

**WORKERS' COMPENSATION ADVISORY COUNCIL  
MINUTES ~ NOVEMBER 19, 2007 ~ MEETING [ 1:00 P.M.]  
TOSHA HEARING ROOM  
FIRST FLOOR - BUILDING A  
220 FRENCH LANDING  
NASHVILLE, TENNESSEE**

The meeting was called to order at 1:15 p.m. by Mr. Dale Sims, State Treasurer.

A quorum of voting members was not physically present; therefore it was necessary to conduct the meeting electronically. However, subsequent to the time the meeting was called to order, the telephone conference call had to be terminated as those attending by telephone could not hear the proceedings. Therefore, the meeting quorum was lost. Chairman Sims, without objection, continued the meeting for informational purposes only.

**\*CHAIR:** Dale Sims, State Treasurer - Present

**\*VOTING MEMBERS:**

Employee Representatives

- > Jack A. Gatlin Present via telephone conference call; not present when conferencing terminated
- > Jerry Lee Present

Employer Representatives

- > Thomas Hayes Absent
- > Bob Pitts Present
- > Gary Selvy Present via telephone conference call; not present when conferencing terminated

**\*NONVOTING MEMBERS:**

- Kitty Boyte [TDLA representative] Present
- Tony Farmer [TTLA representative] Absent
- Kenny McBride [local governments representative] Absent
- Jerry Mayo [insurance companies representative] Absent
- Sam Murrell, MD [health care providers representative -TMA] Present
- A. Gregory Ramos [TBA representative]  
Present via telephone conference call; not present when conferencing terminated
- David Stout [health care providers representative-THA] - Absent

**\*EX OFFICIO MEMBERS**

Commissioner Leslie A. Newman - Absent [Designee, Mike Shinnick, Present]

Commissioner James G. Neeley - Absent [Designee Teresa Bullington, Benefit Review, Present]

At the beginning of the meeting (prior to the time the telephone connection was lost) Mr. Sims requested the representatives of the Division of Workers' Compensation to explain the status of the Department's proposed rules related to the utilization review program and the medical fee schedule. Mr. Blaine Sprouse reported the utilization review rules were filed with the Secretary of State on October 12, 2007 and will become effective on December 26, 2007. He stated the medical fee schedule amendments were at the Attorney General's office for review. Mr. Sprouse explained a public hearing was conducted regarding the utilization review rules on July 24, 2007, and a public hearing was held regarding the amendments to the medical fee schedule on August 28, 2008.

Mr. Sims expressed concerns the Advisory Council had met several times since the Department had initially filed the proposed rule changes and the Council had not been consulted concerning the rules. The decision was made to continue with the agenda items for those present at the meeting, but noted no action could be taken by the Council until its next meeting on December 11, 2007.

**A. DISCUSSION OF PROPOSED AMENDMENTS TO MEDICAL FEE SCHEDULE**

Mr. Sprouse explained after the Attorney General reviews the proposed amendments the amended rules will be filed with the Secretary of State's office and will become effective 75 days after that date. It was noted by Mr. Pitts and Mr. Sims that the rules will become effective unless the Commissioner of Labor/WFD withdraws the rules.

At the request of Mr. Sims, Mr. Sprouse summarized the proposed amendments to the Medical Fee Schedule, the comments made at the public hearing and the agency responses to the comments. Members of the Council were afforded the opportunity to ask questions concerning the proposed changes. Mr. Sims expressed concern that there appeared to be confusion regarding the Department's interpretation of the word "consultation" as it appears in the statute requiring the Commissioner of Labor annually review the medical fee schedule in consultation with the Advisory Council and the Medical Care and Cost Containment Committee. Mr. Pitts stated the Advisory Council cannot discharge its legislative responsibility of commenting on the operation of workers' compensation without some indication of the Department's reasoning behind its decisions. Mr. Lee concurred with the comments of Mr. Pitts.

Dr. Murrell pointed out that the proposed adoption of the Tennessee Geographic Practice Cost Index (GPCI) in the changes to the current Medical Fee Schedule amounts to a significant reduction in reimbursement to the physicians in addition to the initial 25% loss of reimbursement from the adoption of the Medical Fee Schedule. He opined that the cost of practicing medicine is not the same throughout the State of Tennessee - that it does not cost the same in Memphis as in

smaller communities, etc. He expressed concern that continued significant decreases in the reimbursement may lead specialists to decline to accept workers' compensation patients.

Mr. Steve Wade, Tennessee Orthopaedic Associates, addressed the Council regarding the proposed effects on reimbursement by the proposed amendments to the Medical Fee Schedule. He stated one of the major problems with the Tennessee Medical Fee Schedule is that it constantly floats with the changes made in Medicare reimbursement each year. He noted a survey of medical groups showed a 25% decrease in reimbursement since implementation of the fee schedule and expressed concerns that the adoption of the GPCIs will lead to increased reductions in the reimbursement.

Chairman Sims announced discussion of the proposed changes to the Medical Fee Schedule would be added to the agenda for the December 11, 2007, meeting to determine whether to memorialize the Council's comments.

## B. DISCUSSION OF UTILIZATION REVIEW RULES

Mr. Sims noted the proposed amendments to the utilization review program will become effective on December 26, 2008, unless the Commissioner of Labor/WFD takes some action to withdraw the rules.

Dr. Sam Murrell made an extensive presentation to the Advisory Council members that summarized the proposed changes to the utilization review program, concerns he had about the proposed rules and his review of ACOEM guidelines. He noted the proposed changes do require the reviewing doctor be a Tennessee licensed physician in the same speciality which the medical association believes to be a good change. He expressed great concern over the Department's authorization of permit each carrier to choose to use either American College of Orthopedic and Environmental Medicine Guidelines or the Official Disability Guidelines in determining utilization review decisions. He stated the proposed rules do not require the same guideline to be used in all cases; each utilization review company/provider for each insurance carrier can select to use a different guideline on a case by case basis. He also expressed concerns regarding the time limits contained in the rules; the appeals procedure permitted by the rules; the possible penalties that can be assessed against the physician.

Dr. Murrell discussed the following concerns:

1. Utilization Review puts injured workers at risk for delayed or denied access to medical care.
2. Utilization Review adds an additional layer of cost to claims: the direct cost of providing utilization review; indirect cost of lost days from work and indirect cost in patient outcomes due to delay in treatment.
3. Use of the treatment guidelines medically accepted standard of care represents a real paradigm shift - it is essentially a 180 degree reversal of doctrine. Traditionally, the presumption of "appropriate care" has been awarded to the treating physician.

Awarding the presumption of “appropriate care” to guidelines represents a reversal of doctrine and shifts the burden of proof to the treating physician and their patient to justify why they should be cared for.

4. ACOEM and ODG differ on medical recommendations. The insurance carriers can pick and choose which guides to use and potentially deny access/authorization of care for injured workers by choosing the guide which denies approval.
5. The RAND study commissioned by the State of California concluded “adopting multiple guidelines without evaluating the quality of those guidelines and eliminating inconsistencies in overlapping content area could create more issues than it resolves.”
6. The RAND study concluded neither the ACOEM or ODG guidelines were of certain validity regarding lumbar spinal fusion; neither set of guidelines addresses all clinical scenarios and some diagnoses/treatment options are not addressed.

Dr. Murrell also stated there should be a reasonable preservation of the ability of an injured worker to gain access to healthcare under the provisions of the Workers’ Compensation Law. He is concerned the adoption of the ACOEM guidelines will result in delayed care that is less comprehensive and does not meet the accepted standard of care in any other patient population. He also discussed several patient scenarios and how the cases would have been treated if the ACOEM guidelines had been applied and discussed the application of the guidelines would have resulted in either delay of treatment, incorrect treatment or no treatment. He noted the therapies discussed in these patient scenarios would have been covered under commercial policies, Medicare, TennCare, Veterans’ Administration; the only persons who would not be covered for these therapies would be persons for whom ACOEM guidelines were applicable.

Chairman Sims suggested the preparation of a memorandum from him to Commissioner Neeley that transmits Dr. Murrell’s information to the Commissioner so he will be aware of the information as it raises some interesting points about the utilization review rules and the adoption of the ACOEM and ODG guidelines and that the Council also has concerns about the appeals process to insure the process is being appropriately applied.

#### C. OTHER MATTERS

Chairman Sims noted the remainder of the items on the agenda for the meeting were deferred until the meeting on December 11, 2007.

Chairman Sims announced the death of voting member Othal Smith on the 16<sup>th</sup> of October, 2008 and suggested at the December 11 meeting some action could be taken to honor his service to the Council.

The meeting was adjourned at 4:05 p.m.