PROPOSED

MEDICAL TREATMENT GUIDELINES EDUCATION PLAN

December 3, 2007

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The benefits that flow from the implementation of medical treatment guidelines will be more fully realized if all of the key players in the workers' compensation system obtain adequate training on how to use the treatment guidelines and have sufficient incentive to continue applying them. Thus, quality education and training are necessary to successfully integrate the guidelines into the medical delivery system. The Insurance Department (the "Department") recommends to the Workers' Compensation Board (the "Board") that the following three groups of people attend specialized educational programs with respect to the medical treatment guidelines and receive financial and non-financial incentives to apply the treatment guidelines:

(1) Board personnel directly involved in the adjudication of issues concerning medical necessity and medical billing. Board personnel should include, at least, Commissioners, judges, conciliators, and Board panel attorneys. In addition to Board personnel, this group should include arbitrators authorized by the Workers' Compensation Law (collectively "Adjudicators");

(2) Health care providers authorized by the Board, including physicians, chiropractors, podiatrists and psychologists ("Health Care Providers"); and

(3) Employees of or those engaged by insurance carriers, the State Insurance Fund, and self-insureds (collectively "Insurers") that perform tasks relating to utilization review and medical authorization, including claims adjusters, medical-only claims adjusters, medical bill reviewers, medical authorization reviewers, nurses and physicians as reviewers or independent medical examiners (collectively "Medical Reviewers").

This report is organized into three sections. The first section discusses the basic components of the proposed educational programs. The second section identifies potential organizations or entities that could be instrumental in assisting the Board in providing the required instruction for the education programs. The third section provides specific recommendations concerning the methods by which each of the three groups (Adjudicators, Health Care Providers, and Medical Reviewers) should be encouraged or required to participate in the educational programs and use of the treatment guidelines.[1]

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[1] In addition to these three groups, guideline educational programs should be made available to workers' compensation attorneys and licensed representatives. They should be permitted to attend educational programs with Health Care Providers or Medical Reviewers and receive continuing legal education credits.

I. The Educational Plan's Goal Driven Content

The goal of this education plan is to equip attendees with an understanding of:

- The core concepts behind evidence based medicine and medical necessity;
- How the New York treatment guidelines were developed and the medical professionals involved;
- How to interpret and use the treatment guidelines;
- How medical treatment guidelines will provide quality medical care for injured worker-patients;
- How to easily obtain pertinent medical literature and to evaluate the strengths of medical evidence;
- The potential therapeutic benefits of returning the injured worker-patient to work;
- The statutory and regulatory provisions concerning the reporting responsibilities of Health Care Providers and Insurers, paying particular attention to the importance of Board medical reporting forms, which will include questions concerning the application of the treatment guidelines, and other forms relating to medical issues;
- The medical treatment pre-authorization process and the appropriate and inappropriate basis for denial of a request for pre-authorization; and
- The medical treatment authorization dispute resolution process and the impact of treatment guidelines on that process.

The courses must provide, at a minimum, the appropriate level of education and training on these subjects, and present the treatment guidelines in a balanced and impartial fashion. The educational programs should provide attendees with a clinical overview of the treatment guidelines through the use of a lecture and case study format. The case study component of the programs will ask Health Care Providers and Medical Reviewers to apply New York's medical treatment guidelines to a particular injury or injuries. Multiple case studies should be used to cover different parts of the body (*e.g.*, case studies covering knee, shoulder, and lower-back injuries). An examination of other states' treatment guidelines education indicates that the use of case studies is considered an effective teaching tool.

It is recommended that Health Care Providers and Medical Reviewers attend certain educational programs together.[2] This will allow Health Care Providers to hear first-hand the issues facing the Medical Reviewers and vice-versa. When the issues facing the two groups are mutually discussed and understood, the parties should be able to cooperatively resolve potential areas of conflict going forward. The Board should tailor the educational content to the particular needs of the particular group or groups attending the programs.

II. Potential Vendors to Provide Instruction on Medical Issues

States, including California and Florida, have implemented treatment guidelines and have found that using multiple vendors to provide educational courses on workers' compensation has led to confusion, mixed educational messages, and a less than optimal implementation of their treatment guidelines. The confusion can be attributed to any number of factors, including a genuine lack of understanding of the issues or the particular perspective of an educator. To avoid the problems associated with multiple providers creating and delivering educational content, the Board should hire a medical director to direct and control the educational programs from such providers. Board oversight, through a medical director, would ensure the content of the educational programs is internally consistent. Board oversight should also ensure that the educational content is consistent with the Board's rules and regulations concerning the treatment guidelines, reporting requirements, billing procedures, dispute resolution, and educational certification requirements. However, the Board should seek the assistance of outside vendor(s) with experience in medical issues and treatment guidelines to develop the content of the medical elements of the curriculum. The Board should also seek to partner

[2] It makes sense for the Board to provide educational programs to the Adjudicators separately from the other two groups as the educational content should vary significantly, with a heavier focus being placed on the law and basic medical training. In addition, mock disputes over medical necessity issues (an educational format that is recommended for Adjudicators) would not easily fit with the other two groups' educational requirements. However, there must be sufficient overlap in these programs with those delivered to Health Care Providers and Medical Reviewers so that Adjudicators understand the important medical principles underlying the treatment guidelines and the typical situations to which the guidelines would apply.

with organization(s) to effectively deliver the instruction on the medical aspects of the education as this requires a high level of medical skill and knowledge. Some possible organizations that could assist the Board in delivering the medical education include: (1) professional associations of physicians that have experience in providing continuing medical education to their members; (2) commercial developers of guidelines; and (3) other states' governmental agencies that already provide education related to their own workers' compensation treatment.

In any case, given the size and complexity of the education process, the Board should utilize the RFP process to identify an appropriate vendor.

III. Methods to Encourage Adjudicators, Health Care Providers, and Medical Reviewers to Participate in Educational Programs and Use the Treatment Guidelines Appropriately

For successful implementation of treatment guidelines, Adjudicators, Health Care Providers, and Medical Reviewers should attend Board directed educational programs. The educational effort put forth by the Board should aggressively and proactively work towards reaching as many members of the three groups as possible. Once education has been provided to members of the three groups, the Board should institute a means of measuring compliance with the treatment guidelines.

A. Adjudicators

Adjudicators are charged with resolving disputes between Health Care Providers and Medical Reviewers over the medical necessity of treatments or diagnostic tests and payment of medical bills. The Board must provide Adjudicators with an understanding of the treatment guidelines in order for them to decide these types of disputes. Adjudicators will need to know which clinical areas are covered by the treatment guidelines and which are not. As to the areas covered by the treatment guidelines, Adjudicators must be sufficiently educated to be in a position to determine whether a proposed treatment plan or diagnostic service is or is not recommended or whether a claimant should be allowed a variance from the guidelines. These types of medical treatment determinations require training in medical terminology, basic medicine, the evidence based approach to treatment, and the legal ramifications of the treatment

guidelines. Quality education on the treatment guidelines will lend predictability and objectivity to the system at the adjudication level.

As civil service employees of the Board, certain Adjudicators are already required to attend courses organized and conducted by the Board.[3] Workers' Compensation judges receive monthly instruction from the Senior Law Judge in the district where they work and once a year a comprehensive adjudication seminar is held for all judges. Discussions with Board personnel suggest that an expansion of the existing educational programs can be readily accomplished once the educational content for treatment guidelines is developed and a faculty is selected. The Board should require the rest of the Adjudicators to attend these courses also. While an outside organization should be retained by the Board to provide the medical education respecting the treatment guidelines, the Board is well equipped to provide the training relative to the legal implications of the guidelines.

To gauge the effectiveness of the educational programs and to ensure that Adjudicators are actively seeking to appropriately apply the treatment guidelines, Adjudicators should be required to include medical treatment guideline findings in their decisions. The fact that Adjudicators will use the treatment guidelines in rendering decisions will provide an additional incentive to the other two key groups, Health Care Providers and Medical Reviews, to attend the educational programs and use the guidelines in practice.

B. Health Care Providers

The Department recommends that the Board establish an accreditation program for Health Care Providers. The proposed accreditation program is designed to provide incentives for Health Care Providers to use and apply the treatment guidelines. The components of the accreditation program are:

- For the first two years, the educational programs will be offered at no cost to current Health Care Providers;

[3] Arbitrators, pursuant to Sections 13-g, 13-k, 13-l, and 13-m of the Workers' Compensation Law, are not civil servants and are not currently required to attend educational programs offered by the Board. The Board should seek to require arbitrators to attend the same guideline courses as the other Adjudicators.

- Health Care Providers, who complete the approved guidelines educational programs, including successfully analyzing the included hypothetical cases, will be eligible for continuing education credits for their respective professions[4];
- Health Care Providers who complete the approved educational program and receive CME credits will be accredited by the Board under this program;
- Board medical Forms C-4.1, C-4.2 and C-4 Auth. should contain precise questions concerning specific application of the treatment guidelines;
- Accredited Health Care Providers who complete applicable Board medical forms (such as the C- 4) in accordance with Board established criteria, will be entitled to receive increased compensation respecting the medical services that are billed or requested on the forms;
- To remain accredited, the Health Care Providers shall maintain a level of compliance with the treatment guidelines as determined by Board adopted criteria. One possible criterion could be a Health Care Provider's track record respecting requests for pre-authorization of medical treatments or diagnostic tests that are disputed by the Insurer and ultimately decided by a Workers' Compensation judge. Another approach could be to evaluate data showing use of various treatments or tests compared to the recommendations of the treatment guidelines as to timing, frequency or duration.

The accreditation program should result in an expedited delivery of medical services, lower frictional costs and reduced administrative costs for insurers. In determining the amount of increased compensation, the Board should take into account the amount of additional compensation needed to provide a sufficient incentive for Health Care Providers to attend educational programs, accurately complete and transmit essential Board forms, and invest the time in working to apply correctly the treatment guidelines on a case-by-case basis. If the increased compensation is determined as a percentage of the medical cost, then high cost procedures such as surgeries may need to have an upper limit or have the increase determined by different methodology. The size of the incentive needs to be balanced against the benefit and the increased cost to the system.

[4] Offering the courses at no charge and with continuing education credits is an additional incentive to encourage Health Care Providers to attend.

C. Medical Reviewers

To ensure that Medical Reviewers attend the educational programs and successfully demonstrate their ability to utilize the treatment guidelines, Insurers should be required to annually certify to the Department and/or the Board that all Medical Reviewers have attended and passed the required educational programs on the treatment guidelines. Insurers should maintain records supporting their annual certifications and make them available for inspection by the Department or the Board.[5]

The Department and the Board could also encourage Insurers to institute voluntary programs that reinforce the use of the treatment guidelines. For example, Insurers could institute an expedited bill payment program for those Health Care Providers that have a track record of successfully using the treatment guidelines. An expedited bill payment program would add a further incentive for Health Care Providers to use the treatment guidelines but would have to be balanced by consideration of the associated administrative costs for creating and implementing such a system by the Insurers.

The Department and the Board should, based on regulation or statute, assess penalties against Insurers for failing to certify that their Medical Reviewers attended and successfully completed the educational programs.

[5] The State Insurance Fund, as a quasi-state agency, should willingly adhere to the same standards applied to the private sector.