

Statement of
UWC – Strategic Services on Unemployment & Workers’ Compensation

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President

National Committee on Vital and Health Statistics
Subcommittee on Standards
on the
Applicability of Standards to Other Insurance Types

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Thank you for the opportunity to submit this statement as part of the solicitation of input to assist in evaluating national health information standards, and particularly whether insurers and self-insured employers under workers' compensation programs should be required to use the standard transactions required for the health care industry and whether these currently "non-covered" programs as defined under Sections 1173 and 1172(a) of the Social Security Act should be subject to HIPAA standards for privacy of individually identifiable health information.

UWC – Strategic Services is a not for profit membership organization serving the business community in research and the development of policy and legislation with respect to workers' compensation programs. The organization counts as members a large number of federal and state business trade associations, self-insured employers, third party administrators, and the insurance industry.

In addressing the charge to the Secretary in Section 10109 of the Patient Protection and Affordable Care Act (PPACA), a number of bright line points must be recognized.

1. The exclusion for workers' compensation from data transaction and privacy standards under the provisions of the Health Insurance Portability and Accountability Act (HIPAA) must be preserved.

Access to medical information is a critical element of workers' compensation programs. Restrictions on access to medical information in the administration of workers' compensation programs would result in reduced effectiveness in the treatment of injured workers and their return to work. Effective workers' compensation programs must be able to precisely determine the level of impairment of individuals from performing work and the items and services to be provided as part of treatment plans. Treatment plans are designed not only to return individuals to work but also to provide medical treatment that meets the unique requirements of workers' compensation law.

State workers' compensation programs were developed in each state, with requirements that are unique to the state system, taking into consideration the capacity of the system to serve injured individuals, the appropriate coverage of individuals for disability, and the cost of the system to employers.

HIPAA rules recognize the distinction between workers' compensation insurance and health insurance, and the exclusion of workers' compensation programs must be continued.

2. The review of standards for transactions should take note of the recent experience in implementation of reporting requirements under Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007.

The recent experience in implementing the Section 111 reporting requirements demonstrates the difficulties of attempting to align the requirements of state law and arrangements between employers, insurers, TPAs and others with national definitional standards. Ongoing issues currently being addressed include:

- a) **The required use of ICD-9 codes and other CMS reporting standards has imposed significant additional administrative expense.** Self-insured employers, insurance carriers and workers' compensation plan managers have incurred significant costs in developing and implementing systems, training staff, and assuring compliance with federal requirements. A number of the federal requirements call for obtaining new information from claimants and service providers that would otherwise not be needed for administration of the plan. For example, the requirement to report date of first exposure when such information is not maintained under the applicable workers' compensation law, and "guessing" as to the appropriate ICD – 9 codes when current informational coding does not align with the federal definitions.
- b) **The use of national reporting definitions for reporting has resulted in some cases in the improper denial by Medicare of coverage for medical services due to confusion about the specifics of workers' compensation ongoing responsibility for medical treatment.** The COBC and MSPRC have gained access to Section 111 reporting information for the purpose of coordinating benefits under Medicare and other programs and MSP recovery actions. However, the substance of information maintained in the administration of workers' compensation plans is specific to the requirements of individual states, and as such is not easily translated into uniform federal reporting standards.
- c) **The use of unrealistically low reporting thresholds.** In seeking to develop a data base that is as comprehensive as possible, there is a danger that federal requirements may cost more than the value of having the information reported. As an example, requiring the coding and reporting of workers' compensation claims in which there are no loss of days worked and minimal medical treatment costs creates significant administrative costs with virtually no value in the administration of the Medicare Secondary Payer provisions.
- d) **Inappropriately burdensome fines for failure to report to meet federal requirements.** As an example, a \$1,000 per day fine for failure of a Responsible Reporting Entity (RRE) to file a quarterly report as required under Section 111 requirements is unnecessarily burdensome.
- e) **The failure to recognize the complexity of workers' compensation arrangements** that include a menu of unique insurance policy, self-insurance, excess coverage, large deductible and administrative arrangements, and may include settlements under which payments are made to resolve claims but may not be paid for the provision of specific items or services provided by medical providers

Instead of requiring new standards, HHS should work collaboratively with state workers' compensations agencies, self-insured employers and insurance carriers in the development of model data elements that may be common across the country and seek agreements under which information may be exchanged to improve the treatment and return to work of injured workers and management of costs while taking into

consideration the confidentiality and security requirements under the applicable state and federal law.

Conclusion

National standard transaction requirements must not be imposed with respect to workers' compensation plans. Such national standards would significantly increase administrative costs, increase workers compensation rates to be paid by employers, and result in confusion with respect to the appropriate applicability of definitions to workers' compensation programs and federal law.

In evaluating the potential for national standards, the committee should not lose sight of the primary purpose of workers' compensation to provide disability payments and medical services for individuals who were injured on the job, and whose injury arose from the employment, with the goal of returning the individual to work. Federal requirements that increase costs or impair states and workers' compensation programs in meeting these important objectives should not be imposed.