

MINUTES

KENTUCKY WORKERS' COMPENSATION REGULATORY ADVISORY COMMITTEE

MEETING OCTOBER 3, 2018

A meeting of the Regulatory Advisory Committee (RAC) was held on October 3, 2018, beginning at 1:00 p.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 present: Douglas W. Gott, John B. Coleman, Chris Davis, Dale Hamblin, Peter Naake, Timothy Feld, and Scott M. Miller. Also in attendance was Commissioner Robert Swisher. Judge Gott noted that the meeting is held in accordance with KRS 61.823(4)(a), the Open Meetings statute, and that notice of the meeting was published as required. Minutes of the August 30, 2018 meeting were reviewed. Mr. Hamblin moved approval of the minutes, seconded by Judge Davis. The minutes were approved as submitted.

Judge Gott updated the committee on the Medical Advisory Committee meeting conducted September 27, 2018 wherein committee members discussed their support and/or concerns for the drug formulary and guidelines under consideration which, the Commissioner has taken under advisement.

In continuing the discussion of the draft regulations for continuation of medical benefits, Judge Gott addressed the concern referencing electronic submissions and indicated that it has been removed from the first draft. Commissioner Swisher explained the application to continue medical benefits could be filed in two ways, by e-mail or by paper. He went on to explain that the regulations are being drafted as if they would function today and that currently, DWC does not have the ability for the application to be filed electronically in the form of a web form. The Commissioner is of the belief that both the application and the change of address forms need to be signed (wet signatures) and therefore, has not provided for electronic submission.

An attendee, Melissa Stevens, asked about use of EDI to update the claimant's address. Commissioner Swisher indicated that the regulation would not prohibit the carrier from updating through EDI, but that the current system does not interface with LMS.

Mr. Miller suggested that the full address of the Department be added to the proposed forms to assist the unrepresented claimant in returning them.

The Commissioner explained his intent is to make the application process as simple as possible. He expressed his desire to have a new link on the DWC web site

which would include instructions for the application process, along with the accompanying forms.

Judge Gott provided a draft Form 110 Agreement that incorporated language addressing the 780-week medical benefit limitation for those claims subject to that limitation. Judge Davis expressed concern that the third paragraph of that acknowledgement created confusion and may cause a claimant to file the application early. After discussion, the Commissioner acknowledged the language in the proposed regulation regarding filing timeframes needed to be changed to reflect the language in the statute and that the regulation would be amended. Judge Gott confirmed that similar language regarding the 780-week limitation of medical benefits would be included in opinions and awards issued by the ALJs.

Judge Gott indicated that a draft of the regulations for the drug formulary was not yet available to provide to the committee members, but committee members had a list of talking points from which to express their questions and concerns to the Commissioner.

Discussion of those issues began with the “first fill” Commissioner’s initial preference for a seven-day supply of “first fill” medication. Mr. Feld questioned why the fill was seven instead of three days. The Commissioner assured members the regulations would be written in conformity with the other guidelines that govern medical practitioners’ license and dispensing practices. In regards to payment liability, the initial thought was the carrier would be responsible for payment of these medications; however, after further discussion, it was suggested the language reflect the medical payment obligor be responsible for the payment of the medications. Ms. Stevens suggested that the “first fill” be tied to a first report of injury.

Judge Gott noted the initial draft of the regulation would likely state that an approved drug in the formulary would be filled without need for preauthorization. A drug not approved in the formulary would require preauthorization.

Judge Gott and Commissioner Swisher discussed the feedback from the members of the Medical Advisory Committee on their concerns about reviewers denying treatment recommendations based solely on lack of adherence to the guidelines or formulary. The CALJ and Commissioner noted that the initial draft of the regulation would include language to the effect that a carrier will not be able to deny a prescribed medication based solely on the determination that it falls outside the formulary. Melissa Stevens and Rosalie Farris asked what the reviewing physician could or should do to support denial after the peer-to-peer conference when the drug falls outside the formulary. The response was that the physician should acknowledge and address the recommending physician’s support for a non-formulary drug or treatment, and provide his or her own support for why the treating doctor’s rationale is not persuasive.

As for provisions regarding preauthorization, Mr. Miller expressed concerns that peer-to-peer conferences on reconsideration rarely happen for whatever reason. The Commissioner explained the intent is to make the system user friendly for the treating physician to get treatment to the injured worker as quickly and efficiently as possible

and provide a mechanism for peer-to-peer review on those claims where treatment is being denied. The idea is for the prescribing physician to provide a window of availability to discuss the recommended treatment with the reviewing physician and attempt to resolve the situation. A form would be made available for requesting reconsideration providing a date and time the requesting physician would be available to discuss the requested treatment with the reviewer.

Judge Gott reviewed the proposed effective dates of the formulary – July 1, 2019, for claims of injury on and after that date, and for new prescriptions for injuries that occurred prior to that date; and January 1, 2020, for refills of medications prescribed prior to January 1, 2019 (with certain conditions). The Commissioner explained the rationale for the dates chosen. Ms. Farris suggested that the employer and carrier notify the physicians and PBMs of the formulary.

After discussion on the date of the next meeting, the committee agreed to maintain the previously scheduled date of October 31, 2018, at 10:00 a.m., at DWC.

With no other business, Mr. Miller moved to adjourn the meeting, seconded by Judge Davis. The meeting was adjourned at 2:45 p.m.