

Workers' Compensation Legislative & Regulatory Update

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July 1, 2009 is the effective date of the amendments to the attorney fee provisions of the Florida Workers' Compensation Act that passed in the 2009 legislative session. The debate continues as to the effect of these amendments both to industry and the injured employee community. From a regulatory standpoint, new workers' compensation rules are being considered primarily as a result of oversight by the Division of Workers' Compensation in such areas as exemptions from the workers' compensation system, self insurers, medical reimbursements and billing, and carrier audits. Studies of the existing workers' compensation system continue in an attempt to determine its effectiveness in such areas as employer compliance in obtaining proper workers' compensation coverages and medical dispute resolution procedures. The Office of Insurance Regulation is proposing new rules related to applications for workers' compensation coverage.

Attorney Fees

Beginning July 1, 2009, premiums for workers' compensation coverages will be reduced from levels previously approved in 2009 by the Office of Insurance Regulation as a result of the Florida Supreme Court decision in the case of Murray v. Mariner Health, 994 So. 2d 1051 (Fla. 2009). The 2009 Legislature corrected the adverse implications of the Murray decision on attorney fee

costs to the workers' compensation system by restating the law overturned by Murray that claimant's attorney's fees in substantial part should be based upon a percentage of benefits recovered on behalf of injured workers. That bill is effective July 1, 2009 and it was agreed by industry that the new law would create an approximate 6% reduction in rate that had been approved by OIR earlier in the year following the Emma Murray decision.

While the effect of the 2009 legislation on industry and the reduction of costs has been generally agreed to, the effect on injured workers continues to be debated. A primary argument by the trial bar against limiting attorney fees was the effect of restricting the availability of legal counsel to injured workers, i.e., if attorneys were restricted in fees to a percentage of benefits secured on behalf of injured employees, the attorneys would be unwilling to accept small cases because of reduced fees. Studies by NCCI disagree with the trial bar's argument and based upon existing data concluded that injured workers are being represented by attorneys at basically the same rate as before the 2003 amendments to the law which basically capped attorneys' fees consistent with the 2009 amendments. The Workers' Compensation Research Institute of Cambridge, Massachusetts, issued a report recently and reached conclusions consistent with those made by NCCI. Analyzing a sample of in excess of 47,000 cases where income benefit payments were made to injured workers, it was concluded that a significant portion of these workers were able to hire attorneys. The report also indicated that even when the possible attorney fee was

likely to be minimal, a significant proportion of the workers were able to hire attorneys. In summary, the evidence developed suggested no decline or at best a small decline in the ability of workers to retain an attorney. To read the abstract or to obtain a complimentary PDF of the published version of this report, go to http://www.wcrinet.org/result/fl_attorney_result.html.

Insurers' Standards and Practices

The Division of Workers' Compensation has initiated formal rulemaking procedures for the adoption of new rules relating to the monitoring, auditing, and investigating "regulated entities" to ensure the proper payment of workers' compensation benefits to injured workers and medical care providers. The term "regulated entity" includes employers, third party administrators, self insureds, and any entity responsible for paying workers' compensation benefits to or on behalf of injured workers. A complete rewrite of Rule 69L-24 FAC is being proposed to provide timely payment of workers' compensation benefits to injured workers, timely payment of medical bills to providers, and timely reporting of workers' compensation medical data to the Florida Department of Financial Services. Substantial administrative penalties and fines are being proposed for non-compliance. A copy of the proposed rule may be obtained from the

Division of Workers' Compensation website at <http://www.myfloridacfo.com/wc/>. Knowledge of this rule is an absolute must for claims handlers responsible for Florida workers' compensation cases.

Compliance

A workshop has been set for July 16, 2009 at 10:00 a.m. in Tallahassee to consider amendments to Rule 69L-6.012 Notice of Election to be Exempt. Amendments are being considered and will be discussed concerning the revocation of Certificates of Election to be Exempt by operation of law for any dissolved corporation or limited liability company that continues to remain dissolved or inactive for 90 days after the date of its dissolution or when it became inactive. The proposed language in the rule also provides for the revocation by operation of law of any Certificate of Election to be Exempt where the person named on the certificate no longer meets the requirements for issuance of the certificate. A copy of the Draft Rule can be obtained by referring to the Division's website at <http://www.myfloridacfo.com/wc/pdf/notice69L-6012.pdf>.

The Division of Workers' Compensation has now released a new noncompliance referral database for the electronic submission of referrals regarding employers alleged to have failed to provide workers' compensation coverage. Such referrals can be electronically submitted and allows for the referring party to track the status of the referral electronically. The referring party can also have the option to provide an e-mail address to receive automatic electronic notifications as to the status of the referral. The new database will enable the Division to enhance its responsiveness and provide real time feedback to the referring party. The noncompliance referral database can be accessed through the Division's website as above referenced and by clicking on the following link: https://apps.fldfs.com/noncompliance_referral/mainpage.aspx.

Medical Reimbursements

Formal rulemaking procedures have begun on a proposed rule developed by

the Division of Workers' Compensation concerning Florida workers' compensation medical services billing, filing and reporting Rule 69L-7.602 FAC. The amended rule contains new forms to be utilized in the submission of medical bills and reimbursements and references the 2009 Medical EDI Implementation Guide (MEIG). A copy of the proposed rule can be obtained by visiting the DWC website above referenced and referring to Draft Rules. If requested, a hearing will be held on the proposed rule on July 7, 2009 at 10:00 a.m. in Tallahassee. Healthcare providers should be aware of their responsibilities for properly billing for services rendered and the new requirements for payments including information required to support reimbursement requests for such services.

A Rule Workshop will be held on July 7, 2009 at 1:00 p.m. in Tallahassee to discuss the proposal to adopt by reference the Florida Workers' Compensation Reimbursement Manual for Hospitals 2009 Edition. The proposed manual incorporates Medicare's Outpatient Hospital Prospective Payment System payment methodology for reimbursing hospitals for outpatient services with payment adjustment factors as approved by the three member panel at its meeting on November 20, 2008. The proposed manual also incorporates by reference the Medicare Outpatient Hospital Prospective Payment System, recognizes the Integrated Outpatient Code Editor and the National Correct Coding Initiative (NCCI) edits and their updates from the Centers for Medicare and Medicaid Services (CMS) in the Medicare Outpatient Hospital Prospective System.

Of significant interest to the medical provider industry in the workers' compensation system is the recent report from the Division of Workers' Compensation to the three member panel relating to reimbursement disputes and overutilization issues. This report provides a detailed accounting of the petitions for resolution of reimbursement disputes received and adjudicated as well as activity generated by carrier reports of overutilization for fiscal year 2007-2008. The Office of Medical Services (OMS) within the Division of Workers' Compensation administers and oversees the resolution of reimbursement and utilization disputes concerning medical services. During FY 2007/2008, OMS reviewed and closed 1,921 petitions concerning reimbursement

disputes between medical providers and the payors. Of the petitions received, 59% were dismissed and 41% received a determination. Most of the petitions dismissed were untimely or dismissed for insufficient documentation. This newsletter can be contacted for a complete copy of the report that was submitted.

Self Insurance

A hearing was held on June 24, 2009 in Tallahassee in regards to the adoption of proposed rules by the Division of Workers' Compensation relating to self insurers. These new rules constitute a complete re-write of rules relating to qualification to be a self insured and the standards for retention of such status including maintenance of payroll records, loss data records, the filing of financial statements, and calculation of premiums used in determining assessments for self insured status. New rules relate to required actuarial reports, security deposits and excess insurance for the privilege of being self insured. Separate rules apply for governmental entities applying for or retaining a self insured status. New rules also apply to entities that service self insureds. A copy of the proposed rule can be obtained at <http://www.myfloridacfo.com/wc/pdf/notice69L-5.pdf>.

Workers' Compensation Applications for Coverage

The Department of Financial Services, Office of Insurance Regulation is proposing to amend Rule 690-189.003, FAC to allow for but not require electronic signatures in the application for workers' compensation coverage. Proposed amendments also makes explicit those premium audit procedures that under the old rule were incorporated by reference.