WORKERS COMPENSATION
ADVISORY COUNCIL MEETING

Members Present:
Patrick Robinson (Chair)
Joe Shine
Denis Juge
Michael Morris
Greg Hubachek
Troy Prevot
Chuck Davoli
Julie Cherry (& son)

Members Absent:
Bob Israel
Dr. Dan Gallagher
Dr. Hank Eiserloh
Mark Kruse
Ray Peters
Eddie Crawford
Joseph Jolissaint
Clark Cossé, III
Dr. Jim Quillen

- Call to Order- Start at 3:35pm

- Proposed Increase in Vocational Rehabilitation fee schedule-

  Larry Stokes, Ph.D., Stokes & Associates (guest speaker)
  - Dr. Stokes noted that vocational rehabilitation fees have been capped at $80/hr since. Consisdering increased costs of living, it should be $130.56 now. Hourly rate among rehab consultants range from $70 to $250, with $175 as the most common rate. Members of the vocational rehabilitation association would be agreeable to $120/hour.
  - **Patrick**- The issue is relevant because injured workers in Louisiana are out of work 8wks longer than the next ranking state in study. We need a reasonable rate that will facilitate rehab and assist claimants in returning to work faster.
  - **Michael Morris**- market will dictate negotiation of rate.
  - **Patrick**- should we have a max fee for voc. rehab in schedule or should we let it be market driven?
  - **Denis Juge**- Since we have employer choice of vocational rehab, market should dictate
  - (general discussion but no vote taken)

- Proposed Revision to LAC 40:I:2715 (time stamp 13:45:36)

  - **Patrick** – OWC has drafted a revision to LAC 40:I:2715, re the 1010/1009/1008 process. The intent is to clarify the current rule process, provide for preparation of an official appeal record from 1009 to 1008 level, and allow introduction of new evidence at the 1009 & 1008 level in accord with recent jurisprudence. It also includes two alternatives to address pharmaceuticals in the 1010 process since the formulary bill died in legislative session.
  - Re Pharmaceuticals, currently prescriptions are reviewed by the payor's PBM. One alternative in the proposed rule is that a 1010 would only be

needed for the first prescription, and then only periodically thereafter. Another is that pharmaceuticals would be excluded from the 1010 process entirely.

- **Michael Morris**- contemplate what is going on with PBM.
- **Troy Prevot**- there is no standard. Many times the prescription is approved by payors without requiring a 1010. PBM formularies may not be evidence based
- **Michael Morris**- bill that creates formulary needs to be more statutorily exhaustive than now.
- **Patrick**- since bill didn't pass, OWC can present formularies used in other jurisdictions to the MAC, and implement a formulary as part of the medical guidelines.
- **Greg Hubacheck**- Employees can use a card that serves as a 1010, not sure what happens in using the card at pharmacy. If we implement a formulary, PBMs have to follow our process and we would know what is happening
- **Patrick**- When a 1009 re medication is filed, the medical director applies the MTS to the extent it address the medication, or looks to other guidelines per 23:1203.1 D
- **Dr. Roy Lee (OWC Associate Medical Director)** [*audience*]: 95% of the 1009s for medication fall under topicals and compounds. Our guidelines say that there is no evidence behind most of it. Once in a while opioids are addressed, but most medication issues are resolved at the 1010 level.
- **Patrick**: Do we need to address 1010 in relation to pharmaceuticals?
- **Jill Breard** [*audience*] - PBM system works very, very well.
- **Trey Mustian** [*audience*] - One reason not to do it is because 23:1203.1 doesn't have anything to do with pharmaceuticals. Not authorized to expand guidelines in the statute. Also, it's not a big issue right now.
- **Patrick**- It's medical treatment, which is governed by the MTS
- **Mark Riley** [*audience*] - if adopted, this would cause problems that don't currently exist.
- **Troy Prevot**- Narcotics and long term use can be fixed by MAC. Pharmacy taskforce addressed narcotics twice. Hydrocodone needs to be addressed more firmly.
- **Michael Morris**- many states have addressed opioids on their own separate from UR requirements or broader formulary. LA is off charts in comp. IAIABC model and form for medications.
- **Dr. Roy Lee** [*audience*] - guidelines address opioids but doctors don't read. Needs enforcement.

- Paragraph B addresses 1010 process, paragraph C addresses 1009 process, and paragraph D addresses 1008 process (time stamp 14:05:11)
- Removal of 1010 "suspension" option
  - The current rule allows for suspension of the process by the payor, and then a request to the medical director to lift the suspension. The provision is not used and is not in the authorizing statute.
- **Patrick**- any questions about paragraph B; any fee changes that I did not identify?
  - [*unidentified audience member (Mr. Mustian?)*]- Question re provision allowing for voluntary reconsideration of 1010?
    - **Patrick**- page 7 before paragraph 7 addresses that (within 10 days of original denial at 1010 level).

- [*unidentified audience member*]- Proposal says that 1008 and 1009 become moot if treatment approved on voluntary reconsideration. What about penalties and attorney fees?
    - **Response via Patrick**- moots them and speeds process up for approval. Gets treatment done faster.
    - [*audience member*]- What if the reconsideration takes 6 months and they get free ride?
    - **Response via Patrick**- changing their decision based on new evidence that wasn't provided a 1010 level.
    - [*audience member*] – doesn't mean their original decision wasn't already cleared up.
    - **Response via Patrick**- then new evidence wouldn't be necessary.

- [*unidentified audience member*]- Notice requirements on all approval level say notice should be sent to employee or employee's attorney. Old rule said notice should go to employee and employee's attorney. (time stamp 14:09:52)
    - [*unidentified audience member (Mr. Riley?)*]- Some people are unrepresented and won't know what to do. Also, some clients don't keep confirmation with attorneys so they may wait too late to notify attorney or wonder why the attorney doesn't have a copy of the letter already.
    - **Response via Patrick**- Agree, we'll re-work that section.
- Paragraph 7 is the EM (Evaluation & Management) visits which doesn't change current law.
    - **Trey Mustian, Esq.** [*audience*]- should notify healthcare provider if denying after 1010 approved
- Paragraph 8 is the other alternative for Pharmaceuticals which LWC will strike per prior discussion.
- Paragraph 9 which is the current rule that was cut and paste into this one.
- Paragraph C (pg. 8) includes suspension of appeal time in tacit denial. Comparable to HB 205.
    - What is tacit? What is originally deemed a tacit denial may just be paperwork faxed to wrong number.
    - **Michael Morris**- just file a 1009. There's a reason for tacit denial
    - This explicitly states to include the medical records as well as 1010 when submitting a 1009
    - Subparagraph f is an outlier rule requiring a fee for additional records submitted. Will send back if not paid.
- Paragraph C.3 is what should not be submitted. This defines what should be sent in as a clinical review.
    - **Trey Mustian** [*audience*] - you are limiting evidence for those that want a review but the carrier can submit whatever it wants.
    - **Response via Patrick**- That's not what it says. Paragraph C.4 speaks about the carrier and the same rules apply. Intent is not to limit evidence but make it more streamlined.
    - **Michael Morris**- what should be included from paragraph C from current rule
- **Steve Glusman** [*audience*] - Carrier needs to know what/how to respond. They just get notice but not all information. How to enforce?
    - **Response via Greg Hubachek**- Any party should be able to complain about lack of notice. Show proof of service. 1010A process
    - **Patrick**- how much is this a problem?

        - [*unidentified audience member*]- suggests suspending 5 day deadline for response if objection of missing information is raised via fax/email.
            - **Response via Patrick**- require inclusion on certificate of service
            - **Greg Hubachek**- agree
    - Page 10 goes through what needs to be included in the Medical Director's decision. (Time stamp 14:35:23)
    - Paragraph D addresses the 1008 appeal, clarifies and expands current rule to address jurisprudence on admission of new evidence at the 1008 level.
        - **Michael Morris**- What about being able to see evidence?
        - [*unidentified audience member*]- Why is evidence attached to 1009 not subject to R.S. 23:1317 but the new evidence is?
        - **Response via Patrick**- Doesn't want Medical Directors in position of judges. The 1009 review is a clinical review. Argument of questionable evidence can be made at 1008 level, e.g. the recent *Wilson vs. Broadmoor* case from 5th circuit.
        - **Greg Hubachek**- payor should have 5 days from getting information prior to hearing.
        - **Todd Delcambre** [*audience*]- Treating physician should see new evidence; for example, a new MRI could change decision on surgery
            - **Response via Patrick**- never seen new evidence that makes a payor say yes then make a treating physician say no. Also, approval at any level does not mean the treating physician has to follow through with treatment.
            - **Response via Greg Hubachek**- Courts of Appeal are allowing new evidence in.
    - Paragraph D.4.b. allows Medical Director to decide if new evidence affects decision.
    - Paragraph E is same as current rule.
    - **Trey Mustian, Esq.** [*audience*] - Page 11, paragraph 4. Reword last sentence "…shall be competent evidence …"
    - **Cindy Bishop** [*audience*] - Are you looking to submit this to Register for July or June?
        - **Response via Patrick**- no set time but between now and August.
    - **Patrick** - OWC will consider comments and defer rule pending further discussion.

- Other New Business
- Public Comment
- Adjourn at 5:10pm