



California Workers' Compensation Institute

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November 7, 2012

VIA E-MAIL to dwcrules@dir.ca.gov

Maureen Gray,
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation, Legal Unit
Post Office Box 420603
San Francisco, CA 94142

RE: Revisions to Proposed Amendments to ASC fees in the Outpatient Facility Section of the OMFS

Dear Ms. Gray:

This 15-day written comment on revisions to proposed changes to maximum reasonable fees for Ambulatory Surgical Centers (ASCs) under the Outpatient Facility Fee Section (OFFS) of the Official Medical Fee Schedule (OMFS) is presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 80% of California's workers' compensation premium, and self-insured employers with \$36B of annual payroll (20% of the state's total annual self-insured payroll).

Insurer members of the Institute include ACE, Alaska National Insurance Company, AmTrust North America, Chartis Insurance, Chubb Group, CNA, CompWest Insurance Company, Crum & Forster, Employers, Everest National Insurance Company, Farmers Insurance Group, Fireman's Fund Insurance Company, The Hartford, Insurance Company of the West, Liberty Mutual Insurance, Meadowbrook Insurance Group, Pacific Compensation Insurance Company, Preferred Employers Insurance Company, SeaBright Insurance Company, Springfield Insurance Company, State Compensation Insurance Fund, State Farm Insurance Companies, Travelers, XL America, Zenith Insurance Company, and Zurich North America.

Self-insured employer members are Adventist Health, Agilent Technologies, Chevron Corporation, City of Santa Ana, City of Santa Monica, City of Torrance, Contra Costa County Schools Insurance Group, Costco Wholesale, County of San Bernardino Risk Management, County of Santa Clara Risk Management, Dignity Health, Foster Farms, Grimmway Enterprises Inc., Kaiser Foundation Health Plan, Inc., Marriott International, Inc., Pacific Gas & Electric Company, Safeway, Inc., Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Southern California Edison, Sutter Health, University of California, and The Walt Disney Company.

The California Workers' Compensation Institute's top three recommendations for revising the schedule of fees for outpatient hospital departments and ASCs are to:

1. Revise the regulation to conform to section 84 of Senate Bill 863, which requires that -- with the exception of services with final resolution prior to January 1, 2013 -- the maximum ASC facility fee not exceed 80% of the fee paid by Medicare for the same services performed in a hospital outpatient department
2. Reduce the adjustment to the maximum ASC fee allowed in lieu of outlier reimbursement from 2% to 1.3334%, so that it is proportionate to the corresponding adjustment for outpatient hospital departments
3. Delete the dual methodologies for compensating high-cost outlier cases by retaining the outlier multiplier and eliminating the Medicare outlier methodology.

Recommendation – Applicability

Revise the regulation to conform to section 84 of Senate Bill 863, which on January 1, 2013, sets the maximum ASC fee to 80% of the fee paid by Medicare for the same services performed in a hospital outpatient department, except for services with final resolution prior to January 1, 2013.

Discussion

Senate Bill 863 in section 5307.1(c) changes the maximum facility fee for services performed in an ambulatory surgery center to 80% of the fee paid by Medicare for the same services performed in a hospital outpatient department. The revisions propose to apply the changes contingent on the dates services were rendered, but according to Section 84 of Senate Bill 863:

“This act shall apply to all pending matters, regardless of date of injury, unless otherwise specified in this act, but shall not be a basis to rescind, alter, amend, or reopen any final award of workers’ compensation benefits.”

Since it is not otherwise specified in the act, on January 1, 2013, except for matters with final resolution prior to that date, the maximum ASC fee will be 80% of the fee paid by Medicare for the same services performed in a hospital outpatient department.

Recommendation – High-cost outlier compensation

Reduce the adjustment to the maximum ASC fee allowed in lieu of outlier reimbursement from 2% to 1.3334% so that it is proportionate to the corresponding adjustment for outpatient hospital departments.

Discussion

The Division determined that adding 2% to the 120% of Medicare's maximum allowances for all outpatient facility payments results in payment equivalent in aggregate to 120% of Medicare's maximum allowances for non-outlier cases plus a 120% of Medicare's payment for high-cost outlier cases.

Adding 2% to 120% provides an increase of 1.6667%. Adding 2% to 80%, on the other hand, would provide a disproportionate increase of 2.5%, and applying that additional percentage would exceed the maximum ASC allowance set by SB 863. Adjusting the ASC 80% allowance by an additional 1.6667% instead will ensure the same off-set for ASC high-cost outliers as for outpatient hospital high-cost outliers. 1.6667% of 80% is 1.3334%; therefore maximum allowances of 81.3334% will off-set ASC high-cost outliers.

Recommendation – High-cost outlier compensation

The Institute also recommends using a single methodology for compensating high-cost outlier cases by retaining the outlier multiplier and eliminating the Medicare outlier methodology.

Discussion

DWC currently allows hospital outpatient departments and ASCs a choice. Each facility may choose between being paid for all facility bills at 122% of Medicare's basic allowances, but no outlier payments; or being paid 120% of Medicare's basic allowances and receiving Medicare-based outlier payments. Outlier payments involve complex calculation and programming, and all except a few facilities choose the 122% option.

Using dual methodologies to compensate high-cost outlier cases requires claims administrators to support two different ways to program and calculate outlier compensation is unnecessary. The fact that the alternative Medicare calculation is seldom elected by outpatient hospital departments or ASCs is a good indicator that the multiplier methodology provides adequate compensation for high-cost outlier cases. Eliminating the Medicare calculation will reduce complexity and administrative burdens and lower medical cost containment costs and expenses.

Recommendation – Federal Regulations & Notices by dates of service

In addition to the links, post the Federal Regulations and Notices on the DWC web site and provide the tables in an Excel spreadsheet format, if possible, for ease of use.

Discussion

CMS is notorious for changing the location or regulations and notices on its web site, often making them difficult to locate. It would be helpful to make the Regulations and Notices accessible by also posting the actual notices on the DWC web site.

The tables are very helpful and may be even more user-friendly and less confusing if they can also be provided in an Excel spreadsheet format.

Thank you for considering this written testimony. Please contact me if clarification or other assistance is needed.

Sincerely,

Brenda Ramirez
CWCi Claims and Medical Director

BR/pm

cc: Destie Overpeck, DWC Acting Administrative Director
CWCi Claims Committee
CWCi Medical Care Committee
CWCi RTW Group
CWCi Legal Committee
CWCi Regular Members
CWCi Associate Members