

**WORKERS' COMPENSATION ADVISORY COUNCIL
MINUTES ~ ~ AUGUST 25, 2005 MEETING [1:00 P.M.]
710 JAMES ROBERTSON PARKWAY
HEARING ROOM, FIRST FLOOR
ANDREW JOHNSON TOWER
NASHVILLE, TENNESSEE**

The meeting was called to order at 1:05 p.m. by Mr. Dale Sims, State Treasurer.

A quorum of voting members was present; therefore, it was not necessary to conduct the meeting electronically.

The following lists each member and indicates whether they attended the meeting:

***CHAIR:** Dale Sims, State Treasurer - Present

***VOTING MEMBERS:**

Employee Representatives

Jack A. Gatlin - Attended via Telephone Conference Call

Jerry Lee - Present

Othal Smith, Jr. - Present

Employer Representatives

Ronnie Hart - Present

Bob Pitts - Present

Steven Turner - Present

***NONVOTING MEMBERS:**

Kitty Boyte [TDLA representative] - Present

Claiborne (Chip) Christian, M.D. [health care providers representative] - Absent

Jackie Dixon [TBA representative] - Present

Tony Farmer [TTLA representative] - Present

Bob Kirk [local governments representative] - Absent

Jerry Mayo [insurance companies representative] - Present

David Stout [health care providers representative] - Absent

***EX OFFICIO MEMBERS**

Senator Joe Haynes - Absent

Representative Jere Hargrove - Absent

Commissioner Paula Flowers - Present

Commissioner Jim Neeley - Present

1. APPROVAL OF MINUTES - May 20, 2005 Meeting

The draft minutes of the May 20, 2005 meeting had been circulated to the members for review prior to the meeting.

ACTION: The voting members unanimously approved the minutes of the May 20, 2005 meeting.

2. PRESENTATION - 2004 WORKERS' COMPENSATION DATA

Mr. David Wilstermann, Statistical Analyst, made a PowerPoint presentation concerning the 2004 workers' compensation statistical data. Mr. Wilstermann reminded the members that the data contained in the 2004 report do not include cases that arose after the implementation of the 2004 reform act. All claims on which data is reported occurred prior to July 1, 2004. The following summarizes his presentation:

- * Cases are continuing to take longer to reach conclusion. Increases are due to increases in time from injury to maximum medical improvement (MMI) and from MMI to conclusion.
- * The average age of injured workers continues to slowly rise.
- * The average weekly compensation rate continues to rise approximately 3-4 % per year. The percent of workers at the maximum compensation rate is the lowest in 2004 for the five years of data reviewed.
- * Mean PPD multipliers are slowly increasing for body as a whole, arm and leg cases, especially for no return to work cases.
- * The percent of psychological claims is relatively consistent with past years.
- * While the number of permanent total and death cases is higher in 2004, the percentages are lower, as the number of claims reported in 2004 has increased.
- * The percent of trials appealed continues to decrease.

ACTION: No formal action was required regarding this agenda item.

3. CONSIDERATION OF "DRAFT ANNUAL REPORT- CALENDAR YEAR 2004" AND APPROVAL FOR PUBLICATION

A draft of the 2004 Annual Report was sent to the members prior to the meeting. The Executive Director distributed proposed revisions to pages 129 and 130 of the draft report to better reflect the data concerning length of time from injury to conclusion for a claim in which the settlement is approved by the Department of Labor and Workforce Development. She recommended substituting the revised pages for those in the original draft.

ACTION: Mr. Bob Pitts moved the approval of the draft report, as amended by the recommended changes on pages 129 and 130. Mr. Jerry Lee seconded the

motion. The voting members then unanimously approved the 2004 Annual Report, as amended, for publication.

4. PRESENTATION - STATUS OF TENNESSEE WORKERS' COMPENSATION INSURANCE MARKET

Commissioner Paula Flowers introduced Mr. Michael Shinnick, Manager, Workers' Compensation Unit to present a report on the Tennessee Workers' Compensation Insurance Market. Mr. Shinnick's PowerPoint presentation to the members included information concerning the following areas:

- > Tennessee's Workers' Compensation Market Segmentation
- > National Workers' Compensation Picture
- > Tennessee Specific Workers' Compensation Picture
- > Tennessee Assigned Risk Plan
- > Self-Insurance
- > Update on Company Insolvencies
- > Information regarding TRIA

Mr. Shinnick then summarized as follows:

- | | |
|-------------------|--|
| <u>Positives:</u> | Results are improving
Frequency continues to decline
Industry progress in reserve deficiency |
| <u>Negatives:</u> | Medical severity continues rapid growth
Residual market still too large, although declining
Low investment returns continue to pressure underwriting results
TRIA uncertainties |

ACTION: No formal action was required to be taken on this agenda item.

5. PRESENTATION - STATUS OF TENNESSEE ASSIGNED RISK PLAN

Mr. Thomas G. Redel, CPCU, Governmental Services Group, Aon Risk Services, made a PowerPoint presentation on Tennessee Assigned Risk Plan Data. Mr. Redel reported that 40% of the residual market premiums are currently placed with direct assignment carriers. He also indicated while the number of policies written in the assigned risk plan is increasing, the premium is going down and the average premium size is getting smaller as the bigger accounts find coverage in the voluntary market. Mr. Redel also reported premium totals for Plan Years 1998 through 2004, as of December 31, 2004 in the direct assignment and the servicing carrier categories. He also reported cumulative premium total for Plan Year 2005, as of June 30, 2005. Also presented was a summary of projected surplus or deficit for each policy year (1998 - 2004).

ACTION: No formal action was required to be taken on this agenda item.

6. UPDATE ON IMPLEMENTATION OF "REFORM ACT OF 2004"

The Advisory Council has requested the Department of Labor and Workforce Development to provide a brief update of the implementation of the "Reform Act of 2004" at each meeting. Commissioner Neeley presented the following information to members of the Advisory Council:

* A comparison of various requests for assistance received by the Department between the first 6 months of 2004 and the first 6 months of 2005 (as of January 1, 2005 injury dates, the 2004 Reform Act prohibits the filing a lawsuit until the parties have exhausted the benefit review process) shows that there has been a 48% increase in request for assistance on temporary issues; an 18% increase in requests for benefit review conferences; and a 7% increase in requests for settlement approvals.

* The Medical Fee Schedule became effective July 1, 2005; frequently asked questions and answers are posted on the Department's website.

* As of August 1, 2005, over 100 physicians have applied for the Medical Impairment Rating Registry. Of the applicants, 60% are orthopedics and neurosurgeons.

* The Department's Penalty Program enforces the following penalties that are required by statute or rule: (1) 25% penalty for failure to pay or timely pay temporary disability benefits; (2) \$10,000 plus penalty for failure to comply with a specialist's order; (3) failure to appear or provide full settlement authority at a benefit review conference; and a \$25.00 penalty for each 15 day period for failure to timely file a first report of injury. The penalty program is a complaint driven program. From July 1, 2004 through June 30, 2005, there have been 96 penalty referrals (for the 25% penalty); 51 penalties were assessed; the highest assessment was \$4,666.03 and the lowest was \$96.01. The total amount of 25% penalties assessed was \$36,615.06. The 25% penalty is payable to the injured employee.

* During the last fiscal year, the Division of Workers' Compensation has established and filled 55 new positions. New offices were opened in Dyersburg, Clarksville, Murfreesboro and Cookeville; an additional office in Columbia is being built.

* Administrative Rules Hearings have been scheduled in September and October concerning all proposed rules the Department has filed in 2005.

ACTION: No formal action was required to be taken on this agenda item.

7. ADDITIONAL ISSUES

The Executive Director advised the members that the next meeting of the Advisory Council is scheduled for September 25, 2005 at 1:00 p.m. The agenda will include consideration and recommendation concerning the proposed Advisory Prospective Loss Costs Filing.

The meeting of the Advisory Council adjourned at approximately 3: 15 p.m.