



California Workers' Compensation Institute
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July 20, 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: CWCI 1st Forum Comment on Proposed Modifications to Workers' Compensation Information System (WCIS) Regulations

Dear Ms. Gray:

These comments on the proposed revisions to the Workers' Compensation Information System (WCIS) 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 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 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, 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 modifications to the Workers' Compensation Information System (WCIS) regulations are indicated by underline and ~~strikeout~~. Comments and discussion by the Institute are indented and identified by *italicized text*.

§9701 Definitions

Recommendation

(2) For reporting on or after November 15, 2011, but before ~~July 1, 2015~~ (OAL to insert date twelve months after date of filing approved regulation with the Secretary of State), use the California EDI Implementation Guide for First and Subsequent Reports of Injury, Version 3.0, dated November 15, 2011, which is incorporated by reference.

(3) For reporting on or after ~~July 1, 2015~~ (OAL to insert date twelve months after date of filing approved regulation with the Secretary of State), use the California EDI Implementation Guide for First and Subsequent Reports of Injury, Version 3.1, dated ~~August 15, 2015~~ (OAL approval date), which is incorporated by reference.

Discussion

The Institute recommends that the effective date for revised reporting requirements be determined as a factor of regulation finalization and a requisite programming window. The proposed regulations stipulate a past date for electronic submissions, which is not possible. The effective date for new data reporting requirements must be far enough into the future that the regulatory process may be completed and affected parties are able to undertake necessary programming changes. Due to the number of revisions being proposed, the Institute recommends that the effective date be at least twelve months after approval of the regulations to ensure that claims administrators and trading partners are able to program and test the necessary system changes.

California EDI Implementation Guide for First and Subsequent Reports of Injury (FROI/SROI) Version 3.1 ~~(August 15, 2015)~~ (OAL Approval Date)

Recommendation

The Institute recommends that the date for the California EDI Implementation Guide for First and Subsequent Reports of Injury (FROI/SROI) Version 3.1 be determined by the OAL approval date.

Discussion

The Institute recommends inserting the OAL approval date so that there is assurance that the date of the revised EDI Implementation Guide does not occur in the past. There is no way to determine how long the regulatory process will take and all impacted data transmissions must take place subsequent to the date of the Guide, since they are future events by practical definition.

Labor Code section 138.7 “Individually identifiable information”; restricted access.

Recommendation

(b)(2)(B)(i) The State Department of Health Care Services may use individually identifiable information for purposes of seeking recovery of Medi-Cal costs incurred by the state for treatment provided to injured workers that should have been incurred by employers and insurance carriers pursuant to Article 3.5 (commencing with Section 14124.70) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code.

(ii) The Department of Industrial Relations shall furnish individually identifiable information to the State Department of Health Care Services, and the State Department of Health Care Services may furnish the information to its designated agent, provided that the individually identifiable information shall not be disclosed for use other than the purposes described in clause (i). The administrative director ~~may~~ shall adopt regulations solely for the purpose of governing access by the State Department of Health Care Services or its designated agents to the individually identifiable information as defined in subdivision

(a).

Discussion

The Institute recommends replacing may with shall in order to ensure that clear rules govern access to individually identifiable information. This is also in keeping with language in 138.7(b)(3)(A), which states that the “administrative director shall adopt regulations governing the access” to individually identifiable data used by the Division of Workers’ Compensation, the Division of Occupational Safety and Health and the Division of Labor Statistics and Research.

Data Requirements for First Reports of Injury

Recommendation

Data number 53 (DN52), representing the employee’s date of birth is listed as Mandatory/Fatal (M/F) in the revised Data Requirements for First Reports of Injury table. The Institute recommends that this data element remain as Mandatory/Serious (M/S).

Discussion

The Institute recommends that this data element not be made Mandatory/Fatal because claims administrators do not have complete control over this information. The California Workers’ Compensation Claim Form (DWC 1) does not include the employee’s date of birth, nor is there a provision in the Labor Code or regulations requiring that an employee provide his or her date of birth in order to file a claim for benefits. The Doctor’s First Report of Occupational Injury or Illness (DWC 5021) does include the date of birth, but the form is not deficient if it is not provided. While attempts are made to obtain an employee’s date of birth, there is nothing that compels an employee to provide it.

FROI Conditional Rules and Implementation Notes

Recommendation

The Institute recommends clarification for the conditional requirement for DN52, Employee Date of Birth. If MTC=AU AND Jurisdiction Claim Number (DN5) **not** provided then **NOT** Mandatory.

Discussion

The data element (DN52) is listed as Mandatory/Fatal (M/F) in the Data Requirements for First Reports of Injury table, but the FROI Conditional Rules and Implementation Notes indicate that it is mandatory if MTC=AU and JCN is not provided. If the intent is to require that DN52 be accurately populated in all circumstances other than when a claim is acquired (MTC=AU) and the JCN is known, the suggested language is more inclusive.

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

Sincerely,

Stacy L. Jones
Senior Research Associate

SLJ/pm

cc: Destie Overpeck, DWC Administrative Director
Genet Daba, DWC Research Program Specialist
CWCI Claims Committee
CWCI Medical Care Committee
CWCI Regular Members
CWCI Associate Members