WORKERS COMPENSATION
ADVISORY COUNCIL MEETING

Members Present:
Patrick Robinson (Chair)
Chuck Davoli
Denis Juge
Clark Cossé, III
Michael Morris
Joe Shine
Greg Hubachek
Troy Prevot
Mark Kruse
Eddie Crawford
Dr. Dan Gallagher
Joseph Jolissaint

Members Absent:
Ray Peters
Julie Cherry
Dr. Hank Eiserloh
Dr. Jim Quillen
Bob Israel

AGENDA

- Call to Order at 9:40am

- Issue of transparency.
    - Intent is always to allow WCAC to review prior to submission to *Register*.

- LABI request WCAC attendees to make sure to pick up behind themselves.

- Review and comment on proposal to revise and amend LAC 40:I:2715, re 1010/1009/1008 process, **followed by vote on proposal** (see attachment) [timestamp 10:49:25]
    - Problems-
        - 1010- several levels of back and forth; payor can unilaterally suspend the process on basis of lack of information; pharmaceuticals.
            - PBMs aren't really using 1010s
                - Maybe allow only one request for additional information then make decision.
        - 1009- overload of records; time to review
            - Physicians tend to only send 50pages; however, lawyers try to be cautious by sending entire medical record
            - 500 page 1009 takes 1 and ½ days to review compared to normal 1hr review.
                - Maybe allow judge on review decide what should be relevant.
        - 1008- define what is the record
            - Maybe allow additional evidence later since Medical Director just looks at clinical records.

- **Chuck Davoli**- Would prefer a redline copy. Page 4 of 13 #5 Variance: proposal allows payors to use other guidelines in effect to deny variance. Guideline should improve efficiency. Seems to imply ODG could be used by payors even though we didn't approve ODG first go round.
  - **Response by Michael Morris**- Page 3 says both parties can use other guidelines.
  - **Response by Mark Kruse**- "Variance" utilized peer review while "Uncovered" used other guidelines.
- **Michael Morris**- draft to cut down on 1010A is fine or even just making a decision based on first submission.
- **Troy Prevot**- What are the pharmacists' complaints?
  - **Patrick**- they don't want to do 1010s. Current rule limits to 30 days which a lot are run through PBMs
- **Chuck Davoli**- Pg. 2 of 13 e. i. "Where a Payor and an employee agree to the use of a "pharmacy benefits manager" …" I disagree since a payor tells an employee they WILL USE a PBM.
- **Greg Hubachek**- worked on a taskforce that address B,C,D to address concerns by Representative Gaines in 2014 legislative session.
- **Patrick**- 1009 level the administration needs the ability/way to deal with the huge submission

- **Chuck Davoli**- what's the deal with 45 days? [timestamp 11:08:39]
  - **Response by Patrick**- that was discussed between Dr. Rich and Dr. Lee about what "current" means.
  - **Response by Michael Morris**- it was supposed to be start the record with first submission then just update with subsequent information. However, something pertinent to issue may be just outside of 45 days.
  - **Chuck Davoli**- I'm thinking surgical records which tend to include all the conservative treatment, physical therapy, MRIs, etc.
    - **Response by Michael Morris**- if multiple 1010 then just include updated info.
  - **Dr. Dan Gallagher**- should just be medical records. Only a small percentage has been going on for years with lots of records.
    - **Patrick**- Would you need all like 10years of records?
    - **Response by Dr. Dan Gallagher**- Injections would only need recent MRI's to explain recent or new treatment. May want the last 6months since 45days is kind of quick. The simplest thing may be the Medical Director just be able to call and ask why submitting or why denying.
      - **Response by Troy Prevot**- was done in the early days
  - **Patrick Robinson**- concern is ex-parte communications.
    - **Response by Chuck Davoli**- would rather with doctor than judge.
  - **Joe Jolissaint**- sometimes you have to submit all the records. UR has denied surgery (needed based on discogram being positive) due to "no mention of failing conservative treatment". You don't get to discogram without failing conservative treatment.
    - **Response by Troy Prevot**- why didn't provider mention in notes that patient had failed conservative treatment?
    - **Joe Jolissaint**- UR has reviewed & approved all previous treatments and now I have to send 19months of records.

- **Dr. Dan Gallagher**- this could be solved by Medical Director picking up the phone
  - **Response by Troy Prevot**- This could also be solved by peer-to-peer prior to 1009. In UR side, I would hope physician would summarize care in report.
- **Joe Shine**- 3rd party UR may not have access to prior records.
- **Michael Morris/ Troy Prevot**- not opposed to Medical Director picking up the phone.
- **Denis Juge**- as long as Medical Director notes they had communications with parties.
- **Michael Morris**- maybe written form (i.e. email) could be used
  - **Response by Chuck Davoli**- timeframe of dictating and sending communications is onerous.
  - **Michael Morris**- connecting on the phones is difficult as well.
- **Dr. Dan Gallagher**- only Medical Director can make the inquiry

- At 1008 level [timestamp 11:24:34]
- Provision of preparation of record and introducing new evidence. If new evidence, send to payor and give 5 days to change decision which would moot it. Safe harbor built in.
  - **Response by Denis Juge**- pg. 11, 4b. "may" vs. "shall" submit written questions. It leaves it up to judge's discretion.
    - **Michael Morris**- concern over information never been seen.
    - **Denis Juge**- want Judge have medical person reviewing new medical records
      - **Patrick Robinson**- difficult if trying to send evidence back Medical Director.
      - **Michael Morris**- medical necessity should be asked.
  - **Joe Jolissaint**- what is the definition of "new evidence"? It should only be what is created after Medical Director's decision. (i.e. lineage of treatment)
  - **Michael Morris**- are you tracking?
    - **Response by Joe Jolissaint**- only if there's a 1009. Only get 15%-20% of clients' 1010s
    - **Chuck Davoli**- add a penalty to §1127
    - **Eddie Crawford**- same carrier?
      - **Joe Jolissaint**- No. It's because they go out and get a 3rd party UR
- Greg Hubachek reassigned to taskforce
- This doesn't address guidelines. Another issue is attorney's winning on guideline decision but no avenue for payment. Also, it doesn't change tacit denials.
  - **Chuck Davoli**- doesn't change burden of proof.
- **Clark Davoli**- pg. 9 g. talks about a fee for copying over 75 pages. [timestamp 11:37:29]
  - **Response by Patrick**- to cull records from being so large
- Physicians aren't going to do a significant surgery on a "tacit approval"
  - **Dr. Dan Gallagher**- even with authorization you're not guaranteed to get paid.
  - **Troy Prevot**- Tacit denials were Chuck Davoli's idea

        - **Patrick**- way to curb tacit denial is to maybe have a nominal penalty like $250. Then may be escalate after 10, for example.
            - **Joe Jolissaint**- how do you enforce it?....May be also remove fee schedule on tacit denial
            - **Eddie Crawford**- suspend abilities after so many for a certain amount of time.
    - **Jan Clary** (*audience*) - tacit denials. 1010 are sent to wrong fax number
        - **Response to Michael Morris**- current rules says fax numbers are supposed to be sent to LWC.
    - **Mary Lou Sally** (*audience*) - records sent to Medical Director. Medical records aren't kept for legal persons so the only way to get stuff documented is to take testimony from physicians. May rule can allow sworn statement usually 5 pages. You have short time delays at 1008 level.

- OWC Update [timestamp 11:48:39]
    - New Medical Advisory Council Membership
        - Many are from prior council
        - Spoke with a Baton Rouge psychiatrist with specialty in addiction
    - Status of Proposed Medical Treatment Guideline Update
        - Dr. Eiserloh misspoke, at last meeting, when he said he didn't receive the emails.
        - WCAC has since been sent the email
        - Transparency is through the APA process
        - New MAC will go through update and maintain guidelines going forward
        - **Chuck Davoli**- sometimes the representative doesn't communicate with their associations
            - **Patrick**- MAC isn't a public body but maybe an open meeting is needed after update is drafted.
    - Statue of Proposed Formulary
        - Will be given to the MAC
            - **Troy Prevot**- needs to keep guidelines that support formulary be updated with it.
        - Opioids need to be controlled.
            - **Dr. Dan Gallagher**- formulary is cost issue while opioids are care issue. If new drug only option, then needs to be on formulary. Ex: medicine for Hepatitis C.
        - **Chuck Davoli**- seems to be more a medical health care system issue.
    - Medical Fee Schedule
        - Proposals are out on paper.
        - Problems are low inpatient per diem, high outpatient cost and BR codes that are uncontrolled.
            - Increase inpatient by 40%, tie outpatient to Medicare and HOPs. Address BR codes in chapter 51 (mainly pain management)
    - Medical Director Position and 1009 Review Process
        - Limitations in 1203.1.1 make it difficult to fill position. Physicians want to keep their clinical practice.
        - Maybe in upcoming legislative session include something that gives allowance to hire part-time doctors in specific fields. Include provision to identify conflicts.

- Dates for 2016 Council Meetings
  - December meeting cancelled (Clark-move; Chuck-second)

- Additional Public Comment [timestamp 12:12:14]
  - **Judge Sheral Kellar** (*audience*) new rule allows attorneys perform 5hours of pro bono work to get 1 CLE credit. Looking into appointing attorneys to assist with 1010/1009 process under that provision.
    - **Patrick-** discuss issue at January meeting. Include how it would/would not work.

- Adjourn at 11:10am