California Workers' Compensation Institute
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VIA E-MAIL: 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: 1st Forum Comments on Draft Independent Medical Review Regulations

Dear Ms. Gray:

These written comments on draft regulations to implement Senate Bill 863 provisions regarding Independent Medical Review (IMR) and utilization review are presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 80% of California's workers' compensation premium, and self-insured employers with $36B of annual payroll (20% of the state's total annual self-insured payroll).

Insurer members of the Institute include ACE, AIG, Alaska National Insurance Company, AmTrust North America, Chubb Group, CNA, CompWest Insurance Company, Crum & Forster, Employers, Everest National Insurance Company, Farmers Insurance Group, Fireman's Fund Insurance Company, The Hartford, Insurance Company of the West, Liberty Mutual Insurance, Meadowbrook Insurance Group, Pacific Compensation Insurance Company, Preferred Employers Insurance Company, SeaBright Insurance Company, Springfield Insurance Company, 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, Agilent Technologies, Chevron Corporation, City of Santa Ana, City of Santa Monica, City of Torrance, Contra Costa County Schools Insurance Group, Costco Wholesale, County of San Bernardino Risk Management, County of Santa Clara Risk Management, Dignity Health, Foster Farms, Grimmway Enterprises Inc., Kaiser Foundation Health Plan, Inc., Marriott International, Inc., Pacific Gas & Electric Company, Safeway, Inc., Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Southern California Edison, Sutter Health, University of California, and The Walt Disney Company.

Recommended changes are indicated by italicized and highlighted *underscore* and ~~*strikeout*~~.

The Institute wishes to acknowledge the remarkable effort expended by the staff of the Division of Workers' Compensation in drafting regulations to implement Senate Bill 863 in such a short period of time. The Institute generally supports the comments submitted by the California Chamber of Commerce and the California Coalition on Workers' Compensation (CCWC); and by the American Insurance Association (AIA) on the draft regulations. In addition, the Institute offers the recommendations that follow.

The Institute wishes to emphasize the following areas of concern:

Reduce the IMR fees

- Despite potential economies of scale, the draft IMR fees are several times higher than typical fees utilization review. Excessively high fees create disincentives for challenging inappropriate medical care and will adversely affect the efficiency of a cornerstone reform. Reluctance to use IMR will negatively impact the quality of medical care provided to the injured worker, as well.

Clarify that a provider submitting a request for authorization (RFA) must be either the primary treating physician (PTP), or must attach documentation of a referral by the PTP for the requested treatment

- Labor code sections 4603.2(b) and 4603.4(d) require medical treatment to be provided or prescribed by the primary treating physician, and require the provider to submit a prescription or referral from the primary treating physician with a request for treatment or payment.

Remove "the employer" from the definition of claims administrator

- If the definition for claims administrator "also means the employer," documents and reports that include confidential medical information that must be submitted to the claims administrator pursuant to labor code and sent in accordance with the UR and IMR regulations, may be sent to insured employers. This would be a violation of of medical privacy laws -- HIPAA and CMIA.

Require the IMRO to aggregate multiple RFA forms submitted to the claims administrator on the same date, and handle them as though were submitted on a single RFA form. According to the instructions on the proposed RFA form, providers may submit a treatment request with multiple components either a single form or on multiple forms. This will likely cause confusion and delay.

- The medical necessity of a specific requested medical service is affected by what other medical services are being requested, therefore the complete treatment plan, or changes to the treatment plan must be considered together. The original utilization review considered the entire treatment plan and did so at a reasonable cost. It would be inequitable and inefficient to allow an IMRO to charge a separate fee for each individual component of a treatment plan.

Recommendation

- Delete the “employer” and “utilization review organization” from the definition of claims administrator
- Add definitions for utilization review organization, independent medical review, independent medical reviewer, and independent medical review organization
- Revise Section 9792.10.3(d) for clarity

Recommendation
Sections 9792.6.1(c) and 9792.10.1(a)(1)
"Claims Administrator" is a self-administered workers' compensation insurer of an insured employer, a self-administered self-insured employer, a self-administered legally uninsured employer, a self-administered joint powers authority, a third-party claims administrator or other entity subject to Labor Code section 4610, and the director of the Department of Industrial Relations as administrator for the Uninsured Employers Benefits Trust Fund (UEBTF). ~~“Claims Administrator” includes any utilization review organization under contract to provide or conduct the claims administrator’s utilization review responsibilities. Unless otherwise indicated by context, “claims administrator” also means the employer.~~

Discussion
If the definition for claims administrator “also means the employer,” documents and reports that include confidential medical information that must be submitted to the claims administrator pursuant to the utilization review and IMR regulations, may be sent inadvertently to insured employers. This would be a violation of HIPAA and CMIA.

It is not necessary to include the utilization review organization in the definition of a claims administrator. The claims administrator is the entity that administers the claim. A utilization review organization is not a claims administrator; it simply performs one function of claims administration.

It would, however, be appropriate to add a separate definition for the utilization review organization. Because the following terms are used throughout the proposed regulations, it will add clarity and reduce confusion, if the regulations provided specific definitions for them:

- independent medical review,
- independent medical reviewer,
- independent medical review organization, and
- independent review organization.

Recommendation
Section 9792.9
§9792.9. Utilization Review Standards--Timeframe, Procedures and Notice – For Utilization Review Decisions Issued Prior to July 1, 2013 for Injuries Occurring Prior to January 1, 2013.

This section applies to any request for authorization of medical treatment, made under Article 5.5.1 of this Subchapter, for an occupational injury or illness occurring prior to January 1, 2013 if the ~~request~~ **utilization review decision** is communicated to the requesting physician prior to July 1, 2013.

Discussion
This appears to be a misstatement.

Recommendation
Section 9792.10.3
(d) If there appears to be any medical necessity issue, the dispute shall be resolved pursuant to an independent medical review~~, except that, unless the claims administrator agrees that the case is eligible for independent medical review, a request for independent medical review shall be deferred if at the time of a utilization review decision the claims administrator is also disputing liability for the treatment for any reason besides medical necessity.~~. A request for independent medical review shall be deferred if at the time of a utilization review decision, the claims administrator is also disputing liability for the treatment for any reason other than medical necessity, unless when the claims administrator agrees that the case is eligible for independent medical review.

Discussion
The revision is intended to delineate more clearly when a case is ripe for independent medical review and when it must be deferred pending the resolution of other related issues.

Recommendation
Section 9792.10.5
(a) (1) Within fifteen (15) days following receipt of the notification from the independent review organization that the disputed medical treatment has been assigned for independent medical review, or for expedited review, within twenty-four (24) hours following receipt of the notification, the claims administrator shall provide to the independent medical review organization all of the following documents:

(A) A complete and legible copy of ~~the following:~~

(i) All **medical** reports of the employee's treating physician regarding the **disputed treatment** ~~employee~~ within ~~one year~~ **90 days** prior to the date of the request for authorization.

(ii) All **medical** reports and **medical** records ~~of~~ ***regarding*** the employee's medical treatment that are specifically identified in the request for authorization or in the utilization review determination.

Discussion
The specific reference to 'medical' records will improve clarity. The cornerstone of section 4610.5(l) is relevance. The UR/IMR dispute centers on a request for a specific modality of treatment and only those medical records and reports that relate to the disputed medical care are appropriate for review. Sending all records over a fix period of time can result providing irrelevant documents which may only delay the review process. Conversely, simply providing treatment records over a fixed period may miss important information regarding prior injuries or relevant co-morbidities that could affect the review.

Thank you for considering these comments.

Sincerely,

Brenda Ramirez
CWCI Claims and Medical Director

BR/pm

cc: Destie Overpeck, DWC Acting Administrative Director
Christine Baker, DIR Director
CWCI Claims Committee
CWCI Medical Care Committee
CWCI Legal Committee
CWCI Regular Members
CWCI Associate Members
California Chamber of Commerce
California Coalition on Workers' Compensation
American Insurance Association