

February 27, 2024

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WORKERS' COMPENSATION DIVISION
DEPT. OF CONSUMER & BUSINESS SERVICES
350 WINTER ST. NE
SALEM, OR 97312

Re: Written comments regarding WCD's rulemaking hearing for OAR 436-009, -010, -015

Dear Ms. Loiseau,

SAIF Corporation thanks the Workers' Compensation Division (WCD) for the opportunity to provide written comments related to the proposed changes to OAR 436-009, -010, and -015. We appreciate the division's approach to ensuring injured workers have appropriate access to care, that medical providers are adequately incentivized to treat injured workers, and to maintain a balanced system based on cost-effective strategies and timely review of processes and payments. SAIF offers the following written comments for the division's consideration. For issues not specifically raised below, SAIF has no questions or concerns.

OAR 436-010-0270(4)(k)

For claims enrolled in an MCO, when there is a surgery request, proposed OAR 436-010-0270(4)(k) would require an insurer to inform an injured worker, their representative and the provider whether the insurer approves the surgery within 30 days from the date the MCO pre-certifies the surgery as medically appropriate.

As discussed by SAIF at the advisory meeting, an insurer's ability to approve a surgical procedure depends on the facts of the specific claim, the accepted condition(s), and the type of procedure requested. At times, a surgery may be requested to determine the existence of possible new or omitted conditions, may be diagnostic, and/or curative. Often an Independent Medical Evaluation (IME) is utilized to assist the insurer in determining the relationship between the surgery and the accepted conditions.

An IME often takes more than 30 days to occur from the date it is scheduled and then additional time is needed for the examining provider to draft the report. SAIF's ability to review requested medical services is a critical function to ensure that appropriate and related treatment is covered while excluding unrelated or unreasonable treatment.

To account for scheduling, performance of the examination, and time to prepare the report, SAIF suggests that 45 days would be an appropriate time period for an insurer to respond

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once the MCO pre-certifies the surgery as medically appropriate. Generally, an MCO responds within 7-14 days regarding the appropriateness of the requested surgery. A 45 day time period to review and approve/disapprove the surgery would align the processing time period to that of a compensability determination where IMEs are often utilized.

In addition, the proposed rule requires an insurer to respond within 30 days of the MCO's decision. However, an insurer may not receive the MCO's decision for several days due to mail and/or technological delays. SAIF proposes that the insurer's duty to approve or disapprove the surgery begin on the date the insurer receives the MCO's decision pre-certifying the surgery. This ensures that crucial days are not lost due to mail or technical delays.

The proposed rule is also unclear as to what the insurer is approving with regard to the requested surgery. Is the insurer approving the medical appropriateness of the surgery as determined by the MCO? Is the insurer approving the compensability of the surgery? As written, it is unknown what the insurer is approving. Based on the advisory meeting, it is SAIF's understanding that the insurer would approve or disapprove whether the surgery is a compensable medical service that is causally related to the accepted conditions. SAIF proposes the division clarify what the insurer is approving with respect to the surgery.

The proposed rule also lacks language regarding an injured worker's appeal rights and responsibilities if an insurer disapproves the surgery. Without specific language regarding appeal rights and a time line to appeal the disapproval, the effectiveness of a disapproval on subsequent requests for the same procedure is unclear. SAIF proposes a 60 day time period to request review of the insurer's disapproval to align it with the time period to contest a decision by the MCO. See OAR 436-015-0110(6).

As always, SAIF appreciates the WCD's engagement and commitment to the rulemaking process as well as its collaborative approach. Thank you for your consideration of SAIF's comments as the division proceeds with its review of the issues raised.

Sincerely,

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