



STATE OF OKLAHOMA

WORKERS' COMPENSATION COMMISSION

M I N U T E S

of the

WORKERS' COMPENSATION COMMISSION

FOR THE STATE OF OKLAHOMA

for the

February 18, 2015

Special Public Meeting

MINUTES OF THE MEETING OF THE WORKERS' COMPENSATION COMMISSION FOR THE STATE OF OKLAHOMA

NOTICE OF THIS MEETING WAS FILED WITH THE SECRETARY OF STATE ON WEDNESDAY, DECEMBER 31, 2015.

The members of the Workers' Compensation Commission for the state of Oklahoma met at the State Capitol Building, 2300 N. Lincoln Blvd. Room 104, Oklahoma City, Oklahoma, on February 18, 2015.

Members present: Chairman Troy Wilson, Commissioner Denise Engle.

Absent: Commissioner Bob Gilliland.

Others in attendance on behalf of the Commission: Rick Farmer, Clif Cypert, Kim Bailey, and Holly Miller.

Chairman Wilson expressed appreciation for those in attendance and stated that the Commission would hear comments from the public on the proposed emergency and permanent rules and forms. After the roll was taken, he announced the presence of a quorum and the Statement of Compliance with the Open Meetings Act was read. The meeting was called to order at approximately 9:00 a.m.

Chairman Wilson stated the purpose of the meeting was to hear public comments for the Commission's permanent rules. The current emergency rules are effective until September 14, 2015; therefore, it will propose permanent rules that will supersede the current emergency rules. He noted that the Commission submitted its Notices of Rulemaking Intent to the Secretary of State, Office of Administrative Rules on December 22, 2014. The Notices of Rulemaking Intent were accepted and published in the Oklahoma Register on January 15, 2015.

The Commission's thirty (30) day comment period ran from January 15, 2015 through February 16, 2015. The Commission solicited comments from the public, including comments via email at rules@wcc.ok.gov, and the agency received numerous comments which assist in this process.

Chairman Wilson noted that the Commission had a court reporter present to transcribe this meeting in detail and that no questions would be taken during this time, only comments. He expressed that the Commission was there to hear from the public, and gave instructions for speakers to state their name and organization before making their comments.

1. Speaker: Ms. Elizabeth Scott, Crowe & Dunlevy, P.C., on behalf of its clients, Oklahoma Spine Hospital, Oklahoma Surgical Hospital, and Tulsa Spine & Specialty Hospital.

Ms. Scott's comments included the following requests and proposals:

Rule 810:15-1-2, in the Commission's permanent rule should mirror the statutory language found in 85A O.S. § 16(A) providing that the guidelines "are not requirements, nor are they mandates or standards; they provide advice by identifying the care most likely to benefit injured workers." This language clearly contemplates that use of other criteria and treatment may actually be in the injured worker's best interest in some cases. Additionally, the proposed rule should be modified to include language that will ensure a

physician not only has the ultimate discretion in the treatment of an injured worker, but is also able to comply with the obligations promulgated by the relevant state professional licensing act.

Rule 810:15-15-2 provides that if a medical provider provides services that exceed, are not recommended by or are not addressed by the ODG, that provider can only receive payment for those services under certain limited circumstances and after satisfying a high burden of proof, thus giving the ODG basically a mandatory effect. However, the definition of the ODG found in the statutes at 85A O.S. §16(A) clearly provides that the ODG is not mandatory.

Ms. Scott proposed that the Permanent Rule at OAC 810:15-15-2 should be modified as follows:

“(b) Medical care provided as recommended by the ODG is presumed reasonable, and also is presumed to be health care reasonably required. In order for the insurance carrier to deny payment for medical services that are recommended by the ODG, the denial must be supported by clear and convincing medical evidence. A medical provider whose services exceed, are not recommended, or are not addressed by the ODG, must support the deviation from the ODG by clear and convincing medical evidence, in writing to the insurance carrier, as a condition of payment for services rendered. Resolution of medical fee disputes involving deviation from the ODG are governed by 810:15-15-4. However, in no event shall the ODG be considered requirements, mandates or standards.”

2. Speaker: Mike Seney with State Chamber of Commerce presented the following comments and suggestions:

Rule 810:10-1-9. Who may appear before the Commission

Comment: One of the primary reasons for changing from a court-based adversarial system to an administrative system was to reduce the friction between employers and employees in settling workers' compensation disputes. To that end, Title 85A was passed to remove barriers to settlement and requiring attorney representation works against that goal. We would suggest that Rule 810:10-1-9 be restored to the language as set forth in the temporary rules adopted by the Commission, allowing non-attorneys to represent claimants and employers before the Commission.

As we commented in the adoption of temporary rules in December of 2013, it is important to allow individuals and companies to determine the best way to protect their interests before the WCC and as such any party should be allowed to appear without an attorney, so long as the party in attendance has settlement authority. The proposed language reinserts adversarial proceedings which only cause confusion and delay for injured workers and employers.

Rule 810:10-5-45. Submission to medical examination; appointment of medical or vocational expert; travel expenses

Comment: We question the need to increase the reimbursement for mileage traveled to medical examinations. Given the rural nature of our state, a ten mile drive may be required to reach an employee's personal physician and therefore the distance seems overly burdensome for the employer. (Anecdotally, a drive from our offices in downtown Oklahoma City to my primary care physician in northwest Oklahoma City would have a round trip of almost 30 miles.) Changing the reimbursement for mileage from an excess of forty (40) miles to an excess of twenty (20) miles round-trip unnecessarily increases the

monetary burden put on employers and would make even regular trips to see physicians more costly. We would request the Commission restore the stricken language and return to forty miles.

Rule 810:15-5-3. Requirements for use of closed formulary

Comment: We support the change to three days, but would request the Commission clarify that the prior authorization should occur within three business days. We believe insurance carriers should respond quickly to requests because the faster an injured worker receives treatment the better the likelihood of a positive outcome. However, the existence of weekends and holidays has an impact on potential response time. For instance, with this rule and the temporary rule before it, a company would have to pay overtime and holiday pay to answer a request submitted on Friday of last week. We suggest that it be revised to indicate that an insurance carrier or employer should have three business days to respond to a preauthorization request.

Rule 810:15-15-3. Medical dispute resolution of fee disputes

Comment: We oppose the striking of language as proposed in this section. Some of our members have expressed concern that removing the statute of limitation for disputing medical fees would delay the ability of insurance companies or self-insured companies to close cases. This will likely require increased reserves and therefore drive up workers compensation insurance costs. We believe that the one year limit currently allowed by the rules would allow plenty of time for providers to dispute fees.

Chairman Wilson expressed appreciation for everyone in attendance and for the suggestions and comments shared with the Commission.

Announcement

Chairman Wilson announced that the Commission's next regularly scheduled meeting is Thursday, February 19, 2015.

Adjournment

Motion to adjourn: Commissioner Engle.

Second: Chairman Wilson.

Those voting aye: Commissioner Engle, Chairman Wilson.

Absent: Commissioner Gilliland.

The motion carried. The meeting was adjourned.