

## **Workers' Compensation Advisory Council Meeting**

**March 3, 2009, 9:30a.m. to 12:00p.m.**

**LABI Conference Center**

**Meeting began at 9:30 a.m.**

### **Chair and Members Present:**

Chris Broadwater, Director, OWCA  
Charles Davoli  
Jim Patterson  
Denis Juge  
Dickie Patterson  
Dr. Mark Kruse  
Troy Prevot  
Cherie Pinac  
Greg Hubachek  
Dr. Joe Laughlin  
Julie Cherry  
Ken Hawkins  
Clark Cosse  
Michael Morris

### **In addition, attending from OWCA:**

Larry White, Systems Manager  
Teresa Boeneke, Asst. to the Director

The meeting was called to order by Director Chris Broadwater.

### **Introductory Remarks by Executive Director Tim Barfield**

Executive Tim Barfield thanked the Council for their time and effort. From the Louisiana Workforce Commission's stand point and from the Administration's standpoint, the workers' compensation system needs to be moved forward and improved. The center point of improving the system would be the Medical Treatment Guidelines. The Council's support is needed to come to a balanced and reasonable solution to benefit everybody. Everybody wins - the injured worker receives quicker and better treatment and therefore gets back to work quicker. From the medical standpoint, the doctors involved are able to treat the injured worker with less interference from the system when acting in accordance with best evidence. This should also be combined with a simpler and quicker billing and approval processes. To accomplish this, it is important that everybody has a seat at the table. Amid some controversy, there has been a lot of work

done to reach this goal. The ultimate goal would be for the Council to present legislation to the legislature this year that is largely agreed upon. To accomplish this, the focus needs to be on the big picture. If the whole system improves, then everybody wins though no single group will win on every issue. An open mind on the issues is appreciated.

The other focus of Executive Director Barfield is related to dispute resolution. Initial analysis indicated that the dispute resolution/mediations of the department were not performing as hoped. Therefore, prior to even interviewing Chris, a goal was established to move mediation policies forward. Executive Director Barfield directed Chris from the moment he hired him to begin developing a pilot program to address some of the deficiencies of the current model. He will be presenting such a plan to the Council in the coming weeks. The Council's support of this program is appreciated.

### **Presentation of Minutes from February 10, 2009 meeting**

Dickie Patterson made the motion to accept the minutes.  
Jim Patterson seconded the motion and the minutes were adopted.

### **Old Business**

#### **Update on Debit Cards Electronic Payment of indemnity benefits (LA RS 23:1201 and 1201.1)**

Cherie and Ken will have a draft ready by the next meeting. Language needs to be cleaned up. Cherie will check with John Daniels from Chase, to see what reports would be available. R.S. 23:1201A will need to be amended.

Dickie Patterson asks if this will be an opt in and/or opt out procedure. Chris states that it would be at the option for the insurer or the payor rather than mandatory.

Chris would like Dickie, Dr. Laughlin, Dr. Kruse and Cherie Pinac to identify how to establish some electronic payment for the medical benefits. Asks that they start meeting to provide guidance and a report to the Council so this will be ready to move forward for the 2010 Regular Legislative Session.

#### **Notification of Evidence of Premium Fraud (Cherie Pinac and Chuck Davoli)**

Chris, Cherie and Chuck have circulated some language that is very similar to the existing provision of 23:1200.2, which pertains only self insurance funds. That provision requires funds, upon having information that may indicate that a false statement or misleading statement is being made, to provide notice to the Fraud Unit of the Department of Insurance within 60 days. The plan is to include an additional paragraph

somewhere between 1168 or 1172.2, whenever an individual, fund or insurer has information to believe that a false or misleading statement has been made, either orally or in writing, they provide notice to the OWCA within 60 days, therefore triggering an investigation by the OWCA. They will have proposed language by next meeting.

### **Establishment of Fund to Address Return to Work Initiatives (Jim Patterson)**

No draft yet, Chris needs to get numbers from courts. Jim will have a draft ready by next meeting or the last meeting in March.

### **Update on Evaluation of Second Injury fund (Troy Prevot and Greg Hubachek)**

2<sup>nd</sup> Injury Subcommittee – Troy, Greg and Pauline have started the process. They are making progress and will provide updates to the council through the year.

Dickie asked about Rep. Roy's issue (La. R.S. 23:1209). Chris states that Denis and Greg will continue to work on possible solutions, ideas and keep Ted James, Mary O'Brien and Rep. Roy informed. Chris stated that this will be a difficult issue to address.

### **New Business**

#### **Discussion of Evidence Based Medical Treatment Guidelines**

Chris' thoughts:

One of the very positive things, over the last year, coming out of the legislative session, has been some of the dialogue and work done specifically on the issue of evidence based treatment guidelines. I understand at the same time that with that issue comes a lot of emotion from all three primary groups, not to mention the sub-groups. I recognize that. In spite of that, Tim and I have discussed this and we have continued to seek this as something that could be established within the OWC system, because we believe this can be something that provides a significant win for every single group within our system. Let me tell you why we believe that. As we have gone through this process, we hear a lot of complaints, and the complaints that we hear are along these lines. From a standpoint from the medical providers, it goes without saying that there are at times, and maybe more often than not, significant periods of frustration in feeling like they are unable to deliver the medical treatment as timely as they believe they need to in order to come out with successful outcomes, and we have had significant amounts of discussions regarding that issue. From the payor standpoint, there is a level of frustration when there is some evidence of over utilization in some areas. There is some concern from the standpoint of the injured worker, or the plaintiffs, regarding recommendations for what appears to be some cases of significant under utilization. And because of that, I think the parties have continued to spar on all of those issues that all stem from what seems to be a vague target, or a vague set of expectations of what is appropriate. The belief held by Tim and me is that this is a prime opportunity for all of the effected groups to work in a collaborative spirit, to address a single issue that provides a win on all of those fronts. I

understand that there is a significant amount of passion that goes along with that. These are some of the concerns that I hear regarding the establishment of guidelines and I will address those. From the provider standpoint there is an inherent fear that the creation of guidelines is simply a tool for denial of treatment and further ties their hands. From the payor standpoint, if the guidelines are created with significant involvement from the medical community, there is a corresponding fear that it goes to the other extreme to where everything becomes acceptable and nothing becomes inappropriate. In the midst of all that, what gets lost is the injured worker who is in the middle and who is receiving the treatment. All are valid concerns. What seems to be at the heart of some of the lack of progress in the area, is what remains somewhat of a lack of trusts among all of the parties here. If anything has been demonstrated over the last 9 months, every single group that is represented at this table has given some evidence to all the other members of the table that they can be trusted, and they will operate in good faith. Every group has done that. We are not going to end the lack of distrust over night, but I would at least hope, from the character and honor that has been demonstrated thus far, on other issues, that the players in the system can at least extend some level of trust to the others that they will do what is right for the system as a whole. This system of guidelines admittedly can either move us light years forward or light years behind, depending on how we handle our business. If we approach this issue with any single entity looking out only for their self interest, we would go light years backwards. But if the groups will move forward looking at the good of the system as a whole, this can establish a win for all players in the system and move us significantly forward as a model for many other states to look at. With that being said, the greatest level of trust is being shown in the administration putting that in your lap. But that is being done also with a level of confidence that those of you who are sitting at the table as well as those that are here in the audience that are involved in this process, have already demonstrated their willingness to try to move forward and set aside some of the distrust that has plagued us in the past. I have confidence that there is enough intelligence and honor sitting around this table that it can be done. It will not be easy.

There was some language created last session with regard to guidelines and we can begin there. I would like for the various groups that have an interest in this issue, to identify what would be most important to them if guidelines are going to succeed. With that being said, I know that there are concerns. As you raise a concern about a problem with guidelines, try to set aside simple rhetoric and address a specific concern from a factual standpoint. Also, try to identify a concern that someone on the other side may have as well, and identify what you would suggest to fix that. The floor is open for discussion.

Jim Patterson suggested that the parties work together to resolve conflicts, and that all parties should trust in Chris, who will lead impartially.

Troy Prevot stated that we need to have balanced guidelines that are multidisciplinary if they are to be effective.

Dickie Patterson inquired whether we have already agreed that we will have guidelines.

Chris Broadwater answered that, from the administration's standpoint, we believe that we should have guidelines and we should work towards establishing guidelines sooner rather than later. It can be beneficial to everyone in the system. We are opposed to guidelines that would greatly restrict what the doctors are able to do in providing treatment to injured workers. If this becomes an impediment to quality treatment for injured workers, then we failed. At the same time, we are also adamantly opposed to a vast expansion of acceptable treatment into areas where it becomes a blank check. The vast majority of providers in our system are not over utilizing, but there are some who do. In the same respect as there are some who are on the other end under utilizing certain things. What we are supportive of, is something that can encompass the good treatment that is already being provided by medical providers and with an understanding that if you continue to operate in that realm of acceptable good medical practice, then you should not be caught up in inherent delays that tie your hands. We would like to see this council create guidelines.

Denis Juge stated that there are several extremes found in systems around the nation. There are those where the employee is allowed choice of physician. There are those where the employer chooses the physician. Then there are those where the employee chooses from within a network created by the employer. Guidelines can provide another avenue where we do not have to go down the path of battling over who gets the choice of physician.

Chris Broadwater advised that he wants to hear from doctors and labor.

Dr. Laughlin described various ways that doctors currently operate under unwritten guidelines. He also expressed concern over guidelines being used as another method of denial based on reports from Dr. Gunderson regarding his experience with the Texas system.

Chris Broadwater reminded the groups that the desire is to learn from successes and failures of other states. We will not be Texas. Guidelines can be a tool and the hope is that we will establish a standard that docs help create.

Dr. Kruse described the term "best practices" and related how these are established based on best evidence. He further described the difficulties in obtaining the highest levels of evidence.

Dr. Laughlin stated that, if one guy is setting guidelines for his own group/practice, this can lead to failure.

Chris asked whether it would be possible to create multidisciplinary guidelines and get support.

Dr. Laughlin agrees to challenge.

Chris stated that there needs to be a multidisciplinary approach in order to get respect from both sides.

Drs Laughlin and Dr. Kruse state this can be done.

Chris raised 2 concerns: 1. What criteria will be deemed acceptable to be considered? 2. Once established, can we maintain updated information?

Chris asked what quality level will be the “floor” for material to be considered.

Dr. Kruse stated that physicians utilize case history and best practice, which may change from patient to patient.

Chris asked whether there is an established ranking system. Could we establish a process to rank 1-highest 5-lowest?

Michael Morris acknowledged that within clinical practice, there is clinical expertise and an art of medicine.

Dr. Laughlin asked whether the payors could identify their ongoing problems.

Denis Juge agreed to provide feedback from various adjusters/TPAs to identify for the medical providers what the ongoing issues are.

Dr. Kruse inquired whether these could be established in phases.

Dr. Laughlin asked whether we could start with the most prevalent, such as back pain.

Chris pointed out that the parties had yet to answer his first concern - identify acceptable standard of care and “floor” of acceptable evidence.

Dr. Kruse stated that the definition included in Title 22 during last session defining evidence based medicine can be a start.

Chris asked how this will be weighted. Chris asked Dr. Kruse, Dr. Laughlin, Troy Prevot and Michael Morris if they would work together prior to next meeting and see whether they could reach an agreement as to what material could be considered to establish a “floor”. Come up with floor by next meeting of March 17<sup>th</sup>? Each individual agreed to work on this issue.

Chris asked whether there were any other issues relative to guidelines that needed to be discussed.

Chris noted that he had not heard from Labor and asked whether they wished to offer any input.

Denis agreed to volunteer in getting word out to adjusting community in order to obtain information to be shared with the medical providers.

Chris commended all for their input and the way in which they conducted themselves during the meeting.

**Public Comment**

Sherri Giorgio – Medtronic

Not opposed to guidelines and offered to be a resource based upon their experience in other states.

Dr. Laughlin asked if anyone is speaking for patients

Chuck Davoli stated that Labor is in agreement with the concept of guidelines and will continue to work with the groups to achieve this goal in a reasonable fashion.

Chris again asked that each subcommittee have drafts ready on issues by next meeting (March 17) and copy Ted James and Mary O'Brien.

**Meeting Adjourned 12:00 p.m.**