

Medical Advisory Committee

March 9, 2021

Meeting held via TEAMS

Members:

Misty D. Williams, Travelers
Lisa Hartman, RN, AFL-CIO
David Tutor, MD, Occupational Medicine, *Chair*
John Brophy, MD, Neurosurgery
James Talmage, MD, Assistant Medical Director
Jeff Hazlewood, MD, PM&R, Pain Management
Lisa Bellner, MD, PM&R, Pain Management
Cerisia Cummings, DO, Bridgestone

Robert Snyder, MD, Medical Director
Suzy Douglas, RN, BWC
Suzanne Gaines, BWC
Mark Finks, BWC
Troy Haley, BWC

Guests:

Ken Eichler, Corvel
Christopher Chappell
Laura Roberts
Tracy Wall, Eckman/Freeman
Terry Horn, VUMC
Tiffany Grzbowski, Health Systems
Judy Bobbitt, Tennessee Orthopedic Alliance
Roy Johnson, MD, MTOEM
Jennifer Clark, MTOEM
Nancy Kelly, Averitt Express
David Price, Preferred Medical
Faith Parrish, VUMC
Jonathan May, Morgan & Morgan
Cissy Mangrum, TOA

Call to Order

The meeting was called to order at 1:03 PM by the Chair, Dr. Tutor.

Quorum

A quorum was confirmed as present, 8 of 16 (1/3 of the members needed). Electronic roll taken. No verbal introductions.

Approval of Minutes

Dr. Brophy proposed a sentence change to correct 12/1/2020 minutes. The motion was seconded and passed with no objections. The minutes were accepted and approved with the change.

Conflict of Interest Forms

There was a call for Conflict of Interest forms from any who had not yet turned them in.

Old Business

ODG UPDATE:

Dr. Snyder took the committee through the ODG changes. Most of the updates of December 2020 had to do with updating links. There were no changes for January or February.

Dr. Brophy questioned the role of treating depression in worker's comp.

Dr. Talmage pointed out that some things in ODG don't make sense.

The FCE has been used for purposes of determination of pain where there is no anatomic difference. It should not be addressed for use for purposes of permanent restriction when there is no anatomic change or patient is just subject to pain. Dr. Hazlewood said that for the appropriate use of FCE, the physicians need education on how to use FCE. A proposed change to ODG can be requested or we can make a change for Tennessee for using FCE?

Dr. Snyder said that the changes could be forwarded to ODG. Dr. Brophy, Dr. Talmage and Dr. Hazlewood have made comments about it. Once finalized they will be forwarded to ODG.

Dr. Talmage and Dr. Hazlewood motioned and seconded to accept the other ODG updates. The Committee accepted the updates.

Telehealth updates:

Mark Finks presented the Telehealth updates. The public rulemaking hearing reviewed comments from the period of February 19th to March 5th. The next step is to provide responses to the Attorney General and file with the Secretary of State for publishing. The rules are moving through the regular process as they should.

Legislative updates:

Troy Haley presented the legislative updates. The Senate has opened hearings to the public as of March 8. Troy Haley and Mark Finks are monitoring 84 bills.

The Bureau Administration bill passed the House of Commerce.

HB 94 explains burden of proof in open hearing.

The worker's comp exemption registry transfer bill passed House but is not moving in Senate.

HB 335 has a leukemia presumption for firefighters.

The attorney fee sunset extension was on the calendar for the afternoon of March 9 in Senate Commerce and Labor Committee.

A bill to add an emergency rescue workers presumption for pandemic viruses and infectious diseases has been filed.

A bill for firefighter PTSD presumption for worker's comp is not moving quickly.

A bill to establish changes to the definition of medical necessity and medically necessary is not moving forward in its present state. The Bureau has comments as do others.

SB 1072 to authorize physical therapy via telehealth is moving.

An extension of the Workers' Compensation Advisory Council is moving forward on the calendar. SB 118 for medical cannabis has had a negative reception. This would establish a study commission. SB 854 for medical cannabis has had a positive reaction. This is the same bill from last year. Employers want to know how this affects the Drug Free Workplace program, and they have emailed Mark Finks and Troy Haley.

A separate CBD bill which established 35 nanograms per milliliter for urine samples and its anti-discrimination provision is not moving forward.

The nurse practitioner bill does not affect worker's comp. The bill expands scope of practice changes. SB 671, the physician's assistant bill, does not have many changes as far as scope of practice changes that would affect WC.

Other Rules:

The fee schedule and e-billing rules will follow the same path as the telehealth rules.

Troy Haley can be emailed with questions.

UR review report:

Due to the tornado then the pandemic, there was a delay in UR Appeals processing in March 2020.

For 2019-2020, 1656 cases were resolved.

55% of those cases were upheld, 35% were overturned, and 10% were administratively closed.

From the receipt of an appeal to the closure averaged 18 days. Receiving the records is the slowest part of the process. There is very little change in UR appeals time frames and numbers; they remain static. In 2021, the time has been going down because of technology.

UR working group:

On 2/19, the final form for a treatment request with the cover sheet identifying the treatment requested provides the adjuster with all the information needed to approve treatment.

Problems were discussed and abuses identified. The Bureau will take this information and try to create rules and policy changes for UR.

The research project (attempting to see the outcome of UR determinations for approved treatments and denied treatments) was reported. Shoulder surgeries were chosen for this project and reviewed all UR portal procedures and those procedures that were appealed. There were 78 cases identified and 58 records received. These were reviewed for the data needed but they were almost universally incomplete. Dr. Snyder reported that they would be unable to get any meaningful information from the research project. He was complimentary of the insurers' responses.

Penalties:

In January, 6 UR reports were sent to the Penalty Unit. One for an UR doctor not licensed in TN, one for a delay in surgery, 3 cases of prescribed medications where the UR was not done for several months.

There was one case of the incorrect use of ODG.

WCRI Lumbar Spine Surgery Report:

There was a discussion summary from the previous MAC meeting. These recommendation were presented.

- 1) Send the adjuster and spine surgeons a statement of the problem, a copy of ODG and the Supplemental Spine Guidelines.

- 2) Repeat the course on causation and ODG that Dr. Snyder gave in 2016 with emphasis for spine surgeons and pain specialists.
- 3) Emphasize causation, objective findings, psychological factors and opioid usage to the physicians and adjuster in their educational offerings.
- 4) Publish a review of lumbar fusions in WC for the **AdMIRable Review** this summer.
- 5) Opioid weaning should be strongly encouraged by UR before fusions are certified as medically necessary.

Chronic opioid weaning therapy should be encouraged by UR before fusions.

Dr. Brophy does not want surgeons delayed in acute cases.

Dr. Talmage—if the case has no question of need, send it to committee.

Dr. Brophy suggested using the word “chronic” for recommendation #5.

Dr. Talmage—weaning of chronic opioid therapy: new wording:

- 5) Weaning of chronic opioid therapy should be strongly encouraged by UR before fusions are certified as medically necessary.

Dr. Snyder pointed out that the Certified Physician Program (CPP) course will cover 2) and 3), guidelines and causation.

It was observed that degenerative disc disease is now seen to be a DNA problem. It is controversial as far as how this is covered under WC as much less than 50% could be said to be work related.

Degenerative changes should not be covered under worker’s comp.

Dr. Snyder said that lumbar fusions and analysis of causation are already presented as “Red Flags” in the adjuster training course.

Dr. Bellner asked if fusions have two levels, one is worker’s comp and one is medical. What do patients do?

Dr. Brophy answered that the incorporation into one fusion is usual. Chronic adjacent segment is degenerative. The reason is medical with a very few legitimately covered under worker’s comp.

Dr. Brophy motioned; Misty Williams seconded (in chat box). The committee voted to make recommendations 1, 4 and 5 (as revised).

New Business

Other topics for the MAC to address:

There were no specific suggestions, initially.

Dr. Bellner brought up a topic mentioned before. There is still a problem of adjusters changing and the doctor is not informed.

Dr. Hazlewood observed the problem with verifying coverage of patients. Insurance companies buy out worker’s comp cases, so the ongoing treatments are outside of worker’s comp and the patients do not tell the physician.

Dr. Snyder said that when mentioned to the Court, physicians do not have standing so it declined to make any settlement changes. The insurance companies are not required to notify the treating physician. This issue will be looked at again.

The burden is on the physician to make the appeal for the patient. Therefore, providers may have to contact adjusters each time.

Dr. Bellner noted that physicians spend a lot of time appealing denials.

Cannabis:

Four states approved recreational cannabis.

Seventeen states now have recreational cannabis.

Three states have no CBD or cannabis allowed, the others have "medical".

Certified Physician Program:

The REWARD program is now on website. Certification program for physicians includes causation, RTW, and other legal aspects of worker's comp. There may be up to eighteen segments of online material, about 8 hours of educational time and examination.

A physician certified in this program will get increased reimbursements.

More information will become available.

Medical Fee Schedule changes:

RVUs and the conversion factor were change January 1, 2021. Changes from the fee schedule rules may take place next summer (maybe).

Impairment Ratings:

AMA, 6th Edition, is moving ahead with yearly updates and an electronic version for year 2021. The main change with this is a mental illness update (DMS-5).

It is not clear how these annual changes will be rolled out and how they will be accepted by the states.

Abbie clarified that the issue would have to go through the legislature. Tennessee is "locked" into AMA 6th Edition as published in 2009 until there could be a legislative change.

Dr. Snyder observed that the AMA closed their bookstore; you can get the material through Amazon.

COVID update:

Abbie Hudgens presented updates. There are different approaches to COVID presumptions with each state addressing it in different ways. Tennessee has no presumptions (unless there is a caption bill which turns into a presumption).

There have been about 30% of first reports denied since last March, but since last November there has been a sharp downturn in denials. There have been over 6000 reports of injury for COVID in TN. The overall percentage of claims has gone down. Each claim stands on its own merits. The concept of a "lifestyle presumption" is followed by some states. For TN, it must be shown that the work was more than 50% likely to be the reason for contracting the infection.

In Tennessee, some employees can work virtually. In construction, masks are not used since the work is outside.

There has been a change in delivery of health care with the telehealth utilization time frame accelerating by a few years. Some questions arise: Is this change in the best interest of the injured worker? It

improves access to health care but what about quality? How about teletherapy? Not all employees are having a full recovery so how do employees get to maximum physical improvement? Regulators have provided a clarification for adverse reaction to vaccines. For COVID vaccine reactions, it may be hard to make the connection to work unless the employer *requires* employees to get vaccine. This is a new question.

There are few denials in the healthcare industry. Hospitals are taking care of their workers. There are not too many cases with construction workers. Each claim stands on its own merits.

There is some evidence that even fully inoculated, a person can still give virus to another person. CDC put out some guidance for employers regarding investigations in the workplace.

Long term effects of COVID illness:

Dr. Snyder noted that the Summer **AdMI/Rable Review** had articles about impairment ratings for COVID cases.

What if provider refuses to complete an impairment rating? This may very well become a problem as many patients are treated by family practitioners who are unaware that the patient will be making a WC claim. Most family and general practitioners (as well as mid-levels) are not familiar with impairment ratings or WC processes.

Next Meeting

Tuesday July 6, 2021, 1:00 PM CDT.

Adjournment:

3:00 PM by Dr. Tutor.