The Workers’ Compensation (C) Task Force met in Austin, TX, Dec. 9, 2019. The following Task Force members participated: John G. Franchini, Chair, and Robert Doucette (NM); Lori K. Wing-Heier, Vice Chair, and Michael Ricker (AK); Allen W. Kerr represented by William Lacy (AR); Keith Schraad represented by Erin Klug (AZ); Andrew N. Mais represented by George Bradner (CT); Stephen C. Taylor represented by Philip Barlow (DC); Trinidad Navarro represented by Fleur McKendell (DE); David Altmaier represented by Sandra Starnes (FL); John F. King represented by Steve Manders (GA); Colin M. Hayashida represented by Kathleen Nakasone (HI); Doug Ommen represented by Travis Grassel (IA); Robert H. Muriel represented by Mike Chrysler (IL); Vicki Schmidt represented by Heather Droge (KS); James J. Donelon represented by Warren Byrd (LA); Eric A. Cioppa represented by Sandra Darby (ME); Steve Kelley represented by Tammy Lohmann (MN); Chlora Lindley-Myers and LeAnn Cox (MO); Mike Causey represented by Fred Fuller (NC); Glen Mulready represented by Cuc Nguyen (OK); Andrew Stolfi represented by TK Keen (OR); Jessica Altman represented by Shannen Logue (PA); Elizabeth Kelleher Dwyer represented by Beth Vollucci (RI); Raymond G. Farmer represented by Joe Cregan (SC); Larry Deiter represented by Frank Maxwell (SD); Hodgen Mainda represented by Brian Hoffmeister (TN); Todd E. Kiser represented by Tracy Klausmeier and Reed Stringham (UT); Michael S. Pieciak represented by Kevin Gaffney (VT); and James A. Dodrill represented by Tonya Gillespie (WV). Also participating was: Peg Brown (CO).

1. Adopted its Summer National Meeting Minutes

Mr. Ricker made a motion, seconded by Ms. Nguyen, to adopt the Task Force’s Aug. 5 minutes (see NAIC Proceedings – Summer 2019, Workers’ Compensation (C) Task Force). The motion passed unanimously.

2. Adopted the NAIC/IAIABC Joint (C) Working Group Report and Exposed its Draft Document on the Changing Workforce

Mr. Byrd said the NAIC/IAIABC Joint (C) Working Group has been drafting a document regarding workers’ compensation policy and the changing workforce. The document, the Workers’ Compensation Policy and the Changing Workforce, includes a section regarding the changing relationships with work. This section includes information regarding transformations across the workforce and the workplace over the past century. The section addresses connections to work, including: 1) employee or independent contractor issues; 2) alternative work arrangements; 3) platform work; 4) estimates of alternative or independent work; and 5) the impact of change.

The second section of the paper discusses determining employee status and includes information regarding: 1) the federal standard; 2) state standards; 3) state employment classification; 4) state employment tests; 5) marketplace contractors; and 6) the impact of legal uncertainty of employment classification.

The final section of the paper addresses alternative coverage models, including: 1) independent contractor coverage; 2) the black car fund; 3) occupational accident insurance; 4) disability insurance; and 5) portable benefits. This section further discusses policy questions and considerations.

Mr. Byrd made a motion, seconded by Ms. Darby, to adopt the Working Group’s report, as well as to expose the draft document on the changing workforce for a 30-day comment period ending Jan. 6, 2020. The motion passed unanimously.

3. Heard a Presentation on the Official Disability Guidelines and Formularies

Ken Eichler (MCG Health) and Ron Bordelon (Attorney and Consultant and former Texas Commissioner of Workers’ Compensation) presented to the Task Force on official disability guidelines and formularies. Mr. Bordelon said the Texas Workers’ Compensation Commission underwent many reforms during his time as commissioner. He said there is sometimes a misunderstanding regarding how a treatment guideline and a formulary are meant to be used. A treatment guideline and a formulary are not meant to be an establishment of standards of care for medicine. They are also not a directive or dictate to medical providers and doctors on how to treat a patient. A treatment guideline and a pharmacy formulary are an accumulation of evidence that simply guide a medical treatment provider, an insurance carrier or review agents on the best and appropriate evidence that suggests a treatment or a restriction is recommended or not recommended. If a treatment or restriction is recommended, the treating physician can simply provide that treatment or prescription without fear of losing a dispute because the treatment or prescription is not medically appropriate; the evidence in the treatment guideline or in the formulary will
suggest that it is in fact recommended and appropriate. If the treatment or prescription is not recommended, the treatment or prescription will need to be preauthorized; if the doctor and insurer agree through the preauthorization process that the treatment or prescription should be provided, it will be provided without fear of dispute or reprisal. There is a dispute process available if the preauthorization is rejected.

Mr. Eichler said in workers’ compensation, an injured worker is entitled to any treatment that can be medically documented as necessary, regardless of cost. The premise is that unbiased treatment guidelines and formularies can unite payers, providers and employers to confidently and effectively return employees to health. The Centers for Disease Control and Prevention (CDC) also supports treatment guidelines, and treatment guidelines serve as tools for transparency.

One of the differences between group health and workers’ compensation is that with group health, you get what you pay for, meaning prescription benefits are cost-based and are defined and limited. With workers’ compensation, any treatment that is medically appropriate and causally related should be covered, including prescription benefits.

Mr. Bordelon said workers’ compensation is not mandatory in Texas. Texas had a number of reforms, and the treatment guidelines and formularies have by far had the largest quantifiable effect. Results of the treatment guidelines and formularies include costs decreasing, disputes being resolved more quickly, premium reduction (65%) and more employers purchasing workers’ compensation insurance.

Mr. Bordelon said the state of Texas surveys injured workers at various points in their recovery process. Survey results have shown that injured workers’ satisfaction and return to work rates have improved. The state of Texas released a report, Analysis of Injured Employee Outcomes After the Texas Pharmacy Closed Formulary, in October, which provides more detailed information regarding the survey. The report also includes information regarding treatment guidelines.

Implementation of the treatment guidelines and formularies resulted in the total number of claims receiving not-recommended drugs decreasing by 67%. The total number of not-recommended prescriptions decreased by 77%, and the total cost associated with those not-recommended drugs decreased by almost 80%. Additionally, the total number of claims receiving high levels of not-recommended opioids decreased by almost 15,000 from before the formulary went into effect to less than 500. Texas worked very closely with the medical community, resulting in a positive outcome.

The average return to work rate increased following the implementation of treatment guidelines and formularies. Additionally, mental and physical functioning scores improved. The time it took for an injured worker to access care decreased, as well as physicians being paid more quickly. The number of disputes decreased by approximately 40% and were due to a number of factors; however, most of it was due to the transparent process.

The surveys conducted from injured employees following the use of treatment guidelines and formularies indicated that almost 80% of injured employees said they had no problem receiving their prescriptions or medical treatment. An additional 10% of injured workers said problems encountered were minor. The overall result indicated that almost 90% of injured employees are reporting that they have no problem, or very little problem, obtaining the treatment or prescriptions they need.

Mr. Eichler said MCG Health provides a formulary free of charge, and there are nearly 360 different drugs listed on the formulary. The formulary lists drugs that are preferred drugs that do not require preauthorization. Preauthorization in most states takes anywhere between 24 hours to three days. The formulary allows drugs to be sorted by class so the treating physician can sort by drug class, generic prescription name or by brand name. The formulary can be used by the treating physician to educate the patient.

Mr. Eichler said National Council of Insurance Legislators (NCOIL) has been working on a formulary model law for the past year. He said the model formulary bill is being sponsored by U.S. Rep. Matt Lehman (R-IN), who is the president-elect of NCOIL. Mr. Lehman also sponsored the formulary bill in Indiana. Mr. Eichler said Indiana has a limited number of workers’ compensation staff members, so Indiana asked for a prescriptive bill. This bill rolled out with no issues. The opioid prescriptions in Indiana precluded employees from going back to work; employees were unable to go back to work if they tested positive or were prescribed any of these medications.

Mr. Eichler said the International Association of Industrial Accident Boards and Commissions (IAIABC) conducted a return to work study. This study found that incrementally, the longer a person is out of work, the less chance there is the person will return to work. The sooner a person gets treatment for an injury, the sooner he or she is able to get back to work. Additionally, many states have caps on benefits. Therefore, injured workers will become part of other state systems once they hit the workers’ compensation cap.
Mr. Eichler said data-driven medicine is a benchmark, and there has been a decrease over the past few years of evidence-based studies. This makes it important to consider data-driven medicine. In the age of technology, published studies are not necessarily needed to get information out. With quality data, as long as the data is clarified and verified, data is worth measuring.

It is important to note that more than 700,000 people died from opioid overdoses from 1999 to 2017. 68% of the 70,000 drugs involved in an overdose death involved an opioid. There are 130 Americans that die every day from an opioid overdose. There are several states where there are more prescriptions being written than there are citizens in the state. The formula for success is the appropriate diagnosis plus timely care plus appropriate care plus expedited dispute resolution minus injured workers’ frustrations equals improved outcomes.

Mr. Eichler said there needs to be a focus on functional restoration as part of a treatment option and to focus on function. Isolated treatments and medication are a small but costly and potentially dangerous piece of the treatment plan puzzle and need to be looked at like a picture within a picture, meaning the specific drug versus the alternative drug options versus the alternatives to drugs. The return to the activities of daily living (ADLs) and work are often among the best therapies.

Transparency in the rollout process is important, and stakeholder education is key to the success. Additionally, states need to compare formulary models with states having common traits.

Mr. Bordelon said results across the country are positive with respect to formularies. Mr. Byrd asked what the top arguments received for parties not wanting to adopt treatment guidelines or formularies. Mr. Bordelon said misinformation or misunderstanding of the purposes of the treatment guidelines and formularies cause the most resistance. The arguments generally say using treatment guidelines or formularies are like cookbook medicine or telling treating physicians how to treat their patients. Sometimes physicians feel the treatment guidelines and formularies get in between the physician and the patient relationship. Mr. Bordelon said this is a misunderstanding because the treatment guidelines and formularies are informing a doctor how a claim is going to be reviewed when it is being processed for payment. It is also showing the physician this process up front before the doctor provides the treatment. A doctor can still choose the way he or she wants to treat. However, the guidelines state that it is not recommended and so the carrier and the utilization review agent will be looking at this anyway, and the guidelines are providing the doctor this information. It is meant to be a tool for the doctor as well as the guideline do not tell the physician how to treat the patient; rather, it is a procedural tool.

Having no further business, the Workers’ Compensation (C) Task Force adjourned.