

# QUARTERLY ACTIVITY REPORT

April 1 - June 30, 1999

Walter W. Turner, Commissioner  
KY Department of Workers Claims

## DWC And DOI Commissioners Restrict Use of "Retrospective PPO'S"

In June DWC Commissioner Walter W. Turner in consultation with Department of Insurance Commissioner George Nichols, III issued a policy statement to workers compensation insurance companies, group self-insurance funds and self-insured employers informing them that the use of medical provider networks outside of approved Workers Compensation Managed Care Plans is considered unlawful and against public policy, subjecting entities which use those networks to sanctions under the Workers Compensation Act and Insurance Code.

Policy statement by the Commissioners followed an investigation by DWC of complaints by injured workers and their representatives that employer steering of injured workers to physicians had become common practice. DWC found that so called "retrospective networks" were being utilized by carriers and employers who were not participating in authorized managed care wherein an injured employee's choice of provider is generally restricted to physicians enrolled in the managed care arrangement. Physicians participating in the

"retrospective " PPO networks often contractually agree to discounts from reimbursement service levels established by the "official" Workers Compensation Fee Schedule promulgated by DWC pursuant to KRS 342.025(1) and 803 KAR 25:089. The "savings" produced by application of the discount are then divided by the creator of the PPO and the insurance carrier or self-insured employer. Carriers maintain that the use of retrospective networks does not prompt employers to direct workers to participating physicians for care – they assert that the system is blind and fees are discounted only when an employee happens to choose a physician in the network. The DWC Commissioner counters that the arrangements are violative of public policy as they provide a financial incentive for employers and carriers to interfere in the employee's physician selection, establish a relationship between the payor and physician which is not revealed to the patient, and encompass a reimbursement scheme which is contrary to statute. Through the policy statement carriers and self-insured employers were notified of the necessity of immediately terminating the use of provider networks in the absence of a certified managed care plan.

## DWC's Annual Expenditures \$2.5 Million Under Budget

<u>BUDGET ENTRY</u>	<u>BUDGET</u>	<u>SPENT TO DATE</u>	<u>FY BALANCE</u>	<u>% SPENT</u>
<b>Personnel</b>	11,724,000	10,112,342	1,611,658	86.3%
<b>Operating</b>	3,150,000	2,146,425	1,003,575	68.1%
<b>Capital Equipment</b>	<u>120,000</u>	<u>239,367</u>	<u>(119,367)</u>	<u>199.5%</u>
<b>TOTAL</b>	<b>14,994,000</b>	<b>12,498,135</b>	<b>2,495,866*</b>	<b>83.4%</b>

\* Represents year-end surplus  
 Total funded personnel positions: 268  
 Total full-time personnel as of 6/30/99: 211  
 Total full-time vacancies as of 6/30/99: 57

## Confidentiality of Medical Records

The workers compensation claim process has of necessity entailed constant carrier/employer observation of the medical status of the injured workers. Historically, within the compensation program there has been a virtually unrestricted exchange of employee medical records between and among medical providers, carriers, employers, third party administrators, utilization reviewers, the Special Fund, Uninsured Employers' Fund, and Department of Workers Claims staff. On the national front there has in recent years been a flurry of legislative and administrative activity focused upon assuring patient records greater confidentiality and granting patients greater control over the distribution of medical records. Pending before Congress are several bills which if adopted could drastically alter common practices with regard to exchange of medical information within state workers compensation programs. Additionally, there is the imminent likelihood of promulgation of regulations upon the subject matter by the Secretary of Health and Human Services if Congress fails to adopt legislation encompassing heightened protection of medical records.

Department of Workers Claims General Counsel and the Commissioner are monitoring federal developments and assessing the impact of proposals upon the Kentucky workers compensation program. The Department of Workers Claims has also invoked internal policies designed to ensure that all personnel who routinely handle medical records are apprised of their duty to protect confidential records. Security measures have been built into ongoing projects for electronic data interchange (EDI) transmission and storage of medical bill and injury report data to ensure that information is only accessed by authorized personnel. Presently, most of all the medical records held by the Department of Workers Claims are materials filed as evidence in an adjudicated claim or tendered with an agreement settling a claim. These claim records are considered "open records" subject to unrestricted public disclosure and dissemination without a patient medical records release.

## Medical Utilization Review Conference

The Department of Workers' Claims hosted a Utilization Review Conference on May 18, 1999 at the Capital Plaza Hotel. The conference addressed issues raised during the administration of the Utilization Review program in its third operational year. Utilization review was mandated by House Bill 928 in April, 1994. Utilization review programs were required as of April, 1996. Departmental efforts initially focused upon program start-up issues, followed by compliance efforts. As the utilization review program moved into a maturation phase, focus on quality and effectiveness was behind an audit of vendors during 1998 which demonstrated a need for this conference.

The Department worked with consultants from Milliman & Robertson in analyzing issues, planning, and presenting the Utilization Review Conference. Milliman & Robertson publishes the most widely utilized set of treatment guidelines and has consulted with numerous entities in the workers' compensation managed health care arena. Milliman & Robertson offered a national perspective and commentary to local issues identified by numerous stakeholders in the utilization review process.

The conference was well attended and well received. Approximately 90 persons representing 45 separate entities attended. Breakdown of attendance by type of entity follows:

Utilization Review Vendor:	39%
Insurance Carrier:	22%
Self-Insured Employer or Group:	17%
Third Party Administrator:	11%
Department of Workers' Claims:	11%

Attendees absorbed information presented by adjudicators (*Credibility Issues Before Adjudicators*), administrators (*Statutory Design of UR Process*), and clinical consultants (*Application of Guideline Concepts to Enhance Process and Credibility*). A question and answer session helped link conference presentations to issues arising during the daily administration of claims. Written materials or a video tape of the conference is available. Contact Donna Elsen Floyd at (502)564-5550, ext. 488.

## Self-Insurance

The final examination report on the Kentucky School Board Self-Insurance was issued with a favorable findings as to financial condition and operations. Examination of Workers' Guardian Self-Insurance Fund was completed with final report scheduled for release in July. The Department also completed fieldwork in the examination of Forest Industries Self-Insurance Fund and expects an initial audit report by mid August.

Annual self-insurance certificates and recertification extensions were processed for approximately seventy-five percent (75%) of all self-insured employers. Additionally, twenty-five percent (25%) of the surety calculations and fifty percent (50%) of the financial reviews for the individual self-insured companies were completed.

## Enforcement of Coverage

Primary responsibility for confirming compliance with workers compensation coverage requirements rests with the Enforcement Branch. During the 2<sup>nd</sup> quarter of 1999, compliance officers conducted 2,334 on-site inspections of Kentucky businesses to verify presence of workers' compensation coverage. The Commissioner issued forty-eight (48) citations for non-compliance bringing the years' total to two hundred and eighty-one (281). DWC collected \$109,887 on current and previously issued citations.



The Enforcement Branch successfully field-tested an information capture system utilizing palmtop computers. This new process significantly reduces the use of paper report forms while ensuring complete, accurate, and timely management of data. The Branch has moved this technology from a test to a production environment. By the end of the third quarter we expect each compliance officer to be capturing and submitting all investigative information via palmtop computers.

## EDI-POC

During the second quarter of 1999 the Coverage Branch, responsible for maintaining the Department's employer coverage database, received 298,113 records from NCCI; a volume equivalent to approximately four (4) years worth of notices when the Department received paper reports. Analysis of the proof of coverage notices resulted in the Branch rejecting 95% due to errors. In response to continuing difficulties associated with coverage data submitted through NCCI the Commissioner informed all carriers that effective September 1, 1999, Kentucky is terminating the designation of NCCI as a proof of coverage data collection agent. Pending further notice, as of that date, DWC will no longer accept submissions via NCCI.

As part of the commitment to electronic data interchange (EDI) DWC has chosen to open the door for filing Proof of Coverage data to any trading partner that demonstrates the immediate capability of meeting the Department's quality assessment.

Opening the "Proof of Coverage door" will allow carriers and group self-insurance funds to take full advantage of opportunities in a thriving EDI environment. Recently, the Department of Workers Claims purchased an Internet option permitting direct reporting of proof of coverage information to Kentucky. This procedure provides immediate acknowledgment to the carrier that the POC information was successfully transmitted, followed by an acknowledgment twenty-four (24) hours later informing the carrier of acceptance or rejection of the transaction.

We anticipate that other means of submitting POC data, including a conversion of the NCCI WCPOLS format, will soon be available. Product descriptions supplied by the test vendors are available on DWC's web site. During the second quarter Kentucky conducted tests with Celerity Technologies, Inc., Unicom Communications, and Workers' COMP-LINK.

Updates on the testing and approval process can be viewed on the Department of Workers Claims' Home Page ([www.state.ky.us/agencies/labor/wrkclaim.htm](http://www.state.ky.us/agencies/labor/wrkclaim.htm)) or you may call either Bob Wilson at 502-564-0905 ext. 404, or Gary Davis at 502-564-0905 ext. 403.

### Arbitrator Activity

During the second quarter, DWC Arbitrators held over 1200 benefit review conferences, issued 588 benefit review determinations and settled 26% of the 945 claims resolved. Arbitrators continually strive to comply with the statutory requirement that decisions be rendered within 90 days of assignment, however additional time is often necessary for parties to arrange evaluations and provide documentary proof.

### 2nd Quarter Claims Activity

Awards Rendered	830
Settlements Approved	606
Injuries Reported	13,363
Claims Filed	1,042
Reopenings	302
Prelitigated Agreements	811
Dismissals	199
Appeals from Arbitrator to ALJ	521
Appeals to Board	176
Appeals to Court of Appeals	40
Appeals to Supreme Court	47

### ALJ Activity

During the second quarter of 1999, the fourteen Administrative Law Judges (ALJs) performed their traditional duties, including adjudication in de novo appeals from arbitrator decisions and in claims transferred directly from arbitrators prior to an initial decision because of complex fact or legal issues. During this quarter, ALJs received 482 appeals from arbitrators' final orders and 111 files were transferred to ALJs. Also during this quarter, the ALJs held 123 hearings and 105 pre-hearing conferences. The ALJs hold informal conferences in most cases to reduce the number of contested issues and promote settlements. Over 300 agreements were approved by ALJs during this time period and ALJs issued 395 opinions, including 310 awards and 85 dismissals. ALJ's, acting as arbitrators, held approximately 600 benefit review conferences and issued over 215 benefit review decisions.

### Medical Evaluations Update

Between April and June, 1999, 123 claims were received to be scheduled for university medical evaluations. The majority of these were injury claims. This brings the total for the first six months of 1999 to 232. Also, during this quarter, DWC received 73 medical evaluation reports from the University of Kentucky and 49 medical evaluation reports from the University of Louisville.



## Division of Ombudsmen & Workers Compensation Specialists

### Workers Compensation Specialists' Activity

Requests for assistance: 2065  
 Requests for assistance completed: 1772  
 Mediation requests: 330  
 Mediation completed successfully: 182  
 Number of assisted claims filed: 25



### Ombudsmen Activity, Apr. - June, 1999

<b>NUMBER OF REQUESTS RECEIVED</b>	<b>1923</b>
COMPLETED	1796
PRIOR MONTH COMPLETED	447
PENDING	516
<b>SOURCE OF CALL:</b>	
CLAIMANT	911
CARRIER	233
EMPLOYER	195
ATTORNEY	224
MEDICAL PROVIDER	141
GOVERNMENT OFFICIAL	37
MEDICAL REVIEW	27
OTHER	155
<b>TOTAL:</b>	<b>1923</b>
<b>SUBJECT BREAKDOWN OF CALLS:</b>	
MEDICAL FEE SCHEDULE	112
LEGAL QUESTIONS	408
INFORMAL MEDIATION	628
PROCEDURAL QUESTIONS	912
MEDICAL FEE DISPUTE	29
CLAIMS STATUS INQUIRY	129
FRAUD	8
COVERAGE	276
FIRST REPORT OF INJURY INQUIRY	39
MANAGED CARE	15
REHABILITATION	2
UTILIZATION REVIEW	22
REFERRAL TO OUTSIDE AGENCY	71
OTHER	214
<b>TOTAL:</b>	<b>2865</b>



*This agency does not discriminate on the basis of race, color, national origin, religion, age or disability in employment or provision of services.*

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