

MINUTES

KENTUCKY WORKERS' COMPENSATION REGULATORY ADVISORY COMMITTEE

MEETING June 19, 2019

A meeting of the Regulatory Advisory Committee (RAC) was held on June 19, 2019, beginning at 11:00 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, 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 March 28, 2019, which was seconded by ALJ Davis. The minutes were approved as submitted.

Judge Gott noted that work on the regulation on the extension of medical benefits, 803 KAR 25:290, is complete and the regulation is in place.

Judge Gott asked the Commissioner to update the committee on the status of the regulation implementing the pharmaceutical formulary, 803 KAR 25:270. The Commissioner reported that the regulation went before the Administrative Regulation Review Subcommittee (ARRS) in May, at which time objections were raised over the lack of written notification to the claimant upon denial of a medication, and over non-pharmaceutical dispensing. The regulation was deferred until a meeting on June 11. By that time the Commissioner had revised the regulation to satisfy the concerns of those objecting, and, based on that, the regulation passed and will now go before the Interim Committee of Economic Development in July.

With no further questions or concerns regarding the pharmaceutical formulary regulation, Judge Gott turned the discussion to the regulation regarding the implementation of the treatment guidelines. Following the March 28 meeting, comments and suggestions were received resulting in the Commissioner making a substantive revision to section 3. The Commissioner noted that the area of greatest concern in the regulation was how it addressed the ODG labels of "Recommended," "Conditionally Recommended," and "Not recommended," especially "Conditionally recommended." He determined it best not to have the regulation speak to specific labels within ODG, but rather align the presumption of reasonableness and necessity with treatment deemed "reasonable" (lower case "r") under the guidelines; this avoids having to specify whether "Conditionally Recommended" treatment requires preauthorization. Instead, treatment not recommended (again, lower case "n" and "r") or not addressed in the guidelines will require preauthorization.

Ken Eichler of ODG said the revision was appropriate. He said Kentucky was the first state to implement guidelines after an editorial change in the guidelines unintentionally created a new class of treatment, that being “Conditionally Recommended.” He said conditionally recommended treatment was initially placed in the treatment guidelines to flag treatment that may be recommended if certain conditions were met. It was not intended to be a category within the guidelines.

Judge Gott posed a hypothetical of what would happen if only four of six conditions were met on requested treatment, i.e., a treatment recommendation that was “Conditionally Recommended.” Committee members and others in attendance appeared to agree that the regulation would allow a claims adjuster to approve the treatment, or, if there was concern about the lack of conditions precedent, the matter could be referred to Utilization Review, just like the current process.

The Commissioner was asked by Melissa Stevens of AIG to consider a provision that excused the carrier from having to file a medical dispute in the post-award circumstance of a carrier receiving a statement for services for treatment for which preauthorization was not requested which was not recommended or addressed under the guidelines.

The final matter discussed was the effective date of the regulation. The Commissioner noted that the experience with the approval process of the drug formulary suggests that January 1, 2020, may no longer be a viable onset date. He considered July 1, 2020, but after discussion thought the process could be complete by March 1, 2020. He indicated an intent to revise the regulation to reflect that date.

Judge Gott and Commissioner Swisher expressed their appreciation for the committee member’s participation in the process. Through their input and commitment, it was felt their good work resulted in a good product for all parties involved.

With no further business, Judge Coleman moved to adjourn, seconded by Mr. Miller. The meeting adjourned at 11:40 a.m.