



California Workers' Compensation Institute

1333 Broadway - Suite 510, Oakland, CA 94612 • Tel: (510) 251-9470 • Fax: (510) 763 -1592

September 26, 2016

VIA E-MAIL – dwcrules@dir.ca.gov

Maureen Gray, Regulations Coordinator
Regulations Coordinator
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142

Re: Second 15-day Comments on Home Health Care Fee Schedule Regulations

Dear Ms. Gray:

These Second 15-day comments on the draft Home Health Care Fee Schedule Regulations are presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 72% of California's workers' compensation premium, and self-insured employers with \$46B of annual payroll (28% of the state's total annual self-insured payroll).

Insurer members of the Institute include AIG, Alaska National Insurance Company, Allianz, AmTrust North America, CHUBB, CNA, CompWest, Crum & Forster, EMPLOYERS, Everest National Insurance Company, The Hartford, ICW Group, Liberty Mutual Insurance, Pacific Compensation Insurance Company, Preferred Employers Group, Republic Indemnity Company of America, Sentry Insurance, State Compensation Insurance Fund, State Farm Insurance Companies, Travelers, XL America, Zenith Insurance Company, and Zurich North America.

Self-insured employer members include Adventist Health, ALPHA Fund, California State University Risk Management Authority, Chevron Corporation, City and County of San Francisco, City of Santa Ana, City of Torrance, Contra Costa County Schools Insurance Group, Costco Wholesale, County of Alameda, County of San Bernardino Risk Management, County of Santa Clara, Dignity Health, Foster Farms, Grimmway Enterprises Inc., Kaiser Permanente, Marriott International, Inc., Pacific Gas & Electric Company, Safeway, Inc., Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Shasta-Trinity Schools Insurance Group; Southern California Edison, Special District Risk Management Authority, Sutter Health, University of California, and The Walt Disney Company.

Recommended revisions to the proposed regulation are indicated by **underline** and **strikeout**. Comments and discussion by the Institute are identified by *italicized text*.

§ 9789.90 Home Health Care - Definitions.

(g) "Hospice program" means a program licensed pursuant to Health & Safety Code §§1745-1746.

(gh) "Medical Treatment Utilization Schedule," or "MTUS," is the analytical framework for the evaluation and treatment of injured workers that incorporates evidence-based, peer reviewed, nationally recognized standards of care adopted by the administrative director pursuant to Labor Code section 5307.27.

(hi) "Personal care services" means tasks that assist the injured worker with activities of daily living (ADLs) and include: bathing, dressing, toileting, transferring bed/chair, etc.

Discussion

With the addition of "hospice program" under (d), further definition is required. It is suggested that an interdisciplinary program licensed pursuant to Health & Safety Code standards is appropriate.

Renumbering of subsequent sub-sections would be required.

§ 9789.91 Home Health Care – Eligibility for Services & Payment.

(c) Neither an employer nor its claims administrator shall be liable for any home health care services provided by the injured worker's spouse or other member of the injured worker's household, or other entity, to the extent the services had been regularly performed in the same manner and to the same degree prior to the date of injury.

(d)(1) Neither an employer nor its claims administrator shall be liable for home health care services provided by family caregivers or individuals who are not employed by a home care organization, **hospice program**, or a home health care agency, except as provided in subsection (d)(2).

(2) A claims administrator and an injured worker may agree that the injured worker may use, and the employer or its claims administrator will pay for, provider who is not employed by a home care organization, **hospice program**, or home health care agency and who may be a family member of the injured worker, if the individual has the necessary skills to provide the home health care services required by the injured worker and no employment relationship shall be established between the employer or its claims administrator and the provider. In such cases, payment shall be provided directly to the injured worker, who will be responsible for paying the provider. Such agreements may also include a provision to waive the requirements of subsection 9789.92(c).

Discussion

Correction of a minor typographical error is recommended for (c).

The addition of "hospice program" in (d)(1) and (d)(2) is necessary because this term is now included in the definition of Health Aid under §9789.90(d).

Thank you for the opportunity to comment, and please contact me if additional information would be helpful.

Sincerely,

Brenda Ramirez
Claims & Medical Director

BR/pm

cc: George Parisotto, DWC Acting Administrative Director
CWCI Claims Committee
CWCI Medical Care Committee
CWCI Legal Committee
CWCI Regular Members
CWCI Associate Members