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**We support the USA and we proudly stand
when The Star-Spangled Banner is played**

August 11, 2021

Kamerron Slay
Commission Secretary
Idaho Industrial Commission
Via email: kamerron.slay@iic.idaho.gov

RE: Proposed Changes
IDAPA 17.01.01—Administrative Rules Under the Worker's Compensation Law

Dear Ms. Slay,

I am writing to raise my concern regarding the conflict between the "**Proposed Changes—REVISED 10 June 2021**" and the "**Proposed Changes—REVISED 4 Aug 2021**" that I just received.

Specifically, I am referring to "404. SUBMISSION OF MEDICAL REPORTS."

The June 10, 2021, draft provides:

"This procedure applies to **all open** worker's compensation claims" (emphasis added)
(see attached)

The August 4, 2021, draft provides:

"This procedure applies to all open worker's compensation claims where medical services are provided **and which have not been denied** by the Payor."
(emphasis added) (see attached)

The requirement that a claim be "open" and "not been denied" is one of the fundamental concerns that led to my original email to Patti Vaughn on June 30, 2020, and my August 10, 2020, letter to the Idaho Industrial Commission Advisory Committee. I have attached a copy of my August 10th letter and, in particular, I would direct you to my cover letter and the comments sent to Patti Vaughn on

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August 11, 2021

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June 30, 2020, beginning at page 1, paragraph 1, "**The wording of the newly adopted IDAPA rule.**" My request, submitted one year ago, was that the wording "which have not been denied by the Payor" be deleted from the Rule. It was my understanding that the June 10, 2021, draft resolved that issue and I don't understand why the August 4, 2021, draft reverted back to the language "*and* which have not been denied." (emphasis added)

The reason for raising the issue in 2020 was, and still remains, that many claimants have had medical care denied by the Payor (i.e. Surety/Employer), for many diverse reasons, and, under the language as set forth in the August 4th draft, claimants seeking benefits, and often not able to work and earn an income, are placed at a significant disadvantage.

I respectfully submit that the language in the June 10, 2021, draft, which requires that the claimant have an "open" worker's compensation claim, is the appropriate wording.

Very truly yours,



Starr Kelso

Attorney at Law

IDAHO ADMINISTRATIVE CODE
Industrial Commission

IDAPA 17.01.01 – Administrative Rules
Under the Worker’s Compensation Law

010. DEFINITIONS.

The definitions set forth in Chapter 72, Idaho Code apply to these rules. In addition, the following terms have the meaning set forth below: (3-20-20)T

(Break in continuity of section.)

31. ~~Medical Report~~ Information. Means and includes without limitation, all bills, chart notes, surgical records, testing results, treatment records, hospital records, prescriptions, ~~and medication records and opinions of medical professionals, other than retained experts, deemed necessary for the administration or adjudication of a workers’ compensation claim.~~ (3-20-20)T

011. ABBREVIATIONS.

The following abbreviations have the meaning set forth below: (3-20-20)T

(Break in continuity of section.)

11. JRP. Means the Commission’s Judicial Rules of Judicial Practice and Procedure. (- -)T

(Renumber the following subsections.)

404. SUBMISSION OF MEDICAL REPORTS, BILLING AND REQUESTS FOR INFORMATION FROM PROVIDERS

This procedure applies to all open worker's compensation claims ~~where medical services are provided and which have not been denied by the Payor.~~ (3-20-20)T *

01. Medical Treatment Reports. In all cases where medical services are provided and which have not been denied by the Payor, the Provider shall submit written medical reports for each medical visit to the Payor within fourteen (14) days following each evaluation, examination or treatment. (- -)T

~~02.01. Procedure~~ Billing and Payment. In all cases in which a particular injury or occupational disease results in a worker's compensation Claim that has not been denied by Payor, 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 copy of all medical information 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 medical information created as a result of that service. ~~the Provider shall submit written Medical Reports for each medical visit to the Payor. Payers and Providers may contract with one another to identify specific records that will be provided in support of billings. The Provider shall also submit the same written Mmedical Reports information to the Claimant upon request; first copy free of charge. These reports shall be submitted within fourteen (14) days following each evaluation, examination, and/or treatment. The~~

010. DEFINITIONS.

The definitions set forth in Chapter 72, Idaho Code apply to these rules. In addition, the following terms have the meaning set forth below: (3-20-20)T

(Break in continuity of section.)

31. Medical Report Information. Means, and includes without limitation, all bills, chart notes, surgical records, testing results, treatment records, hospital records, prescriptions, and medication records relevant to or bearing upon a particular claim for injury or occupational disease. (3-20-20)T

011. ABBREVIATIONS.

The following abbreviations have the meaning set forth below: (3-20-20)T

(Break in continuity of section.)

11. JRP. Means the Commission’s Judicial Rules of Judicial Practice and Procedure. (- -)T

(Renumber the following subsections.)

404. SUBMISSION OF MEDICAL REPORTS AND REQUESTS FOR INFORMATION FROM PROVIDERS

This procedure applies to all open worker's compensation claims where medical services are provided and which have not been denied by the Payor. (3-20-20)T *

01. Medical Treatment Reports. In all cases where medical services are provided and which have not been denied by the Payor, the Provider shall submit written medical information generated in connection with each medical visit to the Payor within fourteen (14) days following each evaluation, examination or treatment. The Provider shall also submit the same medical information to the Claimant upon request, first copy free of charge. (- -)T

~~01. Procedure. In all cases in which a particular injury or occupational disease results in a worker's compensation Claim, the Provider shall submit written Medical Reports for each medical visit to the Payor. Payers and Providers may contract with one another to identify specific records that will be provided in support of billings. The Provider shall also submit the same written Medical Reports to the Claimant upon request. These reports shall be submitted within fourteen (14) days following each evaluation, examination, and/or treatment. The first copy of any such reports shall be provided to the Payor and the Claimant at no charge. If duplicate copies of reports already provided are requested by either the Payor or the Claimant, the Provider may charge the requesting party a reasonable charge to provide the additional reports. Whenever possible, billing~~



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August 10, 2020

To: Idaho Industrial Commission Advisory Committee
From: Starr Kelso, Kelso Law Office
Re: Charging for Medical Records and Reports

Dear Committee Members,

I respectfully request that the Advisory Committee consider undertaking a review of I.C. §72-432 (11) and IDAPA 17.01.01.010 and IDAPA 17.01.01.402 which pertain to providing claimants, attorneys,...“medical information relevant to or bearing upon a particular injury or occupational disease.” I am forwarding herewith the information that I previously provided to the Commission for consideration.

Until very recently, I have encountered no difficulty in obtaining medical records from providers promptly and without charge. Recently it has become fairly common for a provider's office to only provide medical records from the date of a specific accident without charge. Also, in one instance, the provider argued that it was only required to provide the chart notes that were prepared for each single visit and no other records, such as test results, without charge.

Full and complete medical records are necessary for a proper evaluation and resolution of workers' compensation claims. Given the complexity of medical care and the often times hyper technical analysis of surety retained expert witnesses, it is necessary to be able to obtain all of an injured worker's medical records because it may not be obvious which medical information is relevant to a particular injury or occupational disease.

Since a full and complete understanding of an injured worker's medical history is required, especially in claims in which the ISIF becomes involved, it is routine for my office to obtain a complete medical record from each of the injured worker's providers. Usually by the time that I am first contacted by an injured worker for assistance with a workers compensation claim, they have no discretionary income and many have no income at all. Thus, regardless of whether the claim is compensable, if the claim is going to be properly vetted for representation, let alone prepared for hearing, a substantial amount of money must be advanced on his/her behalf. While such financial outlay may be relatively insignificant in any one given case, when all cases are considered the total

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August 10, 2020

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amount of the advanced sums is substantial.

While it is not expected that anyone will shed a tear that a claimants attorney must advance money, that may never be recovered, in an effort to assist an injured worker, the point is that requiring such advance cost outlay will lead to injured workers with 'small' claims not being able to obtain legal assistance because of the 'risk' that the monetary advance will not be recouped.

I.C. §72-432 (11) provides for the medical information to be provided. The statute does not provide for a fee to be charged for providing the information. If the Legislature had intended that providers be compensated for providing the medical information, it would have been a simple matter for the statute to have so stated. Further it is submitted that the fact that the statute provides for one copy to be provided, tends to reflect that the first copy be free and a second or third copy by provided for a fee. Given the remedial nature of Idaho's Workman's Compensation Statutes and the liberal interpretation to be afforded its provisions, it is submitted that it would be appropriate for the Commission to clarify that an injured worker through his/her attorney is entitled to one free copy of all of his/her medical records.

Sincerely yours,



Starr Kelso

Attorney at Law

Hi Patti,

I am getting back to you regarding your May 18th email comments. I was working on a substantive brief that monopolized all of my time and apologize for it taking so long for me to get back to you on this matter. Perhaps one good thing about the delay is that I believe that I have been able to more succinctly state and discuss the issues surrounding medical records. There are three areas in question. They are:

1. The wording of the newly adopted IDAPA rule.
2. Providers only willing to provide specific limited medical records without charge.
3. The Providers requiring payment for medical records regardless if work comp.

1. The wording of the newly adopted IDAPA rule.

The relevant IDAPA rules adopted in 1995 included the words "which have not been denied by the Payor." This wording was separated from the "Procedure for Submitting Medical Reports" by the "Authority and Definitions" section. Also the "Procedure" section referred to "all cases" which "results in a workers' compensation claim." As a result, it didn't depend on whether or not an injured worker's claim had been accepted or denied in order for records to be provided without charge. (see below)

February 20, 1995

322. SUBMISSION OF MEDICAL REPORTS TO THE INDUSTRIAL COMMISSION.

01. **Authority and Definitions.** Pursuant to Sections 72-432, 75-508, 72-602 and 72-207, Idaho Code, the Industrial Commission of the State of Idaho promulgates this rule governing the procedure for submission of medical reports to the Industrial Commission. This procedure applies to all open workers' compensation claims where medical services are provided on or after the effective date and which have not been denied by the Payor. The following definitions shall be applicable to this Rule. (2-20-95)

- a. "Commission" means the Idaho Industrial Commission. (2-20-95)
- b. "Medical Only Claim" means the injured worker will not suffer a disability lasting more than five (5) calendar days as a result of a job-related injury or occupational disease. (2-20-95)
- c. "Rehabilitation Division" means the Rehabilitation Division of the Industrial Commission and includes its field offices. (2-20-95)
- d. "Time loss claim" means the injured worker will suffer, or has suffered, a disability that lasts more than five (5) calendar days as a result of a job-related injury or occupational disease, or the injured worker requires, or required, in-patient treatment as a result of such injury or disease. (2-20-95)
- e. "Impairment rated claim" means those claims in which the provider establishes an impairment rating for the injured worker. (2-20-95)
- f. "Medical report" includes without limitation, all bills, chart notes, surgical records, testing results, treatment records, hospital records, prescriptions, and medication records. (2-20-95)
- g. "Employer" is defined in Section 72-102(13)(a), Idaho Code and includes agents of employers such as attorneys, sureties, and adjusters. (2-20-95)
- h. "Provider" means anyone who provides medical services as defined in Section 72-102(26), Idaho Code. (2-20-95)
- i. "ISIF" means the Industrial Special Indemnity Fund, which is commonly referred to as the Second Injury Fund. (2-20-95)
- j. "Payor" means the entity that is responsible for making payment to the Provider for services rendered to treat an industrially injured patient and includes self-insured employers, sureties, adjusters and their agents. (2-20-95)
- k. "Claimant" means the patient who sought treatment for an industrial accident or occupational disease and includes agents such as attorneys. (2-20-95)

02. Procedure for Submitting Medical Reports.

(2-20-95)

n. In all cases in which a particular injury or occupational disease results in a workers' compensation
→ ~~*claim~~, the Provider shall submit written medical reports for each medical visit to the Payor. Payers and Providers may

The newly adopted Rules are reformatted so that the words "which have not been denied by the Payor" are immediately above the "Procedure" so that attention is easily drawn to the question of whether or not the claim has been denied. (see below)

March 20, 2020 Amended

17.01.01.010. DEFINITIONS.

31. Medical Report. Means and includes without limitation, all bills, chart notes, surgical records, testing results, treatment records, hospital records, prescriptions, and medication records. (3-20-20)T

404. SUBMISSION OF MEDICAL REPORTS FROM PROVIDERS

This procedure applies to all open worker's compensation claims where medical services are provided and *which have not been denied by the Payor.* (3-20-20)T

01. Procedure. In all cases in which a particular injury or occupational disease results in a worker's compensation Claim, the Provider shall submit written Medical Reports for each medical visit to the Payor.

REQUEST: It is requested that the words "which have not been denied by the Payor" be deleted from the Rule. The Rule, as set forth in the current location, appears to place an even larger burden on an injured worker whose claim has been denied.

2. Providers only willing to provide specific limited medical records without charge.

The most recent issue is reflected by the following attached documents:

A-1: Introductory letter seeking records accompanied by Release.

A-2: Provider Form Letter to "Attorneys requesting Medical Records free of Charge"

RE: Your misinterpretation of the IDAPA rules re: Free Medical Records.

A-3: March 25, 2020, letter from Kelso Law Office to Provider with attachments consisting of 5 pages.

A-4: Provider's Reply Letter (2 pages)

Re: Charges for medical records of Workers Compensation claims Patient—

As you can see, the Provider narrowly interprets the Rule. The Provider's position is that:

"the free 'medical reports' still only pertains to those documents created '...for each medical visit...'. It does not allow free reports...for other medical visits, for other records we may hold for the patient, or for any other medical report or record not prepared 'for each medical visit.'

Contrary to the Provider's above stated position that it is only required to provide "medical reports" specifically created "for each medical visit," it has always been the position of Kelso Law Office that I.C. §72-432(11) governs what medical records the Claimant is entitled to receive from Providers. In relevant part, it provides:

"(11) All medical information relevant to or bearing upon a particular injury or occupational disease shall be provided to the...claimant, the claimant's attorneys or authorized representatives..."

In other words, an injured worker, with little or no disposable income to pay for his/her own medical records in order to pursue a workers' compensation claim, needs one copy of all the records that each physician has in his/her possession pertaining to him/her. Further, given the complexity of many of today's workers' compensation claims, it is necessary that the injured worker be provided all of his/her records. It can't be left up to the person/entity providing medical records to determine what records they will, and will not, provide to the injured worker without charge.

In other words, if "all" medical information doesn't mean "all" medical records but rather means only records created "...for each medical visit..." there will be never ending disputes over whether a record, regardless of the fact that the record in the Provider's file is relevant to or bearing upon a particular injury, will be provided without charge. One example of where such a situation would occur is where an injured worker suffers an injury to his knee, receives treatment from orthopedic surgeon X and recovers but subsequently suffers a second injury to the same knee. This is what occurred in McGivney v. Aerocet/SIF and McGivney v. Quest Aircraft/Federal Insurance Company, IC Nos. 2011-011043 and 2014-019179. In McGivney, Quest Aircraft asserted that the cause of the injury was the 'first' accident which occurred at Aerocet and not the 'second' accident which occurred at Quest. If the medical records obtainable without charge in the 'second' claim are only the medical records generated for that specific accident (i.e. the Quest industrial injury) the records pertaining to the 'first' Aerocet accident would not be subject to being provided without charge, even though without question they fall within I.C. §72-432(11) as being medical records that are "relevant to or bearing upon a particular injury." The injured worker must be able to access must all these records without charge.

The Supreme Court has consistently held that the Workers' Compensation Act is to be construed liberally in favor of claimants. See Jones v. Morrison-Knudsen Co., 98 Idaho 458, 567 P.2d 3 (1977). Under a liberal interpretation, clearly all providers are, or should be, required to produce,

without charge pursuant to §72-432(11), "All medical information relevant to or bearing upon a particular injury" and 'all' means 'all,' not just limited medical information specifically related to a specific accident/injury. In other words, all medical information relevant to or bearing upon the claim needs to be provided without charge.

It must be remembered that in workers' compensation claims, an injured worker or his/her attorney will not necessarily always initially know what medical information is relevant to or bearing upon a particular injury. In workers' compensation claim cases, especially contested claims, it is absolutely critical that claimants and all other parties be able to easily access all of an injured worker's medical records. If Providers are left to withhold any medical information unless a fee is paid, or if the Providers don't think some of the records are "relevant to or bearing upon" the injured worker's condition, there will be inevitable instances where the injured worker will not be provided all of the relevant/bearing upon medical records.

3. The Providers requiring payment for medical records regardless if work comp.

This has become an increasingly common issue. I am forwarding herewith a representative sample of examples.

A-5: November 29, 2018, request and response (3 pages).

A-6: December 4, 2019 CIOX fee.

CIOX is a medical records depository used by more and more Providers to respond to medical records requests. CIOX sends a bill and follow-up bills until they threaten a lawsuit, every time documents are sought from a Provider. Even the December 16, 2019, threat of a lawsuit because of Unfair Debt Collection Practices does not deter it. (6 pages)

A-7: May 8, 2020, is a request to, and a response from, a local physical therapist that is well aware of injured workers receiving their medical records without charge.

A-8: A letter seeking medical record used by a south Idaho attorney that is 'in your face' informing Providers that there is no charge.

Finally, I have attached a draft of a "Policy Memorandum." If the Commission would agree to this draft or a similar one it would be of enormous help in gathering the relevant medical records.

Thank you for your consideration of this matter.
Very truly yours,



Starr Kelso
Attorney at Law



What will be spoken when
your name is brought up?

March 18, 2020

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JOAN KELSO
Office Manager

Worker's Compensation Claim -- Request for Medical Records

Dear Reader:

Our office represents _____ in her worker's compensation claim. For your records, I have enclosed a signed medical release form. This is an Idaho Industrial Commission release form and pursuant to 45 CFR § 164.512 (l) and I.C. § 72-432 (11), HIPAA does not apply to worker's compensation.

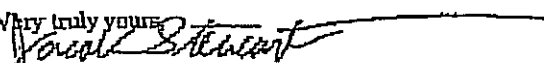
Please forward a true and correct copy of all medical records in your possession that pertain to _____.

Please include imaging reports, work status reports, Industrial Commission job-site evaluation forms, orders for treatment, correspondence to or from the surety and its attorney and any responses thereto, etc. By this request we are seeking a copy of all documents in your file and/or stored electronically that pertain to _____.

Under Idaho Code § 72-432 (11) and IDAPA 17.01.01.404.01 we are entitled to a copy of the medical records free of charge.

If you have any questions, please contact our office by telephone or fax at the below numbers. Thank you.

Very truly yours,


Jacob Stewart

CIWCS-Advanced

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A-1

MAR 19 2020

TO: Attorney requesting Medical Records free of charge

RE: Your misinterpretation of the IDAPA rules re: Free Medical Records

The IDAPA rules you cite do not permit you to obtain all Medical Records free of charge. The rules, as read carefully, only require providers to release, free of charge, medical reports they prepare at the time of a visit. We are happy to provide those reports free of charge, but as to any other medical records, we charge a flat fee of \$25.00. If you want medical records, including billing records, in addition to Medical Reports we prepare at the time of a visit, please sign the bottom of this letter agreeing to pay the \$25.00 invoice we send with those records. In the meantime, to comply with the rules, we are faxing you the Medical Reports prepared at the time of the Visit, as required.

With all due respect, we do not believe the Commission intended that providers provide their entire chart documentation free of charge. That can be a large burden on providers. Let's look at what the IDAPA rules really state:

1. "...Provider shall submit written medical reports (emphasis added) for each medical visit..." That clearly implies a chart note for one particular visit.
2. "The provider shall also submit the same written medical reports to the Claimant". Again, referring only to a chart note for a single visit.
3. "The first copy of any such reports shall be provided... at no charge." Again, referring only to the same report of the same single visit.

In summary, we will provide you, free of charge, all "written medical reports for each medical visit". But we see nothing in the rule which broadens that "free of charge" language to any document related to the patient beyond Medical reports of each visit.

If you want additional documents, sign below and email or fax this letter to us and we will promptly provide you with the other medical records you have requested.

Legal/Medical Records

Kelso Law will pay the \$25.00 fee for medical records other than written medical reports.

Agreed _____ (sign and date) _____



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JOAN KELSO
Office Manager

**What will be spoken when
your name is brought up?**

March 25, 2020

RE:

Your attached March 19th fax
Request for Medical Reports—Worker's Compensation Claim

Dear,

I am writing in response to your March 19th fax pertaining to our request for a copy of Mrs. [redacted] medical records. Before getting into the nitty gritty, I would like to say that I very much appreciate the fact that [redacted]; as a leader in the local medical community, is making an effort to be informed regarding the often times esoteric Idaho's workers' compensation laws and rules. Indeed, a highly respected physical therapist in the area has recently spoken to me very highly of the entire [redacted] team's commitment to providing reasonable medical care to injured workers. Likewise, at Kelso Law Office we strive to help injured workers receive the reasonable medical care that they need but, unfortunately, is often denied by sureties. In that regard, I am enclosing a copy of our brochure.

With regard to the issue of what information a Provider must provide, without charge, a definition, critical to the proper application of the Industrial Commission's IDAPA rules, was overlooked. I would very much prefer the opportunity to meet with you over a cup of coffee and provide you with a full statutory and case law explanation but, since it is doubtful that opportunity will arise until the Covid-19 situation is under control, I am hopeful that my below explanation will suffice for the time being. However, in the event my explanation doesn't resolve the issue, I request we arrange a telephone conversation.

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A-3

KELSO LAW OFFICE

March 25, 2020

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It appears to me that confusion surrounding what documentation must be provided, without a fee, may arise as a result of attempting to distinguish between "medical records" and "Medical Reports," when, in fact, there is no distinction.

I have enclosed a copy of IDAPA 17.01.01.404.01 which sets forth the Procedure for the Submission of Medical Reports from Providers. In order to discern the meaning of "written Medical Reports for each medical visit" in the context of IDAPA, one must refer to the IDAPA "Definitions" section (IDAPA 17.01.01.010). I have enclosed a copy of IDAPA 17.01.01.010.31 whereat the definition of "Medical Reports," is set forth, as follows:

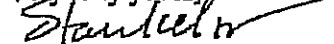
"31. **Medical Report.** Means and includes without limitation, all bills, chart notes, surgical records, testing results, treatment records, prescriptions, and medication records."

The definition of "Medical Report" is "without limitation." There is no distinction between "medical records" and "medical reports." The word "records" is included in the definition of "Medical Report." Therefore, an assertion that "medical reports for each medical visit" is implicitly limited to "medical reports they prepare at the time of a visit" and does not include any other medical records, including billings, is incorrect. Since by definition a "Medical Report," includes *without limitation, all bills, chart notes, surgical records, testing results, treatment records, prescriptions, and medication records,* it is incorrect to assert that an attorney acting on behalf of his client must pay a fee in order to receive "medical records, including billing records" in addition to the Medical Reports prepared at the time of a visit.

With this clarification, I am respectfully requesting that _____ forward me all "Medical Reports" pertaining to my client, _____ including, without limitation, all bills, chart notes, surgical records, testing results, treatment records, prescriptions, and medication records. In that regard, I am not asking for an additional copy of the medical reports that were previously sent with your fax dated March 19th (which I have attached hereto for your convenience so that you may readily identify the documents that were previously sent). Pursuant to Idaho Code Section 72-432 (11) and IDAPA 17.01.01.404.01 (see attached), as _____ attorney acting for and on her behalf, I am entitled to one copy of all of the above requested "Medical Reports," *without limitation*, free of charge.

Thank you for your cooperation and, again, if you would like to discuss this, or other workers' compensation matters, please let me know so we can arrange at date and time for such a discussion.

Very truly yours,



Starr Kelso

Attorney at Law

403. RULE GOVERNING COMPENSATION FOR DISABILITY DUE TO LOSS OF TEETH.

01. **Compensation for Disability.** A Claimant under the Worker's Compensation Law shall be entitled to compensation for permanent disability for the loss of each tooth other than wisdom teeth at the rate of one tenth of one percent (1%) of the whole man. The loss of wisdom teeth shall not constitute any permanent disability. Compensation hereunder shall be in addition to payments for medical services including dental appliances and bridgework necessitated by the injury and any income benefits during the period of Claimant's recovery to which the Claimant be entitled. (6-30-19)T

02. **Prima Facie Evidence.** This rule and schedule shall be prima facie evidence of the percentage of permanent disability to be attributed to the loss of teeth. (6-30-19)T

404. SUBMISSION OF MEDICAL REPORTS FROM PROVIDERS

This procedure applies to all open worker's compensation claims where medical services are provided and which have not been denied by the Payor. (6-30-19)T

01. **Procedure.** In all cases in which a particular injury or occupational disease results in a worker's compensation Claim, the Provider shall submit written **Medical Reports** for each medical visit to the Payor. Payors and Providers may contract with one another to identify specific records that will be provided in support of billings. The Provider shall also submit the same written **Medical Reports** to the Claimant upon request. These reports shall be submitted within fourteen (14) days following each evaluation, examination, and/or treatment. The first copy of any such reports shall be provided to the Payor and the Claimant at no charge. If duplicate copies of reports already provided are requested by either the Payor or the Claimant, the Provider may charge the requesting party a reasonable charge to provide the additional reports. Whenever possible, billing information shall be coded using CPT. In the case of Hospitals, reports shall include a Uniform Billing Form 04. In the case of physicians and other Providers supplying outpatient services, this reporting requirement shall include a CMS 1500 form. (6-30-19)T

a. If an injury or occupational disease results in a Claim, the Employer/Surety or Provider shall submit written reports to the Commission upon request. Such request may either be in writing or telephonic. If a Claim is referred to the Rehabilitation Division, Medical Reports shall be furnished by the Payor or Provider directly to the office that requests such reports. The Payor or Provider shall consider this an on-going request until notice is received that the reports are no longer required. (6-30-19)T

b. If the injury or occupational disease results in a time-loss Claim, the Payor shall submit copies of medical records containing information regarding the beginning and ending of disability, releases to work whether light duty or regular duty, impairment ratings, physical restrictions to the Commission. Other Medical Reports shall be submitted to the Commission only upon request. (6-30-19)T

c. ISIF shall receive all copies of Medical Reports, without charge, from either the Claimant or the Payor, depending upon who seeks to join it as a party to a worker's compensation Claim. (6-30-19)T

d. If the Commission requests Medical Reports from the Payor or Provider, the information shall be provided within a reasonable time period without charge. If information is received for which the Commission has no need, the information may be discarded or destroyed. (6-30-19)T

02. **Report Form and Content.** Upon approval of the Commission, Medical Reports may be submitted in electronic or other machine-readable form usable to all parties. (6-30-19)T

03. **Timely Response Requirement.** When the Commission requests a Medical Report from a Payor or Provider for use in monitoring a worker's compensation Claim, the Payor or Provider shall provide the requested information promptly. (6-30-19)T

04. **Forfeiture of Payment.** If a Provider fails to give records to the Payor or Claimant, the Payor or Claimant may petition the Commission for an order requiring the Provider to provide the requested information. The petition shall set forth the Petitioner's efforts to obtain the information, the responses to those efforts, and why the Petitioner believes that the Provider has the information. In response to the petition, the Commission may enter an

Definitions

IDAHO ADMINISTRATIVE CODE
Industrial Commission

IDAPA 17.01.01 – Administrative Rules
Under the Worker's Compensation Law

28. **Legacy Claim.** Means a FROI that was filed prior to the EDI implementation. (6-30-19)T
29. **Litigated Case.** Means a case in which a complaint has been filed. (6-30-19)T
30. **Medical Only Claim.** Means the injured worker will not suffer a disability lasting more than five (5) calendar days as a result of a job-related injury or occupational disease, nor be admitted to a hospital as an inpatient. (6-30-19)T
31. **Medical Report.** Means and includes without limitation, all bills, chart notes, surgical records, testing results, treatment records, hospital records, prescriptions, and medication records. (6-30-19)T
32. **Medicare Severity - Diagnosis Related Group.** Means a system adopted by CMS that groups hospital admissions based on diagnosis codes, surgical procedures, and patient demographics. (6-30-19)T
33. **Net Premiums Written.** Means the amount of gross direct premiums on policies written less returned premiums and premiums on policies not taken. Paid dividends shall not be deducted for the purposes of calculating net premiums written. (6-30-19)T
34. **Payor.** Means the entity that is responsible for making payment to a Provider for services rendered to treat an industrially injured patient and includes self-insured employers, suraties, adjusters, and their agents. (6-30-19)T
35. **Payroll.** Means the gross amount paid by an employer for salaries, wages, or commissions earned by its own direct employees, but not including any money paid to another entity or received from another entity for leased employees. (6-30-19)T
36. **Pharmacy.** Means a facility as defined in Section 54-1705(29), Idaho Code. (6-30-19)T
37. **Supplemental or Subsequent Report of Injury.** Means the filing of additional information with the Industrial Commission, regarding benefits paid or changes in the status or condition of an injured worker, of a Claim for benefits, as required by Sections 72-602(2), (3), and (4), Idaho Code; filed in accordance with these rules. (6-30-19)T
38. **Termination of Disability.** Means the date upon which the obligation of the Employer/Surety becomes certain as to duration and amount whether by settlement, decision, or periodic payments in the ordinary course of claims processing. If resolved by LSS, the termination of disability shall occur on the date the LSS is approved and an order approving is filed by the Industrial Commission. If resolved by decision, the termination of disability shall occur on the date the decision resolving all issues becomes final. (6-30-19)T
39. **Time Loss Claim.** Means the injured worker will suffer, or has suffered, a disability that lasts more than five (5) calendar days as a result of a job-related injury or occupational disease, or the injured worker requires, or required, in-patient treatment as a result of such injury or disease. (6-30-19)T
40. **Trading Partner.** Means an insurance carrier, self-insured employer, or Claims Administrator that has entered into a Trading Partner Agreement with the Industrial Commission. (6-30-19)T
41. **Trading Partner Agreement.** Means an agreement between the Industrial Commission and a Trading Partner that sets out the terms and conditions for the electronic reporting of information to the Commission. (6-30-19)T
- 011. ABBREVIATIONS.**
The following abbreviations shall have the meaning set forth below: (6-30-19)T
01. **APC.** Means Ambulatory Payment Classification. (6-30-19)T
02. **ASC.** Means Ambulatory Surgery Center. (6-30-19)T

TITLE 72
WORKER'S COMPENSATION AND RELATED LAWS — INDUSTRIAL
COMMISSION
CHAPTER 4
BENEFITS

72-432.

(11) All medical information relevant to or bearing upon a particular injury or occupational disease shall be provided to the employer, surety, manager of the industrial special indemnity fund, or their attorneys or authorized representatives, the claimant, the claimant's attorneys or authorized representatives, or the commission without liability on the part of the physician, hospital or other provider of medical services and information developed in connection with treatment or examination for an injury or disease for which compensation is sought shall not be privileged communication. When a physician or hospital willfully fails to make a report required under this section, after written notice by the commission that such report is due, the commission may order forfeiture of all or part of payments due for services rendered in connection with the particular case. An attorney representing the employer, surety, claimant or industrial special indemnity fund shall have the right to confer with any health care provider without the presence of the opposing attorney, representative or party, except for a health care provider who is retained only as an expert witness.

(emphasis added)

2020

To: Starr Kelso , Kelso Law

From:

Re: Charges for medical records of Workers Compensation claims
Patient -

Dear Starr:

I received your letter of March 25, 2020, disputing our contention that we are entitled to charge for medical records that are not "written medical reports for each medical visit". We have both spent far more in time than the \$25.00 we charge for records we contend are not free. I have decided to be the bigger person and send you all the patient's medical records, at no charge, rather than argue this point further. But please know that your arbitrary position does not require us to expedite your further requests, or to provide courtesy medical opinions as so many attorneys eventually ask for.

To put this matter to rest, you are still incorrect in asking for all medical records at no charge. Although your definition does broaden somewhat the free records to which you are entitled, the free "medical reports" (broadened as defined to include "...bills, chart notes, surgical records, testing results, treatment records, hospital records, prescriptions, and medication records...") still only pertains to those documents created "... *for each medical visit*...". It does not allow free reports (as broadened) for other medical visits, for other records we may hold for the patient, or for any other medical report or record not prepared "for each medical visit". In support of our position that the free Medical Reports (as broadened by definition) apply only to documents prepared for EACH MEDICAL VISIT, paragraph 404 (01) provides that the required free reports "...shall be

A-4

submitted within 14 days following each evaluation, examination and/or treatment".

While the various statutory provisions can be argued as ambiguous, the very small fee we charge for ALL RECORDS (\$25.00) is simply to cover the overhead costs associated with providing this service, and in a world where people and companies should seek to get along to provide service to a patient, it seems rather petty to refuse a most reasonable charge to compensate for a service you are being provided. As I may have pointed out in earlier correspondence, not one other attorney has refused our charge, because they understand the value to good will, compensation for a benefit received, and fair play.

I will provide the missing records as soon as I can catch up from a period of furlough due to the Coronavirus during which requests could not be answered.

Sincerely,

KELSO LAW OFFICE

Truth, Justice, and the American Way
Unfortunately, They Are No Longer Necessarily The Same

STARR KELSO, Attorney

★
JACOB STEWART
Certified Workers' Compensation Specialist
Advanced Level

★
L. W. Johnson
Certified Workers' Compensation Specialist
Advanced Level
Lewiston Office

November 29, 2018

Dear Reader:


Our office represents _____ in his worker's compensation claim. For your records, I have enclosed a signed medical release form. This is an Idaho Industrial Commission release form and pursuant to 45 CFR § 164.512 (l) and I.C. § 72-432 (11), HIPAA does not apply to worker's compensation.

The last report that we have from your office is dated April 18, 2017. Please forward a true and correct copy of all medical records in your possession that pertain to _____ from April 19, 2017, through the present. By this request we are seeking a copy of all documents in your file and/or stored electronically that pertain to _____ for the requested time period.

This request is for a worker's compensation claim. Therefore, under Idaho Code § 72-432 (11) and IDAPA 17.02.04.322.02 we are entitled to a copy of the medical records free of charge. Under IDAPA 17.02.04.322.01(f), medical records "includes without limitation, all bills, chart notes, surgical records, testing results, treatment records, hospital records, prescriptions, and medication records."

If you have any questions, please contact our office by telephone or fax at the below numbers.
Thank you.

Very truly yours,


Jacob Stewart

CIWCS-Advanced

COEUR D' ALENE OFFICE ✓

Mail: P.O. Box 1312
Coeur d'Alene, Id 83816
Tel: 208-765-3260
Fax: 208-664-6261

LEWISTON OFFICE _____

Mail: 1341 7th Avenue
Lewiston, Id 83501
Tel: 208-743-1118
Fax: 208-743-1263

A-5

12/3/18

Kelso Law Office
P.O. Box 1312
Coeur d'Alene, ID 83816

RE: Request for neuropsychological test records for April 19, 2018 through
present

Recently our office received a request for a release of records from the above named patient's neuropsychological evaluation from April 19, 2018 through the present stating records should be provided free of charge since this relates to a workers compensation claim. Records for the dates requested were not paid for through workers compensation/State Insurance Fund. Our office was told to process this evaluation through his regular health insurance not through the State Insurance Fund and this was clarified with the patient prior to evaluation. Consequently, a record fee of \$75 is required to be paid prior to sending the requested records.

KELSO LAW OFFICE

"BECAUSE EVERY INJURED WORKER MATTERS"

STARR KELSO, Attorney

+

JACOB STEWART

Certified Workers' Compensation Specialist
Advanced Level

+

L. W. Johnson

Certified Workers' Compensation Specialist
Advanced Level
Lewiston Office

December 11, 2018

Thank you for your letter of December 3rd. I am forwarding herewith, without hesitation or dispute, payment in full of the requested \$75 record fee.

I do, however, wish to emphasize that our request for records was made in good faith under, and fully compliant with, Idaho's Worker's Compensation Act. The fact that your fee was paid by personal health insurance is not determinative of whether or not we are entitled to a copy of his medical records without charge. In particular, Idaho Code §72-432(11) provides in relevant part:

"(11) All medical *information relevant to or bearing upon a particular injury or occupational disease shall be provided to...the claimant's attorneys...*"
(emphasis added)

Also, in conjunction with Idaho Code §72-432(11), Idaho Administrative Code 17.02.04.322.02 provides in relevant part:

"...The first copy of any such reports shall be provided to the Payor and the Claimant at no charge."

I very much appreciate your comments regarding, and requiring compliance with, ethical standards. For the time being, the clinical report, summary of test scores, and clinical notes, will be sufficient. Should it become necessary in the future for us to obtain a copy of the "test protocols and item responses," I will be glad to obtain, and provide you with, a "special order of protection" in order to satisfy your concerns.

Very truly yours,


Starr Kelso

COEUR D' ALENE OFFICE ✓

Mail: P.O. Box 1312
Coeur d'Alene, Id 83816
Tel: 208-765-3260
Fax: 208-664-6261

LEWISTON OFFICE

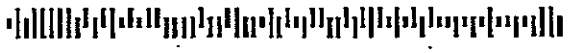
Mail: 1341 7th Avenue
Lewiston, Id 83501
Tel: 208-743-1118
Fax: 208-743-1263

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KELSO LAW OFFICE
PO BOX 1312
COEUR D ALENE, ID 83816-1312

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CIOX
HEALTH

SEND CORRESPONDENCE ONLY TO:
P.O. Box 1812
Alpharetta GA 30023-1812

Notice Date	Customer No.	Page
12/04/19	1944697	1 of 2

ACCT: 1944697

CT: ATTY

KELSO LAW OFFICE
PO BOX 1312
COEUR D ALENE, ID 83816-1312

REMIT TO:
CIOX Health
PO BOX 409740
ATLANTA GA 30384
Federal Tax ID: 58-2659941

DELINQUENT NOTICE

AGED BALANCES				Total Due USD 73.58
0-30 Days	31-60 Days	61-90 Days	Over 90 Days	
0.00	0.00	0.00	73.58	

Despite our repeated attempts to collect your seriously past-due debt, you have not resolved your delinquency. This is your final opportunity to resolve this matter on a voluntary basis. If we do not receive payment for past due invoices within 15 days, we may forward your account to a collection agency or take legal action.



CONTINUED ON NEXT PAGE



A-6

SEND CORRESPONDENCE ONLY TO:
P.O. Box 1812
Alpharetta GA 30023-1812

(Continued)

Date	12/04/19
Customer No.	1944697

** after invoice indicates a prebill invoice. Records are being held until payment is received.

INV NBR	DESC/PATIENT NAME AND ID, FACILITY	INV DATE	INV AMT	BAL DUE	PAID	AMT (if different)
0272913914		05/01/19	2.00	2.00	<input type="checkbox"/>	
0273054038		05/02/19	2.00	2.00	<input type="checkbox"/>	
0274656883		05/18/19	2.00	2.00	<input type="checkbox"/>	
0275618126		05/30/19	65.58	65.58	<input type="checkbox"/>	
0277350531		06/18/19	2.00	2.00	<input type="checkbox"/>	

PLEASE RETURN ALL PAGES WITH YOUR PAYMENT.	TOTAL AMOUNT 73.58 TOTAL REMITTANCE USD <input style="width: 100px; height: 20px;" type="text"/>
--	---

Fast. Secure. Free.

PayCioxHealth is a free, online payment processing service that provides you a fast and convenient way to pay your Ciox Health invoice. You can now pay your Ciox Health invoice by visiting <https://paycioxhealth.com/pay/> which provides options to pay by ECheck or your major credit card.

For questions, please contact us at 800-367-1500 or collections@cioxhealth.com



What will be spoken when
your name is brought up?

STARR KELSO
Attorney at Law

JACOB STEWART
Certified Workers' Compensation
Specialist
Advanced Level

JOAN KELSO
Office Manager

November 19, 2019

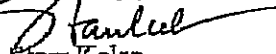
Ciox Health
Correspondence
P.O. Box 1812
Alpharetta, GA 30023-1812

~~Ciox Health
Billing
P.O. Box 409740
Atlanta, GA 30384~~

Dear Reader:

We received the above-referenced "Delinquent Notice" from you for medical billing records requested from [redacted]. For your convenience, a copy of the invoice is included herewith. The records requested are part of [redacted] worker's compensation claims; therefore, pursuant to IC § 72-432 (11) and IDAPA 17.01.01.404.01, injured workers, e.g. claimants, and their attorneys are entitled to a copy of medical records free of charge. Consequently, your demand for a fee for providing the records is improper.

Very truly yours,


Starr Kelso
Attorney at Law

HAYDEN OFFICE
660 W Capstone Court
Suite B
P.O. Box 2456
Hayden, ID 83835
Tel: 208-719-0780
Fax: 208-719-0782

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PO BOX 2456
HAYDEN, ID 83835-2456

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CIOX
HEALTH

SEND CORRESPONDENCE ONLY TO:
P.O. Box 1812
Alpharetta GA 30023-1812

Notice Date	Customer No.	Page
11/08/19	2245697	1 of 2

ACCT: 2245697

CT: ATTY

KELSO LAW OFFICE
PO BOX 2456
HAYDEN, ID 83835-2456

REMIT TO:
CIOX Health
PO BOX 409740
ATLANTA GA 30384
Federal Tax ID: 58-2659941

DELINQUENT NOTICE

AGED BALANCES				Total Due USD 38.46
0-30 Days	31-60 Days	61-90 Days	Over 90 Days	
0.00	38.46	0.00	0.00	

Despite our repeated attempts to collect your seriously past-due debt, you have not resolved your delinquency. This is your final opportunity to resolve this matter on a voluntary basis. If we do not receive payment for past due invoices within 15 days, we may forward your account to a collection agency or take legal action.



CONTINUED ON NEXT PAGE

SEND CORRESPONDENCE ONLY TO: (Continued)

P.O. Box 1812

Alpharetta GA 30023-1812

** after Invoice indicates a prebill invoice. Records are being held until payment is received.

Date	11/08/19
Customer No.	2245697

INV NBR	DESC/PATIENT NAME AND ID, FACILITY	INV DATE	INV AMT	BAL DUE	PAID	AMT (if different)
0283578709		08/27/19	38.46	38.46		

PLEASE RETURN ALL PAGES WITH YOUR PAYMENT.	TOTAL AMOUNT	38.46
	TOTAL REMITTANCE USD	<i>Read Letter!!!</i>

Fast. Secure. Free.

PayCioxHealth is a free, online payment processing service that provides you a fast and convenient way to pay your Ciox Health Invoice. You can now pay your Ciox Health Invoice by visiting <https://paycioxhealth.com/pay/> which provides options to pay by ECheck or your major credit card.

For questions, please contact us at 800-367-1500 or collections@cioxhealth.com



STARR KELSO
Attorney at Law

JACOB STEWART
Certified Workers' Compensation
Specialist
Advanced Level

JOAN KELSO
Office Manager

What will be spoken when
your name is brought up?

December 16, 2019

CIOX HEALTH
P.O. Box 1812
Alpharetta, GA 30023-1812

RE: **UNFAIR DEBT COLLECTION PRACTICES**
RE: **CUSTOMER NO. 1944697 (Kelso Law Office)**

I am contacting you regarding your repeated contacts attempting to collect amounts of money which you allege are due from us (Customer No. 1944697) for medical records that have been provided to us on behalf of injured workers that we represent. Pursuant to **Idaho Code §72-432(11)** and **IDAPA 17.02.04.322.02**, we are entitled to seek and obtain, *without charge*, medical records pertaining to our injured worker clients from their health care providers. The fact that you are the contractual representative of health care providers designated to respond to requests for medical records does not change the fact that we are entitled, by Idaho statutes and regulations, to obtain a copy of the records *without charge*. The **FAIR DEBT COLLECTION PRACTICES ACT**, as amended by Public Law 111-203, title X, 124 Stat. 2092 (2010) provides in relevant part, that:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt...the following conduct is a violation of this section: ...

§807. False or misleading representations

(2) The false representation of—

(A) the character, amount or legal status of any debt, or

(5) The threat to take any action that cannot legally be taken...

Your repeated contacts demanding payment and threatening to send us (Customer No. 1944697) to a collection agency or take legal action constitute unfair debt collection practices under the **FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)**.

You are hereby informed that continued demands for payment and threats to send us (Customer No. 1944697) to a collection agency or take legal action will be met with the filing of a civil lawsuit seeking monetary damages and attorney fees.

Sincerely yours,

Starr Kelso

President, Kelso Law Office

HAYDEN OFFICE
660 W Capstone Court
Suite B
P.O. Box 2456
Hayden, ID 83835
Tel: 208-719-0780
Fax: 208-719-0782



What will be spoken when
your name is brought up?

STARR KELSO
Attorney at Law

JACOB STEWART
Certified Workers' Compensation
Specialist
Advanced Level

JOAN KELSO
Office Manager

May 8, 2020

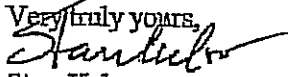
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Dear Reader,

We represent _____ regarding his worker's compensation claim.
to you on or about 3/24/20.

Please forward us (by fax 208-719-0782 or email kelsolawoffice@gmail.com) a true and correct copy of your entire file (chart notes and letters to/from any person or entity). I am forwarding herewith _____'s medical release authorizing you to provide us with this information.

Very truly yours,


Starr Kelso
Attorney at Law

HAYDEN OFFICE
660 W Capstone Court
Suite B
P.O. Box 2456
Hayden, ID 83835
Tel: 208-719-0780
Fax: 208-719-0782

A-7

May 12, 2020

TO: Starr Kelso

FAX: 208-719-0782

We have received your request to furnish you with information on the above named patient. We require a pre-payment of \$45.00 for copying fees.

The following checked item/items are applicable to your request, please furnish the required items, and we will be happy to forward a copy of the requested medical records.

- Signed patient release of information form
- We are unable to locate any medical records for the above named person
- More information is needed before the record can be located
- Patient signature does not match
- No records for dates of service requested

PLEASE FURNISH ADDITIONAL INFORMATION:

- Verification of name spelling
- Date of birth
- Date of last office visit
- Another name patient may have been seen under
- Date of records requested from _____ to _____

Copying fees are \$45.00 (prepayment required)

Sincerely,

Medical Records Department.

DATE:

TO:

FAX NO:

FROM:

RE:

MESSAGE:

Please see attached.

Thank you.

WORKER'S COMPENSATION MEDICAL RECORDS REQUEST

Pursuant to Industrial Commission Rule 17.02.04322.02(a)
effective August 15, 1994, you are required to provide medical
records to claimant at NO CHARGE.

PAGES TRANSMITTED: 4 (INCLUDING THIS COVER SHEET)
IF THERE IS A PROBLEM WITH TRANSMISSION PLEASE CALL:

Dear Medical Records Clerk:

Our firm is representing the claimant, _____ in connection with a worker's compensation claim. I am enclosing a Medical Records Release form which _____ has signed and request that you supply our office with the following:

- a. All office notes and chart notes prepared by you or your office;
- b. All correspondence and reports prepared by you or your office;
- c. All correspondence received from any source (other health care providers, insurance carriers, attorneys, et cetera);
- d. All test reports received from any source; and
- e. All work releases / work status reports.

I would ask that you provide us with copies of these records rather than a narrative report. If a narrative report is needed, I will make a specific request for the same.

Pursuant to Industrial Commission Rule 17.02.04322.02(a) effective August 15, 1994, you are required to provide medical records to claimant at NO CHARGE. This request is made on behalf of the claimant; a copy of claimant's request is enclosed. If you have any questions or there are any problems, please feel free to contact our office.