

**BWC Board of Directors**  
**Medical Services and Safety Committee**

**Thursday, May 26, 2011**  
Level 2, Room 3 (Mezzanine)  
30 West Spring St.  
Columbus, OH 43215

Members Present: James Hummel, Chair  
James Matesich, Vice Chair  
Mark Palmer  
Thomas Pitts  
Dewey Stokes  
Nicholas Zuk, *ex officio*

Members Absent: None

Other Directors Present: David Caldwell, Kenneth Haffey, Stephen Lehecka, Larry Price,  
and Robert Smith

Counsel Present: Tom Sico, Assistant General Counsel

Staff Present: Stephen Buehrer, Administrator  
Donald Berno, Liaison to Board of Directors  
Greg Collins, Program Administrator  
Julie Darby-Martin, Safety Congress Manager  
Johnnie Hanna, Pharmacy Program Director  
Freddie Johnson, Interim Chief, Medical Services  
Tina Kielmeyer, Chief of Customer Services

Scribe: Michael J. Sourek, Staff Counsel

**CALL TO ORDER**

Mr. Hummel called the meeting to order at 8:45 AM, and the roll call was taken. All members were present.

**MINUTES OF APRIL 28, 2011 MEETING**

Mr. Hummel asked for any changes to the minutes of April 28, 2011 meeting. With no changes, Mr. Hummel moved to have the minutes of April 28, 2011 be approved through a voice vote. The motion passed by unanimous voice vote.

**REVIEW AND APPROVAL OF AGENDA**

Mr. Hummel asked for any changes to the agenda. With no changes, Mr. Hummel moved to have agenda be approved through a voice vote. The motion passed by unanimous voice vote.

## **NEW BUSINESS/ACTION ITEMS**

### **1. Motions for Board Consideration**

#### **A. For Second Reading**

##### **1. Outpatient Medication Formulary Rule 4123-6-21.3**

Mr. Hanna presented the second reading of the Outpatient Medication Formulary Rule 4123-6-21.3. Copies of the proposed rule, executive summary, stakeholder grid and CSBR are incorporated by reference into the minutes and provided to MSSC prior to the meeting.

Mr. Hanna noted the proposed rule established for the first time an outpatient drug formulary. The formulary would be managed by the Bureau's Pharmacy and Therapeutics Committee ("PTC"). PTC would follow Food and Drug Administration ("FDA") protocols, medical literature, and best medical practices in maintaining the formulary. The initial formulary includes all medications prescribed to injured workers between January, 2008 and February, 2011, comprising 28,000 National Drug Codes contained within 395 drug classifications, and 1321 generic entities. There were 9 stakeholder responses: a MCO nurse and a physician voiced general support; 2 physicians had questions concerning particular medications which would be addressed at the next PTC meeting; a third party administrator was notified the formulary did not apply to self insured employers; a Bureau nurse had concerns regarding pulmonary medications which would be addressed at the next PTC meeting; an employer organization confirmed that PTC reviewed medications; and 2 representative of legal organizations inquired regarding an administrative appeals process for denials of medications. Mr. Hanna noted the administrative appeals process could be addressed through the Chapter 119 rule making process.

Several Board of Directors members, initiated by Mr. Matesich, disagreed that the Chapter 119 rulemaking response addressed the stakeholder concerns. Mr. Pitts and Mr. Price agreed with Mr. Matesich. Mr. Hanna did note any prescribing physician can request a drug for consideration in the formulary with PTC. If the provider wishes to make a presentation to PTC, the provider can request time in advance as the meeting is public, and PTC is strictly advisory. Additional procedures will also be developed in formulary policies. Mr. Hummel and Mr. Pitts inquired if PTC would have the drug formulary as a standing agenda item. Mr. Hanna replied in the affirmative, there was also a subcommittee of PTC being formed for managing the drug formulary.

Several Board of Directors members made statements regarding the appeals process available to an injured worker if a needed medication was not in the Bureau's formulary. Mr. Zuk wanted an expedited appeals process available to keep the issues out of the Court system. Mr. Price wanted to know the exact process if there was a clinical situation that arose needing an immediate decision. Mr. Pitts agreed injured workers in unique circumstances need a procedure to have necessary non-formulary medications authorized. Mr. Hummel was concerned any appeals process, whether the Industrial Commission or otherwise, had an administrative delay, and not all injured workers could pay out of pocket. While he believed the drug formulary was necessary, he did have concerns over the appeals process. Mr. Stokes noted concerns of delays to injured workers needing mental health drugs not included in the formulary. He also inquired of issues of injured workers transferring over to a new drug on the market while being maintained on a formulary drug. Mr. Caldwell made several comments from his

experience with drug formularies in negotiating collective bargaining agreements. Overall, he was in favor of the drug formulary. However, he was extremely concerned about when the rare exception occurred when an injured worker needed a drug not in the formulary. In his opinion, the exception was the key to the issue, and there are a number of injured workers who could not afford to pay for a prescription out of pocket until someone in administrative position authorized the drug. While the Board of Directors has a fiduciary responsibility to the State Fund, the Bureau is in a better financial position to front the cost of a drug not in the formulary until a decision is made.

In response, Mr. Hanna emphasized injured workers could still file a motion to the Industrial Commission to obtain a certain drug if the drug was denied. To create a formulary where every attorney and every injured worker can appeal a denial without a clinical reason would undermine the formulary's purpose. For example, the Bureau pays \$60,000 per year for a drug that varies from generic Vicodin by only 25 mg of Tylenol; without a drug formulary, this excess cost would continue. Mr. Hanna noted the medications in the formulary were not life saving drugs in the sense of a critical injectable product. The medications were primarily oral medications used in pain management and orthopedics. The medications were generally not for COPD, diabetes or high cholesterol. The medications were not "cutting edge" types of drugs inferred in the above discussions. If such a revolutionary drug was developed, PTC would examine the drug while the drug was going through the FDA approval process, and the Bureau would be ready to include in the formulary once it was approved by the FDA. If an injured worker truly needed a non-formulary medication, the injured worker could pay out of pocket, and if approved, the injured worker would be reimbursed. The drug formulary considers all drugs that are available on the market, and a medical provider could submit a request to Mr. Hanna, the Administrator, or to PTC to consider a drug addition to the formulary. He emphasized every medication prescribed in the past three years to injured workers was included in the proposed formulary. The likelihood of a new drug taking effect in the marketplace without the Bureau being aware was very low. PTC was a committee of medical practitioners making recommendations based on clinical situations. Mr. Hanna also noted an injured worker could still receive a drug he was taking that was in the formulary while requesting approval for a new drug.

Mr. Smith was shocked the Bureau never had a drug formulary, and the savings are significant. Mr. Zuk also agreed the drug formulary was a very important step in containing medical costs in Ohio, and if there was a way to have a generic prescribed over a brand name drug, the drug formulary was a win-win situation. Mr. Pitts wanted assurances that the formulary was a database that would be given to providers, and providers would be able to know what drugs are in a formulary. Mr. Hanna replied the formulary would be available through Internet lookup, and the Bureau was examining drug formulary download availability to smart phones. Mr. Pitts clarified his question that, if an injured worker had a fractured ankle, a provider could look up what drugs were in the formulary to treat the condition, and Mr. Hanna replied in the affirmative. Mr. Hummel inquired if a certain drug was not in the formulary, would there be an alternative drug. Mr. Hanna replied in the affirmative; there were 395 drug classes in the formulary, not individual drugs. Multiple drugs are contained in each drug class. Mr. Pitts said the Bureau's policy in all circumstances is when a generic is available; the Bureau would only pay the generic price if a brand name was prescribed. He inquired if the proposed drug formulary would reduce cost in that regard. Mr. Hanna replied in the negative, the drug

formulary does not change the generic/brand name issue. Mr. Sico pointed out the generic/brand name issue was contained within a separate rule. Mr. Sico also clarified the Industrial Commission appeals process would not usually take 3 to 4 months, but approximately 1 month.

Mr. Hanna concluded by comparing the Bureau's prescription costs with the State of Washington's program, which has extremely restrictive formulary. In Washington, there was only 1 brand name drug in the top 25 prescribed, and Oxycontin was not in the top 25 prescribed, with only 5.9% of all prescription cost. In Ohio, without a formulary, 9 brand name drugs are in the top 25 prescribed, and 13.5% of the Bureau's prescription cost is attributed to Oxycontin. The average 2010 prescription cost in Washington was \$67.69/prescription versus \$88.07/prescription in Ohio. This metric alone represents \$30 million for the Bureau..

Mr. Matesich moved that MSSC recommend that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations to adopt Rule 4123-6-21.3 of the Administrative Code, "Outpatient Medication Formulary," with the motion consenting to the Administrator amending Rule 4123-6-21.3 as presented at this meeting. The motion was seconded by Mr. Palmer, and the motion passed with a 6-0 unanimous roll call vote.

## **B. For First Reading**

### **1. 4123-3-23 Limitations on the filing of fee bills**

Mr. Johnson presented the first reading of Rule 4123-3-23, Limitations on the filing of fee bills. Copies of the proposed rule, executive summary, stakeholder grid and CSBR are incorporated by reference into the minutes and provided to MSSC prior to the meeting. Mr. Johnson said the proposed rule brings consistency to changes in Ohio Rev. Code Sec. 4123.52 that passed under House Bill 123 and effective on July 29, 2011. That statute will change from the current 2 year statute of limitation to submit bills for payment medical services, without exception, to 1 year from the date of service or when the bill becomes payable, whichever is later. In 2009, there were 3.6 million invoices submitted, with only 1.8% coming in after 365 days; in 2010 there were 4.6 million invoices submitted, with only 2.3% coming in after 365 days. Mr. Johnson indicated a minimal impact to providers would occur through the proposed rule.

Mr. Johnson said the rule was sent to the Ohio Hospital Association ("OHA") on May 12, 2011 and to numerous interested stakeholders on May 13, 2011. Discussion with stakeholders led to some changes. Paragraph (A) of the proposed rule mirrored the statute, and Paragraph (B) provided the self insured employer exception. A self insured employer is allowed to negotiate with a provider to accept fee bills from the provider for a time period other than set forth in Paragraph (A). Paragraph (C) gave 3 exceptions to the 1 year rule in Paragraph (A). The first exception was in Paragraph (C) of Sec. 4123.52. The second exception applied to fee bills not timely submitted because of administrative error by the Bureau or a managed care organization. The third exception occurred when a bill was originally submitted to a patient, third party-payer or state or federal program and the patient, payer, or program determined it is not responsible for the cost of the services. The third exception originally did not include "patient"; while the problem was considered small, the situation applied when injured workers realize they paid something they did not have to pay. This third exception, allows the provider to submit for payment.

Paragraph (D) placed a limit of 1 year and 7 days of the initial adjudication of a fee bill for a payment adjustment to be requested. Mr. Johnson indicated there were 2 additional changes to be made to the rule which were not included with the original language the directors currently had before them. The first change will be to paragraph D which will entail changing the wording of “request for payment adjustment” to “request for additional payment.” This new wording will address a possible unattended interpretation that may limit the Bureau’s ability to collect overpayments. The second change would be to add a paragraph E. Mr. Johnson said the effective date of Sec. 4123.52 could cause problems since the statute only speaks to initial billings, and not adjustments. To avoid confusion, paragraph E would be included in the proposed rule to indicate Paragraphs (A) through (C) will apply to fee bills with a date of service of July 29, 2011 or later, and Paragraph (D) will apply to fee bills with a date of service on or after the effective date of the rule’s effective date established by JCARR. Both of these stated changes would clarify the rule. No other stakeholder comments led to any additional changes. Mr. Johnson reiterated that the proposed rule would: have a minimum impact on providers; reduce operational complexity; reduce system error and claims costs; and provide a clearer picture to self insured employers by aiding settlements and budgeting.

Mr. Pitts had concern with Paragraph (B)’s wording “for a time period other than as set forth in Paragraph (A) of this rule.” This wording allowed a self insured employer to negotiate a period of less than 1 year. While he believed a self insured employer could negotiate a period longer than 1 year with a provider, he did not believe the self insured employer could negotiate a shorter time period than Sec. 4123.52 allowed. Mr. Pitts emphatically stated he would object if this wording was in the final version of the rule. Mr. Matesich agreed with Mr. Pitts; if Paragraph (B) remained in its current form, medical providers could be reluctant to continue to treat injured workers. He believed a self insured employer’s ability to negotiate a shorter bill submission time would create disincentives to some providers who did not submit bills as timely as others. In response, Mr. Johnson first noted Paragraph (B)’s wording came from OHA, and the 1 year rule must be followed unless negotiated at arm’s length with the hospital or provider. He also noted Sec. 4123.52 gave exceptions to the Administrator to avoid statute changes. Mr. Johnson doubted OHA would make a recommendation to the detriment of its members. However, given the objections of Mr. Pitts and Mr. Matesich, Mr. Johnson agreed to verify OHA’s intentions. If the intentions were consistent with Mr. Pitts and Mr. Matesich’s objections, the wording would be clarified accordingly. Mr. Hummel asked Mr. Johnson to research and address all concerns raised for the second reading.

## **DISCUSSION ITEMS**

### **1. Customer Services Report**

Ms. Kilmeyer, Mr. Collins, and Ms. Darby-Martin presented the Customer Services Report. A copy of the report is incorporated into the minutes by reference and was provided to MSSC prior to the meeting. The Customer Services Report focused on 2 areas: BWC and Occupational Safety and Health Administration (“OSHA”) Alliance; and the 81<sup>st</sup> Safety Congress.

BWC and OSHA Alliances: Mr. Collins covered this portion of the Customer Services Report without omission until page 3, *Overview of the current BWC/OSHA Alliance with COSE (Council of Smaller Enterprises)*, when his presentation was terminated due to time constraints. Mr. Collins added the Bureau’s free On-Site Consultation Program targeted

small private employers in hazardous industries. Mr. Collins personally was proud of the BWC/OSHA Alliance for temporary workers. The DVDs developed through this alliance, both in English and Spanish, have been widely distributed at national conferences and are being used in many states. Although the alliance expired last year, the DVDs are still being distributed and used. Mr. Collins briefly mentioned the new BWC/OSHA Alliance with COSE and believed the new alliance had much potential. Ms. Kielemeyer explained a copy of the DVD is available for each director, or if they prefer, a link can be provided to the online version.

81<sup>st</sup> Safety Congress: Ms. Darby-Martin thoroughly covered this portion of the Customer Services Report without omission until page 6, *Customer Satisfaction*, when her presentation was terminated due to time constraints. Ms. Kielemeyer informed the directors that a comprehensive report is being developed for the Administrator and copies will be shared with the committee upon completion. Mr. Hummel attended the recent Safety Congress, and he complimented everyone involved.

## **2. Committee Calendar**

Mr. Hummel briefly referenced the Committee Calendar due to time constraints.

## **ADJOURNMENT**

Mr. Hummel moved to adjourn the meeting at 9:55 a.m., and the meeting adjourned through a unanimous voice vote.