California Workers' Compensation Institute
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VIA E-MAIL: dwcrules@dir.ca.gov

November 30, 2015

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

Re: Written Testimony on Proposed Home Health Care Services Fee Schedule Regulations

Dear Ms. Gray:

This written testimony regarding proposed regulations regarding a Home Health Care Services Fee Schedule is presented on behalf of the 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 ACE Group, 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 include 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, Costco Wholesale, Country 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 Home Health Care Services Fee Schedule Regulations are indicated by highlighted underscore and ~~strikeout~~. Comments and discussion by the Institute are indented and identified by *italicized text*.

Recommendations -- § 9789.90 Home Health Care - Definitions.

(a) ~~"CMS" means the Centers for Medicare and Medicaid Services, a division of the United States Department of Health and Human Services.~~ "Attendant care services" means tasks that assist the injured worker with activities of daily living (ADL's) and include: bathing, dressing, toileting, transferring bed/chair, etc.

(b) "Chore services" means tasks that assist the injured worker with instrumental activities of daily living (IADL's) and include: housekeeping, laundry, food preparation, shopping, etc.

(c) "CMS" means the Centers for Medicare and Medicaid Services, a division of the United States Department of Health and Human Services.

(d) "Home care organization" means a business entity engaged in providing non-medical home health care services to injured workers in the home, including personal care and chore services, that must comply with the Home Care Services Consumer Protection Act of 2013 (Health and Safety Code Section 1796.10-1796.12) and be licensed as compliant with the Home Care Services Consumer Protection Act of 2013 by the California Department of Social Services.

(e) "Home health aide" means "an aide who has successfully completed a state-approved training program, is employed by a home health agency or hospice program, and provides personal care services in the patient's home". (Health and Safety Code Section 1727(c)).

(f) "Home health care agency" means a business entity engaged in providing home health care services that must be licensed by the California Department of Public Health and meet one of the following requirements: be Medicare-certified by CMS, or be accredited as a home health care agency by the Community Health Accreditation Partner (CHAP) or the Joint Commission on Certification and Accreditation.

(g) "Home health care services" includes the provision of medical and other health care services, including personal care and chore services, to the injured worker, in their place of residence, pursuant to the Medical Treatment Utilization Schedule (MTUS).

(h) "IHSS" means In-Home Supportive Services, a program of the State of California, the provisions of which are set forth in California Welfare & Institutions Code sections 12300-12330 except that the maximum hours provision of this program, set forth in Welfare & Institutions Code section 12300, subdivision (h)(3), can be exceeded for an injured worker based upon a showing of medical need, if reasonably required to cure or relieve the injured employee from the effects of his or her injury and prescribed by a licensed physician or surgeon, in accordance with Labor Code section 4600, subdivision (h).

(i) "Medicare" means a program of the United States government that provides payment for health care to elderly and disabled persons. The Centers for Medicare and Medicaid Services division of the Unites States Department of Health and Human Services provides this benefit program to eligible members of the public.

Discussion

The Institute recommends the addition of definitions for attendant care and chore services to clarify the type of services that are included for the coded descriptions in §9789.93 Table A. Addition of the recommended definitions requires resequencing of the original terms.

Recommendations -- § 9789.91 Home Health Care – Eligibility for Services & Payment.
(a) Home health care services shall be provided as medical treatment only if reasonably required to cure or relieve the injured worker from the effects of his or her injury and prescribed by a licensed physician and surgeon, in accordance with Labor Code section 4600, subdivision (h) and the Medical Treatment Utilization Schedule.

(b) Home health care services are subject to the utilization review and independent medical review processes set forth in Labor Code sections 4610 and 4610.5, *et seq.*

(c) At the outset of care, an in-home assessment of the injured worker's need for home health care shall be performed by a qualified registered nurse. Assessments of an injured worker's need for home health care shall be performed using CMS's OASIS (Outcome and A~~S~~ssessment Information Set), a group of standard data elements used by CMS to assess patients' needs for home health care services, which is incorporated by reference (http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/OASIS-C1-DataSets.html). When rehabilitation therapy service (speech language pathology, physical therapy, or occupational therapy) is the only service requested by the treating physician for the injured worker, the initial assessment ~~may~~ shall be made by the appropriate rehabilitation skilled professional (speech language pathologist, physical therapist, or occupational therapist).

(d) An employer or their insurer shall not 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, if those home health care services were provided to the injured worker prior to the industrial injury. In addition, an employer or their insurer shall not be liable for home health care services provided more than fourteen (14) days prior to the date of the employer's or insurer's receipt of the physician's prescription ~~or~~ and request for authorization for home health care services, pursuant to Labor Code sections 4600 subdivision (h), and 4610.5, et seq.

(e) This fee schedule does not cover family caregivers or individuals who are not employed by a home care organization or a home health care agency. However, a claims administrator ~~and an injured worker~~ may agree to reimburse an ~~that the~~ injured worker for home health care services provided by ~~may use, and the claims administrator will pay for,~~ an unregistered ~~provider~~ individual (who is not employed by a home care organization 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 needed by the injured worker.

Discussion

The Institute recommends the language changing "may" to "shall" to ensure that the professional with the most appropriate evaluative skills performs the targeted evaluation when the treating physician is requesting only rehabilitation therapy. Replacing "or" with "and" ensures that the request for authorization for home health care services is submitted.

The additional applicable Labor Code reference is recommended for completeness.

In the event that a claims administrator and the injured worker agree that home health care services are to be provided by an unregistered individual, the claims administrator will reimburse the injured worker the agreed upon rate. In addition to providing clarity, the recommended language revision also reinforces that the injured worker is being reimbursed for an expense and an employment relationship is not being established.

Recommendation -- § 9789.92 Home Health Care – Payment Methodology & Billing Rules.
(a) The maximum allowable amounts (MAA) for home health care services are set forth in section 9789.93, Table A. In no case shall the MAA be lower than the state minimum wage in effect on ~~January 1, 2016~~ [insert OAL approval date]. ~~The California workers' compensation home health care fee schedule operates on a fee for service basis~~

(b)

(1) Services shall be billed in fifteen (15) minute increments, with one unit of time being equal to fifteen (15) minutes. Except in the case where a per diem billing code is used, a visit arranged by a home health care organization or home health care agency shall be for a minimum of four units, with additional time beyond the four unit visit billed in fifteen (15) minute increments. The four units may be for different services performed within the visit. For example, if only one service is performed during the visit, the home health care organization or home health care agency would bill the four minimum units to the billing code for that service. However, if two, three or four services were provided during the initial hour of the visit, the home health care organization or home health care agency would bill two, three or four codes, respectively, in relative proportion to the time spent on each service. No more than four services may be billed during a one hour visit.

(2) A per diem billing code covers eight hours and must be used whenever the incremental rate for the number of hours exceeds the per diem rate. For example, if five hours of nursing care at the incremental rate exceeds the per diem rate for nursing care, providers must use the per diem code rather than the 15-minute incremental billing code.

(3) The time per task and frequency for attendant care services and chore services shall be based on those described in the guidelines in Chapter 30-700 of the California DSS Manual for In-Home Supportive Services SS Manual Letter No. SS-06-03 that became effective 10/12/06.

(~~3~~4) Home health care organizations and Home health care agencies shall bill using the CMS 1500 form, which can be downloaded at the following link (http://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/CMS-Forms-Items/CMS1188854.html), or the CMS 1450/UB-04 form which can be downloaded at the following link (http://www.nubc.org/subscriber/index.dhtml).

(5) Each reimbursement request for a family member or other non-registered provider shall be accompanied by a signed itemization of home health care services provided to the injured worker.

(c) Nothing in this section precludes an agreement for payment of home health care services, made between the provider and the insurer or claims administrator, regardless of whether such payment is less than, or exceeds, the fees set forth in this section.

Discussion

While it may be appropriate to assure that payment for services under the home health care fee schedule will not fall below the state minimum wage, we believe the Administrative Director must revise the regulations to accomplish this policy as she does not have the Labor Code authority to adopt an uncertain future rate. The Institute recommends deleting the last sentence in (a) as it is unnecessary.

A consistent standard is necessary to assure reasonable time frames associated with services provided for chore and attendant care services.

§ 9789.93 Table A

Recommendation

The Institute suggests that the Division consider limiting Maximum Allowable Amounts in Table A to no more than 120% of the Medicare Allowances.

Discussion

The Institute suggests that the Division consider limiting Maximum Allowable Amounts to no more than 120% of the Medicare Allowances, which would be in line with other Medicare based fee schedules adopted by the Division. Based on current contracting rates there is no reason to believe that access to home health care services will be negatively impacted by capping MAA at 120% of Medicare.

Recommendation

Rates are effective for home health care services provided on or after (effective date of regulations)

S9122	~~Home health aide or~~ certified nurse assistant, providing care in the home; per 15 minutes

Discussion

The Institute recommends the additional verbiage for completeness and clarity.

The Institute recommends deleting "Home health aide" from the description of S9122 since services provided by a Home Health Aide are addressed in G0156.

Sincerely,

Stacy L. Jones
Senior Research Associate

Brenda Ramirez
Claims & Medical Director

SLJ:BR/pm

cc: Christine Baker, DIR Director
Destie Overpeck, DWC Administrative Director
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CWCI Claims, Legal, and Medical Care Committees
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