

WC ANNUAL MEETING JUNE 15, 2018

Our meeting was conducted at Hotel Indigo in Traverse City.

Chairperson Tim Esper called the meeting to order at 9:03 am.

1. Director's Report – Mark Long

Director Long advised that his goal is to create a regulatory environment that is not burdensome. He is also interested in having claims paid promptly in handling Rule V hearings. He stated the carrier is contacted first to see if can be resolved. If it is pure compliance issue, he will schedule a hearing; however, if penalty is involved, it is sent to Magistrate.

Director Long noted that that there has not be a constitutional challenge since 2011.

Director Long noted that the pure premium continues to drop 9% per year. It is currently at 44%. Insureds have saved \$450 million since 2011.

Director Long advised that he recently spoke to a doctor who was incensed about preauthorization. He told him that there is no legality to preauthorization.

Director Long advised that the Health Advisory Team provides him with information including that claims are paid at 134% above Medicare. He indicated that it has been increased 3 times since 2010. And there was an air ambulance rule established last year for 140% of Medicare.

Director Long advised that the Health Care Services Rules have changed for drug tests. Specifically, there is a utilization rule now for drug tests because drug tests are not intended for cut off purposes.

Director Long advised that the mobile calculation program is up and running and is the most closely related to the Act. However, if there is a dispute between the Act and the program, the Act will prevail.

Director Long advised that the Fire Fighters Presumption Fund has paid 25 claims so far.

Director Long advised that for the past 3 years, he has been data sharing with other State entities to identify and fine uninsured employers. He has received \$130,000.00 in fines this year and has determined that 3.2% of all cases involved uninsured defendants.

Questions:

- Magistrate Colombo questioned as to whether the 3.2% included claims filed and withdrawn.

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- Jim Rick questioned as to whether the Uninsured Fund would be back.
- Robert MacDonald questioned how telemedicine would impact our practice. Director Long answered that the Rules added only have to do with billing. When questioned further by Mr. MacDonald, Director Long advised that the Legislature allows for Telemedicine so they had to establish rules on billing.
- Chris Westgate questioned if the rules were based on OGD guidelines. Director Long advised that he had no idea but the OGD guidelines have not been endorsed.
- Chris Westgate questioned what the Bureau was doing with the \$130,000.00 in penalties collected from uninsured. Director Long advised the money is processed in the same way redemption fees are.

2. Chief Magistrate's Report – Lisa Klaeren

Chief Magistrate Klaeren advised that Robert Tjapkes left the Board of Magistrates and has been replaced with John Sims. Mr. Sims spends 3 weeks of every month in Okemos and the other week in the UP. There are seven magistrates up for re-appointment as of January 26, 2018 and depending on the elections and how fast the Secretary is put in place.

Chief Magistrate Klaeren discussed the Medicare/Medicaid form and its importance. All redemptions must include these forms.

Chief Magistrate Klaeren discussed the Redemption Order and how the heading may change for the allocation but there is a need for a continuation of the allocation for things like LTD offsets. However, due to Donna Grit's case, we need to add language to our long affidavits advising our clients that the allocation on the Redemption Order may not be recognized or followed by the SSA.

Chief Magistrate Klaeren provide a Memorandum (see attached) from both herself and Director Long providing contact information for both Meridian Health Plan of Michigan and Blue Cross Complete due to the many complaints they have received concerning Discovery Health Partners who provides subrogation recovery for both of the above. However, she cautioned that these numbers should only be utilized after all efforts have been made to secure the lien information. Lastly, she advised that Medicaid is notified once weekly of all new claims. Therefore, they know early on about their liens.

- Patrick Duff and Jim Rick both provided stories of difficulties in obtaining lien information.

Questions:

- Dan Hebert questioned if we could establish a precedence that would bar recovery after Redemption. Chief Magistrate Klaeren answered that the Plaintiff and Plaintiff's attorney are held liable pursuant to State law.

Chief Magistrate Klaeren provided the following statistics:

- 85 decisions in 2017 with 99% of decisions within 42 days;
- 29 decisions so far with average of 23 days for the decisions;
- 92% of cases affirmed at the MCAC;
- Average case age is 16 months for decisions and 18 months for redemptions;
and
- 8,400 cases last year whereas 10,000 in 2015.

3. MCAC Report – George Wyatt

Commissioner Wyatt reported that there are currently 87 active appeals and have issued 18 decisions to date. He also reported that 3 commissioners are up for reappointment on August 1, 2018.

Questions:

- Patrick Duff questioned the length in which cases are pending. At the end of the year he expects they will have only 2017 and 2018 cases pending.
- Chris Westgate questioned if interlocutory cases took precedence over other case. He advised that the oldest goes first but they do look at interlocutory appeals to determine if they need to be decided first.

4. State of the Law – Granner Ries

Mr. Ries provided a handout of the cases he discussed. Please see attached. He did not add much to his written explanation of the cases. He did, however, state that these cases and their decisions are confusing and are specific and would not be helpful in our general practice.

Mr. Combs advised there is only one bill related to workers' compensation (HB 5296). He indicated that this bill is trying to extend coverage already afforded to full-time fire fighters to volunteers and part-time fire fighters.

5. Social Security Section – Jim Rick

Mr. Rick encouraged all of us to join the Social Security Section to incorporate elements of workers' compensation into this Section for a better bar.

6. Election of officers – Chairperson Esper

Sam Larrabee – was nominated as a new councilmember to fill the position being vacated by Jayson Chizick. Chairperson Esper called for a Motion to elect Mr. Larrabee to the council. Andrea Hamm so moved, Rosa Bava seconded and the Motion passed without objection or discussion.

Jayson Chizick – was nominated for the Treasurer position to fill the position being vacated by Rosa Bava. Chairperson Esper called for a Motion to elect Mr. Chizick to

the position of Treasurer. Michael Brenton so moved, Dennis Flynn seconded and the Motion passed without objection or discussion.

Rosa Bava – was nominated for the Secretary position to fill the position being vacated by Andrea Hamm. Chairperson Esper called for a Motion to elect Mrs. Bava to the position of Secretary. Jayson Chizick so moved, Ella Parker seconded and the Motion passed without objection or discussion.

Andrea Hamm – was nominated for the Vice Chairperson position to fill the position being vacated by Dennis Flynn. Chairperson Esper called for a Motion to elect Ms. Hamm to the position of Vice Chairperson. Rosa Bava so moved, Jayson Chizick seconded and the Motion passed without objection or discussion.

Dennis Flynn – was nominated for the Chairperson position to fill the position being vacated by Tim Esper. Chairperson Esper called for a Motion to elect Mr. Flynn to the position of Chairperson. Andrea Hamm so moved, Rosa Bava seconded and the Motion passed without objection or discussion.

7. Guest Speaker – Douglas Klein – Medicare

Doug Klein provided a power point presentation on both MSA and conditional payments. Mr. Klein advised he is a certified Medicare consultant. Mr. Klein was kind enough to provide a copy of his power point presentation. Please see attached.

Mr. Klein provided the following additional information:

- The new MSA contractor (Capital Bridge) is being paid 60 million. The last contractor was paid 45 million.
- The new contract is going to include no-fault and liability cases.
- Medicare's interests must always be considered on every case.
- MSA's take 30 days if you have all information
- New conditional's contractor (Performant) is paid 20% of recovery.
- Attached to conditional payments are codes. The codes are from the 111 Form filled by the carrier. In order to change the conditionals, the carrier has to change information on 111. Medicare does not look at our applications.
- Plaintiff attorneys need to copy client's Medicare card to make sure not part of "Medicare Advantage Plan". If they are, they have to contact them directly for reimbursement and are liable for double damages if they don't under a private cause of action.

Questions:

- Robert McDonald questioned if liabilities inclusion. Mr. Klein answered that liability has always been included there was just no capacity to collect.
- Patrick Duff questioned the threshold for liability and same as W/C. Mr. Klein answered that the threshold is specific to W/C.

- In response to a question from Rosa Bava, Mr. Klein recommended getting the MSA prior to Part I of the redemption.
- Dan Hebert questioned who has all the old conditional payments requests. Mr. Klein answered that Performant has them all.
- Dan Hebert questioned if it helps to have claimant call. Mr. Klein indicated that only one should initiate otherwise you could end up with separate claims on each request and not all conditionals being paid.
- Chief Magistrate Lisa Klaeren questioned leaving medical open but disputed. Mr. Klein advised against this and recommended that defendant's pay if they owe.
- Director Long questioned leaving medical open only for the specific workers' compensation claim. Mr. Klein answered that the redemption order can trigger an obligation.
- Patrick Duff questioned what he should tell his clients. Mr. Klein answered that they should prepare for an audit.

8. Magistrate Panel Discussion – John Sims, Bill Housefield, and Keith Castora

John Sims explained the calculations and the difference between A, B, and C. Most importantly, SSA uses the calculation most favorable for the claimant. The SSA relies exclusively on the POMS and will not even look at our life expectancy.

Questions:

- Chris Rabideau questioned the effect of an MSA. Magistrate Sims answered that the voluntary MSA will be either excludable or deductible.
- Charles Palmer stated that the life expectancy is important for LTD or other benefits.

9. New Chairperson Dennis Flynn called for a Motion to adjourn the meeting. Jayson Chizick so moved, Rosa Bava seconded and the meeting was adjourned without objection or discussion.