

Workers' Compensation Legislative & Regulatory Update

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The Florida Hospital Association and the Society of Ambulatory Surgical Centers have filed rule challenges that have effectively blocked the implementation of the latest reimbursement manuals approved by the Three-Member Panel on Workers' Compensation. The rule challenges were expected after representatives of the two facilities urged regulators to withdraw the rules at public hearings. The hospitals objected to a variety of changes including the ongoing controversy over the reimbursement levels for medical implants, orthotics, and prosthetics. The surgical centers are objecting to the rule implementing the manual on the basis that it doesn't recognize how the centers bill for services. Unlike hospitals that use revenue codes to bill for each item and service provided to treat an inpatient, outpatient surgical centers bill using current procedure terminology codes whereby all items and surgical services are combined under one CPT billing code.

In legislative news, legislators are taking action on a number of workers'

comp bills including one addressing the Florida Workers' Compensation Joint Underwriting Association. The Senate Banking and Insurance Committee has approved SB 1894, which is primarily designed to make the residual market eligible for federal tax-exempt status. To accomplish that goal, the bill would grant regulators greater control over the association including the power to name board members, set rates, and approve the association's plan of operation. The Senate is also taking up two other bills addressing first responders and prohibiting general contractors from rejecting a subcontractor's proof of coverage if it is issued by a non-rated self-insurance fund.

The Department of Financial Services Bureau of Workers' Compensation Fraud and the Division of Workers' Compensation Bureau of Compliance have issued a joint annual report that covers the activities of the two bureaus over fiscal year 2005-2006. All told, the actions of the two bureaus resulted in 2,693 stop work orders being issued against employers, which generated over \$58 million in fines and penalties. Additionally, the work of the compliance

officers caused 12,000 additional workers to be covered through the workers' comp system while yielding \$30 million in additional premiums.

Medical Rule Challenges

The Florida Hospital Association and the Florida Community Hospitals have issued a rule challenge that will block the implementation of the Florida Workers' Compensation Reimbursement Manual for Hospitals (2006 edition). At issue was a proposed change in the reimbursement amounts for medical implants, orthotics, and prosthetics to acquisition cost plus 50 percent. The manual also called 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.

The Agency for Health Care Administration Center for Health Statistics (2005) found that 41 percent of the workers' compensation medical dollar goes to hospitals, which represents between three to six percent of hospitals

total revenues. An additional six percent of the dollar is paid to ambulatory surgical centers. AHCA reported that in 2006, hospitals represented 66 percent of all reimbursement disputes filed with the agency. In the case of the hospital manual, after examining the reimbursement levels in other states, the manual called for the medical 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 threshold 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 while the inpatient per diems increased to \$3,304 for surgical inpatients while non-surgical fees remain at \$1,906. Trauma center fees were increased to \$3,305 for both surgical and non-surgical patients.

The FHA objected to the manual on a number of grounds including that the administrative burden of changing the hospitals' charges would require time and millions of dollars and would make the claims handling process less efficient. It also argued that the change in fees is unnecessary, given that the National Council on Compensation Insurance calculated the changes would only

impact over system costs between minus 0.2 and a cost increase of 0.3 percent.

The Society of Ambulatory Surgical Centers also submitted a rule challenge that will delay the adoption of the Florida Reimbursement for Ambulatory Surgical Centers (2006 edition). After first lodging no objections to the rule implementing the manual, the society decided to move forward with the challenge on the basis that the manual is ambiguous since it doesn't recognize the billing system utilized by the surgical centers. Unlike hospitals that utilize the Florida Hospital Association Uniform Billing Manual that set out separate revenue codes for each service and supplies utilized in the hospital inpatient setting, outpatient surgical centers bill payers based on CPT codes that encompass all charges involved in a medical procedure to treat an injured worker.

Until the hospitals' rule challenge is resolved, the Reimbursement Manual for Hospitals (2004, second edition), remains in effect. Likewise, the 2005 Ambulatory Surgical Center Manual remains in effect. The hospitals' and ambulatory surgical centers' rule challenges have been submitted to the Division of Administrative Hearings where an administrative law judge is scheduled to hold a hearing on the disputes within 30 days.

Workers' Comp Bills

The Senate Banking and Insurance Committee has passed a bill (SB 1894) that is the latest attempt to resolve the

FWCJUA's funding needs and restructure its organizational operations. Since the residual market became operational in 1994, the FWCJUA has represented between one percent and three percent of the market. In 2003, legislators abandoned a decade-long policy that called for the association to be self-funding based on the perceived need of small employers who couldn't find available and affordable coverage. As a result, the FWCJUA incurred the first deficit in its history. In 2004, legislators tried to rectify the association's problems without success.

In the 2006 legislative session, legislators were unable to broker a bill due to a split over whether the association should retain its current autonomy or become more of a quasi-state agency. A breakthrough in negotiations between the two chambers came when lawmakers decided that the top priority was to qualify the FWCJUA for federal tax-exempt status. Since 1994, the association has paid \$33 million in taxes including \$16 million last year. Lawmakers inserted the reform language into a bill that implemented the state budget. The reforms were tied to a \$7.1 million appropriation in the main budget bill, which was earmarked to help pay off FWCJUA deficits. Governor Jeb Bush used his line item veto authority to strike down the appropriation, which had the effect of rendering the reforms moot.

Currently, the FWCJUA has 3,000 policies in force and an overall surplus of \$8.5 billion. Subplans A, B, and C, — which were created in 2003—have a \$39 million surplus, which is attributable to subplan C. If the proposed re-

forms take effect, the FWCJUA could use the surplus to pay off deficits in subplan D. If the surplus doesn't cover the deficits, the FWCJUA may request money from the \$15 million contingency fund. The FWCJUA financial report also shows that it will need less money from the contingency fund than earlier projections indicated. The association estimates that subplan D's deficit will equal \$9.3 million. To date, the FWCJUA has received \$7.9 million from the \$15 million contingency fund. It will need another \$1.4 million for a total of \$9.3 million, which falls substantially lower than the amount set aside by lawmakers.

The Senate and Banking Insurance Committee is poised to approve two other workers' comp bills. Sen. J.C. Alexander (R-Lake Wales) is sponsoring SB 746 that grants first responders certain exemptions to the 2003 law. Among the changes contained in the bill 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.

Sen. Don Gaetz (R-Ft Walton Beach) is sponsoring SB 1748 governing 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." Re. Dennis Ross (R-Lakeland) has filed a companion bill in the House.

Compliance

The BWCF and BOC have issued a joint annual report that covers the activities of the two agencies over fiscal year 2005-2006. The report reflects the activities of the agencies since legislators increased the agencies resources in 2003. The BOC now has 71 investigators, seven district supervisors, and two

investigative managers located in 18 cities around the state. Between July 1, 2005 and June 30, 2006, the BOC's investigators contacted 30,000 employers to verify their workers' comp coverage at an average caseload per investigator of 34.18 monthly.

Teams of compliance officers conducted the so-called sweeps, which targeted certain cities, counties, and occupations. In fiscal year 2005-2006, the bureau conducted two such campaigns aimed at drywall contractors, drywall subcontractors, and general contractors. The first of the sweeps were conducted over a three-day period in April in St. Johns, Flagler, and Volusia counties where investigators contacted 449 employers and issued 53 stop work orders. In Lee County, investigators contacted 708 employers and issued 34 stop work orders.

All told, the compliance efforts in fiscal year 2005-2006 resulted in 2,693 stop work orders, which generated over \$58 million in fines and penalties. Additionally, the work of the compliance officers caused 12,000 workers to be covered through the workers' comp system while yielding \$30 million in additional premiums. Under Rule 69L-6.025, employers are allowed to pay their fines under a periodic payment plan. The employer can pay in monthly installments of between one and five years. In fiscal year 2005-2006, employers entered in 1,546 payment plans that resulted in \$11 million collected by the state. There is also another \$30 million in fines to be paid in future years.