

**MINUTES OF THE ILLINOIS WORKERS' COMPENSATION COMMISSION  
MEDICAL FEE ADVISORY BOARD MEETING  
BILANDIC BUILDING, 160 N. LASALLE STREET - ROOM N-502  
HELD ON APRIL 18, 2014**

**Present at the meeting:**

Chairman Michael Latz  
Dr. Avi Bernstein  
Barb Molloy  
Bill McAndrew  
Diana Alvarez  
David Menchetti  
Dr. Michael Vender

**Participating via telephone:**

Jason Keller  
Dianne McGuire

**Not present at the meeting:**

Kim Moreland

**IWCC staff present:**

Ron Rascia, General Counsel and Acting Secretary  
Mike Arnold, Deputy General Counsel  
Brendan O'Rourke, Executive Assistant  
Susan Piha, Manager of Research and Education  
Glen Boyle, Project Manager

Chairman Michael Latz called the meeting to order and noted that a quorum of members was present. There was a motion by Mr. Menchetti, seconded by Mr. McAndrew and unanimously carried, to approve the minutes from the meeting held on December 18, 2013.

Chairman Latz stated that he reviewed the transcript of the last meeting and now would like to clear up any confusion over the 5-3 vote taken at that meeting regarding Mr. Boyle's December 18, 2013 memorandum entitled "E&M Codes, Neurodiagnostic and Psychology Codes, CPT 29826, and Fee Schedule Update for 2014." Chairman Latz stated that he received some feedback that members were not sure exactly what the proposal was being voted on, and so he clarified that the vote was intended to be on the proposal contained in the memorandum to increase the E&M codes as highlighted in four charts in the memorandum.

Chairman Latz stated his interest in re-visiting the issue in light of his clarification, and he asked for any additional input from members. Mr. McAndrew expressed concern that the proposed increase was based on Medicare reimbursement, and he did not want to establish a precedent that all future fee schedule increases would be linked to the Medicare rate. Chairman Latz noted that Mr. McAndrew had previously asked what the rationale was for the specific increases set forth in Mr. Boyle's memorandum.

Mr. Menchetti explained that he voted yes on the proposal at the last meeting because he thought it was a necessary first step and not a bar on future increases. Dr. Vender stated that his prior vote against the proposal was due to the political nature of Medicare. Further, his practice has substantial numbers of both Medicare and workers' compensation patients, and he feels that the workloads for these two populations are not equivalent. Dr. Bernstein echoed Dr. Vender's comments.

Chairman Latz stated that some surgery codes are higher in Illinois than in other states, contrasted against certain E&M codes that are lower in Illinois than in other states. He asked members what the rationale should be for determining how to handle E&M codes. Dr. Vender answered that the Commission should perhaps look at such factors as malpractice risk or the number of support staff needed.

Chairman Latz emphasized that the proposal's intent was not to establish Medicare as the benchmark for future increases, though he acknowledged that it is one useful metric to use in some circumstances. Ms. Molloy advocated for upholding the prior approval of the proposal because there are many smaller providers in Illinois who depend on being reimbursed based on the E&M codes within the proposal and these codes must be increased now. She agreed with Mr. McAndrew's suggestion that the Commission should move forward with the proposal but make it clear that it is not establishing a clear link to Medicare rates.

Dr. Bernstein expressed concern that the Commission will adopt the proposed increase and then do nothing in the future. Ms. Molloy countered that the Board should approve the proposed increases now and then continue to consider the dynamic nature of the health care industry and make any necessary recommendations regarding increases to the Commission in the future.

Chairman Latz agreed that the proposed increase is an incremental change that reflects compromise.

Ms. McGuire and Ms. Molloy engaged in a brief discussion about the specific COLA amount for the proposed increases and the contrast to the way the fee schedule handles surgical fees. Chairman Latz noted that the Board may look in the future at other reimbursements such as surgical.

Dr. Vender argued that the proposed increase is merely low-hanging fruit. He believes that the recent workers' compensation reforms targeted doctors and left hospitals, lawyers, and other stakeholders alone. He remarked that the Commission should consider cutting the entire fee schedule by 60% and seeing what happens to the system as a result. Chairman Latz responded by referencing recent indictments for workers' compensation fraud and increased appropriations for insurance compliance investigations. He stated that doctors are an integral part of the workers' compensation system and must be treated fairly.

Dr. Bernstein asked why the Board could not recommend that the Commission revert the fee schedule back to how it was before the recent reforms and then cut it down by only 10%.

Mr. Menchetti and General Counsel Rascia responded that the Workers' Compensation Act states that the Commission can increase the fee schedule only due to "access to care" issues, that there is a presumption by all members of the Board that rates below Medicare presumptively trigger an "access to care" issue even without an evidentiary hearing, and that any further action would be considered interference with the General Assembly. Chairman Latz agreed that the Board needs empirical data beyond the anecdotal data that has so far been presented to the Board.

Chairman Latz then asked the Board to re-vote on the proposed increase. Dr. Bernstein asked for more time to consider the issue. Ms. Molly questioned why such a delay would be necessary, and Dr. Bernstein restated his concern that the Board would have to live with this particular increase based on Medicare rates for the long term. Mr. Menchetti said that a unanimous vote by the Board would be more influential with the Commission, and he further stated that the labor segment of the workers' compensation system will never stop monitoring access to care issues.

Mr. McAndrew stated that he does not want to be an obstacle, and he noted that the low E&M codes went into effect in September, 2011.

Chairman Latz then called for a re-vote. Mr. McAndrew moved to approve a resolution that the Commission should enact the proposed E&M code increases as soon as possible. Ms. Molloy seconded the motion, and the motion carried unanimously. Chairman Latz noted that this meeting's record establishes a basis for future discussion.

Chairman Latz notified members that at the next meeting there will be a proposal regarding gaps in reimbursement for transportation, as well as a discussion on pending legislation on a discrete issue relating to day laborers and chiropractic care.

Mr. McAndrew requested that the following issues be put on the agenda for the next meeting: (1) can providers be freed of the requirement to submit invoices for implants; (2) will property and casualty insurers be ready to pay workers' compensation bills using ICD-10 codes; (3) the misalignment between the Commission and Medicare regarding changes to certain codes such as 29826 (shoulder surgery); (4) access to care issues created by the current E&M codes, as presented by Dr. David Fletcher from Safe Works; and (5) a disagreement with Commission Rule 711.90(h)(4)(B) and related rules, as argued by Sarah Kutter from Saint Margaret's Health.

Chairman Latz promised members that he would distribute a memorandum to them about the implant issue in advance of the next meeting.

Nataliya Kurcha from the audience identified herself as a billing specialist and asked to be heard for a few minutes about CPT codes. An unidentified audience member objected to this issue being discussed at this meeting due to pending litigation being prosecuted by Ms. Kurcha's employer in the circuit court. Chairman Latz proposed that both sides make presentations at the next meeting, and Mr. Boyle agreed to collect some data on this issue. Mr. Menchetti asked what the current amount is for CPT reimbursement, and Mr. Boyle stated that there is some gray area here as people disagree about what the CPT code currently pays.

Chairman Latz reminded members that the Board's next scheduled meeting is July 16, 2014, but he recommended that the Board agree to meet again prior to that date. He stated he will identify a possible meeting date during the first week of June.

David Porter from the Illinois State Medical Society asked when the Commission will be acting on the Board's E&M codes recommendation. He was advised that this timeframe will be determined soon.

Mr. McAndrew moved to adjourn. Dr. Vender seconded, and the motion carried unanimously.