

Draft
BWC Board of Directors

Audit Committee
Tuesday, October 28, 2008, 4:00 PM
Mansfield Service Office
1st Floor Training Room
240 Tappan Mansfield, OH 44906

Members Present: Kenneth Haffey, Committee Chair
Bob Smith
Bill Lhota
Jim Harris
Jim Matesich

Members Absent: None

Other Directors Present: Thomas Pitts

CALL TO ORDER

Mr. Haffey called the meeting to order at 4:05 PM and the roll call was taken.

MINUTES OF SEPTEMBER 25, 2008

The minutes were approved without change by unanimous roll call vote on a motion by Mr. Matesich, seconded by Mr. Harris.

NEW BUSINESS / ACTION ITEMS

1. Provide advice and consent for Caren R. Murdock as BWC Chief of Internal Audit

Administrator Marsha Ryan addressed the Audit Committee, recommending that the Audit Committee provide its consent for Ms. Caren R. Murdock to become the Chief of Internal Audit as required by Ohio Rev. Code Sec. 4121.125(I). Ms. Murdock appeared before the Audit Committee personally.

Administrator Ryan, Mr. Haffey and Mr. Smith noted they were of strong belief that Ms. Murdock was an excellent candidate for this position, and the public will be well served by her appointment. Administrator Ryan asked the Audit Committee to approve her recommendation that Ms. Murdock be appointed as the Chief of Internal Audit, so that the Board of Directors could vote on her appointment at the October meeting.

Mr. Smith moved for the Audit Committee to recommend to the Board of Directors that it approve Ms. Ryan's recommendation to name Caren R. Murdock as the Bureau of Workers' Compensation's Chief of Internal Audit. The motion was seconded by Mr. Matesich, and the motion passed by a unanimous roll call vote.

2. Rule Review – Second Reading – Claims Procedure 4123-3

Tom Sico, Assistant General Counsel, and Kim Robinson, Director of Claims Policy, presented updates to proposed changes to the claims procedures rules, Ohio Admin. Code Sec. 4123-3.

Mr. Sico noted these rules were previously discussed at the Audit Committee's August meeting, and there was excellent discussion at that meeting. Mr. Sico also noted he had the opportunity to discuss these rules with outside stakeholders since the last meeting.

As a result of the recommendations from the Audit Committee from the last meeting and the outside discussions, there were still twenty-nine (29) rules up for review; however, eleven (11) of the rules were now unchanged, three (3) rules were rescinded, and fifteen (15) rules were amended. This breakdown had changed from the August meeting due to changes in Sections 4123-3-24, 4123-3-29, and 4123-3-31.

Mr. Sico noted the Audit Committee's recommendation of making the rules gender neutral was fully implemented, with each rule being carefully read and tested. Mr. Sico noted some corrections were missed at the first overview of the rules, and the rules have been now corrected to reflect gender neutrality. Mr. Sico noted any clerical or substantive changes that were made to the rules since the August meeting, and explanations for why the substantive changes were made.

Mr. Sico then discussed five questions that had been posed by Mr. Harris in a phone conversation that morning regarding these rules. Mr. Sico provided answers to Mr. Harris' specific questions. Some of the questions involved renumbering or typographical errors, and those changes were corrected. With regard to substantive issues posed by Mr. Harris, Mr. Sico provided explanations to all of his questions. Mr. Harris sought out the opinion of Mr. Pitts regarding Mr. Sico's explanations of substantive changes. After Mr. Pitts noted his agreement with Mr. Sico's positions, Mr. Harris indicated he was satisfied with the changes that were made, and he had no further objections.

Mr. Sico then indicated the last issue for discussion was the length of time of authorizations provided for inspection of files or medical releases of information. The Bureau's recommendation was to have the length of time extended from sixty (60) days to one year. Mr. Sico noted this change was to make the rules be consistent with other sections of the Ohio Revised Code. While the laws did not specifically pertain directly to the Bureau of Workers' Compensation, Mr. Sico noted a medical release signed by a patient would be valid for one year under Ohio law, and the current 60 day provision restricts this law.

Ms. Robinson then addressed the practical implications resulting from keeping the rule at 60 days. She noted Senate Bill 7 made claims information no longer a public record. Frequently spouses of injured workers wished to discuss or obtain claims information. With only a 60 day authorization, the practicality of having the injured worker submit a release every 60 days was proving to be operationally inefficient and a burden. Ms. Robinson supported Mr. Sico's position on the parallel analogy to medical records laws. Ms. Robinson said the bulk of information contained within a claim file was medical records.

Mr. Harris noted the parallel statutes pertained to medical records, and he understood Mr. Sico and Ms. Robinson's view of the medical records portion of the claim file. Mr. Harris noted the information within a claim file goes beyond medical records, such as motor vehicle accident reports and witness statements. Mr. Harris sought rationale from Mr. Sico and Ms. Robinson as to why release of those records should also be expanded out to one year. Administrator Ryan noted this rule change would be a convenience to the injured workers. Mr. Sico noted that there would continue to be a delay in litigation. For example, frequently defense counsel seeks claim file information, but the release is over 60 days old by the time it is submitted to the Bureau. Currently, under the 60 day rule, another release would have to be executed before the Bureau could release the records to defense counsel. Expanding the claim file release to one year for all records eliminates this delay.

Mr. Lhota addressed concerns of who could obtain records for an employer. Mr. Sico noted an employer does not need a medical release from an injured worker because employers are a party to the claim. Ms. Robinson added that controls are in place to ensure that the appropriate persons at the employer's offices are in place before releasing claims records.

Mr. Pitts then addressed the Audit Committee. He recommended changes in Section 4123-3-16(J). One was a clerical changing of an "and" to "or" in the list of acceptable evidence in support of a psychiatric allowance. Mr. Sico agreed with this recommendation. The second recommendation was to eliminate the word "medical" from the rule. Mr. Pitts noted that psychologists are frequently used by the Bureau to determine compensability of psychiatric conditions. Since psychologists are not medical doctors, psychological examinations would be subject to challenge under the current wording. Mr. Sico agreed that the word "medical" should be stricken from any rule pertaining to psychiatric allowances as it pertained to evidence.

Mr. Harris asked if JCARR was provided the comments that were provided to the Audit Committee when they are approving these rules. Mr. Sico specifically replied JCARR was not provided this commentary. There was no capability in the special software used by JCARR in order to provide commentary. Mr. Haffey noted his appreciation of the comments on behalf of the Audit Committee.

Mr. Matesich moved for the Audit Committee to recommend that the Board of Directors approve the Administrator's recommendations on the five year rule

review of the rules of Chapter 4123-3 of the Administrative Code. Mr. Lhota seconded the motion, and the motion passed by unanimous roll call vote.

3. Rule Review – Second Reading – Inpatient Hospital Payment 4123-6-37.1

Mr. Bob Coury, Chief of Medical Services and Compliance, and Ms. Anne Casto, a private reimbursement and coding consultant retained by the Bureau, addressed the Audit Committee regarding this rule.

Mr. Coury noted this was the second reading and presentation of the rule to the Audit Committee; the first reading had occurred at the September meeting. Mr. Coury noted this rule's timeline went back to this past summer, and a formal presentation of the rule was made to the Ohio Hospital Association (OHA) on August 20th. Opportunity was given for OHA or its hundreds of members to comment.

Mr. Coury noted the rule was examined last year, and he noted it was the Administrator's goal to monitor Medicare/DRG program payment schedules to determine how much the Bureau should reimburse hospitals for their services over the Medicare/DRG program. Mr. Coury noted that the levels should not be more than is necessary to maintain injured workers' access to care and quality of care. Approximately \$385 million was paid to hospitals last year.

Mr. Coury then turned over the presentation to Ms. Casto. Ms. Casto presented a statistically oriented presentation to the Audit Committee. She noted her research showed currently the Bureau, by applying the Medicare outlier methodology, had a statistically significant finding of 20% outlier cases. Medicare typically only had a range of outlier cases of 5-6%, last year being at 5.1%. Private insurers had outlier cases at 6-8% of total payments.

Ms. Casto looked at the Medicare outlier methodology and examined whether or not it would work in Ohio's workers' compensation system. She noted four other states – Texas, South Carolina, North Dakota, and California – have adopted this methodology. Ms. Casto determined, by increasing the outlier level to 120%, instead of its current 115%, would reduce outlier cases to approximately 9%. Additionally, Ms. Casto noted the total aggregate payments for these services would increase approximately 3.6% in the coming year, which is consistent with the Consumer Price Index.

Mr. Lhota noted some confusion in interpreting the data. Ms. Casto discussed many of the statistical findings from her analysis, which were taken from data in 2007 and the first two quarters of 2008. Ms. Casto reiterated her belief that raising the outlier threshold 5% from 115% to 120% would improve payments to hospitals without causing an inadequate payment schedule. Furthermore, Ms. Casto was of the opinion the changes would encourage hospitals to engage in cost containment measures.

Mr. Pitts inquired whether this schedule is factor static, or did it vary by procedure or by location. Ms. Casto noted the factor varied year to year and was

dependent upon each facility. Mr. Coury also noted the DRG program was hospital specific.

Mr. Matesich inquired why the changes were being made, and whether the changes intended to become more in line with commercial payers. Ms. Casto noted the 20% outlier finding in her study was a significantly high figure. Ms. Casto deduced through her analysis that the outlier rate was high because the current methodology was considering cases to be outliers that truly were not outliers. Mr. Matesich asked if there would be any significant changes to injured workers. Ms. Casto reiterated Mr. Coury's statement that the Bureau will continue to adequately reimburse and hospitals will continue to accept injured workers as patients. Mr. Coury noted that OHA was cautiously endorsing the proposed change, and their concern appeared to be whether the increase from 115% to 120% will be sufficient to offset payment for outlier cases. Mr. Matesich inquired if there were any statistical differences from a geographical perspective as to how this methodology would impact hospitals. Ms. Casto noted about 50 institutions had outliers, and they varied greatly in a variety of factors. Ms. Casto noted no one institution was detected to have an abnormally high amount of outlier cases; however, Mr. Coury did not dismiss the possibility that there might be an institution abnormally impacted. Mr. Coury added that no single institution complained although very specific data was provided to OHA at the August 20th meeting.

Mr. Harris inquired as to whether an argument could be made that BWC was funding hospitals for lack of payment through Medicare. Mr. Coury responded the hospital community does in fact regularly state that Medicare does not pay enough; however, due diligence was done by the Bureau to use the Medicare outlier methodology with an adjustment factor. Ms. Casto noted some states use a 140% over the board payment scheme over what Medicare will pay, but that scheme did not incorporate outlier cases. Ms. Casto was of the opinion, based on her research, a flat rate scheme would not work in Ohio. She cited commercial payers are at 42% of billed charges, and Medicare was at 25% of billed charges. Texas' workers' compensation system was at 30% of billed charges, and the target set forth in her analysis was for Ohio's workers' compensation system to be at 40% of billed charges.

Mr. Pitts inquired if there was any incentive to allow providers to manipulate a case into an outlier category. Ms. Casto, in her opinion, believed the incentive had been eliminated, or at least greatly reduced, under the current proposal.

Mr. Lhota moved for the Audit Committee to recommend that the Board of Directors approve the Administrator's recommendation to amend Ohio Admin. Code Section 4123-6-37.1 as presented. Mr. Smith seconded the motion, and the motion passed by a unanimous roll call vote.

4. Audit Committee Charter Review

Mr. Donald C. Berno, Liaison for the Board of Directors, discussed recommended changes in the Audit Committee's Charter in the duties and responsibilities, including new provisions. First, Mr. Berno noted that the Committee is

considering a change in name to “Audit and Finance Committee” to reflect its duties with respect to Bureau finances. Mr. Haffey noted he looked for professional ethical standards for finance committees in making recommendations for changes in the Audit Committee’s Charter regarding inclusion of ethical standards.

At approximately 5:15 P.M., after a short break, Ms. Alison Falls participated in this discussion by way of telephone, and her participation continued until approximately 5:38 P.M.

Mr. Lhota inquired if the Governance Committee Charter discussed ethics. Ms. Ann Shannon, Legal Counsel, agreed to research this issue for the Audit Committee.

Ms. Falls inquired as to whether the budget should be reviewed monthly or quarterly. After some discussion on this topic by the Audit Committee members, Mr. Smith recommended the Audit Committee Charter should be reflected to indicate that the budget should be reviewed at each Audit Committee meeting, which is required at a minimum of nine times per year.

Ms. Falls inquired as to whether the Audit Committee approves the rules for the Board of Directors, or recommends rules for approval by the Board of Directors. Mr. Smith pointed out the Audit Committee’s Charter gives guidance on how to address rules. Mr. Berno noted the Audit Committee currently presents rules for recommended approval to the Board of Directors. Mr. Berno also noted that all rate rules go to the Actuarial Committee, and there was nothing included in the Actuarial Committee Charter regarding this rule making authority.

Ms. Falls noted to the Audit Committee that net asset policy was coming upon the Actuarial Committee’s calendar, and it will be presented to the Board of Directors. Ms. Falls recommended a provision be included in all committee charters that the committees need to coordinate with each other, or at least discussion was needed on that point.

Ms. Falls noted a discussion topic with Section 19 of the Audit Committee’s Charter. She inquired whether this catchall provision should be in all committee charters, or just the Audit Committee Charter. Mr. Lhota and Mr. Haffey were indifferent on the issue. Mr. Smith suggested that this item go under the “purpose” section of the charter instead. The Committee also discussed Section 22 of the Audit Committee’s Charter. Ms. Falls noted that the Governance Committee also handles issues of ethics. Mr. Coury noted that there were two separate but distinct ethical issues to be considered. Mr. Coury noted the Board of Directors needed to set ethical standards for its own governance, whereas the agency, through Administrator Ryan and rules and regulations, sets ethical standards for the agency and its employees. The issues can be different, and both Mr. Smith and Mr. Lhota noted Mr. Coury made a good point. Ms. Murdock noted the IIA standards require the internal auditors to take an active role in the ethical culture and the audit would be presented to the Audit Committee.

Mr. Lhota made a suggestion of consideration of whether recusal issues should be included in the charter. Upon further discussion, it was decided since that issue is addressed in the Governance Guidelines, it was not necessary to include it in the charter.

The Audit Committee agreed the charter revisions needed to be discussed further at the next meeting.

DISCUSSION ITEMS

Ms. Tracy Valentino, Chief of Fiscal and Planning, provided an update on the Bureau's pending external audit. Ms. Valentino reported the "yellow book" audit had been timely submitted by the Bureau to the Auditor of State's Office. Ms. Valentino could not discuss the audit findings, which were performed by Schneider and Downs, until the Auditor of State released its findings. Ms. Valentino stated it was customary in an election year for the Auditor of State not to release or approve audit findings thirty days before an election. Consequently, she expected the Auditor of State to release the report in mid November. Ms. Valentino believed the audit findings would be available for discussion at the next Audit Committee meeting. Ms. Valentino was of the belief, at this time, there were no significant findings in the audit, and small issues discovered in the audit would be addressed at the next meeting.

Ms. Murdock appeared before the Audit Committee for a roundtable discussion. Mr. Haffey asked Ms. Murdock as to progression with staffing internal auditors. Ms. Murdock indicated the staffing was progressing. She noted she was awaiting background checks at the present time, and five internal applicants had passed proficiency tests.

EXECUTIVE SESSION

At 5:45 PM, Mr. Lhota moved for the Audit Committee to go into Executive Session pursuant to Ohio Rev. Code Sec. 121.22(G)(3) for the purpose of discussing pending litigation. The motion was seconded by Mr. Smith, and the motion passed by unanimous roll call vote.

At 6:05 PM, Mr. Matesich moved for the Audit Committee to leave Executive Session. The motion was seconded by Mr. Lhota, and the motion passed by unanimous roll call vote.

ADJOURNMENT

Mr. Haffey moved to adjourn the meeting at 6:05 PM, seconded by Mr. Harris. The meeting adjourned with a unanimous roll call vote.

Prepared by Michael J. Sourek, Staff Counsel
November 3, 2008