



American Association of Independent Claims Professionals

August 20, 2010

Mr. Landon Lackey
Tennessee Department of Labor and Workforce Development
Workers' Compensation
220 French Landing Drive
Nashville, TN 37243

Via email: Landon.lackey@tn.gov

Re: Notice of Rulemaking Hearing, Chapter 0800-02-08

Dear Mr. Lackey:

The American Association of Independent Claims Professionals (AAICP) welcomes the opportunity to comment upon the proposed rule amendments related to claims adjuster licensing and training.

The AAICP is an association of independent claims adjustment and third-party claims administration companies that service claims for public entities, insurance carriers, and other businesses in the United States. AAICP members employ more than 11,000 employees and have more than 1,100 offices throughout the country. Its members include both large adjusting companies and third party administrators with national programs and approximately 300 independently-owned property and casualty claims adjusting companies located throughout the United States. Our members also have a significant presence in Tennessee, employing over one thousand individuals in the state across dozens of offices, and with one of leading independent adjusting companies having its corporate headquarters in Memphis.

We have comments on both the procedural nature of the proposed rulemaking, as well as several substantive comments on the proposed changes to the Tennessee Administrative Rules. Our comments are set forth in detail below.

Procedural Concerns:

The AAICP is concerned that the proposed rule fails to define the scope of the training that will be required in Tennessee, and sets up a structure that will empower a single provider who will contract with the State to deliver the required but undefined training for all adjusters in the state.

Many independent adjusters, including but not limited to AAICP members, have extensive internal training functions that would readily qualify for and satisfy any minimum requirements that the State would set. Thus, the nature of the proposed rule, its stated intent that the State will select a single vendor to determine adjuster qualifications, and the lack of transparency as to the elements and basis upon which the state will make its selection, is confusing.

The AAICP is aware that the state earlier this year circulated a draft of the adjuster qualification rules, prior to the publication of the proposed rule upon which the state seeks comment. That draft, set forth as Exhibit A to this letter and available on the internet, described in far greater detail the elements of a qualification program and set forth in great detail the qualifications for such certification. Most importantly, the draft suggested that more than one vendor would be permitted to determine adjuster qualifications in Tennessee.

It remains unclear why the Department has chosen to substitute the cursory proposed rule up for comment in lieu of the more developed and substantive draft that had been circulated. The Tennessee Administrative Procedures Act establishes the purpose of rulemakings to be “designed to clarify and bring uniformity to the procedure of state administrative agencies and judicial review of their determination...” Tenn. Admin. Code 4-5-103. The proposed rule published for comment, however, does not clarify the Department’s procedures, nor bring uniformity to adjuster certification. Rather, having developed such a proposed rule in the Spring 2010 draft, the Department for no apparent reason has withdrawn from its draft and substituted an uncertain and vague proposal in its place.

The procedures used by the Department are unusual, and not in compliance with the requirements of the Tennessee Administrative Procedures Act. Moreover, they do not meet the needs of the Department or the regulated community. For that reason, the AAICP requests that the Department withdraw the proposed rule, reconsider its Spring 2010 draft, and re-propose a new rule that provides the needed detail, clarity and substance to meet the requirements of the Tennessee Administrative Procedures Act.

Substantive Comments on the Proposed Rule:

In the event that the Department chooses not to withdraw the proposed rule in favor of the spring 2010 draft and in response to the Notice of Rulemaking Hearing for Chapter 0800-02-08.01 Adjuster Training with a scheduled hearing date of August 23, 2010, the AAICP submits the comments below for consideration. (Additional comments on the spring 2010 draft are also included in the Appendix.)

1. Rule 0800-02-08.01(3) – “Adjusters’ certification numbers shall be included on all forms filed with the Division of Workers’ Compensation and on all payments and explanations of review subject to T.C. A. §50-6-204. After January 1, 2012, any adjuster who fails to

obtain and maintain the certification pursuant to this Rule shall not be authorized to file any forms in accordance with Chapter 0800-02-01.”

Comment: This new requirement will require the agency to redraft forms and the EDI process to accept the certification number, causing undue burden upon the State. Additionally, the affected adjusters and bill reviewers will be required to reprogram systems to meet the requirement. For this reason, we recommend that the effective date of this requirement be December 31, 2012.

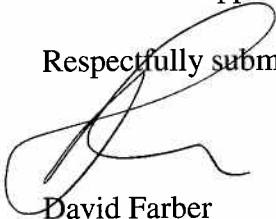
2. Rule 0800-02-08.01(4) – We recommend that the following language (underlined) be inserted into the proposed rule: “For the purposes of this Rule, an “adjuster” is any individual, including but not limited to an employee of a self-insured employer, insurer, third-party administrator, or other employer, who is required to file any forms pursuant to Rules 0800-02-01-.06 through 0800-02-01-.16 and also includes any individual that applies discounts pursuant to Chapters 0800-02-17, 0800-02-18, and 0800-02-19, or applies any other contracted discount to a covered medical bill; **however, “adjuster” does not include a clerical or administrative, a utilization review or case management individual.**” Without this addition the definition will be overly broad and will wrap within it clerical and other workers that should not be subject to training requirements given their work requirements.
3. The proposal is too blunt in its requirement that all workers’ compensation adjusters must take 40 hours of training to sit for an exam and become certified. More specifically the proposed rule does not give consideration to seasoned professional adjusters that are well established and experienced to handle Tennessee workers’ compensation claims. **AAICP requests that the Division broaden the certification criteria and include certification based upon number of year’s experience.** Alternatively, the requirement to sit for the exam could vary based upon number of years experience in lieu of the 40 hours of training.
4. **AAICP requests that consideration be given to industry certifications such as CPCU, AIC and other designations** to allow for initial certification and waive the exam or qualification to sit for an exam.
5. Any mandated initial training and certification program, along with post-designation training, should take into account the residency location of the adjuster and accommodate time and travel by allowing ample training and exam facilities. An online vendor program of training and exam would be extremely valuable to the program. **AAICP strongly urges the Department not to require mandated on-site training and certification in Tennessee.**

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We thank you for your consideration of these comments, and welcome any further questions that you have. Please contact Susan Murdock at 703.830.9192 or susan@murdockinc.com if we can provide any further information.

As we previously communicated, AAICP's comments on the spring 2010 draft are outlined and enclosed in Appendix A.

Respectfully submitted,



David Farber
Counsel to the AAICP

Enclosure:
Appendix A
AAICP Comments on Original Draft on Proposed Rule

APPENDIX A

ORIGINAL DRAFT ON PROPOSED RULE (WITH AAICP COMMENTS)

Insurance Adjuster Certification Program

Purpose:

The purpose of this program is to:

1. set forth the minimum standards of training, experience, and skill that workers' compensation adjusters (including medical-only claims adjusters and adjusters working for medical billing entities, self-insured employers and/or third-party administrators) and medical bill reviewers must possess to perform their duties with regard to Tennessee workers' compensation claims;
2. improve claims handling and the speed in which compensable claims are handled;
3. make the Tennessee Workers' Compensation system more effective;
4. promote professionalism in the industry; and,
5. specify how insurers must meet and certify those standards to the Commissioner of Labor and Workforce Development.

Definitions:

"Adjuster", "Claims Adjuster" or "Medical-only claims adjuster" means a person who is responsible for determining the validity of a workers' compensation claim, for establishing a case reserve, and/or for approving and processing workers' compensation benefits. This person may hire investigators, attorneys or other professionals and may negotiate settlements of claims. This term also means a person who is responsible for the immediate supervision of an adjuster, but does not mean an attorney representing the insurer or a person whose primary function is clerical. This person does not include the medical director or a physician utilized by an insurer for the utilization review process.

Comment: Insurer is not defined. Additionally, these definitions and the proposed regulation should be consistent.

"Certified adjuster" means an adjuster who has successfully completed the training requirements as determined by the Division.

"Certified medical bill reviewer" means a medical bill reviewer who has successfully completed the training requirements as determined by the Division.

"Course" means any program of instruction given to satisfy the requirements of the Division.

"Curriculum" means a course of study that satisfies the requirements of the Division. The curriculum must provide sufficient content, including time allocated to each subject area, to

enable adjusters and medical bill reviewers to meet minimum standards of training, experience, and skill to perform their duties with regard to workers' compensation claims.

“Division” means the Workers’ Compensation Division of the Tennessee Department of Labor and Workforce Development.

“Instructor” means a person who conveys curriculum content to students on behalf of a training entity.

“Medical bill reviewer” means a person who is not a claims adjuster, but rather reviews or adjusts workers’ compensation medical bills on behalf of an insurer or other payer in order to apply fee schedules, PPOs, and/or any other discounts and may include employees or agents of the insurer or other payer, as well as employees or agents of a medical billing entity.

“Medical billing entity” means a third party that reviews or adjusts workers’ compensation medical bills for insurers.

Comment: Insurer is not defined.

“Student” means an individual taking a course that is required for that person in order to be a workers’ compensation adjuster or medical bill reviewer.

“Training” means a course of instruction provided by a training entity that includes the topics specified by the Division.

“Training Entity” means any person or organization recognized as such by the Division for the purpose of providing the adjuster training required by the Division.

Required Training for Medical Bill Reviewers and Claims Adjusters

An insurer, self-insured employer or third-party administrator may not authorize an individual who has not been trained and designated by the Division to act in the capacity of an adjuster or medical bill reviewer of Tennessee workers’ compensation claims except that an individual who is undergoing training may adjust claims under the direct supervision of an instructor, certified adjuster or certified medical bill reviewer. Every insurer, self-insured employer and third-party administrator shall require all adjusters and medical bill reviewers, and their direct supervisors, who handle Tennessee workers’ compensation claims on the insurer’s behalf to be trained and certified pursuant to these subparagraphs:

A. Prior to being designated a certified adjuster, students must be licensed by the Tennessee Department of Commerce and Insurance and must complete forty (40) hours of initial training.

Comment: The TN Dept. of Commerce and Insurance does not currently license staff or independent adjusters. What will the licensing process entail? Will it be administered by the TN DOI or by the TN Workers’ Compensation Division? We request consideration that experienced seasoned adjusters receive a waiver from the training requirement.

1. The insurer, self-insured employer and third-party administrator shall require its adjusters to be trained by a Training Entity for the certification curriculum with the initial training composed of a minimum of: to be determined.
 - a. 13 hours of self-study/Internet instruction
 - b. 24 hours of class room instruction

Comment: Consideration needs to be given to ample locations for classroom instruction.

- c. 3 hours to complete the exam

2. **(ADD: After July 1, 2012)**, all of the required initial training must be completed within a six (6) consecutive-month period, during which time a student may adjust claims under the supervision of **(DELETE: an instructor or)** a certified adjuster. No student may adjust claims on behalf of one or more insurer, self-insured employer or third-party administrator for a combined total of more than six (6) months unless such individual has been trained and designated by the Division.

Comment: How is an instructor established? Will individuals within the adjuster's employer organization be allowed to become qualified instructors? How would the adjuster be "under the supervision" of a third party vendor hired by the State?

3. The Training Entity shall give a final examination based on the initial training to all adjuster trainees.

Comment: We request consideration that experienced adjusters be waived from taking the exam.

- a. No trainee can take the examination unless that person has properly made application to become certified, has paid all appropriate fees and tuition, and completed all required course work **(ADD: text at the end of the sentence to include: unless waived)**.
- b. Trainees must achieve a passing score, as determined by the Division, on this examination to become certified adjuster.
- c. No trainee can take the examination more than three times in any calendar year. There will be no additional cost for taking the examination the second time. However, any trainee wishing to take the examination a third time must re-take all required training courses and must pay all required fees, including tuition, prior to taking the third examination.
- d. There must be a minimum of thirty (30) calendar days between attempts to pass the examination.

B. Prior to being designated a re-certified adjuster a certified adjuster must complete a minimum of 10 hours of post-designation training.

1. Post-designation training must be completed with the Training Entity before December 31st of the year following any certification or re-certification.
2. Failure of a certified adjuster to fulfill the requirements for post-designation training shall result in that person being no longer considered a certified adjuster. That person shall not be authorized to handle Tennessee workers' compensation claims until the requisite number of hours of post-designation training is completed and may be subject to additional penalties set forth below.
3. A certified adjuster shall not be required to be re-trained and re-designated in order to adjust claims for a different insurer, self-insured employer or third-party administrator during the period of time in which their personal certification remains current and valid.

C. Prior to being designated a certified medical bill reviewer, every medical bill reviewer must complete a minimum of 10 hours of initial training and shall complete a minimum of 10 hours of post-designation training every year.

Comment: We request bill review certification be based upon experience of the reviewer, in additional or instead of specific classroom training.

1. The insurer, self-insured employer and third-party administrator shall require its medical bill reviewers to be trained by a Training Entity for the certification curriculum **(ADD: unless waived based on experience).**
2. **(ADD: After July 1, 2012),** all of the required initial training must be completed within a six (6) consecutive-month period, during which time a student may adjust claims under the supervision **(DELETE: an instructor)** of ~~an instructor~~ or **(ADD: qualified)** medical bill reviewer. No student may adjust claims on behalf of one or more insurer, self-insured employer or third-party administrator for a combined total of more than six (6) months unless such individual has been trained and designated by the Division.
3. The Training Entity shall give a final examination based on the initial training to all medical bill reviewer trainees **(ADD: unless waived).**
 - e. No trainee can take the examination unless that person has properly made application to become certified, has paid all appropriate fees and tuition, and completed all required course work.
 - f. Trainees must achieve a passing score, as determined by the Division, on this examination to become a certified adjuster.
 - g. No trainee can take the examination more than three times in any calendar year. There will be no additional cost for taking the examination the second time. However, any trainee wishing to take the examination a third time must re-take all required training courses and must pay all required fees, including tuition.

4. There must be a minimum of thirty (30) calendar days between attempts to pass the examination.
5. Failure of a medical bill reviewer to fulfill the requirements for training shall result in that person being no longer considered a certified medical bill reviewer. That person shall not be authorized to handle Tennessee workers' compensation claims until the requisite number of hours of post-designation training is completed and may be subject to additional penalties set forth below.
6. A certified medical bill reviewer shall not be required to be re-trained and re-designated in order to adjust claims for a different insurer, payer or medical billing entity during the period of time in which their personal certification remains current and valid.

Certification Numbers

All adjusters and medical bill reviewers adjusting Tennessee workers' compensation claims must apply to the Training Entity for a provisional Certification Number within thirty (90) days of (ADD "(a)") the effective date of (~~ADD: the final rule published by the Division of Workers' Compensation implementing~~) this program or (~~Delete "of"~~) (ADD "(b)") the day they first begin adjusting these claims (~~ADD: thereafter~~), whichever is later. The Training Entity shall issue a "provisional" Designation Number to any person applying for such. The assignment of this Provisional Designation Number is to allow time for the adjusters or medical bill reviewers to apply for and complete the training and examination required to obtain Certification and the Certification Number. Provisional Designation Numbers shall be valid for a period of six (6) months only.

Certification Numbers

All adjusters and medical bill reviewers shall be assigned a Certification Number upon successful completion of the training and examination. The Division shall keep a record of these Certification Numbers and shall verify Certification of adjusters upon request.

Certification Numbers shall be personal to and remain with any adjuster or medical bill reviewer should they change employment. Adjusters and medical bill reviewers shall provide their personal Certification Number on all claims forms filed with the Division. Failure to provide their personal Certification Number on all such forms may result in a monetary civil penalty.

Comment: This new requirement is going to require the agency to redraft forms and the EDI process to accept the certification number. Additionally, the affected adjusters and bill reviewers will be required to reprogram systems to meet the requirement. For this reason, we recommend that the effective date of this requirement be December 31, 2012.

Civil Penalties

Failure by an insurer, self-insured employer, third-party administrator, medical billing entity, adjuster or medical bill reviewer to comply with any requirement of the Division, including but not limited to (a) providing the adjuster's and/or medical bill reviewer's valid personal provisional or permanent Certification Number on all forms filed with the Division; and/or, (b) insurers allowing an adjuster or medical bill reviewer other than one validly designated "certified" to adjust a Tennessee workers' compensation claim, shall subject such party to a penalty of not less than one hundred dollars (\$100.00) nor more than ten thousand dollars (\$10,000.00) per violation, at the discretion of the Commissioner. The burden of proof shall be on the insurer, self-insured employer, third-party administrator, medical billing entity, adjuster and/or medical bill reviewer to prove, by a preponderance of the evidence, that the insurer, self-insured employer, third-party administrator, medical billing entity, adjuster, and/or medical bill reviewer is not in violation of this program.

Comment: The significance of the possible penalty per violation supports providing an appropriate period for the implementation of these requirements.

Regarding the curriculum:

The subject matter of the certification program must meet the approval of the Department and must contain the elements listed below:

- Historical overview of workers' compensation
- Overview of the Tennessee Workers' Compensation Division
 - Relationship to Department of Labor and Workforce Development
 - Benefit Review
 - Administrative Review
 - Penalty Program
 - Advisory Council
- Overview of the Tennessee Workers' Compensation Act
 - notice requirements
 - adjuster duties when an injury is reported time frame for accepting/denying claim good faith
 - claims forms filing requirements/EDI
 - exclusive remedy
- The workers' compensation insurance policy
 - insurance principles of compensation
 - medical evidence
- diagnosis
- prognosis
- IMEs
- contested claims
 - investigations
- documentation

- o surveillance
 - compensability
- employee/non-employee
- out-of-state injuries/jurisdiction
- COE/AOE
 - o covered injuries
 - o occupational diseases
 - reserves/estimates
 - denying a claim
- willful misconduct
- intoxication
- failure to use safety equipment
- statute of limitations
 - fraud
 - o billing codes
 - o benefits provisions
 - temporary disability
 - permanent disability and issues concerning impairment ratings
 - death benefits
 - o return to work and vocational rehab
 - o cumulative trauma and gradually occurring injuries
- Medical terminology and abbreviations
 - o medical reports
 - o medical specialties
 - o common occupational injuries and diseases
 - o common medical tests
- Controlling Costs
 - o Choice of Physician Form C-41
 - o Medical Fee Schedule
 - Medical Care and Cost Containment Committee
 - o Case Management
 - o Utilization Review
 - o Drug Free Workplace Program
- Settlement negotiations
 - o Medical Impairment Rating (MIR) Registry
- Second Injury Fund
- Ethical Issues
- Licensing requirements
 - o Denials of license
 - o Expirations
 - o Renewals
 - o Revocations

Required Reference Materials

Reference materials used in providing the training must include:

- The Tennessee Workers' Compensation Act

- All Rules of the Division
- All forms posted on the Division's website
- Any required Employer Posting