

Workers' Compensation Legislative & Regulatory Update

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The Three-Member Panel on Workers' Compensation has approved a comprehensive plan to revamp hospital reimbursements is the latest effort to resolve an ongoing dispute over the cost of physical implants, prosthetics, and orthotics. Detailed in the Florida Workers' Compensation Reimbursement Manual for Hospitals (2007 edition) the plan calls for the first increase in decades in hospitals inpatient per diem rates and the so-called stop loss level that a patient's bill must reach before the hospital can charge 75 percent of usual and customary charges. As for the price of the implants and other medical devices, the manual calls for the devices to reimburse at cost plus 50 percent. However, when calculating an inpatient's charges, the medical devices must be a separate charge that doesn't count toward the stop loss level. The three-member panel also approved the Florida Health Care Reimbursement Manual (2007) that will closely mirror the current manual.

In other news, the Office of Judges of Compensation Claims (OJCC) issued its annual report showing that the 2003 reforms are having their intended effect in reducing the amount of litigation in the system. Additionally, a new maximum compensation rate took effect this month. The Agency for Workforce Innovation determined that the statewide weekly wage paid to the Florida Unemployment Compensation law equaled \$723.23. Under Section 440.12(2), Florida Statutes, the maximum weekly compensation rate shall be equal to the statewide weekly wage.

Three-Member Panel

The three-member panel's action on hospital reimbursements is an attempt to finalize the issue of the costs of physical devices. Critics have long charged that hospitals use the costs of the items to pierce the \$50,000 stop loss level in order to receive 75 percent of usual and customary charges. As a result, the Division of Workers' Compensation stepped in and tried to re-

solve the issue. In an August meeting, the panel gave the division the authority to draft a manual, which set the price for the medical devices at 50 percent above costs including any shipping and handling charges. The Florida Hospital Association quickly opposed the unilateral action taken by the panel and DWC. After several rounds of negotiation the DWC decided that the whole question of hospital reimbursements should be looked at, specifically the per diem rates and the stop-loss level.

Based on its statutory authority, the three-member panel agreed to increase the stop-loss amount from \$50,000 to \$51,400. Additionally, the per diem rates and the stop-loss were increased by 2.8%, reflecting the increase in the consumer price index. The change in per diem levels are as follows:

	Current	Increase
Hospitals -		
Surgery	\$3,213.73	\$3,304
Non-surgery	\$1,906.89	\$1,906
Trauma Centers -		
Surgery	\$3,214.66	\$3,305
Non-Surgery	\$3,214.66	\$3,305

The panel placed the reimbursement level for physical implants, prosthetics, and orthotics at acquisition invoice cost plus 50%. If the devices come with a disposable instrument needed to install the item, then the instrument would be reimbursed at 20% above costs. The items would also be reimbursed on a separate bill and couldn't be calculated toward a patient's total costs. The National Council on Compensation Insurance estimated that the changes would range from a cost savings of minus 0.2% and a slight increase of 0.3%.

The panel also approved the latest edition of the Florida Health Care Reimbursement Manual. In the 2003 law changes, physicians were the only group to see an increase in payments. Specifically, lawmakers tied physicians' reimbursements to Medicare whereby primary physicians received 110 percent of Medicare and surgeons and specialists 140 percent. 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 federal Centers for Medicare and Medicaid Services. A federal law calls for an annual decrease in Medicare rates, which in 2007 was scheduled to be a decrease of 5.1 percent. However, just as it has in previous years, the U.S. Congress stepped in and enacted a bill overriding the decrease.

Therefore, while there will be some adjustments in various codes, the 2007 manual will closely follow the 2006 manual and be revenue neutral. The three-member panel approved the 2007 manual, which will take effect when the federal 2007 changes are incorporated in the current manual.

Both the hospital and healthcare manuals will now go back into the formal rulemaking process for final adoption.

OJCC

By law, the OJCC is required to issue an annual report detailing the judges' performance, which is the best measure of the current level of legal activity in the system. The study follows the state's fiscal year, which runs from July 1 to June 1. The OJCC report compares data from fiscal year 2004 to 2005 through fiscal year 2005 and 2006. Due to the changes in the 2003 reforms, including the elimination of claimant attorneys' hourly fees, in most instances, the expectations were that there would be fewer litigated cases at an overall cost reduction to the system. According to the report, many of those expectations appear to have come due. The number of petitions and new cases has been reduced along with the number of petitions. There have been little changes in the numbers of mediations and the resolution trends associated with the alternative dispute system. The most interesting fact is that the number of reported defense attorney and judge approved claimant fees have slightly increased. The report notes, however, that the figure includes fees for open

cases from past years. In fact, Florida has open cases dating back to 1952. Also, employer/carriers are not required by law to report attorney fees. What follows is the major summary report's findings.

Number of litigated cases:

- Petitions filed: 90,948 – (15% decrease from prior year).
- New cases filed: 36,909 – (4.52% decrease from last year).

Amount of litigation resolved:

- Petitions closed: 79,768 – (15% increase from last year).

Number of mediation conferences held:

- 25,522 – (3.36% decrease from last year).

Disposition of mediation conferences:

- Some resolution of issues: 70.37% — (decrease of 71.02%)
- Settled case: 25.26% — (increase from 24.21%)

Number of continuances granted for mediations:

- Continuances: 4,756 – (increase from 3,333 last year)

Number of continuances granted for final hearings:

- Trial continuances: 5,011 – (decrease from 5,094)

Outcome of litigated cases:

- Resolved before trial: 11,565 – (decrease from 12,504)

Amount of attorneys fees paid:

- JCC approved claimant fees: \$261,058,816 – (17.39% increase from last year)
- Reported defense fees: \$299, 412, 570 – (13.39% increase from last year).