California Workers' Compensation Institute
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April 17, 2018

VIA E-MAIL – DWCrules@dir.ca.gov

Maureen Gray, Regulations Coordinator
Division of Workers' Compensation, Legal Unit
P.O. Box 420603
San Francisco, CA 94142

Re: Public Hearing Comment: Physician Fee Schedule Regulations

Dear Ms. Gray:

On behalf of its members, California Workers' Compensation Institute offers these comments on the proposed amendments to the Physician Fee Schedule regulations. The Institute members include insurers writing 83% of California's workers' compensation premium, and self-insured employers with $65B of annual payroll (30% of the state's total annual self-insured payroll).

Insurer members of the Institute include AIG, Alaska National Insurance Company, Allianz Global Corporate and Specialty, AmTrust North America, Berkshire Hathaway, CHUBB, CNA, CompWest Insurance Company, Crum & Forster, EMPLOYERS, Everest National Insurance Company, The Hartford, ICW Group, Liberty Mutual Insurance, Pacific Compensation Insurance Company, Preferred Employers Insurance, Republic Indemnity Company of America, Sentry Insurance, State Compensation Insurance Fund, State Farm Insurance Companies, Travelers, XL America, Zenith Insurance Company, and Zurich North America.

Self-insured employer members include Adventist Health, Albertsons/Safeway, BETA Healthcare Group, California Joint Powers Insurance Authority, California State University Risk Management Authority, Chevron Corporation, City and County of San Francisco, City of Los Angeles, City of Torrance, Contra Costa County Risk Management, Contra Costa County Schools Insurance Group, Costco Wholesale, County of Alameda, County of Los Angeles, County of San Bernardino Risk Management, County of Santa Clara Risk Management, Dignity Health, Foster Farms, Grimmway Farms, Kaiser Permanente, Marriott International, Inc., North Bay Schools Insurance Authority, Pacific Gas & Electric Company, Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Shasta-Trinity Schools Insurance Group, Southern California Edison, Special District Risk Management Authority, Sutter Health, University of California, and The Walt Disney Company.

Introduction

As noted in the Initial Statement of Reasons for the proposed revisions, geographic adjustment factors were the subject of much discussion during the initial development and adoption of the RBRVS-based fee schedule. The current proposal to adopt Medicare's geographic practice cost index (GPCI) in place of the statewide geographic adjustment factor (GAF) is intended to provide scaled payments based on the cost of doing business in various geographic locations. In 2013, the decision was made to calculate payments based on a statewide average GAF (in accord with the majority of commenters) in order to "streamline the transition to RBRVS, reduce administrative burden and eliminate potential billing abuse"[1] with the understanding that providers in some areas might receive greater or lesser payments than they would using Medicare GPCI values. At that time, Medicare's GPCI's for California were outdated and unrepresentative of actual economic conditions. The Centers for Medicare and Medicaid Services (CMS), however, has now begun a phased implementation of newly refined GPCIs for California; so it may be an appropriate time to revisit the geographic component of the Official Medical Fee Schedule (OMFS) calculation for covered services.

The California workers' compensation community is now four years into the Medicare-based fee schedule for physicians and non-physicians. Currently, physicians and non-physicians treating injured workers receive the same payment amount for the same service, regardless of the geographic location where that service is rendered. Under the proposed revisions, however, providers in large metropolitan areas are projected by RAND to receive increased payment amounts, while providers in more rural areas are projected to receive decreased payment amounts.

Recommendation and Discussion

The Institute believes that the proposed change to the geographic component of the payment formula may exacerbate provider access issues in rural communities due to reduced payment amounts. This possibility was also raised in the August 29, 2017 RAND memo (page 4). The new Medicare GPCIs associated with expanded metropolitan statistical area (MSA) localities are intended to correct underpayments for providers in metropolitan areas (*e.g.,* San Diego) that were incorrectly assigned to the "rest of California" locality. Medicare is not attempting to achieve budget neutrality by reducing the GPCIs for rural "rest of California" payments. However, since the RBRVS-based OMFS has been based on a statewide average GAF, the results will not be the same; the gains in San Diego will be muted and providers in rural California communities will experience reduced payments for their workers' compensation patients.

The RAND memo projects that 59.6 percent of payments would be increased under the proposed change, but the bulk of those increased payments (42.9 percent) are for services in the Los Angeles/Orange County metropolitan area (with a projected increase of only 0.9 percent). This contrasts with decreases in payment amounts impacting the rest of the state (40.4 percent of total payments in RAND's study). On behalf of our members, the Institute is concerned that injured workers seeking medical treatment in non-urban areas may be detrimentally impacted if physicians in the rural areas leave the practice of workers' compensation as a result of reduced payment amounts.

[1] State of California, Department of Industrial Relations, Division of Workers' Compensation. *Final Statement of Reasons. Subject Matter of Regulations: Workers' Compensation – Official Medical Fee Schedule: Physician's Fee Schedule*. August 2013.

In order to gain a better understanding of the regional variation that would result from the proposed payment changes, the Institute calculated fee schedule values for three prominent services, using current GAFs and current Medicare GPCIs. Calculated payments under the current physician schedule and the proposed change for Los Angeles, San Francisco, and "Rest of State"[2] are shown below.

Example #1: 99214 (Office Visit - Established)
Current OMFS payment: $149.46
2018 Medicare GPCIs:
- Los Angeles - $150.79
- San Francisco - $161.16
- Rural "Rest of State" - $141.72

Example #2: 20550 (Injection(s); tendon sheath, ligament)
Current OMFS payment: $73.30
2018 Medicare GPCIs:
- Los Angeles - $73.99
- San Francisco - $78.35
- Rural "Rest of State" - $69.45

Example #3: 72148 (Lumbar MRI w/o contrast)
Current OMFS payment: $324.48
2018 Medicare GPCIs:
- Los Angeles - $328.21
- San Francisco - $360.99
- Rural "Rest of State" - $303.55

The examples above demonstrate the variability in payments for the same services based on geographic location. In addition to the locations included in the "rest of state" designation, there are 13 MSAs (including Fresno, Riverside-San Bernardino, and Stockton) that have the same Work and Practice Expense GPCIs, which means that providers in these areas will also experience reductions in their payment amounts.

The Institute recommends against replacement of the average statewide GAF with the Medicare GPCIs, because the reformulated payments will inevitably result in lowered payments in localities where it is already difficult to find physicians to treat injured workers.

Additional Considerations

Proper payment under the proposed use of GPCIs requires that the service provider include the correct address and ZIP code for where the service actually took place when submitting electronic or paper bills. Additional clarification will be required for physicians who provide services from remote locations (*e.g.*, radiologists interpreting digital scans and radiography from a location that differs from where the scan or x-ray occurred; laboratory services; telehealth services; telephonic conferences; etc.).

[2] Areas designated by Medicare as "Rest of State" consist of ZIP codes that have not been incorporated into Metropolitan Statistical Areas (MSAs).

Consideration should be given to whether physician reports will continue to be paid based on universal flat fees, or whether geographic factors will be included in payment calculations for this type of physician service.

Additionally, the proposed regulations should be coordinated with any revisions to the Explanation of Review/Remittance Advice Guidelines if the service location ZIP code will be required to explain the payment calculation, in order to avoid conflicts and Independent Bill Review (IBR) costs.

Thank you for the opportunity to comment, and please contact us if additional information would be helpful.

Sincerely,

Stacy L. Jones
Senior Research Associate

SLJ/pm

cc: André Schoorl, DIR Acting Director
George Parisotto, DWC Administrative Director
CWCI Claims Committee
CWCI Medical Care Committee
CWCI Legal Committee
CWCI Regular Members
CWCI Associate Members