

WORKERS' COMPENSATION
MEDICAL ADVISORY COMMITTEE

March 11, 2016
9 a.m. – 11:30 a.m.

MAC Committee Members Present: Ronald Bowman, MD; Timothy Keenen, MD (Vice-Chair); Brad Lorber, MD; Susan Strom, DC; Tom Williams, PT; Dr. Franklin Wong, MD (MCO Representative);

DCBS Staff Present:

Lou Savage, Juerg Kunz, Cara Filsinger, Summer Tucker

MAC Committee Members Absent: Constantine Gean, MD (Insurer Representative); Gary Rischitelli MD; Jon Soffer, RN, NP; Joey Blubaugh (Employer Representative); Lon Holston (Worker Representative);

Agenda Item	Discussion
Welcome, Introductions (0:00:00)*	Dr. Bowman called the meeting to order at 9:04 a.m.
Administrative discussion (00:00:00)*	Review and approve minutes for Friday January 8, 2016 MAC Meeting The committee approved the January 8, 2016 meeting minutes as drafted.
Medical Rules (00:00:56)*	WCD has adopted new medical fee and payment rules. The changes are as follows: <ul style="list-style-type: none">▪ New Oregon specific codes for closing exams have been taken off the table due to negative feedback from providers and one insurer. There will be more discussion on this topic in the coming year.▪ Compounding drugs fee schedule: There will only be one fee for compounding (\$10.00). WCD proposed to have a compounding fee per ingredient, but there was negative feedback from stakeholders. Instead, WCD went forward with only one fee for compounding, which also includes a dispensing fee.▪ Physician fee schedule was raised 3 percent.▪ The physical therapy fee schedule will remain the same.
MAC Vacancy (00:02:56)*	<ul style="list-style-type: none">▪ MAC still has a position open on the committee.▪ Send any provider referrals to Cara Filsinger.▪ The new committee member can be a provider who participates in the workers' compensation system, but they do not need to have a specific medical designation.
MAC/Stakeholders (00:04:50)*	New/omitted conditions check box on Form 827 (<i>the following is a summary of discussion; please refer to audio recording for details</i>) <u>Dr. Wong:</u> <ul style="list-style-type: none">▪ At the November 23, 2015 WCD administrative rulemaking advisory committee, stakeholders requested that the division remove the new/omitted condition check box from the Form 827. The division decided not to move forward with this issue until there was a more thorough discussion with MAC and other stakeholders.▪ Dr. Wong has experienced issues with being accused of being a worker advocate if he helped the worker. In the past, he would provide the worker the diagnosis for a condition and would advise worker to write down the information. It was then the worker's responsibility to follow through with claiming the condition.▪ Effective January 1, 2010, the check box was added to Form 827. The check box was intended to streamline the process of claiming a new/omitted condition. Dr. Wong

believes that the checkbox helps keep claims moving forward. Physicians can then identify the appropriate condition that the worker is being treated for, provide treatment, and facilitate treatment. In his own informal poll, none of the physicians Dr. Wong consulted thought it would be good to remove the check box.

- Dr. Wong also presented some concerns about eliminating the checkbox:
 - Workers will get the wrong diagnosis.
 - Taking the check box off could slow the claim process.
 - Physicians will still help the worker even if the checkbox is taken off. For example, the doctor may tell the worker to write down the condition and send it to their claims adjuster. As a result, there may not be documentation of medical evidence from the doctor with the letter supporting the new/omitted condition. Insurers may receive information about the condition, but may not get it on the Form 827.

Dale Johnson, Claimant's Attorney

- Dale has found that some physicians use the Form 827 to get a condition accepted or denied. If the condition is denied, it could be presented to another insurer (outside of the workers' compensation system) so the medical treatment can be provided and paid for. However, workers' compensation claims involve more than medical treatment, and can include wage loss benefits, permanent disability, and vocational assistance. Simply submitting a condition to be accepted or denied can result in an unfair outcome for the worker. Even though the medical treatment may be addressed, other benefits ordinarily provided through workers' compensation would not be available to the worker. Dale expressed concern about whether doctors are considering what is sacrificed when they put a condition out for acceptance or denial.
- If the check box is used to get a denial so medical care can be paid by health insurance, there can be an issue as to how the worker can survive when they are recovering and do not have wage replacement.
- In Dale's experience, some doctors think that the form is a way to get diagnostics paid for. However, diagnostics are compensable as long as they are utilized to determine causation.
- It would be best if the attorney has proof of causation before requesting that another condition be accepted. Otherwise, it is very difficult to pursue claiming a new or omitted condition without having sufficient medical evidence to prove causation. The Form 827 is lacking in that it asks for chart notes and diagnosis codes, but doesn't ask the doctor why the condition is work related. If the doctor doesn't think that the condition is work related, they should tell the worker that. Doctors should not be using a workers' compensation form to manipulate two different systems, and the Form 827 should not be taken lightly.
- Doctors need to know the standard of proof of causation, and if not sure, they should ask an attorney. There are different levels of causation, and the concept is constantly being changed. Attorneys are the subject matter experts on this topic, and consulting with an attorney is not a cost to the system.
- There is nothing on the Form 827 to warn workers that they may lose benefits by signing the form.

Jennifer Flood, Ombudsman for Injured Workers, OIW):

- When used appropriately, the checkbox can not only streamline medical treatment but also streamline time loss authorization.

- There can be issues where the worker's health insurer will urge the worker to file a workers' compensation claim to get a denial so that the health insurer can get paid for the medical care. Working with the Division of Financial Regulation and insurers can help to stop those kinds of claims from coming through in the first place.
- Some providers feel that signature on Form 827 indicates that they believe that the condition is work related. The signature is on a separate portion of the form, but OIW advises providers that the worker should contact OIW. OIW can advise workers to find a different doctor or consult an attorney if the doctor does not agree that a condition is work related.
- Barriers that could be addressed with education:
 - Doctors using the check box to get a denial so they can bill a health insurer.
 - Check box not being used in good faith that the condition is work related.
 - Check box is being used to get diagnostics approved.
 - Proof of causation.
- There can be situations where claiming a new or omitted condition can have a negative impact on receiving time loss benefits. For example, a worker can be receiving time loss both for a strain that has been claimed and for a condition that hasn't been claimed yet. If the worker tries to claim the latter and it is denied, they can potentially lose their time loss benefits. In these kinds of cases, workers may want to speak with an attorney.

Other comments:

- The majority physicians are not disingenuous when they fill out the form, and doctors who operate otherwise are a very small minority. The checkbox helps speed up the process as well. The old process could result in the claim being delayed two or three weeks. (Dr. John Braddock, Majoris Medical Director)
- Diagnoses can be lost as the information is passed from insurers, workers, attorneys, and interpreters. This can result in a claim being slowed down. (Dr. Braddock, Majoris Medical Director)
- Instead of removing checkbox, focus on educating physicians on proper usage of the checkbox. Doctors could also document that the worker believes that the injury is work related but that doctor does not agree. (Dr. Wong)
- Most of the time, the check box works, and insurers do get an opportunity to ask for more information. Educating doctors is important, and SAIF can assist with that. (Jaye Fraser, SAIF Assistant Counsel for Legal Services)
- There are access issues in the workers' compensation system, and more family doctors are needed in the system. The Oregon Medical Association (OMA) is concerned about what can be done to make it easier for providers to have knowledge of the worker's compensation system and provide quality care to injured workers. Continuing education for providers is needed. If the check box is helpful for providers, the Oregon Medical Association will advocate for keeping the box. (Courtnei Dresser, OMA Director of Government Relations)
- The check box does allow medical care to move along efficiently. However, there seems to be a distinction between a brand new condition being traced back to an incident and an evolution in a diagnosis as more information is uncovered. It may be helpful to change the language around the check box to make it possible for the box to indicate that there has been an evolution in the doctor's opinion. (Chris Kafka, Kaiser On the Job MCO)
- Washington has specific boxes that physicians can mark in regards to causation. The

options are: “yes it’s work related”, “probably it’s work related”, “possibly”, and “no”. (Dr. Timothy Craven, Providence MCO Medical Director)

- Dr. Wong and Dr. Braddock noted that they frequently refer workers to OIW as a resource for assistance.

Potential Solutions:

- Create talking points for doctor and worker as a tool for doctors to use in conversation. (Lou Savage, Acting WCD Administrator)
- Create a frequently asked questions document for the 827 form for workers. (Courtnei Dresser, OMA)
- Require doctors to go through a presentation for certification to treat workers’ compensation patients. Even if the presentation was not for a certification, it could be helpful to have one that features information that doctors need to know about workers’ compensation. (Dr. Keenan)
- Use continuing medical education (CME) as an incentive for providers. (Courtnei Dresser, OMA)

Jamie O’Brien
(01:18:00)*

Impairment rating standards: Hernias

Jamie O’Brien, Workers’ Compensation Division, requested some guidance for the WCD Appellate Review Unit on OAR 436-035-0375. In particular, he wanted to know if the requirement for a palpable hernia defect to receive a reward too restrictive. There are some cases where there is still a defect even after surgery.

MAC members felt they did not have the expertise to answer this question, but will look into contacting subject matter experts on hernias for the next meeting.

Dr. Keenan and Dr. Lorber
(01:22:35)*

Technology review: Subcommittee on lumbar and cervical artificial disc

Dr. Keenan and Dr. Lorber will meet soon to discuss 2015 review of cervical disc literature in Contemporary Spine Surgery, along with some individual articles.

Some notable aspects of the Contemporary Spine Surgery article are as follows:

- Currently, 5 or 6 implants are approved by the FDA. Artificial discs are equal in safety, and at least equal in relief of pain.
- In some reports, artificial discs are statistically somewhat superior. However, in the long run, approximately 40 to 50 percent of artificial discs ossify and fuse, so only about half continue to maintain motion.
- Statistically, the rate of adjacent level disease and degeneration is primarily related to the angle at which the implant was done.
- At this point, it remains to be determined in the future whether the motion of those 50 percent of discs that continue to move are actually protecting the level above or whether it is the lordosis.

Juerg Kunz
(01:29:00)*

Technology reviews

- No changes since the last meeting.

Platelet Rich Plasma (PRP)

- PRP injections will be examined later in 2016.
- Dr. Gean sent out a draft report from Washington State regarding PRP, which concludes that PRP is ineffective in some cases. The final report may be a resource MAC can use in the future.

- PRP is currently non compensable, and up to now WCD considered it a form of prolotherapy.
 - MAC determined that PRP is unproven and experimental.

Spinal Cord Stimulator

- SAIF will be able to provide WCD data on the work status of a worker, along with the opioid usage before and after the stimulator implantation. With opioid usage, it is important to look beyond the first 6 months after implantation. Studies have shown improvement in the first 6 months, but after a year there is no significant difference to before the implantation.
- The SAIF data is limited, but SAIF will have the data available by the next meeting.
- Dr. Braddock will be able to send data for 13 spinal cord stimulator cases covering a 5 year period.

The meeting adjourned at 10:42 AM.

The next MAC meeting will be held on May 13, 2016.

*The audio files for the meeting minutes and public testimony (both written and audio) can be found here:
http://www.cbs.state.or.us/wcd/rdrs/mac/mac_mtgmnts.html