

TENNESSEE ADVISORY COUNCIL ON WORKERS' COMPENSATION
MINUTES
Legislative Plaza, Room 30
Nashville, Tennessee
Tuesday, September 20, 2011
1:00 p.m.

Members Present:

Voting Members:

David H. Lillard, Jr., State Treasurer, Chair
Tony Farmer
Jerry Lee – via telephone
Bob Pitts
Dan Pohlgeers
Gary Selvy

Non-Voting Members:

Paula Claytore – via telephone
David Davenport
Stephen Graves
Abbie Hudgens
Lynn Lawyer
Sam Murrell
Gregg Ramos
Mike Shinnick
Lynn Ivanick, Administrator

Also Present:

Senator James F. Kyle, Democratic Leader
Representative Charles M. Sargent, Chairman, House Finance Committee
Steve Curry, First Deputy Treasurer, Treasury Department
Janice Cunningham, Chief of Staff, Treasury Department
Anne Adams, Director Division of Claims, Treasury Department
Ben Simpson, Claims Examiner, Division of Claims, Treasury Department
Larissa Dills, Division of Claims, Treasury Department
David Wilstermann
Cathy Booth, NCCI
Kirt Dooley, NCCI
Lisa Dennison, BYNAC
Mary Frances Miller, Select Actuarial Services
Tom Redel, Senior VP, AON Risk Services
Teresa Bullington, Assistant Admin., TDLWFD, Benefit Review Section
B. Jeff Francis, TDLWFD
Landon Lackey, Attorney, TDLWFD
Dr. Merrill White, Tennessee Orthopaedic Society, Neurospine Committee
J. Nathan Green, RobinsonGreen, LLC, Tennessee Orthopaedic Physicians
Becky Farmer, Center for Sports Medicine and Orthopedics

Call to Order

Chairman, David Lillard called the meeting to order at 1:10 p.m. in Room 30, Legislative Plaza, Nashville, Tennessee. Five voting members were present either in person or via telephone. Chairman Lillard declared a quorum. He explained that roll would be called for all votes. He welcomed the Chairman of the House Finance Committee, Representative Charles M. Sargent. He requested individuals wishing to make public comment sign up or inform the Administrator of their intention to speak.

Chairman Lillard introduced and welcomed the newest member of the Council, Abbie Hudgens, designee for the Commissioner of the Department of Labor and Workforce Development performing her second round of service on the Council.

The next agenda item was the approval of the minutes of the August 22, 2011 meeting. Mr. Gary Selvy made a **motion to approve** the minutes. This motion was **seconded** by Mr. Dan Pohlgeers, a vote was taken, the motion passed and the **minutes were approved**.

Chairman Lillard called upon **David Wilstermann** for his annual presentation regarding the statistics from the Tennessee Department of Labor and Workforce Development. Mr. Wilstermann's presentation along with his supplemental report may be viewed in their entirety on the Treasury Department website at www.treasury.tn.gov under the workers' compensation tab, advisory council, reports section. Questions from council members Mr.'s Farmer, Pohlgeers & Dr. Murrell were addressed regarding specific inclusions in the various graph figures.

Chairman Lillard called upon **Kirt Dooley** of NCCI for his presentation with respect to the Loss Cost Filings. The Law Only Filing proposed to take effect November 11, 2011 recommends a 6.3% increase. Mr. Dooley's report may be viewed under the reports tab of the advisory council webpage under workers' compensation at www.treasury.tn.gov. Inquiries regarding specifics in graphs and offsets, as well as data usage from council member Mr. Pohlgeers were addressed. Council member Mr. Pitts clarified that the rating covered a multi-year period and was being proposed in an effort to get the database back in sync as to what has occurred in the State of Tennessee. Dr. Murrell also inquired about collection of the data used in the calculations. Mr. Dooley informed that the insurance industry provides the data, which is then validated with annual statements and internal procedures.

Chairman Lillard next called upon **Lisa Dennison** of BYNAC to provide her presentation with respect to both the Law Only filing and the Experience filing. Ms. Dennison's report may be viewed in its entirety under the reports tab of the advisory council under the workers' compensation section of the treasury website at www.treasury.tn.gov. Inquiries from council members Dr. Graves, Mr. Pohlgeers, Mr. Pitts were addressed. Ms. Dennison reported that the same data was used by BYNAC as that used by NCCI.

Chairman Lillard then called upon **Kirt Dooley** of NCCI to present the second half of his report regarding the annual Experience filing effective March 1, 2012. This report is also available for review in its entirety at www.treasury.tn.gov, and assumes the acceptance of the November 11, 2011 filing. Inquiry from council member Mr. Pohlgeers regarding the impact of the fee schedule on medical costs, was addressed and explained. Council member, Mr. Shinnick, inquired about NCCI changing the medical loss ratio from using 15 year to 5 year trend, which Mr. Dooley also addressed.

Presentation by **Mary Frances Miller** of Select Actuarial Services regarding both the Law Only and annual Experience filings. Focusing primarily on the Experience filing, she finds the overall filing to be actuarially sound, but suggested changes. Ms. Miller's full presentation may be viewed at www.treasury.tn.gov.

Public comments from **Becky Farmer**, Center for Sports Medicine and Orthopedics in Chattanooga were heard regarding the labor costs and resources it takes to see a workers' compensation patient. Dr. Murrell inquired as to how many full time employees they could do without but for the delays due to the present system. Collaborate effort to repair the system was requested.

Dr. Merrill White, president of the Tennessee Orthopaedic Society and Neurospine Committee member, represents 22 orthopedic surgeons in Knoxville and over 200 neurosurgical surgeons in Tennessee. He indicated that there was no general consensus, but workers' compensation system is generally viewed as being overly burdensome. He suggested that with an extraordinary amount of effort, it could be made to work. He suggested streamlining the current system to make it less costly to administrate.

Chairman Lillard called for a 10 minute break, which was taken. Chairman Lillard then reconvened the meeting at which time Dr. Murrell requested an update from TDLWFD as to the proposed amendments to the Fee Schedule rules. **Landon Lackey** was called upon to explain the state of the proposed amendments to the rules regarding the Medical Fee Schedule. Dr. Murrell additionally inquired as to the nature of the emergency precipitating the need for an emergency rule. Mr. Lackey responded that when the NCCI Law only filing increase was proposed, the TDLWFD proposed an emergency Rule to revert to the pre-August 2009 rate and use of round numbers. Council member Mr. Pohlgeers inquired if there was agreement with the NCCI to later rescind if such changes were put in place. Mr. Lackey explained that a large part of the 6.3% will be mitigated by the rule change. Mr. Pitts addressed the 2+ years of correction needed and indicated that it was believed that a few months following the corrected date, there would be a future NCCI rescission. He then inquired as to a change with respect to institutional care. Mr. Lackey responded that there were no substantive changes in that area.

Council member David Davenport relayed the primary concerns of the Tennessee Physical Therapy Association regarding the amendments to the rules. Chairman Lillard indicated that the letter Mr. Davenport referenced was in the council members' packets and had been requested to be made part of the record. Without objection, the letter from TPTA was made part of the record.

Chairman Lillard asked for further comments regarding the proposed amendments to the rules regarding the Medical Fee Schedule. Mr. Pohlgeers requested clarification of the time frame for institution of the rules. Mr. Lackey explained the process.

Chairman Lillard further indicated that while voting council member Jerry Lee had been available by phone for the earlier part of the meeting, he had since boarded an airplane, and consequently a unanimous vote would be required at this point for passage of any recommendation. Chairman Lillard inquired of the council their desire with respect to any action with regard to the amendment to the rules proposed. Mr. Pitts suggested it would be unproductive for this group to take a vote today. Mr. Pohlgeers suggested that the emergency rule should be postponed.

Dr. Keith Graves of the council indicated that his research showed drops in specialist fees historically resulted in a significant drop in specialist participation levels. Additionally, once specialists chose to leave they were slow to return even if fees later increased.

Chairman Lillard indicated that council member Mr. Mayo, although absent today, had formally requested that the letter from Mr. Shinnick of the Department of Commerce and Insurance to the Advisory Council be made part of the record. Without objection, it was made part of the record.

Dr. Murrell pointed out that concern regarding the proposed rule changes existed on both sides and reiterated concern about health care providers leaving the system.

Chairman Lillard called for comment or action or recommendations regarding the two NCCI filings, Law Only and Experience.

As to the Law Only filing, Mr. Pitts suggested that since the actuaries have all said it meets the requirements, his recommendation is that the council be in support of that filing. So **Moved** by Mr. Pitts, **seconded** by Mr. Farmer. Chairman Lillard called for discussion, and hearing none, called for a vote which was unanimous in favor of **passage of the Motion**.

As to the Experience filing, Mr. Pitts **moved** to reduce the LAE factor to 19, and the medical costs factor to .5%. The Motion was **seconded** by Mr. Farmer and a unanimous vote in favor resulted in **passage of the Motion**.

Chairman Lillard moved to adjourn the meeting and without objection the council stood adjourned at 4:35 p.m.


Lynn Vanick, Administrator
Advisory Council on Workers'
Compensation


David H. Lillard, Jr., State Treasurer
Chairman, Advisory Council on Workers'
Compensation