

# Medical Advisory Committee

July 16, 2019

Amended September 24, 2019.

Tennessee Room, 1<sup>st</sup> FL, Side A  
220 French Landing Drive  
Nashville, TN 37243

## Present for the meeting:

### Members:

Rob Behnke, Cracker Barrel  
Misty D. Williams, RN, Travelers  
Ginny Howard, Zurich  
David Tutor, MD, Occupational Medicine, Chair  
John Brophy, MD, Neurosurgery  
Keith Graves, DC  
Jeff Hazlewood, MD, PM&R, Pain Management  
Lisa Bellner, MD, PM&R, Pain Management  
Cerisia Cummings, DO, Bridgestone  
James Gregory Kyser, MD  
Lisa Piercey, M.D., MBA, FAAP  
Commissioner, TN Dept. of Health  
James Talmage, MD, Assistant Medical Director  
Abbie Hudgens, Administrator, BWC  
Troy Haley, Attorney, BWC  
Mark Finks, Attorney, BWC  
Suzy Douglas, BWC  
Suzanne Gaines, BWC

### Guests:

John Benitez, TN Dept of Health  
Judy Bobbitt, TOA  
Jennifer Clark, MTOEM  
Luis Garcia  
Terry Horn, Vanderbilt  
Roy Johnson, MTOEM  
Nancy Kelly, Averitt  
Toni McCaslin, HealthTrac  
Carter Phillips, MNA GR  
Faith Parrish, Vanderbilt  
Teresa Schebel, Averitt  
Jeri Vincent, Certified Medical Case Manager

### Via telephone:

Robert Snyder, MD, Medical Director  
Jonathan May, Morgan & Morgan

## Call to Order

The meeting was called to order by the Chair, Dr. Tutor at 1:00 PM.

Introductions were made.

## **Quorum**

A quorum was confirmed as present (11/14 members, 1/3 of the members needed).

## **Approval of Minutes**

The minutes of the March 26, 2019 meeting were approved after a correction by Misty Williams.

## **Old Business**

### ODG Updates:

On the handout, Dr. Talmage highlighted the updates, but they were minor updates. Dr. Snyder commented that ODG now recommends exoskeleton. As far as diagnostic injections versus therapeutic injections, there was no real change. The change is in its organization. Because of the amount and complexity, Dr. Tutor proposed to revisit the updates in September. A motion carried to defer approval of the updates until the September meeting, giving the members a chance to review on the ODG site. Dr. Kyser remarked that the information was limited and agreed that it would need further review. It is also suggested that the information be made available to the members prior to the meeting.

### E-billing update:

A summary of the activity for 2018-2019 is available. Dr. Talmage will send digital copies of the handouts. It will be discussed at the next meeting.

### Access to Care:

The next steps to improving injured workers access to care. Dr. Snyder talked about what came out of conference for the first 7 items outlined in the summary. The UR process is the next item.

#### *1. UR Process*

Dr. Hazlewood is frustrated with UR denials. For example, one UR denied a 10's unit in UR and another UR denied Norco 5mg. The carrier gave reasons such as, medication is not working or need is not documented. He is frustrated because he does not use EMR when EMR is not mandated. Insurance companies send everything to UR. Dr. Hazlewood has kept track of UR denials. He pointed out that he has won 28 out of 30 appeals but UR appeals take time and this is unnecessary. When he tries to treat a patient with a low dose of narcotic, the need is documented

but still denied. He commented that he had difficulty getting UR doctors on the telephone; they are not available.

Dr. Bellner has some problems with UR doctors. Insurance companies deny her low cost treatments and observed that “professional” UR doctors have taken over the UR process. She sees the same names repeatedly.

Dr. Snyder noted that they track denials and insurance companies. Carriers have been penalized for failure to properly contract with reviewing doctors. He will investigate whether a specific reviewing doctor’s decisions can be found and whether there are certain offenders.

Abbie Hudgens questioned if URAC would be interested in that data. Misty Williams answered that URAC would be.

Dr. Talmage suggested that the Bureau track UR overturns possibly by doctor, (ATP or reviewer).

Participating by telephone, Jonathan May said that he would help with an analysis of the UR process as it is occurring in Tennessee.

Insurance companies encourage UR doctors to deny treatments. It is not known how the UROs contract with, evaluate and pay the physicians. Dr. Kyser said that some denials are very short-sighted. It should be more cost effective to approve certain treatment than go through the UR.

There are scattered rumors that a carrier might deny a pain-management patient medication through UR as a mechanism to force a patient into a settlement.

Dr. Hazlewood observed that pain management practice is very difficult. Dr. Tutor asked for recommendations. Abbie Hudgens stated that there needs to be new evaluation of UR and pain management. UR needs to be the topic of a group study and open to committee suggestions. Abbie Hudgens added that time lost in treatment is a concern and contributes to physician frustration.

Should there be a method to recover costs if overturning a denial is done; it takes a doctor’s time to prepare for a UR appeal?

Abbie Hudgens suggested that a company’s failure to respond needs to be looked at. Dr. Tutor asked what kind of penalty will the monitoring process will have. Abbie Hudgens said that the issues need to be studied and problems identified. This will need a committee to properly identify the problems and penalty. Abbie Hudgens wants to identify which insurance companies deny UR’s.

Abbie Hudgens asked Lisa Piercey, what do you find out from among your doctors about these problems?

Some insurance companies seem to deny everything and send it to UR. Company policies vary.

Dr. Bellner said that many physicians do not know about the appeal process.

Dr. Snyder said to send anything to him about egregious violators of UR. Sixty percent of the UR appeals are not from physicians; they are from the patient or attorney.

Here is a summary of the discussion points:

- 1) There are incomplete records for review or reviewed.
- 2) There is inaccurate assessment by the reviewer.
- 3) There appears to be seemingly inconsequential and some inappropriate denials.
- 4) The process is *essential* for the insurers.
- 5) Are there certain egregious practices where reimbursements are made for the same doctors doing many reviews and/or payments/bonuses based upon percentage of denials?
- 6) It is noted that the same companies and individuals physicians are responsible for a lot of denials. Certain treating physicians also make many appeals-this is usually based upon the type of practice and their patient population.
- 7) URAC would be interested in data where patterns of potential abuse may be occurring.
- 8) The process takes much time and has high expenses, is it used wisely?
- 9) Some physicians and other providers see the process as being used to disrupt care in an effort to force settlements. This requires confirmation.
- 10) Delayed treatments cause physical damage to the injured worker as well as process/credibility damage to the system, the insurer and others.
- 11) Peer communications problems:
  - Not being available
  - Lying about office calls and contacts
  - Denial ultimatums with short time frames
  - Records issues-not having them, not really reading them.
  - Poor assessment/understanding/interpretation of the guidelines.
- 12) It is observed that there is not enough knowledge, education and communication about the appeal process.
- 13) Various parties have logs of frequent "violating" companies and physicians. This data needs to be shared with the Bureau.
- 14) Can the Bureau identify individuals or companies where there are a high number of overturned appeals? Other metrics are to be developed or reviewed.
- 15) Form a research group to identify issues and identify strategic solutions.

Dr. Tutor suggested a motion for committee to study problem and identify companies and UR doctors. Dr. Hazlewood made a motion for a committee and offered to serve on it. The motion was seconded and approved.

## 2. Panels and Duties

~~"Dr. Brophy said that there were different kinds of WC doctors; some treat, some do impairment ratings. There are problems with impairment and causation and some doctors do not want to deal with WC issues."~~ **Amended: Dr. Brophy has requested that the total number of workers' compensation physicians should be defined by those who are willing to deal with causation questions, impairment ratings and depositions in addition to treating patients.** Dr. Hazlewood agreed that Impairment ratings, pain management, causation analysis are more stressful issues with which some doctors do not want to deal.

How can doctors be incentivized to go into workers comp? Younger doctors don't seem to be interested. Dr. Talmage suggested possible financial incentives.  
(Time required going to other agenda items.)

## Medical Fee Schedule Update

1-17-2019—rulemaking hearing and comment period.

The governor imposed a rules moratorium. The AG released the rules and was posted by the Secretary of State,

The Gov/Ops Committee hears the presentation 8/21/2019.

They will become effective 9-10-2019 (pending Gov/Ops).

Summary: 1. Increased providers by 6% by letting Medicare "float."

2. 5% increase to hospitals with raising per-diems and stop loss mounts.

3. Increased PAs and APNs reimbursement to 160% for all services except assistant in surgery (subject to Medicare billing rules).

4. Increased psychologist to 130% of Medicare.

5. Clarified some confusion about stop-loss language and new patient designations.

Abbie Hudgens said that NCCI costs impact 1.5% of system as a whole. Looking at the medical fee schedule for next year's changes, medical costs in Tennessee are higher than surrounding states, based on what is paid on claims. Abbie Hudgens went on to say that Tennessee closes claims faster and wants to see how this affects the payment amounts for medical for claims.

WCRI and NCCI have reported opioid use dropped 16%. Although this data is for WC claims, it mirrors overall prescriptions not associate with a claim. The use of compounds and topicals have gone down too.

## Legislative Update

Troy Haley announced that 2019 was not a landmark year. There is no new Bureau sponsored legislation.

A firefighter bill creates presumption that firefighters are covered for certain cancers during course of employment.

Drug Free Workplace bill placed a six month cap on prescriptions when positive drug tests are evaluated. It has to be within six months of the expiration date for purposes of medical review officer to consider for a drug result. Tennessee is the only state to have something like this.

Roy Johnson observed that the problem with a person taking medication in the seventh month is if the person has a chronic condition. The Medical Review Officer is certified to make decisions about appropriate drug medication.

A "twenty factor" IRS test to determine difference between employee and an independent contractor was passed but does not apply to WC.

Work-based learning passed. Parity payment for telehealth did not pass, it is in committee. Medical cannabis did not pass; it also remains in committee.

### Utilization Review

Dr. Snyder discussed a case of "bad UR" where the reviewer used notes from 11/18 to make a determination on 3/19. The criteria to determine inaccurate UR was reviewed with the committee. Dr. Tutor asked for motion to proceed with Dr. Snyder's recommendations for this company. Dr. Brophy motioned and Dr. Talmage seconded. The committee agreed by motion to send notice of penalty to the URO and put UR doctor on notice. The penalty would be monetary and a seven day notification letter.

Misty Williams asked, "What responsibility does the URO bear to review accurate and current medical records?"

Other UR stats will be sent as attachments for discussion at the next meeting. Dr. Snyder and Dr. Talmage have logged UR appeal denials. Dr. Talmage pointed out that Tennessee is the only state in which a UR decision can be overturned within two weeks by the Medical Director.

## **New Business**

### Annual Report and 100<sup>th</sup> Anniversary

Abbie Hudgens gave a link to a digital copy of a BWC annual report from 1919. It demonstrated the limits on medical care at that time.

### Emergencies and Drug Test Payments

Drug testing in emergency situations has created some friction when payments are denied. A handout will be sent for discussion at the next meeting.

#### Drug formulary Impact

NCCI has released a study that is summarized in an attachment for review and comment.

#### Mental and Behavioral Health

Issues of use and payment are discussed in an attachment for review and comment at the next meeting.

#### Telehealth

Dr. Snyder called for volunteers for a group Mark Finks is putting together to assess rules for WC. The announcement will be on the website. Jonathan May wants to participate in the UR group. Abbie Hudgens wants a variety of opinions.

Dr. Snyder announced that Abbie Hudgens had been reappointed Administrator by the Governor.

## **Next Meeting**

The next MAC meeting is set for September 24, 2019.

## **Adjournment**

At 2:50, the MAC meeting adjourned.