



August 17, 2021

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

RE: PROPOSED CHANGES TO IDAPA 17.01.01 – MEDICAL REPORTS

Thank you for your work on the revisions to the proposed rule changes to IDAPA 17.01.01.

On behalf of the members of the Idaho Hospital Association and the Idaho Medical Association, we would like to address this proposed change at a high level before getting into the details. As you know, hospitals and providers have their hands full as we enter a fourth wave of COVID-19 cases and hospitalizations. Staffing was an issue prior to the pandemic, and COVID-19 has elevated a difficult staffing situation almost to a breaking point – not just in Idaho, but across the country. National Guard troops were deployed to help with screening at hospitals and to provide COVID testing and vaccinations because of limited staff. Retirees had licenses renewed and have come back to assist with the overwhelming caseload. The costs of temporarily hiring a traveling nurse from a staffing agency have gone up 300%. At a very high level, we would suggest that now is not the time to add more requirements and costs to providers.

Also, at a high level, the Industrial Commission's subcommittee heard repeated complaints that a certain third-party vendor was the problem in obtaining timely medical records, and when they were provided, it was at an additional cost. All of the hospitals and health systems that used that third-party vendor have worked with them to provide information in a timelier manner. From the hospitals' perspective, this process is improving. We would suggest delaying this proposed rule while the third-party vendor continues to implement the guidance from providers on how to appropriately handle requests for medical records in workers' comp cases.

On a more specific level, we believe the requirement in 404.01 to provide medical information "within fourteen (14) days following each evaluation, examination or treatment" is still too burdensome – especially in light of current staffing limitations. At a minimum, it should mirror the 30-day timeframe mentioned in 4040.04.c.

We also continue to have concerns that this proposed rule appears to require not only medical records associated with the industrially related treatment, but also supply, free of charge, any prior medical records that arguably may have some bearing on the claim.

It is general practice that all past medicals records will be supplied in response to a request, subject to any specific limitations based upon date or a type of record - like labs. The provider simply does not have the time to determine what medical records are "relevant to or bearing upon" the industrial injury. Likewise, the requester is generally not going to know what would be relevant.

Sending all prior medical records is likely required under the statute and not a particular concern in itself, but to require the provider to supply these free of charge to claimants or their counsel and the Industrial Commission seems onerous and not contemplated by Idaho Code 72-432(11):

"(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."

Again, we are very appreciative of the revisions made to date – especially in the definition of “Medical Information” – but would respectfully ask the Commission to delay any changes to IDAPA 17.01.01 until third party vendors have made their adjustments and Idaho makes it through the pandemic.

Sincerely,



Susie Keller, Chief Executive Officer
Idaho Medical Association



Brian Whitlock, President & CEO
Idaho Hospital Association