

**Massachusetts Workers' Compensation
Advisory Council Minutes**

March 11, 2009

Department of Industrial Accidents
600 Washington Street, 7th Floor
Boston, MA 02111

Present: Chairman Edmund C. Corcoran, Jr.; Vice-Chairman Mickey Long.

CM: Stephen Joyce; Stephen P. Falvey; John Regan; John Pulgini; Antonio Frias (Inez Leonardo); David Powell; Dennis Hines; Tom Jones, Department of Labor.

Also Present: DIA: William Tattan, Deputy Commissioner and General Counsel; Martine Carroll, Senior Judge; William Taupier, First Deputy Director of Administration; Jack Defina, Director of Accounting & Finance; Ray Marchand, Director of Investigations; Dean Hashimoto, MD, JD, Director Health Care Services Board (HCSB); Kevin Flynn, Division of Health Care Finance and Policy (DHCFP); Ellen Keefe, WCRIB; Kathy McKeever, AIM Mutual Insurance Company.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: Peter A. Cook, Sr.; John D. Boyle; William Corley; Kenneth J. Paradis, Jr.; Department of Business Development.

Agenda:

Chairman's Welcome

Medical Reimbursement Rates/UR Treatment Guidelines - Dean Hashimoto

DIA Update

- Judicial Update - William McCarthy, Administrative Law Judge
- Vital Statistics - William Taupier, Deputy Director of Administration

Action Items

- Minutes - February 11, 2009

Information Exchange Subcommittee Update - Andrew Burton

Budget Subcommittee Update - Edmund C. Corcoran

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Edmund C. Corcoran, Jr., began today's meeting at 9:00 a.m. The Chairman introduced Dr. Dean Hashimoto, Director of the Health Care Services Board (HCSB).

MEDICAL REIMBURSEMENT RATES/UR TREATMENT GUIDELINES

Dr. Dean Hashimoto reviewed the Utilization Review (UR) process and how guidelines are maintained and updated. He recognized Washington State and Colorado as two jurisdictions that have done an excellent job with revising and creating UR guidelines. Dr. Hashimoto noted that maintaining UR guidelines is a very resource intensive activity that requires feedback from doctors and providers. He stated that Washington State and Colorado have the resources to have a full time medical director, paid consultants, and outside firms to implement the guidelines. Although Massachusetts does not have the same resources available, Dr. Hashimoto stated that there are many things we can learn from these two states in regards to maintaining updated UR guidelines.

Dr. Hashimoto stated the UR is essentially a limited managed care mechanism created in the 1990s. He noted that many physicians do not like UR because at times it can interfere with treatment and cause undue delays.

Dr. Hashimoto reported that he had worked with Colorado's Medical Director, Katherine Mueller, along with researchers from the WCRI to examine treatment patterns in 14 states. He informed the Council Members that Massachusetts had among the best utilization rates for treatment. Dr. Hashimoto noted that the Commonwealth's treatment patterns in workers' compensation do not substantially deviate from the kinds of treatments found outside of workers' compensation.

Dr. Hashimoto discussed the workers' compensation medical fee schedule. From a system standpoint, Dr. Hashimoto stressed the importance of maintaining stability with the rates. He expressed concern that the fee schedule has been so out of step with the rest of the country that it poses a danger to all participants in the system. He reported that 90% of the doctors surveyed by the Massachusetts Medical Society indicated that workers' compensation cases were undesirable because of the low payments and the additional administrative paperwork that needs to be conducted. Dr. Hashimoto warned that an unreasonable fee schedule could ultimately lead to higher costs and poor treatment patterns as seen in Texas and California.

Dr. Hashimoto noted that there are two particular issues in regards to the fee schedule that need special attention. First, the fact that surgeons are able to successfully negotiate rates far above the fee schedule could lean the system towards surgery and away from conservative care. He stated that in most cases involving occupational injuries, good conservative care and less surgery actually leads to the best results. Second, he stated that there may be a danger that certain groups may have an advantage in lobbying for better rates. Dr. Hashimoto stated that he is excited to hear that there have been discussions on moving toward a more predictable system where rates are considered on a regular basis.

Chairman Corcoran stated that a consistent concern of the Advisory Council has been ensuring that the HCSB keeps UR guidelines updated to present day medical practices. Chairman Corcoran also referred to Rhode Island's Medical Fee Schedule Task Force that provides a mechanism that can respond to areas of the fee schedule that are inadequate. He noted that Massachusetts should take a look at some of these best practices which may be worthy of modeling. The Chairman stated that having access to quality physicians is the key to a properly functioning fee schedule system.

Dr. Hashimoto stated that there was a need for a broader pool of surgeons willing to participate in the system. He is concerned that the current pool of surgeons is so narrow that they have leverage to ask for higher rates. Dr. Hashimoto stated that by making the rates more realistic, as DHCFP has proposed, could lead to more surgeons and surgical groups taking part in the system.

Council Member John Regan referred to a recent WCRI study that shows the puzzling dichotomy between a low medical fee schedule in Massachusetts and a successful outcome measure where patients express satisfaction with their care.

Chairman Corcoran referred to the DIA's Compensation Review System (CRS) that became an extension of the Utilization Trending and Tracking System developed in the early 1990s. He stated that for many years Raytheon has been a regular contributor of data to this system. The Chairman asked Dr. Hashimoto how beneficial CRS data has been with updating and creating UR guidelines.

Dr. Hashimoto stated that he is reluctant to put more resources towards this system because of the past difficulties that have been encountered. He stated that the data monitoring system was originally designed to modify treatment guidelines and to identify the most important guidelines to be updated. Dr. Hashimoto stated that the system has the potential to be effective if it focused more on correlations and associations as to which treatment patterns are most successful. He noted that the present system looks at each treatment in isolation to see whether there is enough medical evidence to support it.

Vice-Chairman Member Mickey Long expressed the importance of unrestricted access to medical care for injured workers. The Vice-Chairman reminded those present that that workers' compensation medical delivery system cannot be compared to the medical delivery system in the private market. He stated that unlike the private healthcare market, injured workers have given up their rights to sue their employer in exchange for quality and timely medical care.

Dr. Hashimoto agreed that occupational injuries must be treated differently as the immediate goal is to get the injured workers back into the workplace. He stated that it is not uncommon to see twice the number of diagnostic testing done on the workers' compensation side compared to the non-workers' compensation side.

Chairman Corcoran thanked Dr. Hashimoto for taking time out of his day to address the Advisory Council on these important medical issues.

INFORMATION EXCHANGE SUBCOMMITTEE UPDATE

Executive Director Andrew Burton gave a brief update on the Information Exchange Subcommittee's final meeting. He noted that Ellen Keefe had reported to the subcommittee that the WCRIB's Governing Committee has agreed to support the development of an online Proof of Coverage (POC) application, which allows the general public to verify if an employer has a valid workers' compensation insurance policy. Mr. Burton stated that the agreed upon fields include employer name and address, carrier name and address, policy number, policy effective date, and policy expiration date. The Executive Director stated that work will begin on this project in June.

Mr. Burton stated that one of the concerns of the subcommittee was that the POC tool would not address employee misclassification issues. The Executive Director reported that the WCRIB presently hosts an online application ("Depopulation Report") that allows the public to view the Governing Class Code for all employers in the Assigned Risk Pool. Mr. Burton stated that the subcommittee expressed interest in having the POC tool to identify each employer's Governing Class Code regardless of whether insurance was purchased in the voluntary market or Assigned Risk Pool.

The Executive Director reported that the subcommittee also examined a New Hampshire law that allows the public to request, by petition to the Commissioner, a copy of a contractor's workers' compensation compliance statement in cases when there is evidence of suspected fraud. Under this law, contractors would be required to state the following information for the entire policy term: the total number of employees employed, the total number of hours each employee was compensated for, the classification codes which apply for the work being conducted, and the number of employee hours applied to each of the NCCI classification codes claimed.

The Executive Director read two recommendations put forth by the subcommittee.

Subcommittee Recommendation #1: "The subcommittee made a recommendation to the full Advisory Council to support the joint efforts of the DIA and the WCRIB in developing an online Proof of Coverage Application. The subcommittee also recommended that in addition to the agreed fields to be displayed, the application should allow the public to view an employer's Governing Class Code for each policy. The subcommittee further recommended that the POC website link to the WCRIB's existing Experience Modification Factor History application."

Subcommittee Recommendation #2: "The subcommittee made a recommendation to the full Advisory Council that the DIA explore the benefits and feasibility of a similar compliance statement mechanism for Massachusetts that could be implemented either through administrative regulation or statutory change."

Council Member John Regan stated that he was uncomfortable supporting the requirement that the Governing Class Code appear on the POC tool without hearing further dialogue from the WCRIB.

In an effort to accommodate Council Member Regan's concerns and encourage more dialogue, Vice-Chairman Mickey Long suggested that the Advisory Council amend the first recommendation by asking the WCRIB to review the benefits of providing the public with each employer's Governing Classification Code.

Council Members agreed.

Chairman Corcoran asked for a motion to endorse the subcommittee's recommendations as amended.

Motion made to accept the subcommittee's recommendations as amended.

MMS - Passed.

BUDGET SUBCOMMITTEE UPDATE

Chairman Corcoran gave a brief update on the Advisory Council's Budget Subcommittee meeting. The Chairman stated he and Council Member Stephen Falvey had met with the DIA's Budget Director to review the fiscal year 2010 budget proposal for the DIA, as contained within the Governor's House 1 Budget Recommendation. He stated that the proposed budget reflects the tight economic times that the Commonwealth is experiencing.

Chairman Corcoran noted that one issue that came to light in the budget discussions was a recent Interdepartmental Service Agreement (ISA) between the DIA and the Department of Occupational Safety (DOS). The Chairman asked Mr. Tom Jones from the Department of Labor to update Council Members about this recent transfer of funds.

Mr. Jones stated that the DIA had recently completed an ISA that transferred \$67,400 to DOS for fiscal year 2009. He noted that the reason behind the transfer of funds was to help preserve the successful anti-fraud efforts made by the Joint Task Force on the Underground Economy. Mr. Jones explained that DOS is a member agency of the joint task force that is responsible for oversight and regulation of temporary employment agencies in Massachusetts. Due to the severe amount of abuse in this industry, Mr. Jones stated that DOS has been educating employers on their responsibilities and has worked closely with DIA to bring them into compliance with the workers' compensation laws.

Mr. Jones stated that DOS experienced a shortfall in funds after the Governor's 9C budget cuts were made in fiscal year 2009. He noted that there had been discussions on whether the DIA could transfer a limited amount of funds to DOS for the sole purpose of underground economy related issues. Mr. Jones stated that the ISA would directly benefit the DIA by lowering the exposure to the Workers' Compensation Trust Fund as more employers are brought into compliance.

Deputy Commissioner Tim McMahon added that the ISA was a one-time transfer of funds to assist DOS until the end of the fiscal year.

Council Member John Regan expressed concern that the ISA undercuts the DIA's argument before the Ways and Means Committee that there are certain accounts which should not be reduced due to the fact that they are funded by employer assessments. Mr. Regan cautioned that regardless

of how worthy an ISA may be, it could call into question the validity of how the DIA is funded. Council Member Regan suggested that a separate line-item for the joint task force may be worthwhile investigating.

Discussion followed.

Executive Director Burton read aloud the Budget Subcommittee's recommendations. He stated that the subcommittee is recommending that the Advisory Council endorse the House 1 line-item along with the following recommendation:

In light of the Advisory Council's budgetary oversight responsibilities, the subcommittee is recommending that the DIA inform the full Advisory Council of future Interdepartmental Service Agreements before the transfer of funds occur. It is important that any inter-agency transfer of funds has a direct benefit to the operations of the DIA due to the agency's unique employer-funding mechanism. According to the Workers' Compensation Act, employer assessment rates are determined each year according to the projected budgets necessary to pay for the DIA's annual operating expenses and for the estimated amount of payments during the following 12 months for compensation from the Public and Private Trust Funds.

Chairman Corcoran asked for a motion to accept the recommendations of the Budget Subcommittee.

Motion made to accept the recommendations of the Budget Subcommittee.

MMS - Passed.

DIA UPDATE

Judicial Update

Judge William McCarthy updated Advisory Council Members on the information contained within the DIA's vital statistic report for March 2009 (see attached). Conference Queue: 255; Hearing Queue: 649; Reviewing Board Inventory: 160; Impartial Exams for FY'09 (to date): 3,306 (42 waivers); Exam Fees Collected for FY'09: \$1,312,166. In fiscal year 2008 there were 5,187 Impartial Medical Examinations (86 waivers); Exam Fees Collected in FY'08: \$1,620,458.

Judge McCarthy addressed the Decisions Outstanding Report. The Judge reported that there were three judges on the list that had at least one hearing open with a scheduled hearing date going back more than a year. Judge McCarthy explained that some of the open cases may actually be complete but never received a final disposition.

Judge McCarthy stated that there had been a significant decrease in the conference queue. He noted that the only complaint that he has heard is that some cases were being scheduled too quickly. The Judge attributed this decrease in the conference queue to the high caliber of judges that have been appointed to the DIA.

Commissioner Paul Buckley reported that the DIA has posted an advertisement in Lawyers Weekly for Judge Heffernan's term that expires in September of 2009. The Commissioner stated that the Nominating Panel will soon begin the interview process and that they should have their recommendations to the Advisory Council by the May meeting. Commissioner Buckley reminded Council Members that there will be twelve judicial terms expiring next year.

Stop Work Orders/Caseload Statistics

Mr. Bill Taupier updated Advisory Council Members on the Stop Work Order (SWO) and Caseload Statistics (see attached). The DIA issued 355 SWOs in February 2009 (5 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'09 (to date): 2,104. Fine collection for February 2009: \$106,650; total fines in FY'09: \$488,880; SWOs issued in FY'08: 1,929; total fines collected in FY'08: \$437,900; compliance checks for December 2008: 3,194; estimated number of workers now covered by WC insurance as the result of a SWO: 5,645 (FY'09).

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in February 2009: 1,117; total number of cases filed in FY'09 (to date): 9,082; total number of cases filed in FY'08: 14,464; total number of First Report of Injury Forms (FRI) filed in February 2009: 2,729; total number of FRI filed online in February 2009: 741; total number of FRI filed in FY'09 (to date): 21,278 (5,919 filed online - 28%); total number of FRI filed in FY'08: 32,794; total number of FRI filed online in FY'08: 9,199 (28%).

Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims processed in FY'09 (to date): 102; total amount of §65 claims paid by the Trust Fund in FY'09 (to date): \$4,278,405; total number of §65 claims filed in FY'08: 172; total amount of §65 claims paid by the Trust Fund in FY'08: \$6,866,127.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A). Total amount of §37/37A petitions paid in FY'09 (to date): \$15,762,357; total amount paid on these claims in FY'08: \$20,725,671; total monies recovered by the Trust Fund in FY'09 (to date): \$1,044,193; total monies recovered in FY'08: \$1,202,747; total COLA reimbursements to insurers in FY'09 (to date): \$18,234,026; total COLA reimbursements to insurers in FY'08: \$4.0 million.

Council Members raised concern regarding the significant increase in COLA reimbursements to insurance companies.

Deputy Commissioner William Tattan explained that there has been a concentration on removing the backlog of COLA cases. The Deputy Commissioner stated that DIA has recently hired a new COLA manager that has been addressing this backlog.

Chairman Corcoran suggested that the Advisory Council invite a member of the insurance community to explain how COLA reimbursements are handled.

Budget/Personnel Issues

Mr. Taupier reported that as of February 2009, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 286 (237 DIA employees, 49 WCTF employees).

Office of Education and Vocational Rehabilitation (OEVR) Update

Mr. Taupier presented the OEVR statistics. Total referrals to OEVR in FY'09 (to date): 1,484; total referrals to OEVR in FY'08: 2,828; total mandatory meetings in FY'09 (to date): 1,223; total mandatory meetings in FY'08: 2,281; total Determinations of Suitability (DOS) in FY'09: 786; total DOS in FY'08: 1,634; total referrals to insurers in FY'09 (to date): 437; total referrals to insurers in FY'08: 647; total Individual Written Rehabilitation Plans (IWRP) approved in FY'09 (to date): 282; total IWRPs approved in FY'08: 417; total number of Return to Work (RTW) in FY'09 (to date): 83; total number of RTW in FY'08: 163; total number of IWRPs completed with no RTW in FY'09 (to date): 58; total number of IWRPs completed with no RTW in FY'08: 134.

EXECUTIVE DIRECTOR UPDATE

Executive Director Burton reported that all appointments have been made to the legislative committees. He stated that the Joint Committee on Labor & Workforce Development will be chaired by Senator Thomas McGee and Representative Cheryl Coakley-Rivera. The Executive Director stated that once all workers' compensation legislation has been made available online, bill write-ups will be mailed to Council Members. He also stated that before a public hearing occurs, he would organize a meeting with the chairs of the joint committee to discuss the Advisory Council's legislative priorities for 2009.

Executive Director Burton stated that the next Advisory Council Meeting is scheduled to take place on Wednesday, April 8, 2009, at 9:00 a.m.

MISCELLANEOUS

Chairman Corcoran thanked everyone for attending today's meeting and asked for a motion to adjourn.

Motion made to adjourn the meeting.

MMS - Passed.

The next regular meeting of the Advisory Council is scheduled for Wednesday, April 8, 2009, at 9:00 AM, at the Department of Industrial Accidents, 600 Washington Street, 7th Floor Conference Room, Boston, MA 02111.