

GOVERNANCE COMMITTEE

Thursday, October 29, 2009, 8:00 a.m.

William Green Building

30 West Spring Street, 2nd Floor (Mezzanine)

Columbus, Ohio 43215

Members Present: Alison Falls, Chair
Larry Price, Vice Chair
William Lhota

Members Absent: None

Other Directors Present: James Harris, David Caldwell, Kenneth Haffey (arrived 8:25), Robert Smith, James Matesich, James Hummel, Thomas Pitts

Counsel Present: John Williams, Assistant Attorney General

CALL TO ORDER

Ms. Falls called the meeting to order at 8:00 AM and the roll call was taken.

MINUTES OF SEPTEMBER 24 AND 25, 2009

The minutes were approved without changes by unanimous roll call vote on a motion by Mr. Price, seconded by Mr. Lhota.

REVIEW/APPROVE AGENDA

Ms. Falls reviewed the agenda and noted no changes.

The agenda was approved by unanimous roll call vote on a motion by Mr. Lhota, seconded by Mr. Price.

NEW BUSINESS / ACTION ITEMS

1. **MOTIONS FOR BOARD CONSIDERATION**
 - A. **FOR SECOND READING**
 1. **2010 Inpatient Fee Schedule, Rule 4123-6-37.1**

Freddie Johnson, Director, Managed Care Services, and Anne Casto, Medical Services Consultant, presented proposed rule changes to the inpatient fee schedule. While this is a small portion (.2%) of bills, it is a critical segment for

BWC, injured workers and providers due to the seriousness of injuries, and comprises 14% of annual expenses. The proposed increase in 2010 is 2.9%, which translates to \$2.4 million. The Ohio Hospital Association was consulted in September and proposed changes posted on the BWC website. This fee schedule will take effect February 1, 2010 after Board and JCARR approval.

A four-step process was utilized to determine the fee schedules: evaluation of current services, evaluation of Medicare inpatient system updates, changes to the payment adjustment factor, and other adjustments for market service and patient cost. All feedback from stakeholders, including the OHA, was positive. Per a question from Ms. Falls, Ms. Casto explained that the questions proposed by CompManagement concerning outlier methodology were answered to their satisfaction.

The following recommendations were made:

- Adoption of the FY2010 Inpatient Prospective Payment System;
- No modification to the payment adjustment factors, which are 120% of Medicare rate for inliers and 175% of Medicare rate for outliers; and
- No modification for exempt methodology.

This maintains a competitive fee schedule which ensures injured worker access to quality care.

Mr. Pitts expressed a concern about coverage of hospital-acquired conditions. Ms. Casto explained that the proposed schedule excludes a reduction proposed by Medicare for such conditions. BWC actually goes beyond Medicare and pays such bills in full.

Motion was made by Mr. Pitts, seconded by Mr. Lhota that the Governance Committee recommend that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation to amend Rule 4123-6-37.1 of the Administrative Code, "Payment of Hospital Inpatient Services." The Motion consents to the Administrator amending Rule 4123-6-37.1 as presented here today.

The Motion was approved by unanimous roll call vote.

Ms. Falls then inquired of Mr. Johnson why the proposed vocational rehabilitation fee schedules, Rule 4123-18-09, were withdrawn from JCARR. Mr. Johnson and Law Director Tom Sico explained that at the JCARR public hearing, objection was raised by trade association representatives to paragraph B, specifically the provisions that an MCO may have its own fees schedule and such information is proprietary. It was clear JCARR was uncomfortable with the proposed Rule, so a notice of intent to refile the Rule was filed with JCARR.

Mr. Johnson explained that BWC actually benefits if the MCO fee schedule is lower, as BWC will pay the lower of the medical bill, the BWC fee or the MCO fee. If the MCO fee schedule is higher than BWC, the MCO bears the cost. BWC is

working with the Legal Division and the Legislative Liaison to educate JCARR regarding what is required by statute.

Mr. Sico state that the MCO fee schedule is protected by statute. This particular language is in all the various fee schedules and has been so since the initial adoption in 1996. One of the reasons BWC put this language in this rule is because JCARR can invalidate a proposed rule for inconsistency. The Legal Division will provide the full Board with a copy of the letter it sent to JCARR.

2. HPP Provider Rules, Chapters 4123-6 and 4123-7

Mr. Johnson and Nancy Leeper, Medical Policy Program Coordinator, presented proposed amendments to Chapters 4123-6, Health Partnership Program (HPP) providers, and 4123-7 which is a comparable set of Rules for self-insuring employers. Chapter 7 rules are being rescinded in their entirety and incorporated into Chapter 6, which are now applicable to both state fund and self-insuring employers per the newly created Rule 4123-6-01.1.

Mr. Johnson reviewed a summary of the prior Rule readings at the June, July and September 2009 Governance Committee meetings. These revisions resulted in a reduction of thirty (30) rules, providing increased clarity and ease of review for stakeholders. Over 1100 stakeholders, including MCO's, providers, trade associations, self-insuring employers and third-party administrators, received the proposed changes. Over seventy (70) comments were received, 46% of which were statements of general agreement.

Mr. Johnson and Ms. Leeper reviewed two charts which clarified changes to the proposed amendments occurring after the first reading. Mr. Pitts commended the particular change to Rule 4123-6-04.3 with respect to IME's. Mr. Harris did the same regarding Rule 4123-6-55 on notification to employee representatives. Ms. Leeper assured Mr. Pitts that Rule 4123-6-31(C) covers dental issues which arise due to medication.

Mr. Pitts asked regarding Rule 4123-6-16.2, concerning approval of physical therapy, which is not included in the materials. Assistant Law Director Pete Mihaly clarified that this Rule is not currently scheduled for five-year rule review.

Mr. Price echoed Mr. Johnson's comments commending the various staff members who worked on these rule changes for their efforts.

Motion was made by Mr. Lhota, seconded by Mr. Price that the Governance Committee recommend that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation on the five-year rule review of Chapter 4123-6 of the Administrative Code, the Health Partnership Program Rules, and Chapter 4123-7 of the Administrative Code, the Payments to Health Care Providers Rules. The Bureau presented these Rules for First Consideration in four presentations at various prior meetings of the Governance Committee beginning in June 2009. The Motion consents to the Administrator

amending, rescinding and retaining without change the Rules of Chapters 4123-6 and 4123-7 as presented here today for second consideration.

The Motion was approved by unanimous roll call vote.

3. Committee Charter

Don Berno, Board Liaison, and Ann Shannon, Legal Counsel, reviewed changes to the Committee Charter reflecting comments made at the September meeting. Changes have been made so all charters are consistent regarding meetings and membership. Additions have also been made to the “ Purpose” section, and to “ Duties/Responsibilities” , to group duties first by statutory authority, then internal operations.

With respect to the section entitled “ Meetings” , Mr. Lhota asked how the sentence “ The Board grants the Committee authority to have additional meetings” is implemented. Mr. Berno replied that the statute provides for Board approval of the Committee calendars. Ms. Shannon added that the language reflects Board approval of all schedules. Mr. Lhota stated he could not recall this being done. Ms. Falls stated it was her view that statutory compliance was achieved by the Board approving the Committee charters. Ms. Shannon agreed.

Pursuant to the above discussion, the sentence “ The Board grants the Committee authority to have additional meetings” was deleted from the proposed Charter.

Mr. Lhota inquired about language concerning the Committee’s assistance in new Board member orientation. After discussion, the first sentence of the second bullet point under Point 1, Duties and Responsibilities, on Page 2 was amended to read “ Oversee the BWC orientation process and implementation for newly appointed members of the BWC Board.”

On page 3, Point 8, Duties and Responsibilities, the fifth sentence was amended to read “ The subcommittee shall report to the Committee.”

It was agreed that the last bullet point under “ Purpose” on page 1 be stricken, because the language is encompassed in Point 9, Duties and Responsibilities on page 3.

A motion was made by Mr. Lhota, seconded by Mr. Price, that the Governance Committee recommend that the Bureau of Workers’ Compensation Board of Directors approve the Governance Committee Charter, as amended, as approved here today. The motion was approved by unanimous roll call vote.

B. For First Reading

1. Governance Guidelines

Ms. Falls expressed her appreciation to Mr. Berno and Ms. Shannon for their assistance, noting the document has been greatly expanded. Fiduciary Counsel Ron O'Keefe has also reviewed the document and provided comments.

An extensive discussion was had with respect to the language on page 10 regarding waiver of a second meeting. It was first agreed by the Committee that if there was opposition to a waiver at the Committee level, a motion should be made and roll call vote taken. The Board can then vote, table the motion or send it back to the Committee.

Another point of discussion was the phrase "in unusual and extraordinary circumstances" as the basis for waiving a second reading. Mr. Pitts suggested this could be open to multiple interpretations. Chief Legal Counsel James Barnes suggested, as an alternative, "For good reason". Mr. Caldwell wondered if such qualifying language was even necessary. Mr. Haffey and Ms. Falls noted that some sort of language would be useful for future Board members; to emphasize that waiver of a second reading is not a routine matter. Mr. Matesich stated any language should reflect that while a second reading is important, the Committee has a right to waive.

An initial motion to approve the amended language by Ms. Falls, seconded by Mr. Lhota was withdrawn prior to vote when further revisions were suggested.

The "Rules/New Business Submittal Process" section of the Governance Guidelines, pages 9-10, now reads as follows:

Generally, BWC staff should submit proposed rules and new business items to the Board Liaison at least two weeks prior to the upcoming Board meeting or Committee meeting. It is recognized that unforeseen circumstances may prevent such advance submission. For issues concerning the various Committees, the Board Chair, with the advice and consent of the Committee Chair, shall determine whether issues are presented to the Board for resolution.

Information regarding major policy initiatives of rule changes that may be contemplated by BWC should be submitted for the agendas of the Committees for a "first reading" and subsequent reporting by the Committee Chair to the full Board. The same major policy initiative or rule change would then be included on the agendas of the Committee at a later meeting for a "second reading" and possible approval. The first and second readings provide the Board and its Committee members the opportunity to obtain background information, ask questions of BWC staff members, and engage in discussion regarding the topics that are under consideration. The same major policy initiative or rule change would proceed from a first reading to a second reading at a later Committee meeting before the Board would consider approval.

This process of providing both a first and second reading ensures a fully informed vote by the Committee and Board concerning a major policy initiative or rule change. However, a Committee may wish to waive a second reading of a major policy initiative or rule change. In the event a Committee wishes to waive the

second reading of a major policy initiative or rule change, a motion to waive shall be submitted for consideration, and voted upon by roll call vote. If the motion to waive the second reading passes at the Committee level by a majority vote, the Committee may then proceed to consider the underlying major policy initiative or rule change for recommendation to the Board.

Motion was made by Ms. Falls, seconded by Mr. Lhota, that the Governance Committee recommends that the Bureau of Workers' Compensation Board of Directors approve the Rules/New Business Submittal Process section on pages 9-10 of the Governance Guidelines, as amended. The motion was approved by unanimous roll call vote.

Further changes to the Guidelines were discussed and made as follows:

- Page 7, the initial paragraph, the words "the development" following (ii) were deleted as an evaluation form has already been developed;
- Page 8, in the paragraph "Board of Directors' Meetings" the third sentence was revised to read "Advance notice of the time and place of all meetings shall be provided to the media and shall be posted on BWC's website at least 24 hours in advance."
- Page 9, the first full sentence is revised to read "To adjourn a Board or Committee meeting, a motion shall also be made and roll call shall be taken."
- Page 13, the first paragraph under "Board Committees – Composition and Responsibilities", "Medical Services Committee" should now read "Medical Services and Safety Committee."

Ms. Falls requested that all Exhibits to the Governance Guidelines be provided for the second reading at the November meeting. She also noted that Fiduciary Counsel O'Keefe would be attending all the November meetings.

DISCUSSION ITEMS

1. Guard/ Safeguard Discussion

Don Bentley, Technical Director, Division of Safety and Hygiene, reviewed a discussion memo and recommendations concerning the usage of the terms "guard" and "safeguard" in Ohio Administrative Code Rules 4123:1-3 and 4123:1-5. Stakeholder input was overwhelmingly in favor of retaining the current definition of "guard", and promulgating a definition of "safeguard" only to clarify the distinction between "guard" and "safeguard". A proposed definition of "safeguard" will be presented at the November meeting, along with further discussion which could not be accomplished today due to time constraints.

2. Committee Calendar

Ms. Falls noted that the January meeting will include a review of the D & O Policy, and a mid-year review of the Board self-assessment and Administrator's performance.

ADJOURNMENT

Ms. Falls moved to adjourn the meeting at 10:00 AM, seconded by Mr. Price and approved by unanimous roll call vote.

Prepared by Jill Whitworth, Staff Counsel
October 29, 2009