NEVADA ORTHOPAEDIC SOCIETY

January 12, 2016

Mr. Steve George
Department of Business and Industry
Administrator, Division of Industrial Relations
1301 North Green Valley Parkway
Henderson, NV 89074

Attention:
Chuck Verre, DIR Chief Administrative Officer
Katherine Godwin, Supervisor, Medical Unit

Dear Mr. George,

The Nevada Orthopaedic Society very much appreciates the opportunity we had on January 8 to present our concerns about the reimbursement level for independent medical evaluations (IMEs) in the proposed Workers' Compensation Medical Fee Schedule.

As we noted at the meeting, the $750 proposed fee represents a 40 – 60 percent decrease from the rate we believe to be the "industry standard." When conducted appropriately, IMEs consume significant amounts of time, which necessarily must be reflected in the fee schedule. Time is required in both in the clinic and afterward, when conducting a thorough review of the accompanying medical records. On days when IMEs are scheduled, many physicians will schedule fewer patients overall, providing less care to other patients in order to allocate appropriate time to conduct IMEs.

The documentation that accompanies IMEs can be hundreds of pages long. Frequently these IMEs are "court ordered" or "remanded" by a state adjudicator. Requesting adjusters, nurses, or attorneys frequently submit specific questions that they need answered involving causation and liability.

Orthopaedic surgeons provide significant amounts and levels of care to patients in the workers' compensation system. Our driving goal is to help these patients regain their health and return to work. Performing high quality workers' compensation IMEs requires specialized knowledge of the nuances of the system and its complicated documentation and legal requirements. It also involves a significant commitment of clinic time that few physicians are willing to make.

Importantly, NVOS wants to prevent the likelihood that injured workers, the carriers and plaintiffs' attorneys will lose access to physicians who are skilled in conducting such evaluations and performing valuable and reliable court-ordered services such as determining liability and causation. Lack of access to specialty care will lead to delays in recovery, possible increase in wage loss claims, and delays in returning the injured worker to work.

Currently, physicians negotiate fees that reflect agreed-upon services necessary to produce a comprehensive IME; this usually includes a base fee for the IME, combined with hourly charges for the time needed for reviewing the records, video tapes/CDs, and other collateral material.

We understand DIR's stated purpose to insert some predictability into this process for payers, but we are hopeful that the fees will not be set so low as to shift the risk to the physicians conducting the IMEs. Therefore, if your approach is to include IME fees in the schedule, we respectfully suggest the following levels of reimbursement:

NV02001	Review of medical records (up to 100 pages)/testing/evaluation and report	$2,000.00
NV02002	Review each additional 100 pages	$ 500.00
NV02003	Evaluate more than 2 body parts; for each body part	$ 500.00
NV02003	Organize records, per 50 pages	$ 42.50
NV0000	Patient failure to appear	$1,000.00

We strongly believe that Nevada should strive to prevent the scenario that has occurred in other states, namely that too-low rates open the door to an influx of third-party vendors who develop a network of IME consultants and then mark up the physicians' fees in order to cover their costs and to make a profit. We have appended a recent media story about such costs in workers' comp systems and provide an excerpt here:

> *One of the field's most controversial niches is firms that supply doctors to provide second opinions for employers and insurers. This alone is a $4 billion a year industry in the United States, according to one of the leading firms, ExamWorks, whose stock price has tripled in the past four years. Treating physicians say such hired experts are often retired doctors who make quick decisions without fully understanding patients' medical histories.*

Finally, because there was mention during the public comment at the end of the January 8 meeting about re-examining the Milliman recommendation to adopt the RBRVS model, I am re-inserting here an excerpt from our February 11, 2015 (mistakenly dated 2014) comment letter in strong opposition to that approach:

Concern 3: Methodolgy
3.1: RVP vs RBRVS

Pursuant to NRS 616C.260(4)(a), DIR must include in its regulations the "standards for the development of the schedule of fees and charges that are billed and paid…." By reference, NAC 616C.145 adopts the scale known as Relative Value for Physicians ("RVP").

RVP is based on actual clinical work performed and is not influenced by Medicare budget constraints. It is based on national survey data from physicians in all specialties and measures work, risk and time for services performed by providers. RVP has values for nearly all CPT codes, whereas RBRVS is slow to add CPT codes that Medicare does not reimburse due to budgetary factors.

RBRVS is relative to the Medicare population; it is adjusted downward for highly utilized codes in the Medicare population. The workers' compensation population is very different. RBRVS would create a disincentive to see these patients and to provide the additional administrative and time requirements needed to assist an injured worker.

NVOS members are concerned that injured workers not be subject to additional harm because of limited, delayed or no access to the services they need. Such delays will only prolong and frustrate the process of mending the injured worker and returning him or her to work in timely manner.

Before DIR made the decision to maintain the RVP methodology, our comment letter suggested:

NVOS recommends *that DIR undertake a full and complete rulemaking process to amend NAC 616C.145 that rigorously examines the benefits and rationale of departing from the RVP methodologies, concepts and standards prior to undertaking any further work sessions on adopting any new standard, such as the Resource-Based Relative Value Scale ("RBRVS") recommended by Milliman.*

We remain steadfast in our opposition to adopting the RBRVS model for workers' compensation. However, if DIR determines the need to form a a work group on the topic, we respectfully request to be included.

Sincerely,

Abdi Raissi, MD
President

Appendix I

https://www.propublica.org/article/workers-comp-conferences-expos-and-middlemen

"All of This Because Somebody Got Hurt at Work'

by Michael Grabell
ProPublica, Dec. 29, 2015, 8 a.m.

Insult to Injury

States nationwide are dismantling workers' compensation, slashing benefits to injured workers and making it more difficult for them to get care. Meanwhile employers are paying the lowest rates for workers' comp insurance since the 1970s.

The National Workers' Compensation and Disability Conference & Expo in November featured a party with an acrobat, Hummer limos and a live alligator named Spike. Another workers' comp conference in August hosted a concert by Joan Jett & the Blackhearts.

LAS VEGAS — A scantily clad acrobat dangles from the ceiling, performing flips and splits as machines puff smoke and neon lights bathe the dance floor in turquoise and magenta. Dancers in lingerie gyrate on poles to the booming techno. Actors dressed as aliens pose for selfies with partygoers. There's an open bar and waiters weave through the crowd passing out chocolate truffles.

It's the closing night of the National Workers' Compensation and Disability Conference & Expo.

The party at Light, a Cirque du Soleil-themed club at the Mandalay Bay Resort and Casino, capped off the workers' comp industry's biggest annual networking event. For three days in November, hundreds of vendors wooed insurers and employers with lavish after-hours parties, giveaways of designer handbags, photos with Olympic gymnast Kerri Strug, and free rides in orange Hummer limousines.

A top manager for a major insurance company recalled standing amid the hoopla a few years back when a company CEO turned to her and marveled: "All of this because somebody got hurt at work."

Workers' comp is supposed to be simple. If you're injured on the job, your employer pays your medical bills and part of your wages while you recover.

But over the past two decades, a cottage industry of middlemen has emerged, which some have dubbed the "workers' comp industrial complex." Even private equity firms have bought in, seeing profit opportunities in employers' and insurers' quest to contain spending.

The middlemen offer an array of services, from managing claims to negotiating medical bills, all promising to reduce costs — although critics say some actually raise them, as well as the burden on those hurt on the job.

It's a world largely unknown to the injured workers that the firms ultimately serve, and often to the employers who spent an estimated $89 billion on workers' comp in 2013.

Over the past year, ProPublica and NPR have detailed how state after state has reduced the benefits historically granted to injured workers. As a result, some workers have been evicted from their homes, denied medical care and put in humiliating situations.

While lawmakers have clamped down on payments to workers, doctors and lawyers, little scrutiny has been given to these "cost containment" firms — even though today they arguably have more influence on how injury benefits are handled than insurers and employers.

Highlighting the bounty, there are now more than 150 workers' comp conferences a year. There's one for the American Society of Workers Comp Professionals, one for the Association of Workers' Compensation Professionals and one for the Association of Workers' Compensation Claims Professionals. At least 26 have golf tournaments.

At the national workers' comp and disability expo, vendors gave away Apple watches, bottles of bourbon, and a Vespa scooter. There were free massages and shoeshines, a superhero caricature artist, more than one mentalist, and a live alligator named Spike.

Over the past year, conference attendees have heard from Pete Rose, Arianna Huffington, Ted Koppel, Herschel Walker and Joan Jett & the Blackhearts.

Rarely have they heard from injured workers.

"Even though the injured worker is the center of the claim, they're very far removed from what actually happens to them," said David DePaolo, editor of the industry news site, WorkCompCentral. "It's very dehumanizing. Why aren't injured workers part of the conferences? It's because they're a number."

Private Equity Buying Spree

Last year, workers' comp insurers in California spent 36 percent of premiums on overhead — more than they spent on medical care. That's over twice what group health plans can spend on administrative costs under the Affordable Care Act.

A glimpse of the Vegas expo shows why. There were companies that provide networks of doctors and companies that review medical bills, firms that provide expert medical opinions and firms that specialize in complex claims. There were defense lawyers, data processing firms, rehab facilities, surveillance companies, outside claims shops, occupational medicine clinics, pain management services, translators, schedulers, headhunters and associations promoting other conferences.

There were labs that test injured workers' urine for illegal drugs. There were even labs that test urine to ensure workers are taking the prescribed drugs instead of selling them.

In California, the amount of money that insurers spend on medical cost containment programs has more than doubled from $197 million in 2005 to $471 million in 2014, according to the state workers' comp ratings bureau.

Seeing huge profit potential, private equity firms have gone on a buying spree.

Sedgwick, a company that processes claims for large employers, was acquired by two private equity firms for $1.1 billion in 2010 and then sold to another for $2.4 billion in 2014. One Call Care Management, known in the industry as a medical "cost containment" firm, was bought for more than $2 billion in 2013, and reportedly bid to buy another vendor, pharmacy benefit manager Helios, for $2 billion this fall.

Some of the biggest firms — Sedgwick, Genex, Helios, CorVel, MedRisk and One Call — are little known outside the workers' comp industry. But they have become powerful players in determining the future of how injured workers are treated.

The companies say they play a critical role in reducing excessive medical costs and preventing inappropriate treatment. Southern California, for example, has recently witnessed a series of scandals involving doctors and hospital executives who've been accused of bribery, kickbacks and unnecessary surgeries involving workers' comp patients.

Some firms advertise that they analyze data to find the best doctors and can get injured workers in to see them faster than the general public. They say their data tools help employers identify safety problems and manage long-term claims before they spiral out of control.

Robert Hartwig, president of the Insurance Information Institute, said the companies have become necessary as medical care, and the regulations for delivering it across 50 different state systems, have become increasingly complex. The firms don't just reduce costs, he said, but also improve outcomes by helping employees get back to work quicker.

"Cost containment is not a dirty phrase," Hartwig said. "If insurers were to eliminate cost containment because it was costing too much, I can assure you we would see a rapid escalation in fraud and abuse in the system. And we would quickly see an explosion in claims costs."

Increasingly, though, decisions to deny care aren't being made by workers' employers or insurers, but by these myriad claims administrators, managed care companies and cost-containment firms. Some industry observers say the firms have added a layer of cold bureaucracy to an already complicated system. CorVel — a managed care and claims-handling firm whose stock price has nearly doubled in the last three years — recently sent letters to the widows of two police officers killed in the line of duty, wishing their husbands a "speedy recovery."

There's even a Facebook group for injured workers who say they've been mistreated by Sedgwick.

"I don't think we have created the savings intended and I think we've made the system a much more complex, difficult to navigate system," said Bob Wilson, who runs the popular industry site, WorkersCompensation.com.

Wilson said he jokes that even though he's been in the industry for 15 years, he still doesn't understand what some people do. "No wonder injured workers are getting lost in the system."

Controversy in Cost Containment

As business has boomed, little effort has been made to find out whether the companies are helping or hurting injured workers.

Ed Welch, former director of the Workers' Compensation Center at Michigan State University, said managed care is necessary in workers' comp.

“You can look at the field of doctors and say this doctor is really good, he does a lot of back surgeries, he’s very effective, we can negotiate a price,” Welch said. But employers and insurance companies can also use managed care to limit benefits by finding the cheapest doctors or “doctors who will very rarely agree that work caused the disability,” he said.

One of the field’s most controversial niches is firms that supply doctors to provide second opinions for employers and insurers. This alone is a $4 billion a year industry in the United States, according to one of the leading firms, ExamWorks, whose stock price has tripled in the past four years. Treating physicians say such hired experts are often retired doctors who make quick decisions without fully understanding patients’ medical histories.

A recruitment letter for one medical review firm, which a doctor provided to ProPublica, promised an “additional revenue stream” and said that “once a provider is in the rhythm of performing these reviews they should easily be able to perform 4–5 an hour.”

Many cost-containment firms negotiate prices with doctors and other medical providers and then take a cut of the discount they provide to insurers. Often, the insurers and claims administrators receive fees and commissions from cost-containment firms for selling their services to employers, said Frank Pennachio of Oceanus Partners, an insurance consulting firm.

Some cost-containment companies have found another way to profit, according to several doctors, insurance consultants and other service providers who asked not to be named because they must do business with these companies. They said firms misrepresent the cost of services to insurers, pocketing not only the percent of savings but also the difference between the inflated price and the true charges.

“The presence of these companies is becoming so overwhelming that providers are getting squeezed out,” said Steve Cattolica, government relations director for a doctors’ organization, the California Society of Industrial Medicine and Surgery. Some firms are “raising the costs of work comp health care without delivering any value.”

The Workers’ Comp Expo

The 43-story Mandalay Bay casino stands like a shimmering gold cathedral, towering over the Luxor pyramid and the Excalibur castle on the south end of the Vegas Strip.

It was the perfect setting for this year’s workers’ comp and disability expo, which featured panels on how to prevent claims from spiraling out of control, what to do about medical marijuana and “Current Trends in Urine Drug Screening — What the Research Shows.”

Conferences like these are where insurer-driven ideas for legislative reforms spread. And they’re also where deals are made, which explains the attention showered on those holding the purse strings.

One morning, those entering the expo were greeted by a latte bar, hosted by ExamWorks, with baristas etching elaborate patterns in the milk, like the face of a lion or Pacman eating a ghost. Convention-goers mingled at booths and browsed the swag. Strug posed for pictures, drawing people to one firm’s booth while also raising money for charity. Some attendees lined up early to get wristbands for the after-hours parties.

Rising Medical Solutions, another cost-containment firm, hosted a Great Gatsby theme party with guests dressed as flappers. Paradigm Outcomes, a catastrophic case management firm, held its reception at the lounge inside the Cosmopolitan’s three-story crystal chandelier. And Michael Sullivan & Associates, a defense law firm in California, held its party at the House of Blues' Foundation Room, whose website say it features "high-class debauchery" and "luxurious party rooms to suit any desire — no matter how wicked."

But none of them could compete with the closing-night blowout hosted by One Call that featured the acrobat, go-go dancers and glowing aliens clad in spandex.

"If I was an injured worker at home wondering how I would pay my bills, I would be sick to see this," said one insurance company manager who asked not to be named.

One Call, which is based in Jacksonville, Florida, said in a statement that such events are typically sponsored by companies in the industry as "a cost of doing business" and that it chose the Cirque du Soleil theme to keep with the conference's Las Vegas location.

"The focus of One Call Care Management is to make sure that injured workers receive the best care possible, quickly and efficiently," its statement said. "Having opportunities for our colleagues to meet and connect is important for workers' compensation and for any industry."

Not every conference is as elaborate as the national expo. Some focus on providing continuing education credits for lawyers and claims adjusters. Many states put on annual educational conferences to update stakeholders on new trends and regulatory issues.

This year, there were conferences in 104 cities in 41 states — more places than in the country song, "I've Been Everywhere." One hotel, the Beau Rivage Resort & Casino in Biloxi, Mississippi, hosted three workers' comp conferences in 2015.

There are so many conferences that there is even a website called CompEvent.com, which serves as a kind of Ticketmaster for them.

At this year's Risk and Insurance Management Society conference in New Orleans, MedRisk — a network of physical therapy and diagnostic imaging centers for workers' comp — led a parade through the French Quarter, complete with Mardi Gras performers and a brass band, to its reception at Latrobe's on Royal.

And not to be outdone, the 70th Annual Workers' Compensation Educational Conference in Orlando featured a concert by rock 'n' roll legends Joan Jett & the Blackhearts.

In a video posted on Twitter, attendees bopped their heads as they sang along to her hit, "Bad Reputation."