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Protecting injured workers' rights

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November 30, 2017

Emailed: Kara.Dimas@azica.gov

Chairman Dale Schultz
Industrial Commission of Arizona
P.O. Box 19070
Phoenix, AZ 85005-9070

Re: Expanding the Occupational Disability Guidelines

Dear Chairman Schultz:

Attached please find AALIW's Response to the Industrial Commission of Arizona Regarding Expanding the Occupational Disability Guidelines for consideration at the November 30, 2017 ICA hearing.

Sincerely,

Briana Chua
President

Attachment

Cc: James Ashley, Director
Joseph Hennelly, Jr., Vice Chairman
Steven Krenzel, Commissioner
Scott LeMarr, Commissioner
Robin Orchard, Commissioner
The Honorable Steve Yarbrough, Senate President
The Honorable Speaker JD Mesnard, Speaker of the House
The Honorable Katie Hobbs, Senate Minority Leader
The Honorable Steve Farley, Ranking Democrat for the Senate Finance Committee
The Honorable Rebecca Rios, House Minority Leader
The Honorable Karen Fann, Senate Finance Committee Vice-Chair
The Honorable Steve Smith, Senate Commerce & Public Safety Chair
The Honorable Jeff Weninger, House Commerce Committee Chair
The Honorable Jay Lawrence, House Military, Veterans & Regulatory Affairs Committee Chair

The Honorable David Livingston, House Banking and Insurance Committee Chair
The Honorable David Farnsworth, Senate Insurance Committee Chair
The Honorable Athena Salman Ranking Democrat for the House Banking & Insurance Committee
The Honorable David Espinoza, Ranking Democrat for the House Commerce Committee
The Honorable Richard Andrade, Ranking Democrat for the House Military, Veterans & Regulatory Affairs Committee
The Honorable Robert Meza, Ranking Democrat for the Senate Commerce & Public Safety Committee



Protecting injured workers' rights

Response to the Industrial Commission of Arizona
Regarding Expanding the Occupational Disability Guidelines
by
Arizona Association of Lawyers for Injured Workers (AALIW)
November 30, 2017

BACKGROUND

The Industrial Commission of Arizona has scheduled a public hearing for November 30, 2017, regarding expanding the applicability of the Official Disability Guidelines beyond the management of chronic pain and the use of opioids for all stages of pain management. The ICA may modify or change the applicability of the guidelines if the evidence shows that the modification or change will meet all of these three conditions: “1) improve medical treatment for injured workers”, 2) make treatment and claims processing more efficient and cost effective, **and** 3) the guidelines adequately cover the body parts or conditions.” R20-5-1301 (C) (emphasis added).

AALIW's RESPONSE

Although we have read the press reports quoting a workers' compensation insurance carrier attorney as believing the expansion of the ODG is “going to happen”, we believe that any expansion of the ODG should not occur without a careful consideration of: 1) the facts about our Arizona workers' compensation system, and 2) evidence regarding how the one year experiment in using the ODG for management of chronic pain and the use of opioids has improved treatment for injured workers and made claims processing more efficient and cost effective.

A. Important facts to remember about the Arizona workers' compensation system in considering the expansion of the ODG in Arizona.

Our state constitution mandates that our Workers' Compensation system protect injured workers and their families from burdensome and litigious remedies. Ariz. Const. Art. 18, Sec. 8. In exchange for paying an injured workers' medical bills and a portion of his/her lost wages, employers receive a huge benefit: immunity from personal injury lawsuits for that injury.

Arizona's workers' compensation system works and has not put an unfair cost burden on employers according to the data found in the ICA's 2016 annual report dated June 7, 2016: 1) Arizona's Premium Rate Index per \$100 of Payroll is the 15th lowest out of 51 jurisdictions (Report at 18), 2) Arizona's voluntary cumulative rate level change since October 2009 is - 14.0% (Report at 18), 3) Arizona's workers' compensation claims filed since FY 11/12 to FY 15/16 has dropped by nearly 8,000 claims (Report at 15), and 4) Arizona's frequency of lost time

claims per 100,000 workers is lower than our neighboring states of Colorado, Nevada, New Mexico and Utah (Report at 16).

B. There is insufficient evidence to justify expansion of ODG just one year after adopting it for management of chronic pain.

Does the ICA have data showing that the ICA's adoption of the ODG for the management of chronic pain and the use of opioids for pain management starting on October 1, 2016 has: a) improved medical treatment for injured workers, b) made treatment and claims processing more efficient, **and** c) made treatment and claims processing more cost effective? If so, we haven't seen that data; nor have we had a chance to analyze it.

We believe that the ICA should obtain such data and carefully consider it before expanding use of the ODG. If we are going to use evidence-based medicine to approve medical treatment, then the ICA should produce evidence that the one year experiment in using the ODG for pain management has met the goals the ICA has established for improving medical treatment for injured workers and making claims processing more efficient.

In considering whether the one year experiment in using the ODG for pain management has worked in reducing opioid use, the ICA must look at the data **before** October 1, 2016 to see how effective the laws passed originally in 2009 to limit the prescription of opioids (A.R.S. § 23-1062.02) were in limiting opioid use. The experience of our members is that ICA ALJ's were issuing awards limiting opioid use before the October 1, 2016 adoption of the ODG for chronic pain.

C. What have we learned over the past year from using the ODG for management of chronic pain?

The one year experiment in using the ODG for the management of chronic pain and the use of opioids for pain management has not made claims processing more efficient and cost effective because the ICA did not adopt "auto-authorization". The Work Loss Data Institute says the ODG reduces treatment delays because it ensures "providers know in advance which treatments will be approved without prior authorization, allowing them to treat quickly according to evidence-based guidelines." This is called "auto-authorization".

We don't have "auto-authorization in Arizona. When the ICA adopted rules for using the ODG for treatment of chronic pain, it allowed the carrier to deny ODG recommended treatment of chronic pain by obtaining a medical or psychological opinion that there is a "significant medical or psychological reason not to authorize" the treatment. R20-5-1304 (B). This means that health care providers of Arizona injured workers have no guarantee of payment for services that are allowed under the ODG. While pre-authorization of medical treatment is not required in Arizona, health care providers are reluctant to treat injured workers without knowing that they will be paid for their care. This causes delays in obtaining treatment.

It has not increased access to medical care. Our experience is that more doctors do not want to handle workers' compensation cases because of frustrations in dealing with carrier delays or denials of medical treatment and in being involved in the ensuing litigation.

D. There is not sufficient data to justify the expansion of ODG in Arizona at this time

There is insufficient data showing that the ICA's adoption of the ODG last year for the management of chronic pain has improved medical treatment for injured workers or made treatment and claims processing more efficient and effective.

Expansion of the ODG is not needed to return workers to work more quickly because as noted in the ICA's 2016 Annual Report Arizona's frequency of lost time claims per 100,000 workers is lower than our neighboring states of Colorado, Nevada, New Mexico and Utah. Report at 16. Expansion of the ODG is not needed to reduce workers' compensation premiums for employers because Arizona's Premium Rate Index per \$100 of Payroll is the 15th lowest out of 51 jurisdictions. Report at 18.

Our Arizona workers' compensation system is founded on a promise in our state constitution: in exchange for giving up the right to sue the employer for on the job injuries our Workers' Compensation system will protect injured workers and their families from burdensome and litigious remedies. Our state constitution further promises that compensation will not be reduced without a vote of the people.

In the rules it adopted last year, the ICA said it may modify or change the applicability of the guidelines if the evidence shows that the modification or change will meet all of these three conditions: "1) improve medical treatment for injured workers", 2) make treatment and claims processing more efficient and cost effective, **and** 3) the guidelines adequately cover the body parts or conditions." R20-5-1301 (C) (emphasis added). For the ICA to vote to expand the ODG one year later in the absence of such evidence violates not only that rule but also our state constitution's promise that our workers' compensation system will be fair to injured workers' and their families.