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Bobby Jindal, Governor
Curt Eysink, Executive Director

Office of Workers' Compensation Administration

WORKERS' COMPENSATION ADVISORY COUNCIL MEETING

September 30, 2009

LABI Conference Center

9:30a.m. – 11:00p.m.

Chair and Members Present:

Chris Broadwater
Eddie Crawford
Dr. Jim Quillin
Troy Prevot
Dickie Patterson
Greg Hubachek
Chuck Davoli
Cherie Pinac
Jim Patterson
Denis Juge
Michael Morris
Julie Cherry
Ken Hawkins

Members Absent:

Dr. Joe Laughlin
Dr. Dan Gallagher
Clark Cosse

In addition, attending from OWCA:

Larry White, Dep. Asst. Sect.
Teresa Boeneke, Adm. Asst.
Sue Newman, Medical Services Mgr.
Pauline Williams, 2nd Injury Director
Sheral Kellar, Chief Judge
Dr. Larry Ferachi, Medical Director

The meeting was called to order by Director Chris Broadwater.

Update on OWCA Activities - Chris Broadwater, Director

EDI Committee

The Electronic Data Interface, (EDI) Committee is primarily comprised of employees of OWCA and private industry. The purpose of the committee is to look at the possibility of going to an EDI system, as many states are already doing by submission of forms, 1007s, 1002s 1003s electronically so that we can work much more efficiently. EDI also has capabilities of handling medical billing, medical records, electronic filing in the courts, and verification of coverage through NCCI. In addition to some employees from the Records Management Division, Michael Morris, LHBA and Jill Breard, LWCC are

working on this committee to come back and provide us with some recommendations and options as to what we can do to upgrade our systems. They will provide recommendations as to each of those components, what the cost would be, and based upon our budgetary situation, what they think is a feasible plan to start implementing and start upgrading our systems for all of our customers, employees, employers, insurers, and medical providers.

E-Filing Committee

The Electronic Filing Committee (E-Filing) will be evaluating the possibility of moving to electronic filing in our Hearings Division, similar to the system the Federal courts now have. This committee will collaborate with the EDI committee to come up with costs and options. The E-Filing committee will have OWCA employees as well as defense attorney Kirk Landry, and plaintiff attorney, Michelle Sorrells. The first meeting of this committee will take place Friday, October 2, 2009.

Section Updates

Across the board, the 7 divisions within the OWC have all done an incredible job over the last year.

Hearings - In January 2008 there were 10,371 open cases, including PPO cases. In August 2009, they were down to 8,301, they have moved over 2,000 through the system. Some is cleaning records, a lot of that was moving cases through the system that were ready to be resolved. They continue to reduce the average time it takes to work through those cases. Kudos to Judge Kellar and her staff.

OSHA-Safety Division – In 2008 they visited 286 employers which affected 19,400 employees. In 2009 they visited 568 employers which affected over 31,000 employees. This is attributed to staffing issues. They were under staffed. They are now fully staffed with the exception of one administrative position. They are running on all cylinders - significant improvement here.

Fraud Division – In 2008 there were a total of 1,987 investigations, which includes cross referencing UI claims with WC claims, referrals from Insurers, employees. From January 1, 2009, through September 29 of this year they have investigated 2,350 cases. In 2008 they referred a total of 4 cases for prosecution with the AG's office. In the first 9 months of this year, they have referred 21 for prosecution. In all of 2008 those referrals resulted in 2 arrests. In the first 9 months of this year we have had 13 arrests. The breakdown on that is, the referrals for prosecutions: 14 claimants, 6 employers, 1 attorney.

Across the board, all sections are performing at that level. We will have an update on Medical Services and 2nd Injury at the next meeting.

Introduction of Medical Director, Dr. Larry Ferachi

After interviewing several incredible candidates, who were very impressive, one particular candidate really stood out. Dr. Larry Ferachi has been named the Medical Director. In addition to his private practice with the Baton Rouge Orthopaedic Clinic, Ferachi serves as an assistant professor of orthopaedic surgery for the LSU Health Sciences Center at Earl K. Long Hospital. His credentials include memberships in the American Academy of Orthopaedic Surgeons, Louisiana State Medical Society, East Baton Rouge Parish Medical Society, Hughston Sports Medical Society and Tulane Caldwell Medical Society. He served as team physician for Southeastern Louisiana University football and basketball from 1984-1992. Ferachi earned his bachelor's degree from Nicholls State University in 1972 and his medical degree from the LSU School of Medicine in 1976. He completed his residency in 1981 in orthopaedic surgery at Tulane University Department of Orthopaedics.

Dr. Ferachi: Although his main interest is in sports medicine, he also does general orthopaedic work. While he evaluates a lot of backs, he does not perform back surgeries. He has been on both sides of the coin, where he has treated injured employees, and the system objective should be to try to get them back to work as soon as possible. Lately, he has performed more 2nd medical opinions and independent medical evaluations. He is amazed at how slow the process is to get from point A to point B. The guidelines are mainly to take care of the injured employee, but in a timely fashion. We need to educate the physicians in the State of Louisiana as to how we do that. Then we can get the process rolling where everyone benefits, the employer and the employee. That is the goal.

Discussion of guidelines selection and development

Director Broadwater and Dr. Ferachi will continue to meet to finalize the core group of the medical advisory council. Once core group is finalized, the process will start in the terms of reviewing the guidelines that are part of the base model. It is anticipated that as that process is started, there will be a need for additional people on various panels.

Act 254 calls for each professional association to provide the names of three nominees, from which one of them would be selected to serve on the MAC. Several groups have only turned in one nomination. The Director needs the Council's help in getting the required nominations turned in as soon as possible.

Chuck Davoli – Asks if there is a nomination from the neurosurgeon association.

Director – There is one nomination and several volunteers. The Director is going to check with the association to see if they are going to send in two more nominations, or if they are okay with the volunteers. The State Medical Society was asked to help with the nominations, as there is no professional neurology association.

Timeline: Base set of guidelines identified for the various panels by January 1, 2010. Start evaluations of those guidelines during January, February and March, 2010. Have a completed product by mid March 2010. Final product is to be disseminated by mid April 2010, in order to go through the rule making process. Training will be held in May, June and July.

Proposed future meeting dates for the W.C. Advisory Council have been emailed and posted on our web site. Updates on the MAC will be provided at the Council's monthly meetings.

Dickie Patterson – Asks if there are any holes to be filled in the statutes that would need to be brought up at the next legislative session.

Director Broadwater – There is the potential, and will have to be evaluated.

Introduction of Special Assistant, Lisa Fontenot

This position was previously held by Fabian Blache. Fabian directed his attention towards a number of the Fraud issues and investigations and did an outstanding job along with Kaye Fournet. Director Broadwater has asked Lisa Fontenot to fill this position to work on addressing issues with the Fee Schedule. Lisa has got a significant background both in medical billing issues, coding issues, she has worked as an informal mediator (a go between with medical providers and some payors) to work out some reasonable and fair payment structures. Both sides have been pleased with her efforts in that regard. She will be working in that capacity, be a resource to our Medical Services Division, who will have a busy year. Lisa will work with the groups, see what their needs are, what their concerns are, to provide recommendations to the Administration for some middle ground so the issues can be resolved.

Discussion of fee schedule and policy circulars

Sue Newman and her staff have already started working on some grey areas in the schedule. One is an anesthesia issue. Some of these grey areas will be targeted and provide some certainty in advance. Establish a fair reimbursement and fair payment in those types of situations. Post on website periodic circulars, stating the problem, what the policy should be and recommendations as to what to follow. If payors or medical providers have ongoing problems or concerns please contact Sue.

Subcommittees:

Update of Hearing Rules - Chief Judge Sheral Kellar, Chair

Director Broadwater recommends that Sheral Kellar assemble and chair a hearing rules subcommittee made up of people from both sides of the bar, to come up with recommendations for the Council's approval in advance.

Update of UR Rules - Cherie Pinac, Chair

Director Broadwater recommends that Cherie Pinac chair a committee made up of people externally, internally as needed to do a thorough review of the utilization review rules, including people from the medical community, the insurance community attorneys...etc.

Return To Work Fund - Jim Patterson and Chuck Davoli, Co-Chairs

Director Broadwater recommends that Jim and Chuck work together to present the Council with recommendations.

Electronic Billing/Payment - Dickie Patterson, Chair

Director Broadwater recommends that Dickie Patterson chair this subcommittee and provide recommendations to the Council.

Issues raised by Rep. Roy and Rep. LeBas - Denis Juge, Chair

Director Broadwater recommends Denis Juge to chair this subcommittee to provide a solution for their concerns.

Second Injury Fund - Troy Prevot and Greg Hubachek, Co-Chairs

Director Broadwater recommends that Troy Prevot and Greg Hubachek continue working together to move forward with recommendations to the Council.

Director Broadwater moved to establish the subcommittees and that they be chaired by those individuals that have agreed to take on that responsibility with giving them the authority to bring in whoever they deem necessary, either from the Council or outside the Council, so they can come back with some recommendations for consideration and action by the Council.

Troy Prevot seconds motion
No opposition
Motion carries.

Additional issues for 2010 Regular Session:

La. R.S. 23:1035 - clarification of sole proprietor exclusion

Historically there was an exclusion for officers of corporations, members of LLCs to exclude their salary from their premium calculation, which makes sense. There was an amendment done some years back to bring in sole proprietors who were operating businesses, but have never gone through the process of creating that separate juridical entity. The problem it has created is that the statute reads that sole proprietor may exclude themselves by written agreement and that has been construed to mean that they may exclude themselves from coverage by written agreement with another contractor, which was not the intent, the intent all along has been that if someone is not going to include themselves on a policy that they could, by written agreement with their insurer, exclude themselves and there would be an endorsement or some exclusion on the policy indicating those individuals. The Administration would like to submit a bill this year inserting those words “that by written agreement with their insurer exclude themselves from coverage”, so that we clarify that they need to do that with their insurer or self insured group.

La. R.S. 23:1293 - revision of confidentiality prohibitions

Verification of coverage is an issue where some states have the ability to access the OWCA web site whether it's a business or employee be able to identify whether an entity is properly insured in accordance with the law. It essentially accesses the NCCI database and identifies that information. This is a benefit to the employers, employees, and insurers. At the present time the prohibition of 23:1293 is strict and this is not possible. The Council will look into relaxing the language in the statute to better serve employers, employees and insurers.

Other Business

The Governor has appointed the representative for the State Medical Society, Dr. Dan Gallagher. Dr. Gallagher is an Orthopedist from the west bank. He was unable to make today's meeting, but will be joining us in the future.

Chuck Davoli – He and Greg Hubachek are working with the Physical Therapy Association and have invited the OTs to come to the table. They are examining the feasibility of standardization of FCE, and tying that in with some performance criteria specifically with the Orthopaedics for return to work. Contact Chuck if you would like to join in on the meetings.

He and Denis are co-chairing the specialization certification of workers' compensation attorneys. The cycle will put them in January 2011 with the Louisiana Board of Legal Specialization through the Bar Association. A committee has been formed and the meetings have started. If anyone wants to join the meetings please contact Chuck.

Chuck is working on the issue of the uninsured employer fund. He will continue to evolve this issue. Also he is looking into the undocumented and illegal workers. He is working on looking into some disincentives for employers who are hiring illegal and undocumented workers. The qualification would be that they knowingly hired in that capacity.

Director Broadwater states that there is an E-Verifying system that is available with Homeland Security, however there are some problems with the system. It is a free service that employers can register with Homeland Security. Once registered, employers can access databases to check social security numbers.

Jim Patterson – There was an agreement with this council that they work on legislation for Rep. Ponti concerning burden of proof.

Director Broadwater – There will be some additional issues that will come up during the year, as members of the general public, and he encourages the public to contact him or a member of the Council to bring that before us and we will work on the issues. Over the summer he has received positive feed back on the work that, not just the Council has been doing, but all our stake holders, in working hard and passionately, but at the end of the day making progress. Director Broadwater asks that everybody give Dr. Ferachi a little time to get acclimated. We are extremely fortunate to have him working with us.

Would like to see a report from all the subcommittees at the next meeting.

Next meeting with be October 28, 2009.

Adjourn