

**MINUTES OF THE ILLINOIS WORKERS' COMPENSATION COMMISSION
MEDICAL FEE ADVISORY BOARD MEETING
THOMPSON CENTER – 100 WEST RANDOLPH STREET, ROOM 9-034
CHICAGO, IL 60601
HELD ON JUNE 6, 2014**

Present at the meeting:

Chairman Michael Latz
Barb Molloy
Bill McAndrew
Diana Alvarez
David Menchetti
Dr. Michael Vender
Jason Keller

Participating via telephone:

Kim Moreland

Not present at the meeting:

Dr. Avi Bernstein
Dianne McGuire

IWCC staff present:

Ron Rascia, General Counsel and Acting Secretary
Mike Arnold, Deputy General Counsel
Brendan O'Rourke, Executive Assistant
Susan Piha, Manager of Research and Education

Chairman Latz called the meeting to order at 12:30 p.m. He entertained a motion to approve the minutes of the last meeting held on April 18, 2014. Mr. Keller moved to approve the minutes. Ms. Molloy seconded the motion, and the motion carried unanimously.

Chairman Latz began the substantive portion of the meeting with new business. He introduced the topic of the latest amendment to Section 8.2(d) of the Workers' Compensation Act, which requires payers to pay interest at a rate of one percent per month payable to bills that are not paid within 30 days. An issue has arisen regarding the apparent lack of an enforcement mechanism for the Commission to order this one percent to be paid. Chairman Latz invited John Hourihane from the audience to offer his thoughts on this issue. Mr. Hourihane, of the law firm Murphy & Hourihane, noted that the interest payment provision, with either the new 30-day requirement or the old 60-day requirement, has been in effect since 2006. He has found that insurers often do not pay the required interest rate, though circuit courts have repeatedly found in favor of providers when lawsuits have been filed. Hourihane thinks that tens or possibly hundreds of millions of dollars in unpaid interest exists right now throughout the state.

Mr. Menchetti expressed the view that Section 8.2(d) acts automatically by operation of law – in other words, that it does not need to be awarded by the Commission and it cannot be denied. The key is to figure out how it is collected, when applicable. He would prefer a solution that involves the Commission as opposed to Circuit Court. Chairman Latz noted that arbitrators must base their decisions on evidence in the record, and that the parties should not only introduce evidence supporting interest in the record but also include this evidence in their proposed decisions. Mr. Menchetti stated that he would spread word to the petitioner’s bar to write the interest into proposed decisions. He also believes that the physician’s bill with a date and testimony that it has not yet been paid is sufficient evidence to support the payment of interest.

Ms. Molloy, Ms. Moreland, and Mr. Menchetti had a brief discussion about when a payer has sufficient information in order to know that a bill has been properly submitted and how much should be paid, and Mr. Menchetti stated that at the very least the period from the date of the award and the date the underlying bill is paid is easy to calculate. He believes that in some cases interest should be awarded from the time the bill was originally submitted. The payers are free to take a chance if they think they have a good defense to avoid paying for certain care, but the interest provision in the Act was intended to be a deterrent against payers’ refusal to pay for legitimate medical expenses.

Mr. McAndrew raised the issue of a statutory change allowing for providers to participate in claims before the Commission for the purpose of enforcing the interest provision, but he acknowledged, and General Counsel Rascia underscored this point, that this would likely overwhelm the Commission’s resources and detract from its ability to perform its core functions.

Dr. Vender asked if the workers’ compensation system would move toward electronic medical transfers so that there would no longer be disputes between providers and payers about whether bills have been received. Mr. McAndrew noted that the Department of Insurance has been working on such a rule, but the subject matter is very technical in nature and it is not clear where things stand in the process.

Randall Pace from the audience asked what incentive a petitioner’s attorney has to request the one percent interest in a proposed decision, given that the attorney does not get a percentage of an amount of money paid directly to a provider. Mr. Menchetti maintained that he would get the word out to the petitioner’s bar and that he did not think that it would be too much work for attorneys to reference the interest in proposed decisions. Mr. McAndrew stated that providers can do their part by ensuring that all bills are time stamped so that attorneys can easily reference these documents later on. Ms. Piha reminded everyone that the Department of Insurance issued guidance to all insurers regarding the interest requirement, and the Commission’s website contains a link to this guidance.

Chairman Latz then transitioned to the next item of new business: a discussion of whether providers should be freed of the requirement to submit invoices for each implant. Mr. McAndrew acknowledged that providers lost on this issue in a technical/legal sense, but he wondered whether the provider and payer communities could work out an informal arrangement based on trust and taking actions in good faith that would allow providers to avoid having to submit invoices for each individual implant. Ms. Alvarez stated her concern that things would revert back to the old system, where without supporting documentation providers were marking up each implant and using them as a profit center.

Mr. McAndrew and Mr. Shattuck both agreed that more discussion should take place between the provider and payer communities, and that perhaps some metrics should be presented later on so that the Commission could be more fully advised to what extent this is a problem for providers. Ms. Molloy wondered whether it is even possible for implants to be billed without invoices each time, given the use of a chargemaster and Medicare rules.

Chairman Latz then introduced the next topic of new business: whether property and casualty insurers will be ready to pay bills using ICD-10 codes. Mr. McAndrew stated that no one is quite sure if insurance companies are going to comply but that the system cannot operate with two different billing code sets. David Porter from the Illinois State Medical Society asked if the Commission could mandate the use of ICD-10 codes. Mr. Menchetti stated that Section 8.2(a)(6) arguably provides for such a mandate, but that this issue still needs some consideration. Chairman Latz will discuss this issue with Glen Boyle.

The Board next discussed whether there is a misalignment between the IWCC Fee Schedule and Medicare regarding the recent changes to Code 29826. This code relates to arthroscopic surgery, and it was recently shifted from stand-alone to add-on. Mr. McAndrew conveyed to the Board that there is some anecdotal evidence that some payers are not reimbursing for this code. According to Chairman Latz, Glen Boyle has looked into this issue and has found that this code is still being reimbursed at 63 percent of the fee schedule potential.

Mr. Menchetti explained that the old modifier that reduced the stand-alone code to 50 percent reimbursement is not applicable to the new add-on code, and so reimbursement should be at 100 percent. Ms. Piha advised that the current landscape of the code is that the Commission followed Medicare and no longer lists the add-on code in the Fee Schedule for the facility side, just the professional services side. She stated that she has received calls from payers who are concerned about being billed 100% of the amount due to the disappearance of the old modifier. She has been advised by Glen Boyle that billing for this code has evened out after the changes because the professional services side went to 100% but the facility side disappeared. Ms. Molloy observed that facilities cannot attach add-on codes as a facility fee, and that is the reason for the recent concern over this code.

Both Nataliya Kurchiy from the audience and Mr. McAndrew expressed the view that there is no reason for there to be no fee reimbursed on the facility side. Ms. Molloy questioned the rationale for saying that the professional services fee increase offsets the elimination of the facility fee because facilities and physicians do not have fee-sharing agreements. Chairman Latz asked if there was an access to care issue that could be taken to the Commission, and he further noted that if the professional services fee is 100% reimbursable per the Fee Schedule, there is no current justification for payers not to pay at this level.

Chairman Latz then asked for testimony on the record regarding access to care issues arising from low E&M codes. Dr. Vender stated that these low codes are making it hard for general physicians to bring in specialists such as dermatologists, rheumatologists, and electrodiagnostic studies specialists. Mr. Porter stated that the Illinois State Medical Society would be willing to submit a written statement in advance of the Commission's next meeting. From his perspective, it makes no sense that any codes are automatically pegged to the Medicare rate. Chairman Latz countered that there is no intention by the Commission to peg Medical Fee Schedule rates generally to Medicare.

Dr. Vender discussed the substance of a document that was then entered into the record as Exhibit 1. It reflects how much more involved workers' compensation cases are for his practice in terms of administration. Mr. McAndrew then moved to include a letter from a physician regarding this issue as Exhibit 2. No objection was raised and the letter was entered as the second exhibit. Chairman Latz stated that the Commission will entertain written and live testimony if offered at its next meeting on July 16th.

Finally, Chairman Latz recommended that the Board table the final piece of new business – regarding Section 7110.90(h)(4)(b) – until the next meeting and adjourn for the day. Dr. Vender moved to adjourn, Ms. Molly seconded the motion, and the motion carried unanimously.