that the money is used the next year. He stated that the agency, by statute, is allowed to keep a 35% cushion, which they do not exceed. He stated that whatever money is left in the trust fund and is not spent in one year is flushed back into the fund. Mr. Tattan explained that the amount of money in the fund is then used to calculate the assessment for the following year. He stated that, while it might not fully flush out in one year, it does in a couple of years.

Vice-Chairman Corcoran noted that he was on Committees during the 1991 Reform, but he did not know where the 35% number came from and who thought of it. He explained that this number had been an issue in the past and suggested that the Executive Director attempt to research the issue. Vice-Chairman Corcoran suggested that perhaps it was time to reconsider the 35% since the agency is in much better shape than it was when that percentage was established.

Mr. Taupier stated that he believed that the original logic was that the agency had to keep money on hand in case of a catastrophe or having to pay huge amounts of money on uninsured claims. He noted that if the money goes below the 35% mark, it will affect the assessment and we have to bring it back up and if the funds exceed the 35% then the excess is to go back into bringing the assessment down.

ACTION ITEMS

A motion was made to approve the October 12, 2011 minutes.

Motion Seconded and Carried.

HEALTH CARE SERVICES BOARD UPDATE (HCSB)

Chairman Mickey Long introduced Diane Neelon, Executive Director of the HCSB.

Executive Director Neelon provided an update on the Office of Health Policy and the utilization review (UR) process. She explained that her department oversees the UR process, which is mandatory. Ms. Neelon explained that UR is the process in which a licensed medical professional reviews proposed medical treatment to determine if it is reasonable and necessary.

Ms. Neelon stated that prior to the 1991 Reform, insurers needed to provide medical care to injured workers, but there was no oversight of that care. In 1991, language was added to chapter 152, §30 requiring the Commissioner to promulgate regulations to oversee such care. In October of 1993, 452 CMR 6.00 was promulgated, requiring all requested treatment to go through UR.

In August 2009, Ms. Neelon stated, the regulations were changed. Under the new regulations, when an employee is injured, the insurance company can decide whether to send the treatment request for UR. Ms. Neelon indicated that there is a 12 week period for UR and that during said period the insurer cannot deny treatment without utilizing UR. She noted that this change benefits both the insurer and the worker. She noted that it saves money for insurer because they do not have to go through UR if the treatment is clearly reasonable and necessary. She stated that it benefits workers by allowing them to get reasonable and necessary treatment with no undue delay.

Ms. Neelon stated that another change in 2009 was the introduction of application fees for UR agents. She stated that the application is pretty thorough as to what the UR agent needs to present to the agency before they are approved. She reported that the fee for in-state agents is initially \$1,000 and if you are an out-of-state agent the fee is \$3,000. She added that after the initial cost the license must be renewed every two years and the cost drops down by 50%, \$500 for in-state agents and \$1,500 for out-of-state agents. Ms. Neelon explained that since 2009 the agency has taken in \$80,000 in fees.

Ms. Neelon stated that regulation also includes fines for noncompliance. She indicated that fines range from \$100 to \$300 per violation. She explained that previously the letters agents would send out did not make sense or did not provide the correct information. She noted that the letters now must be understandable to the injured worker explaining why they are being refused treatment or allowed treatment and they must cite the guidelines with a brief explanation. She noted that, since 2009, \$1,800 in fines have been issued.

Ms. Neelon stated that the HCSB is currently working on their Chronic Pain Guidelines. She indicated that the use of narcotics issue was a significant issue. The new guidelines will require the injured worker to have follow-up visits with their doctor. Ms. Neelon reported that there had been cases in the past where the injured worker goes six months without seeing their doctor, but, during that time, the doctor continues to write prescriptions. Ms. Neelon stated that the guidelines also include drug testing to make sure the injured worker is taking the narcotics being prescribed. Ms. Neelon noted that there was also a physician monitoring system that has gone into place. She explained that the new guidelines will require the physician to check to see if the injured workers are getting drugs from multiple sources that the drugs are being taken appropriately.

Ms. Neelon also discussed International Classification of Disease Codes (ICD). She explained that new codes (ICD-10) are being released to account for new diseases and illnesses. She noted that the only change for the DIA is that the Trust Fund will need to get the software so they know what those

codes are. She indicated that while the CPT code determines the billing, the CPT codes have to go along with the diagnosis, which would be represented by the ICD-10 codes.

In closing, Ms. Neelon stated that Dean Hashimoto recently completed a study about narcotics and the workers' compensation system. Ms. Neelon explained that the findings in the study indicated that UR of narcotics in Massachusetts was among the highest in the 17 state studied. Ms. Neelon stated that WCRI has offered to come in and speak to the Council regarding the study.

CONCERNS AND RECOMMENDATIONS DISCUSSION

Council Member Stephen Joyce indicated that one recommendation he would propose would be to increase public awareness around workers' compensation issues. He noted that it would help reduce the number of trust fund cases if more people knew that if they employ workers in Massachusetts, they should have workers' compensation coverage and, if they do not, that they will be fined.

Chairman Mickey Long asked that members of the Council review the draft concerns and recommendations and provide any comments they may have to the Advisory Council before the next meeting.

EXECUTIVE DIRECTOR UPDATE

Executive Director William S. Monnin-Browder stated that draft sections of the 2011 Annual Report were in each of the Council member's packets. The Executive Director asked that members review each section and provide any comments or changes before the December 14, 2011 meeting so the report can be discussed and voted on.

Executive Director Monnin-Browder stated that the information for the Joint Task Force on the Underground Economy and Employee Misclassification was not currently available and that once it is received, the information would be e-mailed to Council members. The Executive Director explained that since the Safety Grants are now approved on an ongoing basis, before going to print, Advisory Council staff will touch base with Kathy Manson to get any new updates.

The Executive Director stated that on June 23, 2011 House Bill 1406 (amending burial expenses) was reporting favorably by the Joint Committee on Labor and Workforce Development and referred to the House Committee on Ways and Means.

MISCELLANEOUS

Chairman Long reminded everyone that the next meeting is scheduled for Wednesday, December 14, 2011.

A motion was made to adjourn the meeting. Motion Seconded and Carried.

The next meeting of the Advisory Council is scheduled for Wednesday, December 14, 2011, at 9:00 AM, at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.