

Medical Advisory Committee

June 6, 2023

Via Teams

BWC Large Conference Room
220 French Landing Drive
Nashville, TN 37243

Members:

Rob Behnke
Misty Williams, R.N.
Lisa Bellner, M.D.
Cerisia Cummings, D.O.
Ginny Howard
David Tutor, M.D.
Richard L. Cole, D.C., DACNB, DAAPM, FICCN, FICC(H)
James Gregory Kyser, M.D.
John Brophy, M.D.
Jeff Hazlewood, M.D.
David Tutor, M.D.

Staff:

Troy Haley, Administrator, BWC
Robert Snyder, M.D., Medical Director BWC
James Talmage, M.D., Asst. Medical Director BWC
Amanda Terry, BWC
Mark Finks, BWC
Anne Zimmerman, BWC
Jennifer Schneider, BWC
Keisha Matchem, BWC
Lacy Conner, BWC
Suzanne Gaines, BWC
Kyles Jones, BWC

Guests:

Laura Roberts, Corvell
Spenser Nelson
Tiffany Gryzbowski, HealthSystems
Alex O'Neil, Arbicare
Elijah McGlothen, Butler and Snow
Katherine Moffat, TN Academy of P.A.'s
Judy Bobbitt, TOA
Amelia Mitchell, Schmidt Government Solutions
Patrick Robinson, ODG by MCG
Carla Townsend, NCCI
Jonathon May, Morgan and Morgan
David Price, Preferred Medical
Yarnell Beatty, TMA
Roy Johnson, MD, MTOEM
Adam Jaynes, MNA GR

Via telephone:

Richard L. Cole, D.C., DACNB, DAAPM, FICCN, FICC(H)
Alex O'Neil, Arbicare

In Person:

David Tutor, M.D.
John Brophy, M.D.
Cerisia Cummings, D.O.
Adam Jaynes, MNA GR

Call to Order

Dr. Tutor called the meeting to order at 1:04 PM

Quorum

Mr. Finks took roll of the members, and a quorum was confirmed as present: 11 of 16 members present (1/3/ members needed for a quorum).

Introductions were made.

Approval of Minutes

Dr. Snyder made the following correction to the 3/7/2023 minutes: the meeting was held in the BWC Large Conference Room, not the Tennessee Room.

Dr. Brophy motioned to accept, and Dr. Kyser seconded.
The committee voted to accept the minutes as corrected with no dissent.

The conflict-of-interest statements are up to date.

Old Business

ODG Updates:

Four topicals were changed. Most of the changes had to do with non-steroidal, anti-inflammatory topical compounds and moving them to a separate category. Dr. Snyder thanked Ms. Gryzbowski for her help in correcting the postings. These postings were effective 5/1/2023.

Dr. Hazlewood asked about the Lidoderm patches. They are not just used for neuralgic pain but also for neck and back pain. Dr. Snyder confirmed that for Lidocaine and Lidoderm, there are no restrictions on the update. There are generics available and prior approval is not required.

Ms. Williams commented that there are many combination medications with medications that prevent patients from getting upset stomachs. Many insurance companies want to substitute generics for the more expensive medications.

Dr. Kyser motioned to accept the ODG updates, and Ms. Williams seconded.
The committee accepted the ODG updates as written without dissent.

Medical Fee Schedule:

The Medical Fee Schedule rules came back from the Attorney General's office for some grammatical changes and will go back to the AG's office to complete that part of the process. It will then be sent to be posted with further action sometime this the summer.

Rules and Legislation Update:

Ms. Terry reported that there was nothing new, just the information on the 3 bills affecting workers' comp.

Mr. Haley added that the James Dustin Samples Act was signed by Governor Lee, effective May 17, 2023, Public Chapter 465. It is legislation that creates the presumption that firefighters diagnosed with PTSD were injured in the line of duty and compensable under workers' comp law. The BWC will be involved with the grant program to be established with the Department of Labor and the Fire Marshall to offset the fiscal impact on city and county governments.

For rule-making purposes, the legislation went into effect on 5/17/2023.

For all other purposes, the legislation will be in effect 1/1/2024.

There are legislative set aside funds of \$445,00.00 in the first year and approximately \$880,000.00 in the second and subsequent years for the grant program. This legislation has a 4-year sunset. It will be observed how the program goes and how money is used and how many counties and cities make use of the grant program. The firefighters' presumption will apply to new cases going forward, but this could expand to include cumulative trauma events.

Certain factors must be satisfied; injuries must be related to a specific work event.

This legislation has a long history. A key stat is that it is co-sponsored by all 33 members of the Senate and 80 members of the House.

There might be some court determinations on exactly what is and is not compensable.

UR Report:

Quarter 4 of 2018 compared to Quarter 1 of 2023 shows UR appeals for opioid medications fell. This mirrors an overall reduction in opioid use.

A small sample from Quarter 1 in 2023 showed overturned denials of 75% of claims which were mostly legacy claims involving low doses. Almost all these opioid medications were in combination with 3 or 4 other psychoactive drugs. It would be difficult to wean individuals who have been on them for a long time.

The UR stats are down about 20% for major procedures; it varies from quarter to quarter. There has been a rise in the second quarter.

The first reports of injury were generally between 90,000 and 110,000 a year, pre-Covid. The number of first reports and appeals have pretty much gone back to pre-pandemic numbers.

There has been significant change in who appeals; there are many more from injured worker representatives than physicians.

In reference to opioids, individuals on multiple medications need to have Narcon available or to have been evaluated for sleep apnea. Only medications that have been denied can be reviewed. If a patient is on multiple medications that could affect the one, the suggestion is that each medication should be independently reviewed by the physician.

Many medications prescribed by psychiatrists are denied but often the denial is overturned.

Dr. Hazlewood talked about running into problems with sleep apnea and patients that need their opioids. Many patients can't afford sleep study and don't have private insurance. He observed that many patients are also not on CPAP. It is unfair to take a patient off opioids just because they can't afford sleep study,

but per CDC guidelines that is what should be done if they are not using CPAP. Many people in Tennessee have sleep apnea and many are not on CPAP.

Ms. Williams agreed that people should have what they need and that she saw many prescriptions getting filled.

Approximately 40% of URO reports were received, but we have not had the data analyzed yet.

There were 2 appeals this quarter where UR had denied diagnostic procedures that were within 30 days of injury. One was an ultrasound and the other was an MRI. These were overturned as the denials were inappropriate and not according to the statute.

COVID Update:

There were 124 claims for Covid in the first 4 months of 2023. The total number of first reports for Covid are still below 15,000.

In the courts, there was one case dismissed on summary judgement because there was no medical evidence that the patient's continuing symptoms were related to her Covid vaccine.

There is a status hearing scheduled to occur at the end of the month for a death claim.

Currently, there is mediation on a long Covid claim.

There has been a surprisingly limited number of appeals, requests for treatment, or petitions for benefits filed in courts for Covid and long Covid claims.

Medicare Set-Asides:

There are 6 criteria for payment. The most important payment criteria for physicians: 1. Medical bills and pharmaceuticals must be paid in accordance with the state workers' comp fee schedule. 2. Maintain line-item detail of expenditures for the Medicare set aside.

If the bills are not being paid according to the fee schedule, they should be sent to collection because the claim is closed. The patient is responsible for the bills. It is important for the patient to evaluate the MSA with a professional administrator because the public is usually not educated about the MSA.

The challenge is to educate the population on what an MSA is and what it is for.

These set-asides are self-administered by patients who don't know the fee schedule, therefore insurance must think of this when they offer MSA settlements.

The BWC website has the 30-minute guide to medical treatment after settlement. This answers injured employees' questions about what happens with medical treatment after their case is settled. For permanent impairment, 70-75% of patients settle with open medicals. The courts need to make sure that patients who close their medicals understand what the risks are, especially those without attorneys.

Mental Health Services:

In Tennessee, it is hard to get mental health services for the workers' compensation population. There are too few mental health professionals. This problem has been investigated, and there is no breakthrough on how to increase mental health services in worker's compensation.

Do you extend treating physician designation to psychologists for mental health services only? How do you recruit more psychiatrists? How would this be done especially since 50% of psychiatrists and psychologists don't bill insurance. There is a limited pool to deal with.

How do you get services for firefighter PTSD?

How to enlist mental health services?

Dr. Snyder observed that Blue Cross Blue Shield is revamping how they handle mental health services because they have had trouble filling out their networks for behavioral health. A mental health panel could include a PhD psychologist or a master psychologist. That would require a statutory change.

Different states have included psychologists in their panels. In the states of New York, Colorado, and Wisconsin they are the treating physicians from the start of a claim to end. They can do causation, MMI, and impairment ratings.

How do you recruit mental health providers?

In emergency rooms, there are no inpatient beds or outpatient services within a reasonable length of time for these patients.

Dr. Kyser pointed out issues of expansion of WC and utilizing psychologists. He has been compiling lists of any mental health providers in workers' comp. It is about 50/50 between psychologists and psychiatrists. There are probably more psychiatrists that take insurance than psychologists. There are problems with finding therapists willing to take insurance. The Psychiatric Association is looking into what can be done. There are also problems with coding and getting paid for missed appointments.

There are many complications with workers' comp and payment. It is hard to find providers.

Another problem is that case managers and adjusters might leave the employ of a carrier without notifying the provider. They need to contact the provider and notify in writing when they leave. This should be a law in workers' comp.

Providers must spend a lot of time trying to locate the correct adjuster which results in delay in treatment and care.

The issue of notification is in the upcoming rules changes, and there will be authority to penalize. How will this rule be enforced?

The new fee schedule will have a state specific Z code for missed appointments.

The carrier can suspend benefits if the patient does not abide by provider treatment as a pattern of behavior.

Mr. May remarked that he often sees a panel of mental health providers with no MD's, but PhD's for authorized psychological treatment and care. This is for care that does not have to be provided by a medical doctor. At the end of care, it is hard to get the carriers to accept the final impairment rating from a PhD. The impairment rating must be done by an MD, and it is hard to find MD's willing to see these patients. This creates a gap in the patient care.

It is difficult to get enough psychologists and psychiatrists for panels because it is hard to find people to take workers' comp.

The Tennessee Psychiatric Association opposes any expansion of practice of psychologists, particularly for impairment ratings. There are also a lot of bureaucratic and administrative problems associated with doing workers' compensation.

Dr. Kyser said that Ms. Douglas' assistance is very valuable to his practice.

Contracts and Silent PPOs

The issue of contracts was earlier investigated by Commerce and Insurance with some resolution. Every contract must be looked at to make sure there is no sale or lease language. Providers must also make sure that they maintain control over a contract any time there is a consolidation or merger.

New Business:

Mental Health Treatment and PTSD

For treatment of mental health patients, PhD psychologists cannot do causation, permanent impairment, issue restrictions, or MMI. See above for the earlier discussion.

It would be helpful for the Bureau to reach out to local community mental health centers and advocate for referring injured workers.

Announcement:

The Bureau's conference is next week June 14,15, and16. The Employers Reward program begins 9:30 on Wednesday morning, all day Thursday and half of Friday at the Embassy Suites in Murfreesboro. There are 475 signed up, as of last week.

The Physician Certification Program rules were sent to the Attorney General's Office on Monday. It is very close to being complete. The effective date is 90 days after being filed.

Next Meeting:

September 5, 2023 at 1:00 PM.

Following Meeting:

December 5, 2023 at 1:00 PM.

Adjournment:

2:13 PM.

The Tennessee Department of Labor and Workforce Development is committed to principles of equal opportunity, equal access, and affirmative action. Auxiliary aids and services are available upon request to individuals with disabilities.



Tennessee Department of Labor and Workforce Development;
Authorization No. 337676; This public document was promulgated
for electronic use.