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What's New In Our Industry Florida

WC Legislative Summary

We are just past halfway through the 2024 legislative session. Significant Worker's Compensation bills are primarily associated with medical costs. Those pending bills and status are summarized in this month's Firm Newsletter.

1) HB 161/SB 362 (Companion Bills) - Payments for Health Care Providers and Surgical Procedures under Workers' Compensation

Revises §440.13(10), Florida Statutes, to increase expert witness fees for medical provider testimony from \$200/hr to \$300/hr.

Revises §440.13(12)(f) & (g), F.S., to increase the Maximum Reimbursement Allowances (MRAs) for physician services and the professional component of surgery by a physician to 200% of Medicare.

The Senate version (SB 362) was amended in committee to revise the MRA to 150% of Medicare due to concerns of cost-increases. Either version was supported by the Insurance Industry, which recognizes that Florida has been reimbursing physicians less than most states for physician medical services. (By contrast, Florida WC is ranked among the highest reimbursement rates for hospital and pharmaceutical treatment.)

This revision, in combination with the 2023 statutory revisions relating to the Workers' Compensation Health Care Provider Reimbursement Manual (now exempt from the requirement of legislative ratification), should produce better and more reasonable physician reimbursements, which will be updated annually, rather than every several years while awaiting legislative approval.

2) HB 637/SB 808 (Companion Bills) “Treatment by a Medical Specialist-First Responder

Revises §112.18, F.S., to specifically exempt first responders from certain provisions of §440.13(2) & (3), F.S., by allowing an injured first responder to designate in writing to the employer/carrier their own choice of treating physicians. The bill allows the carrier to provide an alternative specialist of equal qualifications within 5 days of receipt of a written notice to provide care. The workers’ compensation carrier is authorized to choose the requested alternative physician within 5 days of the request but must contact their chosen physician within 5 days to schedule an appointment. The appointment must take place within 30 days of the authorization. Failure to provide care following these procedures permits the claimant to choose his/her physician. Treatment by any physician must be authorized by the carrier, which otherwise must be medically necessary and causally-related to the compensable condition. Reimbursement for such services is capped at 200% of Medicare.

At this point in the Session, there seems to be no formal objections to the terms of these Proposed Amendments.

3) HB989/SB1098 (Companion Bills) -Dept. of Financial Services Bill (covers many issues under DFS authority but this Summary only applies to Medical Costs in the Workers’ Compensation System)

These Companion Bills in part deal with maximum reimbursements (MRAs) for emergency medical services provided by hospitals. Except as provided below, bills do not provide for an MRA for such services, but rather state that such treatment would be paid based on 75% of the hospital’s billed amount unless there is a contract between the hospital and the employer/carrier as to how much should be paid.

Any “percentage of billed charges” provision is strongly opposed by the carriers, as arbitrary and inconsistent with the rest of the Workers’ Compensation Law and the reimbursements by other health care programs. There is no established correlation between hospital billed charges and either the value of services or the cost to provide those services. The Department’s data demonstrates that there has been a “rapid escalation” of hospital charges since approximately 2015.

The Senate version of this legislation (SB1098) was amended to limit reimbursement for such emergency services to 250% of Medicare, unless there is a contract between the parties stating the amounts payable. Despite recognition that other state WC

programs using Medicare-based reimbursements tend to cap payment at 200% of Medicare, or less, the WC Carriers support this amendment on the grounds that it falls in line with average upper limits of reimbursement by other health care programs. The Senate Amendment also states that upon the adoption of this provision, the Department shall engage with an Actuarial Service Firm to begin development of Maximum Reimbursement Allowances for such services. The development of such reimbursement allowances in accordance with this process would expire June 30, 2026.

It is unclear which version of these bills will ultimately be adopted, or whether they will fail due to strong disagreement between interested parties. Hospitals tend to support payments based on a percentage of unlimited billed charges, while the carriers seek to tie reimbursement to some objective benchmark. It remains to be seen whether the House or Senate version will be finally adopted.

Other Pending Workers' Compensation Related Bills

Other limited number of bills related to Workers' Compensation have been filed. Note previous Newsletters summarizing all such bills. No significant activity has occurred in regards to these bills as of the time of this email. If the Legislature considers these bills, updated summaries will be provided.