

Draft Pending Adoption

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Workers' Compensation (C) Task Force
Virtual Summer National Meeting
August 5, 2020

The Workers' Compensation (C) Task Force met virtually Aug. 5, 2020. The following Working Group members participated: James J. Donelon, Chair, Patrick Bell, Warren Byrd, Richard Piazza and Thomas Travis (LA); Jim L. Ridling, Vice Chair represented by Gina Hunt (AL); Lori K. Wing-Heier, Katie Hegland, Katrina Kelly and Michael Ricker (AK); Elizabeth Perri (AS); Alan McClain, Nathan Culp and William Lacy (AR); Evan G. Daniels represented by John Butler, Vanessa Darrah and Tom Zuppan (AZ); Ricardo Lara represented by Ken Allen, Michelle Lo, George Mueller, Mitra Sanandajifar, Dawn Ward and Lynne Wehmueller (CA); Andrew N. Mais represented by Susan Gozzo Andrews, George Bradner, Wanchin Chou, Jared Kosky, Lady Mendoza and Doris Schirmacher (CT); Karima M. Woods represented by Angela King (DC); Trinidad Navarro represented by Robin David, Leslie Ledogar and Tanisha Merced (DE); David Altmaier represented by Greg Jaynes, Jane Nelson and Sandra Starnes (FL); John F. King represented by Steve Manders and Elizabeth Nunes (GA); Colin M. Hayashida represented by Tiffany Chang, Randall Jacobson, Kathleen Nakasone, Colin Okutsu, Eunice Park, Ian Robertson, Grant Shintaku and Paul Yuen (HI); Dean L. Cameron represented by Michele MacKenzie and Randy Pipal (ID); Robert H. Muriel represented by Justin Hammersmith, Brad Lucchini, Judy Mottar, KC Stralka and Erica Weyhenmeyer (IL); Vicki Schmidt represented by Heather Droge, Shannon Lloyd, Justin McFarland and Jennifer Ouellette (KS); Sharon P. Clark represented by Rob Roberts (KY); Eric A. Cioppa represented by Sandra Darby (ME); Steve Kelley represented by Erin Hadrits, Jonathan Kelly, Tammy Lohmann, Michael Marben, Connor Meyer, Philip Moosbrugger, Myra Morris, Jacqueline Olson, Christine Peters, Matthew Vatter, Megan Verdeja and Phil Vigliaturo (MN); Chlora Lindley-Myers, LeAnn Cox, Rebecca Shavers and Jeana Thomas (MO); Mike Causey represented by Fred Fuller (NC); Marlene Caride represented by Mark McGill (NJ); Russell Toal represented by Robert Doucette and Anna Krylova (NM); Barbara D. Richardson represented by Jack Childress, Mark Garratt, Tim Ghan, Gennady Stolyarov and Erin Summers (NV); Glen Mulready represented by Cuc Nguyen, Andrew Schallhorn and Ashley Scott (OK); Andrew R. Stolfi represented by Alexander Cheng, Brian Fordham, Ying Liu and Jan Vitus (OR); Jessica K. Altman represented by Inna Gnipp, Shannen Logue, Mike McKenney and Neel Vaidya (PA); Elizabeth Kelleher Dwyer represented by Beth Vollucci (RI); Raymond G. Farmer represented by Ryan Basnett, Joe Cregan, Will Davis, Daniel Morris and Michael Shull (SC); Larry D. Deiter, Maggie Dell and Frank Marnell (SD); Todd E. Kiser represented by Tracy Klausmeier and Reed Stringham (UT); Michael S. Pieciak represented by Kevin Gaffney, Pat Murray, Rosemary Raszka, Jill Rickard, Wyatt Shea, Jessica Sherpa and Marcia Violette (VT); and James A. Dodrill, Greg Elam, Tonya Gillespie, Erin Hunter and Jamie Taylor (WV). Also participating were: Sydney Sloan (CO); Kevin Clark, Kim Cross, Travis Grassel, Scott Rupp and Andria Seip (IA); Rasheda Chairs and Gail Rice (MD); Amanda Felder and John Wells (MS); Chris Aufenthie (ND); Thomas Green and Connie Van Slyke (NE); Christian Citarella (NH); Marc Allen, Karen Curtin, Gloria Huberman, Sioin Lei, Alexander Vajda and Jia Zhang (NY); Rebecca Nichols and Michael Smith (VA); Mike Shinnick (TN); Monica Avila, Marianne Baker, Miriam Fisk, Andy Liao, John Mooney and Bethany Sims (TX); and Rebecca Rebholz (WI).

1. Adopted its July 22 and June 2 Minutes

Mr. Doucette made a motion, seconded by Director Wing-Heier, to adopt the Task Force's July 22 (Attachment One) and June 2 (Attachment Two) minutes. The motion passed.

2. Heard a Presentation on Workers' Compensation Treatment Guidelines and Formularies

Joseph Guerriero (Reed Group) said the Reed Group is the owner and publisher of MDGuidelines. He said many states know the Reed Group by the American College of Occupational and Environmental Medicine (ACOEM) clinical practice guidelines and drug formularies. Mr. Guerriero said the Reed Group acquired ACOEM and its clinical practice guidelines in 2013. At that time, the Reed Group began having conversations with the states after developing a drug formulary based on the ACOEM clinical practice guidelines. Mr. Guerriero said the Reed Group has an ongoing relationship with ACOEM, and all the guidelines must go through the ACOEM methodology and external peer review before publishing its guidelines. He said the Reed Group's clinical practice guidelines and its drug formulary are developed by a research team located at the University of Utah, namely the Rocky Mountain Center for Occupational and Environmental Health. The guidelines and formulary meet all the criteria that was set forth by the National Academy of Medicine, formerly known as the Institute of Medicine. During 2015 and 2016, California went through a thorough review to decide what it was going to do in terms of its guidelines and its drug formulary.

Ms. Baker said the biggest concern faced during the California workers' compensation reform was to make sure there was access to the best medical treatment by using an independent method and ensuring compliance with the treatment. She said the

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group was able to improve medical care delivery; remove waste, friction, and fraud; and use the savings to increase benefits for employees and reduce workers' compensation rates for employers. Rates were decreased by approximately 40%.

Ms. Baker said workers' compensation reductions were \$3 billion a year and the pure premium rate has decreased 41% since 2015; the pure premium rate continues to decrease. She said the basis for these decreases are due to the proper guidelines and the proper formularies interacting with these guidelines. The independent medical review system ensures compliance with decisions made by independent providers to guarantee the appropriate care.

Ms. Baker said reforms led to significant improvements in the quality of care for injured workers. California's workers' compensation system has seen: 1) a 28% decrease in the overall number of medical services since 2013; 2) an 80% decrease in overall prescription cost per claim since the implementation of Senate Bill 863; 3) a 43% decrease in the number of claims with opioid prescriptions since the adoption of the formulary; 4) a 72% decrease in laboratory tests; 5) a 39% decrease in medical equipment purchases; 6) a 30% increase in payments for physical therapy; and 7) a 9% increase in physician evaluation and management. She said the treating physician is able to better manage the care.

Ms. Baker said, according to the California Workers' Compensation Insurance Rating Bureau (WCIRB), claim settlement rates continue to accelerate. The claims community believes this acceleration is attributable to policy reforms that allowed the claims adjusters to concentrate more on claims handling than other frictional costs before the system and the court.

Ms. Baker said the way improvements were made in the workers' compensation system in California were due to: 1) improving health care quality and delivery; 2) using evidence-based guidelines for presumptive first-level treatment decisions; 3) reducing over-care (i.e., providing evidence-based care first before consideration of surgery); 4) establishing protocols for escalating to other treatment regimens based on individual circumstances; and 5) eliminating litigation over issues that belong to the health care experts, not lawyers and judges.

Ms. Baker said the foundation of effective reform includes: 1) access to quality medical care through medical provider networks and ombudsman; 2) standardized reference material (i.e., medical treatment guidelines for first-level evidence-based treatment); 3) fully integrating a drug formulary with treatment parameters; 4) securing trust in the efficacy and integrity of guidelines for medical treatment, which fundamentally includes the use of drugs as part of treatment; and 5) an independent medical review (IMR) conducted by objective providers.

Ms. Baker said California contracted with the RAND Corporation to conduct a comprehensive study of existing medical treatment guidelines. She said the ACOEM guidelines overwhelmingly stood out as being the best choice, particularly with its adherence to evidence-based validation. Ms. Baker said ACOEM subsequently addressed recommendations of the RAND study for continuous improvement. She said the result of the evaluation was that ACOEM guidelines became the legal standard in California.

Ms. Baker said the ACOEM guidelines were selected in California because: 1) they provide the clinician with an analytical framework for the evaluation and treatment of injured workers in the workers' compensation system; 2) they serve as the primary source of guidance for treating physicians and physician reviewers in workers' compensation; 3) they are the presumed correct first-level standard for appropriate patient care, and enable streamlined approval of treatment requests; 4) they help to protect workers from over-care, under-care or otherwise inappropriate treatment; and 5) they include a comprehensive drug formulary as a fully integrated component of treatment.

Ms. Baker said California selected a drug formulary following the decision to select a guideline. She said the goals for implementing evidence-based formulary goals include: 1) implementing an evidence-based formulary as part of the medical treatment utilization schedule (MTUS); 2) facilitating the provision of appropriate medications to injured workers by establishing a list of preferred medications, with the goal of encouraging usage of the most appropriate medications, and minimizing disputes and associated medical costs; and 3) designing evidence-based formularies to maximize high-quality health care for injured workers and improve work-related outcomes through policies consistent with the MTUS.

Ms. Baker said the California Department of Industrial Relations (DIR) contracted the RAND Corporation to conduct a study of five existing formularies: 1) Washington State Department of Labor and Industries; 2) Reed Group ACOEM; 3) Work Loss Data Institute ODG; 4) Ohio Bureau of Workers' Compensation; and 5) California Department of Health Care Services (Medi-Cal).

Ms. Baker said California selected the Reed Group ACOEM formulary for several reasons: 1) reliance on evidence-based criteria in determining drug lists; 2) compatibility with the MTUS; 3) transparency in the decision process to maintain the drug

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list; 4) established process for regular updates to the formulary drugs; 5) ease of use by treating physicians; and 6) a focus on drugs needed for injured worker conditions.

Ms. Baker said California also looked at the independent medical review process. When looking at this process the following things were considered: 1) medical decisions made by independent medical professionals based on evidence-based medicine; 2) expedited medical decisions; 3) transparency on medical transactions; and 4) antifraud capability.

Ms. Baker said there is always resistance to change. She said California is exploring broadening the user base to include all levels of health care professionals, claims professionals, etc.

3. Heard a Presentation from the NCCI on COVID-19 and Its Atlas Initiative

Susan Donegan (National Council on Compensation Insurance—NCCI) said the NCCI is currently tracking 216 insurance-related COVID-19 bills. She said 95 of the 216 bills focus on items related to workers' compensation. The NCCI is assessing the various workers' compensation presumptions and compensability measures that have introduced and enacted. There are approximately 51 bills, both state and federal, addressing the topics of presumptions and compensability. Ms. Donegan said 20 states have proposed legislation regarding workers' compensation issues, noting that there are multiple bills in some states. She said seven states have enacted some type of legislation addressing the issues of presumptions and compensability.

Ms. Donegan said seven states have issued executive orders, directives, emergency rules or department bulletins. She said bills regarding presumptions and compensability fall into three categories: 1) bills that primarily address first responders and health care workers; 2) bills that add frontline workers, such as a restaurant employees or pharmacy employees; and 3) bills that include broader classes of workers.

Ms. Donegan said the NCCI is also tracking post-traumatic stress disorder (PTSD), as it is unknown if there will be workers' compensation claims related to COVID-19 that come about. She said some insurers are anticipating the possibility of receiving PTSD claims related to COVID-19, particularly from frontline health care workers.

Ms. Donegan said there are two categories of filings the NCCI has worked with regarding COVID-19. She said the first filing was for national item filings, and the NCCI worked quickly and extensively with its 36 state jurisdictions on three different filings and rule changes related to COVID-19. These three filings included: 1) creating class codes to report COVID-19 claims; 2) excluding COVID-19 claims from experience rating calculations; and 3) excluding payroll for furloughed employees in premium calculations. These measures have been approved in most all of the NCCI's 36 state jurisdictions.

Ms. Donegan said July began the NCCI's rate and loss cost season and some states have already been seeing those filings. This year, the NCCI is adding a new feature to the rate and loss cost filings. NCCI has added an executive summary providing a narrative discussing what the filings contain. This summary will include: 1) an introduction that includes filing details and numbers presented for insurance department recommendations; 2) a methodology section explaining what drove the recommendation, which will include state-specific issues if they exist; and 3) COVID-19. COVID-19 is not being addressed in the rate filings this year.

Ms. Donegan said the NCCI is in the process of gathering information to preliminarily gauge the impact of COVID-19 and looking for benchmarks to better understand future impact. She said there are tools referenced on the NCCI's website. There is also a posting on the NCCI's website titled, "2020-2021 Rate Filing Season: What You Need to Know," which provides more details.

Director Wing-Heier asked if the NCCI has any projections or numbers regarding COVID-19. She said she knows, in some cases, people who have been diagnosed with COVID-19 are relatively symptom-free while, in other cases, a person may be in the intensive care unit (ICU) for months. Director Wing-Heier was curious to know if the NCCI had seen any of these costs begin to be reported.

Ms. Donegan said the NCCI has an estimator on its website for each state; however, the NCCI does not have any information regarding claims data. She said the NCCI will begin to see medical information in September or October; however, it will be the second quarter of 2021 before the NCCI will be able to get a true sense of medical costs. Ms. Donegan said the NCCI is hearing anecdotally from insurers that they are not receiving claims quickly. She said she is also hearing the concern that it is unknown medically what some of the long-term effects of COVID-19 might encompass.

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Ms. Donegan said the NCCI's Atlas initiative is a multi-year project intended to modernize accessibility and delivery of the NCCI's manuals and circulars. She said the NCCI rolled out the Class Look-Up tool two years ago. Ms. Donegan said the NCCI is now ready to roll out the regulatory requests for the rewritten basic scopes and residual market manuals in the fourth quarter of 2020. She said NCCI states will be hearing from their state relations executive to learn more about this tool. Ms. Donegan said North Carolina and Michigan, which are both bureau states, are going to be part of a pilot program regarding this tool.

Having no further business, the Workers' Compensation (C) Task Force adjourned.

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