

**Massachusetts Workers' Compensation
Advisory Council Minutes**

September 14, 2005

Department of Industrial Accidents

600 Washington street, 7th Floor

Boston, MA 02111

Present: Chairman Paul Byrne; Vice-Chairman Thomas M. Jones. CM: Edmund C. Corcoran; Mickey Long; Tony Frias (Ines Leonardo); John D. Boyle; John A. Pulgini; Robert Fitzsimmons; Ken Paradis; Jill Brown; John Ziemba, Director of Labor; Peter Scantalides, Department of Business & Technology .

Also Present: DIA: John Chapman, Commissioner; James LaMothe, Senior Judge; Jack Tynan, Deputy Commissioner of Administration; Gayl Mileszko, Chief of Staff, DOL; William Taupier, Deputy Director of Administration and EDP; Catherine Farnam, Director, Office of Health Policy; Deborah DiBella, Office of Health Policy; Carol Falcone, Falcone Associates; Alan Pierce, Alan S. Pierce & Associates; Frank Riviera, PERA; Michael Kelly, AIM Mutual; Lucinda Brandt, Department of Health Care Finance & Policy; Kevin Flynn, Department of Health Care Finance & Policy; Dr. William Patterson, Massachusetts Medical Society; Dr. William Ryder, Massachusetts Medical Society; Dr. Dean Hashimoto, Chair, Health Care Services Board; Karen Gibbons, WCRIB; Tony Salido, WCRIB.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: Jeanne-Marie Boylan; Robert Banks; Bruce Cochrane.

Agenda:

Chairman's Welcome

DIA Update

Judicial Update - James LaMothe, Senior Judge

DIA Vital Statistics - William Taupier, Deputy Director of Administration & EDP

Action Items

- Minutes - August 10, 2005

Discussion on IAB Medical Rates

Kevin Flynn, Pricing & Policy Analyst, Dept. of Health Care Finance & Policy

Dr. William Patterson, Massachusetts Medical Society

Dr. Dean Hashimoto, Chair, Health Care Services Board

Executive Director Update

Miscellaneous

Chairman's Welcome

Chairman Paul Byrne began today's meeting at 9:00 a.m. Chairman Byrne introduced two new members of the Advisory Council: Mr. Robert T. Fitzsimmons, Labor Representative; and Ms. Jill S. Brown, Vocational Rehabilitation Representative. After introductions, Chairman Byrne requested the Senior Judge to proceed with his judicial update.

DIA UPDATE

Judicial Update Senior Judge LaMothe updated Council Members on the information contained within the DIA's vital statistic report for September of 2005 (see attached). Conference Queue: 428; Hearing Queue: 1,928; Reviewing Board Inventory: 123; Impartial Exams for FY'06 (to date): 807 (12 waivers). In fiscal year 2005 there were 4,779 Impartial Medical Examinations (119 waivers).

Senior Judge LaMothe publicly acknowledged the great job Ms. Gayann Wilkinson, Acting Manager of the Impartial Unit and Director of Safety, was performing. He stated that a permanent replacement has not been selected to manage the Impartial Unit.

Senior Judge LaMothe reported that it currently takes 6-8 weeks for a case to go from conciliation to conference. The Senior Judge stated that his goal is to eventually have this time frame reduced to approximately 4 weeks.

The Senior Judge stated that there is still one vacancy within the Reviewing Board. He explained that even with this vacant position, the Reviewing Board has sufficiently handled their caseload. The Senior Judge reminded Council Members that by the end of this year, there would be three Administrative Judge vacancies. The Senior Judge has discussed this situation with the Governor's Legal Counsel, Mark Nielsen.

The Senior Judge provided the Council Members with a proposal for tracking outstanding cases. Senior Judge LaMothe explained that he has worked with the Information

Technology Director to design a system that will accurately measure the true time frame for a hearing decision to be issued. To ensure accuracy, he proposed that the time frame should start on the day the record officially closes (not when it is scheduled) and remain open until the day the decision is filed.

Stop Work Orders/Caseload Statistics

Mr. Taupier updated Council Members on the Stop Work Order (SWO) and Caseload Statistics for August of 2005 (see attached). SWO compliance remains at 100%. Total compliance investigations completed during August: 1,952; total

SWOs issued in August: 22; total SWOs issued for FY'06: 39; total number of SWOs issued for FY'05: 173; total fines collected for August: \$15,500; total fines collected in FY'05: \$267,061.

Mr. Taupier continued his update of the monthly vital statistics. Total number of cases filed for August: 1,441; total number of cases filed for FY'05 (to date): 16,276; total number of First Report's filed for August: 3,766; total number of First Report's filed for FY'05 (to date): 37,461. In August, a total of 1,612 First Reports were filed on-line using the DIA's Information Portal on the Internet (25% of FRI filings).

Mr. Taupier proceeded with his update on uninsured claims (§65). Estimated number of §65 claims filed in FY'06 (to date): 43 (30 have been processed by the WCTF); uninsured claims paid by the Trust Fund for fiscal year 2006: \$773,044. Estimated number of §65 claims filed for FY'05 (to date): 247 (with 201 actual uninsured injuries); uninsured claims paid by the Trust Fund for fiscal year 2005 (to date): \$6,052,205. The Civil Litigation Unit utilizes the courts and the authority of M.G.L. c. 152 to recoup money paid on uninsured claims by taking legal action against the employer in question.

The Department of Industrial Accidents budgeted \$6.0 million for FY'05 and \$5.0 million for FY'06.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund. Number of §37/37A petitions filed in fiscal year 2006 (to date): 51; number of §37/37A petitions paid in fiscal year 2006 (to date): 154; amount paid on these claims in fiscal year 2006 (to date): \$927,592; number of §37/37A petitions filed in fiscal year 2005: 316; number of §37/37A petitions paid in fiscal year 2005: 530; amount paid on these claims in fiscal year 2005: \$25,299,116; COLA reimbursements to insurers in FY'06 (to date): \$1,971,585; COLA reimbursements to insurers in FY'05: \$16.1 million.

Budget/Personnel Issues

Mr. Taupier reported that as of August 2005, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 269 (238 DIA employees, 31 WCTF employees). The DIA has no contract employees at this time. Seven temporary employees are being utilized within the DIA as of this report. Mr. Taupier noted that the DIA is utilizing 3 legal interns who are assisting the Office of Legal Counsel.

ACTION ITEMS

Chairman Byrne asked for a motion to accept the Minutes for August 10, 2005.

Motion made to accept the Minutes for August 10, 2005.

MMS - passed.

DISCUSSION ON IAB MEDICAL RATES

Chairman Paul Byrne introduced Mr. Kevin R. Flynn, Pricing and Policy Analyst for the Division of Health Care Finance and Policy (DHCFP).

Mr. Flynn informed the Advisory Council members that the DHCFP's mandate is to establish public rates of payment to all health care providers. Mr. Flynn explained that in order to do this, the division must collect data from various sources and

analyze the information. Mr. Flynn noted that the DHCFP has experienced problems in the past with obtaining reliable data needed to accurately set rates.

Mr. Flynn reviewed the rate setting process by explaining that after the information is gathered and disseminated, the Commissioner reviews the division's findings. Mr. Flynn stated that the public has an opportunity to provide input at an open hearing. He stated that the Division notifies interested parties of public hearing dates. If a party cannot make the hearing, the Division allows for written testimony to be submitted. Mr. Flynn remarked that the DHCFP reviews all testimony and recommendations provided by concerned parties. Upon review of all material, the last part of the process is the adoption of the medical rates.

Mr. Flynn reminded Council Members that the rates are not the final word but should be used as a guideline. Currently, the division utilizes a Medicare rate methodology. Mr. Flynn stated that because insurance companies are often reluctant to share their medical claim information, it is hard to come up with appropriate reimbursement rates for physicians. He noted that if the DHCFP could access this data it would help ensure that reasonable rates are provided to the physicians for the work they perform.

Insurance representatives have indicated that many physician fees vary substantially for the same procedure. He noted that this variance underscores the difficulties that the DHCFP experiences when attempting to set an equitable rate. Mr. Flynn stated that the only data the Division has currently received was submitted from the Commonwealth's Human Resources Division (HRD). He informed the Council Members that this data has indicated that 75% of surgeons do not accept the prescribed rates.

Several Council Members voiced agreement that the fees charged for the same procedures often vary. Mr. Flynn reminded Council Members that although the statute allows parties to negotiate, the only rate the insurer is required to pay is the rate set by the DHCFP. It was noted that Rhode Island does not negotiate medical rates as their fee schedule is strictly adhered to.

Dr. William Patterson, Massachusetts Medical Society (MMS), provided Council Members with a statement regarding the issue of physician reimbursement under the Workers' Compensation system (see attached).

Dr. Patterson stated that the MMS supports the current system of allowing physicians to negotiate rates with insurers or to accept the existing fee schedule. He explained that after years of using Medicaid rates as the base for workers' compensation medical care, the Division of Health Care Finance and Policy adopted a fee schedule based on Medicare's Resource Based Relative Value Scale (RBRVS). In 2004, the Division of Health Care Finance and Policy adjusted rates upward by approximately 3%. He noted that this brings physicians closer to the national average in workers' compensation reimbursement. However, surveys documented by the MMS also show that these reimbursements have not kept pace with cost increases for physician practices, including increases in malpractice insurance.

Dr. Patterson explained to the Council Members that workers' compensation rates to physicians were previously tied to public assistance rates. Dr. Patterson noted that physicians are willing to do their part to support the extension of Medicaid and

MassHealth coverage to the needy, but they do not believe that charity rates should be applied to the largest employers in Massachusetts. Dr. Patterson acknowledged that Medicare rates are an improvement over Medicaid rates but noted that many of the rates are still too low, especially for anesthesiologists, psychiatrists and E&M codes.

Dr. Patterson noted that the Workers' Compensation Research Institute (WCRI) has repeatedly documented the low costs of medical care to insurers in Massachusetts. In 2002, the WCRI indicated that most state's fee schedules are approximately 40% above Medicare rates, while Massachusetts is 13% below Medicare rates.

Dr. Patterson acknowledged that the 2002 reforms were an advancement. However, he explained that a problem still exists with the Evaluation and Management Codes. Due to the necessity for immediate treatment, E&M codes do not allow for the physician to negotiate fees. Dr. Patterson stated that there are many psychosocial issues affecting the management of workers' compensation claims. Furthermore, he noted that workers' compensation claims require heavy paperwork.

Dr. Patterson stated that Massachusetts has recently experienced difficulties with recruiting physicians. He noted that the high cost of housing and the high cost of running a practice in Massachusetts has put stress on physicians and hampered access to medical providers.

Council members unanimously agreed that the rates needed to be adjusted to reflect the costs incurred by health care providers to deliver medical services.

Dr. Hashimoto, Chairman of the Health Care Services Board, concurred that the medical reimbursement rates for physicians are very low. Dr. Hashimoto stated that if you allow for quick patient care up front, there is a decreased need for surgery. He noted that the low E&M codes for primary occupational health care has impacted the ability of hospitals and others to establish high quality occupational health programs. Dr. Hashimoto noted that prompt access to quality care would help improve the medical outcomes for injured workers.

Mike Kelly from AIM Mutual Insurance Company stated that the system is broken. He stated that AIM Mutual often negotiates fair rates with physicians because it is an investment in a good outcome. He cautioned Council Members that he has witnessed price-gouging from surgeons who ask for reimbursements up to ten times the prescribed amounts in the fee schedule.

The Advisory Council members offered to work with the Division of Health Care Finance and Policy to gather the necessary data needed to assist in the rate setting process. Chairman Byrne thanked all the parties for their participation in today's meeting.

EXECUTIVE DIRECTOR UPDATE

Executive Director Andrew Burton explained that the proposed legislation that would suspend the driver's license of uninsured employers has been filed by Representative Rodrigues and is currently before the Rules Committee. At this time, no bill number has been assigned.

Executive Director Burton stated that the Joint Committee on Labor and Workforce Development is planning to hold an Executive Session on various workers' compensation bills within the next few months. Executive Director Burton notified Council Member that next month's Advisory Council meeting will focus on safety issues and will be held at the Frank Janas Training Center at the DIA's Lawrence Regional Office. Mr. Burton stated that he would email an agenda and directions to all Council Members.

MISCELLANEOUS

Chairman Paul Byrne, Vice-Chairman Tom Jones and Executive Director Andrew Burton recognized the service and achievements of former Council Member Carol Falcone.

Chairman Byrne read a letter of acknowledgement and thanked Ms. Falcone for her dedication and hard work during the past seven years.

Chairman Byrne then asked for a motion to adjourn.

Motion made to adjourn.

MMS - passed. Meeting adjourned 11:45 a.m.

The next regular meeting of the Advisory Council is scheduled for Wednesday, October 12, 2005 at 10:00 AM, at the Division of Industrial Accidents, Lawrence Regional Office, 160 Winthrop Avenue, Lawrence, MA 01843.