

BWC Board of Directors

**GOVERNANCE COMMITTEE**

**THURSDAY, January 22, 2009, 9:00 A.M.**

**William Green Building**

30 West Spring Street, 2nd Floor (Mezzanine)

Columbus, OH 43215

Members Present: Alison Falls, Chair  
Larry Price, Vice Chair  
James Hummel  
Bill Lhota  
Thomas Pitts

Member Absent: None

Other Directors Present: David Caldwell  
Ken Haffey  
James Harris  
Robert Smith

Counsel Present: John Williams, Assistant Attorney General

**CALL TO ORDER**

Ms. Falls called the meeting to order at 9:00 a.m. and the roll call was taken.

**MINUTES OF NOVEMBER 20, 2008**

Mr. Lhota moved that the minutes of November 20, 2008, be approved. Mr. Hummel seconded and the minutes were approved by unanimous roll call vote.

**AGENDA CHANGES**

Ms. Falls requested that she add a discussion item on consistency in motion formats and in roll call procedures.

## **NEW BUSINESS/ACTION ITEMS**

### **RULE APPROVAL PROCESS**

Donald Berno, Board Liaison, and Tom Sico, Assistant General Counsel, reported on the Ohio Administrative Code Rule approval process. Mr. Sico reported that BWC has 80 pages of rules, except for the safety rules, but has fewer than the Ohio Lottery Commission (99) or the Ohio Department of Jobs and Family Services (1000s). Mr. Sico discussed rule types and presented charts on rule making. The Administrator has the rule-making authority, and Workers' Compensation Board has the responsibility of advice and consent to the Administrator. There are four categories of rules for presentation to the Workers' Compensation Board: rules subject to the five-year rule review; rules required by recent legislation and case law; rules to implement management decisions; and rules to follow changes in federal programs. Most rules require approval through the Joint Commission on Agency Rule Review (JCARR). However, rate rules are exempt under Ohio Revised Code §111.15 and become effective on filing by BWC.

As described in the Legal Division report, "The Rule-Making Process," rules and changes originate in BWC operational departments. Public input is required through prescribed hearings, but BWC solicits input earlier through stakeholder groups and workgroups. Mr. Sico cautioned that JCARR can only recommend disapproval of a rule by the General Assembly. Because an agency cannot re-submit a rejected rule during the same term as the General Assembly, an agency will usually withdraw the rule if it senses that JCARR will reject the recommended changes.

Mr. Hummel asked how long had there been a requirement of a five-year review. Mr. Sico replied that it had been required by the General Assembly since 1995. Mr. Hummel asked how BWC decided which rules to review. Mr. Sico replied that, initially, the legislation required review of one-fifth of an agency's rules for five years. Now, agencies review their rules five years after their last review. Mr. Hummel asked if BWC had any approval issues. Mr. Sico replied that nine of ten rules are submitted without any problems. An example of a problematic one was the controversy in the provider fee schedule because rehabilitation providers argued that the rules were based on the wrong section of the Ohio Revised Code. BWC withdrew the rule and refiled it without rehabilitation ICD codes on reimbursements. For the other providers, the rule is effective on February 15, 2009, instead of January 1, 2009 as originally intended.

Mr. Lhota asked if withdrawal of a rule leads to litigation. Marsha Ryan, BWC Administrator, replied that removal of rehabilitation providers from the rule decreased the likelihood of litigation.

Ms. Falls asked what was the impact of withdrawal and refiling on the requirement of Workers' Compensation Board to advise and consent to rules and should the Workers' Compensation Board approve the revised rule. Robert Coury, Chief, Medical Services and Compliance, asked the Legal Division to review the need for the Workers' Compensation Board to offer advice and consent on rules revised after initial approval of the Workers' Compensation Board. Mr. Price, Mr. Pitts, and Ms. Falls each supported what staff did in withdrawal and submission. Mr. Sico replied that BWC did notify Workers' Compensation Board of its actions and affirmed that Legal will examine the process.

In light of withdrawal of the rehabilitation provider portion, Mr. Lhota asked about the BWC authority for BWC to pay these providers. Mr. Coury replied that BWC would follow the status quo of paying fees in accordance with BWC policy. BWC may be open to suit, but there is no threat of one.

Mr. Pitts asked if the JCARR position was to do a carve-out of rehabilitation providers. Mr. Coury replied that JCARR did not direct withdrawal, but the position of rehabilitation providers' association and feedback from JCARR convinced BWC to withdraw.

Ms. Falls requested that "The Rule-Making Process" be revised to add which committee consider which types of rules and the documentation of the rules approval process.

## **RULE REVIEW CALENDAR**

Mr. Berno reported on the new process for conducting the five year review. BWC has created a rules review and process team consisting of four attorneys, Peggy Concilla, Workers' Compensation Council Liaison, and himself. James Barnes, Chief Counsel, and Mr. Sico also attend. Craig Mayton, Legal Counsel, is the committee head. The team has met three times and created a spread-sheet on presenting rules to the Workers' Compensation Board for approval. Mr. Berno then described highlights of the spreadsheet.

Mr. Berno then reviewed a process chart for rules. Currently, BWC staff review the rules, seek stakeholder input, and then distribute them to the Workers' Compensation Board. Then the rules have a first and second reading on consecutive months before committees before submission to the Workers' Compensation Board. BWC proposes adding "volunteer" directors to the staff review and the stakeholder stages to add board perspective to rules before distribution. Also, BWC proposes adding additional meetings of the Governance Committee to process the back-log of rule reviews from prior years.

Mr. Price asked about the process for waiving the second reading and approving the final rule at the first reading. Mr. Berno stated it should probably be a provision in the Governing Guidelines. A waiver can be made by simple majority or by unanimous consent. Mr. Smith suggested a flexible procedure, whereas Mr. Price suggested a consistent one. Mr. Lhota asked if the additional meeting shall be a public one and Mr. Berno replied the meeting would be public.

Ms. Falls reported that there is a large back-log of rules scheduled for the five-year rule review in 2008, so there will be a need for a two to three hour meeting in March to catch-up.

Mr. Harris stated that he believed it was important that the Workers' Compensation Board should make a great effort to review rules and remove the back-log as an issue. Mr. Price cautioned that review of these rules could be perceived to be mundane and tedious; however, it is the duty of the Workers' Compensation Board to advise and consent to the rules.

Mr. Barnes stated that if the Workers' Compensation Board were to follow the proposed schedule, that it would almost complete the rules review by May. Ms. Falls replied that because of other items on the Governance agenda in April and May, there is the need for additional meetings so the five year rules review could be completed in a timely fashion.

Mr. Lhota asked if the presence of one director rendered the staff review into a public meeting. Assistant Attorney General John Williams replied that the presence of one director or two directors did not create a public meeting. However, three directors would be a quorum. Mr. Barnes also cautioned against telephone contacts between directors because that may create the perception of avoiding the open meetings law. Mr. Williams advised that the report to the directors should be in a public meeting.

Ms. Falls asked if the rule review should be presented to the Workers' Compensation Board by staff, with comments by the volunteer director as the director felt appropriate. Mr. Hummel, Mr. Caldwell, and Mr. Smith supported that proposal.

Mr. Lhota recommended that the volunteer director should not generally be asked to review more than one set of rules. Mr. Price supported that proposal. Mr. Harris added that the director should attend the stakeholders' sessions solely as an observer.

Ms. Falls solicited volunteers for various sets of rules. Mr. Caldwell volunteered to work on safety rules concerning metal casting and steel making. Mr. Pitts volunteered for rules on injured workers and rehabilitation.

Ms. Falls asked to what extent BWC should incorporate regulations of the Occupational Safety and Healthy Administration (OSHA) and other federal programs. Mr. Caldwell reported that this issue had been the subject of many past debates. OSHA mandates that the employer has a general duty of maintaining a safe workplace. This is distinct from the notion of a specific safety requirement.

Mr. Pitts reported that the Ohio law requires specific safety rules and never a general requirement of a safe workplace. If BWC were to use OSHA regulations, then Ohio would be relying on federal officials to write a standard. Mr. Price stated that BWC should not be redundant with OSHA. Mr. Caldwell added that OSHA duplicates some safety rules, but not all. Mr. Haffey stated that the presentation to the Workers' Compensation Board at the Ohio Center of Occupational Safety and Health (OCOSH) made it very clear that blanket absorption of OSHA rules was unworkable.

Ms. Falls asked about the application of the governor's executive order to reduce the number of agency rules. Mr. Pitts replied that the enabling law for safety rules was in the Ohio Constitution, which created a higher hurdle to changing the Ohio Revised Code. Mr. Harris reported that since 1975 he was a strong proponent of adopting OSHA rules for Ohio safety rules. However, he understood from the beginning that the only reason for the Ohio safety rules was to provide for a safety award. Mr. Hummel responded that as an employer he is neutral because his companies must use OSHA. Ms. Falls asked who is exempt from OSHA. Mr. Berno replied that any public employer would be exempt.

## **DISCUSSION ITEMS**

### **CALENDAR**

Ms. Falls stated that the next step will be to meet with Mr. Price and Mr. Berno and revise committee calendars for review at the February meeting. Mr. Price asked if departments will be able to lump together all "no change" rules for approval. Mr. Berno stated BWC will do that in the executive summaries for rule changes.

Mr. Lhota asked when the February meeting would begin. Ms. Falls replied it should begin at 8:00 am.

## **ADMINISTRATOR REPORT ON LEADERSHIP DEVELOPMENT ACTIVITIES**

Ms. Ryan reported on a leadership development seminar conducted for senior staff on January 7 and 8 in the William Green Building. BWC agency goals include approval of the fiscal year 2010 and 2011 budgets, aligning agency goals, and enhancement of leadership of the senior team. The State of Ohio has few tools for enhancement because of salary freezes and the absence of salary bonuses. The seminar was conducted by Paul Otte, former president of Franklin University, and covered leadership actions and theory. Ms. Ryan reported that the seminar was very valuable. Mr. Haffey, Mr. Harris, and Mr. Smith each supported the seminar as a necessary and important management activity.

Mr. Lhota asked if Ms. Ryan had shared the seminar with other agencies to attain the additional recognition that BWC got with Kaizen. Ms. Ryan reported she had not shared because of the reduction in dollars for all agencies, which result in less training.

Ms. Falls asked for a list of those who had attended the seminar. She also asked what the key openings at BWC were. Ms. Ryan replied that BWC needs to hire a new chief of Communication to replace Keary McCarthy and a superintendent of Safety and Hygiene. She has elected not to retain a chief of staff.

## **PROCEDURAL CONSISTENCY**

Mr. Berno reported that after research in Robert's Rules of Order and other sources, there is no one way to conduct a roll call vote. The Ohio pension boards use Robert's Rules on adjournment by voice vote. Another method is that if there is a motion to adjourn and a second, the chair can adjourn if she has a sense that the majority agrees. If the chair hears an objection, the chair can still adjourn. Mr. Price reported that if there is an objection, then the chair can still adjourn because the majority rules.

Ms. Falls reported that it makes sense to follow the lead of Mr. Lhota in chairing the Workers' Compensation Board. Adjournment is taken after a motion, second, and roll call vote.

Mr. Lhota stated he thought there should be a roll call vote to adopt the meeting agenda. Ms. Falls requested that this be included in future agendas.

Ms. Falls asked what consistent procedures should be used in presenting motions to the Workers' Compensation Board. Mr. Price replied that the motion should include language that the committee has approved and recommended a motion, not just the committee chair. Mr. Lhota asked what if the committee chair voted

against the motion he is presenting. Mr. Price replied the chair must recommend the motion, but retains his right to vote against it at the Workers' Compensation Board meeting.

Ms. Falls requested these changes be incorporated in the Governance Guidelines.

### **ADJOURNMENT**

There was a motion by Mr. Pitts and second by Mr. Lhota to adjourn. The motion was approved by unanimous roll call vote.

Prepared by: Larry Rhodebeck, Staff Counsel  
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January 29, 2009

**Common Sense Business Regulation (BWC Rules)**

(Note: The below criteria apply to existing and newly developed rules)

**Rules 4123-6-16**

**Rule Review**

1.  The rule is needed to implement an underlying statute.

Citation: O.R.C. 4121.441(A)(1)

2.  The rule achieves an Ohio specific public policy goal.

What goal(s): The rule changes will allow MCOs to obtain a specialist perspective to provide case direction in medically complex cases, toll the MCO's time frame for completing the ADR process when the MCO obtains an independent medical exam, and eliminates the BWC level of ADR review.

3.  Existing federal regulation alone does not adequately regulate the subject matter.

4.  The rule is effective, consistent and efficient.

5.  The rule is not duplicative of rules already in existence.

6.  The rule is consistent with other state regulations, flexible, and reasonably balances the regulatory objectives and burden.

7.  The rule has been reviewed for unintended negative consequences.

8.  Stakeholders, and those affected by the rule were provided opportunity for input as appropriate.

Explain: The proposed rules were reviewed and commented on by BWC's Health Care Provider Quality Assurance Committee, The MCO Medical Directors Committee and the Ohio Association for Justice, and were presented at BWC/IC Cross-Training and HPP stakeholder meetings.

9.  The rule was reviewed for clarity and for easy comprehension.

10.  The rule promotes transparency and predictability of regulatory activity.

11.  The rule is based on the best scientific and technical information, and is designed so it can be applied consistently.

12.  The rule is not unnecessarily burdensome or costly to those affected by rule.

If so, how does the need for the rule outweigh burden and cost? \_\_\_\_\_

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13.  The Chief Legal Officer, or his designee, has reviewed the rule for clarity and compliance with the Governor's Executive Order.

**BWC Board of Directors**  
**Executive Summary**  
**HPP Alternative Dispute Resolution Rule**

**Introduction**

Chapter 4123-6 of the Ohio Administrative Code contains BWC rules implementing the Health Partnership Program (HPP) for state fund employers. BWC initially enacted the bulk of the Chapter 4123-6 HPP operational rules (Ohio Administrative Code 4123-6-01 to 4123-6-19) rules, including the HPP Alternative Dispute Resolution (ADR) rule (Ohio Administrative Code Rule 4123-6-16), in February 1996.

**Background Law**

Ohio Revised Code 4121.441(A)(1) provides that the Administrator, with the advice and consent of the BWC Board of Directors, shall adopt rules for implementation of the HPP including, but not limited to, “[p]rocedures for the resolution of medical disputes between an employer and an employee, an employee and a provider, or an employer and a provider, prior to an appeal under section 4123.511 of the Revised Code.”

Pursuant to this statute, BWC adopted Ohio Administrative Code 4123-6-16, “Dispute resolution for HPP medical issues,” in February 1996. The HPP ADR rule has been amended numerous times since then as operational needs dictated.

**Proposed Change**

This ADR rule has been reorganized and the language modified for greater ease of readability and customer friendliness, in accordance with Governor Strickland’s Executive Order 2008-04S: “Implementing Common Sense Business Regulation.” Therefore, BWC is proposing the rule be rescinded in its current form and re-promulgated as a new rule, even though much of the “new” rule has not substantively changed.

The major substantive changes in the new ADR rule are as follows:

- Previously the MCO was restricted to peer to peer provider reviews when an individual health care provider was involved in the dispute. The new ADR rule modifies this to provide that after one or more peer reviews have been obtained in disputes involving the same or similar treatment, the MCO may obtain a review from a different perspective reviewer. This review will add insight from a specialist perspective to provide case direction in medically complex cases.
  
- The new ADR rule provides that the MCO may recommend that an injured worker be scheduled for an independent medical examination. This recommendation shall toll the MCO’s time frame for completing the ADR process; however, the MCO must submit its recommended ADR decision to the bureau electronically within seven days after receipt of the independent medical examination report. This mirrors the September 25, 2008 change to the ADR rule

tolling BWC's time frame for completing the ADR process when BWC obtained an independent medical examination.

- Finally, the new ADR rule provides that the MCO shall submit its recommended ADR decision electronically to the BWC, which is then published by BWC within two business days of receipt and mailed to all parties. This eliminates the BWC level of ADR review.

**4123-6-16 Alternative dispute resolution for HPP medical issues.**

(A) Pursuant to section 4121.441(A)(1) of the Revised Code, this rule shall provide procedures for an alternative dispute resolution (ADR) process for medical disputes between an employer, an employee, or a provider and an MCO arising from the MCO's decision regarding a medical treatment reimbursement request (on form C-9 or equivalent). An employee or employer must exhaust the dispute resolution procedures of this rule prior to filing an appeal under section 4123.511 of the Revised Code on an MCO's decision regarding a medical treatment reimbursement request.

(B) Within fourteen days of receipt of an MCO decision giving rise to a medical dispute, an employee, employer, or provider may submit the dispute in writing (on form C-11 or equivalent) to the MCO. The written medical dispute must contain, at a minimum, the following elements:

- (1) Injured worker name.
- (2) Injured worker claim number.
- (3) Date of initial medical treatment reimbursement request in dispute.
- (4) Specific issue(s) in dispute, including description, frequency/duration, beginning/ending dates, and type of treatment/service/body part.
- (5) Name of party making written appeal request.
- (6) Signature of party making written appeal request or their authorized representative.

Written medical disputes that do not contain the minimum elements set forth in this paragraph may be dismissed by the MCO or bureau.

(C) Upon receipt of a written medical dispute, the MCO shall initiate the ADR process. The MCO's ADR process shall consist of one independent level of professional review as follows.

(1) If an individual health care provider eligible to be physician of record would be providing the services requested in the dispute, the independent level of professional review shall consist of a peer review conducted by an individual or individuals licensed pursuant to the same section of the Revised Code as the health care provider who would be providing the services requested.

(2) Notwithstanding paragraph (C)(1) of this rule, if the MCO has already obtained one or more peer reviews during previous disputes involving the same or similar treatment, the MCO may obtain a different perspective review from a licensed physician who falls outside the peer review criteria set forth above.

(3) If an individual health care provider not eligible to be physician of record would be providing the services requested in the dispute, the independent level of professional review shall consist of a provider review conducted by an individual or individuals eligible to be physician of record whose scope of practice includes the services requested.

(4) If the MCO receives a dispute where the requested treatment appears to be the same as or similar to a previous treatment request for which the MCO conducted a professional review, and the previous treatment request was ultimately denied based on the

professional review, the MCO may use the previous professional review to satisfy the independent level of professional review requirement of this paragraph.

(5) The MCO shall submit a copy of the professional review to the bureau, and the bureau shall provide the parties to the claim access to the professional review electronically.

(D) If, upon consideration of additional evidence or after negotiation with the party that submitted the written medical dispute, the MCO reverses the decision under dispute or otherwise resolves the dispute to the satisfaction of the party, the MCO may issue a new decision and dismiss the dispute.

(E) Unless the MCO reverses the decision under dispute pursuant to paragraph (D) of this rule, the MCO shall complete the ADR process and submit its recommended ADR decision to the bureau electronically within twenty-one days of the MCO's receipt of the written medical dispute. The MCO may recommend that the employee be scheduled for an independent medical examination. This recommendation shall toll the MCO's time frame for completing the ADR process, and in such cases the MCO shall submit its recommended ADR decision to the bureau electronically within seven days after receipt of the independent medical examination report.

(F) Within two business days after receipt of a recommended ADR decision from the MCO, the bureau shall publish a final order. This order shall be mailed to all parties and may be appealed to the industrial commission pursuant to section 4123.511 of the Revised Code. The provider and the MCO may not file an appeal of the bureau order.

(G) Notwithstanding paragraph (C) of this rule, the MCO may pend a written medical dispute under the following circumstances:

(1) If the MCO receives a written medical dispute involving a medical treatment reimbursement request that appears to be the same as or similar to a previous treatment request for which the MCO conducted a provider review, and the previous treatment request is pending before the bureau or industrial commission, the MCO may pend the new dispute until the previous treatment request has been resolved. Once the previous treatment request has been resolved, the MCO shall resume the ADR process, and may proceed in accordance with paragraph (C)(4) of this rule if appropriate.

(2) If the MCO receives a written medical dispute involving a medical treatment reimbursement request relating to the delivery of medical services for a condition that is not allowed in the claim, and the issue of the allowance of the additional condition is pending before the bureau, the MCO may pend the dispute until the bureau has made a decision on the allowance of the additional condition. Once the bureau has made a decision on the allowance of the additional condition, the MCO shall resume the ADR process.

(H) Notwithstanding paragraph (C) of this rule, an MCO may submit its recommended ADR decision to the bureau electronically without obtaining an independent level of professional review under the following circumstances:

(1) The MCO receives a written medical dispute involving a medical treatment reimbursement request relating to the delivery of medical services that have been approved by the MCO pursuant to standard treatment guidelines, pathways, or presumptive authorization guidelines.

(2) The MCO receives a written medical dispute involving a medical treatment reimbursement request relating to the delivery of medical services for a condition that is not allowed in the claim, and the issue of the allowance of the additional condition is not pending before the bureau.

Effective: \_\_\_\_\_

R.C. 119.032 review dates: 07/09/2008 and 09/01/2013

Promulgated Under: 119.03

Statutory Authority: 4121.12, 4121.121, 4121.30, 4121.31, 4123.05

Rule Amplifies: 4121.121, 4121.44, 4121.441, 4123.66

Prior Effective Dates: 2/16/96; 6/6/97; 1/1/99; 11/8/99; 1/1/01; 1/1/03, 4/1/07; 9/25/08

**[To Be Rescinded]**

**4123-6-16 Dispute resolution for HPP medical issues.**

~~(A) This rule shall provide for procedures for the resolution of medical disputes that may arise between any of the following: an employer, an employee, a provider, the bureau, or an MCO. This rule applies to reviews of records, medical disputes arising over issues such as, but not limited, to quality assurance, utilization review, determinations that a service provided to an employee is not covered, is covered or is medically unnecessary; or involving individual health care providers. Within fourteen days of receipt of written notice of an MCO determination giving rise to a medical dispute, an employee, employer, or provider may request, in writing, that the MCO initiate the medical dispute resolution process provided for in paragraph (C) of this rule. Such written request must comply with paragraph (F) of this rule.~~

~~(B) An employee or employer must exhaust the dispute resolution procedures of this rule prior to filing an appeal under section 4123.511 of the Revised Code on an issue relating to the delivery of medical services.~~

~~(C) Any MCO participating in the bureau's HPP must have a medical dispute resolution process that includes one independent level of review. Except as provided below, if an individual health care provider is involved in the dispute, the independent level of review shall consist of a peer review conducted by an individual or individuals licensed pursuant to the same section of the Revised Code as the health care provider. The MCO must identify the providers performing the peer review. If the MCO receives a dispute where the requested treatment appears to be the same as or similar to a previous treatment request for which the MCO conducted a peer review pursuant to this rule, and the previous treatment request was ultimately denied based on the peer review, the MCO may refer the new dispute to the bureau for a determination as to whether peer review is needed for the independent level of review in the new dispute. If the MCO receives a dispute where the requested treatment appears to be the same as or similar to a previous treatment request for which the MCO conducted a peer review pursuant to this rule, and the previous treatment request is pending before the bureau or industrial commission, the MCO may defer consideration of the new dispute until the previous treatment request is resolved. Once the previous treatment request has been resolved, the MCO shall refer the new dispute to the bureau for a determination as to whether peer review is needed for the independent level of review in the new dispute and shall resume the dispute resolution process under this rule. If, upon consideration of additional evidence or after negotiation with the party requesting dispute resolution, the MCO reverses the determination under dispute or otherwise resolves the dispute to the satisfaction of the party, the MCO may issue a new determination and dismiss the dispute without prejudice. The MCO must complete its internal medical dispute resolution process and must notify the parties to the dispute and their representatives of the decision in writing within twenty-one days of notice of a dispute. The twenty-one days shall be measured from the time the written notice of the medical dispute is received by the MCO. However, if the MCO elects to refer the employee for an independent medical examination as part of the dispute resolution process, the MCO shall have thirty days to complete its internal medical dispute resolution process and notify the parties to the dispute and their representatives of the decision in writing. Upon written notice of the dispute, the MCO shall inform the bureau local customer service team of the dispute. Notice of the medical dispute received by telephone only does not~~

constitute formal notification as described in this paragraph. Within seven days of receipt of written notice of the MCO's decision, the employer, injured worker or provider may request, in writing, that the dispute be referred to the bureau for an independent review. Such written request must comply with paragraph (F) of this rule. The MCO shall refer the requested dispute to the bureau within seven days of written notice of the request. All disputes shall be referred by the MCO to the bureau within seven days of the expiration of the referral period for tracking purposes.

(D) Upon receipt of an unresolved medical dispute from the MCO, if the bureau determines that the MCO has not satisfactorily completed its internal medical dispute resolution process as set forth in paragraph (C) of this rule and the MCO contract, the bureau may return the dispute to the MCO for completion. The return of a dispute to the MCO pursuant to this rule does not toll the MCO's time frame for completing disputes. Within fourteen days after receipt of a completed, unresolved medical dispute from the MCO, the bureau shall conduct an independent review of the unresolved medical dispute received from the MCO and enter a final bureau order pursuant to section 4123.511 of the Revised Code. The bureau order may include a determination that the employee be scheduled for an independent medical examination. This determination shall toll the bureau's time frame for completing the dispute, and in such cases the bureau shall enter a final bureau order within seven days after receipt of the independent medical examination report. This order shall be mailed to all parties and may be appealed to the industrial commission pursuant to section 4123.511 of the Revised Code. Neither the provider nor the MCO is a party entitled to file an appeal under section 4123.511 of the Revised Code.

(E) If an MCO receives a medical treatment reimbursement request relating to the delivery of medical services for a condition or part of the body that is not allowed in the claim, the MCO may deny the request for the reason that the condition or part of the body is not allowed in the claim. The provider may recommend an additional allowance on a recommendation for additional conditions form (Form C-9 or equivalent) with supporting medical evidence, or the claimant may file a motion requesting an additional allowance. The bureau shall review the recommendation or motion and shall consider the additional allowance. If a party has requested medical dispute resolution of the issue under this rule while the motion or issue on the allowance of the additional condition is pending before the bureau, the MCO may defer consideration of the dispute until the issue of the allowance of the additional condition is resolved, notwithstanding the time limits for resolution of the dispute as provided in paragraph (C) of this rule. Once the bureau has made a decision on the additional allowance, the MCO shall resume the dispute resolution process under this rule. If a dispute is filed where the claimant has not filed a motion for allowance of the condition or the bureau has not allowed the condition as recommended by the provider on the treatment plan form, the MCO may refer the matter directly to the bureau for an order under paragraph (D) of this rule.

(F) If the MCO receives a dispute where the requested treatment relates to the delivery of medical services that have been approved by the MCO pursuant to standard treatment guidelines, pathways, or presumptive authorization guidelines, the MCO may refer the matter directly to the bureau for an order under paragraph (D) of this rule.

(G) A written request to initiate the medical dispute resolution process under paragraph (A) of this rule or to refer the dispute to the bureau for an independent review under

~~paragraph (C) of this rule (written appeal request) must contain, at a minimum, the following elements (form C-11 or equivalent):~~

~~(1) Injured worker name.~~

~~(2) Injured worker claim number.~~

~~(3) Date of initial medical treatment reimbursement request (form C-9 or equivalent) in dispute.~~

~~(4) Specific issue(s) in dispute, including description, frequency/duration, beginning/ending dates, and type of treatment/service/body part.~~

~~(5) Name of party making written appeal request.~~

~~(6) Signature of party making written appeal request or their authorized representative.~~

~~Only one medical treatment reimbursement request (form C-9 or equivalent) may be addressed in a single written appeal request under paragraph (A) or paragraph (C) of this rule. Written appeal requests that do not contain the minimum elements set forth in this paragraph may be dismissed without prejudice by the MCO or bureau.~~

~~Effective: \_\_\_\_\_~~

~~Prior Effective Dates: 2-16-96; 6-6-97; 1-1-99; 11-8-99; 1-1-01; 1-1-03; 4-1-07~~

# **Alternative Dispute Resolution (ADR)**

**Bob Coury, Chief Medical Services and  
Compliance**

**Freddie Johnson, Director Managed Care  
Services**

**February 19, 2009**

# ADR

## Introduction and Guiding Principle

- **Legal Requirements**

- **Guiding Principle**

To ensure quality medical treatment decisions, and the management and resolution of treatment disputes

## ADR – Disputed Issues

- **Disputed issues include:**
  - Decisions regarding medical treatment and diagnostic testing
  - Request for consultation
  - Feasibility of Voc Services/Closure of rehabilitation case
  - Authorization of medical equipment, supplies and services
  - Nursing services

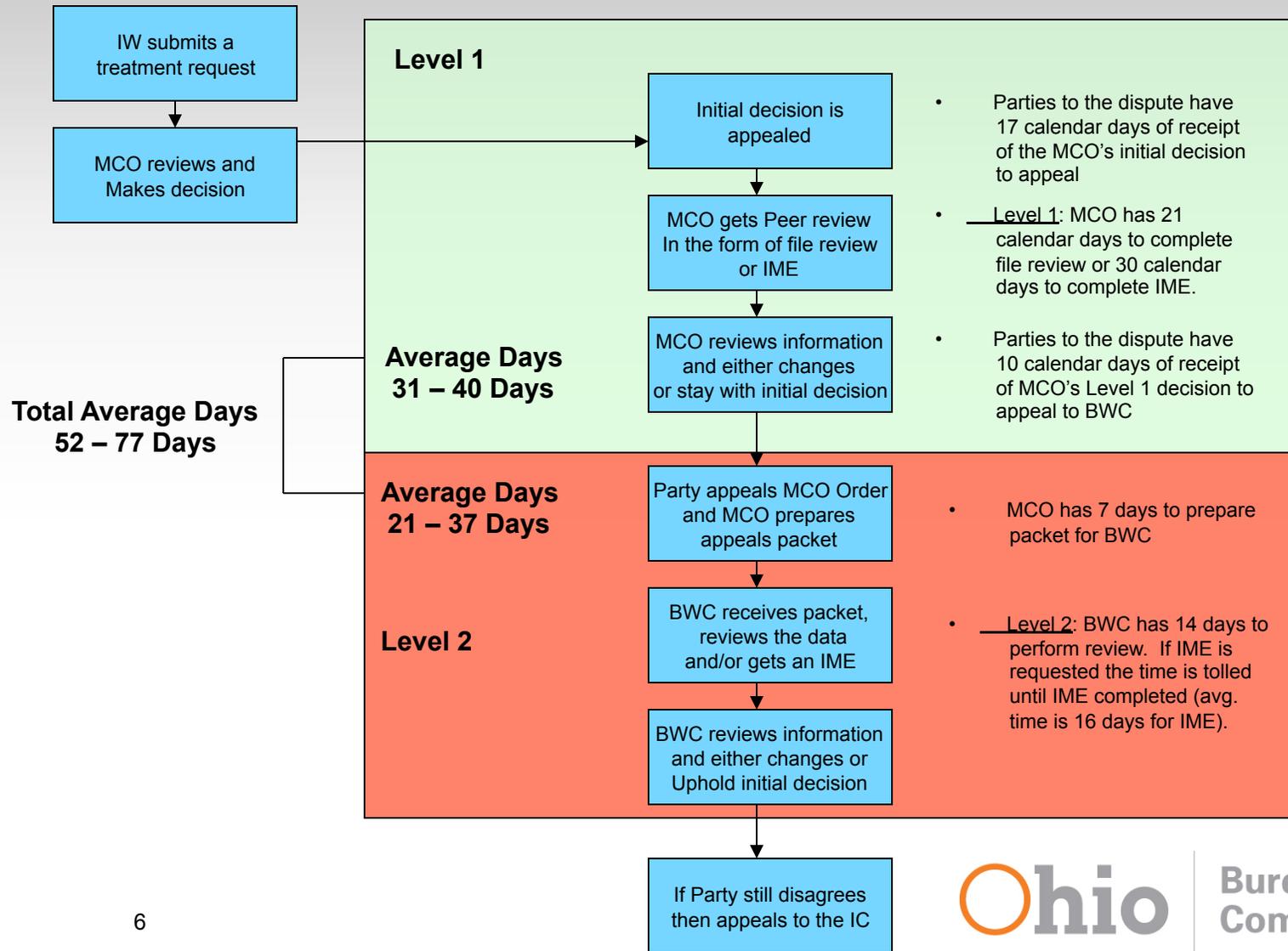
# ADR Recommended Reforms: How Did We Get Here?

- **Administrator Objective**
  - Identify BWC processes and workflows and eliminate inefficiencies
  - Medical Services Identified ADR as inefficient process
- **ADR Internal Audit - March 2008**
  - Findings
    - The lengthy appeal process may prevent timely medical treatment.
  - Recommendations include
    - Determine the feasibility of eliminating levels of ADR process
    - Implement controls to ensure appropriate MCO treatment decisions
- **Deloitte Study**
  - Further supported eliminating second tier ADR at BWC
- **BWC/MCO Workgroup and Stakeholder input**

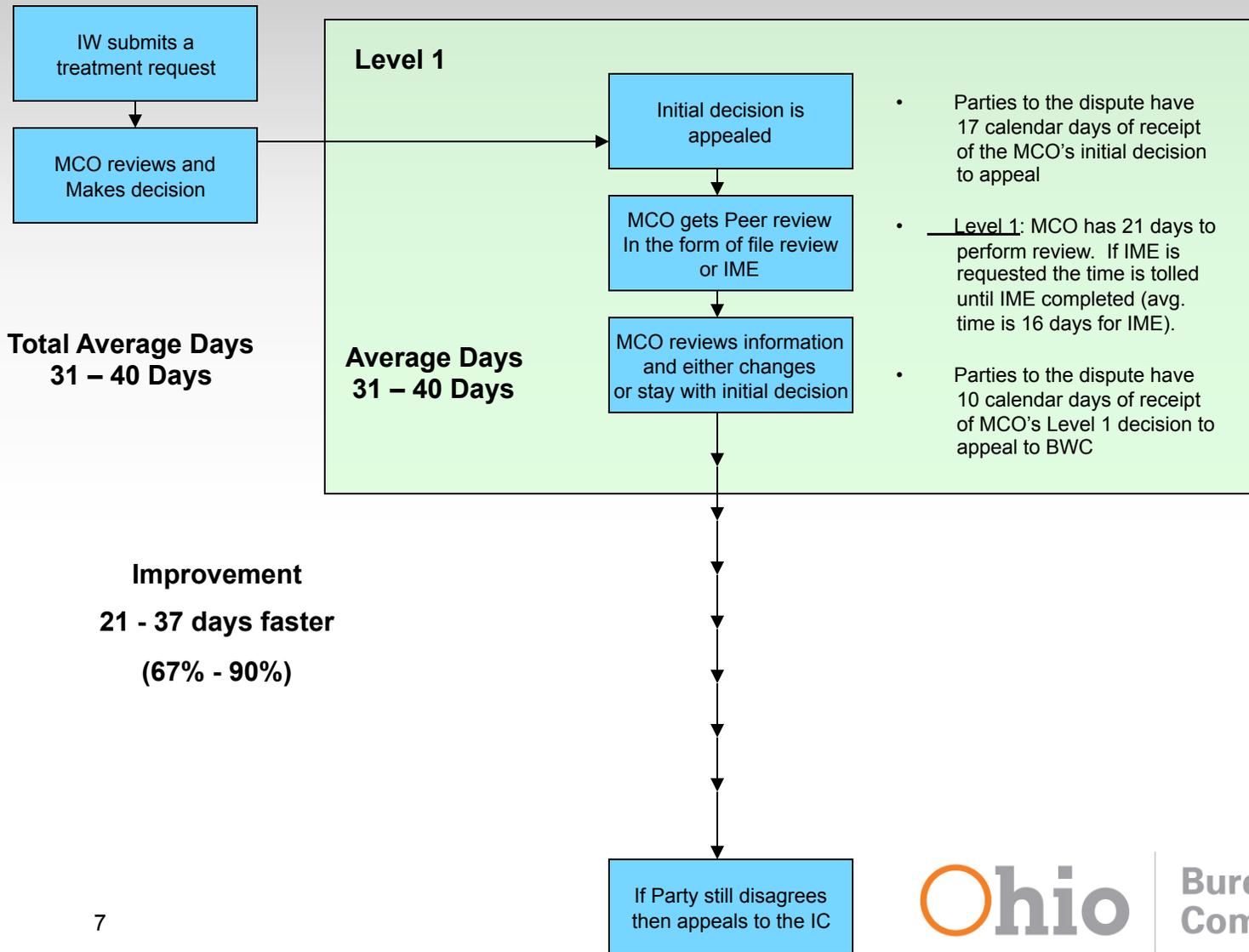
## ADR Reform Goals

- Facilitate resolution of medical treatment disputes – timely, effectively, efficiently
- Ensure fairness and due process
- Ensure robust Quality Control of treatment decisions
- Improve parties' satisfaction

# The Dispute Process



# The Dispute Process Revised



# ADR Proposed Rule Changes

- **Allow MCOs to obtain a review from a more specialized area of medicine**
  - Previously reviews conducted by a physician having a like practice as the physician requesting the treatment
  - Facilitate resolution of medical treatment disputes – timely, effectively, efficiently
- **Allow the MCO time frame for completing the ADR process to be suspended during the time a recommended independent medical examination is accomplished**
  - MCOs have a 21 to 30 day timeframe for performing a review and making a decision.
  - Usually, the time associated with requiring and completing an IME will result in MCOs' timeframes being exceeded.
- **Reflect the requirement that within the time specified the MCO must submit a recommendation to BWC, from which BWC will then issue an Order to all parties**
  - This clarifies BWC's expectation of the MCO in the time handling of disputes
  - This also facilitates Robust Quality control of treatment decisions

# ADR Projected Implementation Timeline

## – **Completing rule change approval process**

- *Timeline:* Board and JCARR review Completed in May/June - 2009

## – **Implement workflow and IT system changes -**

Example, MCO electronic IME scheduling, electronic submission of draft orders

- *Timeline:* June/July - 2009

# Alternative Dispute Resolution (ADR)

*Thank you*

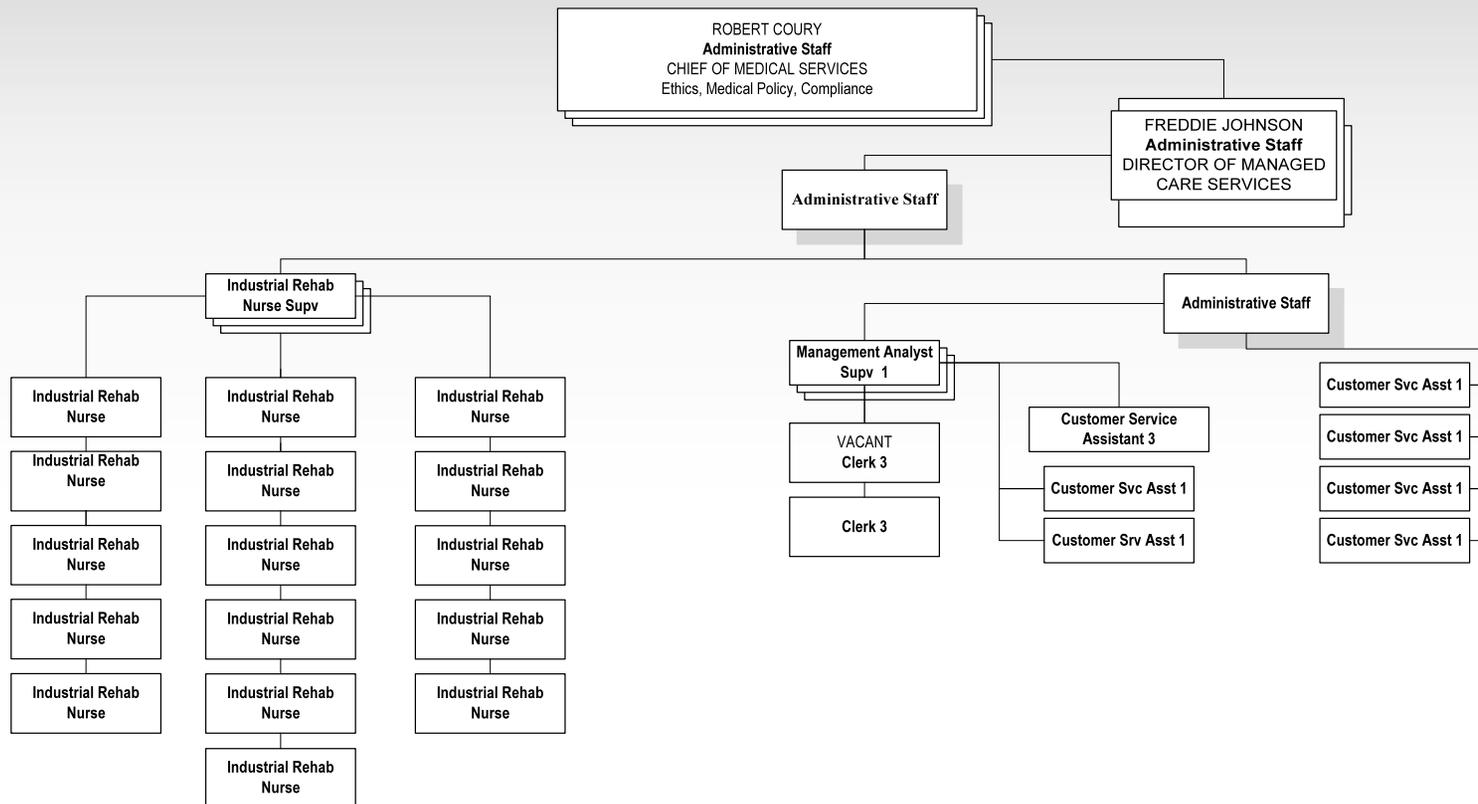
# ADR Activity Levels

- **ADRs are about 3% of total treatment request volumes**
  - Current active claims = 1,291,455
  - C-9's filed in 2008 = 484,582
- **MCO Level 1 appeals experience about 28,000 per year**
  - 22 MCO's
- **BWC Level 2 appeals experience about 14,000 per year**
  - 16 Nurses
  - Conduct 6-9 reviews daily
- **Number of ADR IMEs completed in 2008**
  - 198 at a Total cost of \$85,000.00
  - IME Cost \$450 per
  - File Review \$30 per 10 minute up to 18 units ( $\$20 \times 180 = \$360$  maximum)
- **BWC file review costs for 2008**
  - \$165,380.40

# ADR Organization

**MEDICAL SERVICES DIVISION  
ALTERNATIVE DISPUTE RESOLUTION**

Revised 2/18/09



### 5 Year Rule Review

Chapter	Title	# of rules	Legal Authority			JCARR review	Staff Contact	Review due	Proposed Sched	Proposed Timeline						Filed
			S	J	O					complete internal review	complete external review	senior team review	BOD Bk. DdIn*	Gov Comm	BOD Vote	
4123:1-7	Metal casting	14	x			Yes	M. Ely	2008	Feb. 09	complete	2/24/09	2/26/09	6-Mar	19-Mar	30-Apr	
4123:1-9	Steel Making, Manuf, & Fabricating	5	x			Yes	B. Loughner	2008	Mar. 09	complete	in process	2/26/09	6-Mar	19-Mar	30-Apr	
4123:1-11	Laundry & Dry Cleaning	5	x			Yes	R. Gaul	2008	Mar. 09	complete	2/17/09	2/26/09	6-Mar	19-Mar	30-Apr	
4123:1-1	Elevators	5	x			Yes	R. Gaul	2008	Mar. 09	complete	1/17/09	3/5/09	10-Apr	28-Apr	29-May	
4123:1-13	Rubber & Plastics	4	x			Yes	M. Lampl	2008	Feb/Mar 09	complete	3/10/09	3/19/09	10-Apr	28-Apr	29-May	
4123:1-17	Window Cleaning	7	x			Yes	D. Feeney	2008		1/26/2009	3/10/09	3/29/09	10-Apr	28-Apr	29-May	
4123-14	Non-complying employer	6	x			Yes	D.C. Skinner	2008	11/08-1/09				10-May	28-May	29-Jun	
4123-6-01 to 18	HPP- Program	49	x	x	x	Yes	F. Johnson	2009	Jun/Jul 09			5/21/09	1-Jun	18-Jun	31-Jul	
4123-6-50 to 73	HPP/QHP	24	x	x	x	Yes	F. Johnson	2009	Apr/May 09			6/25/09	10-Jul	30-Jul	28-Aug	
4123:1-5	Workshops & Factories	32	x			Yes	M. Ely	2008	Oct. 09	7/15/09	7/17/09	7/23/09	3-Aug	24-Sep	30-Oct	
4123-6-19 to 46	HPP- Provider	33	x	x	x	Yes	F. Johnson	2009	Aug/Sept 09			8/20/09	4-Sep	24-Sep	30-Oct	
4123 - 7	Payments to Health Care Prov.	30	x	x	x	Yes	F. Johnson	2009	Aug/Sept 09				9-Oct	29-Oct	20-Nov	
4123-9	General Policy	12	x		x	Yes	J. Smith, TK, RM	2008	11/08-1/09				TBD	TBD	TBD	TBD
4123-18	Rehab of Inj and Dis Workers	16	x		x	Yes	K.Fitsimmons, K Robinson	2008	11/08-1/09	complete	in process	TBD	TBD	TBD	TBD	
	total rules for 08-09	248														

\* materials in final form

S=Statutory  
J=Judicial  
O=Operational

# 12-Month Governance Committee Calendar

Date	February 2009	Notes
2/19/2009	1. Dispute Resolution for HPP Medical Issues	
	2. Rules Calendar	
Date	March 2009	
3/19/2009	1. Five Year Rule Review (9 am - 11 am) Room TBD	
Date	April 2009	
4/28/2009	1. Five Year Rule Review (2 pm - 5 pm) Room TBD	
4/29/2009	1. Launch Administrator's Review (8 am - 9:30 am) Room TBD	
Date	May 2009	
5/28/2009	1. Finalize Administrator's Review - No Rules (9 am - 11 am) Room TBD	
	2. Launch Board Self- Assessment	
Date	June 2009	
6/17/2009	1. Five Year Rule Review (if needed) (2 pm - 5 pm) Room TBD	
6/18/2009	1. Finalize Board Self- Assessment	
	2. Committee Membership Recommendations	
	3. Develop Education Plan	
	4. Administrator's objectives for 2009/10	
Date	July 2009	
7/29/2009	Five Year Rule Review (if needed) (2 pm-5 pm) Room TBD	
7/30/2009	1. Five Year Rule Review	
Date	August 2009	
8/27/2009	1. Five Year Rule Review	
Date	September 2009	
9/23/2009	1. Five Year Rule Review Room TBD	
9/24/2009	1. Governance Guidelines	
	2. Committee Charters	
Date	October 2009	
10/29/2009	1. Five Year Rule Review Room TBD	
Date	November 2009	
11/19/2009	1. Committee Charters Room TBD	
	2. Five Year Rule Review	

# 12-Month Governance Committee Calendar

Date	December 2009	
12/16/2009	1. Committee Charters	
Date	January 2010	