STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

PUBLIC HEARING

Wednesday, January 24, 2007
The Junipero Serra State Building
320 West 4th Street
Los Angeles, California

Richard Starkeson
Industrial Relations Counsel

Carrie Nevans
Acting Administrative Director

Dr. Anne Searcy
Medical Director

Destie Overpeck
Chief Counsel

Maureen Gray
Regulations Coordinator

Reported by: Gail Paige-Washington
Paula Guild

PUBLIC HEARING

LOS ANGELES, CALIFORNIA

WEDNESDAY, JANUARY 24, 2007; 10:00 A.M.

-000-

MR. STARKESON: Good morning, ladies and gentlemen. Thank you for coming here today. This is our hearing on the Division of Workers' Compensation Proposed Regulations on the Physician's Fee Schedule within the Official Medical Fee Schedule.

I'm Richard Starkeson, an attorney for Acting Administrative Director Carrie Nevans who is seated here to my left. We also have with us on the podium here today Dr. Anne Searcy who is the Medical Director of the Division of Workers' Compensation; immediately to her left and then again to the left, the far left, is Destie Overpeck, Chief Counsel of the Division of Workers' Compensation, and Maureen Gray our Regulations Coordinator, seated here in the front on your left-hand side of the auditorium.

Thank you, Ms. Gray, for making the arrangements for the hearing this morning.

All right. This hearing will continue as long as there are people here present who wish to comment on the Regulations, but we will, nevertheless, close at 5:00 o'clock at the latest. If the hearing should happen to

continue into the lunch hour, we will take at least an hour's break for lunch. Written comments will be accepted up until 5:00 p.m. at the headquarters office by fax or e-mail or by delivery at the Division's office on the 17th floor of the headquarters building in Oakland. The purpose of this hearing is to receive comments on the proposed amendments to the Regulations, and the Acting Administrative Director welcomes any comments you may have about them. All your comments, both written and oral, will be considered by the Acting Administrative Director in determining whether to adopt these regulations as written or to change it.

Please restrict the subject of your comments on the regulations and any suggestions you may have for changing the regulations. We are not planning to enter into any discussions this morning, although we may ask for clarification or ask you to elaborate further on any points you are presenting.

When you come up to give testimony please give your business card to Ms. Maureen Gray who is seated here (indicating) at the front of the auditorium so we can get a correct spelling of your name for our transcript. Please speak into the microphone on the podium. The podium is here at the front of the speakers' table.

Before starting your testimony please identify yourself for the record. So with that, I'm going to

introduce Carrie Nevans who will call for the first speaker.

MS. NEVANS: Is this on? Okay. The first speaker that signed up is Alex Swedlow from CWCI.

ALEX SWEDLOW

MR. SWEDLOW: Good morning, are we on? Okay. I'll just -- my name is Alex Swedlow. I'm the Executive Vice President in charge of research for the California Workers' Compensation Institute. We are a not for profit, a public policy research organization working with various stakeholders assisting to better understand cost drivers and other important issues in the system using objective research data and techniques. I'm here today to present the results of a study that we conducted on behalf of the Administrative Director. Separate and apart of this are comments that the institute has submitted concerning the proposed changes to the E and M schedule. I won't comment on those, but I believe that they've been forwarded to your office. In 2007 --

UNIDENTIFIED SPEAKER: It's very hard to hear.

MS. NEVANS: Yes. I'm almost thinking come sit up here and use this mike.

MR. SWEDLOW: Sure.

MR. STARKESON: It's better if you hold it closer.

MR. SWEDLOW: Now? Better? Ok. Great.

MR. STARKESON: You have to hold it real close to your mouth.

MR. SWEDLOW: Ok. Great.

In 2007, the California Division of Workers' Comp -- don't swallow it.

In 2007 the California Division of Workers' Compensation seeks to modify the Official Medical Fee Schedule which establishes health care reimbursement levels for most medical services within the workers' compensation system, and that includes the evaluation and management office visits services. At the request of the AD the institute estimated systemwide changes for 10 E and M office visits codes and priced them under 9 distinct California regional 2006 Medicare Fee Schedules. The authors used the database of just about a million E and M Codes from 2005 dates of services and compared the current fee schedule reimbursement amounts with 9 California Medicare fee schedules. And because each encounter included the location of the injured workers, where they live, their zip code, we were able to create a 10th option, which is a weighted regional adjustment average reimbursement level for all 10 procedures adjusting for the 9 different California regions. There's a handout with 4 tables that I will reference. I'll also say that the final study will be finished and released

on our website by the end of the week.

In terms of background, the California Official Medical Fee Schedule for workers' compensation governs medical procedure fees for the treatment of work injuries in the state and includes a wide variety of different types of medical treatment including E and M services, anesthesia, surgery, radiology, physical medicine, chiropractic manipulations and special services. Other services such as pharmaceuticals, DME's, supplies, orthotics, and the like as well as inpatient and outpatient facilities fees are also part of the fee schedule, but they don't fall under the physician portion of OMFS which we are concentrating on today.

This report, this study models the systemwide effects on reimbursement focusing on 10 E and M codes, 10 of the most widely used office visit codes in our system. What we wanted to do was to begin to take a look at how big a footprint, how often these codes are used relative to all E and M codes; so we first constructed the database of all E and M codes and parsed out 10 codes to see what size volume we are talking about. It turns out that the 10 codes that the Administrative Director is interested in represent about 80 percent of the volume of all E and M codes and about 2 out of 3 dollars paid for all E and M codes. So with that as a sort of point of departure, we wanted to model the

overall effect of moving from our fee schedule to the Medicare fee schedule. In order to do that we needed to pull some additional data together from other sources including the Workers' Compensation Insurance Rating Bureau. The Rating Bureau estimates total physician medical payout in 2005 for the insureds in California at about 1.9 billion, that's physician related services. If we adjust that for the self-insureds in California by adding another 25 percent to that total, it brings us to about 2.4 billion in physician-related services for 2005. According to the institute data, about 21 percent of all those physician-related fees are for E and M services which brings us to about a half a billion dollars paid in E and M services in 2005. As we said before, 2 out of 3 dollars paid for E and M services were associated with the 10 codes that were being considered which brings our total systemwide dollars paid for E and M -- for those 10 E and M codes in 2005, to about 342 million dollars. When we take that figure and we begin to consider the Medicare Fee Schedules, the first thing that we learn is Medicare has many different regions across the country and 9 specific regions within California, including Marin, San Francisco, San Mateo, Alameda, Santa Clara Ventura, Los Angeles, Orange, and then a large category called "the rest of California" where they dump all the other counties including San Diego and San

Bernardino and others. Because we had that zip code information, we were able to construct a 10th region which adjusts for where those codes were actually performed, and then adjust for the differences in how many codes were performed in Los Angeles versus San Francisco and then weight them again for how many different office visits codes were performed across the 10 different ones that are being considered.

What are the results when we compare the current fee schedule with the 10 other fee schedules? With the exception of one of the categories, we find significant increases across all categories, across all regions in the Medicare fee schedule. The current reimbursement level adjusting for the volume of the 10 different codes is $66.07. What we found going across the various regions anywhere of a price increase from about 16 percent for that "rest of California" category to a high of about a 46 percent increase for Santa Clara. So with the exception of the rest of California, almost all of the Medicare fees for all regions and all codes were significantly greater than the corresponding -- our current fee schedule.

In general, the Medicare rates for Northern California were priced at a higher rate than Southern California or the rest of California, and also the differences among the Medicare Fee Schedules were

substantial. The average difference from the Official Medical fee schedule to Medicare rates range from a high, again, of Santa Clara of 46 percent down to the rest of California. Interestingly enough, over half the codes in our database fell into that rest of California bucket. And that's because that rest of California area has some very large counties in it including San Diego and San Bernardino and Santa -- I'm sorry. And Riverside.

So the next step was to create a systemwide projection. If we see that using the California overall weighted average, which adjusted for the 9 different regions and the 10 different codes, we found a 23 percent increase over the current fee schedule for an additional cost of about 79 million dollars. So using our weighted average of all 9 regions in California, we are projecting -- should we go with the weighted average, a 79 million dollar increase or a 23 percent increase over our current fee schedule for those 10 codes. Interestingly enough, if we look across the 9 regions we find that the County of Ventura has almost a spot on similar results of about a 24 percent increase and an 83 million dollar increase without the additional effort of the regional adjustment.

As I said, the study, the full study will be coming out in a couple of days. There will be sufficient details for you to look at the model and make some suggestions and

comments on further refinements.

Any questions? Ok.

MR. STARKESON: Thank you.

The next speaker we have signed up here is Dr. Larry Herron, California Orthopedic Association.

LARRY HERRON, M.D.

DR. HERRON: Good morning, I'm Dr. Herron. I'm an orthopedic surgeon in San Luis Obispo, and I represent 2000 practicing orthopedic surgeons in this county -- or in this state -- who treat workers' compensation, or at least most of them do. I appreciate the opportunity to speak this morning. I'll be quite brief. In summary, we support the Division's increases for the treatment codes for new patients' evaluation and treatment codes. As someone whose treated in work comp for 25 years and less in Medicare reimbursement, any increase is greatly appreciated. On the other hand, the orthopedic surgeons in this state hope that this is an interim increase. As you all know, it takes significantly greater time and effort to treat workers' compensation patients compared to your Medicare patient. With the new rules, utilization reviews become extremely onerous and time consuming, and we hope that sometime in the future we'll be at a meeting such as this to further

increase the reimbursement. The proposal that we have has to do with the consultation codes. Most specialists and orthopedic surgeons treat patients after they've already been cared for in industrial medical groups. Short of falling off a 4-story building and breaking their back, all of the spine patients that I see have been treated by an industrial medical group, and the patient is ultimately referred to me for a consultation. And the consultation consist of "Is this patient a candidate for surgery? Is there any other treatment that would be of benefit to this patient?" Or what the carrier would like is, "Is this patient permanent and stationary?" And probably 19 times out of 20, I tell the carrier the patient is permanent and stationary and doesn't need surgery. This is followed by numerous letters to "well, would you please rate this patient." And the patient was seen in consultation, not as a med-legal, and sooner or later I end up performing a cheap med-legal for the carrier by rating the patient, talking about future medical care, et cetera.

So consultation codes also need to be increased. The overhead for just seeing a patient in a consultation is, again, significantly greater than Medicare. And the current consultation rates are basically out of Medicare rates. So in the letter that we've sent you, we've requested that you also consider increasing the consultation codes, the

outpatient consultation codes by the same rate as the treating codes.

Finally as someone who treats in the lowest paying Medicare area, my reimbursement is exactly the same as rural Mississippi. I would plead with you not to break this up into individual areas in California but to use one overall California rate for reimbursement. The cost of caring for a workers' compensation patient is just the same in my county as it is in San Francisco or Los Angeles.

Thank you.

MR. STARKESON: Thank you, Dr. Herron.

Next, Steve Cattolica, and you might want to indicate the organizations you are representing since it looks like several.

STEVE CATTOLICA

MR. CATTOLICA: Thank you. My name is Steve Cattolica. I represent the California Society of Industrial Medicine and Surgery, U.S. HealthWorks, and the California Society of Physical Medicine and Rehabilitation. Together these groups touched the lives of approximately 25 percent of all the injured workers in California. Our written comments have been submitted to you. I'd like to highlight a couple of aspects of those written comments. First of

all, of course, is our fundamental support and any kind of recognition that physicians have gone unpaid or underpaid, in some respects, since 1986. We'd like to be sure, as a previous speaker said, that this be considered an interim increase, and that no inertia in these fees be created, no standstill in the study that will go forward that should actually do what should have been done a long time ago with respect to raising the fees to what's necessary. When we had the opportunity to talk to the Division with respect to the medical-legal fee schedule, which was appropriately increased not too long ago, we pointed out that inflation and the cost of renewing business has risen around 35 percent since the earl -- late 80's.

We believe that this move that essentially creates parity with Medicare, in some respects, and for a limited number of codes should only be that interim increase. We'd also like to point out that we understand that there -- in earlier testimony of a public hearing with respect to physician dispensed medication, that the point was made by some speakers that they were compelled to dispense from their offices because E and M codes were under reimbursed. We can't dispute that. We aren't really going to speak to that, but we'd like to just make the point that physician dispensed medications is a benefit to injured workers that ought to be considered separately from this increase, and

that no connection between this increase and any decrease in that reimbursement formula for dispensed drugs ought to be made. One does not balance out the other in any aspect.

You are likely to receive testimony at this hearing that advocates that a broader set of codes be considered. You may hear it orally; you may see it in writing. We would agree with that testimony. You are likely to hear that this proposed interim adjustment should actually be a much larger promotion of Medicare than parity. We would agree with that testimony when it's heard. But in deciding what the final outcome is, the number of codes and the actual percentage increase, we'd like to assure that the Division takes into account that paid amounts reflected in the CWCI data and any supposed increases from that paid data that your adjustment may reflect do not take into account MPN discounts. And so to make an example, if a Division decides that a 35 percent weighted average for all these codes is the route to go -- and I'm just using this as an example -- know that the net to the physician is going to be significantly less than that due to MPN or PPO discounts. And please consider that when you finally come to your conclusion. Thank you.

MR. STARKESON: Thank you. Mr. Cattolica.

Mr. Mark Hayes.

///

///

MARK HAYES

MR. HAYES: My name is Mark Hayes. I'm the president of VotersInjuredatWork.org. I want to thank the panel for the opportunity to testify today. VotersInjuredatWork.org is a nonprofit organization that represents the interest of employees injured in the service of California employers. We are pleased to comment in support of the proposed regulations changes that increase fees for the 10 evaluation and management codes for services provided on or after February 15, 2007. We know the workers' comp. system needs to provide medical care by competent physicians, and in order to assure that, they need to adequately compensate physicians for their treatment and services. We feel that the current rates of these 10 codes are and have been too low for several years and need to be increased. Without the necessary increase, the risk of physicians choosing to no longer practice workers' comp. medicine becomes a real likelihood. There are already too many problems that exist which are causing physicians to leave a troubled system. The current use of utilization review is being abused and does not allow physicians to treat injured workers in a timely fashion. The misapplication of the ACOEM guidelines is another contributing factor, as well as the problems with Medical Network Providers -- or Networks, Provider Networks.

We don't need to add any more reasons for good physicians to leave the system. We urge you to increase the fees. Again, thank you for affording us the opportunity to present our position on the proposed regulations.

MR. STARKESON: Thank you, Mr. Hayes.

Our next speaker is Tim Madden. Just one second, please.

TIM MADDEN

MR. MADDEN: My name is Tim Madden, and I am representing the California Occupational Medicine Physicians, COMP. We are a group of 40 occupational clinics here in California. I will make my comments very brief.

We would like to thank the Division for your work on this topic. We appreciate your recognition of the low levels of reimbursement that have been in place for over 20 years now. We appreciate your willingness to meet with our organization to discuss these issues, and with that I would like to introduce our President, Dr. Ron Crowell, and he will give you some more specific comments. Dr. Crowell is the next person on the list so with your permission.

MR. STARKESON: Yes. Certainly. Go Ahead.

///

DR. CROWELL: Good morning. Thank you for the opportunity. It's nice to be a part of what appears to be a consensus.

MR. STARKESON: Dr. Crowell, could you state your name, even though you are on the list, for the reporter.

MR. CROWELL: It is Ronald Crowell, C-r-o-w-e-l-l.

MR. STARKESON: Thank you.

MR. CROWELL: I am the owner and medical director of a large primary care occupational practice in the Greater Los Angeles Area, and I am also president of COMP, which are 40 similar practices.

We are here to, first, strongly support the proposed regulations; second, to express our sincere appreciation for the Division, the Division's efforts to understand the crisis the primary care providers in occupational medicine face based on the third lowest reimbursement schedule in the nation, a fee schedule that really hasn't been modified to any significant degree in 25 years. It's put us on the edge, the brink of extinction, and the message has been received loud and clear, and we are very, very appreciative.

We would further echo the previous speakers that this should be the first step in a comprehensive process, which we know the Division is already underway with, which will

lead to the complete reformulation of the Official Medical Fee Schedule. We sincerely hope that that will be accomplished this calendar year 2007, and we offer our assistance in any way we can, not only myself, but one of our members, Greg Gilbert with Concentra, is a national expert in reimbursement and has been through the process in many, many states and can help with the areas that have been successful and the areas that have been failures. We certainly don't think California should reinvent the wheel but, wherever possible, work with the experience of others.

COMP stands by its previous joint position paper, which we have submitted, in concert with Kaiser and WOEMA, which is the Western Chapter of ACOEM, and with the Family Practice Group. We have also submitted written testimony today.

I am not going to go through the specifics but just highlight the fact that we look to a world where RBRVS is used as the basis, not tied to Medicare, but it gives us a way to approach this. Most states in this country use RBRVS. We hope that will be tied to an inflationary multiplier and not to the Medicare program which deals with federal politics and federal budgetary issues.

We hope that when the Division determines what the ultimate multiplier will be that the issue of the administrative overhead as was defined by the Lewin report

will be factored in and added to whatever the baseline reimbursement.

Heretofore, Medicare was always considered the most cost intensive practice, and occupational medicine has set new standards. This is very complicated, very difficult. There are real costs involved -- and I understand -- and hopefully there will be a further elucidation of what has transpired since the original Lewin report. MPNs have not made life easier.

The final comment I would like to make is with the particular bias in primary care. We are the backbone of workers' compensation medical care in this state. Practices like mine are 100-percent occupational medicine. We can't do this as a lost leader. We can't mix it in with a patient mix which includes all sorts of other patients that might be better reimbursed. We depend on fair reimbursement for what we do. It is complicated, and it seems to be lost in the mix that this is a specialty.

When an outfit like Blue Cross will develop an MPN with 70,000 doctors of which probably .001 percent have any idea of what workers' compensation practice is, when First Health will put out a booklet with 50 or 60,000 doctors, this to our group is unimaginable. We are a specialty. We are a specialty by training and experience. There are also Boards. It's an art as well as a science to keep injured

workers in the workplace and get them well quickly and efficiently, and you just can't hand this out to any warm physician with a heartbeat. And we all thought that's where MPNs were going to take this system, and it has in the hands of the most sophisticated, the self-insured. They know how to build an MPN with just the right number of the very best doctors.

The small employers -- and I'm a small employer -- we are in the marketplace depending on behaviors of insurers. When they sign up with outfits that give you books of tens of thousands of names of doctors, this is not advancing the cause of quality occupational care in our state.

The take-home message is: In your elucidation this year, please be sure that you come to a formula that pays us a fair price for the work we do so that the core of this program survives and thrives and helps lead us into a new year of workers' compensation in California.

Thank you very much.

MR. STARKESON: Thank you, Dr. Crowell.

We don't have anyone else listed on the sign-up sheet that wanted to speak here this morning. Is there anyone else present in the room who wants to speak this morning?

Yes, come forward, sir.

And please state your name for the record and hold the microphone very close to your mouth.

MR. GILBERT: Will do. And I hope nobody has the flu out there. I think Alex left. Maybe he was sick.

GREG GILBERT

My name is Greg Gilbert. I am the Senior Vice President of Reimbursement and Governmental Relations for Concentra Health Services. Concentra manages the practices of 310 occupational health centers in 40 states. We are by far the very largest in this business.

I am involved in several jurisdictions officially in medical fee committees -- Georgia, Maryland -- and have advised other states such as Texas, Oklahoma, Nevada, Michigan, with respect to their fee schedule development.

I want to say brief comments so everybody can go home and have lunch and catch planes. But basically I would like to say we support this increase. We ask that you keep the fees where they are in terms of their weighting.

When we looked at our distribution mix of E&M codes, we came up with about a 13-percent increase from the Official Medical Fee Schedule. We still need to look at the analysis and report that Alex mentioned to understand what differences are there, but I am sure they are probably geographic.

///

So we support this increase. We ask and urge you to continue down the pathway of developing and reforming the existing fee schedule. There is lots of work to be done, and inequities still exist. We just ask that you continue down that pathway, and we offer our help, my help, and the organization's help related to that development.

Thank you.

MR. STARKESON: Thank you.

Is there anyone else here present that wants to testify or make comments on the regulations? I am not seeing any hands or any other indications.

If there is no one else who is going to testify, we will be closing the hearing. You will have the opportunity to file written comments today until five o'clock this afternoon either by fax or e-mail or by actual delivery to the headquarters office in Oakland.

On behalf of the Acting Administrative Director, Ms. Carrie Nevans, I am going to close the hearing and extend our thanks and appreciation for your attendance and the testimony that you have given here this morning. The hearing is now closed.

(The Public Hearing was concluded at 10:38 a.m.)

* * *

R E P O R T E R S' C E R T I F I C A T I O N

I, Gail Paige-Washington, Official Hearing Reporter for the State of California, Department of Industrial Relations, Workers' Compensation Appeals Board, do hereby certify that:

The foregoing matter was reported by myself and Paula Guild, Official Hearing Reporters for the Workers' Compensation Appeals Board;

The preceding transcription of proceedings was accomplished via computer-aided transcription, with the aid of audiotape backup, to the best of our ability.

I thereafter merged the respective sections of the electronic file portions of transcript to produce this transcript of one volume, being a true and complete transcription of the proceedings held on January 24, 2007, in the matter identified on the first page hereof.

Dated: January 26, 2007

Gail Paige-Washington
Official Hearing Reporter
Workers' Compensation Appeals Board