

BWC Board of Directors

MEDICAL SERVICES & SAFETY COMMITTEE

Thursday, August 26, 2010, 8:00 a.m.

William Green Building

30 West Spring Street, 2nd Floor (Mezzanine)

Columbus, Ohio 43215

Members Present: James Harris, Chair
James Hummel, Vice Chair
Alison Falls
Thomas Pitts
William Lhota (*ex officio*)

Members Absent: James Matesich

Other Directors Present: Larry Price, David Caldwell, Robert Smith, Charles Bryan,
Kenneth Haffey

Counsel Present: John Williams, Assistant Attorney General
James Barnes, BWC General Counsel and Chief Ethics
Officer

Staff present: Robert Coury, Chief, Medical Services and Compliance
Dr. Robert Balchick, Chief Medical Officer

Scribe: Jill Whitworth

CALL TO ORDER – AUGUST 26, 2010

Mr. Harris called the meeting to order at 8:00 AM and the roll call was taken. Mr. Matesich will not be in attendance for today's meeting. All other committee members were present.

MINUTES OF JULY 28, 2010

Mr. Hummel questioned the content of the phrase "anecdotal information received by BWC has clearly shown that injured workers have been experiencing problems with the new rule" on page 6, paragraph 3. Freddie Johnson, Director of Managed Care Services, clarified that this statement is accurate.

The minutes were therefore approved without changes by 4-0 unanimous roll call vote on a motion by Mr. Hummel, seconded by Mr. Pitts. Mr. Lhota was inadvertently omitted from the roll call.

REVIEW/APPROVE AGENDA

Mr. Harris noted no changes to the Agenda. The agenda was approved by 4-0 unanimous roll call vote on a motion by Ms. Falls, seconded by Mr. Hummel. Mr. Lhota was inadvertently omitted from the roll call.

NEW BUSINESS / ACTION ITEMS

1. Motions for Board Consideration

A. For Second Reading

Transcutaneous Electrical Nerve Stimulators (TENS) and Neuromuscular Electrical Stimulators, Rule 4123-6-43

Freddie Johnson, Director of Managed Care Services, presented the second reading of the proposed rule regarding TENS units and other neuromuscular stimulators. The presentation included reference to the “Executive Summary – HPP TENS/NMES Payment Rule”, the revised Rule 4123-6-43, and the “TENS Data Table and Charts” of August 26, 2010, which are incorporated by reference into the minutes.

Under the former rule, the medical provider was responsible for delivering supplies to the injured worker. This often resulted in unnecessary shipments. Modifications were made to the rule in 2009 to address this issue, putting the responsibility on the injured worker to request supplies. Mr. Johnson reviewed several tables and charts illustrating a decline in utilization of supplies for the period July, 2008 through June, 2010, including a precipitous drop in the first quarter of 2010 when the rule modifications became effective. During this same period, the reimbursement costs of TENS units and supplies increased.

Although the prior modifications did appear to reduce unnecessary supplies, an unintended burden was placed on the injured work, thus, further changes were necessary to achieve flexibility and clarity without unduly burdening injured workers. Various stakeholders, including the MCO’s, provider and employer organizations, and the Ohio Association for Justice, provided additional feedback. Mr. Johnson covered the several revisions of Paragraphs B and C of the rule over time. Initially, the rule provided for monthly written contact to the TENS provider initiated by the injured worker. This was felt to be too restrictive, as was the next revision requiring monthly authorization by the MCO. The final version reads as follows:

(B) The claimant's MCO shall regularly determine the specific TENS supplies needed by the claimant through the period of time authorized for TENS use. The TENS provider must receive authorization from the claimant's MCO prior to the delivery of supplies and/or equipment. The TENS provider shall then deliver the supplies and bill the claimant's MCO after authorization is received. A self-insuring employer may, but is not required to, follow the same procedure as an MCO under this rule; provided, however, that in no event shall a self-insuring employer require a claimant to submit a written request for TENS supplies and/or equipment. The claimant's MCO shall retain the documentation of the contact with the claimant substantiating the claimant's need for supplies in accordance with the time frames set forth in rule 4123-6-14.1 of the Administrative Code. The TENS provider's bill must indicate the actual date of service, reflecting the date that services or supplies were provided. The bureau, MCO, QHP, or self-insuring employer may adjust bills upon audit of the audit discloses the provider's failure to comply with this rule.

(C) The TENS provider shall maintain the following records and make them available for audit upon request:

- (1) Authorization of TENS supplies or equipment received from the injured worker's MCO, and all other documentation relating to the injured worker's need for TENS supplies or equipment received by the provider prior to the delivery of the supplies or equipment, including any requests received from the injured worker, if applicable.

Mr. Johnson stated it is important to institute a regular review of supplies to make sure they are received when needed. BWC will be working with the MCO's to establish appropriate time frames to be included in the MCO policy guide.

Mr. Caldwell asked if injured workers were represented in the stakeholder feedback. Mr. Johnson replied that the Ohio Association for Justice represents the claimant's bar. Mr. Pitts commented that the MCO's appeared to uniformly believe contacting the injured worker was burdensome. This attitude is of concern when one considers utilization of a TENS unit is most often to address a chronic situation.

Mr. Hummel made a motion, seconded by Ms. Falls, 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 4123-6-43 of the Administrative Code, "Payment for Transcutaneous Electrical Nerve Stimulators and Neuromuscular Electrical Stimulators." The motion consents to the Administrator amending Rule 4123-6-43 as presented here today. The motion was approved by unanimous roll call vote 5-0.

B. For First Reading

1. Pharmacy and Therapeutics Committee Rule 4123-6-21.2

Dr. Robert Balchick, Medical Director, presented the proposed rule creating a pharmacy and therapeutics (P & T) committee which would make recommendations regarding pharmacy issues directly to the Administrator. The presentation included reference to the "Executive Summary – Pharmacy and Therapeutics Committee Rule" of August 26, 2010, which is incorporated by reference into the minutes.

Dr. Balchick explained that presently under Ohio Administrative Code Rules 4123-6-21(Q) and 4123-6-22, a pharmacy and therapeutics subcommittee exists which is part of the Health Care Quality Assurance Committee (HCQAAC). This subcommittee had been dormant beginning in 2007, but was revived and has been meeting since the fall of 2009. It is composed of six (6) physicians and six (6) pharmacists, and makes recommendations to the HCQAAC. The time lag between meetings can result in delays in discussing and/or implementing such recommendations.

In an effort to improve operational efficiency and credibility of the BWC Pharmacy Department, it was determined to make P & T a stand-alone committee with authority to make direct recommendations to the Administrator. Stakeholder feedback was solicited and is due by September 1, 2010. Four (4) comments have been received: two are supportive, two require additional response. All stakeholder feedback will be presented to the Committee at the second reading. Mr. Harris noted that feedback from employee organizations needs to be part of the process.

Per a question from Ms. Falls, Dr. Balchick stated that Johnnie Hanna, Pharmacy Director, chairs the present subcommittee but he is a non-voting member. Ms. Falls also questioned if fees are paid to the subcommittee members. Dr. Balchick and Administrator Marsha Ryan explained that travel expenses are not paid for either HCQAAC or subcommittee members, HCQAAC members are paid \$600; P&T members are paid \$400 per meeting.

Mr. Hummel inquired whether HCQAAC reviewed the proposed rule. Dr. Balchick responded that they did perform a review, and supported the rule. Mr. Lhota noted that because there are twelve (12) committee members, this could create issues of a tie vote, and questioned why the committee chair was non-voting. Dr.

Balchick responded that there is no prescribed number of committee members, but BWC wanted equal representation of doctors and pharmacists. As the committee chair performs a good deal of administrative functions, it was determined that position should be held by a BWC employee. Administrator Ryan commented that the P & T committee function is more advisory than a true directorial board, providing insight from experts and expanding knowledge to the workers' compensation community at large. Mr. Smith commended the use of objective outsiders. Dr. Balchick stated that all the committee members are very enthusiastic about their roles. Per a question from Mr. Pitts, Dr. Balchick noted that the committee members are required by rule to have active clinical practices.

In further discussion of voting, Ms. Falls pointed out that the pharmacy director can vote if there is a tie. This poses, in her view, an interesting governance question. Mr. Price cautioned that in reviewing the committee membership component over time, voting may not turn out to be an issue, so immediate changes may be premature and unadvisable. Mr. Harris noted that in the BWC Board voting process, tie votes have not been an issue because the motions are vetted through the committees. Administrator Ryan emphasized that the P & T Committee is an advisory committee, whose primary purpose is to receive information, review it and make recommendations to the Administrator.

DISCUSSION ITEMS

1. Medical Services Division Report

Robert Coury, Chief of Medical Services, presented the "Medical Services Division Board Report" dated August 23, 2010, which is incorporated by reference in to the minutes.

Revisions are being made to the additional allowance determination policy to make it more proactive, consistent with Deloitte recommendations. These revisions reflect that the MCO has the initial contact with the injured worker and can make the most appropriate and timely decisions. BWC and MCO staff will be trained beginning 9/6/2010 and the effective date for implementation is 10/12/2010.

MCO performance measures are being revised. The current, key metric, Degree of Disability Management (DoDM) was state of the art in 1999 but is now outdated. A new metric, Measurement of Disability Management (MoDM), improves the measurement regarding timeliness of return-to-work, and appropriate future care for the injured worker. The MCO's were in absolute agreement that DoDM was outdated. However, there was vigorous debate on several issues with respect to the new MoDM metric, including whether to base the metric on national data,

Ohio data, or a hybrid of both. It was agreed to utilize Ohio data, with review to occur every 3-5 years. There is presently an 80% consensus on the metric, with additional enhancements proposed for the remaining items.

Mr. Pitts commented that an injured worker's return to work may be affected by outside factors. Mr. Coury agreed that it would be unfair, for example, to penalize a provider for factors such as employer decisions. This is where the MCO assists as a point of contact and therefore should be accountable for an injured worker's actual return to work, and why the provider is measured on release to return to work as opposed to actual return to work. Mr. Pitts asked if this is an incentive to return to work for the same employer. Mr. Coury replied that these changes should impact both MCO and employer conduct, based on comparative data both nationally and locally. Per a question from Mr. Haffey, Mr. Coury explained that the BWC workgroup was created by BWC to improve the process development between BWC and the MCO's.

A redesign proposal is also being implemented for the vocational rehabilitation program. This includes strengthening qualifications for Disability Management Coordinators, improved training, system enhancements, establishing a performance measurement, and renovating the reporting infrastructure.

Mr. Bryan asked about the expansion of injury coding. Mr. Coury responded that BWC has an outside vendor to manage ICD coding, and all is satisfactory to his knowledge. Ms. Falls asked if the changes to the additional conditions process will result in material improvements or changes in responsibilities. Mr. Coury stated materiality will not be known until it is measured, but the intent of the process is to reduce disability by providing proper care in a timelier manner. BWC claims teams will rely more on information from the MCO nurse case manager, which can produce a change in responsibility, but there is no reason for BWC to perform a duplicative medical review. This should also reduce the number of allowance disputes which go to hearing. Mr. Pitts commented that these revisions comport with the MCO's expressed preference to have such decisions be based on medical data, not as a legal function of the hearing process.

Mr. Pitts also asked about an MCO directing injured workers to its preferred provider network. Mr. Coury responded that this occurs in 4-5% of claims and is not statistically significant. Mr. Pitts questioned whether an MCO would deny a C-9 from a preferred provider. Mr. Coury noted there are two treatment decisions: is the treatment medically necessary, and who should provide the treatment. BWC would not want an MCO to rubber-stamp these important decisions, which is why there are treatment guidelines and utilization review. The presumption is that an MCO does not defer to the preferred provider by virtue of its contractual relationship with the MCO, but the only way to validate this presumption is through data review.

2. Committee Calendar

There were no changes to the calendar. The September meeting has a very full agenda, including four rule reviews.

ADJOURNMENT

At 9:27 AM, Mr. Hummel moved to adjourn the meeting. The motion was seconded by Mr. Pitts and approved by 5-0 unanimous roll call vote.