

GOVERNANCE COMMITTEE

Thursday, June 18, 2009, 9:00 a.m.

William Green Building

30 West Spring Street, 2nd Floor (Mezzanine)

Columbus, Ohio 43215

Members Present: Larry Price, Vice Chair
William Lhota
James Hummel
Thomas Pitts

Members Absent: Alison Falls, Chair

Other Directors Present: James Harris, James Matesich, David Caldwell,
Kenneth Haffey, Robert Smith, and Charles Bryan

Counsel Present: John Williams, Assistant Attorney General

CALL TO ORDER

Mr. Price called the meeting to order at 9:02 PM and the roll call was taken.

MINUTES OF MAY 28, 2009

The minutes were approved by unanimous roll call vote on a motion by Mr. Hummel, seconded by Mr. Lhota.

REVIEW/APPROVE AGENDA

No changes were made to the agenda. The agenda was approved by unanimous roll call vote on a motion by Mr. Lhota, seconded by Mr. Hummel.

NEW BUSINESS / ACTION ITEMS

1. Administrator's Objectives for 2009/2010

Administrator Marsha Ryan presented a review of the Administrator's Objectives for 2009/2010. The key principles are the same as last year, but the language has been revised to reflect an active rather than passive voice.

Specific items addressed by the Administrator include the following:

I. Flexible Performance Agreement (with Governor Strickland)

- rate reform and communication regarding operational excellence;

- completion of MIRA reserve changes which is now in maintenance mode;
 - administrative expense benchmarking to determine best practices;
- and
- partnering with the Ohio State University College of Public Health and the new Board Medical Services Committee to evaluate the managed care system;

II. Leadership

Align and accomplish agency-wide goals while continuing the efficiency initiatives. Prioritizing IT support was cited as an example.

III. Planning

Continued emphasis of enterprise reporting and metrics, Safety & Hygiene, and implementation of Deloitte recommendations with Board guidance.

IV. Interaction with External Parties

Communication and engaging external parties in dialogue to promote good governance, transparency, actuarially sound rates, and timely announced implementation of agency initiatives.

V. Integrity and Ethics

Continued emphasis on training for all staff, sound decision-making and emphasis on transparency with internal and external stakeholders.

VI. Board of Directors

Enhance strategic discussions and focus on evaluation of Deloitte recommendations.

Per a question of Mr. Bryan, Administrator Ryan indicated that comparative data from other states will likely be available in September, and predicted dramatic favorable changes.

Mr. Lhota questioned the exclusion of evaluation topic #7, "Key Principles for Operational Excellence". Administrator Ryan clarified that these items are those at the top of the page because they are the underpinning for all BWC goals. Mr. Lhota suggested that this also continue as a separate evaluation item for continuity and consistency purposes.

Mr. Smith stated these were excellent objectives, and could be translated into strategies for the Board.

Mr. Harris requested that when focusing on comparisons with other states, a range of items should be reviewed, including employee benefits and medical costs. Mr. Pitts noted that with the addition of the new committee, such items will receive more attention.

Mr. Price noted these objectives show the growth of BWC over the past two years.

Mr. Hummel moved that the Governance Committee recommend the Board of Directors approve the Administrator's goals as presented on June 18, 2009. Before a vote was taken, Mr. Lhota requested an amendment that the goals include item #7 of the evaluation, "Key Principles for Operational Excellence." As amended, the motion was seconded by Mr. Lhota and approved by unanimous roll call vote.

2. Discussion of Committee Membership Recommendations

Mr. Price clarified for the record that the power of appointing committees, per statute, lies with the Board of Directors.

Mr. Pitts moved that the Governance Committee recommend the committee assignments as contained in the materials reviewed by the committee on June 18, 2009. These recommended assignments will be considered by the Chair of the Board of Directors. At the July 31, 2009 Board of Directors meeting, the Chair of the Board of Directors will present committee assignments to the Board for their consideration and approval. Mr. Hummel seconded the motion.

Before a vote was taken, a discussion ensued and it was determined to amend the second paragraph of the motion to read "At the June 19, 2009 Board of Directors meeting". Mr. Pitts made the motion as amended, Mr. Hummel seconded and the amended motion was approved by unanimous roll call vote. Mr. Lhota indicated that as Chair of the Board of Directors, it was his intent to recommend approval of the committee membership to the Board at tomorrow's meeting.

3. Board Advisory Structure for Input on Medical Issues

Administrator Ryan explained that to continue BWC's focus on how well we deliver medical services, costs and benchmarking, it makes tremendous sense to rely on the expertise of Board members. Mr. Harris commented that he has received positive feedback from external parties with respect to this concept. Mr. Pitts noted this could accurately be compared to the rate-making function impacting employers, in that delivery of medical services is

the first place an injured worker interacts with the BWC system. Mr. Price emphasized that this will need to be coordinated with the directors to avoid a negative impact on the monthly meeting schedule.

RULES FOR SECOND READING

1. 2009 Provider & Service Fee Schedule, Rule 4123-6-08

Freddie Johnson, Director, Managed Care Services, and Jean Graff, ICD-9 Analyst, Medical Policy, presented proposed rule changes to the provider fee schedules. This is an interim update of the current schedule implemented in February 2009, and should take effect approximately September 22, 2009 after Board and JCARR approval.

The proposed modifications reflect updates in 2009 Medicare and Medicaid rates, which became effective after the initial implementation, correction of coding errors, modification of coverage status for approximately 200 selected codes and other changes for transparency and ease of use. Another change, which was instituted throughout state government, reduces mileage reimbursement. The result is an estimated 0.2% increase in fees, or approximately \$800,000.00 overall.

Per a question from Mr. Hummel, Mr. Johnson clarified that certain types of ancillary treatment, even if they are not covered, can be covered if there is an appropriate nexus with the allowed conditions. Providers can be reimbursed above the fee schedules if evaluated and approved – for example, a difficult surgery. Fees are meant to encourage providers to treat injured workers. Analysis is also made of areas where provider coverage is scarce with an emphasis on recruitment.

Mr. Bryan asked whether a provider could not provide service if the fee is not high enough. Mr. Johnson said yes, but there is an appeals process and the provider could request a higher rate than the fee schedule. Mr. Bryan asked whether it was a fair characterization to say that fees drive access to services. Mr. Johnson stated that access is one of the key pieces of information examined by the BWC during the rate setting process. Mr. Johnson continued by stating the staff is working on an access to care model to determine where there are injured workers with limited providers. BWC is also looking at recruiting efforts. Fees are not the only driving factor.

Mr. Pitts and Mr. Harris both commented that providers have expressed concern about the bureaucracy and cumbersome nature of service approval, as opposed to the fee amount. Mr. Johnson noted that this is an ongoing process and BWC is working to find the right balance.

Mr. Haffey asked if this may be an issue for the new committee the Board is considering. Administrator Ryan answered in the affirmative. Administrator Ryan expressed the view that the new committee would be useful in addressing these issues.

Mr. Lhota asked for an explanation of “relative value units” (RVU’s), and if the selection of a conversion factor (CF) was subjective. Mr. Johnson replied it was somewhat subjective, and BWC desires to be one of the higher payers, especially with surgeries.

Mr. Price also noted that such discussion illustrates the importance of input received at public forums.

Mr. Hummel moved that the Governance Committee recommend that the Board of Directors approve the Administrator’s recommendation to amend Rule 4123-6-08 of the Administrative Code, “Bureau Fee Schedule,” to adopt the Provider Fee Schedule effective September 21, 2009. The motion consents to the Administrator amending Rule 4123-6-08 and enacting Appendix A to the Rule as presented here today. Mr. Pitts seconded and the motion was approved by unanimous roll call vote.

2. Non-Complying Employer, Rule 4123-14

Ron Suttles, Interim Director, Business Consulting, and Barb Ingram, Director of Accounting, presented proposed amendments to Chapter 4123-14 rules regarding non-complying employers. These changes were made pursuant to five-year rule review and House Bill 100, and were circulated to 38 external parties for feedback. Mr. Suttles noted that approximately 900 employers would be impacted by these changes. Substantive changes were identified as follows:

- Rule 4123-14-01 is rescinded and replaced with expanded language that an employer can be placed in lapsed status for failure to pay any assessment or obligation, not only premiums.
- Rule 4123-14-02 is updated to reflect current BWC collection procedures.
- Rule 4123-14-04 is amended to outline notification procedures to employers regarding non-compliance claims.
- Rule 4123-14-05 defines settlement parameters.
- Rule 4123-14-06 outlines that an employer must go through an initial review before filing a formal protest.

Mr. Price requested that a spreadsheet be provided before tomorrow’s Board meeting to reflect stakeholder input on the proposed changes.

Mr. Pitts moved that the Governance Committee recommend that the Board of Directors approve the Administrator's recommendations on the five-year rule review of Chapter 4123-14 of the Administrative Code, non-complying employers. The motion consents to the Administrator amending four rules, rescinding one rule, adopting one rule, and retaining without change one rule of the non-complying employer rules of Chapter 4123-14 as presented here today.

The motion was seconded by Mr. Lhota and approved by unanimous roll call vote.

RULES FOR FIRST READING

1. HPP Rules, Rule 4123-6-01 to 4123-6-18

Mr. Berno initiated the discussion by providing a timetable for these proposed revisions. The rules will be read in three sections. Once the Committee has completed their first readings, the sections will be combined into one rule, and circulated for additional stakeholder feedback. A second reading for the entire package of changes will be done in October or November. Many of the proposed changes include the incorporation of Chapter 7 rules for self-insured employers into Chapter 6 for state fund employers, avoiding needless duplication. Over 30 rules could be rescinded.

Freddie Johnson, Director, Managed Care Services, and Tammie Mihaly, Manager of Provider Relations, presented proposed changes to various Chapter 6 rules regarding provider certification and decertification, including as follows:

- Rule 4123-6-01(CC) and (DD) add language for definitional consistency with respect to hospitals and urgent care facilities.
- Rule 4123-6-02.1 is rescinded as the initial enrollment period for provider certification has concluded.
- Rule 4123-6-02.2(B)(1) is modified to monitor providers who have chemical dependency or substance abuse restrictions.
- Rule 4123-6-02.2(C)(11) is modified to clarify credentialing for home health agencies, including "deeming" authority from the Center for Medicare and Medicaid Services.
- Rule 4123-6-02.2(C)(35) now recognizes telemedicine credentialing per the Ohio State Medical Board, and Rule 4123-6-02.2(C)(38) recognizes American Board of Vocational Experts credentialing requirements for voc rehab.
- Rule 4123-6-02.3(A) provides that the certified provider list is publicly accessible on the BWC website.

- Rule 4123-6-02.3(B) removes the prior notification requirement for BWC review of the provider's facility or office.
- Rule 4123-6-02.3(D) addresses the provider's agreement to abide by BWC's sensitive data and confidentiality policies.
- Rule 4123-6-07 is rescinded as the relevant information is covered in Rule 4123-6-02.21.

Mr. Haffey again complimented the use of the spreadsheet to reference stakeholder feedback.

Mr. Pitts posed a question concerning Rule 4123-6-02.6(F), with respect to the new language "medically managing an employee's claim", as opposed to management of the employee's injury. A claim is an economic event. This proposed language appears to make the MCO the agent of the employer as opposed to the employee.

In response, Bob Cury, Chief of Medical Services and Compliance, noted that having two rule readings is beneficial to point out language which may not accurately reflect the Bureau's philosophy, which is that the MCO's represent both the employer and employee interests. Any language which could be construed as contradictory to that dual representation should be changed.

Mr. Pitts then pointed Rule 4123-6-02.3(D)(2) and (3) raise concerns that providers will consider treatment guidelines to be hard and fast rules from which they cannot deviate. Mr. Johnson commented that providers are very familiar with the various national treatment guidelines which do have some differences. BWC is trying to initiate a consensus by using ODG guidelines, but this is not a "hard and fast" rule, just a foundation.

DISCUSSION ITEMS

Rule Review Calendar

Don Berno, Board Liaison, advised that the workshop safety rule review is now complete and on track for Committee review in August. All other calendar items remain as scheduled. Mr. Price commended the rule review effort.

Committee Calendar

The Committee calendar was reviewed through September.

At 10:44 AM, Mr. Price moved to recess to Executive Session for personnel matters, seconded by Mr. Lhota and approved by unanimous roll call vote.

Mr. Price moved and Mr. Matesich seconded to close the Executive Session. The motion to close the Executive Session was approved by unanimous roll call vote.

ADJOURNMENT

At 11:35 AM, Mr. Price moved to adjourn the meeting, seconded by Mr. Pitts.

Prepared by Jill Whitworth, Staff Counsel
June 18, 2009