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State: Fla.

Doctor Calls WC Impairment Guide Malpractice: Top [2015-08-27]

ORLANDO, Florida — The Florida Division of Workers' Compensation asked for stakeholders' opinions about improving the system, and they heard an earful Wednesday from doctors who say the state's impairment rating guides are hopelessly out of date.

“Following the current impairment guide is like committing high malpractice,” said Fraser Cobbe, the executive director of the Florida Orthopedic Society.

Cobbe's opinion and those of more than a score of other professionals were offered at a public meeting Wednesday at the 70th Annual Workers' Compensation Institute Educational Conference. The DWC held the forum to gather stakeholder input as it evaluates the possibility of changing rules or proposing legislation on its impairment guides, physician overutilization and treatment guidelines.

Wednesday's testimony will be presented to the three-member panel charged with making a biennial report to the Division to help it determine if legislation or new rules are warranted to regulate workers' compensation, according to DWC Assistant Director Andrew Sabolic.

“I want to dispel any urban myths about what we're doing here,” Sabolic said, indicating no changes are imminent. “We want feedback from the stakeholders about what, if anything should be done. We want you guys to tell us your thoughts on these issues.”

Sabolic said he and his colleagues will take the information from this meeting and provide the feedback gleaned to the panel. They will act on any potential change.

The current impairment standards were implemented in 1996 and the sophistication of medical treatment has grown a lot in 20 years, according to Sabolic. He said the division wants to include the newest technology to properly benefit people.

That was all Dr. David Perloff, a cardiologist, had to know.

“No medical textbook used in 1996 is used today,” Perloff said. “Since the guidelines have been in place, there have been three doublings of medical knowledge.”

Perloff also said the medical impairment guidelines do not necessarily fit a patient's situation. He said an Ironman triathlete with certain test results can have a 95% impairment while a person much less fit can be at 80%.

“It can be a real quagmire,” Perloff said.

"If a concert pianist loses a finger, it's a major problem. A tap dancer not so much," explained Richard Chait, an attorney and self-described "worker advocate." "It's a pain and suffering system in a system that's not supposed to have pain and suffering."

Perloff and others said the DWC should adopt the most recent American Medical Association standards, with tweaks to make them appropriate for a particular situation. He called it a hybrid. Dr. Steven Borzak, an internist and cardiologist, agreed.

"It's okay to start with the AMA guidelines, but there has to be more," Borzak said. "There should be a group of doctors who can work with each specialty."

Chait said he is worried about input about any adjustments to the guidelines coming from nonexperts.

"There's going to be a ripple effect if we're not careful," he said. "We need a team of docs who are an independent group who can put this together."

Sabolic also said he wanted the group's input on medical treatment guidelines, which he said are laid out in Florida statute. Treatment should be of short and intense duration aimed at making a return to work an integral part of the treatment plan, he said.

Dr. Robert Fleigelman, who said he practices occupational medicine, said the system is imperfect because of the changing nature of medical treatment.

"There are no good treatment guidelines and there are none that are terrible," Fleigelman said. "By the time you write one, it's not good medicine anymore."

Claimants' attorney Mike Weiner, president-elect of the Workers' Compensation Section of the Florida Bar Association, said treatment guidelines tie the hands of both judges and doctors.

Mollie Frawley, a nurse from Tallahassee who said she worked for the division 25 year ago, said the problem with the treatment guidelines in their present state is the inflexibility they create.

"Workers' compensation does not provide any choices," Frawley said. "The guidelines do not let a doctor do what is best."

Sabolic also said he wanted to hear the group's ideas about overutilization, meaning doctors doing more work than necessary to boost their income. He told the group he is frustrated because insurance carriers should be policing the physicians.

"We get a complaint from a carrier (about a doctor's overutilization) three years out and we're scratching our heads because the law gives the carriers a great deal of autonomy," Sabolic said. "We want to know why they paid the claim and did nothing about it."

Few in the audience, which appeared to have more doctors than lawyers, had suggestions. Frawley blamed the system.

"It's the workers' compensation system, that's who," Frawley said. "A carrier can't really deny a medical treatment. The only way to do it is with a peer review and what doctor will do that?"

He also had ideas for policing.

“If a carrier sees it a lot, they shouldn’t refer the doctor anymore,” Fogel said.

The WCI's educational conference concluded Wednesday.