

Medical Advisory Committee

December 13, 2022

Via Teams

Tennessee Room
220 French Landing Drive
Nashville, TN 37243

The meeting was held in the Tennessee Room with telephone and virtual options available. All attended via TEAMS. The use of the virtual platform is a benefit to the public, allowing participation of out-of-state stakeholders and others interested in the subjects of this meeting. It is necessary for establishment of a quorum that the members have the virtual option available. The committee rules provide for the members to be counted as present for the determination of a quorum (see rule **0800-02-23-.04 (2-3)**).

Members:

Rob Behnke, Cracker Barrel
Misty D. Williams, Travelers
Lisa Hartman, RN, AFL-CIO
Ginny Howard, Zurich
David Tutor, MD, Occupational Medicine Chair
John Brophy, MD, Neurosurgery
James G. Kyser, MD, Psychiatry
Richard L. Cole, D.C., DACNB, DAAPM, FICCN, FICC(H)
Jeff Hazlewood, MD, PM&R, Pain Management
Lisa Bellner, MD, PM&R Pain Management
Cerisia Cummings, DO, Bridgestone
Amy Moses, McKee Foods Corporation
Veatrice Storey, Zurich Insurance
John Benitez, MD, TN Department of Health

Guests:

Carla Townsend, NCCI
Faith Parrish, Vanderbilt
Yarnell Beatty, TMA
Brian Allen, Mitchell
Patrick Robinson, ODG by MCG
Spenser Nelson
Judy Bobbitt, TOA
Tiffany Gryzbowski, HealthSystems
Larry Brinton, Accuro Solutions
Amelia Mitchell
Susan Stewart, Coventry
Ally Lynch
Alex O'Neil, Arbitech
Tammy Casey

Staff:

Troy Haley, Administrator, BWC
Robert Snyder, MD, Medical Director BWC
James Talmage, MD, Asst. Medical Director BWC
Suzy Douglas, BWC
Mark Finks, BWC
Amanda Terry, BWC
Suzanne Gaines, BWC

Via telephone:

Alex O'Neil, Arbitech
Veatrice Storey, Zurich Insurance
John Brophy, MD

Call to Order

Dr. Tutor called the meeting to order at 1:05 PM.

Introductions were made of committee members, staff and guests.

Quorum

A quorum was confirmed as present: 14 of 16 members present (1/3 members needed for a quorum).

Approval of Minutes

Dr. Cole motioned to accept the minutes of the September 20, 2022, meeting and Ms. Howard seconded. The minutes of the September 20, 2022, meeting were approved as written with no dissent.

Conflict of Interest

Ms. Douglas reported that 1 form was missing.

Old Business

ODG Update

Dr. Snyder presented the ODG updates from December of 2022. All updates were from the drug formulary.

The changes for the first three entries were for miscellaneous, and the new entries were that they require prior approval.

Buprenorphine had added conditional approval for the tablets used in disorder and pain treatment. There were changes for the methadone. They are no longer recommended for the diskettes. Most of the other changes were an updated entry or deletion, i.e., moving other medications into other categories.

Dr. Snyder recommended that the committee accept the ODG changes.

Dr. Tutor questioned why Propoxyphene was still in the formulary? Dr. Snyder answered that this is still used outside of the United States.

Dr. Tutor asked for a motion to approve the updates.

Dr. Benitez moved to accept the updates, and Dr. Kyser seconded. The committee voted to accept the changes with no dissent.

Medical fees Schedule and Medicare Updates

As of this date, Medicare has recommended a 3% reduction in the conversion factor, which is subject to change once Congress is back in session.

It drops from \$35.00 to \$34.06, which will affect the fee schedule.

The public hearing for the medical fee schedule updates has been completed and the comments received have been processed by the Bureau at this time.

The biggest change Dr. Snyder highlighted in the fee schedule is an increase in certain sub-specialties including neurology, cardiology, psychiatry, psychology, and pulmonology.

Another change is that the Bureau has partnered with Fair Health to provide rate tables and downloadable format that will be free to all users. The rules must be approved by the Attorney General and go through the Government Operations Committee. Later in 2023, the rate tables can be used rather than individuals doing their own calculations.

Dr. Snyder asked for comments. Dr. Tutor and Dr. Kyser agreed that the free rate tables will be a very welcome addition to the program and create one standard source of calculations.

Rules and Legislative Update

Ms. Terry reported that there is still work on rules for 17, 18, and 19 and the changes will be soon finished. There are no legislative updates now.

Mr. Haley is working with those rules and projected to have it ready to send to the Attorney General's office by the end of the week.

The time delay is usually at the Attorney General's office, which can be weeks or months.

Once the final signed version comes from the Attorney General's office it will be filed on the same day with the Secretary of State's office. The effective date of the rules is exactly 90 days from the date the final version is filed with the Secretary of State, pending approval by the joint Government Operations Committee at their regular monthly rule review before the 90-day period passes.

Utilization Review has new rules, effective 9-29-2022, posted on the website. This allows adjusters an extra day to approve treatments or procedures or send it to utilization review. Approval time went from 3 days to 4 days. This will be monitored more closely to hold UR companies and adjusters to the timeline. The timeline starts when the adjuster receives both the medical note and the corresponding request for treatment or medication.

The UR organizations will be required to give annual reports on the number of utilization reviews done and the results, as well as the physicians involved in the UR. The reports will be organized and given to the Medical Advisory Committee.

Dr. Tutor asked for questions or comments.

REWARD

Ms. Douglas invited anyone interested to attend the Employer Reward Group Support meeting's next session of RTW coordinator training that will be February 22nd at 9:30. Dr. Les Kertay will be speaking. He is a clinical psychologist and will address return to work issues. Anyone interested in attending is invited to contact Ms. Douglas to get on the wait list.

Certified Physician Program

New applications to the Certified Physician Program are on hold awaiting further evaluation from the Attorney General's office with some legislative changes. The individuals who are currently enrolled in the program or have already completed the modules and the educational sessions will receive continuing medical education credits. (CME'S).

There is a question of whether the Bureau has the authority to create a separate category of physicians. It has to do with statutory authority for creating a separate group or separating a group into a new group. Mr. Haley has had correspondence with the Attorney General's office concerning this, and they will require statutory authority to promulgate the Certified Physicians Program. This has been added to the administration bill and must go through the legislative process for approval.

Covid Update

On December 8, 2022, NIOSH (National Institute of Occupational Safety and Health) had a webinar that presented the New York State data on COVID with a slideshow. Anyone who is interested can request the report and slideshow from Dr. Snyder or Ms. Douglas.

Dr. Snyder commented that New York's experience mirrored Tennessee's. During 2021, 6% of their overall worker's compensation claims were COVID related. The highest percentage of those claims came from first responders and not healthcare workers. The rate of denial of claims was also similar, being between 60 to 65%. Of the claims accepted, only 25% ever received any awards, medical payments, or lost time from work. Only 10% of their death claims received benefits. In Tennessee, only about 15% of accepted claims got some payments. Approximately 20% of death claims received death benefits. There are a few differences, but the numbers from New York State and those from Tennessee are close as far as denied claims and payments.

Most jurisdictions are seeing a very limited amount of litigation related to COVID. Most claims are settled at mediation or withdrawn. There are virtually no court cases involving COVID.

A remaining concern for the industry is worry over liability for cases of "long COVID". The industry is worried about the potential exposure to those cases. Experience has shown that few workers' compensation cases have gone to long term payments. NCCI has documented only 4 or 5 cases of COVID where the medical expenses were over \$1,000,000.00 and that had to do with the individuals who ended up in ICU and then had long term consequences. For a number of claims that have been accepted, the average medical expenses were approximately \$4000.00 per claim. The expenses have not borne out with the risks or potential risks so far, but it is a worry for the industry itself. There are very few new COVID claims now.

There is potential for influenza claims or for other infectious diseases. Tennessee has a presumption of infectious diseases, but they must meet stringent requirements about how it is reported and under what time frames. The number of claims that come in with infectious diseases are very low.

New Business

Bureau Programs: What We do.

Dr. Snyder shared his computer screen and presented the overview of the different Bureau programs and answered questions.

The Bureau has seven offices in Gray, Knoxville, Chattanooga, Murfreesboro, Nashville, Jackson, and Memphis. There are approximately 160 employees, including 12 Court of Workers' Compensation judges and 3 Appeals Board judges.

The Bureau has been accepted as one of the top 3 workplaces. The Administrator is Troy Haley, and the Assistant Administrator is Jeff Francis.

The programs within the Bureau can be divided into 6 categories. The first is administration. All claims that are filed in the state of Tennessee are tracked by the Bureau with electronic forms. The claims include payments, adjusters, and interactions with the injured workers. Proof of Coverage and the companies that are required to have the workers compensation coverage are tracked. Ms. Terry heads up the legislative and legal services, which include an advisory role concerning statutes and rules, and the Penalty Program for violation of the statutes and rules. The Information Systems and Communication are also under administration.

The Mediation and Ombudsman services of the Tennessee MOST program include the mediation services. The petition for benefits determination is a dispute that can be filed with the state and goes to mediation. Before it goes to court, the mediators certify a dispute certification notice which identifies the issues that have not been resolved, and only those can be taken to the court.

The MOST program, where the Ombudsman contact Information Services, handle over 3,000 calls for information in a month. The Ombudsman attorneys can give legal help to the injured workers who do not have an attorney. They help with filing forms and other activities in the pursuit of cases in court.

The Compliance Program includes the Uninsured Employer Fund. This is a fund specifically for injured workers whose employers should have been insured but were not. As a consequence, these injured workers do not have any coverage.

The Employee Misclassification Education Enforcement Fund tracks employers who have misclassified employees by not applying all their payroll that they should for classification purposes, or by eliminating employees by calling them independent contractors. The Uninsured Employers Fund and Compliance Program create penalties not only for uninsured employers, but also for employers that misclassify employees or do not report their proper payrolls.

The Compliance Program has taken over the Exemption Registry and is in the process of operationalizing that registry for employers that request exemptions.

There are ancillary services which fall outside some of the other categories. The Drug Free Workplace Program provides education, advice, and information in training programs for employers within the state that want to keep a safe workplace.

The Subsequent Injury Fund is for the injured workers who have a subsequent injury after a settlement. This fund is designed to cover the employers who would otherwise be liable for the total injury. This moves them into a separate fund.

The Next-Step Program is a scholarship program for injured workers who cannot go back to their previous occupation and would like to go on to further either manual training or to educational opportunities, including college programs, two-year programs, or other training programs in the state.

Finally, the Reward Program is a program to help employers and injured workers get back to work and provide communications with physicians to encourage returning employees to work under limited duty, if possible, and encourage communications.

The Medical Unit is responsible for designing and implementing the fee schedule and handles utilization review appeals. It also handles the registration, educational requirements, and oversight of case managers in the state of Tennessee. The Medical Impairment Rating Registry is an administrative program to settle disputes concerning permanent impairment ratings that differ. It also handles medical fee waivers for the medical fee schedule should an injured worker not be able to find adequate or quality providers either out-of-state or in-state for certain subspecialties.

The Medical Payment Committee is the administrative process of resolving disputes between the providers and the payers. The Medical Advisory Committee advises the Administrator on things that are important to the stakeholders of the Bureau. There are the customers served which includes everyone that comes in contact with the Bureau, including injured workers, employers, insurers, other employees, attorneys, and providers. The Bureau's job is to answer their questions as competently and quickly as possible while being transparent about the rules and regulations that must be followed.

The Bureau is involved in many educational programs, including the Physician Education Conference and the Bureau's Annual Education Conference. There are educational possibilities within the website itself of adjuster training and certification programs, as well as other presentations. The Bureau has always welcomed questions and ideas from the outside. It is also available to present the different programs and activities to different constituents such as providers, attorneys, employers, or insurers. It is the mission of the Bureau to fulfill the promise of workers' compensation today and tomorrow.

Dr. Snyder asked for any questions or comments.

Dr. Kyser asked about the Next Step Program. Dr. Talmage offered to answer his questions. The Next Step Program was authorized by the legislature for injured workers who were not back to work at the time their claim was settled. They have a 90-day window in which to apply, and their claim must be settled.

If they are accepted into the program, they are eligible for up to \$5000.00 a year for up to four years for educational expenses to acquire skills for an alternate occupation. A number of applicants have been approved who are going to community college or formal college to get training for such jobs as bookkeepers, medical coders, etc.

Applicants meet with Marian White, the head of the program. She finds them a job to support themselves while they are going through the training to find alternative employment. Anyone who wishes to get into the program can contact Ms. White.

Mr. Behnke commented that he would like to see more people in that program. The money for this program comes from the Subsequent Injury Fund.

Ms. Douglas and Dr. Snyder are speaking in Knoxville at the Mid-South Worker's Compensation Conference on January 20, 2023.

Dr. Benitez had questions about the drug formulary. Dr. Snyder said that a webinar on ODG had just been completed and will be placed on the website. He will also prepare a presentation on formulary for the next MAC meeting.

Next Meeting:

March 7, 2023.

Adjournment:

Dr. Tutor adjourned the meeting at 1:53 PM.

The Tennessee Department of Labor and Workforce Development is committed to principles of equal opportunity, equal access, and affirmative action. Auxiliary aids and services are available upon request to individuals with disabilities.



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