California Workers' Compensation Institute
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November 16, 2012

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: Predesignation & Chiropractor Treating Physician – 1st Forum comments on CCR Sections 9780.1, 9783, 9783.1, 9785, and 9786

Dear Ms. Gray:

This commentary on the draft regulations regarding predesignation & the chiropractor treating physician requirements is presented on behalf of members of the California Workers' Compensation Institute. Institute members include insurers writing 80% of California's workers' compensation premium, and self-insured employers with $36 B of annual payroll (20% of the state's total annual self-insured payroll).

Insurer members of the Institute include ACE, Alaska National Insurance Company, AmTrust North America, Chartis Insurance, 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 Group, 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.

The Institute congratulates the Division on drafting clear and concise regulatory changes to conform its regulations to changes in the standards for predesignation and chiropractic treatment made by Senate Bill 863. The Institute recommends two changes; one to clarify the effective date; the other to address unintended consequences to the proposed Petition for Change of Primary Treating Physician.

Recommendation -- Effective date
Specify in these regulations that the changes to predesignation and chiropractic treatment requirements are effective on January 1, 2013, and apply to all pending matters.

Discussion
Section 84 states:

> *"This act shall apply to all pending matters, regardless of date of injury, unless otherwise specified in this act, but shall not be a basis to rescind, alter, amend, or reopen any final award of workers' compensation benefits."*

Pursuant to this section, because the act did not specify otherwise, the changes to predesignation and chiropractic treatment make the changes to predesignation and chiropractic treatment standards effective on January 1, 2013 for all pending matters. As a practical matter, the updated regulations are expected to be adopted after this date. To avoid confusion and disputes, the Institute urges the Administrative Director to specify in the regulations that the changes are effective on January 1, 2013, and apply to all pending matters.

Recommendation – Enforcement of the 24-visit limit for chiropractor treating physicians
The Institute recommends that regulations:

1. Require the employer or claims administrator to notify an employee who has selected a chiropractor as his or her treating physician that:
    a. a chiropractor shall not be a treating physician after the employee has received 24 chiropractic visits; and
    b. the employee is required to select a new treating physician after 24 chiropractic visits unless the claims administrator authorizes additional visits in writing.
2. Require the claims administrator upon the 24th visit to notify the chiropractor and injured employee that because the 24-visit cap has been reached:
    a. the employee must select a new treating physician who is not a chiropractor;
    b. the chiropractor is no longer the employee's treating physician and the chiropractor's opinion is not admissible on any issues after the 24-visit cap has been reached except as commented upon by subsequent treating physicians and QMEs;
    c. the claims administrator is not responsible for any further treatment or services by the chiropractor; and
    d. if the injured employee or provider disagrees that the maximum has been reached, the dispute may be resolved through the normal dispute process.
3. Limit the Petition for Change of Primary Treating Physician to situations where the injured employee continues to require treatment but fails to select a new Primary Treating Physician. In these cases the claims administrator may submit the form along with proof of 24 visits.

Discussion
Instead of limiting a chiropractor to act as a treating physician for no more than the number of visits allowed by Labor Code section 4604.5, the Petition for Change of Primary Treating Physician may unintentionally guarantee up to 45 days or more of additional treatment beyond that limit for chiropractor PTPs.

Language in Section 9786(b)(6) appears to enforce a change in the PTP chiropractor who reaches or exceeds a 24-visit limit only after the filing of a "Petition for Change of Primary Treating Physician" form (DWC-Form 280 (Part A)) pursuant to LC 4603.

> Labor Code Section 4600(c) requires that a "*chiropractor shall not be a treating physician after the employee has received the maximum number of chiropractic visits allowed by subdivision (d) of Section 4604.5."* Use of the term "shall" imparts an automatic status change that should not require a petition before a change in provider. Rather, the injured employee should simply be notified that the visit limit has been reached and be required to select a new treating physician. Requiring that a petition for a change be filed creates a conflict between 4600(c) and 4604.5(c). Under 4604.5(c), employees are limited to 24 chiropractic visits. Payment is not required for visits in excess of 24. Under the proposed regulation, it appears that the injured worker will be permitted to continue to treat with the chiropractor until a ruling is made on a Petition for Change of Primary Treating Physician. This will lead to arguments that despite the law, the claims administrator is required to pay for any visits made until the petition is ruled upon. Indeed, subdivision (f) of Section 9786 says *"The claims administrator's liability to pay for medical treatment by the primary treating physician shall continue until an order of the Administrative Director issues granting the petition."* Additionally, because the claims administrator cannot act until the 24 visit cap has been reached, this process essentially guarantees that the injured worker will continue to seek care beyond the 24 visits with the chiropractor because the insurer cannot require them to select another treating physician until the petition process is complete. This is contrary to the plain language and intent of the law.
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> The proposed language also seems to conflict with section 9767.6(f) which states: *"A Petition for Change of Treating Physician, as set forth at section 9786, cannot be utilized to seek a change of physician for a covered employee who is treating with a physician within the MPN."*

Thank you for considering this recommendation. Please contact me if I can provide any clarification.

Sincerely,

Brenda Ramirez, Claims & Medical Director
California Workers' Compensation Institute

cc: Destie Overpeck, DWC Acting Administrative Director
CWCI Claims Committee
CWCI Medical Care Committee
CWCI RTW Group
CWCI Legal Committee
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