Workers' Compensation Legislative & Regulatory Update

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Volume 7, Issue 1
January 17, 2006

The Three-Member Panel on Workers' Compensation has decided to postpone action on adopting the Florida Health Care Reimbursement Manual (2006 edition) until federal lawmakers address the reimbursement levels set out by the Center for Medicare and Medicaid Services. The federal reimbursement levels for health care providers were schedule to decrease by 4.4 percent as of January 1, which would have lowered Florida's workers' comp rates from between 0.7 percent and 1.1 percent. Federal lawmakers, however, suspended the implementation of the decrease as they work to finalize a bill that would rescind the proposed fee reduction and maintain provider reimbursements at 2005 levels. The three-member panel's action comes as the Division of Administrative Hearings is preparing to hold a Feb. 7th rule hearing on the Florida Hospital Reimbursement Manual (2005). The manual is being challenged by the hospitals after the three-member panel voted to limit reimbursements for physical implants, prosthetics, and orthotics to 20 percent above costs.

In legislative news, Sen. Michael Bennett (R-Bradenton) has filed a bill (SB 1101), which would allow certain employers to forego workers' compensation coverage by purchasing an alternative insurance program. Similar to 24-hour coverage, the alternative coverage would cover medical treatments due to work-related and non-work related accidents. The coverage, however, would not cover other medical conditions that are not directly attributed to an accident. As drafted, the bill contains several unclear provisions including changes to the coverage requirements and exemptions available to both non-construction and construction employees. Under the bill, only non-construction employers with fewer than 4 employees may elect to be exempt for purposes of the workers' compensation law. All other corporate officers, sole proprietors, or partners would be considered employees under the law and therefore would have to purchase workers' comp coverage or the alternative coverage. Currently, no insurers offer the alternative coverage envisioned under the bill.

The Senate Banking and Insurance Committee has released an interim report that examines the possibility of the state implementing a loss cost rating methodology. Lawmakers have debated the possibility of moving to a loss cost rating system for several years. Florida is only one of eight states that calculates its rates using an administrative pricing method, which incorporates all costs associated with providing coverage to employers. Under the loss cost pricing method, the state would continue to draw on carriers' aggregate data to set the factors for loss experience and loss adjustment expenses. Using those factors, however, individual carriers would be free to develop rates based on their own expenses and profit requirements. The report states that due to the reduction in rates since the 2003 reforms, there is no compelling reason to move to a loss cost system.

The interim report also addresses the funding problems of the Florida Workers' Compensation Joint Underwriting Association (FWCJUA). The association has been running deficits since 2003 and 2004 when lawmakers restructured the coverage options to provide an affordable policy to new and small businesses, as well as certain charitable organizations. The legislature also appropriated $15 million from the Workers' Compensation Administrative Trust Fund to cover some deficits while also granting the association the authority to levy assessments against all policyholders. The Senate report includes a series

of recommendations to reduce the likelihood of assessments including appropriating more funds from carriers through the trust fund. The report also recommends using the surplus in certain accounts to pay off the deficits in other accounts.

The DWC has issued a report that found the Special Disability Trust Fund's (SDTF) outstanding liability has fallen by nearly $2 billion since lawmakers closed the fund to new claims as of January 1, 1998. Lawmakers closed the fund after it posted a liability of roughly $3.62 billion and actuaries calculated it could take up to 10 years before the fund could retire thousands of backlog claims. According to the latest actuarial report, the SDTF's projected liability for fiscal year 2005-2006 is expected to equal around $1.67 billion, and the fund should be able to start paying claims as they are received sometime between 2007 and 2009. As a result, employer/carriers could see a reduction in the SDTF's current statutorily mandated assessment of 4.52 percent by the end of the decade.

Three-member panel

The three-member panel held its annual meeting to consider the Florida Health Care Reimbursement Manual (2006). In the 2003 reforms, physicians were the only group to see an increase in payments. Specifically, lawmakers tied physicians' reimbursements to Medicare whereby primary care physicians received 110 percent of Medicare and surgeons and specialists 140 percent. To offset the increase, lawmakers reduced certain hospital costs. The 2003 law specified that the physician reimbursement changes applied to all physicians defined in Chapters 448 and 459, Florida Statutes. The three-member panel later included in the reimbursement manual other providers such as chiropractors, optometrists, podiatrists, and registered nurse practitioners.

Since the health care manual is tied to Medicare, any changes are contingent on the actions of the Centers for Medicare and Medicaid Services. For the past several years, the government has been seeking to lower the reimbursement levels only to see Congress intercede. For 2006, the center calculated a 4.4 percent reduction from 2005 levels. The National Council on Compensation Insurance calculated that if Florida implemented the federal decrease it would reduce overall rates from between 0.7 percent and 1.1 percent, which represents a savings of between $28 million and $45 million. Congress, however, is expected to soon vote on the Deficit Reduction Act of 2005. The bill will eliminated the proposed reductions and maintain physicians reimbursements at 2005 levels, although the individual maximum reimbursement amounts for some services could change. Since the federal government's action is pending, the three-member panel agreed to not take any action on the state's reimbursement manual for 60 days.

In other three-member panel news, the panel also delayed any action for 60 days on the Florida Hospital Reimbursement Manual (2005 edition). As part of the 2003 reforms, hospitals agreed to place certain non-surgical outpatient services under the physician fee schedule. No changes were made on inpatient charges.

Since 1999, hospital inpatient reimbursements have been calculated based on per diem rates of $3,200 for surgical cases and $1,900 for non-surgical patients. However, hospital fees for inpatient services are calculated at 75 percent of usual and customary charges once a patient's costs exceed $50,000. Carriers have alleged that hospitals are manipulating the cost of physical implants, prosthetics, and orthotics so that an inpatient's charges would exceed the $50,000 threshold necessary for hospitals to receive the higher reimbursement level.

Although there was little hard data for the three-member panel to examine, last year the panel voted to limit the hospitals' reimbursements for the devices at 20 percent above costs even if the total charges for an inpatient's stay exceeded $50,000. The Florida Hospital Association (FHA) challenged the rule and despite lengthy negotiations with the division and other parties, no agreement has been reached on the issue. The matter is schedule to be heard by a DOAH administrative law judge on February 7.

As a result of the rule challenge, the hospitals are being reimbursed under the 2004 manual. Division officials said that even if the challenge over the 2005 manual is resolved, the manual might never take affect since the 2006 manual would supercede it. Officials also say that due to the negotiations a number of new issues have been raised, which the three-member panel might consider when the 2006 manual is drafted. For example, even if the medical devices are limited to 20 percent, should the devices be included in the per diem rate and therefore be calculated toward the $50,000 threshold; or should the medical devices be a stand-alone charge. There is also the issue of whether the 20 percent figure adequately reflects the hospitals' costs. As a separate issue, officials noted that the three-member panel might want to review the per diem rate, which has not been changed since 1999. It should be pointed out, however, that any such changes to the 2006 manual could result in an additional challenge by the hospitals.