

# *Workers' Compensation Board*

## *Workgroup Meeting Minutes*

August 26, 2013

**Monday, August 26, 2013**

### **I. Call to order**

Director Monagle, acting as Chair of the Alaska Workers' Compensation Board, called the workgroup to order at 9:10 am on Monday, August 26, 2013, in Anchorage, Alaska.

### **II. Roll call**

Director Monagle conducted a roll call. The following Board workgroup members were present: Linda Hutchings, David Kester, Rick Traini, Zeb Woodman

### **III. Agenda**

Director Monagle stated the purpose of the workgroup meeting is to finalize recommendations for presentation to the full board at their September meeting.

The workgroup reviewed the minutes from the July 26, 2013 workgroup meeting. Member Hutchings moved to approved, seconded by member Kester. Minutes were unanimously approved.

### **IV. Discussion on Medical Cost Containment.**

#### Fee Schedule

- The workgroup discussed a revised fee schedule using resourced based, fully implemented, non-facility, geographically adjusted, relative value scale (RBRVS) methodology. The workgroup reviewed a *Fee Schedule Primer*, produced by the State of Hawaii, the Idaho RBRVS fee schedule, and the Hawaii Medicare plus fee schedule.
- The group reviewed a price comparison worksheet produced by the Director showing the maximum allowable reimbursement (MAR) for arthroscopic knee surgery (CPT code 29881) under various fee schedules.
- Director Monagle has obtained the top 25 procedure codes by dollar amount charged and by frequency. He has forwarded these codes to Alaska's top 3 health insurers – Premera/Blue Cross, Aetna, and United Healthcare – for a side-by-side price comparison to Alaska's MAR fee schedule allowance.
- The workgroup discussed how the regulatory process would work if the Board had authority to establish state specific conversion factors, and how the Medical Services Review Committee might be integrated into this process.
- The workgroup discussed the timing of a revised fee schedule, i.e., the amount of lead time necessary for enabling legislation and regulatory work. The consensus was that it would possibly take until January 2015 or possibly January 2016 to develop and implement conversion factors.

- The workgroup discussed the frequency of updates to a RBRVS fee schedule, and the need for carve-out multipliers for certain services and charges, such as air ambulance services.
- The discussion included the need for a medical director to provide the Division specific subject matter expertise in developing fee schedules, treatment guidelines, and addressing medical disputes.
- It was noted that a fee schedule based on RBRVS methodology is consistent with the recommendations made the Workers' Compensation Legislative Task Force in 2006 and the Medical Services Review Committee in 2009.
- The workgroup also discussed limiting the MAR to the fee schedule in the jurisdiction where medical treatment or services were provided, establishing a 12 month time bar for submitting medical bills, and establishing a 6 month time bar for disputing medical payment.
- The workgroup recommends adopting CMS rules, modifiers, and the National Correct Coding Initiative, and ICD-10 diagnostic codes. *Note: Law advises that national publications may not be adopted "as amended from time to time" through the regulatory process. We are advised to seek statutory authority for this type of standing reference.*

#### Prescription Drugs

- The workgroup discussed revision of the current formulary for prescription drugs, recommending moving away from average wholesale price (AWP) to retailers plus a multiplier, to manufacturer's cost, times a multiplier, plus a dispensing fee.
- The workgroup discussed and recommends regulating physician dispensing, requiring NDC coding on all packed drugs.
- The workgroup discussed the opioid epidemic, recommending regulations based on the joint IAIABC/ACOEM draft model rule. Member Hutchings recommended more frequent urinalysis testing than recommended by IAIABC.

*Break 10:25 am – 10:43 am*

#### SIME Selection

- There was a discussion concerning the regulatory selection process for updating the Board's SIME physicians. The consensus is that there is too much "horse trading" taking place in the current selection process. The workgroup also discussed whether there should be weight given to the opinion of a SIME, the Board's expert.

#### Treatment Guidelines

- The workgroup discussed the recommendation of evidenced based medicine and use of treatment guidelines. The primary national producers are the Reed Group, which produces the ACOEM Treatment Guidelines (ACOEM), and the Work Loss Institute, which produces the Official Disability Guidelines (ODG). The recommendation was that both be adopted, with a provision that if one or both guidelines recommended treatment, the payer should accept for payment.

If both do not recommend treatment, they payer could deny treatment. Denial of treatment could be promptly reviewed by an in-house medical director for first level administrative review, which is subject to Board review on appeal.

- Adoption of treatment guidelines was recommended by both the Workers' Compensation Legislative Task Force and the Medical Services Review Committee.

*Lunch Break 11:52 a.m.-1:39 p.m.*

#### Summary of Recommendations

- The workgroup reviewed Director Monagle's summary of recommendations thus far. There was a discussion over the recommendation that the MAR for out-of-state treatment be governed by the laws of the jurisdiction where treatment was provided. The concern is that the recommendation was moving in the direction of employer directed care. Director Monagle stated that the idea of employer directed care was specifically not moved forward by the workgroup at the July meeting. Written comment from Labor was specifically opposed to employer directed care.
- The workgroup modified the language pertaining to the frequency of updating the RBRVS fee schedule.
- Director Monagle said he would look for source material on prescription drug manufacture costs.
- After discussion, the workgroup removed the recommendation to amend regulations pertaining to the selection of SIME physicians. Since this process does not require a statutory change, it was decided to keep this item separate from the workgroup's recommendations.
- The workgroup finalized its recommendations on treatment guidelines.

#### Reemployment Benefits

The workgroup discussed recommendations for changes to the reemployment benefits program. The workgroup discussed the following items.

- Eliminate mandatory evaluations at 90 days.
- On a voluntary basis, provide consultation with the employer and employee to determine the physical demands of the employer and the physical capacities of the employee to determine whether a stay-at-work (SAW)/return-to-work (RTW) plan can be implemented.
- Bring reemployment evaluations in-house.
- Make a one-time cash benefit available to injured workers who are found eligible for reemployment benefits. Give the injured worker the option of entering a state administered retraining plan, or taking the cash benefit and complete retraining on their own. Institute a Workers' Safety and Compensation Administration Account (WSCAA) contribution as part of the one-time cash benefit.
- Strengthen criteria for reemployment specialists, eliminating reemployment services by non-credentialed individuals and eliminate reemployment services

being administered by firms not principally owned by credentialed individuals.

- Develop fee schedule for reemployment specialists.
- Increase the statutory benefit from \$13,300 to a higher amount based on UAA tuition rates, and tie to Alaskan CPI for education.
- Increase evaluation timeline from 30 to 60 days.
- Provide statutory provision for RBA reconsideration.
- Amend the statute to allow employers to controvert based on noncooperation & follow regular appeal process.
- The Director needs to provide statistics on the case load assignments to reemployment specialists, and what a reemployment counselor would make in-house.

*Break 3:00 pm – 3:46 pm*

On the issue of whether or not to bring evaluations in-house, the workgroup decided to present the Board with two options – one with evaluations being done in-house and the other with evaluations continuing as is, with some recommended changes.

The workgroup finalized the language in its recommendations for consideration by the full Board at the September meeting.

*Meeting Adjourned 4:00 pm*

### **Medical Costs**

- Replace existing UCR fee schedule with a relative value fee schedule with state specific conversion factors. The proposed regulation should include
  - Provider pricing based on CMS RBRVS for each practice category.
  - Facility pricing based on CMS DRG relative weights.
  - Provision for adopting national publications relating to procedure codes, modifiers, national correct coding initiative, and other reference materials necessary to implement.
  - Provision for evaluating the state specific conversion factors once every two years.
  - Provision for state specific formulary for air ambulance services.
  - Provision that reimbursement for out-of-state services be the lower of the workers' compensation fee schedule in the jurisdiction where the service is provided or the workers' compensation fee schedule adopted in Alaska.
- Adopt a regulation providing that providers must submit bills to payers within 12 months from date of service, and that a claim for disputed reimbursement be submitted within 6 months of date dispute arose.
- Amend the formulary for prescription drug fee schedule from AWP to manufacturer's cost times a board specified mark-up, plus a dispensing fee.
- Require that prescriptions dispensed by a physician bill based on the manufacturer's national drug code identifier.
- Regulate the prescription of opioid narcotics, basing regulations on the IAIABC model.
- Hire or contract for a medical director within the Division.
- Recommend adoption of ODG and ACOEM treatment guidelines, with expectation that recommended treatment under one or both guidelines is approval to pay, and recommendation against by both guidelines is reason for denial. Denials would be subject to administrative appeal and review by the Board.

### **Reemployment Benefit Costs**

- Repeal the 90 day mandatory evaluation, and return to evaluation upon the request of either the employer or the employee.
- On a voluntary basis, provide an initial consultation with the employer and employee to determine the physical demands of the employer and the physical capacities of the employee to determine whether a stay-at-work (SAW)/return-to-work (RTW) plan can be implemented.

- Adopt one of the following options
  - Option A
    - ✓ Bring the reemployment evaluation and plan process in-house.
    - ✓ Increase the benefit under .041(l) from \$13,300 to \$18,600, and adjust to cpi.
    - ✓ If found eligible, provide two choices
      1. accept retraining with limit of 2 years and maximum benefit under .041(l), or
      2. accept a one-time cash benefit of amount under .041(l) plus 50%, and an additional 20% paid into WSCAA for reemployment administration.
  - Option B
    - ✓ Strengthen criteria for reemployment specialists, eliminating reemployment services by non-credentialed individuals and eliminate reemployment services being administered by firms not principally owned by credentialed individuals.
    - ✓ Develop fee schedule for reemployment specialists.
    - ✓ Increase the benefit under .041(l) from \$13,300 to \$18,600, and adjust to cpi.
    - ✓ If found eligible, provide two choices
      1. accept retraining with limit of 2 years and maximum benefit under .041(l), or
      2. accept a one-time cash benefit of amount under .041(l) plus 50%.
- Increase evaluation time from 30 days to 60 days.
- Provide statutory provision for RBA reconsideration with 30 days of decision.
- Amend the statute to allow employers to controvert based on noncooperation & follow regular appeal process.