

Workers' Compensation Advisory Council Meeting

February 10, 2009 9:30a.m. to 12:00p.m.

LABI Conference Center

Meeting began at 10:00 a.m.

Chair and Members Present:

Chris Broadwater, Director, OWCA
Charles Davoli
Jim Patterson
Denis Juge
Dickie Patterson
Dr. Mark Kruse
Troy Prevot
Cherie Pinac
Greg Hubachek

In addition, attending from OWCA:

Larry White, Systems Manager
Teresa Boeneke, Asst. to the Director

The meeting was called to order by Director Chris Broadwater.

Presentation of Minutes from January 27, 2009 meeting

Dickie Patterson made the motion to accept the minutes.
Jim Patterson seconded the motion and the minutes were adopted.

New Business

Discussion of LA RS 23:1209 – Rep. Chris Roy

Rep. Roy discussed HB 1292 (2008 Reg. Session) relative to the prescriptive period for claiming workers' compensation benefits; to provide for an interruption of prescription for indemnity or medical payments; and to provide for related matters. Amending -LA. R.S. 23:1209(A). Representative Roy suggested that employees who try to remain in their jobs rather than accept indemnity benefits, sometimes get punished by 1 year prescriptive period when they eventually require medical treatment. As a result, he indicated that it is sometimes necessary to file suit just to interrupt prescription, or request a sedentary/light duty release in order to utilize a longer SEB prescriptive period.

Greg Hubachek stated that there was a Supreme Court Case regarding this issue, and he would provide a copy to the members for their consideration.

Denis Juge voiced concern with medicals being interrupted and suggested we may be better served by amending the prematurity statute rather than amending the prescriptive period.

Chuck Davoli explained the difference in a developmental disability and the variations on prescription found in La. R.S. 23:1209.

After further discussion of the isolated incidents where this becomes problematic, Chris Broadwater requested that attorneys from each side (Hubachek and Juge) work possible solutions and keep Ted James and Rep. Chris Roy informed. Chris Broadwater further thanked Representative Roy for his efforts, as well as the patience he has shown in agreeing to work with the Council to address his concerns.

No formal motion was presented.

Uninsured Employers Fund (Chuck Davoli)

Chuck Davoli suggested that he believes there to be three kinds of fraud:

1. 1208 Fraud
2. Insurance Premium Fraud
3. Uninsured Employer Fraud (1168)

Chuck provided a handout showing research compiled from other states that have established uninsured employer trust funds. He suggested that we need to develop a system to deter employer fraud, but also consider having a fund established to address situations where employers go undetected and fail to pay necessary benefits. He inquired whether there was sufficient interest in setting up a drafting committee to conduct research.

Cherie Pinac questioned how such a program would be funded and whether this would be an additional assessment on those already paying the assessments that fund the OWCA.

Chris Broadwater questioned how other states handle rights of reimbursement from the fund when statutory employers are forced to pay benefits due to one of their subcontractors allowing his coverage to lapse.

Greg Hubachek suggested that, currently, taxpayers and Medicaid pay these claims. As such, he believes there is a need to go after the uninsured employer.

Michael Morris agreed that this appears to be an enforcement issue and questioned whether the OWCA is doing enough in this area.

Chris Broadwater provided an update as to efforts in this regard and requested assistance through the providing of solid leads.

Jim Patterson made a motion to form a study committee to examine how other states operate and agreed to co-chair this committee with Chuck Davoli.

A second was provided by Troy Prevot.

There was unanimous agreement by Council and the motion carried.

Discussion of HB 1083 (2008 General Session) –(Chuck Davoli)

Chuck Davoli recounted what transpired with HB 1083, filed in the 2008 Regular Session by Rep. Pat Smith. He further inquired as to the desire of the Council for continued efforts addressing this issue.

Jim Patterson pointed out that this may be addressed at federal level based on the President's former actions on this issue while in the U.S. Senate.

Chris Broadwater stated that he appreciates the efforts of Rep. Smith and is supportive of addressing this issue. He indicated that the OWC has revised some internal procedures in order to better address the problem. He expressed concern over reintroducing the bill this session since the bill called for a significant investment from the State General Fund. Rather, he suggested we proceed with efforts to address the problem through new processes and a reallocation of existing resources.

No formal motion was presented.

Expansion of State IME

Chris Broadwater questioned whether we could increase the opportunities for resolving medical disputes by expanding the scope of the State appointed IME. He noted that there appeared to be significant disagreement over adding causation to the factors to be considered, but asked the parties to consider an expansion of the existing language to include other factors without addressing causation.

Troy Prevot noted that, regardless of what they consider, the Judge retains the ability to disregard opinions of physicians.

Denis Juge noted that medical causation is different than legal causation, and is simply another expert opinion.

Chris Broadwater noted the disagreement with labor and asked that, instead of focusing on an area where there is clearly disagreement, let's focus on what we can agree on.

After comments raised from the audience, Chris Broadwater reminded the audience that there will be a public comment later. Therefore, only the council should comment at this time.

Mark Kruse suggested that all 3 physicians should have the ability to comment on every aspect of a case, with the Judge weighing the opinions and making the final decision.

Chris Broadwater expressed his opinion that, if the examination is made by an individual who is truly independent, then the process should not be threatening and the more information you have, the better able the court is to make an informed decision. Nonetheless, he did not raise issue to stir things up, but just wants to keep making progress.

Chuck Davoli suggested that one tool that could be used to help would be medical guidelines.

Chris Broadwater recommended that the Council table the IME issue since there appears to be significant disagreement over the issue and, in his estimation, it will not make such a significant impact that it is worth risking the loss of progress and a cooperative spirit of the parties.

The issue was tabled.

Old Business

Update on Debit Cards Electronic Payment of indemnity benefits (LA RS 23:1201 and 1201.1)

Cherie Pinac and Paul Buffone sent recommended language to Ken Hawkins for his consideration and are waiting for Ken to respond.

Premium Fraud (Cherie Pinac and Chuck Davoli)

Cherie Pinac emailed draft over to Chris for his review. Chris will review and get back with Council.

Chris Broadwater discussed what the parties expect to address at our next meeting and suggested the Council cancel the Feb. 19, 2009 meeting and extend the next meeting date, March 3, 2009, into the afternoon if necessary. He further requested that all rough drafts of all language mentioned in all council meetings, be brought to the next meeting on March 3, 2009 to be circulated.

Denis Juge suggested we work on schedule for guidelines and provided a copy of the last draft of guidelines created at the conclusion of negotiations in the 2008 Regular Session.

Public Comment

Stephen Dale Cronin (LMA) Discussed the prescription issue and questioned whether a place holder suit is a logical solution. He also pointed out that it must be determined whether the 1209 language will be considered as a preemptive period or a prescriptive period.

Wayne Fontana suggested that an IME agreement could speed up the process. He suggested that medical causation is necessary to include because it provides the court and the parties with more information, which is better. He suggested that there is no disadvantage to either side if we still allow Judge to weigh all testimony.

Sharon Knight voiced concern over the Council allowing a tabled issue to be discussed. She believes the issue requires more study.

Chris Broadwater thanked Ms. Knight and the rest of the members for their comments. However, he pointed out that he will not restrict public comments. While the parties may not always agree, the public comments may still be useful to the council whether the item is tabled or not. Therefore, he will always allow comments.

The Council was reminded that the next meeting will be held March 3, 2009 at 9:30 AM and we will continue into the afternoon if necessary.

Meeting Adjourned 11:30 a.m.