

Workers' Compensation Legislative & Regulatory Update

from McConnaughay, Duffy, Coonrod, Pope & Weaver, P.A.

Tallahassee • Pensacola • Panama City • Jacksonville • Gainesville • Ocala • Sarasota • Fort Lauderdale • Miami

*Volume 8, Issue 2
February 16, 2007*

The Florida Hospital Association and the Florida Community Hospitals Association are urging the Division of Workers' Compensation not to move forward with a rule (69-7.501) implementing the Florida Workers' Compensation Reimbursement Manual for Hospitals (2007 edition). The hospitals' position sets the stage for a possible rule challenge that could delay the implementation of the manual for an indefinite period of time. Approved by the Three-Member Panel on Workers' Compensation, the manual changed the reimbursement amounts for medical implants, orthotics, and prosthetics to cost plus 50 percent. The manual also calls for the first increase in decades in hospitals' inpatient per diem rates and the so-called stop loss level that the patient's bill must reach before the hospital can charge 75 percent of usual and customary charges. A rule hearing on the Florida Reimbursement Manual for Ambulatory Surgical Centers (69L-7.100) passed with few comments and the rule is expected to be finalized. Among other things, the manual sets out

a reimbursement level for 27 new designated surgical codes.

The Agency for Health Care Administration (AHCA) has also finalized a rule (59A-31) that sets out the process to resolve medical reimbursement and utilization disputes between health care providers and insurers. Among other things, the rule codifies a statutory provision that grants health care providers up to 30 days to petition the agency upon receiving a notice from an insurer that a reimbursement request has been rejected or substantially adjusted downward. In other news, legislators have filed few workers' compensation bills as the legislature prepares to convene its regular session on March 6. Newly elected Chief Financial Officer Alex Sink has also tapped Assistant Director of the Division of Workers' Compensation Dan Sumner to serve as the general counsel for the Office of the Chief Financial Officer.

Reimbursement Manuals

The use and cost of medical implants, orthotics, and prosthetics has long been

a source of controversy. Employer/carriers have 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. Last year, the three-member panel gave the division the go ahead to draft a manual, which set the price for the medical devices at 50 percent above costs including any shipping and handling charges. The FHA 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 reimbursement should be looked at, specifically the per diem rates and the stop-loss level.

After examining the reimbursement levels in other states, the manual called for the devices to be reimbursed at acquisition invoice cost plus 50 percent. Additionally, the reimbursement amount for any disposable instrument necessary to install the devices was set at acquisition invoice cost plus 20 percent. When calculating an inpatient's charges, the medical devices must be a separate charge that doesn't count toward the stop loss level.

The manual also set out the first increase in the per diem rate and stop-

loss in years. Based on its statutory authority, the three-member panel increased the per diem rates and the stop-loss by 2.8 percent, which reflected the most recent increase in the consumer price index. The stop-loss amount increased from \$50,000 to \$51,400. The proposed 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 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%.

While the hospital manual is likely to be challenged it appears the ambulatory surgical center manual has no serious objections. Under the current manual, the reimbursement level for implants under the ASC manual is acquisition invoice cost plus 20 percent. Additionally, the current manual sets out maximum reimbursement allowances for 11 procedures. Under the new manual, the surgical centers would receive an increase in the reimbursement for implants to acquisition invoice cost plus 50 percent. The increase would be partially offset in the change in reimbursement for disposable surgical implements and shipping and handling. Currently, both are reimbursed at cost plus 20 percent. Under the new manual, the reimbursement would be decreased to just cost. Additionally, the manual sets out the maximum reimbursement al-

lowances for 27 new surgical codes. NCCI estimated that the changes would have a negligible impact on the system's total cost.

AHCA Rule

The AHCA rule codifies a statutory provision that grants health care providers up to 30 days to petition the agency upon receiving a notice from an insurer that a reimbursement request has been rejected or substantially adjusted downward. Acting on its statutory authority in Chapter 440.13(7), Florida Statutes, the agency initially issued a draft of the rule early last year that incorporated a number of provisions that insurance representatives strongly disagreed with. For example, one rule provision stated that determining whether a payer engaged in a practice of unreasonably turning down reimbursement requests hinged on whether the payer repeatedly and improperly disallowed reimbursements. Payors stated the provision was too arbitrary since the definition of repeatedly denying or adjusting payments could range from a few improperly paid bills to thousands. The rule also set out a series of penalties that insurer representatives said had no basis in the law.

Based on those objections, AHCA withdrew the rule until an interagency agreement moving the medical services unit to the DWC was finalized. Following that action, AHCA, in conjunction with the division, proposed a new rule that closely follows the statute and alleviated many of the insurers' objections. Taking effect last November, any health care provider who contests a payment has up to 30 days to petition AHCA — using form 3160-0023—to resolve a

disputed bill. A notice by a payor to disapprove a bill is established through an Explanation of Bill Review. The rule sets out four methods to prove when the health care provider received the EOBR, which starts the 30-day period. The methods are as follows:

- Upon receipt of the EOBR, the provider can stamp the document. The stamp must contain the notice and all data provided by the payor as well as the name and company of the health care provider.
- The health care provider can maintain a verifiable login process. A copy of the login and the data from the payor must be contained in the petition.
- Health care providers may also submit to AHCA the postmark from the envelope that contains a denial or adjustment from a payor.
- If none of those criteria can be met, a date can be determined by adding five calendar days to the issue date of the EOBR.

In addition to informing AHCA, the health care provider must submit the petition and all accompanying information to the carrier. Importantly, by law the petition can only be served through the United States Postal Service and not through UPS, Fed EX, or other commercial delivery operation. Once received, the carrier has 10 days to respond to the petition using form 3160-0024. If the carrier doesn't respond the petitioner is automatically deemed to be entitled to the full amount of the submitted bill.

The rule also includes a process whereby the provider and payor can negotiate to resolve the dispute. Within 14 days of the carrier responding to the petition, both parties can issue a joint

stipulation requesting AHCA not to rule on the dispute for up to 60 days. At any point in those 30 days, however, either side can request that the joint stipulation be put aside and allow AHCA to move forward. If a provider has repeatedly filed a petition against the same payor, AHCA has the authority to consolidate the petitions and make one decision. Finally, no provider can contest a bill for services provided through a managed care arrangement.

Workers' Comp Bills

With the legislative session due to convene on March 6, so far few workers' compensation bills have been filed by legislators. One bill that appears to be certain to be considered by legislators addresses a number of concerns expressed by first responders. Various versions of the bill have circulated through the legislature since the issues were first raised in a 2003 House Task Force on Homeland Security. The bill would create Chapter 112.1815, Florida Statutes, and apply to all law enforcement officers, firefighters, and emergency medical technicians as defined by law. In essence, the bill would grant first responders some exceptions to the 2003 law to meet the special needs of first responders as advocated by union groups and some lawmakers. Rep. Sandy Adams (R-Oviedo) and Sen. J.C. Alexander (R-Lake Wales) are the bill's main sponsors, although many other legislators have signed on in support of the legislation.

Among the changes contained in the bills (HB 45 and SB 746) are the following:

- An adverse reaction to a small pox vaccination would automatically be deemed a compensable injury.
- An injury due to an exposure to a toxic substance would not be compensable except in cases where the claimant could prove the injury was incurred by a preponderance of the evidence. However, an epidemiological study is not required to prove the claimant's injury was directly linked to an exposure of a toxic substance.
- First responders could receive permanent total disability benefits for life if their employers don't participate in the federal social security program.
- First responders could receive medical benefits even if a mental or nervous injury is not due to a physical injury. However, the claimant could only receive indemnity payments if the mental injury is accompanied by a physical injury.
- Claimant attorneys could receive in excess of the statutory fees in cases involving exposure to toxic substances or occupational diseases.

NCCI estimates that the financial impact of the bill on first responders' classes could run between \$12 million and \$13 million. However, that doesn't include the cost incurred by self-insured municipalities.

Another bill on legislators' agenda would specify that an employee's injury is not compensable if the employee deviates from their job regardless of whether the injury occurred on the employer's property. The bill defines "deviation" as any action not related to the employee's work duties or to the personal benefit of the employee. Sen. Mike Bennett (R-Bradenton) and Rep.

Baxter Troutman (R-Winter Haven) are sponsoring the bills (SB 1204 and HB 607).

Rep. Dennis Ross (R-Lakeland) has filed a bill regarding the cancellation of construction contracts. The bill creates Section 627.442, Florida Statutes, and reads as follows: "A person who requires a workers' compensation policy pursuant to a construction contract may not reject a workers' compensation insurance policy issued by a self-insurance fund that is subject to Part V. of chapter 631 based upon the self-insurance fund not being rated by a nationally recognized insurance rating service." As of yet, there is no companion bill filed in the Senate.