

Workers' Compensation Legislative & Regulatory Update

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The Florida Workers' Compensation Reimbursement Manual for Hospitals is nearing approval after the Three-Member Panel on Workers' Compensation approved changes in inpatient per diem rates and settled on a method to calculate the cost of physical implants, orthotics, and prosthetics. The Florida Workers' Compensation Manual for Ambulatory Surgical Centers and the Florida Workers' Compensation Manual for Health Care Providers are likewise heading for final approval. Gov. Charlie Crist has approved the four workers' compensation bills enacted by the legislature in the 2007 legislative session. Among the bills is one that grants first responders certain rights under the law that are not available to other workers. Crist's approval comes despite a heavy lobbying effort by the counties and cities, which called on the governor to veto the bill. The National Council on Compensation Insurance has released a preliminary study that found there has been little change in the percentage of claims involving attorneys between the pre and post 2003 reforms. However, the system continues to benefit from a downward trend in litigation.

Health Care Manuals

Finalizing the hospital manual has been a highly controversial process as carriers pushed regulators to change the way hospitals bill for physical implants, orthotics, and prosthetics. Carriers argued that they didn't have access to the invoices of the items and that hospitals were using the charges to breach the stop-loss level of \$50,000 allowing the hospitals to collect 75 percent of usual and customary charges.

To settle the dispute the three-member panel made a number of changes in the manual. The manual calls for the medical devices to be reimbursed at acquisition invoice cost plus 60 percent, an increase of 10 percent from earlier drafts of the manual. 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 don't count toward the stop loss level.

A point of contention was that the edited manual allows hospitals to charge for the medical devices on an "aggregate" acquisition basis. This allows hospitals to submit one bill bundling the cost if more than one device was needed per surgery. Carriers initially opposed the provision, but finally agreed to it since carriers were assured that they

would have access to the separate invoices under the audit provision of the medical billing rule.

The manual also sets 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. The stop-loss amount increased from \$50,000 to \$51,400 while the inpatient per diems increased to \$3,304 for surgical inpatients. Non-surgical rates remain at \$1,906. Trauma center fees were increased to \$3,305 for both surgical and non-surgical patients. The manual also caps fees for outpatient surgery diagnostic procedures that are performed within three days of an outpatient surgical procedure at 60 percent of usual and customary costs.

The ambulatory surgical centers have also lifted their objections to their fee schedule. Specifically, they requested that the manual include a definition of the medical devices. Under the approved manual, the centers will be reimbursed at invoice cost plus 50 percent. The manual also sets the reimbursement for 27 specific surgical procedures at 70 percent of the median cost for the procedures based on data collected by the Division of Workers' Compensation. The health care provider manual has also been updated to include changes made by Medicare to adjust fees based on the differences in certain costs by geographic regions. The state has three regions, one that includes Miami-Dade, a second that includes the Ft. Lauderdale

dale area, and another that encompasses the rest of the state.

WC Bills Take Effect

In the 2007 session, legislators largely avoided workers' compensation issues based on the system's performance since the 2003 reforms. However, six bills were approved by the legislature and have taken effect as of July.

One highly controversial bill (SB 746) grants "first responders" certain rights under the law. The bill's passage came after it's sponsors removed a number of objectionable provisions including one that would have expanded claimant attorneys' fees in cases involving exposures to toxic substances. Among other things, the bill defines an occupational disease as "a disease that arises out of employment as a first responder and is due to causes and conditions that are characteristic of and peculiar to a particular trade, occupational, process, or employment and excludes all ordinary diseases of life to which the general public is exposed." The bill also covers issues concerning benefits for adverse reactions to small pox vaccinations and mental and nervous injuries. NCCI estimated that the cost for first responder classes would increase by 5.4 percent or roughly \$11 million. That estimate, however, doesn't include the costs for the self-insured states, cities, and counties.

The Florida Workers' Compensation Joint Underwriting Association is the subject of two bills. The first bill (SB 1894) is designed to qualify the residual market for federal tax-exempt status. Since 1994, the association has paid out over \$33 million in federal income tax including \$16 million in 2006. To qualify for tax-exempt status, regulators now exercise more control over the association. Regulators now have the power to name all board members, require the residual market to gain prior approval before implementing rate changes, and approve the association's plan of operation. A second bill (HB 7169) shields public access to certain information including

underwriting files, claims files, and records obtained by internal auditors.

A fourth bill (SB 1748) 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." There are currently four self-insurance funds in the state. They are the following: Florida Citrus, Business, and Industry Fund, the Florida Retail Federation Self Insurers Fund, the Florida Rural Electric Self Insurers Fund, and the FRSA Self Insurers Fund. None of these funds are rated by a national rating organization.

HB 547 relates to law enforcement, correction, and correctional probation officers and the presumptions of compensability for tuberculosis, heart disease, or hypertension as found in Section 112.18, F.S. In order to qualify for these presumptions, these officers must have had a physical examination prior to their employment with the "employing agency" which failed to demonstrate the existence of these conditions.

Finally, CS for CS for SB 1624 allows for contractors and subcontractors involved in certain public construction projects to qualify for large deductible workers' compensation rating plans without individually satisfying eligibility requirements. Now such entities may combine their payrolls if the minimum deductible is \$100,000 and the standard estimated premium for the construction project is \$500,000 or more.

NCCI Claimant Attorney Study

NCCI has released a preliminary study that shows the impact on claimant attorneys' fees as a result of the 2003 reforms. In the reforms, legislators' eliminated hourly fees except for an hourly fee of \$150 for one medical-only claim per accident for a maximum amount of \$1,500. In eliminating all other hourly fees, legislators called for

fees to be paid on a percentage of recovery basis. Specifically, attorneys can receive 20 percent of the first \$5,000 of benefits, 15 percent of the second \$5,000 of benefits, and 10 percent for any claimant benefits secured in the following 10 years. If any benefits were secured past that point the attorney would receive five percent.

NCCI offered one major caveat in releasing the preliminary study on litigation activity. Namely, that the attorney fee changes could not be judged outside of the many changes made in the 2003 reforms. Additionally, the council noted that the post-reform changes are based on a sample of claims from accident year 2004 that have yet to be settled. The study included the following findings:

- The report found that there was little change in the percentage of claims with claimant attorney involvement between the reforms and 2004. In accident-year 2004, 20.3 percent of cases involved litigation, a number that was equivalent to the 20.1 percent reported in accident-year 2003. The decline in litigation, however, started prior to the 2003 reforms. Part of the decline may be attributable to the overall decline in claims' frequency, which has been declining at an annual rate of 5.3 percent between 2001 and 2005.
- Between 2001 and 2003, the state's permanent partial disability average cost with claimant attorney involvement declined by four percent between pre-reforms and post-reforms. In cases involving attorneys, the average lump-sum indemnity cost was 47 percent higher than in cases where no attorney is involved.
- The end of hourly fees in favor of the statutory contingency reimbursement rate has reduced claimant attorneys' fees. Post-reform, the average claimant attorney fees paid on all claims involving attorneys fell by 30 percent. In accident-year 2004, claimant attorneys' fees fell by 20 percent when compared with the average fees paid than between accident-years 2000 and 2002.