

**WORKERS' COMPENSATION ADVISORY COUNCIL
AMENDED MINUTES ~ ~ MAY 20, 2005 MEETING [10:00 A.M.]
710 JAMES ROBERTSON PARKWAY
HEARING ROOM, FIRST FLOOR
ANDREW JOHNSON TOWER
NASHVILLE, TENNESSEE**

The meeting was called to order at 10:10 a.m. by Mr. Dale Sims, State Treasurer

The members made a determination that it was necessary to conduct the meeting electronically and that the matter(s) to be considered were such that timely action was necessary and the physical presence by a quorum of the voting members was not practical.

The Executive Director called the roll. The following lists each member of the Advisory Council and indicates whether they attended the meeting:

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

***VOTING MEMBERS:**

Employee Representatives

Jack A. Gatlin - Present

Jerry Lee - Present

Othal Smith, Jr. - Present via Conference Call

Employer Representatives

Ronnie Hart - Present via Conference Call

Bob Pitts - Present

Steven Turner - Absent

***NONVOTING MEMBERS:**

Kitty Boyte [TDLA representative] - Present

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

Jackie Dixon [TBA representative] - Absent

Tony Farmer [TTLA representative] - Present via Conference Call

Bob Kirk [local governments representative] - Absent

Jerry Mayo [insurance companies representative] - Absent

David Stout [health care providers representative] - Absent

***EX OFFICIO MEMBERS**

Senator Joe Haynes - Absent

Representative Jere Hargrove - Absent

Commissioner Paula Flowers - Absent [Designee, Scott White, Deputy Commissioner, Present]

Commissioner Jim Neeley - Absent [Designee, Sue Ann Head, Administrator of Workers' Compensation, Present]

The following lists the topics discussed at the meeting and indicates the actions taken or recommended to be taken:

1. WCAC ADMINISTRATIVE MATTERS

- Discussion of Conducting Meeting by Electronic Means

ACTION: The voting members made the following determination: (1) the matter(s) to be considered were such that timely action was necessary; (2) the physical presence by a quorum of the voting members was not practical; (3) it was necessary to conduct the meeting electronically. The five voting members (present at the meeting in person or on the telephone) voted unanimously to conduct the meeting electronically.

2. APPROVAL OF MINUTES

Draft minutes for the meetings conducted on March 18, 2005, April 1, 2005 and April 15, 2005 were distributed to the members prior to the May 20, 2005 meeting for review.

ACTION: The draft minutes for the meetings on March 18, 2005, April 1, 2005 and April 15, 2005 were unanimously approved by the voting members (present in at the meeting in person or on the telephone).

3. CONSIDERATION AND RECOMMENDATION RE: NCCI LAW ONLY FILING EFFECTIVE JULY 1, 2005

The members of the Advisory Council heard presentations concerning the "Law Only" filing from the following persons:

1. Ms. Cathy Booth [NCCI State Relations Executive] and Ms. Carolyn Burgh, ACAS, [NCCI actuary].
2. Mr. Gregory N. Alff, FCAS, MAAA, [Senior Actuary, Willis Risk Solutions North America], the Advisory Council's consulting actuary.

3. Ms. Mary Frances Miller, FCAS, MAAA, FCA [Select Actuarial Services], the consultant to the Department of Commerce and Insurance.

Ms. Booth and Ms. Burgh explained the NCCI's filing and the rationale and judgments underlying the recommended -6.9% decrease. Mr. Alff stated his opinion that the NCCI proposed reduction of -6.3% is reasonable; however, he indicated concerns regarding the NCCI's application of a 40% off set to savings on physicians and hospitals due to possible responses of the providers to the implementation of the Medical Fee Schedule. Mr. Alff suggested the Advisory Council might want to consider at least the NCCI's reduction in the offset for hospital utilization. Ms. Miller stated there is huge variability in the estimates since direct Tennessee workers' compensation data was unavailable for use by the NCCI in its calculations and estimates. She indicated a reasonable range would be from -5% to -10%.

It was noted by the Advisory Council that after the NCCI submitted the Law Only Filing that an amendment was proceeding through the legislature that will delay the penalty portions of the Medical Fee Schedule for six months until January 1, 2006. Thus, the members expressed concern the delay may impact behavior of the medical providers that could result in an actual delay of the medical costs savings for six months. Mr. Alff told the members he did not have this information at the time of his evaluation of the NCCI's filing and given that information he would be comfortable with the NCCI's proposed decrease of -6.9%.

Members of the Advisory Council expressed concerns that due to the nature of the deadlines for data reporting to the NCCI by insurance carriers it will be several years before data will be reported that reflect the changes made in Tennessee by the adoption of a medical fee schedule. In addition, members of the Advisory Council commented that care should be taken by those who publicize the recommended overall decrease in rates [due to the implementation of law changes related to the medical fee schedule and the increase in the maximum temporary total disability benefit rate] to assure the public and other officials understand that the recommended decrease related to the Law Only Filing will become effective at the same time as the Advisory Prospective Loss Costs Filing made by the NCCI in late December, 2004 that was approved as an increase in rates.

ACTION: The five voting members of the Workers' Compensation Advisory Council who were physically present or present via conference call unanimously recommended that the decrease of 6.9% as filed by the NCCI to be effective on July 1, 2005, be approved for the following reasons:

- a). the delay in implementation of the penalty provisions of the Medical Fee Schedule until January 1, 2006, which may result in delay in the actual implementation of the Medical Fee Schedule reimbursement rates by providers;
- b). the uncertain effects that the cumulative behaviors by providers and insurance carriers may have on the ultimate savings from a Medical Fee Schedule ;
- c). the overlapping effects of the annual advisory prospective loss costs filing that is to be made in late August or early September, 2005; and

- d). **the lack of evidence of the true impact of the Medical Fee Schedule on medical costs due to the availability of minimal data and the lag time within which the NCCI can collect data from the carriers pertaining to actual paid medical costs for Tennessee claims.**

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

The Advisory Council has requested the Department to provide a brief update of the implementation of the "Reform Act of 2004" at each meeting. Sue Ann Head, Administrator of the Division of Workers' Compensation and various members of the staff of the Division presented the following information:

- a). Medical Fee Schedule Rules: The "public necessity" rules and the "proposed" rules have been reviewed and approved by the Attorney General and were filed with the Secretary of State on May 9. The "public necessity" rules will be effective on July 1, 2005; the "proposed" rules will be effective on July 26.
- b). Benefit Review Rules: These rules are at the Attorney General's office for review.
- c). Medical Impairment Rating Registry Rules: These rules are at the Attorney General's office for review. These will go into effect on July 1 as "public necessity" rules and they will terminate 165 days from filing. The "proposed" rules will have to go through the more exhaustive promulgation process before becoming permanent rules.
- d). Benefit Review Program: Requests for benefit review conferences increased 29% from March, 2004, through March, 2005; requests for department approval of proposed settlements increased 7% over the same time period.
- e). Lawsuits: The department reported more workers' compensation lawsuits have been filed than expected since the January 1, 2005 effective date for mandatory mediation prior to filing suit. Some are regular cases in which the attorneys profess not to know about the law change or they forgot; others are filed to test whether the employer/insurer files a motion to dismiss the case; others have been filed challenging the constitutionality of various provisions of the 2004 Reform Act.

ACTION: No formal action was taken by the members regarding this agenda item; however, members of the Advisory Council expressed concern that the rules related to the Medical Impairment Rating Registry had been sent to the Attorney General's office for review prior to the proposed rules being sent to the Advisory Council as required by the statute. The members were advised these rules were the "public necessity" rules and that the Department would bring back the "proposed" final rules in plenty of time for the Advisory Council to have input on those provisions that the Council is statutorily required to review prior to the rules becoming final.

5. EXECUTIVE DIRECTOR REPORT

Linda Hughes, Executive Director of the Advisory Council reported on the status of workers' compensation legislation introduced by the General Assembly in 2005. Ms. Hughes also reminded the members of the tentative meeting dates for the remainder of the year.

ACTION: It was decided that meetings would not be necessary on June 10 and July 21.

The meeting of the Advisory Council adjourned at 12: 05 p.m.