



California Workers' Compensation Institute

1111 Broadway Suite 2350, Oakland, CA 94607 • Tel: (510) 251-9470 • Fax: (510) 763-1592

August 3, 2015

VIA E-MAIL to dwcrules@dir.ca.gov

Maureen Gray, Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation, Legal Unit
Post Office Box 420603
San Francisco, CA 94142

RE: 15-Day Written Comment – Transition of DWC Regulations and Forms to ICD-10

Dear Ms. Gray:

These written comments on modifications to proposed regulations and forms required for the transition to ICD-10 are presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 71% of California's workers' compensation premium, and self-insured employers with \$46B of annual payroll (26% of the state's total annual self-insured payroll).

Insurer members of the Institute include ACE, AIG, Alaska National Insurance Company, Allianz (Fireman's Fund Insurance Company), AmTrust North America, Chubb Group, CNA, CompWest Insurance Company, 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 are Adventist Health, 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, County of Alameda; Costco Wholesale, 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 draft Copy Service Fee Schedule regulations are indicated by highlighted **underline** and **strikeout**. Comments and discussion by the Institute are indented and identified by *italicized text*.

§9785 Reporting Duties of the Primary Treating Physician

Recommendation

(e)(1) Within 5 working days following initial examination, a primary treating physician shall submit a written report to the claims administrator on the form entitled "Doctor's First Report of Occupational Injury or Illness," Form DLSR 5021. Emergency and urgent care physicians shall also submit a Form DLSR 5021 to the claims administrator following the initial visit to the treatment facility. On line 24 of the Doctor's First Report, or on the reverse side of the form, the physician shall (A) list methods, frequency, and duration of planned treatment(s), (B) specify planned consultations or referrals, surgery or hospitalization and (C) specify the type, frequency and duration of planned physical medicine services (e.g., physical therapy, manipulation, acupuncture). For dates of service prior to October 1, 2015, use Form 5021 (Rev. 4 1992). For dates of service on or after October 1, 2015, use Form 5021 (Rev. 5 2015). Although ICD-10 coding is required on or after October 1, 2015, ~~until for a twelve month period ending October 1, 2016, no medical treatment or medical-legal bill shall be denied based solely on an error in the provider's citation of the level of specificity of the ICD-10 diagnosis code(s) used. Providers may use either version of the form until December 31, 2015. As of January 1, 2016, providers must use the 2015 version of the form.~~

(f)(8) When continuing medical treatment is provided, a progress report shall be made no later than forty-five days from the last report of any type under this section even if no event described in paragraphs (1) to (7) has occurred. If an examination has occurred, the report shall be signed and transmitted within 20 days of the examination.

Except for a response to a request for information made pursuant to subdivision (f)(7), reports required under this subdivision shall be submitted on the "Primary Treating Physician's Progress Report" form (Form PR-2) contained in Section 9785.2, or in the form of a narrative report. If a narrative report is used, it must be entitled "Primary Treating Physician's Progress Report" in bold-faced type, must indicate clearly the reason the report is being submitted, and must contain the same information using the same subject headings in the same order as Form PR-2. A response to a request for information made pursuant to subdivision (f)(7) may be made in letter format. A narrative report and a letter format response to a request for information must contain the same declaration under penalty of perjury that is set forth in the Form PR-2: "I declare under penalty of perjury that this report is true and correct to the best of my knowledge and that I have not violated Labor Code § 139.3."

For dates of service prior to October 1, 2015, use Form PR-2 (Rev. 06-05). For dates of service on or after October 1, 2015, use Form PR-2 (Rev. 2015). Although ICD-10 coding is required on or after October 1, 2015, ~~until for a twelve month period ending October 1, 2016, no medical treatment or medical-legal bill shall be denied based solely on an error in the provider's citation of the level of specificity of the ICD-10 diagnosis code(s) used. Providers may use either version of the form until December 31, 2015. As of January 1, 2016, providers must use the 2015 version of the form.~~

(h) When the primary treating physician determines that the employee's condition is permanent and stationary, the physician shall, unless good cause is shown, report within 20 days from the date of examination any findings concerning the existence and extent of permanent impairment and limitations and any need for continuing and/or future medical care resulting from the injury. The information may be submitted on the "Primary Treating Physician's Permanent and Stationary Report" form (DWC Form PR-3 or DWC Form PR-4) contained in section 9785.3 or section 9785.4, or in such other manner which provides all the information required by Title 8,

California Code of Regulations, section 10606. For permanent disability evaluation performed pursuant to the permanent disability evaluation schedule adopted on or after January 1, 2005, the primary treating physician's reports concerning the existence and extent of permanent impairment shall describe the impairment in accordance with the AMA Guides to the Evaluation on Permanent Impairment, 5th Edition (DWC Form PR-4). Qualified Medical Evaluators and Agreed Medical Evaluators may not use DWC Form PR-3 or DWC Form PR-4 to report medical-legal evaluations.

For dates of service prior to October 1, 2015, use Form PR-3 (Rev. 06-05) or PR-4 (Rev. 06-05), as applicable. For dates of service on or after October 1, 2015, use Form PR-3 (Rev. 2015) or PR-4 (Rev. 2015), as applicable. Although ICD-10 coding is required on or after October 1, 2015, until for a twelve month period ending October 1, 2016, no medical treatment or medical-legal bill shall be denied based solely on an error in the provider's citation of the level of specificity of the ICD-10 diagnosis code(s) used. Providers may use either version of the form until December 31, 2015. As of January 1, 2016, providers must use the 2015 version of the form.

Discussion

The Institute recommends revising the language stipulating the twelve month grace period for high levels of ICD-10 specificity coding. While the proposed modifications do incorporate the grace period defined by the Centers for Medicare & Medicaid Services (CMS), the modified language introduces ambiguity and confusion. Beginning October 1, 2015 providers must use ICD-10 codes when submitting bills to Medicare; Medicare has announced that their rules related to the level of specificity of the ICD-10 codes will be relaxed and providers will receive payment as long as they are using an ICD-10 code that is in the correct family under the ICD-10 coding structure. (see attached [CMS letter](#) to providers dated 7/07/15)

The Institute also recommends striking the language that allows a provider to submit either version of form 5021 after October 1, 2015 as this language implies that a provider may use either ICD-9 or ICD-10. Form 5021 (Rev. 4 1992) requires ICD-9 and form Rev. 5 2015 requires ICD-10. Stating that either form can be used until January 1, 2016 will result in providers using ICD-9 codes for services rendered after October 1, 2015.

Similarly the language that allows a provider to submit either version of forms PR-2, PR-3 or PR-4 should be stricken so that only the newer versions are submitted for services on or after October 1, 2015.

§14003 Physician.

Recommendation

(c) The reports required by this Section shall be made on Form 5021, Rev. 54, Doctor's First Report of Occupational Injury or Illness (sample forms may be secured from the Division), upon a form reproduced in accordance with Section 14007, or by use of computer input media prescribed by the Division and compatible with the Division's computer equipment. However, reports may be submitted on Revision 4 of Form 5021 for dates of service prior to October 1, 2015. Although ICD-10 coding is required on or after October 1, 2015, until for a twelve month period ending October 1, 2016, no medical treatment or medical-legal bill shall be denied based solely on an error in the provider's citation of the level of specificity of the ICD-10 diagnosis code(s) used. Providers may use either version of the form until December 31, 2015. As of January 1, 2016, providers must use the 2015 version of the form.

Discussion

Based on the rationale provided in the discussion section addressing the Institute's recommendations for §9785 subsections (e)(1), (f)(8) and (h) the language allowing either versions of Form 5021 should also be stricken from §14003.

Thank you for considering these recommendations and comments. Please contact me if additional clarification would be helpful.

Sincerely,

Stacy L. Jones
Senior Research Associate

SLJ/pm

cc: Destie Overpeck, DWC Administrative Director
Lindsey Urbina, DWC Legal Unit
CWCI Claims Committee
CWCI Medical Care Committee
CWCI Legal Committee
CWCI Regular Members
CWCI Associate Members