

BRUYNS Fred H * DCBS

From: Russell, Dolores : MHN CEO <DRR@LHS.ORG>
Sent: Wednesday, October 21, 2015 9:27 AM
To: BRUYNS Fred H * DCBS
Subject: CareMark Comp Testimony for 11/9/2015 Rulemaking advisory committee meeting - Issue # 11

CareMark Comp offers this written testimony for the 11/9/2015 Rulemaking advisory committee meeting on Division 009 and 010 Rules; specifically regarding Issue # 11. We offer this written testimony in lieu of attending the 11/9/2015 Rulemaking advisory committee meeting.

We reviewed definitions for physician and for attorney/lawyer from various sources, including Websters College Dictionary, The Free Dictionary, Wikipedia, and Wikidictionary among others. Generally, the most representative definitions are these:

Physician: A physician is a professional who is licensed to practice medicine, which is the art and science concerned with promoting, maintaining or restoring human health through the study, diagnosis, and treatment of disease, injury, and other physical and mental impairments.

Lawyer/Attorney: A lawyer is a person who practices law, including judges, attorneys, or counselors at law, whose practice involves the practical application of abstract legal theories and knowledge to advise individuals in legal matters, to represent them in legal transactions, and to represent them in a court of law and other legal settings.

A physician is trained, qualified and licensed to diagnose and recommend appropriate medical treatment for medical conditions, including those that may result from an occupational injury. A lawyer is not trained, qualified or licensed to diagnose or recommend appropriate medical treatment for medical conditions, including those that may result from an occupational injury.

Both the Oregon Medical Association's Workers' Compensation Committee and the Medical Advisory Committee worked very hard over several years, from at least 2008 to 2009, to address the difficulty for many Oregon injured workers to claim symptoms of disease and injury that they believed derived directly from their employment. Many medical conditions went unclaimed because workers did not know how to go about claiming them. Many medical conditions were inaccurately diagnosed and claimed on that basis following the initial evaluation of the worker, while accurate diagnoses made later by the worker's physician were not claimed by the worker in spite of the physician's instructions to the worker on how the worker could claim additional conditions. These two organizations of caring, educated and informed physicians and other medical practitioners advocated effectively for the addition of the "Request for acceptance of a new or omitted medical condition on an existing claim" box on the Form 827 so that physicians can help the worker to appropriately claim those medical conditions which have been diagnosed by trained and licensed physicians, guided by clinical reality.

It is then up to the insurer to determine compensability of the claimed condition(s).

The worker can always seek legal counsel at any time for legal matters, but to require the legal representative of an injured worker submit their opinion as to the validity of which medical conditions diagnosed by the worker's physician may be claimed as a result of the worker's on-the-job claim does not make medical sense to us. In the Issue # 11 write-up, the second bullet point seeking to justify such a requirement ("It is a medical/legal decision and should not be completed without consulting an attorney") seems to assert that all injured workers should be required to obtain the services of an attorney in order to claim a previously unclaimed condition with their physician's assistance. We believe the cost to the system associated with that requirement would be enormous. Furthermore, we believe that to grant

lawyers authority over which medical conditions may be claimed by workers would likely result in mistaken diagnosis and claims, leading to significant increases in workers' compensation system costs in the form of adjuster time, IMEs, attending concurrence letters, etc.

CareMark Comp urges the Oregon Workers' Compensation Division to make no change to Form 827 and the "Request for acceptance of a new or omitted medical condition on an existing claim" box. This is a medical issue. The current process supports medical practitioners doing what they are trained and licensed to do; that is, to assist the worker to claim medical conditions that have been diagnosed by their medical practitioner.

Thank you.

Dolores Russell
For CareMark Comp Managed Care Organization