**WORKERS' COMPENSATION ADVISORY COUNCIL**
**MINUTES ~ OCTOBER 4, 2007 ~ MEETING [ 1:00 P.M.]**
**FIRST FLOOR HEARING ROOM**
**ANDREW JOHNSON TOWER**
**710 JAMES ROBERTSON PARKWAY**
**NASHVILLE, TENNESSEE**

The meeting was called to order at 1:04 p.m. by Mr. Dale Sims, State Treasurer. A quorum of voting members was present; therefore it was not necessary to conduct the meeting electronically. The following lists each member of the Advisory Council and indicates whether they attended the meeting:

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

***VOTING MEMBERS:**

Employee Representatives

> Jack A. Gatlin - Present
> Jerry Lee - Present
> Othal Smith, Jr. - Absent

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 - Present
Commissioner James G. Neeley - Designee Sue Ann Head, Administrator of Division of Workers' Compensation Present

## 1. APPROVAL OF MINUTES\

Draft minutes for the meetings on April 20, 2007; May 14, 2007 and August 20, 2007 were distributed to the members prior to the meeting for review. No corrections or revisions were noted.

**ACTION: The voting members of the Council unanimously voted to approve all three sets of minutes.**

## 2. CONSIDERATION OF NCCI LOSS COSTS FILING

The National Council on Compensation Insurance (NCCI) had submitted in August, 2007 an advisory prospective loss costs filing that recommended an overall reduction in loss costs of -7.2% to be effective on March 1, 2008. The Advisory Council met to consider the filing as is required by TCA §50-6-402. The members received comments from its consulting actuary, Mr. Greg Alff; Ms. Carolyn Bergh, Practice Leader and Senior Actuary with NCCI; and Mr. Thomas Meyer, the consulting actuary to the Department of Commerce and Insurance, Thomas Meyer.

Ms. Bergh noted the overall aggregate change of -7.2% in the proposed loss costs is determined by a reduction of -9.1% due to experience, trend and benefits plus the increase in the loss adjustment expense of +2.1%. She explained the NCCI's selected indemnity loss ration trend in the current filing is -2.5% and the medical loss ratio trend is 1.5%.

Ms. Bergh stated that the NCCI has adopted a significant change in its methodology for the calculation of the provision for loss adjustment expenses (LAE), the expenses associated with the handling of workers compensation claims. The LAE provision is a combination of Defense and Cost Containment Expense (DCCE) and Adjusting and Other Expense (AOE). In the filing, the NCCI is proposing to increase the LAE provision from its current level of16.8% of losses to19.3% of losses. The DCCE increases from 9.8% to 11.5% and the AOE provision increases from 7.0% to 7.8%. She explained in past years NCCI has calculated the LAE using data from both private carriers and state funds. This year the NCCI's countrywide accident year methodology is based on private carrier data only.

Ms. Bergh noted that the filing includes data from all carriers. All carriers reported their data and the NCCI had resolved past concerns with certain carriers' data. Therefore, data from these carriers were added into the past years' reporting of losses and this affected the loss projections to ultimate compared to the filing that was effective March 1, 2007. Finally, she reminded the members of the Advisory Council that the insurance carriers apply a multiplier to the NCCI filed and approved loss cost; in addition, an employer's final pricing will be affected by the applicability of: Experience Rating, Premium Discounts, Schedule Rating, Premium Dividends and Retrospective Rating.

Mr. Greg Alff, the actuary under contract to the Advisory Council to review the NCCI's loss costs filings, stated the NCCI's proposed decrease of-7.2% for the Tennessee voluntary workers' compensation market is reasonably calculated based on the 2004 and 2005 policy year data underlying the filing. However, Mr. Alff noted he has concerns regarding the NCCI's proposed filing in two areas: the medical development factor from19th to ultimate and the factor to increase the load for estimated ultimate defense and cost containment.

Mr. Alff explained the loss development factors for indemnity have decreased from 1.310 for 1st to ultimate in the previous filing to 1.294 in the current filing and for 2nd to ultimate from 1.094 in the previous filing to 1.091 in the current filing. In his opinion, based on data for 1st report to 2nd report and changes to PPD (permanent partial disability) benefits affecting 2004 and 2005, indemnity loss development factors may continue to slowly decrease. Mr. Alff questions the NCCI's increase in the 19th to ultimate factor for medical from 1.023 to 1.042 because he feels there are inconsistencies in the calculations that make the proposed 1.042 development factor questionable. He recommended limiting the19th to ultimate factor to 1.030.

Mr. Alff noted he has concerns regarding the NCCI's proposed 19.3% provision for loss based expenses. With regard to the defense and cost containment expense (DCCE), he stated the updating of the data with 2006 information for this filing indicates DCCE ratios are increasing countrywide but the increase in the accident year development DCCE ratios are almost entirely attributed to the NCCI's methodology change of using only private carrier data. He explained this change has raised the DCCE factors significantly. His analysis of the factors for years 2001 through 2004 indicates the DCCE factors increased by an average of 0.6%, but utilizing the factors for only 2005 and 2006 increase the DCCE factors sharply over the previous accident periods. Mr. Alff agreed there is a reasonable rationale for the methodology change to private carrier only data since the rate filing is for the voluntary market. However, he stated it is his opinion that the NCCI's rationale for the increase to 11.5% based on the 2005 and 2006 data is not fully justified.

Mr. Alff also questioned why Tennessee's relativity (to countrywide) would increase from.971to.981 given the changes in Tennessee law requiring mediation and the decrease in certain PPD benefits. He also recommended a change in the AOE expense to 7.5%. With regard to the LAE factor in the NCCI filing, Mr. Alff believes the DCCE expense load should be capped at 10.8% and the AOE load should be capped at 7.5%. This would yield 18.3% instead of the proposed LAE of 19.3%.

Mr. Alff explained the NCCI's filing of a proposed -7.2% overall loss costs change is calculated using a medical development trend factor of 1.042 for 19th to ultimate and a 1.193 factor to load for loss based expense (LAE). Mr. Alff recommended two changes to the NCCI's loss costs filing: a revised 19th to ultimate factor of1.030 for medical development and a 1.183 factor to load for loss based expense. Adoption of these two changes would result in an overall advisory prospective loss costs filing of -8.6%.

Mr. Thomas Meyer stated he and Mary Frances Miller had reviewed the NCCI filing and found it to be sound and reasonable. He noted no areas of the filing with which he had a different recommendation.

Following the presentations of the actuaries and the answers given in response to questions about pertinent portions of the filing, Advisory Council members expressed concern with the NCCI's proposed change in the trend factor for medical development from 19th to ultimate as it is a result of a significant addition of carrier data that had been missing for prior years. Several members were not comfortable with taking carrier data from a company (or companies) that had been missing in prior years and ultimately deciding the company data was satisfactory and then retroactively reallocating it to prior years' experience. The Council members were comfortable with accepting new data from the missing company or companies and using it prospectively only.

The members noted concerns about the NCCI's methodology change to limit data to private carriers only in the calculation of the Loss Adjusting Expenses. Several Advisory Council members thought it inappropriate for the NCCI to change its methodology for the calculation of Loss Adjustment Expenses without some notice and discussion with the state before presenting a loss cost filing using the changed methodology. At least one member of the Council noted it was troubling to see a request for an increase in the Loss Adjustment Expenses for Tennessee when the Reform Act of 2004 enacted several changes in the law in an effort to make workers' compensation claims less litigious and less costly. In addition, the members indicated it might be more appropriate to phase in this methodology change over a two year period in order to maintain stability in the workers' compensation market. As a result of this view, the members expressed they were more comfortable with Mr. Alff's recommended 1.183 factor to load for loss based expense (as opposed to the NCCI proposed factor of 1.193) as it has the effect of limiting the increase by half for the period covered by the filing (March 1, 2008 through February 28, 2009).

**ACTION:** **The voting members of the Council unanimously recommended to Commissioner Leslie Newman the adoption of a -8.6% overall change in the loss cost level to be effective on March 1, 2008. This recommendation incorporated both changes recommended by Mr. Alff: the adjustment of 19th to ultimate for medical development from the NCCI's proposed 1.042 to 1.030 and the revision of the load for loss based expense from the NCCI's proposed factor of 1.193 to a factor of 1.183.**

## 2. REPORT BY DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT re: ACTIVITIES OF WORKERS' COMPENSATION DIVISION AND RELATED ISSUES

Ms. Sue Ann Head, Administrator of the Division of Workers' Compensation, Department of Labor and Workforce Development made a PowerPoint presentation regarding activities of the various programs and responsibilities of the division. The following summarizes the information provided:

- The division receives notice of claims electronically (Electronic Data Interchange); notice of both lost time claims and no lost time (medical only) claims are required to be submitted. In Fiscal Year 2006-2007 there were 51,583 lost time claims and 77,374 no lost time (medical only) claims reported.

- The division receives proof of insurance coverage electronically from the NCCI; data is available to the division within 1-2 days after the employer has purchased the coverage(notice of cancellations are also sent to the division). Coverage verification is available to the general public (www.ewccv.com/cvs) . In Fiscal Year 2006-2007, the division received 99,684 proofs of coverage and 157,128 notices of cancellation, reinstatement or endorsements.

- The Second Injury Fund may be liable to pay a portion of the benefits due to an injured employee if the employee becomes permanently and totally disabled as a result of the claimed injury; the Second Injury Fund is no longer liable for permanent partial disability awards that total over 100% (injuries sustained on or after July 1, 2006. The number of cases filed against the Second Injury Fund has been decreasing since 2005.

- The Benefit Review Program operates in 11 locations: Memphis, Dyersburg, Jackson, Clarksville, Nashville, Murfreesboro, Columbia, Cookeville, Chattanooga, Knoxville and Kingsport. The goals of the program are: (1) to resolve disputes which occur in the context of a workers' compensation claim; (2) to minimize adversarial relationships; and (3) to decrease litigation and reduce costs for all parties. The program provides information to the public; responds to requests for assistance related to temporary disability and medical benefits; conducts mediation (benefit review conferences); and approves settlement agreements reached by the parties. For the period 2004 through 2006, the temporary disability issues handled by the program increased by 122%; the conducted mediations increased by 39%; and approval of settlements increased by 36%.

- The Utilization Review Program is undergoing a change in rules; the new "rulemaking hearing rules" have been filed with the Secretary of State's office. Under the new rules, utilization review will be mandatory whenever the total medical costs reach $10,000; deadlines for sending cases for review and for rendering decisions are established; treatment guidelines promulgated by the ACOEM and ODG have been adopted; and provides a procedure for resolving disputes between the treating doctor and the utilization review agent.

- The Drug Free Workplace Program is a voluntary program. At the end of Fiscal Year 2005/2006 5,715 employers participated in the program; at the end of FY 06/07, 7,170 employers were participating. Employers who participate receive a 5% $

- Uninsured Employers Fund program has offices in Dyersburg, Jackson, Nashville, Cookeville, Knoxville & Jefferson City. The program is charged with the responsibility to determine whether an employer has proper workers' compensation insurance and to collect penalties from those who have failed to comply with the requirement to have coverage. In Fiscal Year 2005/2006, the program conducted 2,903 requested and /or random investigations and 292 employers were penalized for non-compliance. In Fiscal Year 2005/2006, the program collected $873,258.28 in penalties; in Fiscal Year 2006/2007, $1,077,356 was collected.

- Penalty Program is complaint driven and enforces several penalties required by statute or departmental rule. In Fiscal Year 2006/2007, the program received 218 referrals for failure to pay or timely pay temporary disability benefits and 67 penalties were assessed totaling $56,748.45. The program received 15 referrals regarding the penalty for failure to comply with a Workers' Compensation Specialist's Order ($10,000 penalty); 8 penalties were assessed totaling $50,700. The program also reviews penalties due to violation(s) of the requirement to submit specific forms to the Division of Workers' Compensation. For the last fiscal year, 24 penalties were assessed against insurance carriers; 11 against employers; 1 against a self-insured pool/trust; and 3 that were divided between both. The total amount of assessed penalties were $15,970; the largest of which was $3,360 and the lowest was $150.

- Medical Fee Schedule Program was established as a result of the 2004 Reform Act and became effective July 1, 2005. The penalty provisions became effective January 1, 2006. The fee schedule is mandatory and comprehensive. It is a cap on the amount of medical fees that can be paid and is based on the Medicare model. The department has filed proposed amendments to the medical fee schedule that adopt medical prices based on local (instead of national) community rates; creates a single rate for physical therapy charges; sets a fee to be charged by an authorized treating physician for a impairment rating; and adopts a maximum charge for anesthesia.

- Medical Impairment Rating Registry (MIRR) Program was established to settle disputes over permanent impairment ratings (competing ratings required); is available for injuries occurring on or after July 1, 2005. The opinion and rating of the MIRR physician is presumed to be accurate and can be rebutted only by clear and convincing evidence to the contrary. There are 150+ Tennessee licensed doctors on the registry. Since implementation on July 1, 2005, there have been 90 valid requests for an independent evaluation through the MIRR Program and 17 of the cases were settled prior to the evaluation. The department has filed amendments to the Medical Fee Schedule related to the medical prices based on local community.

- Administrative Review Program was effective related to any order issued on or after May 26, 2006. From January 1, 2007 through June 30, 2007, 329 requests for review were received; 277 orders issued (202 affirmed; 75 not affirmed); 31 were untimely filed; 9 were withdrawn.

Ms. Head reported the department is working to develop rules for adjuster training that will involve a certification process. She told the Council the department would appreciate the Council's input in this process. Ms. Head also explained the department continues to be concerned by the number of claims that do not receive timely payment of temporary benefits. The program is currently a referral-driven process but the department plans to move to a systematic tracking of payments.

**ACTION:** **No specific action was required regarding this agenda item. However, during the presentation Chairman Sims and other members of the Council requested the department to provide information to the Advisory Council concerning the following:**

**1) the standard statistical reporting the department collects regarding the Benefit Review Program;**

**2) whether changes may be needed in the Drug Free Workplace Program;**

**3) whether the penalty money collected by the Uninsured Employers Fund is sufficient to enable some benefits to be provided to the injured employees of uninsured employers;**

**4) the administrative review of specialists' orders; and**

**5) comments received at the public hearings held regarding the proposed revision of the utilization review rules and the proposed amendments to the medical fee schedule and the agency responses to the comments**

**ADJOURN -** The meeting was adjourned at 4:05 p.m.