

IN MY OPINION

The End of the Happy Days

Brace Yourself for Bad Times in Workers' Compensation

By Joseph Paduda

The last five years have been good ones for Florida's employers. Workers' compensation costs are down dramatically, claim frequency continues to drop, and premiums have followed the same trajectory. However, all good things must come to an end, and in this case the event that triggers the end may well be the state's recent decision to increase reimbursement for outpatient procedures.

On November 20, Florida's workers' compensation regulatory bosses (the Three-Member Panel) approved a change in the way workers' compensation payers will reimburse outpatient facility bills. According to www.WorkCompCentral.com, Florida regulators will "begin drafting a rule to base outpatient fees paid to hospitals on the Medicare Outpatient Prospective Payment System. But the fees would be adjusted using Florida-specific multipliers based on the usual-and-customary charges now employed to establish outpatient fees... Under the new system, the Medicare-based fees would be adjusted by a new factor created by a hospital's usual and customary charges, by 174 percent for outpatient surgeries and 395 percent for other outpatient services."

Interestingly, an analysis by the National Council on Compensation Insurance (NCCI) of the proposed change provided to the Department of Financial Services (DFS) in a Nov. 4 letter predicts it will be "premium neutral." That is, the added cost due to higher prices won't materially affect premiums. I'd note that this doesn't address the already sky-high profits hospitals are making on workers' compensation in Florida, profits that make it the best payer by far in the Sunshine State. It also fails to adequately address the likelihood that increased reimbursement will lead to more procedures performed in more lucrative settings.

Significant Increase

We don't have to look far to see what will happen as a result of the panel's proposed changes. South Carolina put



in a Medicare-plus hospital fee schedule on Oct. 1, 2006. Now, per NCCI, there is a 23.7 percent workers' compensation rate increase filed and pending. And, the Palmetto State's Medicare+ hospital fee schedule pays hospitals less than the fee schedule being proposed by Florida's DFS (140 percent of what Medicare pays in South Carolina versus 174–395 percent of what Medicare pays being proposed for Florida). Paying hospitals more has significantly increased medical costs and utilization in South Carolina.

The proposed change would link what Medicare pays hospitals as defined by the Ambulatory Payment Classifications (APC) payment rate, adjusted to mark up the Medicare APC payment on a hospital's charge, to roughly equate with what DFS thinks are the average charges billed by Florida hospitals for that "group" of APCs.

Florida is putting APCs into two groups — surgical and "other hospital outpatient." I'll leave the mind-numbing minutiae of Medicare reimbursement analyses at that, and focus on the key problems with the panel's decision.

Let's start with the use of Medicare's reimbursement rates and methodologies. Workers' compensation systems should not use Medicare as a basis for reimbursement. Medicare fees reimburse providers for

providing care to elderly folks, not working-age, employed people. As a corollary, providers treating Medicare patients are not concerned with functionality or return to work. The Centers for Medicare & Medicaid Services (CMS) has repeatedly stated their reimbursement methodology is specific to their population, and discouraged use of that methodology by other payers. Yet these differences have never been evaluated. To my knowledge, there has never been any thorough study of how the inpatient or outpatient hospital resources used by workers' compensation patients compare with resources used by Medicare patients. Logic indicates there are significant differences, but the regulators have not determined if these differences exist, much less what impact any differences would have on treatments, and therefore costs.

The panel's reimbursement scheme pays hospitals 74 percent more than Medicare for surgeries and four times Medicare for other outpatient services. This is insane. Workers' compensation is already the most profitable line of business for Florida hospitals, delivering gross margins in excess of 50 percent. This methodology makes it even more lucrative. It is indeed curious that DFS would require employers to pay much more for health care delivered to workers' compensation claimants than

the state is willing to pay for care delivered to Medicaid patients. I impute no nefarious motives, but do wonder how the panel can justify this dramatic difference.

Locking in Increases

There's more. Basing reimbursement on charges is just nutty. Most obviously, providers can inflate charges at will — and do. Often, hospital charges are many times their actual delivery cost. A 2004 study by the Institute for Health and Socioeconomic Policy found that 14 Florida hospitals charged more than five and a half times their actual cost of delivering care. Moreover, providers increase charges around 14 percent every year. The panel's recommended methodology now locks in a 14 percent trend rate for outpatient hospital services in Florida, on top of charges that are already several times actual costs.

As noted above, one can expect that services currently provided in physician offices will increasingly be performed in higher-cost hospital locations. So procedures that were billed at the lower physician rate

will now be billed at the much higher rates by hospitals. Here's how this would happen: Hospitals will be financially incented to encourage their affiliated physicians to partner with the hospital in building or buying outpatient surgical and other facilities. As the procedures would now be billed by the hospital, they would be reimbursed at the hospital fee schedule, not at the (much lower) physician rate.

These issues have been raised in previous meetings and provided in documents submitted to the panel over the last few months. According to sources present at the Nov. 20 hearing, additional information was presented regarding the basis for the panel's determination that the change would not have any significant impact on costs. Florida State University health economics guru Gary Fortier submitted a brief that stated that the methodology being used by DFS was "fundamentally flawed, and in my opinion the study and methodology used cannot be relied upon . . . to make policy." Fortier also warned that once this payment system,

which encourages greatly increased utilization of hospital services to treat workers' compensation patients, is put in place, it will be hard to change even if payments become more tight-fisted in the future.

It is indeed unfortunate that the Sunshine State has the second highest percentage of working folks without health insurance, but why make workers' compensation payers cover their medical bills? No, there's not a direct link, and no, this wasn't expressly addressed (as far as I know, as I wasn't at the hearing), but from here it sure looks like workers' compensation payers are being asked to help facilities cover the underpayments from Medicaid and to provide funds to help treat the uninsured.

Oh, and Florida's workers' compensation facility costs will now be the highest in the country. ▲

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