

**WORKERS' COMPENSATION ADVISORY COUNCIL
MINUTES ~ DECEMBER 11, 2007 ~ MEETING [1:00 P.M.]
FIRST FLOOR HEARING ROOM
ANDREW JOHNSON TOWER
JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE**

The meeting was called to order at 1:13 p.m. by Mr. Dale Sims, State Treasurer.

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

***VOTING MEMBERS:**

Employee Representatives

- > Vacant Position
- > Jack A. Gatlin Present
- > Jerry Lee Present

Employer Representatives

- > Thomas Hayes Absent
- > Bob Pitts Present
- > Gary Selvy Present

***NONVOTING MEMBERS:**

- | | |
|---|---------|
| Kitty Boyte [TDLA representative] | Present |
| Tony Farmer [TTLA representative] | Absent |
| Kenny McBride [local governments representative] | Absent |
| Jerry Mayo [insurance companies representative] | Present |
| Sam Murrell, MD [health care providers representative -TMA] | Present |
| A. Gregory Ramos [TBA representative] | Present |
| David Stout [health care providers representative-THA] | Absent |

***EX OFFICIO MEMBERS**

- Commissioner Leslie A. Newman - Absent [Designee, Mike Shinnick, Present]
- Commissioner James G. Neeley - Absent [Designee Sue Ann Head, Administrator,
Workers' Compensation Division, Present]

APPROVAL OF MINUTES

Draft minutes of the October 4, 2007, were distributed to the members of the Advisory Council prior to the meeting. Upon a motion for approval made by Mr. Jerry Lee, seconded by Mr. Bob Pitts, the minutes were unanimously approved.

OLD BUSINESS

A. DISCUSSION OF UTILIZATION REVIEW RULES

Chairman Sims announced he had been in communication with Commissioner Neeley's office and Commissioner Neeley intends to withdraw the proposed Utilization Review Rules that had been filed with the Secretary of State's Office. Therefore, Chairman Sims stated no further discussion would take place concerning this agenda item. He asked Ms. Sue Ann Head, Administrator, Division of Workers' Compensation, to express his appreciation to Commissioner Neeley for this action.

B. DISCUSSION OF PROPOSED AMENDMENTS TO MEDICAL FEE SCHEDULE

After announcing the proposed amendments to the Medical Fee Schedule are still pending in the Office of the Attorney General and when approved they will be filed with the Secretary of State, Chairman Sims gave a brief review of the issues surrounding the proposed changes to the Medical Fee Schedule, summarized the Council's role regarding the Medical Fee Schedule and expressed his concerns regarding the impact of the proposed changes on the provision of care to injured workers. He reminded the Council members their statutory charge is advisory and with regard to the medical fee schedule, the Council has the requirement to consult with the Department of Labor/WFD.

Chairman Sims also reviewed the language of the medical fee schedule statute that requires the Commissioner in the development of the rules "to strive to assure the delivery of quality medical care in workers' compensation cases and access by injured workers to primary and specialist care while controlling prices and system costs". He suggested all should be cognizant that a balance exists between access to care and the cost of that access to care. He stated it was made clear during the last meeting of the Advisory Council that a level of concern exists among members of the medical community that Tennessee may be approaching the tipping point where providers are reluctant to participate in the workers' compensation system which would be detrimental to both employees and employers.

Chairman Sims noted the Advisory Council does not have the information necessary to determine whether the Tennessee system is close to the tipping point or not. He stated the Advisory Council relies on the Department to have an early warning system in place to determine whether there is a decrease in the number of doctors who are willing to treat injured workers.

Dr. Murrell expressed concern the proposed rule changes creates a floating fee schedule because the rules do not select a specific Medicare year as the floor of the schedule. Then, with the addition of the GPCIs this is a compounding of the effects on the doctors. He cautioned that a doctor may stay in a specific network but elect not to treat workers' compensation patients.

Mr. Selvy requested clarification from the Department as to how the Department reaches its decisions regarding changes needed. Ms. Head stated prior to the last year in which the Department began to collect data into a huge database the Department used insurance industry data on medical costs and looked at what the insurance companies identified as the drivers of medical costs in Tennessee. She stated the Department will begin looking at its own data instead of industry data in the future.

Dr. Murrell questioned using WCRI data as it is post adoption of the Tennessee Medical Fee Schedule. Ms. Head stated the Department did not use WCRI data in its decision process.

Dr. Murrell agreed with the suggestion that the impairment rating be determined at the last office visit in addition to completing the form that reflects return to work and the date of maximum medical improvement within a short period of time to incentivize the doctor. Ms. Head stated the intent of the Department is to create is a cap on the charge for the provision of the impairment rating while allowing an additional charge if additional testing is required.

Mr Pitts made the motion the Advisory Council communicate the following to the Department:

- the areas of concerns brought to the attention of the Council at its November meeting;
- a suggestion that Department have in place an adequate monitoring system of the effects of the Medical Fee Schedule; and
- the testimony from the November meeting regarding fear the charge for the medical impairment rating will be an additional charge to the last office visit and to suggest the rating be provided during the last visit.

Mr. Lee seconded the motion and the voting members present unanimously approved the motion.

C. DISCUSSION OF ADDITIONAL ISSUES

Ms. Head reported the proposed Benefit Review Rules recently were transmitted to the Attorney General for review and changes to the Drug Free Workplace Program Rules are in the development stage. Mr. Pitts requested future statistical reports concerning Benefit Review include numbers in addition to percentages.

Mr. Pitts discussed the original intent behind the adoption of the statute that permits a review process of specialists' orders. He stated the intent was not to create an administrative appeals court within the Department and the original intent did not envision the ability to include introduction of new and additional facts. Rather, the original intent was to permit review of the orders upon the

facts that were before the specialist at the time of the original decision to assure quality and continuity in the decision making process. He requested any party opposed to the concept of changing the language of the statute to reflect the original intent to make their opposition known prior to the beginning of the legislative session.

Ms. Teresa Bullington, Benefit Review Program Coordinator, explained the changes being made to the Benefit Review Rules and the need for the changes. She indicated the Department consulted with the attorneys who serve on the Advisory Council during the preparation of the amendments to the rules. No formal comment of the Council is necessary on these proposed changes.

D. RESOLUTION HONORING OTHAL SMITH, JR.

A draft of a resolution to honor the service of Othal Smith, Jr. to the Advisory Council was presented to the Council. The Council unanimously approved the resolution to be printed and to be presented to his family at a later date.

E. EXECUTIVE DIRECTOR REPORT

The Executive Director noted the meeting materials included:

- a copy of the order of the Commissioner of Commerce & Insurance that approves the NCCI filing of -7.2 overall reduction in the loss costs to be effective March 1, 2008;
- a copy of the letter reflecting the decision of the Commissioner of Commerce & Insurance to lower the loss costs multiplier applicable to the assigned risk plan to 1.63.

The members selected January 11, 2008, at 9:30 a.m. for the next meeting of the Advisory Council. At that meeting the Council will be reviewing and approving the report to the legislature regarding significant Supreme Court decisions.

Chairman Sims requested the Executive Director to submit a proposed schedule for meeting dates in 2008 to the members and asked the members to report possible conflicts.

The meeting was adjourned at 2:05 p.m.