

Trovillion, Inveiss & Demakis

Trovillion, Inveiss & Demakis, APC has grown in reputation as one of Southern California's premier law firms specializing in representation of employers, insurance carriers and third party administrators in workers' compensation litigation.

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Practice Pointer: **Physician Requests for Payment for Record Review under Labor Code 5307.11**

TID WELCOMES NEW ATTORNEY

Trovillion, Inveiss & Demakis is pleased to welcome attorney Beverly Helleesen to the firm!

Beverly brings with her an extensive defense litigation background in both civil and workers' compensation law.

Beverly enjoys local travel to historic sites including Route 66. Beverly works out of our Orange County office. She can be reached at BHelleesen@TIDLAW.com

NEW OFFICE MANAGER

The firm is also pleased to welcome their new office manager, Deanna Ridenour. Deanna has been working

On January 1, 2014, several CPT codes commonly used in the old Official Medical Fee Schedule (OMFS) became obsolete, including review of medical records (99358), consultations (99245), and narrative reports (99080). These codes have been eliminated and have not been replaced in the new OMFS implemented under SB 863, which is based on the Medicare RBRVS system. The rationale is that Medicare considers these services to be inclusive of the fees charged for patient evaluations. In response to these recent changes, physicians have refused to perform these services and are requiring claims examiners to sign a contractual agreement to pay for these services pursuant to Labor Code 5307.11.

Labor Code § 5307.11, implemented in 2001, provides parties with the ability to contract rates for services instead of relying on the OMFS. This issue rarely arose prior to SB 863, as most parties relied upon the OMFS to establish reimbursement rates for medical treatment and have not exercised their right to contract outside of the OMFS.

In many instances, such as when treating physicians are reviewing their own prior reports or other similar documents, additional compensation in excess of fee schedule may not be appropriate. However, if the report

with insurance defense firms since 2002. A San Diego native, graduate of SDSU and Cal Western Law School, Deanna enjoys spending time with her family at the beach.

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prepared by the physician is intended to be relied upon to resolve disputed issues, such as apportionment or causation, and failure to review medical records could affect the physician's determination the request for additional compensation is likely justified. The need for the physician to review records and comment on those records will ensure that the report will be construed as substantial medical evidence.

When a MPN provider makes a request for additional compensation under LC 5307.11, the claims examiner should first find out why the request is being made and whether the request is reasonable. If the claims examiner has made a specific request for the MPN doctor to review records, then the physician should be provided compensation for the extra work. A request for payment to review records that are not relevant to a particular disputed issue should be rejected.

If the request is determined to be reasonable, the carrier and physician will need to agree upon a rate of compensation, unless already provided for within the terms and conditions of the existing MPN provider contract. It is prudent to review the terms of the requesting provider's current MPN contract with the insured to verify if provisions are already in place for an agreed upon rate of compensation for performing the requested services, outside of the OMFS. If compensation rates have already been established in the MPN provider contracts, the MPN contract terms will control. Otherwise, the parties will need to agree on a reasonable rate of compensation through negotiation, which may be appropriate to determine on a case by case basis, depending on the complexity of the case and other relevant factors. A decision will also need to be made by each claims examiner regarding whether to create its own contract for such purposes or use the contract provided by the MPN physician. As a word of caution, an agreement for additional compensation under LC 5307.11 is considered a binding contract, enforceable by law.

In summary, carriers are now faced with the decision to accept or reject Labor Code 5307.11 requests by physicians for additional compensation to perform services whose fees are now excluded from the new RVRBS based OMFS, which went into effect on January 1, 2014. Although carriers will not suffer any adverse

consequences for refusing to provide additional compensation for these services, carriers should review each request and authorize reasonable requests when appropriate.

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