

## **MINUTES**

### **KENTUCKY WORKERS' COMPENSATION REGULATORY ADVISORY COMMITTEE**

#### **MEETING March 28, 2019**

A meeting of the Regulatory Advisory Committee (RAC) was held on March 28, 2019, beginning at 10:30 a.m., in Conference Room C 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. Hamblin moved to approve the minutes of the meeting on March 7, 2019, which was seconded by ALJ Coleman. The minutes were approved as submitted.

Judge Gott asked Mr. Hamblin to update the committee on the status of the two regulations on which the committee had advised the commissioner during 2018. For the regulation on the extension of medical benefits, 803 KAR 25:290, Mr. Hamblin said the regulation had been through both subcommittee hearings and awaiting finalization. As for the regulation implementing the pharmaceutical formulary, 803 KAR 25:270, the regulation will be before the Administrative Regulation Review Subcommittee April 9, 2019.

Judge Gott then turned the discussion to the regulation for the implementation of the treatment guidelines. The committee had a draft of the regulation, and copies were provided to meeting attendees so as to follow and participate in the ensuing discussion.

In reviewing Section 1, Definitions, it was questioned whether "evidence based medicine" needed to be included since it is not used elsewhere in the regulation. Judge Gott noted that KRS 342.035 required the Commissioner to adopt practice parameters or evidence based treatment guidelines for medical treatment. Commissioner Swisher said he would probably expand the initial "Necessity, Function, and Conformity" section to include reference to the requirement for guidelines based on evidence based medicine.

Under Section 2, Purpose and Adoption, it was noted there is a duplication in the last sentence in subsection 2 and the first sentence in subsection 3.

As to Section 3, Application, concern was expressed about how "conditionally recommended" treatment was dealt with in subsection 3. Mr. Naake noted that present language gave the carrier the ability to, or perhaps required them to, deny treatment

unless every condition precedent was met. Mr. Naake suggested substantial compliance language instead of having “all” conditions be met, and that utilization review should “substantially apply” the treatment guidelines. Comments in response expressed concern about “watering down” the guidelines.

Mr. Eichler suggested language be added to subsection 6 that medical providers shall articulate “in writing” sound medical reasoning for deviating from the guidelines, and that subsection 6(a) read reasonable “treatment options” instead of “alternatives.”

At the end of discussions, the Commissioner indicated that further consideration of comments and revision of the regulation were required. A revised document will be made available to interested stakeholders, and, based on the feedback, he will decide whether another meeting is necessary. He thanked the committee members for their time and input on a challenging project, and said members should be proud of the results of their work that will be used by parties for years to come.

With no other business, Judge Davis moved to adjourn, seconded by Judge Coleman. The meeting adjourned at 11:47 a.m.