

**THE LABOR COMMISSION  
WORKERS' COMPENSATION ADVISORY COUNCIL**

**Wednesday, October 10, 2012 – 12:00 P.M.  
Room 319, Heber M. Wells Bldg.  
Salt Lake City, Utah**

**The following Advisory Council members were in attendance:**

David Bird, Esq., Parsons Behle and Latimer  
Dennis Lloyd, Workers Compensation Fund  
Reo Castleton, President, SL Cnty Fire Dept Local 1696  
Dave Davis, President, Utah Food Industry Association  
Brian Kelm, Esq.  
Richard J. Thorn, President/CEO, Associated General Contractors - Utah Chapter  
Edward Holmes, M.D., Summit View Medical  
Todd Bingham, President, Utah Manufacturers Association  
Brandon Dew, Central Utah Federation of Labor  
Sen. Karen Mayne

**The following Advisory Council members were excused:**

Rep. Mike Morley  
Kathleen Bissell, Liberty Mutual  
Jeff Rowley  
Brandt Goble, Painters and Tapers Local 77  
K. Dawn Atkin, Esq., Atkin & Associates  
Tracey Klausmeier, Utah Dept of Insurance

**Others Present:**

Sherrie Hayashi, Commissioner  
Alan Hennebold, Deputy Commissioner  
Ron Dressler, Director, Division of Industrial Accidents, Labor Commission  
Maggie Karpeck, NCCI  
Rod Morris, Deloitte Consulting  
David Lamb, Utah Labor Commission, Administration Division Director  
Sara Danielson, Utah Labor Commission, Administrative Assistant  
Stan Mead  
Ty Berret  
Peg Howarth  
Jim Behunin  
William Barlow, Utah Labor Commission  
Brad Morse, Utah Labor Commission  
Clarissa Craig  
Jock Smith  
Deidre Marlowe, Utah Labor Commission  
Zachery King  
Scott Mecham  
Julie Vary

**WELCOME**

**Welcome –Commissioner, Sherrie Hayashi** brought the meeting to order at 12:00 p.m. Commissioner Hayashi requested that everyone make sure that they sign the roster. Commissioner Hayashi welcomed Brandon Dew and Todd Bingham as new members of the council.

### **1. Miscellaneous Business:**

Commissioner Hayashi asked if everyone had had an opportunity to review the minutes of the July 11, 2012, Advisory Council. Dave Davis made a motion to approve the minutes, Brian Kelm seconded the motion. The voting was unanimous.

### **2. Senator Mayne –**

Commissioner Hayashi stated Senator Mayne had three items that she wanted to make the Council aware of in the upcoming session, and turned the time to Sen. Mayne.

Senator Mayne stated that she is sponsoring a bill in the Senate, and Rep. Barrus will be the sponsor in the House, for RMCOEH, Rocky Mountain Center for Occupational and Environmental Health, to receive on-going monies from the General Fund in the amount of \$50,000 per year. This is to allow RMCOEH to produce and maintain an unbiased web site containing facts about our environment and occupational issues.

Senator Mayne will sponsor a resolution to honor the Workers' Compensation Fund for its efforts in workplace safety. She, with the help of Dennis Lloyd, distributed a book about the history of Paul S. Richards and his efforts to improve occupational health and safety. "Bingham Canyon Doctor" The Life and Legacy of Paul S. Richards.

Senator Mayne will be sponsoring a bill relating to the coordination of benefits. This bill will require regular medical insurance to pay for medical care while a claim for workers compensation benefits is in dispute, with reimbursement from the workers' compensation insurance carrier upon resolution of the claim in favor of workers compensation coverage. There will be a fine imposed on the regular medical insurance carrier for not paying the bills. This fine will be deposited with the Uninsured Employers Fund. The claims would be paid at the lowest negotiated rate for the service provided.

The Council would like to look at the actual language of the bill prior to endorsement. This will be provided. Senator Mayne stated that this bill will be discussed in committee in November.

### **3. Adjudication Division Update – Judge Deidre Marlowe**

Judge Marlowe explained that the Adjudication Division has created a Medical Panel Review Committee which will discuss all issues regarding medical panels, i.e. training, report writing, recruitment etc. This committee is planning to meet next week. Judge Marlowe listed the members of the committee. Dave Davis observed that there were no Employer representatives on the committee.

Commissioner Hayashi stated that the 2011 ALJ Survey has been completed and compiled. She forgot to bring the results to the meeting, and stated that she would provide the results via email to the council. She also explained that a survey will be requested after each hearing. The web address for the survey will be emailed to the parties and a business card would be given to the witnesses and non-party participants after each hearing.

### **4. Budget / Premium Surcharge – David Lamb**

Dave Lamb distributed the financial spreadsheets and reviewed the highlights. He stated that collections had not been as high as expected.

Rod Morris, Deloitte Consulting, presented the actuarial report for the ERF and UEF. One of the concerns Rod raised was the decrease in funds deposited from the Tax Commission. Several members of the council asked that the Commission get an explanation of the decrease from the Tax Commission either through an audit, or through information from the Insurance Department to verify the amounts. Commissioner Hayashi stated that she would meet with the Governor's Office of Management and Budget and with the Commission's Legislative Fiscal Analyst and see if we can get answers and will then let the council know. The Commission is currently gathering information on the self-insured companies and the amount of premium they pay from the Tax Commission.

Rod Morris recommended that the premium rate for the ERF remain at 3%. He also recommended that the premium rate for the UEF be raised, but not necessarily this year. The UEF rate will need to be raised to .35% to maintain adequate funding for the future.

Rod Morris also informed the council that there is a possible risk of Medicare requesting reimbursement.

Dave Davis suggested lowering ERF's rate 10-15 points to either 2.9 or 2.85% and raising the UEF rate by the same amount to either .15 or .2%. Thereby leaving the total assessment rate the same. Brian Kelm stated that that sounded good.

Dave Davis made a motion to lower the ERF rate to 2.9% and raise the UEF rate to .15% for a neutral overall change. Brian Kelm seconded the motion. No further comments were made. The voting was unanimous in the affirmative. The Commission will notify the Tax Commission of this change by the end of the week and proceed with rule making.

## **5. Legislative and Rule Making Matters – Alan Hennebold**

**Attorney Fees** - Alan Hennebold stated that attorney fees are based on the benefits received by injured workers. The benefits have risen and therefore the attorney fee maximums should also be raised. This past year the benefits increased by 2% and therefore, the Commission is proposing to raise the maximum attorney fees by 2%. A copy of the proposed rule change was distributed.

Brian Kelm made a motion to increase the maximum fee levels as follows: through the Commission from \$17,125 to \$17,468; through the Court of Appeals from \$24,706 to \$25,200; and through the Supreme Court from \$30,321 to \$30,927. Reo Castleton seconded the motion. Voting was unanimous. The Commission will proceed with rule making.

**Burial Expenses** – Sherrie reported that the Commission is charged with reviewing burial expenses every two years. She distributed a handout showing what average burial expenses have been over the last several years. She explained that the Commission's current rule on burial expenses is set at \$8,000, while the average burial is about \$6,500.

**Medical Fee Schedule/Guideline** – Alan began the discussion with a review of the Commission's statutory authority to regulate physician services. He stated that the Commission's current rule regarding regulation of physician services adopts the Commission's Medical Fee Schedule/Guideline. In the Guidelines specific commentary is given and necessary treatment is also given. The Commission is proposing to no longer adopt the Commission's guideline by rule, but still provide the information. The Medical Fee Committee has reviewed this change and has been given the commentary to review, which would be available at the same time as the rule being effective. The proposed rule change adopts the conversion factors approved by the council last Spring.

Discussion was held.

Dennis Lloyd stated that the guidelines have become the Community Standards and they should not be dismissed without serious consideration.

Dr. Edward Holmes states that the guidelines help to prevent injured workers getting procedures that are not medically and scientifically necessary.

Dennis Lloyd suggested that maybe a statutory change would be better to allow the Commission to formulate treatment guidelines.

Dave Bird made a motion for the Commission to provide the council with proposed statutory language to expand the Commission's rule making authority.

Alan Hennebold suggested authority for the Commission to regulate fees, protocols and standards for medically necessary treatment.

Dave Bird made a motion for the Commission to have our legislative liaison open a bill file to enlarge the Commission's authority to cover regulation of fees, protocols, medically necessary treatment, and nurse practitioners. Dave Davis seconded the motion. No further comment was made. The voting was unanimous.

Alan Hennebold stated that the Commission will proceed with rule making to adjust the conversion factors to what the council approved last Spring.

## **5. Other Business – Commissioner Hayashi**

Commissioner Hayashi reminded everyone of the Council meeting schedule for 2013 listed on the Agenda.

Brian Kelm moved to adjourn the meeting.

Meeting adjourned at 2:30 pm.