

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

December 9, 2015

Department of Industrial Accidents

1 Congress Street, Suite 100

Boston, MA 02114-2017

Council Members Present: Steve Joyce; Mickey Long; Todd Johnson; Teri McHugh; Frank Ruel; John Pulgini; Michael Kelley.

Also Present: Linda Edmonds Turner, Director; Omar Hernandez, Senior Judge; Bill Tattan, General Counsel; John Riordan, Deputy General Counsel; Karen Fabiszewski, Trust Fund Director; Pasqua Scibelli, Civil Litigation Manager; Marc Joyce, Senior Regional Services Manager; Alan Green, Deputy Director of Investigations; Bob Ford, CFO; Dr. John Burress, Boston University Medical School; Ellen Keefe, Worker' Compensation Rating and Inspection Bureau (WCRIB); John Murphy, Massachusetts Insurance Federation.

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

Absent: John Regan; Bernie Mulholland; Bill Corley; Steve Falvey; Executive Office of Labor and Workforce Development; Executive Office of Housing and Economic Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update – Omar Hernandez, Senior Judge
- Vital Statistics – Omar Hernandez, Senior Judge
- Update on Regulatory Review Process – Karen Fabiszewski, Trust Fund Manager
- Director's Update – Director Linda Edmonds Turner

Communications

Action Items

- Minutes – August 12, 2015
- Minutes – September 9, 2015
- Minutes – October 14, 2015
- Minutes – November 18, 2015

Executive Director Update – William Monnin-Browder

Health Care Delivery in the Workers' Compensation System and the Impact of Medical Fee Schedules

Dr. John Burress, Medical Director at the Boston Center, Department of Occupational and Environmental Medicine and Assistant Professor of Family Medicine at Boston University Medical School

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Steve Joyce began the meeting by informing Council members that this would be DIA General Counsel Bill Tattan's last meeting. The Chairman stated that Mr. Tattan has been with the Agency since 2007 and has been a valuable resource. The Chairman congratulated Mr. Tattan on his retirement and thanked him for his service.

Chairman Joyce asked Senior Judge Omar Hernandez to provide his Judicial Update.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez stated that the average wait times between conciliation and conference are approximately 2.5 months in Fall River and Boston; 2.5 to 3 months in Springfield; 3 months in Worcester and 3.5 to 4 months in Lawrence. He noted that the wait times are up slightly due to vacations around the holidays, but he expects they will come down soon. The Senior Judge noted that the roster of impartial physicians has remained steady.

The Senior Judge stated that the next regional workers' compensation conference, like the one held in October, is in the planning stages. He stated that Vermont would be included in the conference and that the organizers would reach out Connecticut and Maine to try to include those states as well. The target date for the conference is in October 2016.

The Senior Judge stated that the Agency is working to develop an opiate diversion program. He explained that a proposed program is currently being reviewed by the Secretariat and that he is hopeful that such a program could begin in 2016. The Senior Judge agreed to discuss the program in greater detail at the Advisory Council's next meeting.

Vital Statistics

Senior Judge Omar Hernandez updated Council members on the information contained within the DIA's vital statistics report for December 2015. He offered the following statistics: Conference Queue: 617; Hearing Queue: 694; Reviewing Board Inventory: 82; Impartial Exams for FY'16 (to date): 1,794 (39 waivers); Exam Fees Collected for FY'16 (to date): \$81,030,941; Impartial Medical Examinations in FY'15: 4,146 (94 waivers); and Exam Fees Collected in FY'15: \$1,967,550.

The Senior Judge updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in November: 159 (12 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'16 (to date): 933; fine collection for November: \$160,142; total fines in FY'16 (to date): \$452,699; SWOs issued in FY'15: 1,938; total fines collected in FY'15: \$1,188,541; compliance checks for November: 6,522; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 2,065 in FY'16 (to date).

The Senior Judge continued the update of the monthly vital statistics offering the following: total cases filed in October 2015: 894; total cases filed in FY'16 (to date): 5,028; total cases filed in FY'15: 11,837; total First Report of Injury Forms (FRI) filed in November 2015: 2,307 (2,035 filed electronically: 88%); total FRIs filed in FY'16: 14,314; total FRIs filed in FY'15: 33,353 (29,290 online). In November 2015 the number of employee claims filed: 753; number of employee claims filed in FY'16 (to date): 4,260; number of discontinuances filed: 139; the total number of discontinuances filed in FY'16 (to date): 748; the number of third party claims filed: 2; total number of third party claims filed in FY'16 (to date): 20.

Senior Judge Hernandez proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY'16 (to date): 51; total amount of §65 claims paid by the Trust Fund in FY'16 (to date): \$2,527,759; total §65 claims filed in FY'15: 99; total amount of §65 claims paid by the Trust Fund in FY'15: \$7,620,855; total recovery efforts against uninsured employers FY'16 (to date): \$472,615; total recovery efforts against uninsured employers FY'15: \$1,556,069.

The Senior Judge proceeded with the vital statistics for the Second Injury Fund (§37/37A), stating the following: total amount of §37/37A petitions paid in FY'16 (to date): \$6,328,019; total amount paid on these claims in FY'15: \$30,682,389; total COLA reimbursements to insurers in FY'16 (to date): \$1,035,896; total COLA reimbursements to insurers in FY'15: \$14,344,261.

The Senior Judge reported that as of November 2015, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 236 (180 DIA employees, 56 WCTF employees).

The Senior Judge presented the following accounting and finance statistics: total referral fees collected in FY'16 (to date): \$1,482,776; total referral fees collected in FY'15: \$3,888,246; total assessment collections in FY'16 (to date): \$41,014,142; total assessment collections in FY'15: \$70,934,257.

Trust Fund Reimbursement to Insolvent Insurers

General Counsel Bill Tattan stated that on Monday, December 7th, the Supreme Judicial Court denied a petition for further appellate review by The Home Insurance Company (in liquidation) in The Home Insurance Company v. Workers' Compensation Trust Fund. Mr. Tattan explained the facts of the case, noting that the Trust Fund had refused to reimburse COLA because Home Insurance Company, after entering liquidation, was no longer an “insurer” entitled to COLA reimbursements.

Mr. Tattan noted that the Appeals Court had affirmed the Reviewing Board's decision in the case. He explained that the Reviewing Board held that insolvent insurers are not entitled to be reimbursed by the Trust Fund because the Trust Fund is a pay as you go system—if a company has gone insolvent, they no longer collect funds from the employers, and, therefore, are not entitled to be reimbursed by the Trust Fund.

Regulatory Review Update

Ms. Fabiszewski stated that, as part of its regulatory review process, the DIA has forwarded draft revised regulations to the Executive Office of Labor and Workforce Development for review. She explained that once any issues identified by the Secretariat are resolved, the recommendations will be forwarded to the Secretary of State's office to go through the public process.

Ms. Fabiszewski stated that she believes that most of the recommendations are clean up, rather than substantive, changes, i.e. where the regulation uses the term “Commissioner,” the Agency proposes to change the term to “Director.” She also explained that references to forms that are no longer used or sections of the law that have been repealed, like 39F, would be deleted.

Senior Judge Omar Hernandez noted that proposed changes to the Adjudicatory Rules section of the regulations are clean up in nature, rather than substantive.

Director's Update

Director Turner stated that since the last meeting the DIA has had another working group meeting on Circular Letter #348. She explained that the group has made significant progress. She then asked Ms. Fabiszewski, as Chair of the working group, to provide a brief update.

Ms. Fabiszewski stated that the working group established under Director Turner's direction to consider changes to Circular Letter #348 held its second meeting on December 3rd. She stated the parties were able to reach a consensus on a number of recommendations. She explained that one of the recommendations involved a new reporting form and everybody was able to agree on the concept and the structure of that

form. Ms. Fabiszewski stated the DIA's IT Department is currently developing the form so that everybody can take a look at it to ensure that the paper format is consistent with the working group's discussions. She noted that once everybody in the group agrees that this is what was discussed, then all recommendations will go to Director Turner for review and she will decide on any changes to the process.

Miscellaneous

CFO Bob Ford stated that he would like to provide a presentation on the audits and budget at the Advisory Council's February meeting. Mr. Ford also stated that they are about to send the letters out to the self-insurers, who have never been audited, notifying them of audits.

COMMUNICATIONS

Executive Director Monnin-Browder noted that he had a two items to discuss. He stated that he was copied on a letter yesterday from Attorney Ellen Keefe of the WCRIB to the Division of Insurance (DOI). The Executive Director stated that WCRIB was filing to revise and update the Admiralty and the Federal Employees Liabilities (FELA) programs in Massachusetts. Mr. Monnin-Browder noted that as part of the DOI's regulations, the Advisory Council must get notice of proposed changes such as these. He indicated that he would share the letter and accompanying filing with members of the Advisory Council.

Attorney Ellen Keefe stated that, over the years, there have been a lot of changes nationally to the class and rates for the Admiralty and FELA programs and that the WCRIB did not adopt many of those because there is very little exposure in Massachusetts. Ms. Keefe noted that recently some of their members have been asking the WCRIB to adopt some of the national changes, primarily for computer system purposes. She explained that the after the changes were filed, the WCRIB received a call from the DOI saying that they want to treat it as a formal rate filing, so WCRIB provided notice to the Advisory Council and the Attorney General.

Mr. Monnin-Browder stated that Attorney Alan Pierce, a former member of the Advisory Council, had reached out to offer to update the Advisory Council on some of the national developments in workers' compensation, i.e. opt out and constitutional challenges to the exclusive remedy.

Chairman Joyce stated that Mr. Pierce would be placed on the agenda for February.

ANNUAL REPORT DISCUSSION

Mr. Monnin-Browder informed the Council that their packets contain the latest draft of the FY'15 Annual Report. The Executive Director stated that the new draft includes a one page "Key Facts and Figures" section at the beginning of the report to provide some of the highlights discussed by the Council in recent years. He noted that the draft also includes an Executive Summary, which has not been included in previous reports. He suggested that if anyone had any comments to let him know within the next couple of weeks, so the report can be finalized for January.

Chairman Joyce stated that he would ask everyone if they have comments to please get them back to Mr. Monnin-Browder quickly. He explained that he would like to vote to approve and distribute the report at the January meeting.

HEALTH CARE DELIVERY IN THE WORKERS' COMPENSATION SYSTEM AND THE IMPACT OF MEDICAL FEE SCHEDULES

Chairman Joyce introduced Dr. John Burress, Medical Director at the Boston Medical Center, Department of Occupational and Environmental Medicine and Assistant Professor of Family Medicine at Boston University Medical School.

Dr. Burress stated that he is a physician with 20 years of experience who treats injured workers. Dr. Burress stated that treating injured workers in this state is currently a non-viable business opportunity. He explained that there is no way to offer a functional occupational clinic in this state with the current medical fee schedule rates. He explained that his center is being outsourced and will be the 22nd occupational health center to close in Massachusetts. He explained that while there were some positive impacts of the 1991 Reform, it locked reimbursement rates in place. He stated, additionally, that Massachusetts has no performance drivers to ensure best practices.

Dr. Burress stated that he believes our system is outdated and, from a clinician's standpoint, Massachusetts should think about a new model to provide upfront resources to prevent disability by offering sustaining reimbursements for primary injury care. He stated that a system should facilitate not obstruct. He suggested shifting money from administrative costs such as utilization review to actual care delivery.

Council member Mickey Long thanked the doctor for his presentation and noted that the Council's job is to advise the Governor. Mr. Long encouraged Dr. Burress to prepare some bullet points detailing the situation facing occupational health doctors. He stated that in its next report to the Governor, the Council could say that there are serious deficiencies in the way this system is treating injured workers.

Chairman Joyce stated that it sounds like the services that Dr. Burress provides have great value in terms of getting people healthy and back to work faster, which results in lower costs. He stated that the system ought to support operations that do that.

Meeting adjourned.

The next meeting of the Advisory Council is scheduled for Wednesday, January 13, 2016, at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.