Health Care Provider Advisory Committee
Meeting Minutes
Aurora Medical Center in Summit
October 13, 2017

Members Present: Mary Jo Capodice, DO; BJ Dernbach (chair); Amanda Gilliland; Michael M. McNett, MD; James O'Malley (acting chair); Peter Schubbe, DC (via telephone) and Jennifer Seidl, PT.

Excused: Ted Gertel, MD; Richard Goldberg, MD; Scott Hardin, MD; Barb Janusiak, RN; Maja Jurisic, MD; Stephen Klos, MD; Jeff Lyne, DC; and Jim Nelson.

Staff Present: Kelly McCormick.

Observers: None

1. **Call to Order/ Introductions:** Mr. O'Malley convened the Health Care Provider Advisory Committee (HCPAC) meeting at approximately 10:20 a.m., in accordance with Wisconsin's open meetings law. The members of the HCPAC and staff of the Worker's Compensation Division (WCD) introduced themselves.

2. **Acceptance of the August 11, 2017 meeting minutes:** The minutes of the August 11, 2017 meeting could not be approved as a quorum of members was not present. Approval of Minutes for the last meeting was deferred.

3. **Future meeting dates:** The HCPAC members agreed to schedule the next meeting on January 19, 2018; in the event of inclement weather, January 26, 2018 was set as a back-up meeting date. A meeting date of May 4, 2018 and a tentative meeting date of August 3, 2018 were also set.

4. **Correspondence:** In response to the e-mail received from Dr. Kelly Worth of the Milwaukee Spine and Joint Center and previously discussed at the August 11, 2017 meeting, the WCD drafted a letter dated October 12, 2017 to be used by providers if the treatment they provide is denied by the inappropriate use of the Treatment Guidelines in ch. DWD 81. The letter stated the Treatment Guidelines are factors to be used only by expert reviewers in rendering opinions to resolve necessity of treatment disputes between providers and insurance carriers filed with the WCD. It also stated that no statutory authority exists to allow the use of the Treatment Guidelines for utilization of treatment reviews to deny treatment. The WCD website was updated to reflect this information. Hard copies of the WCD's letter and website information were distributed.

5. **Review of WCAC Agreed Upon Bill:** Mr. O'Malley summarized the major provisions of the WCAC Agreed Upon Bill for this biennium, which had not yet been introduced in the legislature. The provisions were as follows:

    a. Permanent Partial Disability (PPD) Benefit Maximum Rates. A PPD benefit maximum rate increase of $20 per week in 2018 and $25 per week in 2019, resulting in a maximum PPD rate of $382 for injuries on or after January 1, 2018 and $407 for injuries on or after January 1, 2019.

b. Permanent Total Disability Supplemental Benefits. Two-year advance in eligible dates and rates. Current law provides for those injured prior to January 1, 2003 to receive a supplement benefit up to a maximum rate of $669 per week. A two-year advance would expand coverage to include injuries prior to January 1, 2005 and increase the maximum supplemental benefit rate to $711 per week.

c. Increase Amount for Release of Unaccrued Benefits in Compromise Agreements. Increase the amount of unaccrued compensation that may be released to the injured worker without restriction in a compromise settlement pursuant to s. DWD 80.03(1)(d) of Wisconsin Administrate Code from $10,000 to $50,000.

d. Posting of Employee Rights Under Worker's Compensation Act. Require the Department to develop a poster showing a worker's rights under the Worker's Compensation Act that employers would be required to display in the workplace. The Department will provide a model form that can be printed for display. The effective date of the posting requirement will be January 1, 2019.

e. Loss of Hearing Measurements. Require WCD to review and report to the WCAC on loss of hearing measurements, how laws in Wisconsin compare to other states, how technology has improved, etc. to guide future decisions regarding statutory requirements related to calculating the amount of hearing loss for worker's compensation claims.

f. Scheduled Injury Multiplier. When a worker suffers a scheduled injury that results in permanent partial disability (PPD), and the employer is unable to return the employee to work with a wage within 15% of his or her pre-injury wage, the worker will receive a 15% increase in the otherwise payable weeks of benefits.

g. Medical Fee Schedule. Require the Department to develop a medical fee schedule that approximates the average negotiated price of group health in Wisconsin. In developing the fee schedule, the Department shall utilize available data sources, including surveying self-insured employers to request price data by Centers for Medicare & Medicaid Services (CMS) Current Procedural Terminology (CPT) codes. The fee schedule shall be constructed initially by applying a percentage increase to Medicare rates that would result in the fee schedule approximating the average negotiated group health price. Annually thereafter, the fee schedule shall be adjusted by an amount equal to medical inflation. The department shall repeat the data collection and analysis in order to reset the medical fee schedule rates every ten years. Data collected by the Department under this section shall be considered proprietary information and not subject to open records requests. The fee schedule shall include a two and one-half percent (2.5%) increase above the the Department-determined average negotiated group health price to reimburse medical providers for administrative expenses associated with worker's compensation claims, unless providers request a public hearing to bring data forward to the Department that proves the amount of uncompensated administrative expenses associated with worker's compensation claims is higher than 2.5% but no higher than 10%. The fee schedule shall be effective as of January 1, 2019.

h. Electronic Billing/Payments. Require that all providers treating worker's compensation patients utilize electronic billing and accept payments electronically by 2019.

i. Electronic Medical Records. By 2019, require the availability of electronic medical records to people currently permitted to receive copies of medical records in worker's compensation claims.

j. PPD minimum ratings. The Department shall report to the WCAC on the progress of the review of the minimum PPD ratings in s. DWD 80.32, Wis. Adm. Code, as required by 2015 Act 180, within three months of the bill's effective date.

k. Opioid Use.

1. Limit physician dispensing of opioids for a workplace injury to a 7-day supply per claim. Opioids dispensed by a physician beyond a 7-day supply shall be deemed to be unnecessary treatment under s. 102.16 (2m), Wis. Stats.

2. The Department shall coordinate with the Department of Safety and Professional Services (DSPS) to educate providers, and shall educate injured workers, about FDA-approved treatments and devices for chronic pain, to be used in lieu of or in combination with medication, that could be covered under the Worker's Compensation Act as a medical expense that may be reasonably required to cure and relieve from the effects of the injury. FDA-approved treatments may include, but are not limited to, physical therapy, acupuncture, trigger point injections and chiropractic care.

3. If an injured worker is prescribed opioids by a treating physician, and the employer or insurer obtains an IME opinion stating opioids are not needed, if the claim is otherwise work-related, the following shall apply:

a. Any IME opinion regarding the cessation of opioid medications MUST contain all of the following:

1. A discussion of FDA-approved alternative treatments or devices other than opioid medication for the treatment of the injured worker's pain, and if opining that "alternative treatments" are also unnecessary, an explanation as to why alternatives are unnecessary;

2. A proposed plan of discontinuation of opioid therapy consistent with the Wisconsin Medical Examining Board Opioid Prescribing Guideline (available at: http://dsps.wi.gov/Documents/Board%20Services/Other%20Resources/MEB/20161116_MEB_Guidelines_v4.pdf);

3. If the IME opines that the injured worker has developed behaviors indicative of opioid use disorder, affirmatively offer to

pay for, and assist the worker in obtaining a physician referral for addiction treatment.

4. If the injured worker develops opioid use disorder, the employer or insurer shall advise the employee that currently prescribed opioids will continued to be paid by the employer or insurer until the patient is referred for treatment. It is understood that opioids may continue to be prescribed for a time as a part of the addiction treatment process.

5. Educate workers regarding opioid therapies, opioid addiction, and alternative treatments by providing information within the "Worker's Compensation Rights" poster that will be required to be displayed by employers.

Dr. McNett expressed unease with the language "indicative of opioid use disorder" as that would imply a diagnosis had been made. He suggested substituting "concerning for opioid use disorder."

Mr. O'Malley explained that the WCD had several proposals that were also included in the Agreed Upon Bill. The most significant proposal involved revising the definition of an employer subject to the Wisconsin Worker's Compensation Act from "a person who usually employees three or more workers. . ." to "a person who employees three workers at any time is subject to the act on the day in which the three employees are first working."

Another proposed change by the WCD would add a new exception to the list of exceptions for when records held by the WCD, the Office of Worker's Compensation Hearings, or the Labor and Industry Review Commission could be disclosed. Records concerning whether an employee has a work injury are otherwise considered confidential. The new exception would allow the disclosure of the name and address of the employee who is the subject of the record, the name and address of the employee's employer, and any financial information about that employee contained in the record to the Department of Health Services or a county department of social services.

The WCD, at the recommendation of the Department of Health Services, also proposed adding language to ch. 46, Wis. Stats., to specifically clarify that the provisions allowing fiscal agents for home health care providers to have one worker's compensation insurance policy to cover providers for several individuals only applied for worker's compensation coverage purposes.

Multiple proposals by the WCD were of a technical nature to correct unintended drafting errors resulting from the transfer of adjudicatory functions from DWD to the Department of Hearings and Appeals (DHA) in the last biennium.

6. **Review of ch. DWD 81 of the Wisconsin Administrative Code:** The HCPAC continued its review of the worker's compensation treatment guidelines in ch. DWD 81 of the Wisconsin Administrative Code. The following changes were proposed:

   a. Sections 81.06 (11) (a) 5., 81.07 (11) (a) 5., and 81.08 (11) (a) 5. Change to read: 5. Except as otherwise <u>provided</u> ~~specified~~ in sub. (3), passive treatment modalities in a clinic setting or requiring attendance by a health care provider are not necessary beyond 12 weeks <u>of treatment</u> ~~after any passive modality other than bedrest or bracing is first initiated~~.

b. Section 81.06 (12) (a), change to read:
(a) Initial nonsurgical treatment is appropriate for the first phase of treatment for all patients with radicular pain, with or without regional low back pain, with no or static neurologic deficits, for which surgery is not considered standard of care, under sub. (1) (b) 2., ~~and shall be the first phase of treatment.~~ It shall be provided within the guidelines of sub. (11) (a), with the following modifications: Epidural injections, ~~blocks and~~ nerve root injections, and peripheral nerve blocks are the only therapeutic injections necessary for patients with radicular pain only. If there is a component of regional low back pain, therapeutic facet joint injections, facet nerve injections, trigger point injections, and sacroiliac injections may also be necessary.

c. Section 81.07 (12) (a), change to read:
(a) Initial nonsurgical treatment is appropriate for the first phase of treatment for all patients with radicular pain, with or without regional neck pain, with no or static neurologic deficits, for which surgery is not considered standard of care, under sub. (1) (b) 2., ~~and shall be the first phase of treatment.~~ It shall be provided within the guidelines of sub. (11) (a), with the following modifications: Epidural ~~blocks~~ injections, nerve root injections, and peripheral nerve blocks are the only therapeutic injections necessary for patients with radicular pain only. If there is a component of regional neck pain, therapeutic facet joint injections, facet nerve blocks, and trigger point injections may also be necessary.

d. Section 81.08 (12) (a), change to read:
(a) Initial nonsurgical treatment is appropriate for the first phase of treatment for all patients with radicular pain for which surgery is not considered standard of care, under sub. (1) (b) 2., ~~and shall be the first phase of treatment.~~ It shall be provided within the guidelines of sub. (11) (a), with the following modifications: Epidural ~~blocks~~ injections~~, and~~ nerve root injections, and peripheral nerve blocks are the only therapeutic injections necessary for patients with radicular pain only. If there is a component of regional thoracic back pain, therapeutic facet joint injections, facet nerve blocks, and trigger point injections may also be necessary.

The HCPAC members chose to defer further review of ss. 81.07 (11) (b) through (14) until after conferring with a neurosurgeon.

7. **New Business:** None.

8. **Adjournment:** There was a motion to adjourn by Dr. McNett, seconded by Ms. Seidl. The motion passed unanimously. The meeting was adjourned at approximately 12:15 p.m. The next meeting is scheduled for January 19, 2018.