Medical Aid: General Principles

Final Program Policy Decision and Supporting Rationale

Date: March 2011

I - Introduction

In setting the Program Policy Agenda, the Workers' Compensation Board (the "WCB") undertakes a program policy issue identification process. This process involves the identification of program policy issues where the development of new and/or the revision of existing policy statements will improve consistency in decision making and/or assist the WCB in achieving its corporate/system goals.

Medical Aid – General Principles was considered a "major" policy issue of the WCB Board of Directors and placed on the 2009 Program Policy Agenda. The WCB began policy development in October 2008 with the release of the Stage 1 consultation paper entitled *"Issues Clarification Paper: Medical Aid – General Principles".* The WCB considered the feedback provided during the November 26th, 2008 Program Policy Summit and carried out research and analysis throughout June - September 2009 on this program policy topic.

At the October 2009 Board of Directors' meeting, the Board agreed to initiate Stage 2 consultation with stakeholders on the proposed new draft program policy. On November 4th, the document entitled "*Program Policy Background Paper: Medical Aid – General Principles*" and a draft program policy were mailed to individuals on the key stakeholder mailing list and posted to the WCB website for a period of 31 days. The deadline for submissions was December 4th, 2009. The WCB accepted 1 late submission (December 7th). The WCB received 6 submissions in total from stakeholders offering input on the proposed draft new program policy.

The Issues Clarification Paper and Policy Background Paper can be found on the WCB website at www.wcb.ns.ca.

On February 25, 2011 the WCB Board of Directors approved a new program policy *"Medical Aid – General Principles"*. Please see Appendix A for the new program policy.

This report includes:

- Key issues raised by stakeholders during Stage 2 consultation on the proposed new program policy;
- Rationale for why the WCB *did* or *did not* revise the draft new program policy *"Medical Aid – General Principles",* in response to stakeholder submissions received as a result of Stage 2 consultation;
- Appendix A: WCB's final policy decision as reflected in the final version of the program policy, and
- Appendix B: Summary of feedback received during Stage 2 consultation.

II – Key Issues Raised During Stage 2 Consultation and WCB Response

This section of the report summarizes the key issues raised by stakeholders and provides the rationale for why the WCB did or did not revise the proposed new Medical Aid General Principles program policy to reflect this input. For a detailed overview of input received from stakeholders, see Appendix B - Stage Two Consultation Summary.

Injured Workers' Associations and Labour

Stakeholder Issue #1: Use of Phrase 'timely, appropriate and cost-effective manner'

The phrase 'timely, appropriate and cost-effective manner' is not found anywhere in the text of the *Workers' Compensation Act* and verges into interpretation of Section 102(1) of the *Act* which uses the words 'necessary or expedient'.

WCB Analysis

The WCB agrees that the phrase "timely, appropriate and cost-effective manner" is not found in the text of the *Act*. The purpose of including this phrase in the draft policy was to improve clarity and provide a better understanding of the meaning of 'necessity, character and sufficiency' of medical aid in accordance with Section 104 of the *Act,* not to attempt to interpret Section 102(1) of the *Act*. A jurisdictional review of other medical aid general principles policies indicates that this phrase is often used when describing the 'necessity, character and sufficiency' of medical aid.

In reviewing the draft policy language, the WCB agrees that the use of the phrase 'timely, appropriate and cost-effective' could lead to confusion regarding interpretation of Section 102 of the *Act*, especially as the word 'appropriate' is used frequently in *Policy 2.3.1R Provision of Health Care Services* regarding the entitlement to medical aid decision. As a result, the WCB has removed any reference to the phrase 'timely, appropriate and cost-effective manner' from the final version of the policy.

Stakeholder Issue #2: *Policy 2.3.1R Provision of Health Care Services*

Proposed new policy and *Policy 2.3.1R* do not appear to be very different. The existing policy could be used to interpret questions about the delivery of all medical aid.

WCB Analysis

The WCB recognizes that there is a close relationship between *Policy 2.3.1R* and the draft *Medical Aid – General Principles Policy*. Although the two policies are related, each policy does provide direction unique to specific stages of the medical aid decision making process. *Policy 2.3.1R* is intended to provide direction related to the

determination of entitlement to medical aid. Generally, the policy addresses the conditions/factors that must be considered/satisfied for a worker to be entitled to a particular type of medical aid. Once entitlement has been determined, the proposed draft policy is intended to provide principles to guide the delivery of the medical aid services. These principles are not inherent and/or explicit in *Policy 2.3.1R* and, for this reason, the WCB has decided to draft the new *Medical Aid General Principles Policy*.

In developing the draft policy, the WCB did explore the possibility of integrating the contents of *Policy 2.3.1R* into the new proposed policy and eliminating *Policy 2.3.1R*. However, it was determined a change of this sort may cause unnecessary confusion and unintentionally suggest that changes were made to the criteria considered in determining entitlement to medical aid – which was not the intent/purpose of the policy process. The WCB does believe the existence of the two complementary policies is appropriate and helpful to provide direction for medical aid decision-making. As a result, the WCB has not changed the language in the final version of the policy in response to this issue.

Stakeholder Issue #3: Policy Intent

Should indicate that this policy is intended to clarify how the WCB makes decisions about access to medical aid while remaining consistent with the *Act* and not impose any new limits on access to compensation benefits or services.

WCB Analysis

As was stated in the background paper, the purpose of this new policy is not to change, expand or limit the legal rules governing the delivery of medical aid. Rather, the intent, as stated in the draft version of the program policy, is to describe the general principles the WCB considers in the delivery of medical aid to injured workers who have been caused a personal injury as the result of a workplace accident.

This new program policy cannot impose new limits on entitlement to compensation benefits or services because this policy does not provide direction for making the entitlement to medical aid decision – that direction is provided in *Policy 2.3.1R*. For this reason, the WCB has not changed the language in the final version of the policy in response to this issue.

Stakeholder Issue #4: Quoting Sections of the *Act*

The WCB should include Section 187 of the *Act* (benefit of the doubt) in this program policy and include a provision ensuring that decisions on approval of prescription medications must meet the standard of Section 186 & 187 of the *Act*.

WCB Analysis

The WCB agrees that it improves reader comprehension and overall clarity of the policy to state the relevant sections of the *Act*. The draft program policy references those sections of the *Act* which are referred to or drawn on for authority – this does not suggest that other sections of the *Act* are not applicable. The WCB would like to clarify that relevant provisions of the *Act*, including sections 186 and 187, always apply. The requirements in sections 186 and 187 of the *Act* are not specific to medical aid but rather apply to all decisions made by the WCB. For this reason, the WCB has not changed the language in the final version of the policy in response to this issue.

Stakeholder Issue #5: Transportation

Policy should refer to the requirement of the WCB to be responsible for transportation of workers as set out in *Policy 2.1.1R7 – Workers' Travel Expenses for Health Care*.

Policy should re-iterate what is in the *Act* and state "immediate and appropriate transportation to a hospital or physician". The policy does not provide clear direction to employers respecting their responsibilities.

WCB Analysis

The draft principle related to transportation was intended to set out the roles and responsibilities of employers related to medical aid to ensure they are aware of their requirements under the *Act*. In terms of entitlement to specific medical aid, such as worker travel expenses, these are addressed in other policies. It would not be appropriate to reference these in this draft policy as this could lead to confusion over the purpose of this draft policy (i.e. to clarify the principles in the delivery of the medical aid versus entitlement to the medical aid). For this reason, the WCB has not changed the language in the final version of the policy in response to this issue.

The WCB agrees that the wording of the principle related to transportation in the draft policy could be changed to re-iterate what is stated in Section 107 of the *Act* regarding employers' responsibilities. To provide clear direction to employers respecting their responsibilities, the WCB has changed the language in the final version of the policy to re-iterate the wording of Section 107 of the *Act*.

Injured Workers' Associations and Labour
-and-
Employers and Others

Stakeholder Issue #6: Cost-Effectiveness

The quality of the medical aid provided must have a higher priority over cost. While cost is obviously an important factor, the least expensive chair, for example, may not meet

the individual requirements or needs. Policy should reflect that more consideration be given to quality over cost. We support the effective use of public funds. However, this ought not to be done unless its effect on the injured worker is determined to be either positive or at least neutral to the more expensive product, service or medication.

There is agreement with cost-effectiveness as a principle but there is question as to how the WCB will implement this if this is not happening now.

WCB Analysis

The principle related to cost-effectiveness was not intended to suggest that cost is as important or a more important factor than quality care. Rather, the intent of the draft principle was to communicate that where a worker's healthcare and rehabilitation needs can be satisfied by a number of medical aid options, in selecting the medical aid cost will be a factor considered. To state this intent more clearly in the policy, and to reinforce that quality care provided to the injured worker is first and foremost, the WCB has made the following changes to the final wording of *Policy Statement 2 – General principles in the delivery of medical aid*, subsection g (additions are underlined, deletions have strike-throughs):

> While the WCB's foremost responsibility is to ensure the quality care and rehabilitation of injured workers, the WCB also ~~The WCB~~ has a responsibility to mitigate costs to the workers' compensation system where appropriate. Where there is a choice in the type of medical aid product or device that i~~s appropriate~~ will satisfy a worker's needs, ~~the WCB will ensure that the most cost-effective type of medical aid is provided.~~ best efforts will be made to ensure that the product or device that satisfies the worker's needs is chosen in the most cost-effective manner.

Stakeholders have questioned the WCB's ability to implement this cost-effectiveness principle. Over the last number of years, the WCB has implemented a number of initiatives that allow workers to receive the necessary medical aid in a more cost-effective manner. For example, in accordance with *Policy 2.3.4R*, if a brand-name medication can be replaced with a generic medication, the WCB will pay the cost of the generic medication. Also, in 2009, the WCB introduced a new pharmacy benefits management system, which includes an electronic drug formulary. Among other benefits, this system improves the quality of data the WCB collects which is essential to effectively managing increasing prescription drug costs.

Stakeholder Issue #7: Worker Co-operation

Where the policy states "the WCB requires injured workers to co-operate in any medical aid treatment or service that promotes the worker's recovery", this should be followed by "provided it is recommended by the injured worker's treating physician" which would be consistent with *Policy 5.2.5 – Worker Able to Perform Suitable Work*.

Section 85 of the *Act*, which requires an injured worker to submit to a medical examination if requested to do so by the employer, the Board, Appeals Tribunal or Medical Review Commission, should be included in this section of the policy.

Stakeholders agree with the policy statement but recommend guidelines be developed for case management teams to identify what it means to fail to co-operate – much inconsistency at present.

WCB Analysis

The WCB recognizes that the treating physician is an integral part of an injured worker's care and rehabilitation. However, to include a statement in policy which supports the need for the treating physician to recommend any medical aid treatment or service goes against current day trends in primary health care in Nova Scotia.

The government of Nova Scotia is committed to improving primary health care[1]. The province has provided funding for nurse practitioners whose scope of practice includes (but is not limited to) diagnosing, prescribing medications, and ordering diagnostic tests; has changed regulations to broaden the ability of pharmacists to provide prescription medications; and has launched Telecare which provides Nova Scotians with easy access to health advice from registered nurses over the phone. Primary health care reform is about supplementing, rather than replacing, physician services in order to provide more comprehensive care.

The *Act* does not require treatment to be recommended by the physician. As the health care system is evolving and those who provide health care services is changing, we do not want to unintentionally limit the interpretation of the language of the *Act* or policy. That being said, it is not the intention of the WCB to limit access to the treating physician. At any point in the continuum of care and rehabilitation from the compensable injury, the injured worker may see their treating physician.

In light of the above, the WCB has not changed the language in the final version of the policy in response to this issue.

Section 85 of the *Act* requires an injured worker to comply with a request by an employer for a medical examination. If the worker objects to the request, the WCB may determine if the request is reasonable. The WCB agrees that Section 85 of the *Act* should be included in the final policy under the principle regarding worker co-operation. Therefore, the WCB has added the following wording to the final version of the policy under *Policy Statement 2 – General principles in the delivery of medical aid*, subsection c:

> Also implicit under this principle is the requirement for a worker to submit to a medical examination if requested to do so by the worker's employer, the WCB or the

[1] From Nova Scotia's *Health Transformation Update*, April 2009

Appeals Tribunal, as per Section 85 of the *Act*. If the worker objects to a request, the WCB may determine if the request is reasonable.

Stakeholders also raised an issue regarding inconsistent application of 'failure to cooperate' in WCB decision-making. They requested guidelines be developed to identify what it means to 'fail to cooperate'. This draft program policy addresses broad principles related to the delivery of medical aid. The development of guidelines for this topic of non-cooperation is much more specific than what is addressed in the draft program policy. While the development of guidelines is something that the WCB may consider operationally in an effort to improve consistency and transparency, it is not part of this program policy and, for that reason, no changes have been made to the program policy regarding this issue.

Stakeholder Issue #8: Worker Choice

Language in the draft policy is unclear regarding worker's initial choice of health care service provider and raised confusion as to interpretation. The policy wording did anything but bring clarity and transparency – it was the single statement in the policy that raised consistent confusion, questions and concerns. Language should be tightened up to say that once the Board has approved a particular type of medical service, best efforts will be made to support the health care provider of choice.

Proposed policy should contain a provision assuring an injured worker the freedom to choose a health care service provider and the proposed policy should contain specific repercussions upon employers and WCB staff persons who infringe upon that freedom of choice.

The statement that WCB supports injured workers in their initial choice of WCB approved service providers is misleading. Many workers are threatened with termination by their employer or with a section 84 threat of suspension/termination for non-compliance by the WCB case manager/adjudicator if they question a physiotherapy referral. Workers have no choice to choose a service provider and are certainly not supported by the WCB.

It would appear that injured employees would not be able to seek medical attention from their treating physicians. Over the past three years it appears the WCB is trying to replace medical opinions from qualified physicians with functional assessment alone by other health care professionals that do not possess the same education that would allow a proper medical diagnosis. This would be inconsistent with the *Act* and would be in violation of Section 107.

WCB Analysis

It is evident from the responses received from stakeholders that the language in the draft policy is unclear regarding worker choice of health care service provider. The intent of the draft principle related to worker choice was to highlight that once it is

determined that a particular form of medical aid is required for the worker's care and rehabilitation (i.e. orthotics, physiotherapy, etc.), the worker has choice of the specific health care provider who they would like to deliver that service to them, so long as that service provider is on WCB's list of approved service providers. For example, it may be determined that a worker needs to see a pedorthist for orthotics. The worker has the choice as to which pedorthist they see, so long as wait times and distance to be travelled to appointment are reasonable. Nothing in this policy statement denies the injured worker the right of a patient to select alternative treatment or to decline medical treatment, but it may impact ongoing entitlement to benefits.

The WCB agrees that the language in the draft policy could have been clearer in stating the above intent. The WCB has changed the language in the final version of the policy to address this issue, as follows:

> Once the WCB has approved a particular type of medical aid service or treatment, best efforts will be made to support the injured worker's choice of health care service provider to deliver that service or treatment ~~The injured worker has a right to choose their health care provider~~, from among those that are WCB-approved and qualified to deliver the medical aid…

Stakeholders also raised issues regarding workers being threatened with Section 84 of the *Act* for non-compliance if they question a physiotherapy referral and not being able to seek medical attention from their treating physicians. As discussed above, the WCB is responsible for determining the necessity, character and sufficiency of medical aid Therefore, if it is determined that physiotherapy is necessary and appropriate for the treatment of the worker's compensable injury and will promote recovery and/or return to work, the worker is responsible for cooperating in the physiotherapy. Depending on the particular circumstances of the situation, failure to cooperate may be in conflict with the worker's duties as stated in Section 84 of the *Act*. That being said, the Direct Access to Physiotherapy Program does not prevent a worker from also seeing their treating physician. The worker can participate in physiotherapy functional assessment and see their treating physician, the two are not mutually exclusive. The Direct Access to Physiotherapy Program is focused on sprain/strain type injuries. As physiotherapists are specifically trained in conducting functional assessments, direct referral to physiotherapy allows for a functional assessment that considers the worker's job demands and the worker's capabilities to be completed so that an appropriate return to work plan can be developed.

Stakeholder Issue #9: Fees for Service Providers

Proposed policy should contain a provision requiring health care service providers to meet a specific minimum standard of service and are not dependent on WCB service fees as the main source of income.

The listing of service providers raised concerns. The WCB separated out physicians and physiotherapists and put in a "catch-all" for everyone else. It is recommended that

the WCB either include other groups such as nurses and dentists, or leave the listing out altogether as the first paragraph covers things well.

<u>WCB Analysis</u>

The WCB is committed to ensuring that injured workers receive appropriate standards of care from service providers. Although not discussed under the principle related to service provider fees, the draft policy ensures minimum standards for service providers are met by stating the WCB uses only WCB-approved service providers to deliver medical aid services. WCB-approved service providers include those that the WCB recognizes as licensed or accredited to deliver health care services in Nova Scotia through provincial or national licensing agencies. These licensing agencies ensure that their members are adhering to certain standards of care for their respective professions. As this issue is already addressed in the draft policy, no changes were made to the final version of the policy.

Stakeholders also raised issue with the inclusion of the list of service providers with whom the WCB negotiates fees. This list was originally included to identify those service providers with whom the WCB has negotiated fees through explicit contracts, with the “catch-all” phrase, ‘any other WCB approved service provider as required’, intended to capture any contracts that may be developed in the future. In reviewing the policy wording, the WCB agrees that the first paragraph of the principle sufficiently communicates the principle and that the listing of service providers causes unnecessary confusion and is not necessary. Therefore, the WCB has removed the listing of service providers from the final version of the policy.

<u>Stakeholder Issue #10: Prescription Drugs</u>

This section should not just be limited to prescription drug administration. Other elements should be included such as, for example, appropriate orthotics use. Does this section need to be referenced at all, where this guideline is already stated in the prescription drug policy?

There is agreement with promoting appropriate prescription drug administration, but it is stakeholders’ understanding that the WCB does not have an internal formulary at this time (relying on the Dept. of Health formulary). Therefore, this subsection cannot truly be achieved at this time. Without well established tracking and monitoring of prescription patterns, it will not be possible to impact change in this area. Also, they question what guidelines there are to ensure that appropriate prescription drug administration is being done. There is also concern that the contract with Medavie Blue Cross may remove the decision making power as to whether a drug will be covered under the *Workers’ Compensation Act* from the WCB to an unelected and privately run insurance company.

WCB Analysis

The intent of including the section on appropriate prescription drug administration in the draft policy was to re-iterate the importance the WCB places on this topic, for the health and safety of injured workers. In line with stakeholder feedback, the WCB agrees that this principle is already explicitly stated in the prescription drug policy (*Policy 2.3.4R*). Also, the essence of this topic deals with entitlement to medical aid and the focus of this program policy is the provision of medical aid. Therefore, including this principle in the draft policy could lead to confusion over the purpose of this draft policy (i.e. to clarify the principles in the delivery of the medical aid versus entitlement to the medical aid). Therefore, as this principle is already explicitly stated in another policy and to minimize confusion over the purpose of the *Medical Aid – General Principles Policy*, the WCB has removed this section from the final version of the policy.

As noted in *Policy 2.3.4R*, the WCB does have and use formularies for ensuring appropriate drug administration. Overall, the WCB has 16 formularies, each constructed around the nature of the injury. These formularies are used, whenever possible, to determine which prescription drugs are appropriate for the type of compensable injury, the quantity of the prescription drug, and whether the WCB will pay for the prescription drugs. Recently, the WCB has partnered with Medavie Blue Cross to develop a pharmacy benefits management system, which is based on electronic application of all these formularies. The implementation of the management system is providing the WCB with data on prescription drug patterns and usage that will allow for improved management of costs. Regarding decision making power to determine drug coverage, this power still resides with the WCB. The role played by Medavie Blue Cross is to administer the formularies on the WCB's behalf, not to make decisions about what is included in the formularies.

Employers and Others

Stakeholder Issue #11: Employer involvement in medical aid decisions

Draft policy is not inclusive of the employer in any medical aid decision making. Employers feel limited in their ability to participate in decisions about alternative treatment approaches, the cost of services and moving services to different locations.

WCB Analysis

In accordance with the *Act*, the WCB is responsible for determining the necessary and appropriate medical aid to treat the worker's compensable injury and to promote recovery and return to work. Employers play a key role in a successful return to work plan. For instance, the employer maintains contact with the worker during recovery to ensure a continued link to the workplace. The employer also identifies opportunities for modified or transitional duties to accommodate the worker's return to work. Successful return to work is a team effort. Overall, it is ultimately the WCB who is responsible for

making decisions regarding the provision of medical aid. The intent of the policy is to communicate in an open and transparent manner to both workers and employers the principles the WCB considers in the decision making process. As a result, the WCB has not changed the language of the final version of the policy is response to this issue.

Stakeholder Issue #12: Timely Access to Health Care Services

Policy should include what "promotion of timely access" means to the WCB. The WCB is encouraged to develop objective benchmarks that could be used to determine whether the WCB is meeting its goal of timely access.

Employers do not agree that timely access to health care service is occurring today. The statement is subjective in that 'timely' to the WCB is not what is timely for the injured worker or the workplace.

WCB Analysis

The issues raised by stakeholders have to do with defining and measuring "timely access" to health care services. "Timely access" to health care services will differ depending on the injured worker's individual needs, availability of treatment options, and the type of treatment needed. As a result, timelines for treatment will differ and need to be considered on a case-by-case basis. The WCB makes every effort to ensure injured workers are receiving necessary health care services in a timely manner and is examining ways to improve timely access to treatment through innovative arrangements such as our expedited surgeries program and direct access for key diagnostic testing such as MRIs. However, this topic of defining timely access for each treatment option is much more specific than the principle-based nature of the draft program policy. As a result, the WCB has not made changes to the final version of the policy to address this issue.

Appendix A – Final Program Policy

PROGRAM POLICY

NUMBER: 2.3.5

Effective Date: February 25, 2011	**Topic:**	**Medical Aid – General Principles**
Date Issued: March 7, 2011	Section:	Health Care
Date Approved by Board of Directors: February 25, 2011	Subsection:	General

Preamble

The purpose of this program policy is to describe the general principles the *Workers' Compensation Board* (the "WCB") considers in the delivery of medical aid to injured workers who have been caused a personal injury as the result of a workplace accident.

Definitions

"medical aid", as defined in Section 2(r) of the *Workers' Compensation Act* (the "*Act*"), includes

(i) any health care service, product or device that may be authorized by the Board and is provided to a worker as a result of a compensable injury, including those forms and reports required by the Board respecting the aid or services, and

(ii) reasonable expenses, authorized by the Board, incurred by a worker in order to obtain medical aid.

Policy Statement

1. General

In accordance with Section 102 of the *Act*, the WCB may provide any medical aid the WCB considers necessary or expedient as a result of the compensable injury. In making this determination, the WCB considers *Policy 2.3.1R – Provision of Health Care Services* and other medical aid policies which are applicable in specific circumstances.

In providing medical aid, the WCB is responsible to determine the necessity, character and sufficiency of medical aid, as per Section 104 of the *Act*. This means the WCB determines the need for medical aid; the type of medical aid; and the extent to which medical aid is required.

2. General principles in the delivery of medical aid

In the provision of medical aid, the WCB generally considers, but is not limited to, the following principles.

a) **The WCB uses only WCB-approved health care service providers to deliver medical aid services, as described below.**

The WCB is committed to ensuring that injured workers receive appropriate standards of care from health care service providers. Accordingly, the WCB authorizes payments to only WCB-approved health care service providers. WCB-approved health care service providers include those that the WCB recognizes as licensed or accredited to deliver health care services in Nova Scotia through provincial or national licensing agencies. If provincial or national licensing agencies do not exist for a particular service provider class, the WCB may approve the use of those service providers to deliver medical aid services to injured workers.

b) The WCB promotes timely access to medical aid services, as described below.

Prompt access to appropriate treatment and services is important to aid the recovery of injured workers and to reduce the effects of the compensable injury. Where appropriate, the WCB may arrange for an injured worker to receive treatment or services in an alternate location if local sources of services are unavailable, or delayed.

c) The WCB requires injured workers to co-operate in any medical aid service that promotes the worker's recovery, as described below.

This principle reflects Section 84 of the *Act*, which states that the worker has a duty to co-operate in any medical aid or treatment that promotes the worker's recovery and provides the authority for the WCB to suspend, reduce or terminate compensation where the worker fails to co-operate.

Also implicit under this principle is the requirement for a worker to submit to a medical examination if requested to do so by the worker's employer, the WCB or the Appeals Tribunal, as per Section 85 of the *Act*. If the worker objects to a request, the WCB may determine if the request is reasonable.

d) The WCB requires employers to provide, at their own expense, immediate and appropriate transportation to a hospital or physician to any worker in their employment, who is in need of it as the result of a workplace injury, as described below.

This principle reflects Section 107 of the *Act*, which states that, following a workplace injury, every employer must provide a worker, who is in need of it, with immediate and appropriate transportation to a hospital or a physician located within the area or within a reasonable distance of the place of injury, at the employer's expense.

e) Best efforts will be made by the WCB to support injured workers in their initial choice of WCB-approved health care service provider, as described below.

Once the WCB has approved a particular type of medical aid service or treatment, best efforts will be made to support the injured worker's choice of health care service provider to deliver that service or treatment, from among those that are WCB-approved and qualified to deliver the medical aid. The WCB may limit the number of visits to health care service providers to what is appropriate for the injured worker's compensable condition.

When authorizing appointments with WCB-approved health care service providers, the WCB considers the condition of the injured worker, waiting times, and distance to be

traveled for the appointment or treatment.

f) **The WCB establishes the fees it pays for medical aid related services through negotiation with individual WCB-approved health care service providers or WCB-approved health care service provider groups or by adoption of health care service provider fee schedules, as appropriate.**

g) **The WCB ensures the appropriate medical aid in the form of a product or device is provided in a cost-effective manner, as described below.**

While the WCB's foremost responsibility is to ensure the quality care and rehabilitation of injured workers, the WCB also has a responsibility to mitigate costs to the workers' compensation system where appropriate. Where there is a choice in the type of medical aid product or device that will satisfy a worker's needs, best efforts will be made to ensure that the product or device that satisfies the worker's needs is chosen in the most cost-effective manner.

Application This program policy applies to all decisions made on or after February 25, 2011.

References *Workers' Compensation Act* (Chapter 10, Acts of 1994-95), Sections 2 (r), 102, and 104.

Appendix B:

Stage Two Consultation Summary for Medical Aid–General Principles

Outlined below is a summary of general comments submitted by various stakeholders.

Injured Workers' Association and Labour

General Comments

- Use of phrase "timeliness, most appropriate and cost-effective manner" is not found anywhere in the text of the Workers' Compensation Act. What is found in Section 102 (1) are the words "necessary" or "expedient". Feel use of this phrase verges into interpretation which changes the statutory intention of the Act. Cost should not be the principle factor in determining what medical aid should be provided, rather should be what is "necessary or expedient as a result of the injury".
- Proposed new policy and Policy 2.3.1R do not appear to be very different and thus, the existing policy could be used to interpret questions about the delivery of all medical aid.
- Should indicate that this policy is intended to clarify how the WCB makes decisions about access to medical aid while remaining consistent with the Act and not imposing any new limits on access to compensation benefits or services.
- Medical aid should be administered in a fair and consistent manner. WCB should be careful to ensure the provision of medical aid is not being used arbitrarily to terminate benefits of injured workers.

Quoting specific provisions of the Act

- Should quote Section 187 of the Act fully in the program policy.
- Include a provision ensuring that decisions on approval of prescription medications must meet the standard of section 186 and 187 of the Act.

Application of Policy (effective date)

- Will this policy have a retroactive application? If the policy is a restatement of existing practices, what effect will a "start" date have on the claims adjudication process?

Transportation

- Policy should refer to requirement of the WCB to be responsible for transportation of workers as set out in *Policy 2.1.1R7 – Workers' Travel Expenses for Health Care*.
- Policy should re-iterate what is in the Act and state "immediate and appropriate transportation to a hospital or physician".
- Section 107 of the Act requires an employer to provide transportation to a doctor or hospital; it does not give the employer the authority to refer a worker to physiotherapy. Proposed policy requires amendments to provide clear direction to employers respecting their responsibilities.

Cost-Effectiveness

- This should not be done unless its effect on the injured worker is determined to be either positive, or at least neutral to the more expensive product, service or medication.
- Not cost-effective to pay physicians five times what provincial health insurance pays.
- The quality of the medical aid provided must have a higher priority over cost. While cost is obviously an important factor, the least expensive chair, for example, may not meet the individual requirements or needs. The proposed policy should reflect that more consideration be given to the quality of medical aid provided rather than the cost.
- Suggest WCB consider other bulk buying opportunities, perhaps through the Department of Health and the District Health Authorities, for certain medications that are extensively purchased by and for injured workers.

Quality Care

- The WCB continues to use Physicians specializing in Internal Medicine to assess and treat injured workers with occupational lung diseases by reading x-rays. A diagnosis cannot be determined or dismissed based on an x-ray alone.
- Feel that over the past 3 years the WCB is trying to replace medical opinions from qualified physicians with functional assessment alone by other health care professional that do not possess the same education that would allow a proper medical diagnosis.

Worker Co-operation

- Where the policy states "The WCB requires injured workers to co-operate in any medical aid treatment or service that promotes the worker's recovery", this should be followed by "provided it is recommended by the injured worker's

treating physician" which would be consistent with *Policy 5.2.5 – Worker Able to Perform Suitable Work*.

Worker Choice

- Proposed policy should contain a provision assuring an injured worker the freedom to choose a health care service provider and the proposed policy should contain specific repercussions upon employers and WCB staff persons who infringe upon that freedom of choice.
- The statement that WCB supports injured workers in their initial choice of WCB approved service providers is misleading. Many injured employees are informed by their employers of appointment times and dates with specific physiotherapists. Many large employers have contracts with private physiotherapists. Many workers are threatened with termination by their employer or with a section 84 threat of suspension/termination for non-compliance by the WCB case manager/adjudicator if they question the physiotherapy referral. Workers have no choice to choose a service provider and are certainly not supported by the WCB.
- It would appear that injured employees would not be able to seek medical attention from their treating physicians. Over the past three years it appears the WCB is trying to replace medical opinions from qualified physicians with functional assessment alone by other health care professionals that do not possess the same education that would allow a proper medical diagnosis. This would be inconsistent with the *Act* and would be in violation of Section 107.

Fees for Service Providers

- Often the WCB focus is on the most inexpensive service provider rather than upon the quality of services offered. Proposed policy should contain a provision requiring health care service providers to meet a specific minimum standard of service and are not dependent upon WCB service fees as the main source of income.

Employers and Others

General Comments

- Employers feel that they are not consulted by the WCB in medical aid decisions to move services to another location. Employers want to be more involved and consulted regularly in the management of their claim(s). Employers feel limited in their ability to participate in decisions about alternative treatment approached and the cost of services.
- Draft policy is "controlling" by the WCB and not inclusive of the employer in any medical aid decision making.

- It is employers' expectation that this policy will facilitate consistent application and that all hearing officers will be educated on the policy, so employers will experience greater consistency in decisions/rulings.

Timely Access to Health Care Services

- Program policy should include what "promotion of timely access" means to the WCB. A common understanding of "timely access" is critical.
- The WCB is encouraged to develop objective targets/benchmarks that could be used to determine whether the WCB is meeting its goal of timely access. The benchmarks should be compared to actual performance and progress towards achieving the desired target should be tracked. The information could be compared to performance targets from other jurisdictions and could be published on the WCB website. This would provide more transparency in the process as intended by the WCB.

Worker Co-operation

- Employers agree with the statement but recommend guidelines be developed for case management teams to identify what it means to fail to co-operate – much inconsistency at present.
- Inconsistent application of the Act to determine the appropriate threshold at which to terminate service provision for particular cases.
- Statements about Section 85 of Act that were in the background paper need to be transferred to the draft policy and the language is unclear. It was the understanding of employers that the WCB does not have to determine the request is reasonable. Feel the language in this section minimizes the employers' right to request an independent medical examination. Employers emphasize that they do have the right to have an IME under Section 85 of the Act. The employer does not have to ask the WCB if the WCB thinks the IME is "reasonable" and only in issues where the employee feels it unreasonable is the WCB's approval required.

Worker Choice

- The policy wording did anything but bring clarity and transparency – it was the single statement in the policy that raised consistent confusion, questions and concerns.
- Employers feel this policy statement is unclear and raised confusion as to interpretation. Also the language within this subsection is ambiguous and needs to be tightened up.
- Express concern that the statement makes it the worker's choice what kind of health services would be approved initially, rather than the choice of which professional, among the service approved by the WCB.

- Employers felt this section could be interpreted to mean the worker could decide that they would not like to see a physiotherapist as recommended by the employer, they would prefer to visit their family doctor. Does this preclude the employer from having a contractual relationship with one provider to provide the physiotherapy consultation?
- Language should be tightened up to say that once the Board has approved a particular type of medical service the Board will make its best effort to support the health care provider of choice.

Fees for Service Providers

- The listing of providers raised concerns. The WCB separated out physicians and physiotherapists and put in a "catch-all" for everyone else. It was recommended that the WCB either include other groups such as nurses, dentists, or leave the listing out altogether as the first paragraph covers things well.

Prescription Drugs

- What guidelines are there to ensure that appropriate drug administration is being done?
- Employers agree with promoting appropriate prescription drug administration, but it is our understanding that the WCB does not have an internal formulary at this time (relying on the Dept. of Health formulary). Therefore, this subsection cannot truly be achieved at this time. Without well established tracking and monitoring of prescription patterns, it will not be possible to impact change in this area.
- There are other elements that should be included in this section for example, appropriate orthotics use; it should not just be limited to prescription drug administration.
- Does this section need to be referenced at all, where this guideline is already stated in the prescription drug policy?

Cost-Effectiveness

- Employers agree with the statement but question how the WCB will implement this statement if this is not being done now? Stakeholders want opportunities to provide input as decisions are being made for a worker that was injured within their organization.