

**Massachusetts Workers' Compensation  
Advisory Council Minutes**

September 12, 2007

Department of Industrial Accidents  
600 Washington Street, 7<sup>th</sup> Floor  
Boston, MA 02111

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

CM: Jeanne-Marie Boylan; John D. Boyle (Teri McHugh); John Pulgini; Peter A. Cook (Karen Shanley); Kenneth Paradis (Andrea Keyo); Stephanie Noguera (Department of Labor); George Ramirez (Department of Business & Technology).

*Also Present:* DIA: Timothy McMahon, Deputy Commissioner of Administration; William C. Tattan, Deputy Commissioner/General Counsel; Martine Carroll, Senior Judge; Dean Hashimoto, Health Care Services Board; Diane Neelon, Office of Health Policy; John Glennon, Information Technology; John Zimini, Office of Investigations; Mike Kelley, AIM Mutual Insurance Company; Maureen Aveno, Rhode Island Workers' Compensation Court; Kevin R. Flynn, Division of Health Care Finance & Policy; Carol Falcone, Falcone Associates; Louis Greenberg, Insurance Recovery Group.

*Advisory Council Staff:* Andrew Burton; Evelyn Flanagan.

*Absent:* CM: John Regan; Robert Banks (William Corley); Tony Frias; Jill Brown.

*Agenda:*

Chairman's Welcome

DIA Update

- Judicial Update - Martine Carroll, Senior Judge
- Vital Statistics - John Glennon, Director of Information Technology

Action Items

- Minutes - June 13, 2007
- Minutes - August 8, 2007

Proposed Audit Guidelines - Sole Proprietors/Partnerships

Workers' Compensation Medical Fee Schedule Discussion

Executive Director Update

Miscellaneous

### **CHAIRMAN'S WELCOME**

Chairman Edmund C. Corcoran, Jr., began today's meeting at 9:00 a.m. Chairman Corcoran introduced George Ramirez who serves as General Counsel for the Department of Business and Technology. Mr. Ramirez will be serving on the Advisory Council in an ex-officio capacity for Director Robert Coughlin. Chairman Corcoran also introduced Diane Neelon who is the DIA's new Executive Director for the Office of Health Policy. The Chairman requested that Senior Judge Martine Carroll proceed with the judicial update.

### **DIA UPDATE**

#### Judicial Update

Senior Judge Martine Carroll updated Advisory Council Members on the information contained within the DIA's vital statistic report for September 2007 (see attached). Conference Queue: 254; Hearing Queue: 1,411; Reviewing Board Inventory: 199; Impartial Exams for FY'08 (to date): 819 (14 waivers). In fiscal year 2007 there were 5,246 Impartial Medical Examinations (202 waivers).

Senior Judge Carroll informed the Advisory Council Members that the average waiting period for a conference is between 4 and 6 weeks. The Senior Judge stated that the Impartial Physician roster currently has approximately 231 doctors enrolled.

Senior Judge Carroll reviewed with Advisory Council Members the status of vacant judicial positions. The Senior Judge noted that the closing date for applications is September 28, 2007. Senior Judge Carroll stated that she expects the Nominating Panel to begin judicial interviews sometime in October and the Advisory Council would most likely begin interviews shortly thereafter.

Senior Judge Carroll informed the Advisory Council Members that the DIA will be holding a public hearing on Friday, September 28<sup>th</sup> at 10:00 a.m. in Hearing Room 776 (Boston - DIA), to

discuss proposed amendments and additions to the Department of Industrial Accidents Adjudicatory Rules, 452 C.M.R. 1.00 et seq.

### Stop Work Orders/Caseload Statistics

Mr. John Zimini updated Advisory Council Members on the Stop Work Order (SWO) and Caseload Statistics for August 2007 (see attached). Total compliance investigations initiated in August 2007: 1,308; total investigations for FY'07: 23,214; total SWOs issued in August 2007: 39; total SWOs issued for FY'07: 388; total fines collected in August 2007: \$40,672; total fines collected in FY'08: \$78,594; total fines collected in FY'07: \$400,753.

Mr. John Glennon continued the update of the monthly vital statistics. Total number of cases filed for August 2007: 1,442; total number of cases filed for FY'08 (to date): 2,654; total number of cases filed for FY'07: 15,149; total number of First Report of Injury Forms (FRI) filed for August 2007: 3,125; total number of FRI filed online for August 2007: 866 (28%); total number of FRI filed for FY'08 (to date): 5,649; total number of FRI filed online for FY'08 (to date): 1,601; total number of FRI filed for FY'07: 33,476; total number of FRI filed online in FY'07: 8,910.

**Chairman Corcoran requested that the DIA analyze the number of cases filed on a national level and determine why these claims are decreasing.**

Mr. Glennon proceeded with his update on uninsured claims (§65). Total number of §65 claims processed for FY'08 (to date): 38; total amount of §65 claims paid by the Trust Fund for FY'08 (to date): \$734,070; total number of §65 claims filed for FY'07: 192; total amount of §65 claims paid by the Trust Fund for FY'07: \$6,831,832.

Mr. Glennon proceeded with the vital statistics for the Second Injury Fund (§37/37A). Total number of §37/37A petitions approved for payment in FY'08 (to date): \$302,496; total amount paid on these claims in FY'08: \$302,496; total number of §37/37A petitions filed in FY'08: 0; total amount paid on these claims in FY'07: \$26,575,359; total monies recovered by the Trust Fund in FY'08 (to date): \$308,222; total monies recovered in FY'07: \$1,167,465; total COLA reimbursements to insurers in FY'08 (to date): \$102,881; total COLA reimbursements to insurers in FY'07: \$9.1 million.

### Budget/Personnel Issues

Mr. Glennon reported that as of August 2007, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 256 (221 DIA employees, 35 WCTF employees).

The DIA has no contract employees at this time. Three (3) Technical Consultants; eleven (11) temporary employees; and two (2) interns are being utilized within the DIA as of this report.

#### Office of Education and Vocational Rehabilitation (OEVR) Update

Mr. Glennon presented the OEVR statistics. Total referrals to OEVR in FY'08 (to date): 425; total referrals to OEVR in FY'07: 2,839; total mandatory meetings in FY'08 (to date): 341; total mandatory meetings in FY'07: 2,282; total referrals to insurers in FY'08 (to date): 97; total referrals to insurers in FY'07: 706; total Individual Written Rehabilitation Plans (IWRP) approved in FY'08 (to date): 84; total IWRPs approved in FY'07: 428; total number of Return to Work (RTW) in FY'08 (to date): 35; total number of RTW in FY'07: 176; total number of IWRPs completed with no RTW in FY'08 (to date): 23; total number of IWRPs completed with no RTW in FY'07: 152.

#### **ACTION ITEMS**

Chairman Corcoran asked for a motion to accept the Minutes for June 13, 2007.

Motion made to accept the Minutes for June 13, 2007.

MMS - Passed.

Chairman Corcoran asked for a motion to accept the Minutes for August 8, 2007.

Motion made to accept the Minutes for August 8, 2007.

MMS - Passed.

Executive Director Andrew Burton gave a brief summary of last meeting's presentation on Proposed Premium Audit Guidelines for Sole Proprietors/Partnerships. Mr. Burton explained that before October of 2000, Sole Proprietors could not purchase a workers' compensation policy for themselves because they did not qualify as an "employee." Mr. Burton explained that after the 2000 law allowing Sole Proprietors to obtain coverage, the WCRIB found that some employers were not paying the proper premium amounts when hiring Sole Proprietors/Partnerships. Mr. Burton reported that on May 1, 2007, the DOI directed insurers to indicate on Certificates of Insurance whether or not a Sole Proprietor has elected to obtain coverage for themselves. The Executive Director stated that the WCRIB wants to ensure that when an insurer audits a policy there is no confusion between the policyholder and insurer on who should be covered.

Chairman Corcoran asked Mr. Burton to read the following proposed motion to be considered by the voting members:

**"Motion to recommend that the DIA & DOI work with the WCRIB's subcommittee of the Bureau/Producer Advisory Group to finalize premium audit guidelines for sole proprietors and partnerships to ensure that as many workers can be covered under the workers' compensation system and to assist insurers in better understanding their exposure when writing and collecting premiums."**

Chairman Corcoran placed the motion as read by Mr. Burton on the table for discussion.

Executive Director Burton stated that if the motion passed, the Advisory Council would send a letter to the Commissioners of the DIA and DOI encouraging their agencies to work with WCRIB on finalizing acceptable guidelines.

MMS - Passed.

General Counsel William Tattan explained to Council Members that a 1992 Reviewing Board Decision ( MacTavish v. O'Connor Lumber Co.) set forth the guidelines for determining independent contractor status. The General Counsel expressed concern of having the agency support guidelines or definitions that may oppose a past Reviewing Board decision. General Counsel Tattan asked Advisory Council Members if they would be willing to suspend a vote on this motion to give Commissioner Buckley an opportunity to provide further input on this issue at the next Advisory Council meeting.

Chairman Corcoran asked Council Members if there was a motion to reconsider going forth with a recommendation at this time.

Motion made to reconsider the recommendation to allow Commissioner Buckley the opportunity to address this issue at the next Council meeting.

Council Member Jeanne-Marie Boylan reiterated that it was not the Advisory Council's intent to endorse specific guidelines, but rather to encourage the parties to work towards establishing guidelines.

MMS - Passed.

## **WORKERS' COMPENSATION MEDICAL FEE SCHEDULE DISCUSSION**

Chairman Corcoran introduced Maureen Aveno, Executive Director, Rhode Island Workers' Compensation Court; Kevin Flynn, Pricing & Policy Analyst for the Division of Health Care Finance & Policy; Dr. Dean Hashimoto, Chair of the Health Care Services Board and Michael Kelley, Vice President & Claims Manager of AIM Mutual Insurance Company.

Executive Director Maureen Aveno presented to the Advisory Council Members a brief overview of Rhode Island's Workers' Compensation Medical Fee Schedule. She noted that Rhode Island's workers' compensation system went through many reforms during the late 80's and early 90's. To help usher these reforms, Rhode Island created both a Workers' Compensation Advisory Council and a Medical Advisory Board. Ms. Aveno stated that the Medical Advisory Board formulated a medical fee schedule with the consulting help from MediRisk. She stated that MediRisk looked at the usual and customary costs of CPT codes and suggested that the Rhode Island Workers' Compensation System pay 90% of the usual and customary cost.

Executive Director Aveno stated that a Fee Schedule Task Force was created in 1992 which consisted of a diverse group of representatives from the Department of Labor & Training, Beacon Mutual Insurance, self insured employers, the Medical Advisory Board, Blue Cross/Blue Shield, third party administrators, the Rhode Island Medical Society, and the Hospital Association of Rhode Island. One of the first initiatives of the Fee Schedule Task Force was to clean up the excess CPT codes that did not correspond with workers' compensation claims and create state-specific codes.

In 1994, the Fee Schedule Task Force started establishing rules to ensure that the fee schedule could not be manipulated to benefit any one party. Ms Aveno stated that the Task Force also reviewed the level of payment for certain codes that were not reflective of actual costs. In 1998, the Task Force released their first Fee Schedule Book that included rules and revised codes. In February of 1999, the Task Force added Annual Cost of Living Increases to all of the CPT codes to ensure that they remained relevant. Executive Director Aveno explained that the Task Force is still meeting today and continually fine-tunes the fee schedule and expands codes when necessary.

Executive Director Aveno stated that the Rhode Island Fee Schedule is a maximum payment fee schedule. She noted that insurance carriers still negotiate with doctors, but unlike Massachusetts, they are negotiating for lower payments. Ms. Aveno suggested that if Massachusetts was concerned about the rising cost of medical care, it should consider a fee

schedule based on a Relative Value Scale. Executive Director Aveno stated that one of the reasons Rhode Island's fee schedule works is because the Medical Advisory Board offers all parties a forum where they can speak their minds.

Mr. Kevin Flynn, Pricing and Policy Analyst at the Division of Health Care Finance & Policy (DHCFP), reported on the progress that has been made since he last appeared before the Advisory Council. Mr. Flynn reminded Council Members that there has historically been a need for data to show what is being paid for medical treatments. Mr. Flynn referred to a February of 2006 study by the Workers' Compensation Research Institute that determined the range of payments that were being made for the most common procedures performed on workers' compensation patients. Mr. Flynn noted that the study was very useful to his agency in drafting preliminary updates to the Fee Schedule. He also noted that the DHCFP has met with the Health Care Services Board on two occasions to discuss areas of the fee schedule that require the most attention.

Mr. Flynn reviewed several areas of the fee schedule that the DHCFP has been trying to address. He stated that they are still having difficulties with adequate rates for both orthopedic surgeons and neurosurgeons. He noted that in the Western part of the state it is particularly difficult to get a neurosurgeon. The DHCFP is also trying to bring the medicine fees to current Medicare levels.

In closing, Mr. Flynn stated that he believes when proposed changes are made, relevance will be put back into the fee schedule. Mr. Flynn noted that he is optimistic that a regulation will be presented to the public on January 1, 2008.

Dr. Dean Hashimoto, Chairman of the Health Care Services Board explained that one of his biggest concerns is in the process. He stated that there is a need for a more formal process so that the system becomes less crisis oriented. Dr. Hashimoto referred to the WCRI's Annual Report (see attached) and noted that Massachusetts has the second highest medical expenses in the country but has the lowest workers' compensation fee schedule. He believes that it is necessary to develop a Task Force or a Committee to address these problems and to work towards finding a solution.

Mr. Michael Kelley, Vice President & Claims Manager, AIM Mutual Insurance Company, stated that he was impressed with the process that Rhode Island has gone through in maintaining their fee schedule. Mr. Kelly stated that the goal in Massachusetts should be to provide good medical treatment, fair reimbursement and good access. He stated that the fee schedule has grown so

out of control that many carriers have had to create their own fee schedules and networks. Mr. Kelley expressed concern that the fee schedule should not be changed uniformly. He noted that many of the fees are adequate and that studies show high satisfaction from the user community. Mr. Kelley stated that access to medical care is not an issue with AIM Mutual's clients.

Dr. Dean Hashimoto expressed concern that the current system has created an oligopoly amongst certain surgeons. Dr. Hashimoto believes that a change to specific parts of the fee schedule is necessary just to encourage more doctors to get involved in the system.

Executive Director Maureen Aveno stated her belief that in order to make the Massachusetts fee schedule more relevant, it will need to change from a minimum payment fee schedule. The Executive Director explained that there will always be negotiation when you are dealing with a fee schedule that sets minimum amounts. She also stated that the forthcoming changes being proposed by the Division of Health Care Finance & Policy may only serve as a band-aid to much greater problems that need to be systematically addressed by including all parties in the discussion.

Chairman Corcoran suggested that the DIA consider creating a Fee Schedule Task Force that could be modeled after Rhode Island. The Chairman stated that a Task Force could prove to be a useful mechanism in maintaining a relevant fee schedule.

Deputy Commissioner Tim McMahon stated that he will discuss the possibility of creating a Fee Schedule Task Force with Commissioner Buckley and get back to the Advisory Council.

### **EXECUTIVE DIRECTOR UPDATE**

Executive Director Burton stated that there had been a major setback in the Scar-Based Disfigurement Study. Mr. Burton explained that Deloitte Consulting is unable to locate any relevant data in the DIA's computer database. The Executive Director stated that Deloitte's next step is to work with the Workers' Compensation Rating & Inspection Bureau to see if there is any scar-based disfigurement data that can be extracted from their databases.

Mr. Burton concluded his update by stating that the next Advisory Council meeting is scheduled for October 10, 2007.

### **MISCELLANEOUS**

Chairman Corcoran thanked all parties for attending today's meeting.



Motion made to adjourn.

MMS - Passed. Meeting adjourned at 11:15 a.m.

**The next regular meeting of the Advisory Council is scheduled for Wednesday,**

**October 10, 2007, at 9:00 AM, at the Division of Industrial Accidents, 600 Washington Street, 7<sup>th</sup> Floor Conference Room, Boston, MA 02111.**