



February 21, 2023

Mr. Fred Bruyns
Rules Coordinator
Department of Consumer and Business Services
Workers' Compensation Division
350 Winter St. NE
Salem, OR 97309-0405

Via Electronic Mail: WCD.Policy@dcbs.oregon.gov

Re: Proposed Amendments to Medical Service Rules

Dear Mr. Bruyns:

The American Property Casualty Insurance Association (APCIA) appreciates the opportunity to comment on the Workers' Compensation Division's proposed amendments to the workers' compensation rules relating to medical fees and payments, medical services, and managed care organizations.

APCIA represents nearly 70 percent of the U.S. property casualty insurance market and the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, protecting families, communities, and businesses in the U.S. and across the globe. APCIA advocates for a healthy and stable state workers' compensation system that provides prompt indemnity benefits and high-quality medical care to injured workers at a fair and reasonable cost to employers.

APCIA in general supports the proposed amendments and thanks the Workers' Compensation Division on their efforts in updating the rules. APCIA does, however, have some concerns regarding proposed new section 436-010-0240(4)(g). This new section states: "A medical provider is encouraged to discuss potential modified work duties with employers. However, a medical provider may not discuss medical treatment or diagnoses with employers or release medical records to employers."

APCIA is concerned that the new language could be interpreted to interfere with a workers' compensation insurer's or self-insured employer's need for medical information to properly administer the claim. Any prohibition or delays in communicating medical information to the carrier or to the self-insured employer would disrupt and delay the administration of the claim and could prevent the claimant from receiving timely and appropriate medical care. It is essential that insurers and self-insureds may communicate with the medical provider and receive the claimant's medical information.

APCIA has been advised that the intent of the new language is not to interfere in any way with the communication and distribution of medical information to the carrier or self-insurer to efficiently administer the claim. We also understand that the new language is not intended to interfere with the

right of the carrier to discuss with its policyholder case management and appropriate treatment. We believe the intent of the proposed new section is only to limit communications between the medical provider and the employer when the employer is not self-insured.

APCIA notes that other sections of the rule preserve the right of the carrier and the self-insurer to the claimant's medical information. Section 436-010-0240(4)(a) provides that "Health Insurance Portability and Accountability Act rules allow medical providers to release information to insurers, self-insured employers, service companies, or the Department of Consumer and Business Services." Section 436-010-0240(4)(b) states "When patients file workers' compensation claims they are authorizing medical providers and other custodians of claim records to release relevant medical records including diagnostics. The medical provider will not incur any legal liability for disclosing such records...The authorization is for the life of the claim and cannot be revoked by the patient or the patient's representative."

New proposed section 436-010-0240(4)(g)'s prohibition of communications between the medical provider and the employer creates at least the possibility of some confusion and ambiguity regarding the release of medical records of the provider to carriers and self-insured employers. To alleviate the potential for any ambiguity, APCIA recommends that the Division insert additional language to proposed new section 436-010-0240(4)(g) to clarify that notwithstanding the new language, insurers and self-insureds may continue to obtain medical information from the medical provider and the insurer remains free to discuss case management and treatment plans with its policyholder.

APCIA thanks you for your consideration of these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "S. A. Bennett", with a long horizontal flourish extending to the right.

Steven A. Bennett
Vice President, Workers Compensation Programs & Counsel
American Property Casualty Insurance Association