

**Joint Medical Advisory Committee &
Management-Labor Advisory Committee**

Meeting Minutes
September 19, 2009

Opening:

Dr. Keenen, of the Medical Advisory Committee, called to order at 9 am on September 19, 2009 at Clackamas Community College, a meeting of the Medical Advisory Committee (MAC), the Management-Labor Advisory Committee (MLAC), and the Workers' Compensation Division.

Present:

Timothy Keenen (MAC Vice Chair), Hans Carlson (MAC), Maria Carraher (MAC), Gary Rischitelli (MAC), Brad Lorber (MAC), Frank Prideaux (MAC), Constantine Gean (MAC), Franklin Wong (MAC), John Braddock (MAC), Joey Blubaugh (MAC), John Shilts (WCD), Jerry Managhan (WCD), Jacqueline Sewart (WCD), Barbara Smith (WCD). Jeri Ray (MLAC), Lon Holston (MLAC), Greg Miller (MLAC), John Kirkpatrick (MLAC), Kathy Nishimoto (MLAC), Bob Shiprack (MLAC).

A. Welcome and Introductions All

Dr. Keenen of the Medical Advisory Committee began the meeting by welcoming members of the Management-Labor Advisory Committee. Members of the Medical Advisory Committee, Management-Labor Advisory Committee, and staff from the Workers' Compensation Division, then introduced themselves.

B. Approval of MAC Meeting Minutes of Friday, July 17, 2009 MAC

The Medical Advisory Committee reviewed the July 17, 2009 meeting minutes. Dr. Keenen made a motion to adopt the minutes. Medical Advisory Committee staff seconded the motion. The committee then accepted the motion.

C. Medical System Overview John Shilts and Jacqueline Sewart

The division discussed the **September 18 Management-Labor Advisory Committee/Medical Advisory Committee Joint Meeting Memorandum**, stating how the 2006 Medical Section's Medical Quality Initiative identified four focus areas to contain medical costs: the Pharmacy Project, the Electronic Data Interchange (EDI) Project, the Treatment Guidelines Project, and the Provider Education Project. The division then discussed the development of these projects over the years, and the work that has gone into them to improve the delivery and affordability of medical services.

In addition, the division reviewed the following **Medical Initiatives**: the Stay-at-work/Return-to-work Improvement Project, the Oregon Fee and Payment Rules Rewrite and Reorganization Project, Physician Hassle Factor Project, Developing a Process and

Methodology for Annually Reviewing the Oregon Fee Schedule, Provider e-Billing/e-Payment Project. The division stated that these projects, along with the other benefits they bring to the workers' compensation system, help to lessen medical providers' hassle factors when providing treatment and care to injured workers.

D. Preponderance Closures (HB2706) Barbara Smith

The division presented an overview of **Preponderance Closures (HB 2706)**, discussing their context in the workers' compensation system, the problems they sometimes present, raised by the Oregon Self-Insurers Association, and possible solutions for those problems also proposed by the Oregon Self-Insurers Association, along with current remedies.

After the overview, members of the Medical Advisory and Management-Labor Advisory Committees and the Workers' Compensation Division discussed issues concerning preponderance closures.

The Medical Advisory Committee asked if it was a misunderstanding or a lack of education when an attending physician fails to close a claim. The division answered that these were indeed common reasons for a physician not closing a claim appropriately, but generally problems can be attributed to both attending physicians and insurers equally.

The division said that in the few cases they had to take action with a health care provider for not closing a claim, the problem was resolved through the provision of information. The Medical Advisory Committee said that once a physician understands that they can continue to provide appropriate medical care for a chronic condition, they would usually close the claim.

The Medical Advisory Committee asked the division what is the cost to the workers' compensation system when claims are not appropriately closed. The division replied that although they can identify problem claims, they do not have data on how much these claims cost the workers' compensation system.

The division commented on how there is clearly frustration on the part of employers, or HB2706 would not have been introduced. However, the division said that they usually receive complaints in about 1% of claims for which the worker gets a permanent disability award, and fewer of those are valid. In many cases, the division said they could resolve complaints by advising the insurer on the right questions to ask the attending physician in order to close the claim. The division said that when this informal mediation does not work, they usually visit the physician and talk with them before issuing a sanction.

The Management-Labor Advisory Committee asked if the Medical Advisory Committee had been aware of more physicians with a long-term relationship with patients refusing to close claims as compared to physicians with short-term relationships with patients. The Management-Labor Advisory Committee pointed out that sometimes it is the workers' perception that once a claim is closed they may be vulnerable to lose their job. Knowing this, a physician with a long-term, more personal, relationship with the patient may try to keep the claim open on the patient's request. The Medical Advisory Committee agreed

this may be the cause of some claims not being closed, stating that it is difficult for a physician to switch between being a patient advocate and being objective in the workers' compensation system.

The Management-Labor Advisory Committee asked if the Medical Advisory Committee had discussed what the process would be if HB2706 passed. If the bill passed, the Medical Advisory Committee said the small problem that exists on the present bill would potentially exist in the next bill, but with the division now sending the few sanction letters to insurers rather than physicians as they do presently.

The Medical Advisory Committee asked if the division could refer problem cases through a medical arbiter process. The division said this could be an option, but the physician would still have to concur with the process. The division said they had proposed this suggestion to some proponents of HB2706, but those proponents were uninterested with this type of remedy.

In conclusion, the Medical Advisory Committee decided that preponderance of closure had been a good subject for both committees to discuss, but that no specific action was necessary, with any highlighted problems being adequately resolved in a fair and neutral way by the present regulatory system.

E. Update on MAC study of AMA 6th Edition John Shilts and Dr. Rischitelli

After a brief introduction to the AMA guides by the division, Dr. Rischitelli presented a Medical Advisory Sub-Committee **study of the AMA Guides to the Evaluation of Permanent Impairment, 6th Edition**. The sub-committee comprised Dr. Rischitelli, Dr. Carlson and Dr. Prideaux. In preparation of the study, the sub-committee received input from the division staff, Mike Manley, Debra Hughes, and Juerg Kunz. Dr. Rischitelli began by stating that, currently, the state of Oregon uses the AMA Guides 3rd Edition (Revised) to provide the methods for measuring range of motion and performing other physical assessments, with the results of the assessment applied to an Oregon "schedule" to arrive at permanent impairment award. In contrast, the AMA 6th Edition abandons the reliance on range of motion, with impairment ranges now based on diagnosis, and modifiers for physical exam, clinical studies, and functional status. The sub-committee suggested four options for the state of Oregon:

1. Fully adopt the Guides.
2. Adopt the Guides methods and update the Oregon specific "schedules."
3. Create an Oregon-specific modification of the Guides.
4. Maintain the status quo, and await further adoptions of the guides.

Dr. Rischitelli invited the meeting attendees, after requesting access, to review resources and add modifications and comments at the Wiki Page <http://wcdmac.pbworks.com/>. At this Online webpage, the sub-committee posted the questions that the Management-Labor Advisory Committee asked the Medical Advisory Committee concerning the AMA 6th

Edition with the appropriate answers, which Dr. Rischitelli reviewed with the meeting attendees after the presentation.

The Medical Advisory Committee and the Management-Labor Advisory Committee discussed how the range of motion is not a good indicator of specific pathology, disease burden, function or wage loss. For instance, they commented on how a patient who has limited range of motion may have good functionality, and somebody who has limited functionality may have good range of motion.

In addition, both committees discussed how some physicians, because of where they are geographically located, will not need training in how to use the AMA 6th Guides because they have been using this system through dealing with Federal Claims for professions such as long shore workmen, and postal workers.

The committees discussed how the corrected AMA 6th Edition Guides is posted Online, and how editing errors in the AMA 6th Edition Guide have been corrected by the accompanying erratum.

Next, the committees discussed if the training of physicians would lead to insurers increasing the rates for workers. In addition, would the state of Oregon have to adopt successive edition of the guides. These were noted as good questions, but no answers were provided by the committees.

The committees went on to discuss how physicians might prefer to perform the closing exam and then record and then provide the information necessary to a non-physician to perform the rating.

The division informed the committees that they had studied medical bill data that showed that fifty percent of physicians currently perform closing exams, and fifty percent of closing exams are referred to non-physicians.

The Medical Advisory Committee said that the use of the AMA 6th Edition Guides by the state of Oregon was another subject for discussion, with no action by the committee needed.

F. Opioid Drug Management Jacqueline Sewart

In an **Opioid Management Memorandum** to the Medical Advisory and Management-Labor Advisory Committees, the division provided an overview of the opioid management problem, as well as a plan of action to address that problem. Afterwards, the meeting attendees discussed the difficulties of opioid therapies that both keep workers off work, as well as creating safety issues for those workers that do return to work while on opioid therapy. The division stated that there will be Medical Advisory Sub-Committee to study opioid management with input from the governor's Pain Management Commission Coordinator, and the Chairwoman for the Oregon Pain Management Commission. In addition, the Medical Advisory Committee has invited Dr. Chou to attend the November 20 Medical Advisory Committee Meeting to advise the committee about opioid management.

The committees discussed how there is no legal requirement for injured workers to notify their employers that they are taking a narcotic to manage pain while at work outside of professions such as pilots and drivers. However, the committees did mention that employers do sometimes require their employees to adhere to company policies that they should not work while taking prescription pain medication.

The Medical Advisory Committee referenced a study that described how the prescription of opiates by physicians varies from state to state for certain types of injuries. In light of studies like this, the committee discussed how the sub-committee should perhaps focus their study of opioid management on physician education and awareness.

The Management-Labor Advisory Committee asked if the Medical Advisory Sub-committee will study the outcomes of prescribing certain opiates. The Medical Advisory Committee said obtaining this data would be expensive, though there is published data that shows that prescribing opiates prolongs disability, costs more, and brings with it higher litigation rates.

The Medical Advisory Committee noted that physicians practicing in the state of Oregon may feel conflicted as to the level at which they should be prescribing narcotics, when, over the past year, those same physicians were required to take a pain management class because they were under-prescribing narcotics.

The Management-Labor Advisory Committee discussed how it has been their experience that injured workers are generally visiting, and being prescribed opiates by, occupational health specialists and pain management practitioners rather than their primary care physicians.

The Management-Labor Advisory Committee discussed how it would be preferable to the employer to have an identifier on the return to work form stating that the worker is currently taking pain medication. The division said that there would likely be legal issues putting an identifier on the form. The Medical Advisory Committee asked the division if they could research the legal ramifications, if any, of including such an identifier on a form.

In a discussion of the definitions of dependence, tolerance, and addiction, the committees talked about how it would be difficult to separate injured workers who are addicted to narcotic analgesics because they are trying to manage pain, and those workers who are addicted to narcotic analgesics for other reasons, that may include taking a narcotic analgesic to control a condition like depression that is sometimes associated with chronic long-term pain management, though their pain is gone. The Medical Advisory Committee also noted that sometimes it's the case that an injured worker may stop taking a narcotic analgesic and there is no reduction in their pain, but the injured worker will then continue to take the narcotic analgesic, not to get high, but because they have become dependent on the narcotic analgesic. In this way, such a worker is unlike a worker who has no pain and continues to take the narcotic analgesic.

The Medical Advisory Committee discussed how the sub-committee might want to address two issues: firstly, the appropriateness of prescribing a narcotic and the level at which it should be prescribed, and, secondly, what should be done with an employee already in the workplace who is taking a prescribed pain medication, but not necessarily for a workers' compensation injury.

Moreover, the Medical Advisory Committee highlighted how it would be useful for the sub-committee to look at post-accident injuries, and the propensity for one drug to cause a problem, or be abused, over another.

The Management-Labor Advisory Committee discussed the introduction of a prescription database that will allow physicians to see a patient's name, their prescription history, and the name of the prescribing physician. When introduced, the database will provide a way for physicians to control prescriptions given to injured workers. The committee noted that employers would not have access to this database.

The Medical Advisory Committee concluded that opioid management is a large issue, and that the discussion has identified a number of key issues to be addressed by the sub-committee, and at the next Medical Advisory Committee Meeting.

G. Adjournment

Dr. Keenen adjourned the meeting at 11:30 am. The next Medical Advisory Committee Meeting will be at 9 am to 11:30 am on November 20, 2009 at the Clackamas Community College.