

# *Workers' Compensation Board*

## *Meeting Minutes*

December 13, 2012

**Thursday, December 13, 2012**

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

Director Monagle, acting as Chair of the Alaska Workers' Compensation Board, called the Board to order at 9:02 am on Thursday, December 13, 2012, in Anchorage, Alaska. Director Monagle noted this is a special meeting of the Board for the purpose of discussing workers' compensation medical costs.

### **II. Invocation and Pledge of Allegiance**

### **III. Roll call**

The roll call was taken. The following Board members were present:

Stacy Allen	Linda Hutchings	Rick Traini
Brad Austin	David Kester	Patricia Vollendorf
Jeff Bizzarro	Sarah Lefebvre	Robert Weel
Pamela Cline	Krista Lord	Zeb Woodman
Chuck Collins	Amy Steele	
Don Gray	Mark Talbert	

Janet Waldron was absent.

### **IV. Agenda Approval**

A motion to approve the agenda was made by member Hutchings, and seconded by member Weel. The agenda was approved by unanimous vote.

### **V. Board Committee Reports**

Medical subcommittee chair Linda Hutchings acknowledged receiving a large amount of information from Director Monagle and Chief of Adjudications, Janel Wright. Ms. Hutchings stated the most appalling realization is how much medical costs have increased in recent years. She cited an example where a provider had billed an employer \$27,000 for medical treatment, but upon discovering that it was a workers' compensation claim and not a health claim, they billed the employer an additional \$17,000. Ms. Hutchings said that there is no current effective medical cost containment in place for workers' compensation.

### **VI. Director's Report**

Director Monagle gave a PowerPoint presentation of workers' compensation system medical costs in Alaska. He noted that the data comes from a range of studies and sources, and noted that there is a time lag between data collection and reporting.

## Highlights of Director Monagle's Presentation

- According to the 2012 Oregon Workers' Compensation Premium Survey, Alaska moved into the #1 position, being ranked as the state with the highest workers' compensation premium rates.
- Over the past 6 years, although Alaska has moved to the #1 place, overall premium rates have declined year to year – primarily due to the continued downward trend in claim frequency rates.
- Alaska's medical costs comprise 76% of total loss costs, compared to 59% country wide.
- Alaska's medical costs have risen from \$100 million to \$160 million over the past 10 years, with an 8.5% increase in 2011.
- Alaska's medical costs per indemnity claim is \$48,200 compared to \$28,000 countrywide.
- Alaska's medical costs are 160% of allowable Medicare costs, the highest rate in the nation.
- Physician dispensing of repackaged drugs is a rising problem in Alaska.
- Legislative actions were taken in 2004, 2005, 2007, 2009, and 2011 concerning medical fee schedules.
- The Workers' Compensation Task Force, established by the Legislature in 2005 recommended
  - Discontinuing medical fee schedules based on usual, customary, and reasonable (UCR) fees
  - Improving medical cost data collection
  - Adopting legislation restricting the over-use of opioid narcotics
- The Medical Services Review Committee, established by the Legislature in 2005 recommended
  - Switching from a UCR fee schedule to a resource based relative value scale (RBRVS) fee schedule
  - Implementation of separate RBRVS conversion factors for medical practice areas
  - Basing hospital fees on Medicare/Medicaid diagnostic related group (DRG) codes
  - Basing fees for ambulatory surgical centers on Medicare/Medicaid ambulatory payment classification (APC) rates
  - Implementation of treatment guidelines
  - Improved medical cost data collection
  - Contacting with an independent research organization to study the effects of recommended changes

*Break 10:15am-10:41am*

## **VII. New Business**

Director Monagle invited the Medical Subcommittee to make a recommendation to the full Board on desired action. Subcommittee chair Hutchings suggested the Board

make a recommendation to the Legislature to address the ineffectiveness of the current medical fee schedule in containing workers' compensation medical costs.

Director Monagle reminded the Board that under Alaska Statute 23.30.001, which was added by the legislature in 2005, the statute states the intent of the Workers' Compensation Act is to provide "...quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter."

The Board began discussion on a proposed resolution addressing medical costs under the Alaska Workers' Compensation Act.

#### **VIII. Public Comment Period 11:00am – 12:00 noon**

David Floerchinger, workers' compensation attorney. He testified that physician dispensing of prescription drugs is driving up medical costs. He cited Automated Healthcare Solutions dba Prescription Partners, which promotes physician dispensing as a way for treating physicians to add to their profit margins. In his work for the Anchorage School District (ASD), he noted increased billing from Prescription Partners (PP). Mr. Floerchinger and ASD performed a price comparison between PP and local retail pharmacies. For a single oxycodone pill Anchorage retail pharmacies charged \$.93/pill vs. \$4.36/pill by PP. For hydrocodone, pharmacies charged \$.78/pill vs. \$2.26 by PP. For zolpidem tartrate (Ambien), pharmacies charged \$1.63/pill vs. \$9.25 by PP. Mr. Floerchinger testified the problem in Alaska lies with how the fee schedule treats the average wholesale price (AWP). The AWP is the retail "sticker price" for a drug. Alaska's fee schedule allows for a markup of AWP + 20% for brand name drugs, and AWP + 25% for generic drugs. Mr. Floerchinger says Alaska is in essence allowing full retail plus. He suggested the fee schedule should be a percentage of AWP – not in addition to AWP – such as 60% of AWP. Finally, Mr. Floerchinger testified that he had back surgery in the recent year. His surgeon quoted him a price of \$8,000. He checked the Alaska fee schedule, and discovered that workers' compensation reimbursement rate was \$10,391, and that Washington State workers' compensation fee schedule had a reimbursement rate of \$3,352.

Fred Brown, Executive Director of the Health Care Cost Containment Corporation of Alaska. Mr. Brown echoed the comments made by Linda Hutchings and David Floerchinger on the disparity between healthcare and workers' compensation pricing. While he supports the Board's efforts to produce a more effective fee schedule, he recommends that the Board go one step further by allowing employers to contract for care, similar to what was proposed in Senate Bill 116 last session. He recommended looking at how managed care organizations are handled in Oregon and California.

Misty Steed, Corvel Corporation. Ms. Steed testified that Corvel is the only preferred provider organization (PPO) for workers' compensation in Alaska. However many providers will not participate, such as neurosurgeons and orthopedic surgeons. Ms. Steed also testified that

- Despite the higher costs, outcomes in Alaska are no better than elsewhere.

- Physician dispensing is a growing problem in Alaska.
- The new fee schedule pricing in Alaska is driving medical costs up. In-patient allowances alone rose 120%.
- Alaska fee schedule rates governing services provided out-of-state are 2-3 times higher than what is permitted in the states where the service is provided.
- Washington State's fees are 1/3 of Alaska's fee schedule allowances.
- Alaska needs treatment guidelines to control over-utilization issues.
- The recommendations of the Medical Services Review Committee need to be implemented.

Steven Constantino, injured workers' attorney. Mr. Constantino testified that medical costs are a national issue – not just a state workers' compensation issue. The Board is being asked to address a national problem at the detriment of Alaskan injured workers. Mr. Constantino also testified that

- \$270 million was spent on workers' compensation benefits in 2011, less than 5% of the \$5.0 billion spent on healthcare in Alaska.
- If providers fees are cut dramatically, they will stop treating injured workers.
- Treatment under workers' compensation is not the same as treatment under general healthcare. Workers' compensation is a litigated process. Providers don't know how much they will be paid, when they will be paid, or if they will be paid for their services. Workers' compensation reimbursement rates reflect the additional risk providers incur by treating injured workers.
- The Board is being asked to make important decisions based on anecdotal evidence.
- The discussions on the difference in medical costs between Alaska and other states does not take into account the higher cost of rural delivery of benefits in Alaska.
- The discussions on basing fees on Medicare/Medicaid fee schedules is premature. The predictability of CMS fee schedules is uncertain, and it is dangerous to tie the workers' compensation fee schedule to CMS fees.
- Workers' compensation premium rates declined by over 3% in 2013. There is a problem, but there is no fire. The Board shouldn't rush to judgment.
- Any proposed solution must comply with legislative intent, which is to have predictable access to reasonable medical care.

Bruce Jayne, Alaska Spine Center. Mr. Jayne testified the current procedural terminology (CPT) comparisons in the Board's packets include many procedures that are unlikely to be encountered in workers' compensation cases. He would like to see a fee comparison with CPT codes more applicable to workers' compensation. Mr. Jayne also testified that

- Treatment may be less expensive out-of-state, but that when patients return and require ongoing care, who is going to provide these services. In-state providers may be reluctant to provide this follow up care.
- Insurance companies have carve-out pricing for higher volume procedures. The Board should keep in mind these kinds of alternate payment strategies.

- He has worked in other states, including Texas. In that state, doctors won't take on new patients where stringent fee schedules apply.

The Board reviewed & discussed the material presented by the Director and the information received during the public comment period.

*Lunch Break 12:03 am-1:38 p.m.*

**IX. New Business (continued)**

Member Bizzarro moved that the Board adopt a resolution to address medical costs under the Alaska Workers' Compensation Act. The motion was seconded by member Hutchings. The Board discussed the draft resolution, and how medical costs would be regulated should the legislature take action on the proposed resolution. The motion was approved unanimously.

Some of the issues the Board would like to address at its next meeting include drug repackaging, overuse of opioid narcotics, a review of medical release forms, effective return-to-work and reemployment strategies.

*Meeting Adjourned 2:45 pm*