WCAC Meeting- April 23, 2015 (start at 9:30am)

Members Present:
Patrick Robinson (Chair)
Ray Peters
Joe Shine
Julie Cherry
Denis Juge
Michael Morris
Greg Hubachek
Mark Kruse
Troy Prevot
Eddie Crawford
Joesph Jolissaint
Robert Israel

Members Absent:
Clark Cossé, III
Dr. Jim Quillin
Dr. Dan Gallagher
Dr. Hank Eiserloh
Chuck Davoli

- SB107 – Sen. Peacock [time stamp 13:00:09]
  - Amends La. R.S. 23:1378 to extend the SIB exclusions (first 104 weeks of indemnity/$25,000 of medicals) until 7/1/2020
  - This is an agency bill intended to maintain the current deductible for SIF claims
  - Council unanimously approved

- HB 393 – Rep. Lorusso [time stamp 13:01:04]
  - Amends La. R.S. 23:1196.1 regarding allowable investment of self-insured funds
  - Steve Queyrouze, COO, with the LA Restaurant Association Self Insurer's Fund discussed bill on behalf of Rep. Lorusso
    - Currently, only allows for bonds to be bought from Louisiana
    - Will allow bonds to be bought from other states that are rated 'A'
    - Will allow bonds in commercial package securities which are triple 'A' rated
    - Will change corporate bonds that are currently purchased at 'A' rating to be bought at triple 'B' rating
    - This will allow a return on funds that increase an average of 50-75 basis points
    - Department of Insurance supports this bill.
  - Bob Israel moved to support; Michael Morris seconded
    - Council unanimously supports

- HB205 – Rep. Gaines [time stamp 13:04:08]
  - Amends La. R.S. 23:1203.1 regarding 1009 process and appeals of MDG decisions
  - Trey Mustian, Esq. presented on the bill
    - Aims to do the following:
      - To make handling medical guideline appeals more user friendly by extension of deadlines.
      - Give Courts guidance in evidentiary matters
      - Provide a mechanism for there to be an official court record
    - Currently, it is 15 days to appeal a 1010 including a tacit denial

- To try to help healthcare providers and claimants who need to appeal the bill looks to extend the deadline from 15 days to 30 days.
    - The clock would not start running until there is an expressed written denial.
- Problem: even though utilization review rules say notification is required, it doesn't always happen and there's no consequence.
- It will allow claimant to opt to appeal a tacit denial even before the deadline
- Bill allows:
    - Deadline to file 1008 extended to 30 days as well
    - When 1008 is filed, party filing appeal is to notify the Medical Director who will get the official record together
        - This should fix the inconsistency of record gathering
- Decisions from 2nd & 3rd Circuit Courts says Medical Director can consider new evidence
    - The bill allows (if court rules competent & relevant) Medical Director will be given a 15day period to review new evidence
    - **Patrick**: If it is remanded to Medical Director & he changes his opinion, does that change the appeal process for the successful side which is now the losing side?
        - **Trey M., Esq.** - that will have to be looked at
        - **Troy Prevot**- Need to penalize insurers and employers who are not responding
            - Worried about lengthen the time
        - **Ray Peters**- can employers take another look if new evidence?
            - **Trey M., Esq.**- they can already do that
            - **Julie Cherry**- already discussed that some won't look at recent submitted evidence once they denied the original claim.
                - **Patrick**- that's why we need to formalize the process saying new evidence to be sent to Medical Director & payor.
- **Patrick**: We need to discourage tacit denials since it may have just been a problem in communication (i.e. wrong fax number)
    - **Michael Morris**- there should be a penalty for ignoring but there should also be protection for those who do follow the system.
    - **Greg Hubachek**- penalty should be R.S. 23:1125(C) ($250 plus attorney fees)
        - Also, the bill covers the time doesn't run until I receive the written denial, correct?
        - **Trey M., Esq.**- Correct. Also, if you know there is a tacit denial, you can appeal as well.
    - **Julie Cherry**- Right now denial just goes to provider in question, correct?
        - **Trey M., Esq**. - If they know of plaintiff's representative, it's supposed to go to the representative also.
        - **Greg Hubachek**- There's no teeth to that either.
        - **Michael Morris**- But there's also no teeth to filing 1009s that are required and giving us copies of supporting records. Records not being provided with the 1010 that

were subsequently sent with the 1009. Penalties should not just be one way.

- **Greg Hubachek**- even if we kept the time to 15 days, the required receipt of denial would give the full time to appeal.
- **Patrick**: does the allowance of the new evidence mitigate the time extension on either side of the 1009?
  - **Trey M., Esq.** - the problem is we are not getting notified or we are getting notified late then scrambling to collect all paperwork. I want to remedy the issue at the 1009 instead of once it goes to court. If allow to go to court, then it will extend the process.
- **Jenny Valois, Esq.** [Audience]- adding 15 days to get documentation together is not that bad when you consider it takes 30 days to get a hearing after the 1008 is served and many times the insurer has to appoint defense council. It usually ends up being 60-90days out. It's wasteful to go through mailing process for records when the extra days would help since we are not getting 30day hearings anyway.
- **Troy Prevot:** if we keep chipping away, we will be back to 6mths to get an approval for an MRI.
- **Patrick:** is the time to set a hearing concurrent with submission, prep of the appeal record?
  - **Trey M., Esq.** - first they will set a status conference which is where they set a hearing date.
  - **Michael Morris-** No status conference until an Answer is filed
- **Greg Hubachek**- if I could propose a change to address Trey M.'s concerns of the 30days; page 1 line 20 change "30" to "15" and page 2 line 5 again change "30" to "15", you are getting more time because it doesn't start to run until you get your written denial.
  - **Troy Prevot**- someone could sit around for 2yrs while someone doesn't get treated
- **Greg Hubachek**- Only doctors can file 1010s if no response.
- **Patrick**: if 1010 sent to wrong fax number and you don't know, then an indefinite suspension can have problems, leaves the request in limbo.
- **Joe Jolissaint**- What about unrepresented claimants?
  - **Patrick**: if time has run, then file a new 1010
- **Will Green** [audience] - Are there a lot of tacit denials? Has there been a decrease or increase in them? If you don't teach hospitals and physicians, then legislation is pointless.
  - Answer via **Jan Clary** [audience] - not a huge problem. From January 1st to March 31st, there were 119 tacit denials to OWC. Of those, 38% was from 1 provider with multiple physicians. After contacting them, they are working on their process issues. OWC gets between 200-250 MGDs a month.
    - **Julie Cherry-** You said one clinic. Did they come from 1 particular payor as well?
      - **Jan Clary** [audience] - No.
      - **Patrick:** one issue already resolved was provider sending paperwork to UR carrier at wrong fax number
- [Female Audience Member]- Confused on Provider vs. Payor
  - Answer via **Patrick**- Problem is with medical provider getting 1010 to payor. 5 days goes by with no response and becomes a

tacit but it was actually sent to the wrong fax number in order to get a response.
    - Troy Prevot moved to not support bill; It was seconded
    - Julie Cherry substitute motion to take no position; It was seconded.
        - Vote on substitute motion: 6 opposed vs. 4 agree
        - Vote on not support bill: 6 [Michael, Troy, Ray, Eddie, Joe Shine, Bob] in favor of motion (to not support bill) vs. 4 [Greg, Julie, Joe Jolissaint, Mark Kruse] against.
        - **Greg Hubachek**- Report what we just did and those who voted can't go in and argue the other side.

- SB256 – Sen. Martiny [Time stamp 13:43:41]
    - Amends La. R.S. 23:1142 and enacts La. R.S. 23:1261-1266, to provide for a closed pharmacy formulary in workers' compensation claims
    - Jennifer Marusak, LSMS, presented. The bill is not what was originally presented.
    - It is to eliminate hassle factor both for providers and payors. There is a Y group and everything else be considered an N.
        - Concern about narcotics on Y schedule.
    - Patients get medicines in a timely manner.
    - Legislation is not directing care. It has no shutoff value for prescribing.
    - Oversight panel to keep it clinical. Gauge prescriptions on Y drugs for effectiveness and keep from abuse.
    - Working on substitute bill. Debating on health welfare vs. labor committee
    - **Chuck Davoli**- will there be a way to review substitute bill before it goes to committee?
        - Response via **Jennifer M**. - it depends on your council. We are meeting with as many people as possible
    - **Patrick**: As far as the Oversight Committee, there is a Medical Advisory Council in place. What's the value to adding pharmacists added to MAC vs new panel?
        - Response via **Jennifer M.** - never wanted it to be construed as cost factor. It is effectiveness factor.
        - **Mark Kruse**- The primary point of MAC, which I'm on, is care.
    - **Troy Prevot**- When you did Medicaid Formulary, how did y'all make decision?
        - Response via **Jennifer M.** - left door open for rebates. The group looked at models that were already in place. Evaluate changes through the rules.
        - **Chuck Davoli**- Which formulary have you looked, will look at and/or recommend?
            - Response via **Jennifer M**. - Some have suggested TX & WA. There are four in place. They greatly reduce opioid prescription because more payor involved.
        - **Julie Cherry**- Would they have option on updates to modify updates, accept, reject or take parts?
            - Response via **Jennifer M**.- Left that up to rule making and Director
            - **Joe Shine**- I would like to see payor on the panel or separate panel for check & balance. Cost is always a factor.
            - **Michael Morris**- would like to have representation on panel
            - **Troy Prevot**- Clinical first, cost second

- **Jenny Valois, Esq.** [audience] - Medicaid statute had provision about open hearing laws and that prevent pharmaceutical reps from lobbying to that panel. This draft doesn't have those protections. The 19th JDC has said the MAC is only an advisory committee and not subject to public meeting laws. I'm also concerned the agency has already made a decision on which formulary will be used and which drugs to add outside the panel that isn't formed yet.
    - **Patrick:** What is the basis for that concern?
    - **Jenny Valois, Esq.** [audience]: Emails from agency lawyer
    - **Patrick:** Please send me a copy of those emails since I have not seen them as I should have since I'm the Director. This is not our bill, have not spoken to LSMS about a particular formulary or made a choice.
- **Jenny Valois, Esq.** [audience] - Another problem is restriction to pain medicine per our approval rate to Medical Director. Problem with TX formulary is saying a drug is a N drug for one indication or another. Example: Cymbalta is a Yes drug for anti-depressed but a No drug for pain. Cost will be driven by having different doctors having to prescribe a drug.
- Michael Morris moved to oppose bill as is; Greg Hubachek seconded it
    - Council unanimously opposed to bill in current form
- **Patrick:** Formulary should never definitively exclude drug. If it's beneficial, based on scientific evidence, recommended and appropriate, then there should a process for it to be approved.
    - **Troy Prevost**- Our current guidelines can't support a formulary
    - **Joe Jolissaint**- Some drugs you can't get off cold turkey.
    - **Julie Cherry**- Any guidelines or formulary need to contemplate the patients that will meet max but still need care.
- Motion to oppose SB256 in its current form unanimously approved by council.

- Workers' Memorial Day, April 28, 2015 [time stamp 14:05:27]

- Kids Chance Fundraiser on May 8th

- Public Comment [time stamp 14:07:21]
    - N/A

- Other Business [time stamp 14:07:30]
    - **Will Green** [audience] - LABI Workers' Compensation conference will be at L'Auberge Casino in Baton Rouge on August 20-21st.

- Adjourn [time stamp 14:12:15]