

MEDICAL SERVICES & SAFETY COMMITTEE

Wednesday, December 15, 2010, 9:00 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
James Matesich
Thomas Pitts

Members Absent: William Lhota (*ex officio*)

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

Counsel Present: John Williams, Assistant Attorney General
Janyce Katz, Assistant Attorney General
James Barnes, BWC General Counsel and Chief Ethics Officer
Ann Shannon, Legal Counsel

Consultant Present: Anne Casto, President, Casto Consulting

Staff Present: Marsha Ryan, Administrator
Donald Berno, Board Liaison
Freddie Johnson, Director, Managed Care Services
Abe Al-Tarawneh, Superintendent, Division of Safety and Hygiene
Michael Rea, Industrial Safety Administrator

Scribe: Jill Whitworth

CALL TO ORDER – DECEMBER 15, 2010

Mr. Harris called the meeting to order at 9:00 AM and the roll call was taken. All official committee members were present. Mr. Lhota, *ex officio* member, was absent.

MINUTES OF NOVEMBER 19, 2010

The minutes were approved without changes by 5-0 unanimous roll call vote on a motion by Ms. Falls, seconded by Mr. Matesich.

REVIEW/ APPROVE AGENDA

Mr. Harris noted no changes to the Agenda. The agenda was approved by 5-0 unanimous roll call vote on a motion by Mr. Matesich, seconded by Mr. Pitts.

NEW BUSINESS / ACTION ITEMS

1. Motions for Board Consideration

A. For Second Reading

1. Ambulatory Surgical Center Fee Schedule – Rule 4123-6-37.3

Freddie Johnson, Director of Managed Care Services, and Anne Casto, Consultant, presented the second reading of the proposed rule regarding 2011 Ambulatory Surgical Center Fee Schedule Rule 4123-6-37.3. The presentation included reference to the Executive Summary, a copy of the proposed rule as amended, the common sense business regulation form, and a visual presentation that was also provided in written form dated December 15, 2010, which are incorporated by reference into the minutes.

Ambulatory surgical centers (ASCs) are stand alone facilities providing services connected with surgical procedures such as arthroscopic procedures and pain management injections, and which do not require inpatient hospitalization.. Nearly 200 ASC's serve as a critical part of BWC's provider group, providing increase availability and access of such services to injured workers.

The proposed ASCFS recommends the adoption of 2011 Medicare reimbursement ASC fee schedule, the adoption of a 1.3% BWC adjustment factor to offset Medicare's negative productivity adjustment used to redress Medicare's requirement pursuant to the federal Affordable Care Act, and maintenance of the current payment adjustment factors of 110% for pain management procedures and 100% for all other allowed procedures. This will result in an estimated 10% or \$677,000 dollars payment increase to ASCs over 2010 estimated total reimbursements. Implementation of the ASCFS will occur April 1, 2011.

In formulating the proposed changes, BWC met with the Ohio ASC Association and the Ohio Hospital Association (OHA). The representatives of the two associations expressed an understanding and agreement with the recommendations as presented. The Ohio ASC representative was also please to hear that this Board in our last ASC fee schedule recommendation presentation raised the question about increase utilization of ASC facilities. After posting on the BWC website in November, an additional nine comments were received.

The 2011 Medicare rates represents the final year of a 4 year Medicare transition in moving from the old Ambulatory Payment Classification methodology to the new Prospective Payment Methodology based on Medicare's Outpatient Perspective Payment Methodology. Over the previous 3 years Medicare has gradually moved the ASC rates to the 4 year full rates of the outpatient prospective payment system. This full transition as reflected in the Medicare published rates resulted in an 11% increase in the orthopedic

rates and a 2% decrease in pain management services rates, with a 6% increase in other services payment rates.

Pursuant to the affordable care act, the published Medicare rates did reflect an adjustment to the calculated ASC base rates. The Medicare productivity improvement adjustment was a reduction of a negative 1.3% to the ASC CPI-U rate, thus taking it from 1.5% to .2%. BWC's in analyzing the Medicare adjustment determined that this reduction was not in supportive of nor facilitated BWC's guiding principle of ensuring injured workers access to quality care. BWC is therefore recommending a 1.3% BWC adjustment factor to offset the Medicare reduction. The impact on the ASC rates are orthopedic rates would increase by another percentage point, the 2% decrease in pain management service rates are negated, with a 6% increase in other services payments rates.

Some individual ASC comments reflect a perceived inadequacy in the reimbursement amounts. Mr. Johnson noted in a follow-up conversation with the ASC Association Executive Director he highlighted the fact that with the full implementation of the Medicare methodology, BWC will be again this year providing an increase to the ASC rates, which has been the case since 2008. In 2011 ASC would experience a 10% increase in their rate, pointing out that for orthopedic services they would experience after the 1.3% adjustment, a 12% increase. While pain management was set to go down 2% the BWC adjustment offset that decrease. Further, Mr. Johnson indicated that he shared with the ASC that it was imperative for them to assist BWC in getting ASC cost data which could be utilized in BWC's analysis underlying recommendations for modifying payment adjustment factors. ASC cost data is not available to BWC; unlike hospitals, ASCs do not participate in Medicare cost reporting. BWC agreed to work with an ASC workgroup to identify cost data. Mr. Matesich inquired as to the referenced 197% reimbursement for hospital outpatient services. Mr. Johnson replied that while BWC understands the point raised by the 197% payment adjustment factor, the hospital cost structure is higher than the cost structure for ASCs, thus, an underlying rationale for the higher payment adjustment factor. Moreover, the current 197% payment adjustment factor for hospitals is part of a 3 year transition reduce the payment adjustment factor down to 166%, which will result in an estimated decrease over a 3 year per of 22% in reimbursement to hospitals. Mr. Johnson further indicated that there are no projected decreases in reimbursement for ASCs. Ms. Casto added that in the future, as more data becomes available, fee schedules should become more consistent with one another, as BWC is developing a 5 year strategy to continue to ensure balance in providers, which continues to ensure injured workers access to quality care.

Mr. Price asked about the stakeholder comment that ASCs perform services in a timelier and more cost-effective manner. Mr. Johnson replied that while we can evaluate that the cost of using an ASC is less, more information is needed to evaluate outcomes. Next year, ASCs will be required to report cost data to Medicare. BWC is committed to working with ASCs and developing performance measures, so injured workers can evaluate what gives them the best treatment option and outcome, not simply the lowest cost. Administrator Ryan noted this is not unique to workers' compensation, in that maximizing health care services is a global issue.

In summary, the recommendation to the Committee is as follows:

- adopt the calendar year 2011 ASC PPS rates as published in the CMS final rule;
- apply a BWC adjustment of 1.3%; and
- maintain current payment adjustment factors of 110% for pain management procedures and 100% for all other allowed procedures.

Mr. Hummel made a motion, seconded by Mr. Pitts, 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 4123-6-37.3 of the Administrative Code, "Payment of Ambulatory Surgical Center Services." The motion consents to the Administrator amending Rule 4123-6-37.3 as presented here today. The motion was approved by unanimous roll call vote 5-0.

2. Outpatient Hospital Fee Schedule – Rule 4123-6-37.2

Mr. Johnson and Ms. Casto presented the second reading of the proposed rule regarding 2011 Outpatient Hospital Fee Schedule Rule 4123-6-37.2. The presentation included reference to the Executive Summary, a copy of the proposed rule as amended, the common sense business regulation form, and a visual presentation that was also provided in written form dated December 15, 2010, which are incorporated by reference into the minutes.

Mr. Johnson noted that outpatient hospitals (OHs) represent 17% of overall BWC medical expenses. In April 2010, BWC adopted a prospective payment methodology for OHs to be implemented beginning January 1, 2011, resulting in a 22% decrease in OH reimbursement over a three-year period. The proposed rule changes result in an additional 0.8% reimbursement reduction, effective April 1, 2011. The changes were supported by OHA. Three comments were received from stakeholders including OHA, which led to the additions to the initially proposed rule language to reflect all children's hospitals located in Ohio.

Ms. Casto stated that Medicare has chosen to adopt a multiple procedure reduction methodology for therapy services, which recognizes that duplicate practice expense inputs should be accounted for when multiple therapy services are performed in the same session. Medicare reduced the practice expense component payment rate by 25% to account for the reduction in activities when multiple units or services of designated therapy services are performed on the same date of service. The Medicare adjustment results in an estimated overall decrease for therapy service of 7%.

Further Medicare adjustments reflect Affordable Care Act market basket adjustments of -.25% for Ambulatory Physician Classification (APC) services, -1.75% for Clinical Lab services, and -30.78% for Physician services. BWC as a result of its analysis has determined that these budget neutrality adjustments are required by law under Medicare, but do not reflect or support BWC's goal of ensuring injured worker access to quality care.

The recommendation to the Committee is as follows:

- adopt rates as published in the 2011 Outpatient Prospective Payment System final rule;

- apply the following separate 2011 BWC adjustment factors: 0.25% for services reimbursed under APCs, 1.75% for laboratory services reimbursed under the Medicare Clinical Lab Fee Schedule, 30.78% for services rendered under the Medicare Physician Fee Schedule.
- maintain the approved January 1, 2011 payment adjustment factors of 253% for Children's Hospitals, and 197% for all other facilities.

The impact of these recommendations will be an estimated 8% overall reimbursement decrease, or an estimated dollar impact of - \$11.4 million. These changes will also facilitate BWC's implementation of the adopted hospital outpatient prospective payment system, while maintaining an effective fee schedule supporting access to quality care for Ohio's injured workers.

Mr. Pitts made a motion, seconded by Mr. Hummel, 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 4123-6-37.2 of the Administrative Code, "Payment of Hospital Outpatient Services." The motion consents to the Administrator amending Rule 4123-6-37.2 as presented here today. The motion was approved by unanimous roll call vote 5-0.

B. Emergency Rule (waiver of second reading)

1. Medical Services Provider Fee Schedule Rule 4123-6-08

Mr. Johnson and Jean Stevens, Medical Policy Senior Analyst, presented a request for an emergency rule to update the provider fee schedule to reflect recent changes in standardized billing codes. The presentation included reference to the Executive Summary, a copy of the proposed rule as amended, the common sense business regulation form, and a document entitled "BWC 2010 Proposed Emergency Rule Changes for BWC's Professional Provider and Medical Fee Services Reimbursement Schedule", which are incorporated by reference into the minutes.

The Professional Providers and Medical Services fee schedule provides reimbursement for all relevant medical providers rendering services to Ohio injured workers. Additionally this fee schedule provides reimbursement for certain services also rendered to injured workers. The current Professional Services and Medical Providers fee schedule was approved by the Board in July of this year and implemented on October 25th.

A key component driving the fee schedule reimbursement calculation and accompanying payment methodology are two sets of procedural codes. The first set of codes is the common procedural terminology or CPT Codes. There are over 10,000 CPT codes, which are published by the American Medical Associations and describe procedures for professional services, such as surgery, anesthesia, physical therapy etc. Medicare adopts these codes and establishes relative value units for each of the services. The second set of codes is the Healthcare Common Procedural Codes or HCPCS. There are over 3,600 of these codes, which are developed and published by Medicare, and describe specific services such as durable medical equipment, supplies, medications, vision services, prosthetics and others. Medicare establishes set prices for these codes.

Prior to 2007, BWC under the approach of adopting fee schedule changes by policy would as a part of that process adopt new codes released by the AMA and Medicare. Thus, BWC and the various providers were in step with billing and reimbursement protocols reflecting new and/or expired billing codes.

In 2007 chapter 119 and BWC specific rulemaking protocols were put in place for fee schedule rule changes. These protocols includes 2 reading to the BWC Board and the standard JCARR process which could result in an estimated period in excess of 120 days for a proposed rule to become effective. The new coding schemes are not released until the month of December, and are effective on January 1st of next year. Under the current rulemaking process and fee schedule development methodology, it is virtually impossible for BWC to be in a position to adopt the new codes once they are released. However, providers do adopt the new codes immediately and submit bills accordingly.

The impact of the incongruence of codes used creates additional expense to correct denials of otherwise valid services. BWC in 2010 implemented work-a-round procedures to minimize the number of bills being denied. The work-a-round procedure is an avoidable labor intensive process. Further, providers wishing to avoid unnecessary denials must maintain a separate set of BWC billing code and the nationally updated set of billing codes. The need to undertake such action increases providers' administrative challenges of serving Ohio's injured workers population. These administrative challenges results in increased costs to the system, and can be a barrier to provider participation, reducing BWC's opportunity to maintain and/or increase Ohio's injured workers' access to quality care.

To eliminate these inefficiencies in coding and payment, an emergency rule is proposed, along with an expedited process eliminating the second reading before the Medical Services and Safety Committee to adopt the 2011 CPT and HCPCs coding updates. The rule would be submitted to the Governor's Office and, after passage, be effective for 90 days, which would permit the JCARR process to take place. The changes being recommended reflect a very narrow update to new 2011 CPT and HCPCs codes. The total number of new CPT and HCPCs codes BWC is adopting is 80, with the number of current 2009 codes to be deleted totaling 144. There are no projected measurable changes in provider reimbursements. The codes changes would not impact execution of BWC's standard methodology and project plan for the normal annual evaluation and recommendation for the Professional Providers and Medical Services fee schedule; which will be presented to the Board in June and July, with an implementation date in October, 2011.

Per a question from Mr. Hummel, Mr. Johnson clarified that this process must be done each year because the codes are not released until December, after passage of the BWC fee schedules. Per a question from Ms. Falls, Mr. Johnson reiterated that the providers, the MCOs, and the BWC healthcare quality assurance advisory committee all agreed with this action..

Mr. Harris made a motion, seconded by Mr. Hummel, that the Medical Services and Safety Committee waive the second reading of Rule 4123-6-08 of the Administrative Code, "Bureau Fee Schedule," in order to amend the rule as an Emergency Rule by January 1, 2011. The motion was approved by unanimous roll call vote 5-0.

Mr. Harris made a motion, seconded by Mr. Hummel, 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 4123-6-08 of the Administrative Code, "Bureau Fee Schedule," as an Emergency Rule, to implement changes in the Healthcare Common Procedural Coding System by January 1, 2011. The motion consents to the Administrator amending Rule 4123-6-08 and enacting Appendix A to the Rule as an Emergency Rule as presented here today. The motion consents to the Administrator requesting that the Governor declare an emergency for the adoption of the rule, and consents to the Administrator also filing the rule under the normal Chapter 119 rulemaking procedure. The motion was approved by unanimous roll call vote 5-0.

C. Recommend Board Approval of FY 2010 Division of Safety and Hygiene Annual Report

Dr. Abe Al-Tarawaneh, Superintendent, Division of Safety and Hygiene, presented the Division of Safety and Hygiene (S&H) Annual Report. The presentation included reference to the Annual Report, covering pages _65-80_ of the BWC Annual Report, which is incorporated by reference into the minutes.

Dr. Al-Tarawneh noted that S&H had a very successful year, in particular with respect to the following three areas:

Programs and services. There was nearly a 50% increase in education and training attendance. Over 9,000 employers participated in safety councils, resulting in \$1.060 million in paid subsidies and \$27.3 million in premium rebates. Safety Congress participation increased 17%, mostly from small employers with under 100 employees. 110 employers received safety intervention grants totaling close to \$2.5 million. S&H field consultants made 19,000 workplace visits to provide consulting services to over 5,500 employers. Also, 9,300 air quality samples were tested in over 800 workplaces.

Data analysis/research. The partnership with NIOSH continues to provide benefits. Also, S&H in collaboration with the Actuary Division and Employers programs developed and implemented a new design for the drug-free safety program.

- Assistance to high frequency/severity employers. The Preferred Customer Market project was finished this past Fiscal year. The project was directed to provide assistance to high frequency and/or severity claims in four different industries including construction, nursing homes, public employers, temporary staffing companies, Claims and days away from work have decreased by 17% over the past two years for the companies that benefited from our safety services. In partnership with the Ohio Manufacturers Association, S&H thoroughly reviewed over 2,000 claims involving the metal-stamping industry and recommended accessible safety interventions to be shared with employers in this industry to prevent accidents and injuries in their workplaces.

Mr. Haffey expressed appreciation for S&H's efforts and that S&H is being brought to a higher level in the recent year and a half. Mr. Bryan inquired if programs are being

offered with all employer groups. Mr. Al-Tarawneh stated that currently, one S&H consultant is assigned to assist each employer group. He also, noted that S&H has been working with some of the most homogeneous groups like Ohio Manufacturing Association and the, Ohio Trucking Association, to develop safety and injury prevention programs that are suitable to employers participating in these groups. He also noted that S&H will continue to target this type with other groups in the future.

Ms. Falls made a motion, seconded by Mr. Hummel, that the Medical Services and Safety Committee recommend that the Bureau of Workers' Compensation Board of Directors approve the BWC Division of Safety and Hygiene Annual Report and refer it to the Board of Directors for review, approval and release. The motion was approved by unanimous roll call vote 5-0.

D. For First Reading

1. OSHA/PERRP Cranes and Derricks Rule

Dr. Al-Tarawaneh and Michael Rea, Industrial Safety Administrator, presented the first reading for amendment of Rule 4167-3-04.2. The presentation included reference to the executive summary and common sense business regulation form, which is incorporated by reference into the minutes.

In conjunction with the Public Employer Risk Reduction Program (PERRP), BWC is required to adopt or amend rules to be consistent with the Occupational Safety and Health Administration (OSHA) rules. OSHA has updated its construction industry safety standards concerning cranes and derricks for the first time since 1971. These revisions deal with such matters as operator training, ground conditions, assembly, power-line safety and hazard training.

BWC has informed various stakeholders of the changes, including county engineers, the Ohio Department of Transportation, the Ohio Department of Natural Resources, and safety councils. The PERRP rule reflecting the OSHA revisions must be filed by March 8, 2011.

In response to questions by Mr. Hummel and Mr. Matesich, Mr. Rea clarified that these rules changes do not affect the VSSR regulations, and do not apply to private employers and that information about the changes to the OSHA rule will be communicated to Ohio's private employers through Safety Councils as well as other means of communications.

DISCUSSION ITEMS

1. Medical Services Division Report

Robert Coury, Chief of Medical Services and Compliance, presented the "Medical Services Division Board Report" dated December 6, 2010, which is incorporated by reference in to the minutes.

BWC has an obligation to ensure MCO's are providing the best resources for injured workers. Key MCO performance metrics have been implemented, including MoD, in the new MCO contract. Provider performance metrics are continuing to be developed and,

once in place, further analysis can be made of trends such as performance effectiveness and referral patterns. Provider performance metrics are being created from the ground floor by BWC based upon the Ohio environment, research and best practices. In March 2011, providers on the DAS/Labor WILMAPC provider panel who do not meet certain benchmarks reflecting good patient care will be excluded from the provider panel.

2. Committee Calendar

There were no changes to the calendar. Mr. Harris noted there is another full agenda for the January meeting.

ADJOURNMENT

At 10:34 AM, Mr. Hummel moved to adjourn the meeting. The motion was seconded by Mr. Matesich and approved by 5-0 unanimous roll call vote.