WORKERS' COMP NEWS

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Employer, insurer groups say no to specialty docs

During four meetings between March 16 – June 18, 2010, employer and insurance groups serving on an advisory committee made clear they want the Commission to stay with its current formula for paying medical providers and not adopt any deviations that could result in higher costs to the system.

Anesthesiologists and orthopedists have been insisting the South Carolina Workers' Compensation Commission make adjustments because, they maintain, the current formula underpays them for their services. The Commission appointed an advisory committee earlier in the year to review the agency's methodology for calculating the maximum allowable payment under its Medical Services Provider Manual.

The advisory committee, comprised of representatives from providers, employers, insurers, and injured workers, was also asked to consider other methodologies, including the use of multiple conversion factors or using a "Medicare-plus" payment system. The committee, chaired by trial attorney Mark Arden, voted formally at its June meeting and submitted the following recommendations to the Commission in early July:

- The Workers' Compensation Commission should continue the current policy of utilizing the Resource Based Relative Value Scale and a single conversion factor for calculating the maximum allowable payment for each procedure code.
- The Commission should review the Provider Manual annually, and give stakeholders an opportunity to submit comments.
- The agency should include a complete listing of the HCPCS codes and corresponding fees in the Provider Manual.
- The Commission should conduct a cost-benefits analysis of including in its Provider Manual the American Dental Association's alphanumeric codes for dental services provided in a workers' compensation claim.

As explained by the Commission, the Healthcare Common Procedure Coding System (HCPCS) is a standardized coding system designed to ensure healthcare claims are processed in consistent fashion. HCPCS codes are divided into two subsystems: Level I and Level II. Level I is comprised of Current Procedural Terminology (CPT) codes, under which providers are paid for services rendered in diagnoses and treatments. Level II codes are used primarily to identify products, supplies, and services not included in the CPT codes, such as ambulance services, durable medical equipment, prosthetics, and various supplies.

Insurers and bill review companies will benefit from the inclusion of Level II codes as it will reduce disputes and administrative workload.

Orthopedists had argued that changes in the relativities within the RBRVS had reduced their payment for procedures to an unacceptably low level. Anesthesiologists maintained that inasmuch as the adjustment factor used for their services is lower than that used for other providers, they are already being punished through the use of a multiple conversion factor system.

As healthcare costs have traditionally accounted for about 45% of total workers' compensation costs in South Carolina, large consequences flow from adjustments the Commission makes to its Medical Services Provider Manual. For instance, in great measure because of the payment system that went into effect October 1, 2006, medical costs for workers' compensation claims in South Carolina declined from $422.4 million in 2008 to $296.1 million in 2009. Over the same period, the number of accidents reported to the Commission declined from 73,795 to 71,973.

The National Council on Compensation Insurance favors the use of fee schedules in controlling healthcare costs and concludes "the most effective fee schedules are those that set maximum allowable fees that are no more than 40% above Medicare." (South

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What's Inside

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Haley would fold commission into insurance department

Republican gubernatorial candidate Nikki Haley says if elected she would fold the South Carolina Workers' Compensation Commission into the South Carolina Department of Insurance.

"From 2004 to 2007, workers' compensation premiums increased almost 50 percent, which is not surprising considering that disability ratings issued by the South Carolina Workers' Compensation Commission (WCC) are on average more than 80 percent higher than if the WCC used objective standards. South Carolina's Workers' Compensation Commissioners are appointed by the governor and altering the composition of the Commission will be among the Haley Administration's first priorities," she says on her website.

"The initial goal of the WCC was to streamline claims processing and keep workers' compensation claims out of trial courts. Instead, it has evolved into an increasingly expensive, subjective judicial process. Given that over half of this Commission's members are attorneys, this is not altogether surprising. Instead of stacking the Commission with political insiders, former legislators and attorneys, the Haley Administration will ensure that the Commission is balanced with accomplished and respected members of the business community," she adds.

Rep. Haley adds she would appoint commissioners who "will have committed to awarding damages consistent with the American Medical Association (AMA) guidelines. Once the board has been balanced through gubernatorial appointments, the WCC should be folded into the Department of Insurance to ensure greater accountability in the process and remove the political obstacles to a business-friendly WCC." ■

President's Column

Reforming worker's comp

Fall is in the air, though I must admit, as I write this column, it still feels like mid-summer. With the Fall of 2010 coming, we have an election right around the corner. South Carolina will be electing a new Governor, either Nikki Haley or Vincent Sheheen. I have reviewed the position statements of both candidates. Mr. Sheheen states he is in favor of government reform, recruiting new industry to South Carolina and protecting small businesses. So far he has made no specific statement on the Workers' Compensation system, however. Ms. Haley has proposed a revamping of the Compensation system, to include making the Commission part of the Department of Insurance.

Ms. Haley proposes the use of objective standards in reaching awards, streamlining the claims process and altering the composition of the Commission by excluding "political insiders, former legislators and attorneys..." She states she will only appoint Commissioners who will pledge to give awards consistent with the AMA Guide. Finally, after the Commission has been "balanced through gubernatorial appointments" she will seek to make the Commission part of the Department of Insurance to insure accountability.

Certainly some of her proposals have merit, though past experience tells me the reforms she suggests are going to be politically difficult. I

David Keller

am also concerned about her apparent misunderstanding of the role of lawyers in the system, particularly those of us who protect and defend the interests of employers, carriers and self insured's. By the time of our annual meeting on November 4, we will know the results of the election. As president of your association I intend to request a meeting with the governor-elect. At that time, I will ask either Mr. Sheheen or Ms. Haley what is in the planning process for Workers' Compensation and I will also ask them to seek a broad range of advice form experts in the field, including our association, before making any concrete proposals to the legislature.

Please "save the date", Thursday November 4, for our General Membership Meeting at Seawell's Restaurant in Columbia. We will be electing new officers and we are planning an excellent program. See you in November. ■

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Expanding role of 'medical foods'

Observers warn that repackaged drugs and so-called medical foods are playing a larger role in workers' compensation, particularly in California, requiring regulators and payers alike to understand their impact and develop policies for coverage and reimbursement.

"It is highly likely we're going to see more of these scripts, and far better to be ready than to have your adjusters making decisions completely unprepared," writes well-known workers' compensation consultant Joseph Paduda on his blog, Managed Care Matters.

As defined by the Orphan Drug Act (1988 Amendment), a medical food is "a food which is formulated to be consumed or administered enterally (orally) under the supervision of a physician, and which is intended for specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation." These therapeutic agents are a heterogeneous group of formulations which comprise a relatively new category of medical protocols defined by Congress, and are subject to regulation by the U.S. Food and Drug Administration (FDA).

"...To summarize, medical foods are medical products for a specific nutritional purpose as opposed to dietary supplements which are a consumer product to supplement the diet and maintain good health and regular function..."

Paduda says there does appear to be evidence supporting the use of medical foods for treatment of pain, osteoarthritis, and other conditions, with one medical food, Limbrel, the subject of large, double-blind, placebo-controlled clinical studies in the United States and Japan. He adds some observers have reported that taking Limbrel has resulted in statistically significant improvement in all primary clinical endpoints (functional mobility, functional stiffness and functional joint discomfort).

According to Richard Isaacson, assistant professor of neurology and medicine, and associate chair of education at the University of Miami Miller School of Medicine, "medical foods offer physicians an additional tool for approaching and managing various medical conditions. They can help improve the symptoms and/or slow the progression of a specific chronic condition, and they are complementary to approved pharmacological therapies."

One way to understand medical foods is to contrast them with dietary supplements. "Medical foods and dietary supplements are discrete regulatory classifications and are not interchangeable. The former must be shown, by medical evaluation, to meet the distinctive nutritional needs of a specific, diseased patient population being targeted, prior to marketing," he writes.

"In contrast, dietary supplements are intended for normal, healthy adults and require no pre-market efficacy tests. In addition, medical foods require physician supervision and a prescription. To summarize, medical foods are medical products for a specific nutritional purpose as opposed to dietary supplements which are a consumer product to supplement the diet and maintain good health and regular function," he adds.

A recent study by the California Workers' Compensation Institute notes that some companies are promoting compound drugs and convenience packs ("co-packs") comprised of prescription medications and "medical foods" to California workers' compensation medical providers. "Between the first quarter of 2006 and the first quarter of 2009, the percentage of National Drug Codes (NDCs) in California workers' compensation associated with compound drugs, co-packs and medical foods has nearly quadrupled from 1.2 percent to 4.7 percent," the institute reported.

"Over the same three-year span, the total amount charged for these products has grown from 2.2 percent to 11.8 percent of the total dollars billed as "medications" in the California workers' compensation system. Similarly, during this same period, the percentage of California workers' compensation medication dollars that paid for compound drugs, medical foods and co-packs increased more than five-fold from 2.3 percent of all drug payments in the first quarter of 2006 to 12.0 percent in the first quarter of 2009," it added..

The California Workers' Compensation Institute, a private, non-profit organization of insurers and self-insured employers, conducted the study because of concerns among federal regulators and workers' compensation payors over the growing use of compound drugs, co-packs and medical foods. "With the meteoric rise in the use of compounds, co-packs and medical foods in the aftermath of the repackaged drug regulations (in California), these products have quickly become a significant pharmaceutical cost driver in the California workers' compensation system, accounting for nearly 1 out of every 8 dollars."

"That trend is likely to continue until such time as state policymakers enact statutory controls and increase administrative oversight in order to determine the true efficacy and the appropriate use and reimbursement of these interventions," it concluded. ■

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CALENDAR

October 17–20, 2010	34th Annual Educational Conference on Workers' Compensation. Embassy Suites at Kingston Plantation, Myrtle Beach.
November 4, 2010	General Membership Meeting, SC Self-Insurers Association. Seawell's, Columbia.
January 19, 2011	NCCI's South Carolina State Advisory Forum. Columbia Metropolitan Convention Center.

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Carolina has a Medicare + 40% system for hospital-based charges) NCCI calculates that among the 22 states that report to the NCCI, South Carolina's reimbursement rates were the 8th lowest – 7 states paid less and 14 states paid more.

NCCI specifically cited the favorable impact of South Carolina's fee schedule in requesting a 0.3 percent decrease in workers' compensation advisory loss costs beginning July 1, 2009.

The Commission invited a variety of interest groups to appoint representatives to the advisory committee. A few groups declined the invitation, including the South Carolina Civil Justice Coalition.

The advisory committee consisted of the following:

- American Insurance Association – Mary Ann Lubeskie, vice president claims, medical programs
- Companion Property & Casualty – Jeri Boysia, vice president & actuary
- Corvel – Cindy Benton, district manager
- Injured Workers' Advocate – Mark Arden, Esq., Chappell, Smith & Arden
- Key Risk Management Services – Glenn Miller, associate vice president, managed care
- Palmetto Hospital Trust - Brian Teusink, senior executive vice president, PHTS
- Property Casualty Insurers' Association – Rick Bouchard, vice president, claims Montgomery Insurance
- South Carolina Association of Ambulatory Surgery Centers – Mike Pankee, Ambulatory Surgery Center of Spartanburg
- South Carolina Chamber of Commerce – Ron Chatham, The Edisto Group
- SC Employee Insurance Program (at the State Budget and Control Board) Laura Smoak, research & statistics manager
- South Carolina Hospital Association – Barney Osborne, vice president finance & reimbursement
- South Carolina Orthopaedic Association – AnnMargaret McCraw, chief operating officer, Midlands Orthopaedics
- South Carolina Medical Association – Will Floyd, MD
- South Carolina Self-Insurers Association – Moby Salahuddin, executive director
- South Carolina Society of Anesthesiologists – Margarita Pate, executive director
- South Carolina Small Business Chamber of Commerce - Randy Pardee, Pardee's Refrigeration and Air Conditioning
- South Carolina Workers' Compensation Educational Association – Donna Croom, executive director
- State Accident Fund- Harry Gregory, executive director ■

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EDITOR & WRITER

Moby Salahuddin
215 Holly Ridge Lane
West Columbia, SC 29169
E-mail: msalahuddin@sc.rr.com.
Telephone: 803-794-2080