



July 12, 2021

Idaho Industrial Commission  
P.O. Box 87320  
Boise, ID 83720-0041

**RE: PROPOSED CHANGES TO IDAPA 17.01.01 – MEDICAL REPORTS**

Dear Commissioners –

Thank you for the opportunity to provide input through the negotiated rulemaking process on proposed changes in the way medical reports are accessed in Worker’s Compensation cases.

The Idaho Hospital Association and the Idaho Medical Association have reviewed these proposed changes with several questions in mind: Do they reduce regulatory burdens? Do they maintain Idaho’s focus on being the least regulated state in the nation? Do they reduce costs for healthcare providers and improve access to affordable healthcare for Idahoans? Our conclusion is that the answer to each of these key questions is, “No”.

We think, however, there are ways to modify the language and reduce the regulatory burdens while still providing timely access to necessary medical reports in workers’ compensation cases.

We are concerned that by changing the definition of “Medical Reports” to “Medical Information” in 010.31 and including the additional language of, “opinions of medical professionals, other than retained experts, deemed necessary for the administration or adjudication of a worker’s compensation claims” that the Commission is adding significant time and compulsory costs to healthcare providers. This language also adds a level of subjectivity and vagueness in what the Commission may “deem necessary” from treating medical providers in the “administration or adjudication” of these claims in various contexts.

The proposed regulation expands information the Commission can request from a treating provider to include requiring them to issue medical opinions to include, but not limited to, starting and ending periods of when the patient is in a period of recovery, permanent or temporary restriction opinions, further treatment recommendations, and impairment opinions.

While we do not feel the additional language in 010.31 is necessary, and, at the very least, we would recommend striking “retained” as it relates to experts. This definition should exclude the opinions of all medical experts, whether retained or not, since those opinions are not generally sought until late in the claim or are not necessary for “treatment”.

We would recommend modifying the new language in 404.02 to read, “...any bill for medical services sent to a Payor for payment by a Provider, as defined in Section 72- 102(26), Idaho Code, shall be accompanied by a summary of copy of all medical information or code to justify ~~generated by the Provider in connection with~~ the service being billed, free of charge. A Payor need not consider for payment any bill for medical services that is not accompanied by the summary medical information to support ~~created as a result of~~ that service.” The

level of detail originally prescribed in the new language is unnecessary and can be intrusive when the bills are paid by someone not privy to the medical information. A summary of the services should be sufficient.

We should note that the new language included in 404.04 adds yet another entity (ISIF) that can obtain medical reports free of charge - and within 15 days. This effectively requires medical providers to bear the cost of providing medical records free of charge to all people or entities within the worker's compensation system except for employers.

Additionally, 404.05(c) says a doctor who has to create medical information "shall be compensated at an hourly rate to be set by the Commission as part of its medical fee schedule." This is a one size fits all approach which does not accurately capture the complexities which specialists often deal with. We believe an improved approach would be to have the Commission set the rate at a fair market value for the services to be provided. Another approach would be to set the compensation in the fee schedule that reflects the fair market rate of such services, which recognizes the differences in the value of services.

While the medical information included in 803.07(a) is to be provided free of charge to the patient or patient's attorney upon request, the Commission will govern the per page rate providers may charge for information requested by employers/sureties. There needs to be language that assures providers the per page rate will be in line with current costs and/or market rates.

Finally, we have significant concerns with 803.07(b) which allows parties to require medical providers to respond to medical information requests (includes opinions) by letter, conference, deposition, or testimony at hearing at an hourly rate set by the Commission. In the case of a response by letter or conference, the response has to be completed within 15 days of the request. Keep in mind these requests could be seeking opinions regarding causation, alternate potential causes, opinions regarding preexisting conditions and impact on claim, periods of temporary disability, impairment ratings pursuant to the AMA Guides, permanent restrictions, and care to be needed in the future. Those kinds of opinions that go beyond the treatment of claimants should be provided only voluntarily and at market rate without a cap.

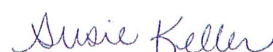
In summary, there does not appear to be anything in this proposed rule that would lessen the burden on medical providers. Rather, it expands the burden for providers treating worker's compensation claimants by compelling medical opinions that go beyond the medical treatment of the patient, under a short time frame, and free of charge to the Commission and at a rate to be fixed by the Commission for other parties. It also increases the administrative cost of providing the expanded medical information to the Commission, Claimant, and ISIF free of charge. This burden will be upon the providers and ultimately, at least in part, also shared by employers and/or insurance companies that pay for the care.

More work is needed on these proposed changes and we would request consideration of the suggestions included in this letter or an opportunity to continue working on acceptable language to meet the intent of the proposed changes.

Sincerely,



Brian Whitlock, President & CEO  
Idaho Hospital Association



Susie Keller, President & CEO  
Idaho Medical Association