



PRACTICE MATTERS

major workers' compensation reform by the 2003 legislature -physicians get increase in reimbursement fees

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The workers' compensation goal of the Florida Medical Association and involved specialty societies for the 2003 Florida legislative session was to improve injured worker access to quality providers by increasing physician participation. By increasing reimbursement fees, gaining the ability to negotiate fees, reducing the hassle factors associated with providing services to injured workers, and finding ways to identify and remove fraudulent physicians from the workers' compensation system, more physicians will accept workers' compensation patients. Injured workers will receive more timely and effective treatment. Overall system costs will be reduced. Because premiums have skyrocketed over the last few years with many businesses not able to afford workers' compensation coverage, the Governor asked the legislature for a bill that would increase availability and affordability, and reduce system costs by 15 percent.

process. The National Council of Compensation Insurance (NCCI) estimates this legislation will create a system savings of 12.5 percent or \$375 million.

Two state agencies administer the workers' compensation system in Florida, the Division of Workers' Compensation (Division) of the Department of Financial Services (Department) and the Agency for Health Care Administration (AHCA). The Division has primary responsibility for administering and regulating workers' compensation. It serves as a resource for employees and provides educational information to employers/carriers and employees. The Division also investigates unpaid carrier medical bills and reviews questionable denials submitted to providers by carriers. AHCA, on the other hand, administers health care provider certification, reimbursement and utilization dispute resolution,

Figure 1 - EXAMPLES (for Locality 1/2):

	Current WC	Medicare (2003)	Jan. 1, 2004 WC
New patient office visit (99204)	\$81	\$128.24	\$141
Established patient visit (99213)	\$39	\$49.44	\$54.38
Initial consult, Level 4 (99244)	\$157	\$161.22	\$177.34
Removal of implant, deep (20680)	\$332	\$338	\$473.20
Tendon sheath incision (26055)	\$343	\$651.23	\$911.72
Open femoral fracture (27236)	\$1421	\$1069	\$1496.60
Arthroscopy, knee, surgical (29876)	\$809	\$594	\$831.60
Laminectomy (63030)	\$1145	\$845	\$1183
Laminectomy (63047)	\$1907	\$1010	\$1907 (N/C)

In the final hours of the first special session the legislature passed a workers' compensation bill, SB 50A. The bill provides for an increase in physician reimbursement fees, includes the ability to negotiate above the fee schedule, revises indemnity benefits for injured workers, gives more compliance and enforcement authority to combat fraud, and provides changes that expedite the dispute resolution

accomplishes provider audits, and provides technical assistance on billing and reimbursement issues.

Any physician who renders workers' compensation services/treatments, excluding emergency care, must (1) be certified by AHCA, and (2) receive authorization from the carrier before providing treatment. There is no longer

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a requirement to attend a five-hour certification course.

Reimbursement Fees

Effective January 1, 2004, workers' compensation reimbursement fees for physicians licensed under chapters 458 or 459 are increased to a maximum of 110 percent of Medicare for non-surgical and 140 percent of Medicare for surgical procedures, or the current fee schedule, whichever is greater. A system increase of 4.8 percent or \$144 million will be going to physicians with 3.4 percent being offset by cuts in hospital fees.

The statute now clearly states that providers can negotiate their fees with carriers outside the fee schedule. Specifically, the bill states that an individual physician shall be reimbursed either the agreed upon contract price or the maximum reimbursement allowance. However, the reason the physician is being paid higher than the fee schedule must be stated in the contract.

The goal of the Florida Medical Association is to reduce the hassle factors and increase reimbursement fees to a level that will encourage physicians to accept injured workers as patients. Our research, which considered fees in other southeastern states, indicates that fees of 150 percent of Medicare for non-surgical and 200 percent for surgical procedures are the appropriate goals. We will continue to strive for this fee schedule in future legislative sessions.

Although chiropractors did not gain an increase in their reimbursement fees, the bill changes the number of chiropractic workers' compensation services allowed from 18 within 8 weeks, to 24 within 12 weeks. Chiropractors and podiatrists can now also be used as Medical Care Coordinators to manage care for physicians licensed under Chapters 460 and 461, Florida Statutes, respectively.

Hassle Factors and Carrier Compliance

Some headway was made to get carriers to pay claims in a timely manner. After January 1, 2004, the Department shall require that all medical bills properly submitted by the provider (and not denied by the carrier) be, in timely manner, paid within 45 calendar days. To help in reducing the number of workers' compensation forms, the Division will standardize physician reports to employers and carriers. Starting in October 2003, the carrier must report the maximum medical improvement (MMI) date to the Department within 14 days after each MMI is determined, or at 98 weeks, after temporary disability benefits begin to accrue, if MMI has not been reached.

Practice Parameters

The insurance industry claimed that one major problem in the workers' compensation system has been the over-utilization of certain codes and the ordering of tests that were not medically necessary. In an effort to combat this, the bill mandates the use of the practice parameters and

protocols adopted by the United States Agency for Healthcare Research and Quality (AHRQ). AHRQ maintains a comprehensive database of evidence based clinical practice guidelines.

The use of guidelines to assist in physician/patient decisions and to standardize treatment will not only improve care for Florida's injured workers, but will also reduce costs and the amount of fraud in the workers' compensation system.

Injuries

Effective October 2003, the injury must be based on objective relevant medical findings; pain or other subjective complaints alone, in the absence of objective relevant medical findings, are not compensable. A compensable injury must have the work related injury as the major contributing cause (greater than 50 per cent) demonstrated by medical evidence. Note: For any mental or nervous injury there must be a compensable physical injury and benefits are limited to six months following the date of MMI of the injured employee's physical injury.

Independent Medical Examinations and Dispute Resolution

Effective October 2003, the employer and employee are entitled to only one Independent Medical Examination (IME) per accident (rather than per specialty). The IM Examiner may not provide the recommended, medically necessary follow-up care. If the employee wins the dispute, the carrier will reimburse his/her costs. If a managed care arrangement exists, the carrier will pay the costs of the IME if the physician used is in the provider network. The parties may mutually agree to a "consensus IME," where the findings and conclusions shall be binding to both parties.

As an optional dispute resolution process, the employer, carrier, and employee may seek consent from a judge of compensation claims to enter into binding claim arbitration in lieu of other remedies.

Governor Bush signed the bill on July 15, 2003, and, except as otherwise provided, the bill shall take effect October 1, 2003.

Other major issues/changes:

- **Fraud:** The Department of Financial Services is given additional resources and authority to combat workers' compensation fraud.

- **Benefits:** Many injured workers' benefits were reduced or lost in this legislation. Examples - A qualifier for social security disability is no longer automatically qualified for Permanent Total Disability (PTD) benefits. An injured worker is no longer qualified for PTD if the employee is engaged in, or is physically capable of engaging in sedentary work within 50 miles of the employee's residence. The burden of proof is placed on the injured

worker. Under this bill, if the injured worker is eligible for social security, PTD benefits stop when the disabled employee reaches age 75. The previous language allowed benefits to continue through the individual's life.

- **Death benefits:** The limit on the death benefit was raised from \$100,000 to \$150,000.

- **Attorney's fees:** This bill limits attorney's fees and may, as claimed by the trial bar, limit the availability of attorneys for injured workers with small claims. Attorney's fees will be awarded on a statutorily defined contingency basis and be based solely on benefits secured by the attorney on behalf of a claimant, with the exception that the judge of compensation claims may approve an alternative fee, not to exceed \$1,500 once per accident, based on a maximum hourly fee of \$150 per hour. If the carrier communicates an offer to settle at least 30 days prior to the trial date and the claimant/attorney refuses the offer, the calculation of attorney's fees to be assessed against the carrier will be based only on the amount awarded above the amount specified in the offer to settle.

- **Construction exemptions:** Any employer with employees working in Florida must obtain workers' compensation coverage for all employees. The bill limits exemptions to three officers, with at least 10 percent ownership, of a Florida corporation engaged in the construction industry.

The FMA wishes to thank the members of the Workers' Compensation Advisory Committee who expended much time and energy over the last eight months in this effort. Special thanks to Doctors Mark Fahey, Tom Hicks, Phil Tally, Troy Tippett, and Michael Webb for their testimony. The following organizations contributed both time and resources to this effort:

[Florida Orthopaedic Society](#)

[Florida Neurosurgical Society](#)

[Florida Chapter, Am. College of Surgeons](#)

[Florida Association of Occup. and Environ. Medicine](#)

[Florida Academy of Pain Medicine](#)

[Florida Society of Neurology](#)

[Florida Society of Physical Medicine and Rehabilitation](#)

[Bays Medical Society](#)

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