

WORKERS' COMPENSATION
ADVISORY COUNCIL MEETING 4-20-16

Members Present:

Sheral Kellar (Chair)
Chuck Davoli
Clark Cossé, III
Julie Cherry
Troy Prevot
Ray Peters
Joseph Jolissaint
Eddie Crawford
Bob Israel
Greg Hubachek
Joe Shine

Members Absent:

Dr. Jim Quillin
Denis Juge
Michael Morris
Dr. Dan Gallagher
Mark Kruse

MINUTES

I. Call to Order at 2:25pm

- Canceled April 28th meeting. This meeting called to review SB 44 & amendments.

II. Roll Call

III. 2016 Pending Legislation (timestamp 14:27:23)

SB44 (with amendments) - Senator Gatti

- Moved from Agenda item #IV.
- Senator Gatti from Bossier, Webster, Claiborne & Bienville parishes and is a former WC judge (D1W).
 - Bill only applies where there is a third party tortfeasor.
 - Settlement normally pays back WC and possibly any future liability.
 - Businesses wanted their ratings (E-MOD) down if the insurance company is full reimbursed.
 - **Clark Cossé**- does it have to be 100% subrogation or proportional?
 - **Sen. Gatti**- sometimes a moody fee negotiation determines that. The bill says 40% of more.
 - **Charles Davoli**- I support bill. It's a credit extended to employer when there's a third party offender. This may be a disincentive for open claims.
 - **Director Kellar**- dollar for dollar credit has been on the books forever.
 - **Troy Prevot**- I believe Michael Morris worked on an amendment with you.
 - **Sen. Gatti**- this solidifies the policy. Sometimes even when the insurer is satisfied the e-mod doesn't go down which effects bids on future jobs

- **Troy Prevot**- I understand but in the 38 states that follow NCCI rules where mod is corrected but it just takes time.
 - **Sen. Gatti**- trigger is settlement or payment
- **Greg Hubachek**- does NCCI regulation have force of law?
 - **Sen. Gatti**- no, it's policy. This would codify it. There is a shadow of this in 23:1104(D) but it's left open to interpretation. Employer is usually left out since he is not at the table.
- **Eddie Crawford**- Does NCCI have any timelines?
 - **Troy Prevot**- 18months. Your reporting period is specific.
- **Jill Crawford** [audience] - if you get a subrogation recovery that's more than 10% of your incurred value, you are required to do a correction report. The rules say "without delay". LWCC internal policy makes it automatic for e-mod and premiums. This bill conflicts and wouldn't really help. However, codifying NCCI rules would help.
- **Joe Jolissaint**- is the E-Mod affected if employer is disputing the compensability of claim? Sometimes medical is paid but not wages.
 - **Jill Leonard** [audience] - there is an indicator for fraud or non-compensability so it doesn't affect e-mod. If you pay claim, then it's usually compensable.
- **Troy Prevot**- if we vacate what we do with NCCI, it would be detrimental to relationship with state.
- **Sen. Gatti**- Michael Morris amendment adds the NCCI language to 1103.
- **Director Kellar**- fiscal note was included in today's handout for little more information
- **Ken Hawkins, esq.** [audience] - is one sector the problem?
 - **Sen. Gatti**- I'll look into it.
 - **Troy Prevot**- According to NCCI, this type is only 2% of the claims.
 - **Sen. Gatti**- Usually these are the big claims.
 - **Pauline Williams** [LWC; audience] - self-insured employers don't report to NCCI and don't have an experience mod (e-mod). Self-insured group funds do report to NCCI and are regulated by DOI.
 - **Ray Peters**- no premiums since it's our own money so the rating wouldn't affect anything.

**Carla going to print rushed copy of new amendment; vote on hold

IV. Proposed Changes to L.S.A. – R.S. 23:1201, 1201.1, and 1306 (timestamp 14:54:50)

~~Larry White, Deputy Director~~

Pauline Williams, Deputy Director

- Moved from agenda #III.
- Mainly for carriers and SI.
- Looking to extend EDI reporting from First Report of Injury (FROI) to Subsequent Report of Injury (SROI)
- Reasons- staff has to manually enter over 25,000 1002 forms per year into 2 different systems (EDI & Legacy)
- Three parts identify for updating is 1201, 1201.1, 1306.

- **Troy Prevot**- same version of EDI?
 - **Pauline Williams**- determines on how long it takes to implement
- **Clark Cossé**- So no bill; just notice?
 - **Director Kellar**- correct. We need do this as well due to limit of staff. There are 4 types (modification, suspension, termination, initial payment) for each claim. 32,000 pieces of paper to key manually. Will roll out first volunteer then mandatory
 - **Clark Cossé**- you have budget for hardware and software?
 - **Pauline Williams**- just expanding from 1007. We want to be ready when we get authorization.
- **Director Kellar**- Need committee to help Pauline (those familiar with IAIABC): Michael Morris, Jill Leonard and Troy Prevot.

V. **New 1008 and Answer Form** (timestamp 15:02:15)

Chief Judge Diane Lundeen

- We included updated 1011 form as well.
- This form will track efilings.
- 1008
 - Help new plaintiffs with inclusive list of causation action, defense can understand request, limit service, improve clarity
 - Previously vetted by council.
 - Added is the employee currently working to indicate TTD, SEB, etc.
 - Pg. 3 expanded bona fide dispute section under #9.
 - Tracked MICS cases and 1009 appeals
 - Added section 10 on pg 4 (request for expedited hearing)
 - Added language to reason for rejection
 - Only objective part kept was fraud as cause of action on Pg. 4. Remedy was fraud must be specified.
 - **Mark Zimmerman** [audience] - pg. 4; there is no authority to dismiss claim. Concern is prescription.
 - **Chief Judge Lundeen**- nothing can be dismissed without a hearing. 40:5705 Abandonment states you can dismiss without prejudice for failure to update address.
 - **Director Kellar**- seeing forms substantially incomplete (i.e. missing employer, S.S #, mailing address, etc.)
 - **Chuck Davoli**- spoke about this 15 years ago when looking at ombudsman. What is the level of communication?
 - **Director Kellar**- call then try by written letter
 - **Chuck Davoli**- may want a written uniform policy to ensure all locations do the same.
 - **Mark Zimmerman** [audience] - include language “According to subject to statute...”
 - **Ken Hawkins, esq.** [audience] - put “* required” so *pro se* people know what is required.
 - **C. Ray Murry, esq.** [audience] - Can use your own petition. Who determines it is rejected?

- **Chief Judge Lundeen-** Court. There will be instructions for any user.
 - **Director Kellar-** instructions won't be promulgated but will be posted on website with form.
 - **C. Ray Murry, esq.** [*audience*] - signature block should be removed in regards to misrepresentation, etc. What is relevance of "Are you working"? What if on/off working? Beyond scope of 23:1311
 - **Chief Judge Lundeen-** this is to help trigger looking at additional benefits. Clarifies or may shorten claim. This is a snapshot.
 - **Director Kellar-** pro se tend to put "no"
 - **Jenny Valois, esq.** [*audience*] – needs definition of working. This would be developed later as an allegation. Specification of TTB, etc is ok but question of working could be removed.
 - **C. Ray Murry, esq.** [*audience*] – Answer should have "are they an employee? What day was termination?" unless we remove that language.
 - **Director Kellar-** form to go back to committee then will move forward
- Answer form-
 - No change other than remove safety device that no longer exists & allowing service by fax or email
 - **Joe Jolissaint-** need notes regarding fraud if not supported. (if 1008 form has the statement). Affirmative defenses need space to outline basis of allegations.
 - **Chief Judge Lundeen-** can put "explain" in bold or "plead specifically".
- 1011 form-
 - 1011 form (1 pg.) is given to any case that is settled. It is for record keeping and statistical purposes.
 - Only change is #5. Settlement is: medical, indemnity or final. Also, only required by law attachments are on the checklist.
 - **Clark Cossé-** form number location?
 - **Chief Judge Lundeen-** bottom left corner
 - Chuck Davoli- even if a settlement is on record get form?
 - **Chief Judge Lundeen-** any settlement required to get approval by court will get the form. Those unrepresented will get assistance from DRS and judges will question on record if all parties are protected.
- **Steve Wanko** [*audience*]- question for Answer. Need language in regards to filing 1002.
 - **Chief Judge Lundeen-** #13 pg 2 "Employer/ insurer has complied ..."
Can track. If lying, then claim against them for fraud.
 - **Brett Staire** [*audience*] - will bring up prematurity.
 - **Chief Judge Lundeen-** put "date filed" if yes. They have to answer.

- **Greg Hubachek**- Won't get kicked back but if not admitted then you can't apply for preliminary determination. If blank, then didn't admit and other side should move to strike.
- **Ken Hawkins, esq.** [audience] - required to use Answer form?
 - **Chief Judge Lundeen**- until mandatory, then both are optional.
- **C. Ray Murray, esq.** [audience]- 1011 no line about cost for fees
 - **Director Kellar**- WCRI tracks costs.
 - **Pauline Williams [LWC; audience]** - Form 100 collects annually from all insurers. Basis for assessment
 - **C. Ray Murray, esq.** [audience] put it back on.

VI*. 2016 Pending Legislation (timestamp 15:43:49) revisited

- **Carla Roberts**- attorney for Senate Labor
 - Senate Labor not meeting tomorrow
 - This will just be an amendment
- **Corey Gaines [LWC]**- Cost Containment program
 - Works with companies that have an e-mod of 1.5 or greater
 - Help write reports, provide safety/health inspections
 - Once hazards are abated then 7% reduction for WC insurance
 - **Dan LaStrapes [LWC; audience]** - but that is scheduled rating, not e-mod reduction.
 - **Corey Gaines**- first 5% to visit then 2% once abated
- **Julie Cherry** moved for favorable of amendment #1872.
Favorable- 10; Oppose- 0; No decision- 0. Director Kellar not part of voting.

VII. Other Business (timestamp 15:47:11)

- **Troy Prevot**- 1009 decisions coming back lacking detail & citation of guidelines. I understand there was a backlog. Don't know what to appeal.
 - **Joe Jolissaint**- UR denials are not specific as well
 - **Director Kellar**- That may be how he feels to respond. Don't want to overstep line of supervision. Will review your concerns.
- **Chuck Davoli**- depending on council come November, I would like council involved with the November week of Kids Chance.
 - May 13th is local Kids Chance fundraiser (crawfish boil) at 6513 Perkins Road
- **Julie Cherry**- Workers' Memorial Day program at 10:30am on Thursday, April 28th at Labor Union Hall.

VIII. Public Comment (timestamp 16:01:49)

- **Jenny Valois, esq.** [audience] – agree with Troy but like Medical Director to certify his basis for decision.
- **Mark Zimmerman [audience]** changing name back to Department of Labor?
 - **Director Kellar**- don't know.

IX. Date for Next Meeting (timestamp 16:03:12)

- Tentatively May 26th with location TBA

- X. **Adjournment** at 4:03pm
- **Motion-** Clark; **Second-** Greg