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Comments on Proposed Medical Cost Containment Regulations

July 2, 2006

Ms. Eileen Wunsch
Chief, Health Care Services Review Division
Bureau of Workers' Compensation
Department of Labor and Industry
Chapter 127 Regulations -- Comments
PO Box 15121
Harrisburg, PA 17105-5121

Fax (717) 772-1900 Attn: Eileen Wunsch

RA-LI-BWC-Administra@state.pa.us

Dear Ms. Wunsch:

This letter represents comments regarding the recently published proposed medical cost containment regulations. I understand that public comment meetings are scheduled for July 10 in Philadelphia, July 11 in Harrisburg, and July 13 in Pittsburgh and that all comments must be submitted to the Bureau seven calendar days prior to these meetings, and I also understand that written comments have been requested within 30 days of the June 10 publication of Proposed Rulemaking. Please therefore accept this letter both as written comments and also as a request for Jennifer Margroff, LPN, UMRPC's URO Coordinator, to speak at the July 13, 2006 meeting in Pittsburgh as a representative of UMRPC.

Overall my basic comment regarding the Proposed Rulemaking is that I believe these new requirements and procedures as a whole will modify the workers' compensation system in Pennsylvania to favor the economic interests of insurance companies to the clinical and economic detriment of injured workers. Additionally the effects of the proposed regulations could well discourage physicians from treating workers' compensation patients in Pennsylvania, as similar rules have created a substantial physician access issue for work injuries in the neighboring states of Ohio and West Virginia. Therefore I recommend that these proposed regulations not be implemented.

Here are some examples to support this view:

- An important concept in the existing procedures is that utilization reviews are assigned randomly among a large group of qualified UROs and thereby among a large group of qualified reviewers. Under the current scheme, all certified UROs share in the randomization process of new utilization reviews. Yet the proposed new contracting scheme via 127.1051 would change this randomization process among a large group of qualified UROs and instead would permit the Bureau to assign reviews in part or in whole to a smaller group of UROs chosen by the Bureau. This could have the effect of creating political or economic bias in the assignment of reviews to UROs.

- The proposed procedures in 127.1051 do not require the Bureau to state a reason why any particular URO would or would not receive assignments, nor are any due process procedures in effect through the Courts or otherwise to challenge such Bureau assignments. Therefore, an effect of the proposed procedures could be to substantially reduce the number of UROs performing reviews in the Commonwealth and to completely eliminate the randomization process over a large number of UROs which currently serves well to assure UROs are impartial and not subject to external economic or political influence in their decisions and selection of reviewers.

- If as above an effect of 127.1051 is to substantially reduce the number of UROs in the state, then a small number of remaining UROs in the state with the vast majority of review assignments would now have the economic authority to assign a very small number of reviewers to do all reviews in the state for a given specialty. This could create a biased utilization review system by essentially giving undue influence to just one or two reviewers in that specialty along with significant economic incentive for this small group of reviewers to render opinions consistent with the economic or political bias of the employing URO.

- Proposed regulation 127.856 permits insurers to submit peer-reviewed, independently funded studies to the URO which may be relevant to the treatment under review. Yet the injured worker is not permitted to similarly submit such peer-reviewed studies in support of the requested treatment! Clearly the effect of such a regulation would be a bias in the system against the injured worker.

- Proposed regulation 127.861 provides that providers may be prohibited from introducing evidence regarding treatment related to any UR request in which they failed to provide medical records without reasonable cause or excuse. Furthermore providers would be prohibited from billing for this treatment. This regulation ignores the fundamental role of the injured worker in this process! Undesirable complications of this regulation include:

- Under this regulation, an injured worker could be forever denied medically necessary treatment without a means of appeal simply because his treating physician did not meet a bureaucratic requirement.

- Under this regulation, an injured worker could be compelled to switch to a different treating physician simply because his treating physician did not meet a bureaucratic requirement.

- Under this regulation, treating physicians might choose to not accept workers' compensation injury patients out of concern that missing a deadline such as this for submission of records would irrecoverably and substantially limit any future reimbursement the physician might receive for caring for that patient.

- Proposed regulation 127.824 describes a pre-certification process for treatment approval which runs counter to recent experience both inside and outside Pennsylvania showing that such pre-certification is not in the interest of the patient, provider, or healthcare system overall. Injured workers in Ohio and West Virginia experience healthcare provider access restrictions due to such pre-certification requirements. Furthermore, in Pennsylvania if we look at the healthcare system outside of the workers' compensation arena, there has been a dramatic shift over the past 1-2 year to eliminate such pre-certification requirements for most physician care; healthcare insurers, providers, and patients alike have concluded that the cost in both money and time expended in such a pre-certification system exceeds the potential cost containment such pre-certification aimed to achieve over the past decade.

- Aside from the above negative impact of the proposed new procedures upon injured workers, I disagree with the conclusion in the preamble to the proposed procedures stating that "*this proposed rulemaking does not impose significant additional reporting, recording, or paperwork requirements on either the commonwealth or the regulated community.*" To the contrary, this proposed rulemaking would result in a **dramatic** cost in both time and personnel expense for both the Bureau and also UROs. The learning curve required to understand the new regulations, revise policy/procedure manuals, bid for contracts, and train URO employees would by simple observation be extremely time-consuming and labor-intensive but this simply has not been addressed at all in the Proposed Rulemaking even though such an assessment of economic impact is required.

  This concern regarding the required time and expense to train staff in new procedures is of particular importance because the Bureau has on multiple occasions during past URO training sessions resisted suggestions by UROs that the Bureau establish a question/answer website for UROs which would make the process of learning/implementing Bureau procedures consistent and efficient for both the Bureau and UROs. Since such a website does not exist nor has been announced, the process of implementing these new regulation would likely be

inconsistent, arbitrary, and costly among the UROs, ultimately resulting in increased costs to the workers' compensation system overall.

- Proposed regulation 127.201 would permit insurers to forever deny payment to healthcare providers if medical bills were not initially presented within 90 days of the employee's first date of treatment with that provider. Such a requirement is arbitrary and contrary to the interests of the injury worker since often it is not evident that a particular injury is work-related until more than 90 days have elapsed. Such a regulation also has the potential to create uncertainty regarding payment for work injuries which could drive treating physicians away from participating the workers' compensation system.

  For example, suppose an employee is treated by his primary care physician for several months for hand pain of unknown etiology and then at some point the physician retrospectively diagnoses work-related carpal tunnel syndrome as a cause of the patient's symptoms. Is the patient's own primary care physician now prohibited from being reimbursed for treating the patient for the work injury? If so, how does this serve the interests of the injured worker or of the healthcare system overall? Will healthcare providers continued to treat injured workers given this unfriendly system?

  Alternatively, let us suppose that an injured worker accidentally provides an incorrect workers' compensation insurer address to a treating physician and it takes over 90 days for this error to be identified and resolved by the treating physician's billing office. Again is the patient's treating physician now prohibited from being reimbursed for treating the patient for the work injury and if so, how does this serve the interest of the injured worker or of the healthcare system overall? Will healthcare providers continued to treat injured workers given this unfriendly system?

- Proposed regulation 127.211 (c) prohibits a provider from billing an injured worker for services for a reported work injury until a denial of payment is received from the workers' compensation insurer. Although the intent of this regulation is admirable in protecting a patient's rights, in fact the regulation could have the opposite effect in a situation where causality of the injury is uncertain and may need to be resolved through an administrative or legal process.

  This proposed regulation 127.211 (c) conflicts with the requirement of some non-workers' compensation insurers that a bill must be submitted within 60 days of service. Thus it is possible that by the time a workers' compensation insurer issues a denial, the submission deadline has passed for the patient's non-workers' compensation insurance and therefore this regulation could hurt an injured worker by forcing the injured worker to pay out of pocket for medical care rendered during a period when the work-related compensability status of the injury was uncertain.

- In order to maintain the impartiality and unbiased nature of the URO process, I propose modifying 127.806 to indicate that the Bureau will assign the UR to an authorized URO on a random basis with each qualified URO having an equal chance of being assigned any particular UR

- Proposed regulation 127.858 is similar to existing regulations in that a URO is not permitted to request nor may any party supply reports of independent medical examination (IME) evaluations performed by any party for the purposes of litigation. I would suggest that this regulation biases the process against the injured worker because an employer or insurer is permitted to introduce records from a treating physician which are contrary to the employee's interest, yet an employee is not permitted to introduce records from an employer-arranged-IME which are contrary to the employer's interest.

Finally, if these proposed requirements and procedures are not implemented but rather a new set of Proposed Rulemaking is developed, then I would propose that the intended purpose to clarify the requirements/procedures for medical review and to contain the costs therein could perhaps be achieved alternatively if the following procedure were considered:

- The current Bureau policy to match a reviewer to a provider under review by both licensure and specialty dramatically increases the cost of reviews in some specialty situations where there are a scarcity of reviewers, such as for example D.O. Emergency Medicine Physicians or D.O. Neurosurgeons. Also the requirement to match both licensure and specialty substantially increases the administrative cost of operating a URO since this effectively doubles the required size of panel reviewers for a URO.

  The standard of care for an M.D. or D.O. physician is essentially identical in most specialties in Pennsylvania; therefore, if UROs were permitted to consider M.D. and D.O. licensure as equivalent, this could provide substantial cost containment with negligible impact upon the quality of reviews.

In summary, the proposed medical cost containment regulations would modify the existing utilization review scheme in a manner contrary to the interest of the injured worker, whose interests are more important than any in this context. The proposed regulations could reduce injured worker access to treatment of work injuries and could subject injured workers to liability for payment of disputed medical bills in a manner not intended by the Legislature. Thus I recommend that these proposed cost containment regulations not be adopted.

Sincerely,

Richard S. Kaplan, M.D.
President
Uniontown Medical Rehabilitation, P.C. URO/PRO
rkaplan@umrpc.com

Gelnett, Wanda B.

From: LI, BWC-Administrative Division [RA-LI-BWC-Administra@state.pa.us]
Sent: Wednesday, July 05, 2006 8:34 AM
To: Wunsch, Eileen; Kupchinsky, John; Kuzma, Thomas J. (GC-LI); Howell, Thomas P. (GC-LI)
Subject: Comments on the Regs. from Karla

-----Original Message-----
From: Richard Kaplan [mailto:rkaplan@umrpc.com]
Sent: Monday, July 03, 2006 7:59 PM
To: RA-LI-BWC-Administra@state.pa.us
Subject: Comments on Chapter 127 Regulations and Request to Speak at Pittsburgh Meeting on July 13

Please accept these comments regarding the proposed Chapter 127 Regulations and please accept this as my request for Jennifer Margroff from UMRPC to speak at the upcoming Pittsburgh meeting on July 13.

Thank you.

Richard Kaplan, M.D.
rkaplan@umrpc.com