

GOVERNANCE COMMITTEE

Thursday, July 30, 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
James Hummel
Thomas Pitts

Members Absent: None

Other Directors Present: James Harris, David Caldwell, Kenneth Haffey, Robert Smith, James Matesich (arrived 8:30), Charles Bryan (arrived 9:00)

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 JUNE 18, 2009

Mr. Lhota pointed out as a procedural matter that on page 3 of the minutes, in the fourth paragraph beginning “Mr. Hummel moved”, and in paragraph 3 under section 2, there should be separate motions and votes reflected to approve proposed amendments, then to approve the motion as amended. The Chair asked the scribe to check her notes on this issue. Upon further review by the Scribe of the June minute notes, there was not a separate motion. The language of the motion included the words “as amended”. Hence, the vote was valid and accurately presented in the minutes. On page 7 of the minutes, additional language in the last sentence should reflect that the Executive Session was called “for the purpose of reviewing personnel matters”.

The amendments to the minutes were approved by unanimous roll call vote on a motion by Mr. Price, seconded by Mr. Lhota.

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

REVIEW/APPROVE AGENDA

Ms. Falls reviewed the agenda and noted that item 1 under New Business/Action Items, “Board advisory structure for input on medical issues” is moved to the August meeting. Item 2 is revised to “Review FY 2009 Education report”. Item 3 is clarified to reflect that submission to the Workers’ Compensation Council is not required for the FY 2010 Board education plan.

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

NEW BUSINESS / ACTION ITEMS

1. Review FY 2009 Education report

Board Liaison Don Berno presented a review of the FY 2009 Board Education report to document the educational sessions completed during the past year. Many changes to the approach to education have evolved since the initial process in 2008. Education is now topic-specific and done at meetings, rather than separate sessions focusing on baseline understanding of the BWC. Ms. Falls asked if there were any omissions of note not reflected in the report. Mr. Berno noted that for future reports the dates of each educational presentation will be included. No additional responses or further comments were forthcoming.

The Committee concluded by consensus that all regulatory requirements for Board education were met in 2009, and a vote was not necessary.

2. Review FY2010 Board Education plan

Mr. Berno reviewed the proposed FY 2010 Board Education plan. The statutory language which mandates the educational requirements for the Board and its members is included. The statute does not require a plan be submitted annually to the Workers’ Compensation Council. For this fiscal year, there is no need for a new director orientation. A calendar is included, referencing which statutory requirements are satisfied by each educational session, and a tentative monthly schedule.

Ms. Falls questioned whether education at the Committee level satisfied both the letter and spirit of the statute, and asked Chief Legal Officer James Barnes for further review and comment. Mr. Pitts noted the report should reflect the change in the January 2010 meeting date to January 21-22. Ms. Falls noted that the education plan is expected to be a living document, with modifications made as necessary throughout the year.

Ms. Falls moved that the Governance Committee recommend to the Board of Directors that it approve the FY 2010 education plan for the BWC Board of Directors. The motion was seconded by Mr. Lhota and approved by unanimous roll call vote.

RULES FOR FIRST READING

1. 2009 Vocation Rehabilitation Services Fee Schedule, Rule 4123-18-9

Freddie Johnson, Director, Managed Care Services, and Karen Fitzsimmons, Rehab Policy Unit Manager, presented proposed rule changes to the vocational rehabilitation services fee schedules. This is scheduled for second reading next month and should take effect approximately November 16, 2009 after Board and JCARR approval. Changes have been made to further the goal of ensuring access to high quality care by establishing appropriate benefit plans and terms of service, with competitive fee schedules, which in turn enhances the provider network. Rehabilitation services make up 3.5-4 % of total dollars spent on claims, approximately \$31.9M in FY 2008.

The proposed modifications reflect stakeholder comments from June meetings. Revisions have been posted on the BWC Website for further review and comment. The proposed schedule was also provided for review to BWC's Labor-Management-Government Advisory Council. Review was undertaken of all vocational rehabilitation service codes, the maximum number of units of service reimbursable for all codes, current reimbursement rates, and benchmarking against other payers. It was noted that codes used by BWC may differ from those used by Medicare/Medicaid and other states, but the comparative review was useful to uncover any marked deviations.

During the Ohio Hospital litigation BWC did not change the reimbursement codes. Review will now occur on an annual basis to make sure fees are in line with guiding principles.

Mr. Harris noted that these fee adjustments will address some of the concerns raised in the public forums.

Per a question from Mr. Price, Mr. Johnson clarified that before the OHA decision, fee schedules did not have to be amended by rule. There is no specific policy governing this, just the five-year rule review and the Administrator's function in making rules regarding fees.

Ms. Fitzsimmons discussed specific unit of service changes, including adding a new service code for Ergonomic Implementation, and expanded travel and mileage reimbursement.

In sum, 54 codes were modified, 8 units of service were modified, 1 code was added, and 18 codes were unchanged.

Per a question from Mr. Smith, Mr. Johnson explained that rehabilitation is evaluated on a number of reporting levels. This information is not published, but BWC expects the MCO to be working to provide the most appropriate services to the injured worker, not merely use the lowest cost provider. Benchmarks are in the development process. Per an

inquiry from Ms. Falls, Mr. Johnson stated that it is a FY 2010 objective for benchmarks to be available to the general public.

Mr. Lhota asked how mileage is adjusted given the volatility of gas prices. Mr. Johnson stated this will be reviewed at least annually, but interim changes could be brought before the Board if warranted.

Mr. Harris asked if the injured worker has a choice of rehabilitation provider. Mr. Johnson responded that the injured worker does have a choice, but BWC relies upon the MCO to provide guidance through the process. Ms. Fitzsimmons explained that an injured worker may request a provider change in writing and it will be implemented. This differs with respect to self-insured employers. Per an Industrial Commission opinion, the self-insured employer selects the vendor. Mr. Johnson will provide Mr. Harris with a copy of this opinion from the Industrial Commission.

Ms. Falls asked why stakeholder trade associations differ with respect to opinions of CARF accreditation, which BWC requires only for work-hardening programs. Mr. Johnson explained that independent rehab providers feel this is an unfair cost. It does not, however, restrict access to services. Work-hardening differs because it is a team-based, holistic approach. Work conditioning may offer the same services without requiring the provider to be accredited. Texas also requires CARF accreditation, and the program exists in six (6) other states.

There will be a second reading of this rule at the August, 2009 meeting.

2. HPP/QHP Rules 4123-6-50 to 4123-6-73

Before the presentation began, Mr. Berno explained that to streamline regulations, and make the medical rules more “user friendly”, staff was recommending merging large portions of the Chapter 7 rules into Chapter 6. To achieve that goal, staff will present a first reading of the rules over a four month period, including the recommendations for rules to be merged. Then, stakeholders would have the opportunity to review the combined rules between the September and October Governance Committee meetings, and staff would present a second reading in October.

Tom Woodruff, Director of Self-Insurance, and Vicky Fisher, Supervisor, Self-Insurance Department, presented proposed amendments to Rules 4123-6-50 through 4123-6-73 regarding the qualified health plan (QHP) system for self-insured employers. These changes were made pursuant to five-year rule review, and were circulated to multiple external stakeholders for feedback. The stakeholder feedback is included. There are five (5) amendments, fourteen (14) rules rescinded and five (5) rules unchanged. The substance of the rules is being preserved even with the rule reductions.

Mr. Woodruff clarified that QHP participation is not mandatory since 2003, and the employer has an option to submit an alternate medical management plan (MMP). Currently 194 (out of 1200) self-insuring employers use a QHP. In the MMP, the injured

worker may select any approved provider. In the QHP, the first treatment must be with the QHP selected provider. The injured worker can then opt to treat with another approved provider if he so chooses.

Mr. Woodruff reviewed the proposed revisions, noting that many of these come from statutory changes and combining information into other rules. Mr. Harris questioned why Rule 4123-6-55 was changed to delete notification to the employee representative in a QHP decertification context. Mr. Woodruff stated he did not know the precise reason but would investigate.

Mr. Price's question concerned necessity for the second level of appeal review in Rule 4123-6-69, as most decisions were upheld. Mr. Woodruff stated there have been no widespread complaints concerning a lack of due process. Tina Kielmeyer, Chief of Customer Services, added that this differs from the state-fund ADR process in that BWC has no role. In the self-insured arena, the review is done in one place. Mr. Bryan asked about Rule 4123-6-58 and whether QHP leasing provider networks impacts costs. Ms. Kielmeyer responded that the self-insured employers may see cost savings, but it makes no difference from BWC's point of view.

These rules will be presented for a second reading in October as a part of the combined medical rules.

3. HPP/MCO Rules

Bob Coury, Chief of Medical Services and Compliance, and Teresa Arms, Director of MCO Business and Reporting Unit, addressed multiple changes to the MCO rules contained in Chapter 4123-6. Three rules were rescinded and replaced, 13 rules amended, 5 rules rescinded altogether, and three rules unchanged. Specific rules were reviewed and changes reported to the Committee.

One such emphasized change was with respect to Rule 4123-6-04.5(B) concerning claim reactivation, that the MCO must give a recommendation concerning reactivation for the Bureau's consideration. Mr. Pitts asked if reactivation must be precipitated by a current incident. BWC Legal Counsel Pete Mihaly explained that this language is taken from Rule 4123-3-15, and BWC processes all reactivation requests irrespective of whether there is a current incident.

Mr. Matesich asked about changes concerning prohibition "kick-backs". If a MCO refers an individual to an affiliated company, BWC pays the affiliated entity directly so the MCO cannot receive a financial interest. The prohibition on "kick-backs" applies whether an affiliate is involved or not. Mr. Smith inquired about disclosure of affiliated entities. Mr. Coury replied that all affiliations must be disclosed in the recertification process. As part of the MCO contract, the MCO must also disclose how such conflicts will be managed.

These rules will be presented for a second reading in October as a part of the combined medical rules.

**4. General Policy and Principal Operating Units of Bureau Offices
Rules 4123-9-1 to 4123-9-12**

Tom Sico, BWC Assistant General Counsel, presented changes to these rules which describe the overall general BWC organization. Twelve rules have been rescinded and one rule introduced. As these rules relate to BWC staff functions, no external stakeholders were consulted as they are not affected by these changes. The new rule is 4123-5-01.

Mr. Harris conveyed his concerns about the Fraud unit conducting VSSR investigations in terms of objectivity. Ms. Falls stated this issue will be added for discussion at a future date.

These rules will have a second reading in August.

DISCUSSION ITEMS

Rule Review Calendar

Mr. Berno noted that the August meeting will include factory/workshop safety rules, which are very extensive. These rules will be provided on a CD with accompanying spreadsheet.

Committee Calendar

The next Governance Committee meeting will be held August 27, 2009 from 8:00 to 9:30 AM.

Today's planned Executive Session for personnel issues will be deferred to tomorrow's Board meeting.

ADJOURNMENT

Mr. Lhota moved to adjourn the meeting at 10:02 AM, seconded by Mr. Pitts and approved by unanimous roll call vote.

Prepared by Jill Whitworth, Staff Counsel
July 30, 2009