

BWC Board of Directors

Medical Services and Safety Committee

Thursday, May 27, 2010

Level 2, Room 2 (Mezzanine)

30 West Spring St.

Columbus, OH 43215

Members Present: James Harris, Chair
James Hummel
Thomas Pitts
William Lhota, *ex officio*

Other Directors Present: Charles Bryan, David Caldwell, Alison Falls, Kenneth Haffey,
James Matesich, Larry Price, and Robert Smith

Members Absent: None

Counsel present: James Barnes, General Counsel

Scribe: Michael J. Sourek, Staff Counsel

CALL TO ORDER

Mr. Harris called the meeting to order at 2:35 PM, and the roll call was taken. All members were present.

MINUTES OF APRIL 29, 2010

Mr. Harris asked for any changes to the minutes of April 29, 2010. With no changes, Mr. Hummel moved to have the minutes of April 29, 2010 be approved, and Mr. Pitts seconded the motion. The motion passed with a 3-0 unanimous roll call vote.

REVIEW AND APPROVAL OF AGENDA

Mr. Harris asked for any changes to the agenda. With no changes, Mr. Pitts moved to have the agenda approved, and the motion was seconded by Mr. Hummel. The motion passed with a 3-0 unanimous roll call vote.

NEW BUSINESS/ACTION ITEMS

1. Motions for Board Consideration

A. For Second Reading

- 1. Group Experience and Group Retrospective Safety Program Requirements
– Rule 4123-17-68**

Mr. Abe Al-Tarawneh, Superintendent of the Division of Safety and Hygiene, (DSH), Ms. Michelle Francisco, Safety Council Program Manager, and Ms. Robin Watson, Industrial Safety Consultant Specialist, presented the second reading of the Group Experience and Group Retrospective Rating Safety Program Requirements, Rule 4123-17-68. Mr. Al-Tarawneh noted a interested parties grid was provided, and the Bureau has continued engagement with interested parties.

Mr. Al-Tarawneh noted the proposal requires sponsors to monitor the group membership's participation in training, and the sponsor must pick training topics related to group members' safety issues. The proposal modernizes the previous rule and provides ease in understanding. The proposal requires both sponsors and affiliates be held to the same standards. Also, the proposal will require sponsors to issue a safety accountability letter to their members, report the number of members participating in the 8-hour and 2-hour training; and changing the reference in the rule language from a "9 key safety elements" to the 10-Step Business plan for safety, and requiring sponsors to have training address common injury types among their members. In response to input from interested parties, Mr. Al-Tarawneh reported that the changes to the rule language were made since last month's reading and were related to employers not completing the two-hour training requirement as well as language that was perceived as requiring implementation of the Ten Step Business Plan for Safety by employers participating in the program. Mr. Al-Tarawneh also noted that BWC's Division of Safety and Hygiene intends to form a working group with interested parties to review and evaluate the rule in next year.

Mr. Hummel asked what changed with the 2-hour training requirement. Mr. Al-Tarawneh replied the Bureau proposed having employers not complying with this requirement become ineligible for the program in future years. Input from interested parties suggested employers may be removed from the program due to paperwork issues rather than not completing the training. Mr. Hummel asked if employers still had to do the 2-hour training requirement, and Mr. Al-Tarawneh replied in the affirmative.

Mr. Hummel moved that the Medical Services and Safety Committee recommend that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation to amend rule 4123-17-68 of the Administrative Code, "Group Experience and Group Retrospective Safety Program Requirements," with the motion consenting to the Administrator amending rule 4123-17-68 as presented at the meeting. The motion was seconded by Mr. Pitts, and the motion passed with a 3-0 unanimous roll call vote.

2. Fifteen Thousand Dollar Medical-Only Program – Rule 4123-17-59

Mr. Ronald Suttles, Supervisor, Employer Programs and Ms. Kathy Arnett, Management Analyst Supervisor, presented the second reading of the Fifteen Thousand Dollar Medical-Only Program, Rule 4123-17-59. Ms. Arnett noted the rule changes were necessary because of statutory changes. The rule now requires a medical provider accept the Bureau's fee schedule and cannot bill an injured worker the difference if an employer participates in this program. Based on a suggestion at last month's meeting, an

additional change requires an employer participating in the program must remit payment to the medical provider within 30 days of invoice receipt.

Mr. Hummel asked if balance billing had occurred in the past. Ms. Arnett replied in the affirmative, and in those instances, the Bureau educated the medical provider. Mr. Harris inquired if education meant the medical provider had to refund payments made by injured workers, and Ms. Arnett replied in the affirmative. Mr. Pitts questioned how many employers were in this program. Ms. Arnett indicated the figure has been consistently around 3,000 employers.

Mr. Pitts moved that the Medical Services and Safety Committee recommend that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation to amend rule 4123-17-59 of the Administrative Code, "Fifteen Thousand Dollar Medical-Only Program," with the motion consenting to the Administrator amending rule 4123-17-59 as presented at the meeting. The motion was seconded by Mr. Hummel, and the motion passed with a 3-0 unanimous roll call vote.

DISCUSSION ITEMS

1. Pharmacy Program Overview

Dr. Robert Balchick, Medical Director, Mr. Johnnie Hanna, Pharmacy Program Director, and Ms. Christine Sampson, Pharmacy Program Operations Manager, presented a continuation of the Pharmacy Program Overview. Mr. Hanna reiterated that during the first three quarters of 2009, the Bureau's drug rebate program covered all of the administrative cost for the pharmacy program. In 2010, drug rebates are expected to be \$6 million. The Bureau is developing a process to allocate these refunds to the benefit of employers.

Mr. Hanna noted the top 5 medication classes represented 80% of total reimbursements by the Bureau, but only 49% of the total number of prescriptions dispensed. Analgesics were first in each category, and a significant decrease in topical local anesthetics was based on limiting Lidoderm to only the approved usage by the Food and Drug Administration. Lidoderm reimbursements went from \$10 million to \$400,000 per annum.

Mr. Hanna compared 2009 prescription data for the Bureau with national averages. The Bureau figures were validated with the pharmaceutical benefits manager (PBM). National averages were used as there are no workers' compensation specific figures available. The Bureau's generic fill rate was 74% versus 61% nationally. The Bureau's average cost of prescription was \$86.97 versus \$183.36 nationally, and the Bureau's average rebate per prescription was \$3.06 v. \$3.31 nationally. The Bureau's pursuit of generic substitutes has been very cost effective, and for 2009, prescription costs increased 5.4% versus 7% to 9% nationally. Lower cost drugs with large volumes tend to lead to misuse; one Bureau goal is to focus on safety and efficacy, and this goal was a driving force of the Pharmacy and Therapeutics Committee (PTC). Mr. Harris inquired if an injured worker could only receive a generic drug. Mr. Hanna replied that if the injured worker requests a brand drug over a generic equivalent, and the drug is on the Bureau's maximum allowable cost (MAC) list, the injured worker has to pay the difference between

the brand name and generic drug. Mr. Pitts asked if a physician recommended a brand name drug, whether the request would be reviewed by an MCO. Mr. Hanna said the request would be reviewed by the PBM, not an MCO. The prescription is known as a “dispense as written” prescription; if there is only one generic equivalent available for the drug, the Bureau would fully reimburse the prescription as these drugs are not on the Bureau’s MAC list. Mr. Hanna emphasized some drugs are available only in brand name form; if there is a need for one of these drugs available in brand name form only, the injured worker will get the brand name drug. Mr. Harris asked if there was no generic equivalent, the Bureau would reimburse the price in full, and Dr. Balchick responded in the affirmative.

Mr. Hanna said the Bureau’s Pharmacy Program had strategic goals for 2009-2012 broken down into 2 categories: improving utilization and monitoring utilization. There were 3 subcategories of improving utilization goals: developing a formulary by rule; amending or promulgating other rules as necessary; and working to improve therapeutic decisions and outcomes. Developing a formulary would provide prescribers with a comprehensive list of covered drugs, allow for proactive review of new drugs for admission, and focus all formulary decisions first on clinical safety and efficacy. Amending and promulgating rules would address first fill prescriptions and assignment, establish an autonomous PTC, establish a pharmacy lock-in program, establish a charge structure driven by strategic pricing, and manage injectable drugs presently managed by MCOs. Assignment involves claims at their onset; if a pharmacy does not accept assignment of the prescription until the claim is approved, an injured worker has to pay out of pocket for the prescription and then obtain reimbursement. PTC, a group of 6 physicians and 6 pharmacists that examines whether a drug works and whether the drug is safe, would be instrumental in developing the Bureau’s formulary and be driven from a clinical perspective. PTC is a subcommittee of the Healthcare Assembly and Advisory Committee. The Ohio Administrative Code requires changes to make the committee autonomous. The pharmacy lock-in program would improve safety and decrease misuse of medications by having injured workers choose their pharmacy provider. There was a recent instance where an injured worker went to 18 different pharmacies to fill prescriptions in a 3 month period. Strategic pricing is an issue because the “Average Wholesale Price” program will expire by September, 2011. Before implementing strategic pricing, the Bureau would present the recommendations to the Board of Directors. Likewise, injectable drug strategies were in their infancy, and stakeholder input would be obtained before seeking rule changes. Working to improve therapeutic decisions and outcomes involved maximizing application of the PBM’s monitoring and intervention capacity, implementing medication therapy management for chronic pain patients, partnering with other state agencies, and establishing comparative metrics through the OSU project.

With regard to monitoring utilization goals, Mr. Hanna noted 3 strategic goals: centralizing management of the Drug Utilization and Prior Authorization Review process, which would avoid discrepancies on how medications are reviewed statewide and maximize opportunities to create prospective and retrospective interventions in medication use; creating and monitoring key utilization metrics with PBM and Bureau databases; and engaging the PTC to provide therapeutic guidelines and oversight, which would be necessary in deciding medical utilization and what drugs should be reimbursed. Mr. Hanna noted all injured worker prescriptions go through edits with the PBM, including prescription volume, interaction with other drugs, multiple prescribers, and

multiple pharmacies. The PBM had significant capacity for data editing and determining why a medication is being used and if it is being used safely and effectively. Currently the Bureau was working with the Ohio Pharmacy Association for chronic pain situations.

Mr. Harris inquired on the timeframe of addressing the formulary. Mr. Hanna noted this goal required distributing the formulary as widely as possible and placing it on the internet. The process was iterative, and by end of summer more detailed information would be available. Mr. Matesich inquired how often pharmacies accepted assignment. Mr. Hanna replied there were no solid numbers because there was no way the Bureau could break down paper drug reimbursement claims; e.g., in some cases, the Bureau denied reimbursement that was later overturned by the Industrial Commission. The Bureau had no way of calculating what percentage of paper reimbursements relate to lack of assignment. Mr. Matesich suggested posting a list of pharmacies that will accept assignment by region. Mr. Harris asked for feedback from Mr. Pitts from his experiences on paper drug reimbursements. Mr. Pitts concurred that Mr. Hanna accurately described the issue, and the process was laborious. His experience was that assignment was not a small number problem. Mr. Hanna and Dr. Balchick confirmed that 9% of all prescriptions filled by our providers are thru the accepting assignment process but the number of times an injured worker attempts to get a prescription filled and the pharmacy will not accept assignment is very difficult to determine. Many of the large pharmacy chains do not accept assignment, and Dr. Balchick added that currently the Bureau will pay a \$2.50 fee for accepting assignment in addition to the \$3.50 dispensing fee per prescription. If the cost of the script was \$12.00, the return on investment for the pharmacy in light of the risk of assignment was worthwhile; however, if the drug cost \$90, the risk-reward is not there for a pharmacy. The Bureau needs to review cost benefit ratios with pricing to determine the appropriate level of assignment fee to generate pharmacy incentives. Mr. Caldwell asked if assignment occurs after a claim allowance. Mr. Hanna replied the issue was at the claim's onset; once the claim is allowed, all pharmacies participate. Mr. Pitts asked what drugs were injectable drugs. Mr. Hanna replied medications included comprehensive pain medications, such as Morphine or Clonidine that go into pain pumps, or local anesthetics. He noted that injectable medications are being given disparate treatment by the 19 MCOs.

Mr. Harris asked if the Bureau was working with stakeholders in the chronic pain study. Mr. Hanna stated the program was in its pilot stages, and OPA had access to independent and chain pharmacists. The study was open to stakeholder input. Mr. Pitts asked if the program was focusing on chronic pain situations, and Mr. Hanna noted pharmacists would collaborate with prescribing physicians on a more intensive basis as to whether the medication therapy was appropriate for chronic pain. Pharmacies would look at Ohio Automated Rx Reporting System (OARRS), laboratory values, opiate pain contracts, and what collaborative therapies could help. Dr. Balchick said the Bureau's role was administrative, not clinical. The Bureau is reimbursing the pharmacist for his/her role in managing the case, not setting medical parameters; the function is to facilitate the pharmacist's role. Mr. Pitts inquired if the goal was to create guidelines or suggestions for chronic pain cases. Dr. Balchick replied in the negative; the medication therapy management codes being developed are to encourage a pharmacist's role in a facilitative manner. The program does not tell the pharmacist how to manage the case. Mr. Harris hoped the Bureau would seek input from all stakeholders before implementing this plan. Mr. Pitts noted his experience of seeing drug reviews where some classes of medications

are deemed no longer warranted; his concern was a general one as while he could understand the need for cost control, he was seeing abstract reviews to justify no ongoing medical need for certain medications. Mr. Hanna noted his experience from acute care practice had 98% of pharmacist recommendations accepted. Medication therapy management will follow the same program and information, and the decisions will be made based on the case's complete information. The Bureau was partnering with Ohio Department of Jobs and Family Services (ODJFS) to collaborate on better medication outcomes. Dr. Thomas Gretter, Chairman of the ODJFS Drug Utilization Review Committee, will be a member of the BWC Pharmacy and Therapeutics Committee which meets next month. The agencies are looking for synergies in their programs. Finally, the OSU School of Public Health is looking at narcotics usage in the Bureau system, and the report should be finished later this year.

Dr. Balchick noted the death rate in Ohio due to unintentional drug poisoning increased from 2.9 to 12.8 per 100,000 people between 1999 and 2008, or from 327 to 1,473 deaths per year. Several years ago, an increased trend in narcotics abuse was identified nationally, with Scioto County one of the most severe nationally. The Ohio Department of Alcohol and Drug Services and the Ohio Department of Health formed a Poison Action Group/New and Emerging Drug Trends committee, of which Dr. Balchick was a member. Currently unintentional drug overdose is the leading cause of injury death in Ohio, more than motor vehicle accidents. In terms of Bureau claims, the Bureau identified 137 deaths in 2008 because of narcotics abuse, representing 10% of the state's total, but the Bureau pays just 2% of all medical bills in the state.

Mr. Smith inquired what percentage of the unintentional drug overdoses were due to provider error. Dr. Balchick replied that was a very difficult question. If Mr. Smith was asking the number of deaths from a doctor prescribing 300 pills as opposed to 30, the number was exceptionally small. However, if the question involves whether the drug should have been prescribed, the question is very subjective and difficult. Mr. Smith believed the term "unintentional" was misleading; when a young adult steals pills from his grandmother's cabinet that would not seem to qualify. Mr. Smith inquired if Scioto County's problem was primarily due to one drug. Dr. Balchick said Scioto County had unique features where a number of national pain clinics operated. The clinics would operate on a cash-only basis and sometimes prescribe without a medical evaluation. Mr. Haffey indicated it seemed there was no difference between drug abuse and unintentional drug deaths. Dr. Balchick noted unintentional drug poisoning encompassed a broader term; while narcotics were most significant in unintentional drug poisoning deaths, other drugs were involved. Mr. Haffey inquired about what drugs are narcotics, and Dr. Balchick provided examples of Codeine, Percocet, Morphine, Oxycontin, and Vicodin. Mr. Caldwell asked if there were different classes for these medications. Mr. Hanna replied there are federal drug classes, and they are numbered I through V. Class I drugs have no medicinal value, such as LSD. Class II drugs include all analgesics and opiate derivatives, including the mother of all narcotics, Morphine, and Dilaudid, Percocet, Oxycontin, and Oxycodone. Mr. Caldwell asked if a class number made a drug illegal or legal, and Mr. Hanna replied in the negative; the Drug Enforcement Administration dictates the laws and guidelines for each class of medication. Vicodin was a Class III drug, but sleeping pills and barbiturates were Class IV drugs. Mr. Pitts asked how many drug poisoning cases in Dr. Balchick's experience involved alcohol, and Dr. Balchick said he did not have a figure, but alcohol was not the only problem. Persons

also abuse medication with Valium and sleeping medications, and this problem was why the Bureau was examining further. Dr. Balchick noted the number of U.S. deaths due to unintentional drug overdoses in 2006 exceeded that of a large jet crash every day for 2.5 months in a row.

Dr. Balchick noted the Pharmacy Program's vision was to be recognized as the national leader for its efficient and clinically effective delivery of innovative pharmacy services for Ohio's injured workers by 2012. The Governor has created the Ohio Prescription Drug Task Force comprised of legislators, law enforcement, and medical professionals. Dr. Balchick is a member of the task force. Phase I's report was released last week, and Phase II's report would come out in October. The task force focused on 5 areas: increasing public awareness; educating prescribers and pharmacists; legislative changes; data surveillance and research; and collaboration with law enforcement. As a first step, the OSU Department of Public Health is performing research into the problem and engaging in policy development; collaboration is occurring with anyone willing to assist in the study.

2. Customer Services Division Report

Mr. Al-Tarawneh and Mr. Michael Rea, Industrial Safety Administrator, presented the Customer Services Division Report. The focus of the presentation addressed the BWC's Safety services response to fatalities which are the worst type of injury that can occur at any work place, and that with such outcome, we are powerless. Mr. Al-Tarawneh added "while nothing can surpass the loss of life, the devastation associated with work related fatalities is overwhelming to the family, friends, coworkers and the employer. An unfortunate and sad crisis that is very unique, for the magnitude and effect of a fatal injury is never bounded. It is within such circumstances, where our mission at BWC proves resilience as our customer service is tested against these unbounded terms of magnitude and effect.

In most situations we learn about workplace fatalities through news reports before they are reported to us. When news reports surface, the service office area in which the company with the fatal injury operates is alerted and a response team is assembled to offer assistance to the employer. A claim specialist is assigned to the task of contacting the employer and MCO to offer assistance and to inform and assist the involved parties with the procedures and processes for filing a claim. Our Safety Violations Investigations Unit is also alerted to begin working with other Local, State, Federal agencies to investigate the circumstances that lead to the accident.

Unfortunately, this month, our system was tested with three instantaneous fatalities, one at a private employer workplace and two at two Ohio public employers workplaces. One occurred on May 6 and involved a 41 years old Highway Technician employee at the Ohio Department of Transportation District Five. The second occurred on May 7 and involved a 31 years old Inspector employee at the City of Middletown. The third occurred on May 12 and involved a 52 years old rolling mill operator at a private employer workplace.

Fatalities at public employers' workplaces carry added challenges since BWC has the jurisdiction to enforce the Public Employer Risk Reduction Program safety standards at public employers' workplaces. Accordingly, while we work with employers to handle the

claim in a timely and responsive manner, we have to carry on with our responsibility of investigating the circumstances that lead to the accident and resulted in the fatal injury and, when applicable, cite the employer where violations of PERRP's standards are identified in the workplace. While I do not want to provide any particulars about our investigations, these fatalities are under investigation by our PERRP safety consultants and Safety Violations Investigation Unit. Claims relative to these two fatalities were filed with BWC and are being processed in a timely fashion to prevent financial hardships to the families of the fatally injured workers.

Generally, our safety approach is very straight forward and includes evaluating the investigation and the circumstances that lead to the accident, offering assistance to the employer to abate the hazard, and if the hazard proves to be a newly recognized hazard to certain industries, to make sure we alert those employers to the newly recognized hazard.

Understanding the devastating effect of workplace fatalities, we have started a concerted effort at BWC to continually evaluate these claims in our system at the individual level and publish an annual analysis report with our findings. This work has been recently completed and a draft report has been prepared for that purpose, which provides analysis of work related and occupational disease fatalities in Ohio's workplaces for Calendar years 2007, 2008, and 2009.

Although the circumstances surrounding each of the fatalities evaluated in those three calendar years are sobering, the total number of fatalities in our workplaces has been going down over the past three calendar years, 181 in 2007, 156 in 2008, 129 in 2009, and 41 in the first five months of this year."

Mr. Smith inquired how the current fiscal year statistics would compare since 10 months of the fiscal year already passed. Mr. Al-Tarawneh did not have those figures as the analysis is performed by calendar year. Mr. Harris concurred with Mr. Al-Tarawneh regarding how sobering workplace fatalities are.

Ms. Falls asked for a point of clarification relative to enforcement and accident investigations in private employer's workplaces Mr. Al-Tarawneh indicated the Bureau had enforcement powers over public employers and not private employers. Mr. Al-Tarawneh noted that Violations of Specific Safety Requirement, or "VSSR," rules do exist and were updated last year. Ms. Falls inquired what enforcement meant, such as taking an employer to Court or fines. Mr. Al-Tarawneh said SVIU will investigate when VSSRs are alleged. Mr. Caldwell indicated VSSRs were an additional award to an injured worker. Mr. Thomas Wersell, Director of Special Investigations, noted SVIU had a working relationship with the Occupational Safety and Health Administration (OSHA) and that OSHA has enforcement authority in private employer's workplaces, and Mr. Al-Tarawneh comments regarding VSSRs applied when a VSSR is filed. Mr. Harris indicated a VSSR award to an injured worker ranges from 15% to 50% of compensation paid, which is in addition to payments made to an injured worker or his family. The VSSR payment comes from the employer and not the Bureau. Ms. Falls stated the term "enforcement" was used more broadly than her understanding. Mr. Wersell said the Bureau was in uncharted waters with OSHA; the Bureau always had a working relationship with the federal agency, but now there is a sharing of information. The Bureau was receiving front end information from OSHA that could be used later. Mr. Pitts commented if an employer is subject to multiple violations in a certain time period, fines can be assessed

by OSHA. Mr. Harris complimented SVIU for working with OSHA, as he was of the understanding that there was no collaboration between the BWC and OSHA in the past. Mr. Wersell commented the relationship is working well.

3. Follow-Up on MCO Public Forums

Mr. Harris said many issues brought up in the MCO Public Forums were being collaboratively addressed. A report outlining timelines and implementation targets has been distributed to the Directors. He encouraged any questions be directed to Mr. Donald Berno, Liaison for the Board of Directors, or to Mr. Robert Coury, Chief of Medical Services and Compliance.

4. Committee Calendar

Mr. Harris noted the June calendar would have a first reading of the Medical and Service Provider Fee Schedule and Medical Services Report, which Mr. Berno confirmed.

ADJOURNMENT

Mr. Pitts moved to adjourn the meeting at 3:46 PM, seconded by Mr. Hummel. The meeting adjourned with a 3-0 unanimous roll call vote.