I am submitting this comment for distribution to the Legislative Committee on Administrative Rules for their meeting on October 29th. I cannot attend the in-person hearings as I am scheduled with patients at that time.

I am writing in strong support of updating the Workers Compensation fee schedule (Rule 40). This update is long overdue, and I think this update is very important to ensure our injured workers get the medical care they are legally entitled to.

There is one outstanding issue that I ask LCAR to request the Department of Labor address before finalizing the rule. During the comment period, we recommended adding language to Rule 40 clarifying that a health care provider who provides a medical record review pursuant to 21 V.S.A. § 640b (b)(4) be licensed in Vermont, as well as establishing a fee schedule for rendering such reviews. It appears that DOL did not fully understand this comment as the department added language requiring providers be licensed in the State of Vermont for permanent impairment ratings and independent medical exams (in Rule sections 40.112 and 40.113) but did not address preauthorization record reviews under 21 V.S.A. § 640b (b)(4), rather appeared to read our comment as addressing reviewing records performed only as part of an independent medical exam.

The reason this language is needed is that currently the DOL commissioner is denying injured worker access to "due process" by allowing insurance companies to introduce medical necessity opinions from doctors who are not licensed to practice medicine in Vermont. This practice is in violation of 26 V.S.A § 1311(F) and (G), which specifies that a license is needed to render medical opinions or determinations of medical necessity.

26 V.S.A § 1311 defines the "practice of medicine" to include:

(F) rendering a written or otherwise documented medical opinion concerning the diagnosis or treatment of a patient or the actual rendering of treatment to a patient within the State by a physician located outside the State as a result of the transmission of individual patient data by electronic or other means from within the State to the physician or his or her agent; or

(G) rendering a determination of medical necessity or a decision affecting the diagnosis or treatment of a patient.

A medical record review determining medical necessity constitutes the practice of medicine. Because it is not exempted under 26 V.S.A. § 1313, performing this review without a Vermont medical license constitutes illegal practice of medicine under 26 V.S.A. § 1314.

This is also consistent with 42 CFR § 410.78(b), which requires virtual providers to be licensed in the patient's jurisdiction.

Why This Language is Necessary

Protects Due Process: The Department of Labor currently allows insurance companies to use medical necessity opinions from out-of-state doctors who are not licensed in Vermont. This violates 26 V.S.A. § 1311(f) and (g), and constitutes the illegal practice of medicine under 26 V.S.A. § 1314.

Prevents "Opinion Shopping": Setting minimum qualifications for record reviewers prevents carriers from shopping for biased opinions to deny care.

Ensures Legal Accountability: Requiring a Vermont medical license aligns with state and federal mandates. It establishes an easily verifiable baseline and gives injured workers an immediate legal remedy if they are harmed by an out-of-state provider who denies treatment without a physical exam.

Please consider requiring the Department of Labor to further amend Rule 40 to explicitly require a Vermont medical license for record reviews as part of medical preauthorization pursuant to 21 V.S.A. § 640b (b)(4). This protects vulnerable injured workers and provides a clear legal remedy through the Board of Medical Practice if harm occurs.

Thank you,

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