

## MINUTES

### KENTUCKY WORKERS' COMPENSATION REGULATORY ADVISORY COMMITTEE

#### MEETING FEBRUARY 6, 2019

A meeting of the Regulatory Advisory Committee (RAC) was held on February 6, 2019, beginning at 10:00 a.m., in the Oscar Morgan Conference Room at the Department of Workers' Claims, 657 Chamberlin Avenue, Frankfort, Kentucky.

Chief Administrative Law Judge Douglas W. Gott called the meeting to order. The following members were present: Douglas W. Gott, John B. Coleman, Chris Davis, Dale Hamblin, Peter Naake, Timothy Feld, Ken Dietz, and Scott M. Miller. Also in attendance was Commissioner Robert Swisher. Judge Gott noted that notice of the meeting had been posted and was being conducted consistent with KRS 61.823(4)(a), the open meetings statute. Mr. Feld moved to approve the minutes of the meeting on December 12, 2018, which was seconded by Mr. Hamblin. The minutes were approved as submitted.

Judge Gott asked Mr. Hamblin to update the committee on the status of the two regulations the committee had advised the commissioner on during 2018. For the regulation on the extension of medical benefits, 803 KAR 25:290, Mr. Hamblin said no request for public comment was made but one written (favorable) comment was received, and so it will be ready for administrative regulation review subcommittee assignment in March. As for regulation implementing the pharmaceutical formulary, 803 KAR 25:270, Hamblin said there have been three requests for public comment plus written comments. The hearing on public comments will be at DWC on February 22, 2019, at 10:00 a.m. Requests to speak on the formulary regulation are accepted through February 15, 2019; written comments can be submitted through February 28, 2019.

Judge Gott turned the committee's attention to their remaining task of advising the commissioner on a regulation to implement the treatment guidelines. To initiate discussion, he asked Ken Eichler of ODG to give an overview of the treatment guidelines, and, specifically, explain the designations of "recommended," "conditionally recommended," and "not recommended" treatment. Mr. Eichler compared these categories to those in the drug formulary where "Y" drugs are recommended drugs, and the "N" drugs are not recommended but could be approved in certain circumstances with substantiation from the recommending physician.

The nature of conditionally recommended treatment created the most discussion with the committee, particularly as it relates to the likelihood that the regulation will provide for a presumption of medical necessity for "recommended" treatment. It was explained that conditionally recommended treatment becomes recommended if certain conditions are met or documented. An example was given of an MRI of the low back

being conditioned on presence of radiculopathy or lack of response to physical therapy, etc. If conditions are met the treatment becomes recommended. Mr. Eichler explained that “conditionally recommended” is a “soft flag” to the claims examiner to review the treatment records to ensure that pre-conditions for treatment are documented.

Mr. Eichler pointed out that supporting documentation on the DWC website made reference to “acute low back practice parameters” that could conflict with the treatment guidelines. Commissioner Swisher indicated that related regulations, such as the one on Utilization Review, would be reviewed once the formulary and treatment guideline regulations were formally adopted to ensure consistency and compatibility.

Mr. Eichler is providing committee members with temporary licenses to access ODG, and will provide a training tutorial by phone.

Judge Gott said he would follow up with committee members with dates for the ODG training session and the next RAC meeting, the latter of which would likely be the first week of March. (The meeting has since been scheduled for March 7, 2019, at 10:00 a.m., at DWC.)

With no other business, ALJ Coleman moved to adjourn, seconded by Mr. Hamblin. The meeting adjourned at 11:05 a.m.