

Audit Committee Agenda
September 26, 2007
Level 2, Room 3
3:00 pm – 5:00 pm

Call to Order

Ken Haffey, Chairman

Roll Call

Tom Woodruff, Scribe

Approve Minutes of August 24 meeting

Ken Haffey

New Business/Action Items

1. Discussion and Approval of Audit Committee Charter
Ken Haffey
2. Rule Making Process
3. Rule Update
 - Review and make recommendation to Board for coverage application
 - Review and make recommendation to Board for hospital reimbursement rules

Discussion Items*

1. External Audit Update
Ken Haffey
2. Discussion of Disabled Workers' Relief Fund
Tracy Valentino
3. Response to Inspector General Manual Override report
James Barnes
4. Discussion of Reporting Process for Litigation Updates
James Barnes
5. Annual Calendar of Events
Joe Bell and Ken Haffey
6. Internal Control and Documentation Process
Joe Bell

* Not all discussion items have materials included.

Next Meeting: October 25, 4:00 pm – 6:00 pm

BWC BOARD OF DIRECTORS **AUDIT COMMITTEE MEETING** **08/24/07**

CALL TO ORDER

Meeting called to order by committee chairman Haffey @ 8:00 am, August 24, 2007.

ROLL CALL

Roll call taken by minute taker, all three directors present:

- Bill Lhota
- Ken Haffey - chair
- Philip Fulton

Also present: Joe Bell, Chief of Internal Audit, Susan Hanley, Internal Audit Administrative Assistant, Tracy Valentino, Interim Chief Financial Officer, Keith Elliott, Internal Audit Senior Manager.

Mr. Lhota motioned to appoint Mr. Haffey as Chair of the committee. Mr. Fulton seconded the motion. Roll call taken by minute taker. Mr. Haffey unanimously elected to position of audit committee chair.

STAFF INTRODUCTION

Joe Bell provided committee with overview of BWC's Internal Audit Function and introduced Keith Elliott & Tracy Valentino.

Committee directors discussed audit function with Bell, who emphasized the importance of professionalism and training / development of audit personnel

DISCUSSION OF COMMITTEE DUTIES

Chairman Haffey discussed committee duty issues with Joe Bell. Also, discussed status of the external audit to be completed by Schneider Downs.

Bell discussed material in audit committee binder provided to directors for the day's meeting as well as provided an overview of the FY 07 4th Quarter Executive Summary.

AUDIT CHARTERS:

Bell discussed HB 100 audit committee duties under attachment 1 (committee charter) of the binder RC 4121.125 & 4121.129 and reviewed the existing Charter with the committee directors. Chairman Haffey indicated that committee will be revising the charter.

Auditor of State is responsible for completing or contracting BWC's external financial audit. The external audit is contracted out for five years (FY07 to FY11) to Schneider Downs.

Mr. Lhota raised issue of the internal audit reporting relationship being reported to the Board and Committee.

POLICY & PROCEDURES:

Bell discussed audit committee policy and procedure, including outline contained in attachment 2 of meeting binder.

Bell discussed Internal Audit Division charter contained in attachment 3 and discussed internal audit standards.

Bell detailed his reporting duties to Administrator and Audit Committee.

Bell discussed process for conducting audits and the various type of audits conducted by the internal audit unit. The proposed Internal Audit plan was discussed and contained in attachment 4. He emphasized having good controls over processes.

Bell discussed audit process workflow contained in attachment 5.

Mr. Lhota raised issue as to whether or not internal audit was fully staffed. Bell indicated that the Internal Audit Division was increasing personnel with respect to Information Technology processes.

Mr. Lhota raised issue of business continuity as applied to BWC as a whole.

Committee adjourned for a break @ 9:28 am.

Reconvened @ 9:38 am

Further discussion by Bell on audit process flow chart.

Bell discussed 4th quarter report for fiscal year 2007 (attachment 6). Discussed emphasis on remediation. Discussed audit plans in detail, and how they are updated every quarter.

Directors discussed quarterly report comments with Bell.

Directors discussed future committee meeting length and time with a preference for committee meetings to be held from 4:00 pm – 6:00 pm, on Fridays, following the scheduled Board meetings.

CURRENT INITIATIVES

UPDATES IN INTERNAL AUDIT:

Internal audit is working closely with senior management to ensure that control processes are consistent with, and in alignment with, senior management strategic objectives.

Internal audit is adapting to changes being made and contemplated by senior management.

Committee adjourned for break @ 10:30 am.

UPDATE ON EXTERNAL AUDIT (Joe Patrick, engagement partner from Schneider Downs):

Committee reconvened with Joe Patrick presenting on external audit.

Financial Statements evaluated from 4 perspectives:

1. revenue cycle
2. disbursement cycle
3. investments
4. reserve for compensation

control evaluation:

1. revenue cycle
2. disbursement cycle

balance sheet evaluation:

1. investments
2. reserve for compensation

95% complete with control testing; findings to be reported in approximately 10 days

Audit to be completed by 09/27/07 (final delivery of audit report); nothing to suggest that completion of report will be delayed

Disabled Workers Relief Fund (DWRF) issue: a liability entry (\$1.9 billion) has been made, but an asset entry has yet to be made; new legislation is required to enable BWC to make asset entry

Mr. Lhota motioned to enter executive session, seconded by Mr. Fulton to discuss confidential matters relating to the external audit that is not complete. All three committee directors voted to enter executive session. Executive session into @ 10:50 am.

Mr. Lhota motioned, and seconded by Mr. Fulton to exit Executive Session @ 11:00.
Vote to end executive session unanimously.

Motion to adjourn committee meeting made by Mr. Lhota, seconded by Mr. Fulton.
Meeting adjourned at 11:05 am.

Minutes taken by Tom Woodruff, BWC Staff Counsel.

OHIO BUREAU OF WORKERS' COMPENSATION

AUDIT COMMITTEE CHARTER

Draft

PURPOSE

The Audit Committee has been established to assist the Board of Directors of the Ohio Bureau of Workers' Compensation in fulfilling its fiduciary oversight responsibilities through:

- Oversight of the integrity of financial reporting process.
- Compliance with legal and regulatory requirements.
- Monitor the design and effectiveness of the system of internal control.
- Confirm external auditor's qualifications and independence.
- Review performance of the internal audit function and independent auditors.

AUTHORITY

The Audit Committee has the authority to conduct or authorize investigations into any matters within its scope of responsibility.

1. Recommend to the Board an accounting firm to perform the annual audit required under R.C. 4123.47. Recommend an auditing firm for the Board to use when conducting audits under R.C. 4121.125.
2. Retain and oversee consultants, experts, independent counsel, and accountants to advise the Committee on any of its responsibilities or assist in the conduct of an investigation.
3. Seek any information it requires from employees—all of whom are directed to cooperate with the Committee's requests, or the requests of internal or external parties working for the Committee. These parties include, but are not limited to internal auditors, all external auditors, consultants, investigators and any other specialists working for the Committee.
4. Review results of each annual audit and management review; if problems exist, assess appropriate course of action to correct, and develop action plan. Monitor implementation of any action plans created to correct problems noted in annual audit.
5. All Committee actions must be ratified or adopted by the Board of Directors of the Bureau of Workers' Compensation to be effective.

COMPOSITION

The Committee shall be composed of a minimum of three (3) members, appointed by majority vote of the Board of Directors of the Ohio Bureau of Workers' Compensation. One member must be a certified public accountant.

MEETINGS

By majority vote, determine how often the audit committee shall meet and report to the Board. The Committee will invite members of management, external auditors, internal auditors and/or others to attend meetings and provide pertinent information, as necessary. Subject to open

meeting laws, the Committee will hold executive sessions with external auditors, when deemed appropriate in the performance of their duties.

RESPONSIBILITIES

The Audit Committee shall have responsibility for the following:

1. Oversight of the integrity of the financial information reporting process:
 - Review with management and the external auditor significant financial reporting issues and judgments made in connection with the preparation of the financial statements.
 - Review with management and the external auditor the results of the audit.
2. Developing an oversight process to assess the adequacy and effectiveness of internal controls and provide the mechanisms for periodic assessment of system of internal controls on an ongoing basis.
3. Overseeing the assessment of internal administrative and accounting controls by both the external independent financial statement auditor and internal auditor.
4. Consulting on the appointment and/or removal of the Chief of Internal Audit and have oversight on the work of the Internal Audit Division.
5. Serving as the primary liaison for Bureau of Workers' Compensation Board of Directors and providing a forum for handling all matters related to audits, examinations, investigations or inquiries of the Auditor of State and other appropriate State or Federal agencies.
6. Ensuring the independence of the external auditor and approve all auditing, other attestations services and pre-approve non-audit services performed by the external auditor.
7. Reporting to the Board of Directors of the Bureau of Workers' Compensation on all activities, findings and recommendations of the Committee.
8. Establishing policies and procedures to function effectively.
9. At least once every 10 years, have an independent auditor conduct a fiduciary performance audit of BWC's investment program, policies and procedures. Provide a copy of audit to the Auditor of State.
10. Review all internal audit reports on regular basis.

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THE RULE-MAKING PROCESS EXPLAINED

The state legislature has given state agencies the ability to adopt rules to implement and/or clarify laws. Agencies can use one of two methods. These methods are named after the Ohio Revised Code citation -- a “119” rule or a “111.15” rule.

The “119” rule-making process is mandatory, unless the legislature exempts an agency from that process, and allows them to use the 111.15 rule process. For BWC, the exempt (111.15) rules are generally related to rate rules.

1. BWC’s Rule Making Process

- Rules are proposed by interested BWC Departments.
- BWC’s Legal Division helps prepare rules & handles filing process with Register of Ohio and JCARR.
- To enact any BWC rule, the Board must first give its advice & consent.

2. Basic Chapter 119 rule process (106-115 days for completion)

- After BWC files proposed rule on-line at the Register of Ohio, BWC conducts public hearing on the rule (within 31 to 40 days of filing rule).
- Joint Committee on Agency Rule Review (J.C.A.R.R.) holds hearing on the rule within 65 days of rule filing. JCARR reviews the rules to determine that:
 - The rules do not exceed the scope of the rule-making agency's statutory authority;
 - The rules do not conflict with a rule of that agency or another rule-making agency;
 - The rules do not conflict with the intent of the legislature in enacting the statute under which the rule is proposed; and,
 - The rule-making agency has prepared a complete and accurate rule summary and fiscal analysis of the proposed rule, amendment, or rescission.
- JCARR’s *only* option is to recommend that a rule be invalidated.
- If JCARR does not take action to invalidate a rule, at the end of JCARR’s jurisdiction, BWC “final files” the rule to be effective no sooner than 10 days later.
- Properly promulgated rules have the force and effect of law.
- Public participation: BWC’s public hearing

3. R.C. 111.15 rules (10 days for completion)

- The exempt rules are generally BWC rate rules
- These rules are filed with the Register of Ohio, but are not subject to public hearing or JCARR review.
- These rules are effective no sooner than 10 days from filing.
- Public participation: interested parties can provide informal input during rule preparation; proposed rules are distributed to interested parties.
- At a minimum, BWC must review its rules every 5 years to determine whether to:
 - Continue the rule without amendment;
 - Rescind the rule; or,
 - Amend the rule.

Executive Summary
Application for Coverage: R.C. 4123.32; Rule 4123-17-13

Legislative History

H.B. 100, effective September 10, 2007, amended R.C. 4123.32 to provide that an employer must provide at least some basic required information to BWC on an application for workers' compensation coverage, or BWC can deny the application. An employer files for coverage on BWC form U-3. R.C. 4123.32 states:

The administrator of workers' compensation, with the advice and consent of the bureau of workers' compensation board of directors, shall adopt rules with respect to the collection, maintenance, and disbursements of the state insurance fund including all of the following: ...

(F) A rule providing that each employer, on the occasion of instituting coverage under this chapter, shall submit an application for coverage that completely provides all of the information required for the administrator to establish coverage for that employer, and that the employer's failure to provide all of the information completely may be grounds for the administrator to deny coverage for that employer.

Rule Procedure

This rule is a Chapter 119 rule. Upon the Board's advice and consent to the rule, BWC will schedule a public hearing on the rule and the rule is also subject to the jurisdiction of the Joint Committee on Agency Rule Review.

Summary of Rule Amendments

4123-17-13 Rule controlling the making of the initial application for rating.

Paragraph (A) of the rule contains minor grammatical changes of the passive voice to the active voice to clarify the meaning of the rule. The last sentence clarifies that BWC will return the employer's security deposit upon cancellation of coverage only if there is no successor employer.

New paragraph (A)(1) list the required elements the employer shall provide on the U-3 application. The employer shall provide the:

- (a) Legal name of the employer;
- (b) Address of the employer;
- (c) Federal identification number or social security number;
- (d) Business entity type (corporation, L.L.C., sole proprietorship, partnership, etc.);
- (e) Information related to whether the applicant for coverage has purchased an existing business or is has another associated policy;
- (f) Name of the owner or corporate officer, and, where applicable for elective coverage, the name of the sole proprietor, partners, or minister;

- (g) Information related to the description of the employer's operations;
- (h) Signature of the person completing the application for coverage.

Under Paragraph (A)(2) of the rule, BWC will attempt to contact the employer to obtain the required information if it is not on the U-3 application. However, if the applicant does not provide the required information, BWC shall deny the employer's application for coverage.

Under Paragraph (A)(3) of the rule, an employer's coverage shall begin at the time BWC receives a completed application for coverage and the minimum security deposit required by rule 4123-17-16 of the Administrative Code, subject to the BWC's verification of the application. The coverage is effective from the date of application unless the application is deficient and the employer did not provide the additional information. In such case, BWC shall deny the employer's application for coverage from the time of the application. If the employer is in business without coverage, the employer may be a non-complying employer and subject to premium and penalties for the period of non-compliance.

Paragraphs (B) and (C) of the rule are essentially unchanged.

4123-17-13 Rule controlling the making of the initial application for rating.

(A) The bureau shall ascertain the amount of premium due from an individual employers ~~is ascertained employer~~ by applying the basic rate for the occupation or employment in which the employer is engaged to the estimated expenditure of wages for the ensuing six months and also for an additional adjustment period of two months; that is, the advance estimate should be made for a period of eight months. Employers are required to file with the bureau of workers' compensation an application setting forth the name and address of the employer, ~~the location of all places where employees are employed,~~ a description of the work done or industry conducted ~~at each such place by the employer,~~ the estimated average number of employees in each kind of work, the estimated total payroll for the ensuing six months, and an estimated total payroll for an additional adjustment period of two months, and such other information as may be requested by the bureau. Upon receipt of the application, the bureau will classify the applicant-employer's status ~~will be classified~~ as to the type of industry or nature of the enterprise with respect to the degree of hazard involved and the bureau shall advise the applicant ~~shall be advised~~ as to his the employer's classification, rate, and amount of first premium security deposit, calculated on a basis of an estimated expenditure or wages for eight months in advance, and at the same time the bureau will furnish the applicant ~~will be furnished~~ with an invoice on which to remit payment of such premium security deposit. ~~This~~ The bureau shall retain this premium security deposit ~~shall be retained~~ as an adequate eight-month premium deposit subject to a periodic review by the bureau. The bureau shall return ~~and~~ any unearned portion of this deposit ~~shall be returned~~ to the employer upon cancellation of the coverage, if there is no successor, subject to audit.

(1) On the occasion of instituting coverage under this rule, the employer shall submit an application for coverage that completely provides all the information required for the bureau to establish coverage for the employer. The employer shall, at a minimum, provide the following information:

(a) Legal name of the employer;

(b) Address of the employer;

(c) Federal identification number or social security number;

(d) Business entity type (corporation, L.L.C., sole proprietorship, partnership, etc.);

(e) Information related to whether the applicant for coverage has purchased an existing business or is has another associated policy;

(f) Name of the owner or corporate officer, and, where applicable for elective coverage, the name of the sole proprietor, partners, or minister;

(g) Information related to the description of the employer's operations;

(h) Signature of the person completing the application for coverage.

(2) If the bureau receives an application for coverage that does not contain all of the information required by paragraph (A)(1) of this rule, the bureau will attempt to contact the employer to obtain the required information. If the applicant does not provide the required information, the bureau shall deny the employer's application for coverage based upon the employer's failure to provide all the information required by paragraph (A)(1) of this rule.

(3) An employer's coverage shall begin at the time the bureau receives the application for coverage that completely provides all the information required for the bureau to establish coverage for the employer and the minimum security deposit required by rule 4123-17-16 of the Administrative Code. The employer's coverage is subject to the bureau's verification of the application for coverage. If the bureau is required to contact the employer to obtain any of the information required by paragraph (A)(1) of this rule and the bureau obtains the required information, the employer's coverage shall remain effective from the time of the receipt of the application. If the applicant does not provide the required information, the bureau shall deny the employer's application for coverage from the time of the application. When an applicant fails to provide the information required by paragraph (A)(1) of this rule and has employed one or more persons, the employer may be considered a non-complying employer under rule 4123-14-01 of the Administrative Code, and the bureau may recover premium and penalties from the employer under rule 4123-14-02 of the Administrative Code.

(B) New coverage shall be granted upon receipt of a written binder when deemed to be in the best interest of the risk and the bureau of ~~workers' compensation~~. Such binder shall be granted by the administrator or his designee. The binder shall be effective for the period of thirty days from the date of issuance and cannot be renewed. The premium security deposit must be billed by the bureau and paid by the risk before the thirty days expire. Payroll reports and premium charges shall coincide with the effective date of said binder.

(C) If the bureau determines, after reviewing the information submitted with the application provided for in paragraph (A) of this rule, that the employer is essentially the same employer regardless of entity type for which risk coverage previously had been provided, the bureau may transfer the prior risk coverage to the employer and the employer shall assume any outstanding obligations under the prior risk coverage. The bureau may reactivate a previously cancelled risk coverage in order to complete this transfer.

R.C. 119.032 review dates: 03/01/2008

Promulgated Under: 119.03

Statutory Authority: 4121.12, 4121.121, 4121.13, 4121.30

Rule Amplifies: 4123.29, 4123.32, 4123.34

Prior Effective Dates: 7/1/62; 10/1/79; 9/1/93, 7/27/06

Executive Summary
Proposed HPP Hospital Inpatient Services Payment Rule Changes

Background

The Health Partnership Program (HPP) rules were first promulgated in 1996, prior to the implementation of the HPP in 1997. Subsequently, HPP rules establishing criteria for the payment of various specific medical services were adopted in February 1997.

Ohio Administrative Code 4123-6-37 provides general criteria for the payment of hospital services under the HPP. Ohio Administrative Code 4123-6-37.1 provides specific methodology for the payment of inpatient hospital services. It initially became effective January 1, 2007, and was later amended effective April 1, 2007.

Proposed Rule Changes

Ohio Administrative Code 4123-6-37.1 currently incorporates by reference “42 CFR Part 412 as published in the October 1, 2006 Code of Federal Regulations (CFR),” as well as Federal Register citations to the 2006 Medicare regulations under which the “applicable diagnosis related group (DRG) reimbursement rate” was determined during the last Medicare fiscal year.

Medicare has recently published its 2007 DRG reimbursement regulations in the Federal Register, and 42 CFR Part 412 is scheduled to be updated in the October 1, 2007 CFR. Therefore, BWC is proposing to revise Ohio Administrative Code 4123-6-37.1 to reference the Federal Register citations to the 2007 regulations, and 42 CFR Part 412 as published in the October 1, 2007 CFR.

In addition, BWC is proposing that references in Ohio Administrative Code 4123-6-37.1 to hospitals’ “2004 total inpatient cost-to-charge ratios as reported to Ohio Medicaid” be changed to the 2006 reported ratios, so that BWC may utilize the most current reported information.

Executive Summary
September 2007

4123-6-37.1 Payment of hospital inpatient services.

Unless an MCO has negotiated a different payment rate with a hospital pursuant to rule 4123-6-08 of the Administrative Code, reimbursement for hospital inpatient services shall be as follows:

(A) Reimbursement for hospital inpatient services, other than outliers as defined in paragraph (C) of this rule or services provided by hospitals subject to reimbursement under paragraph (D) of this rule, shall be equal to one hundred fifteen percent of the applicable diagnosis related group (DRG) reimbursement rate for the hospital inpatient service under the medicare program.

(B) In addition to the payment specified by paragraph (A) of this rule, hospitals operating approved graduate medical education programs and receiving additional reimbursement from medicare for costs associated with these programs shall receive an additional per diem amount for direct graduate medical education costs associated with hospital inpatient services reimbursed by the bureau. Hospital specific per diem rates for direct graduate medical education shall be calculated annually by the bureau effective October 1 of each year, using the most current cost report data available from the Centers for Medicare and Medicaid Services, according to the following formula:

$1.15 \times [(total\ approved\ amount\ for\ resident\ cost + total\ approved\ amount\ for\ allied\ health\ cost) / total\ inpatient\ days] = direct\ graduate\ medical\ education\ per\ diem.$

Direct graduate medical education per diems shall not be applied to outliers as defined in paragraph (C) of this rule or services provided by hospitals subject to reimbursement under paragraph (D) of this rule.

(C) Reimbursement for outliers shall be determined as follows:

(1) For hospitals with a ~~2004~~ 2006 total inpatient cost-to-charge ratio as reported to Ohio medicaid, outliers shall be defined as hospital inpatient stays in which the hospital's allowable billed charges multiplied by the hospital's ~~2004~~ 2006 total inpatient cost-to-charge ratio as reported to Ohio medicaid is more than two standard deviations above the applicable medicare DRG value, and reimbursement for outliers shall be equal to the hospital's allowable billed charges multiplied by the hospital's ~~2004~~ 2006 total inpatient cost-to-charge ratio as reported to Ohio medicaid, not to exceed sixty percent of the hospital's allowable billed charges;

(2) For hospitals without a ~~2004~~ 2006 total inpatient cost-to-charge ratio as reported to Ohio medicaid and out-of-state hospitals, outliers shall be defined as hospital inpatient stays in which sixty percent of the hospital's allowable billed charges is more than two standard deviations above the applicable medicare DRG value, and reimbursement for outliers shall be equal to sixty percent of the hospital's allowable billed charges.

(D) Reimbursement for inpatient services provided by hospitals and distinct-part units of hospitals designated by the medicare program as exempt from DRG-based reimbursement shall be determined as follows:

(1) For Ohio hospitals with a ~~2004~~ 2006 total inpatient cost-to-charge ratio as reported to Ohio medicaid, reimbursement shall be equal to the hospital's allowable billed charges multiplied by the hospital's reported cost-to-charge ratio plus twelve percentage points, not to exceed seventy percent of the hospital's allowed billed charges.

(2) For Ohio hospitals without a ~~2004~~ 2006 total inpatient cost-to-charge ratio as reported to Ohio medicaid and out-of-state hospitals, reimbursement shall be equal to sixty-six percent of the hospital's allowed billed charges.

For purposes of this rule, the "applicable diagnosis related group (DRG) reimbursement rate" or "value" shall be determined in accordance with the medicare program established under Title XVIII of the Social Security Act, 79 Stat. 286 (1965), 42 U.S.C. 1395 as amended, as implemented by the following materials, which are incorporated by reference:

(a) 42 CFR Part 412 as published in the October 1, ~~2006~~ 2007 Code of Federal Regulations;

(b) Department of Health and Human Services, Centers for Medicare and Medicaid Services' "~~42 CFR Parts 409, 410, 412, 413, 414, 424, 485, 489, and 505 Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2007 Rates; Fiscal Year 2007 Occupational Mix Adjustment to Wage Index; Health Care Infrastructure Improvement Program; Selection Criteria of Loan Program for Qualifying Hospitals Engaged in Cancer Related Health Care and Forgiveness of Indebtedness; and Exclusion of Vendor Purchases Made Under the Competitive Acquisition Program (CAP) for Outpatient Drugs and Biologicals Under Part B for the Purpose of Calculating the Average Sales Price (ASP).~~" Federal Register, Volume 71, Number 160, Pages 47869-47918, August 18, 2006 "42 CFR Parts 411, 412, 413, and 489 Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2008 Rates; Final Rule." Federal Register Vol. 72 No. 162 Pages 47129-48175, August 22, 2007 ;

(c) Department of Health and Human Services, Centers for Medicare and Medicaid Services' "~~42 CFR Parts 409, 410, 412, 413, 414, 424, 485, 4123-6-37.1 2 489, and 505 Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2007 Rates; Correction.~~" Federal Register, Volume 71, Number 191, Pages 58286-58287, October 3, 2006;

~~(d) Department of Health and Human Services, Centers for Medicare and Medicaid Services' "Medicare Program; Hospital Inpatient Prospective Payment Systems and Fiscal Year 2007 Rates: Final Fiscal Year 2007 Wage Indices and Payment Rates After Application of Revised Occupational Mix Adjustment to Wage Index" Federal Register, Volume 71, Number 196, Page 59885-60043 October 11, 2006.~~

Effective Date: 1/1/08

Prior Effective Dates: 1/1/07, 4/1/07

**Ohio Bureau of Workers' Compensation
Board of Directors
Actuarial Committee**

Issues Draft

1. Group Rating Methodology
2. Target Net Assets
3. Undiscounted Ultimate Loss Reserves
4. Discount Rate Selection and Application
5. Use of Actuarial Consultants
6. Medical Cost Trend – Measuring and Controlling
7. Use of NCCI Methodologies
8. Dividend Policy and Procedures
9. Data Quality
10. Information Sharing with Industrial Commission

Disabled Workers' Relief Fund and Self-Insuring Employers' Guaranty Fund
Position Paper
Accounting for Claim Liabilities

The Disabled Workers' Relief Fund (DWRF) was created and is operated pursuant to Chapter 4123.411 through 4123.414 of the Ohio Revised Code (ORC). DWRF provides permanently and totally disabled (PTD) workers' with a supplemental stipend to offset increases in the cost of living. Generally, disabled workers are eligible for DWRF benefits if their combined workers' compensation and social security disability benefits are less than a statutorily mandated base.

DWRF I covers DWRF benefits awarded for injuries incurred prior to January 1, 1987. DWRF I is funded by an assessment of at least 5 cents, but not to exceed 10 cents per one hundred dollars of payroll. For many years the DWRF rate was inadequate to fund DWRF I benefits and was supplemented by investment earnings from the State Insurance Fund (SIF). There has not been a need for SIF to supplement DWRF since January 2004.

In 1986, Senate Bill 307 established DWRF II. DWRF II covers DWRF benefits awarded for injuries incurred on or after January 1, 1987. DWRF II is funded by assessments based on employer payroll and rates recommended by the Administrator and approved by the Workers' Compensation Oversight Commission.

Initially DWRF II rates were established with the intent to fund DWRF II on a fully pre-funded basis. In 1988, the Attorney General (AG) issued an informal opinion that DWRF II should be operated on a terminal-funding basis. This opinion was affirmed in 1993 when the AG issued a formal opinion concluding that DWRF II assessments shall be levied at a rate that will produce an amount no greater than the amount that is sufficient to make supplemental benefit payments during the period for which the assessment is levied.

BWC has not recorded a reserve for compensation for either DWRF I or DWRF II in the statement of net assets. The reserve totals were disclosed in the financial statement footnotes. The 1981 AG opinion indicated that the DWRF I funding provisions "do not contain any language which can be read as requiring or authorizing the maintenance of a reserve." This same conclusion was reached in the 1993 AG opinion regarding funding for DWRF II. Thus it was determined that DWRF I and DWRF II were operated on a pay-as-you-go, terminal funding basis.

Should the method of determining the level of DWRF assessments impact whether or not a liability has been incurred and reported in BWC's financial statements? The remainder of this paper reviews more recent Governmental Accounting Standards that address accounting for enterprise funds and how these standards apply to DWRF.

Governmental Accounting Standards Board Statement Number 34 (GASB 34) paragraph 67 requires that activities be reported in an enterprise fund if laws or regulations require that the activity's costs of providing services be recovered with fees and charges.

Generally Accepted Accounting Principles also mandate the use of an enterprise fund for the separately issued financial statements of public-entity risk pools. In Governmental Accounting Standards Board Statement Number 10 (GASB 10), a public entity risk pool is defined as a "cooperative group of governmental entities joining together to finance an exposure, liability, or risk. Risk may include property and liability, workers' compensation, or employee health care." GASB 10 paragraph 76 extends the

Disabled Workers' Relief Fund and Self-Insuring Employers' Guaranty Fund
Position Paper
Accounting for Claim Liabilities

accounting requirements for a public entity risk pool to entities providing insurance or risk management coverage to individuals or organizations outside the governmental reporting entity with a material transfer or pooling of risk among the participants.

The statutes creating DWRF intended for the annual cost of providing DWRF benefits be financed through annual user charges. Employers pay DWRF assessments in conjunction with their workers' compensation premiums. In exchange, BWC provides workers' compensation insurance along with cost of living benefits for permanently and totally disabled workers. The activities of DWRF meet both of the above requirements mandating the use on an enterprise fund.

GASB 10 paragraph 22 indicates that liabilities should be established for unpaid claims costs when insured events occur. "The liability should be based on the estimated ultimate cost of settling the claims (including the effect of inflation and other societal and economic factors)." In this case, the insured event would be the injury that results in a PTD claim.

GASB 34 paragraph 92 indicates that the financial statements of an enterprise fund should be presented using the economic resources measurement focus and the accrual basis of accounting. The economic resources measurement focus reports all inflows, outflows, and balances affecting or reflecting an entity's net assets. The accrual basis of accounting recognizes the financial effect of transactions and events when they occur, regardless of the timing of related cash flows. This measurement focus and accounting basis are used by private sector entities.

Comparisons can be made between the accounting for DWRF benefits and the accounting for defined benefit pension plans. Much like the actuarially accrued liability for pensions, DWRF benefits are not expected to be liquidated with expendable available resources. If DWRF were to be accounted for in a governmental fund, the liability for unfunded DWRF obligations like unfunded pension obligations would not be reported in the governmental fund financial statements. However, the unfunded liabilities for pension obligations would be reported as liability in the accrual-based, government wide financial statements. Thus the conclusion is reached that the unfunded liability for DWRF benefits must be included in the accrual-based financial statements for an enterprise fund.

Even though DWRF is funded on a pay-as-you-go-basis, it does not eliminate the need to record the estimated ultimate liabilities for DWRF benefits in BWC's accrual-based financial statements.

These same conclusions apply to the Self-Insuring Employers' Guaranty Fund (SIEGF). SIEGF was created and is pursuant to ORC 4123.351. SIEGF provides for the payment of compensation and medical benefits to employees of defaulting self-insured employers. SIEGF is funded by assessments to self-insured employers "at rates as low as possible but such as will assure sufficient moneys to guarantee the payment of any claims against the fund."

The statute is clear that the cost of providing benefits in SIEGF is to be recovered with fees charged to the self-insured community, thus meeting the requirement mandating the use of an enterprise fund and accrual-based accounting.

Disabled Workers' Relief Fund and Self-Insuring Employers' Guaranty Fund
 Position Paper
 Accounting for Claim Liabilities

The actuarially calculated reserves for SIEGF should be recorded as a liability in BWC's accrual-based financial statements. BWC will also record an unbilled assessment receivable equal to the discounted reserve for compensation as BWC has the authority to assess premiums against self-insured employers in future periods to meet the cash-flow requirements of SIEGF.

Impact to Prior Period Financial Statements

| | |
|---|---------------------------|
| | (000's omitted) |
| Net Assets as of June 30, 2003 | 552,379 |
| Prior Period Adjustments that Increased (Decreased) Net Assets: | |
| DWRF Reserves for Compensation | (2,208,650) |
| DWRF Reserves for Loss Adjustment Expenses | (66,300) |
| DWRF Unbilled Premiums - PES | 74,137 |
| SIEGF Reserves for Compensation | (416,154) |
| SIEGF Unbilled Premiums -SI | 416,154 |
| ACF Reserves for SIEGF Loss Adjustment Expenses | (25,600) |
| ACF Unbilled Premiums SI | 25,600 |
| Net Deficit as of June 30, 2003 (Restated) | <u><u>(1,648,434)</u></u> |
| | |
| Net Assets as of June 30, 2004 | 860,770 |
| Impact of 2003 Adjustments | (2,200,813) |
| DWRF Reserves for Compensation | 384,487 |
| DWRF Reserves for Loss Adjustment Expenses | 11,600 |
| DWRF Unbilled Premiums - PES | (11,900) |
| SIEGF Reserves for Compensation | (176,279) |
| SIEGF Unbilled Premiums -SI | 176,279 |
| ACF Reserves for SIEGF Loss Adjustment Expenses | (9,500) |
| ACF Unbilled Premiums SI | 9,500 |
| Net Deficit as of June 30, 2004 (Restated) | <u><u>(955,856)</u></u> |

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Office of the Attorney General
State of Ohio
Opinion No. 81-034

July 10, 1981

SYLLABUS:

R.C. 4123.411 requires the Industrial Commission to set the assessments for the Disabled Workers' Relief Fund, within the limits specified in R.C. 4123.411, at a level that will produce an amount no greater than the amount estimated by the Commission to be necessary to carry out the provisions of R.C. 4123.412 to 4123.418 for the period for which the assessments are levied.

William W. Johnston
Chairman
Industrial Commission of Ohio
246 North High Street
Columbus, Ohio 43215

Dear Sir:

I have before me your request for my opinion in which you present the following question:

Should the Commission maintain the Disabled Workers' Relief Fund at the level necessary to carry out the provisions of Section 4123.412 and 4123.418 for the period for which the assessment is levied or should the Commission maintain actuarial reserves for the Disabled Workers' Relief Fund?

The Disabled Workers' Relief Fund was created as a separate fund in 1953 when the 100th General Assembly enacted R.C. 4123.412, 4123.413, 4123.414, 4123.415, 4123.416, 4123.417 and 4123.418. 1953 Ohio Laws 506. R.C. 4123.412

currently provides:

For the relief of persons who are permanently and totally disabled as the result of injury or disease sustained in the course of their employment and who are receiving workers' compensation which is payable to them by virtue of and under the laws of this state in amounts, the total of which, when combined with disability benefits received pursuant to The Social Security Act is less than three hundred forty-two dollars per month adjusted annually as provided in division (B) of section 4123.62 of the Revised Code, there is hereby created a separate fund to be known as the disabled workers' relief fund, which fund shall consist of such sums as are from time to time appropriated by the general assembly and made available to the order of the industrial commission to carry out the objects and purposes of sections 4123.412 to 4123.418 of the Revised Code. Said fund shall be in the custody of the treasurer of the state and disbursements therefrom shall be made by the industrial commission to those persons entitled to participate therein and in such amounts to each participant as is provided in section 4123.414 of the Revised Code.

Originally the Disabled Workers' Relief Fund was funded by legislative appropriations. However, in 1959 the primary method of funding was changed by the enactment of R.C. 4123.411, which provided for an assessment against the payroll of all employers. 1959 Ohio Laws 535 (103rd Gen. A.). Although the assessment against payroll continues to be the primary source of funding, a secondary source of funding was created in 1975 when the 111th General Assembly amended R.C. 4123.411 (1975 Ohio Laws, Pt. 2, 2917) to provide that if the assessment is not sufficient, the additional amount necessary shall be provided from the income produced as a result of investments made pursuant to R.C. 4123.44. Currently R.C. 4123.411 provides:

For the purpose of carrying out sections 4123.412 to 4123.418 of the Revised Code, the industrial commission shall levy an assessment

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against all employers at a rate, of at least five but not to exceed ten cents per one hundred dollars of payroll, beginning July 1, 1980, such rate to be determined annually for each employer group listed in divisions (A) to (D) of this section, which will produce an amount no greater than the amount estimated by the commission to be necessary to carry out such sections for the period for which the assessment is levied. In the event the amount produced by the assessment is not sufficient to carry out such sections the additional amount necessary shall be provided from the income produced as a result of investments made pursuant to section 4123.44 of the Revised Code.

Assessments shall be levied according to the following schedule:

(A) Private fund employers, except self-insured employers-in January and July of each year upon gross payrolls of the preceding six months;

(B) Counties and taxing district employers therein-in January of each year upon gross payrolls of the preceding twelve months;

(C) The state as an employer-in July of each year upon gross payrolls of the preceding twelve months;

(D) Self-insured employers-in January and July of each year upon gross payrolls of the preceding six months.

Amounts assessed in accordance with this section shall be collected from each employer as prescribed in rules adopted by the industrial commission pursuant to division (E) of section 4121.13 of the Revised Code.

The moneys derived from the assessment provided for in this section shall be credited to the disabled workers' relief fund created by section 4123.412 of the Revised Code. The commission shall establish by rule classifications of employers within divisions (A) to (D) of this section and shall determine rates for each class so as to fairly apportion the costs of carrying out sections 4123.412 to 4123.418 of the Revised Code.

Consistent with the primary funding provision of R.C. 4123.411, the 103rd General Assembly also enacted R.C. 4123.419 (1959 Ohio Laws 1332 (H.B. 1131)), which currently provides:

The assessment rate established pursuant to section 4123.411 of the Revised Code, subject to the limits set forth in that section, shall be adequate to provide the amounts estimated as necessary by the industrial commission to carry out the provisions of sections 4123.412 to 4123.418 of the Revised Code, and in addition to provide moneys to reimburse the general revenue fund for moneys appropriated by section 2 of H.B. No. 1131 of the 103rd general assembly or by the 104th and succeeding general assemblies for disabled workmen's relief. When such additional moneys are available in whole or in part for the purpose of making such reimbursement, the director of budget and management shall certify such amount to the industrial commission who shall thereupon cause such moneys to be paid to the general revenue fund from the disabled workmen's relief fund except that any amounts due because of the state's obligation as an employer pursuant to section 4123.411 of the Revised Code and not paid to the disabled workmen's relief fund shall be deducted from any such reimbursement.

The primary source of funding is, therefore, an assessment on the payroll of all employers. Unlike premiums paid into the State Insurance Fund, to which your request refers, the assessment for the Disabled Workers' Relief Fund is not affected by the employer's merit rating. See R.C. 4123.34(C). The employer's accident experience has absolutely no bearing upon the assessment rate.

The level at which the Disabled Workers' Relief Fund must be maintained is also substantially different from that of the State Insurance Fund. R.C. 4123.29 requires that the premium rates for the State Insurance Fund shall be set at a level that assures its solvency. Specifically, the statute provides:

The industrial commission shall classify occupations or industries with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premium of the risks of the same, based upon the total payroll in each of said classes of occupation or industry sufficiently large to provide a fund for the compensation provided for in Chapter 4123. of the Revised Code, and to maintain a state insurance fund from year to year. The

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rates shall be set at a level that assures the solvency of the fund. Where the payroll cannot be obtained or, in the opinion of the commission, is not an adequate measure for determining the premium to be paid for the degree of hazard, the commission may determine the rates of premium upon such other basis, consistent with insurance principles, as is equitable in view of the degree of hazard, and whenever in such sections reference is made to payroll or expenditure of wages with reference to fixing premiums, such reference shall be construed to have been made also to such other basis for fixing the rates of premium as the commission may determine under this section.

The commission in setting or revising rates shall furnish to employers an adequate explanation of the basis for the rates set. (Emphasis added.)

In addition to the requirement of a solvent fund sufficiently large to provide for the compensation provided in R.C. Chapter 4123, R.C. 4123.34 also necessitates the creation and maintenance of a reasonable surplus. R.C. 4123.34 provides in part:

The industrial commission, in the exercise of the powers and discretion conferred upon it in section 4123.29 of the Revised Code, shall fix and maintain, for each class of occupation, or industry, the lowest possible of premium consistent with the maintenance of a solvent state insurance fund and the creation and maintenance of a reasonable surplus, after the payment of legitimate claims for injury, occupational disease, and death that it may authorize to be paid from the state insurance fund for the benefit of injured, diseased, and the dependents of killed employees (Emphasis added.)

I understand that historically the Industrial Commission has interpreted the emphasized language of R.C. 4123.29 and 4123.34, quoted above, as requiring the State Insurance Fund to have a reserve which will enable it to meet the calculated future liability of the fund as of any given point in time. I further understand that the Commission sets premiums at a level to provide for such a reserve. Such an interpretation is in accordance with the statutory language requiring the setting of premium rates at a level that assures the solvency of the fund and the maintenance of a reasonable surplus.

The Disabled Workers' Relief Fund funding provisions, on the other hand, do not contain any language which can be read as requiring or authorizing the maintenance of a reserve. R.C. 4123.411 provides that the Industrial Commission shall levy an assessment, within the limits specified, which will produce an amount 'no greater than' the amount estimated by the Commission to be necessary to carry out R.C. 4123.412 to 4123.418 'for the period for which the assessment is levied.' R.C. 4123.411 also requires that the assessments be levied according to a specific schedule. The schedule provides that private fund employers and self-insured employers shall be assessed in January and July of each year upon the gross payroll for the preceding six months, and that counties and taxing district employers therein shall be assessed in January, and the state as an employer shall be assessed in July, both upon the gross payroll for the preceding twelve months.

A well-settled principle of statutory construction is that words in a statute are to be given their plain and ordinary meaning unless it is otherwise clearly indicated. Crane v. Comm'r of Internal Revenue, 331 U.S. 1 (1947); Lake County National Bank v. Kosydar, 36 Ohio St. 2d 189, 305 N.E.2d 799 (1973); Wachendorf v. Shaver, 149 Ohio St. 231, 78 N.E.2d 370 (1948).

Applying this principle to the language of R.C. 4123.411, I must conclude that the Commission is required to 'levy an assessment against all employers at a rate, of at least five but not to exceed ten cents per one hundred dollars of payroll, beginning July 1, 1980,' but that, within these limits, the Commission has no authority to levy an assessment for the Disabled Workers' Relief fund which would produce an amount greater than the amount necessary to carry out the provisions of R.C. 4123.412 to 4123.418 for the period for which the assessments are levied. The legislative intent is clearly expressed in the statute. To levy assessments at a rate which would be sufficient to create a surplus or a reserve would be to exceed the statutory authority contained in R.C. 4123.411.

Therefore, in specific response to your question, it is my opinion, and you are so advised, that R.C. 4123.411 requires the Industrial Commission to set the assessments for the Disabled Workers' Relief Fund, within the limits specified in R.C. 4123.411, at a level that will produce an amount no greater

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than the amount estimated by the Commission to be
necessary to carry out the provisions of R.C.
4123.412 to 4123.418 for the period for which the
assessments are levied.

Respectfully,
William J. Brown
Attorney General

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1993 Ohio Op. Atty. Gen. 2-57, 1993 Ohio Op. Atty. Gen. No. 93-011, 1993 WL 349789 (Ohio A.G.)

Office of the Attorney General
State of Ohio
Opinion No. 93-011

May 17, 1993

SYLLABUS:

1. Pursuant to R.C. 4123.411(B), for all injuries and disabilities occurring on or after January 1, 1987, the Administrator of Workers' Compensation is required to levy an assessment against all employers at a rate per one hundred dollars of payroll that will produce an amount no greater than the amount estimated by the Administrator to be necessary to carry out R.C. 4123.412-418 for the period for which the assessment is levied.

2. R.C. 4123.411(B) does not authorize the Administrator of Workers' Compensation to levy the assessment therein described at a rate that will create a reserve within the disabled workers' relief fund.

J. Wesley Trimble, Administrator
Bureau of Workers' Compensation
30 West Spring Street
Columbus, Ohio 43266-0581

Dear Administrator Trimble:

You have requested an opinion regarding the appropriate method of levying assessments under R.C. 4123.411(B) with respect to the disabled workers' relief fund. Created in 1953 by R.C. 4123.412, [FN1] see 1953-1954 Ohio Laws 506, 508 (Am.Sub.H.B. 105, eff. Oct. 21, 1953), the disabled workers' relief fund "was designed to subsidize the monthly income of permanently and

totally disabled workers whenever it fell below a certain statutory minimum." State ex rel. Martin v. Connor, 9 Ohio St.3d 213, 213, 459 N.E.2d 889, 890 (1984). A disabled worker who is eligible to participate in that fund, see R.C. 4123.413, receives an additional monthly benefit, the amount of which is determined in accordance with the formula set forth in R.C. 4123.414. See Thompson v. Industrial Commission of Ohio, 1 Ohio St.3d 244, 244, 438 N.E.2d 1167, 1167 (1982) ("[g] enerally speaking, disabled workers are eligible for a [disabled workers' relief fund] payment if their combined workers' compensation and Social Security disability benefits amount to less than a statutorily mandated base"). See also Wean Incorporated v. Industrial Commission of Ohio, 52 Ohio St.3d 266, 557 N.E.2d 121 (1990).

Authority of the Administrator of Workers' Compensation to Levy Assessments Under R.C. 4123.411

Assessments against the payrolls of all employers are the primary sources of the moneys that constitute the disabled workers' relief fund. R.C. 4123.411 empowers the Administrator of Workers' Compensation to levy those assessments. R.C. 4123.411 reads, in part, as follows:

(A) For the purpose of carrying out sections 4123.412 to 4123.418 of the Revised Code, the administrator of workers' compensation, subject to the approval of the workers' compensation board, shall levy an assessment against all employers at a rate, of at least five but not to exceed ten cents per one hundred dollars of payroll, such rate to be determined annually for each employer group listed in divisions (A)(1) to (3) of this section, which will produce an amount no greater than the amount estimated by the administrator to be necessary to carry out such sections for the period for which the assessment is levied. In the event the amount produced by the assessment is not sufficient to carry out such sections the additional amount necessary shall be provided from the income produced as a

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result of investments made pursuant to section 4123.44 of the Revised Code.

Assessments shall be levied according to the following schedule:

(1) Private fund employers, except self-insured employers-in January and July of each year upon gross payrolls of the preceding six months;

(2) Counties and taxing district employers therein, except self-insured county hospitals-in January of each year upon gross payrolls of the preceding twelve months;

(3) The state as an employer-in January, April, July, and October of each year upon gross payrolls of the preceding three months.

Amounts assessed in accordance with this section shall be collected from each employer as prescribed in rules adopted by the administrator pursuant to division (E) of section 4121.13 of the Revised Code.

The moneys derived from the assessment provided for in this section shall be credited to the disabled workers' relief fund created by section 4123.412 of the Revised Code. The administrator shall establish by rule classifications of employers within divisions (A)(1) to (3) of this section and shall determine rates for each class so as to fairly apportion the costs of carrying out sections 4123.412 to 4123.418 of the Revised Code.

(B) For all injuries and disabilities occurring on or after January 1, 1987, the administrator, for the purposes of carrying out sections 4123.412 to 4123.418 of the Revised Code, shall levy an assessment against all employers at a rate per one hundred dollars of payroll, such rate to be determined annually for each classification of employer in each employer group listed in divisions (A)(1) to (3) of this section, which will produce an amount no greater than the amount estimated by the administrator to be necessary to carry out such sections for the period for which the assessment is levied.

Amounts assessed in accordance with this division shall be billed at the same time premiums are billed and credited to the disabled workers' relief fund created by section 4123.412 of the Revised Code. The administrator shall determine the rates for each

class in the same manner as it fixes the rates for premiums pursuant to section 4123.29 of the Revised Code.

R.C. 4123.411(A) thus directs the Administrator of Workers' Compensation to levy an assessment against all employers at a rate, within the limits specified, that will produce an amount no greater than the amount estimated by the Administrator to be necessary to carry out the provisions of R.C. 4123.412-418 for the period for which that assessment is made. R.C. 4123.411(A) also provides that in the event the amount produced by the assessment is not sufficient to carry out those provisions, the additional amount necessary shall be provided from the income produced as a result of investments made pursuant to R.C. 4123.44. [FN2]

R.C. 4123.411(B), which is the focus of your inquiry, authorizes a second assessment, in addition to that prescribed by R.C. 4123.411(A), against all employers for all injuries and disabilities occurring on or after January 1, 1987. [FN3] As in the case of R.C. 4123.411(A), such assessment is to be levied at a rate that will produce an amount no greater than the amount estimated by the Administrator to be necessary to carry out R.C. 4123.412-418 for the period for which that assessment is levied. Unlike R.C. 4123.411(A), however, R.C. 4123.411(B) does not authorize the use of income produced as a result of investments made pursuant to R.C. 4123.44 to make up any deficiency in the amount of moneys raised by that assessment. In addition, R.C. 4123.411(B) states that the Administrator shall determine the rates of those assessments for each class of employer in the same manner as it fixes the rates for premiums pursuant to R.C. 4123.29. [FN4]

You wish to know whether the assessment under R.C. 4123.411(B) should be levied at a rate that will maintain an appropriate actuarial reserve for future benefit payments, or whether the assessment should be levied only at a rate that will provide adequate cash to make current supplemental benefit payments. You have referred to the language differences in R.C. 4123.411(A) and R.C. 4123.411(B) mentioned above, and you suggest that those differences may justify setting rates under R.C. 4123.411(B) at a level that will produce a reserve within the disabled workers' relief fund for supplemental benefit payments.

R.C. 4123.411(A)

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In 1981 Op. Atty Gen. No. 81-034 the Attorney General addressed the question of whether the Industrial Commission should levy assessments under R.C. 4123.411, [FN5] the provisions of which now appear in R.C. 4123.411(A), see note three, supra, at a rate sufficient to create and maintain a reserve for payments from the disabled workers' relief fund. Op. No. 81-034 advised that the provisions of R.C. 4123.411 neither required nor authorized the Industrial Commission to maintain a reserve for those payments. The opinion stated that this conclusion was warranted by the plain language of R.C. 4123.411 directing the Industrial Commission to levy an assessment, within the limits therein specified, which would produce an amount "no greater than" the amount estimated by the Commission to be necessary to carry out R.C. 4123.412-418 "for the period for which the assessment is levied." On this point Op. No. 81-034 reasoned at 2-132 and 2-133 as follows:

A well-settled principle of statutory construction is that words in a statute are to be given their plain and ordinary meaning unless it is otherwise clearly indicated. *Crane v. Comm'r of Internal Revenue*, 331 U.S. 1 (1947); *Lake County National Bank v. Kosydar*, 36 Ohio St.2d 189, 305 N.E.2d 799 (1973); *Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E.2d 370 (1948).

Applying this principle to the language of R.C. 4123.411, I must conclude that the Commission is required to "levy an assessment against all employers at a rate, of at least five but not to exceed ten cents per one hundred dollars of payroll, beginning July 1, 1980" but that, within these limits, the Commission has no authority to levy an assessment for the Disabled Workers' Relief fund which would produce an amount greater than the amount necessary to carry out the provisions of R.C. 4123.412 to 4123.418 for the period for which the assessments are levied. The legislative intent is clearly expressed in the statute. To levy assessments at a rate which would be sufficient to create a surplus or a reserve would be to exceed the statutory authority contained in R.C. 4123.411. Op. No. 81-034 also noted that, when the General Assembly intended that the Industrial Commission fix assessment or premium rates at a level that would guarantee a

reserve for, and thus the solvency of, a particular fund, it so declared in express language that was clear and unequivocal. As examples in that regard, Op. No. 81-034 referred to the language in R.C. 4123.29 that required the Industrial Commission to set premium rates "at a level that assures the solvency of the [state insurance] fund," and the language in R.C. 4123.34 that directed the Industrial Commission to fix and maintain the lowest possible rates of premium "consistent with the maintenance of a solvent state insurance fund and the creation and maintenance of a reasonable surplus." *Id.* at 2-131 and 2-132. [FN6]

R.C. 4123.411(B)

Similarly, R.C. 4123.411(B) does not authorize the Administrator of Workers' Compensation to levy the assessment therein described at a rate that will produce an actuarial reserve to be used for supplemental benefit payments from the disabled workers' relief fund. Rather, the assessment under R.C. 4123.411(B) is to be levied at a rate that will produce an amount that is sufficient to make supplemental benefit payments during the period for which the assessment is levied. This conclusion is compelled by the first sentence of R.C. 4123.411(B) that directs the Administrator of Workers' Compensation to levy an assessment "which will produce an amount no greater than the amount estimated by the [A]dministrator to be necessary to carry out [R.C. 4123.412-418] for the period for which the assessment is levied." This language of R.C. 4123.411(B) is clear and unambiguous, and thus warrants no further interpretation. See generally *State ex rel. Stanton v. Zangerle*, 117 Ohio St. 436, 159 N.E. 823 (1927) (statutory language that is plain and definite need only be read in order to ascertain its meaning). The logical and reasonable inference from the foregoing language is that the Administrator of Workers' Compensation is not authorized to levy the assessment under R.C. 4123.411(B) at a rate that will produce a reserve for supplemental benefit payments that are to be made other than during the period for which the assessment is levied.

The language differences in R.C. 4123.411(A) and R.C. 4123.411(B) identified previously furnish no support for the opposite conclusion with respect

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to this particular issue. The General Assembly expressly permits assessment deficiencies under R.C. 4123.411(A) to be satisfied with the income that is produced from investments made pursuant to R.C. 4123.44, but does not otherwise permit the same with respect to assessment deficiencies under R.C. 4123.411(B). This does not mean, however, that one may thereby infer authority on the part of the Administrator of Workers' Compensation to levy the assessment under R.C. 4123.411(B) at a rate that will produce a reserve, and thus foreclose the possibility of an assessment deficiency at a future date. Rather, it simply means that the General Assembly has not authorized the use of income produced from investments made pursuant to R.C. 4123.44 to satisfy assessment deficiencies that may occur under R.C. 4123.411(B).

The reference to R.C. 4123.29 in the concluding sentence of R.C. 4123.411(B) also cannot be used to infer authority on the part of the Administrator of Workers' Compensation to levy the assessment under R.C. 4123.411(B) at a rate that will create a reserve within the disabled workers' relief fund for supplemental benefit payments. In that regard R.C. 4123.411(B) states that the Administrator shall determine the assessment rates for each class of employer "in the same manner as it fixes the rates for premiums pursuant to [R.C. 4123.29]." R.C. 4123.29 in turn authorizes the Administrator to fix the premium rates for employer contributions to the state insurance fund, and at a level "that assures the solvency of the fund," R.C. 4123.29(A). The language of R.C. 4123.411(B) that refers to R.C. 4123.29 reasonably can mean that the Administrator shall determine assessment rates for the disabled workers' relief fund by using risk classifications and calculation methods that are similar to those he employs under R.C. 4123.29. It does not further mean, however, that R.C. 4123.29(A)'s solvency directive is to be incorporated into R.C. 4123.411(B), and construed as empowering the Administrator of Workers' Compensation to levy the assessment under R.C. 4123.411(B) at a rate that will create a supplemental benefit payment reserve within the disabled workers' relief fund. Indeed, to do so would nullify and render ineffective R.C. 4123.411(B)'s directive that the Administrator shall levy that assessment at a rate that will produce an amount no greater than the amount estimated to be necessary to carry out R.C.

4123.412-418. See R.C. 1.47(B) ("[i]n enacting a statute, it is presumed that ... [t]he entire statute is intended to be effective").

Conclusion

Based upon the foregoing, it is my opinion, and you are advised that:

1. Pursuant to R.C. 4123.411(B), for all injuries and disabilities occurring on or after January 1, 1987, the Administrator of Workers' Compensation is required to levy an assessment against all employers at a rate per one hundred dollars of payroll that will produce an amount no greater than the amount estimated by the Administrator to be necessary to carry out R.C. 4123.412-418 for the period for which the assessment is levied.

2. R.C. 4123.411(B) does not authorize the Administrator of Workers' Compensation to levy the assessment therein described at a rate that will create a reserve within the disabled workers' relief fund.

Respectfully,
Lee Fisher
Attorney General

[FN1]

R.C. 4123.412 reads as follows:

For the relief of persons who are permanently and totally disabled as the result of injury or disease sustained in the course of their employment and who are receiving workers' compensation which is payable to them by virtue of and under the laws of this state in amounts, the total of which, when combined with disability benefits received pursuant to the social security act is less than three hundred forty-two dollars per month adjusted annually as provided in division (B) of section 4123.62 of the Revised Code, there is hereby created a separate fund to be known as the disabled workers' relief fund, which fund shall consist of the sums that are from time to time appropriated by the general assembly and made available to the order of the bureau of workers' compensation to carry out the objects and purposes of sections 4123.412 to 4123.418 of the Revised Code. The fund shall be in the custody of the treasurer of the state and disbursements therefrom shall be made by the

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bureau to those persons entitled to participate therein and in amounts to each participant as is provided in section 4123.414 of the Revised Code.

[FN2]

R.C. 4123.44(A) authorizes the Administrator of Workers' Compensation, with the approval of the Workers' Compensation Board and the Industrial Commission, to invest any of the surplus or reserve of the state insurance fund, see R.C. 4123.30; R.C. 4123.34(B), in any of the bonds, notes, certificates of indebtedness, mortgage notes, or other obligations or securities thereafter described.

[FN3]

The provisions that appear in division (B) of R.C. 4123.411 were enacted by the General Assembly in 1985-1986 Ohio Laws, Part I, 718, 756 (Am.Sub.S.B. 307, eff. Aug. 22, 1986). That legislation also amended the provisions of former R.C. 4123.411 and redesignated those provisions as R.C. 4123.411(A).

[FN4]

R.C. 4123.29(A) states as follows:

The administrator of workers' compensation, subject to the approval of the workers' compensation board, shall classify occupations or industries with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premium of the risks of the same, based upon the total payroll in each of the classes of occupation or industry sufficiently large to provide a fund for the compensation provided for in this chapter, and to maintain a state insurance fund from year to year. The rates shall be set at a level that assures the solvency of the fund. Where the payroll cannot be obtained or, in the opinion of the commission, is not an adequate measure for determining the premium to be paid for the degree of hazard, the administrator may determine the rates of premium upon such other basis, consistent with insurance principles, as is equitable in view of the degree of hazard, and whenever in this chapter reference is made to payroll or expenditure of wages with reference to fixing premiums, the reference shall be construed to have been made also to such other basis for fixing the rates of premium as the administrator may determine under this section.

The administrator in setting or revising rates

shall furnish to employers an adequate explanation of the basis for the rates set.

[FN5]

1989-1990 Ohio Laws, Part II, 3197, 3338 (Am.Sub.H.B. 222, eff. Nov. 3, 1989) amended R.C. 4123.411(A) and (B) for the purpose of transferring from the Industrial Commission to the Administrator of Workers' Compensation the authority to levy assessments for the disabled workers' relief fund.

[FN6]

1989-1990 Ohio Laws, Part II, 3197, 3315, 3319 (Am.Sub.H.B. 222, eff. Nov. 3, 1989) similarly amended R.C. 4123.29 and R.C. 4123.34 for the purpose of transferring from the Industrial Commission to the Administrator of Workers' Compensation the authority to set premium rates and risk classifications under those two sections.

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END OF DOCUMENT

Ohio Bureau of Workers' Compensation
Position Paper
Unbilled Premiums and Assessments

Ohio Revised Code 4123.40 requires that state agency rates be set at amounts equal to the estimated cost of awards or payments to be made during the next fiscal year. If the amounts remitted to the Bureau for a fiscal period are greater or less than actual awards or payments, the overage or shortage shall be included in determining the rate for the next succeeding fiscal period.

Ohio Revised Code 4123.35.1 requires that assessments for the Self-insuring Employers' Guaranty Fund be set at rates as low as possible but such as will assure sufficient monies to guarantee the payment of claims against the fund. Paragraph H of this section, indicates that the operation of this fund does not create a liability upon the state.

House Bill 100 (signed by the Governor on June 11, 2007) amended Ohio Revised Code 4123.411 to require that assessments for the Disabled Workers' Relief Fund (DWRF) be set at rates as low as possible but that will assure sufficient moneys to guarantee the payment of any claims against the fund.

As rates for state agencies, self-insured employers, and DWRF assessments are calculated on a terminal funding or pay-as-you-go basis, the Ohio Revised Code has provided BWC with the statutory authority to assess employers in future periods for amounts needed to meet these obligations.

Governmental Accounting Standards Board Statement Number 34 (GASB 34) paragraph 67 requires that activities be reported in an enterprise fund if laws or regulations require that the activity's costs of providing services be recovered with fees and charges. The statute is clear that the cost of providing benefits for state agencies and benefits from SIEGF and DWRF are to be recovered with fees charged to employers thus meeting the requirement mandating the use of an enterprise fund and accrual-based accounting.

GASB 34 paragraph 92 indicates that the financial statements of an enterprise fund should be presented using the economic resources measurement focus and the accrual basis of accounting. The economic resources measurement focus reports all inflows, outflows, and balances affecting or reflecting an entity's net assets. The accrual basis of accounting recognizes the financial effect of transactions and events when they occur, regardless of the timing of related cash flows. This measurement focus and accounting basis are used by private sector entities.

Governmental Accounting Standards Board Statement Number 10 (GASB 10) paragraph 20 allows for premium revenue recognition based upon the cost recovery method. Under the cost recovery method, premiums are recognized as revenue in an amount equal to the estimated claims costs as insured events occur.

GASB 10 paragraph 22 indicates that liabilities should be established for unpaid claims costs when insured events occur. "The liability should be based on the estimated ultimate cost of settling the claims (including the effect of inflation and other societal and economic factors)."

Based on the authority from the Ohio Revised Code and Governmental Accounting Standards, BWC will record unbilled receivables equal to the discounted reserves for compensation for state agencies, self-insured employers, and DWRF.



State of Ohio

INSPECTOR GENERAL'S TASK FORCE

Thomas P. Charles, Inspector General

REPORT OF INVESTIGATION

AGENCY: Ohio Bureau of Workers' Compensation
FILE ID NO.: 2006271 DATE OF REPORT: August 21, 2007

EXECUTIVE SUMMARY

File ID No. 2006271

In November 2006, a task force led by the Office of the Inspector General (“OIG”) opened an investigation involving the methodology used by the Bureau of Workers’ Compensation (“BWC”) to override calculated premium rates for contributing employers to the state’s insurance fund.

While employers in other states can shop and compare premium rates through private insurance companies, Ohio offers a group-rating system to assist employers in reducing their premiums. Because some employers do not qualify for discounts despite demonstrating good workplace safety practices, the BWC has permitted similarly situated employers to join group programs in which they share payroll and risk factors, allowing them to qualify for premium discounts of up to 95 percent. Employers who are unable to qualify for a group rate may request manual overrides of their rates.

Ohio is one of the few states that operate a public, or government-run, workers’ compensation program. BWC sets premium rates for Ohio employers utilizing an actuarial program that calculates an employer’s payroll and the risk factors associated with each job type.

Concerned about a lack of controls, former BWC Administrator William E. Mabe ordered an internal audit of the override process in the spring of 2006. The audit report revealed that many Ohio employers had received manual overrides to their calculated premium rates, thereby drastically reducing their annual premiums. Although manual overrides are common in the insurance business for legitimate reasons, what set these cases apart was both a lack of documentation to support the overrides and the fact that decisions about whether or not to grant the overrides were the choice of one man – John Romig, BWC’s former chief of employer services.

Our investigation found that companies that received overrides had been involuntarily removed from group-rated programs after filing serious claims, and that their newly calculated premium rates had soared to the extent that the companies' financial futures were in jeopardy. Consequently, panicked employers contacted BWC, their elected officials or both, and many subsequently saw their premiums lowered.

While this sequence of events raises serious questions about fairness and equity, we found that the Ohio Revised Code gives the BWC administrator or his designee broad authority to set premium rates arbitrarily, without approval or oversight from anyone. At the BWC, that person was Romig, the designee of former BWC Administrator Jim Conrad.

Conrad and Romig told us that BWC liberally used its discretionary authority to give Ohio employers so-called "exception" premium overrides in an attempt to keep companies that had filed serious medical claims in business. Although Conrad, Romig and other BWC officials did not adequately document their decisions, we found no evidence to contradict this assertion, nor did we find any evidence that they or other BWC personnel accepted gifts or anything else of value from employers in exchange for the overrides.

We did find that BWC responded in a more urgent manner to legislative inquiries regarding overrides than they did when employers contacted the agency on their own.

The Task Force also investigated an allegation that BWC improperly awarded Cincinnati-based Busken Bakery a \$40,000 safety grant in 2001. Busken did not initially qualify for the grant, and it was alleged that it was awarded after officials at the bakery boasted that they intended to contact then-Governor Bob Taft.

We determined that this allegation was unsubstantiated. However, we also found that Romig was given unfettered control of the grant process and that he unilaterally approved the grant request after another BWC official denied it because he believed that Busken had conscientiously sought to protect its workforce from injury. Thus, even though Romig had the authority to award the grant, we believe that he lacked the justification to override the earlier

denial.

We also found that the owner of Busken Bakery, Daniel “Page” Busken, made \$2,250 in contributions to the Taft/Bradley campaign fund, including a \$1,500 donation one month before the grant was awarded. Although these contributions appear to be suspicious, we were unable to prove any connection between them and the grant approval.

Information concerning premium overrides and legislative constituent inquiries was forwarded to the Joint Legislative Ethics Committee (JLEC). As a result, JLEC referred one case to the Franklin County Prosecutor.

Our investigation found three omissions. As a result, we are making four recommendations and are asking BWC to respond within the next 60 days with a plan outlining how these recommendations will be implemented.

recipient. However, we found no evidence that Romig or anyone else at BWC either accepted anything of value or acquiesced to any external pressure in exchange for making those decisions.

Finally, we believe that it is long past time for BWC to adopt the findings of its own actuarial consultant with regard to the huge premium discounts the Bureau has granted to employers in its group-rated programs. Although Mercer has been recommending since 1990 that group-rated discounts not exceed 60 to 65 percent, BWC continued to offer discounts of up to 95 percent. Not only have these discounts been unfairly subsidized by non-group-rated employers, but the staggering savings they have provided to group-rated employers have caused some of those employers to experience exponential rate increases when medical claims have resulted in an expulsion from their group program.

We have forwarded all information and documentation regarding the contacts Ohio legislators made on behalf of employers to the Joint Legislative Ethics Committee (JLEC). JLEC made a referral to the Franklin County Prosecutor's Office.

V. RECOMMENDATIONS

Based on the results of this investigation, we make the following recommendations and request that BWC respond to the Task Force within sixty days with a plan of action as to how these recommendations will be implemented:

1. In order to ensure adequate internal controls and fairness to all Ohio employers, BWC should follow both the recommendations in the October 2006, Internal Audit Report and the agency policies established in response to that audit. In the event the audit and/or the policies do not set out specific criteria, considerations or guidelines for granting premium overrides, BWC should create and adopt such criteria and guidelines. Because the audit recommendations also suggested a time table for implementation, we request BWC provide a status report on the implementation of the audit recommendations.

2. BWC should follow the established minimum threshold criteria for awarding safety grants, and develop additional policies to ensure a more fair and equitable system rather than relying on an arbitrary process when awarding safety and other grants.
3. BWC should follow the recommendations of its actuarial consultant and the internal audit report in the establishment of premiums for group-rated employers, in order to address the inequities associated with the group-rating process.
4. BWC should ensure that it gives equal consideration to all override requests made by employers, legislators and others.



Audit Committee Calendar Fiscal Year 2008

October

November

December

January

February

March

April

May

June