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August 31, 2020

Senator Curtis S. Bramble
Representative James A. Dunnigan

To Senator Bramble, Representative Dunnigan, and the members of the Business and Labor Interim Committee.

The Workers' Compensation Advisory Council submits this report pursuant to Utah Code Ann. §34A-2-107.

Introduction

S.B. 64, passed in the 2018 legislative session, requires the Workers' Compensation Advisory Council ("Council") to study the following items and submit three written reports to the Business and Labor Interim Committee no later than September 1, 2019, 2020, and 2021:

1. How to reduce hospital costs for purposes of medical benefits for workers' compensation;
2. Hospital fee schedules used in other states;
3. Hospital billing and payment trends within the state;
4. The approximate rate at which a workers' compensation insurance carrier or self-insured employer should expect to reimburse a hospital for billed hospital fees for covered medical service.

This is the second of the three required reports.

Background

The Utah Labor Commission ("Commission") and Council representatives obtained information from the Workers' Compensation Research Institute ("WCRI"), the National Council on Compensation Insurance ("NCCI"), the Utah Department of Health, and the Utah Hospital Association ("UHA") to include in this report.

Prior to the passage of S.B. 64, S.B. 216 from the 2016 legislative session directed hospitals to be reimbursed by an insurance carrier at the rate of 85% of the billed charge if there was no contract between the parties which would set out an agreed upon reimbursement rate. This was effective for the time period between May 10, 2016, and

July 1, 2018. Prior to S.B. 216 the Workers' Compensation Act granted the Commission exclusive jurisdiction to hear and determine the reasonableness of amounts paid to hospitals in situations where no prior contract existed between the hospital and the workers' compensation carrier.

According to NCCI, inpatient and outpatient hospital services comprise approximately 46% of workers' compensation medical payments.

1. Recommendations on how to reduce hospital costs for purposes of medical benefits for workers' compensation. Hospital fee schedules used in other states.

In addition to setting certain temporary hospital reimbursement rates, S.B. 216 required the Council to study how hospital costs could be reduced for purposes of medical benefits for workers' compensation. That report was provided to the Business and Labor Interim Committee on November 28, 2017. The section of that report dealing with specific cost saving options has been expounded upon here for purposes of these reports. This information is derived from the WCRI report titled "Hospital Outpatient Payment Index: Interstate Variations and Policy Analysis, 9th edition." This report was updated from last year (8th edition) and includes information from 36 participating states.

1. Fixed-Amount Fee Schedules

    a. Medicare Based

    This is a system whereby states will obtain information from the federal Medicare database regarding Medicare's payments for services, then the state will add on a certain percentage, though there are some variations from state to state. The "Medicare plus a percentage" then becomes the reimbursable amount. This is the most common system used by at least 14 states including CA, CO, CT, GA, ID, IN, MA, MN, MS, NC, SC, TN, TX, and WV.

    b. Traditional Fee Schedule

    This is a system developed by the state which determines what appropriate reimbursements should be for various services. This system is more involved, varies from state to state, and is required to be updated annually and is used by seven states: FL, IL, KS, MD, NY, NV, and OK.

2. Percent-of-Charge

    Four states, including Utah, use a percent-of-charge type fee regulation. The state determines what percentage of billed charges will be reimbursed by the insurance carrier to the hospital. AL, LA, and NE use this model.

    Under S.B. 64 this is the model Utah currently uses. Specifically, hospitals located in a county of the first, second, or third class as defined in Utah Code Ann. §17-50-

501 are reimbursed 75% of billed charges. If a hospital is in a county of the fourth, fifth, or sixth class they are reimbursed at 85% of billed charges.

3. Cost-to-Charge Ratio

   This methodology requires the individual hospitals to provide information to the state regarding their costs, then allows the hospital to charge a certain percentage above that cost. Each hospital will receive a different reimbursement for a specific procedure, however, each will be required to bill the same percentage above the cost. Four states use this model including KY, MI, NM, and OR.

4. Other

   Three states used a mixed approach where they combine different methodologies. These are AR, PN, and VA.

5. No Fee Schedule

   Five states in the report do not have a hospital fee schedule including AZ, IA, MO, NJ, and WI.

6. Use of Data Analytics Companies

   This option involves the use of hospital repricing services (vendors) utilizing usual and customary payment data to create a pricing review methodology. This option was discussed by the Council but the Council is unaware of any state incorporating this method.

It should be noted that within each of the options there are several implemented variations. States may group Current Procedural Terminology ("CPT") codes or allocate reimbursements on a per-procedure basis, use unique factors to determine hospital costs, or create differing methodologies to determine a percent-of-charge ratio.

WCRI reports that states with no fee schedules had higher hospital outpatient payments per episode compared with states with fixed-amount fee schedules – 51-151% higher on average. States with percent-of-charge based fee schedules had higher hospital outpatient payments per episode than states with fixed-amount fee schedules – 74-168% higher on average. Lastly, states with cost-to-charge ratio fee schedules had hospital outpatient payments per episode similar to states with fixed-amount fee schedules.

Each of these options provide a means by which hospital costs in workers' compensation cases might be controlled. Most of them are utilized by other states as a means to control hospital costs. Based on the above information, a fee schedule of any type controls and reduces hospital costs more so than not having a fee schedule.

2. Hospital Billing and Payment Trends Within the State

Many Utah hospitals and insurance carriers have contracts in place which govern reimbursement rates for a certain percentage of workers' compensation related treatment. The non-contracted rates are currently governed by the reimbursement requirements provided for under S.B. 64. Prior to S.B. 64, S.B. 216 controlled for the time periods mentioned and before S.B. 216 "usual and customary" was the most common method used to determine reimbursement rates.

For the most recent service year available, 2019, NCCI reports that hospital costs represent approximately 46% (14% inpatient/32% outpatient) of all dollars spent for medical costs within Utah's workers' compensation system. This compares to approximately 33% (13% inpatient/20% outpatient) countrywide. Additionally, hospital inpatient payments as a percentage of Medicare in Utah are 194% compared to 195% countrywide for workers' compensation reimbursements. Hospital outpatient payments as a percentage of Medicare in Utah are 263% compared to 247% countrywide for workers' compensation reimbursements.

According to NCCI, the number of reported transactions in Utah in 2019 was over 587,000, with more than $144,764,700 paid for more than 46,700 claims. This represents data from approximately 96% of the workers' compensation premiums written, but does not include self-insured data.

Additionally, the Council asked the UHA to provide the following information:

1. What percentage of workers' compensation related hospital transactions are not under contract (what % of reimbursements does SB 64 address)?

Response: The majority of hospitals report that 57% - 65% of their workers' compensation claims are non-contracted Over the past five years this has ranged 53% - 68% for the majority of hospitals. However, there is even a wider difference in rural Utah where at least one hospital reported that only 1 of 17 workers' compensation carriers have a contract with them so most of their workers' compensation cases are not under contract and would be addressed by S.B. 64.

2. What is the five-year trend for hospital rack rates (increasing/decreasing/same)?

Response: The majority of hospitals report that their contracted volume is relatively flat over the past five years and that non-contracted volumes have grown over the past 5 years. Overall, both contracted and non-contracted rates have dropped from about 75% in 2015 to 67% in 2020 for the majority of hospitals that reported.

3. Are hospitals generally being reimbursed per the SB 64 percentages for non-contracted rates or is reimbursement still an issue?

Response: The simple answer is generally "no." All reporting hospitals state that this is still an issue. The non-contracted plans are reimbursing larger hospitals as low as 55% in FY20 to as high as 77%. There is widespread variability in payment rates from non-contracted plans. In rural Utah, hospitals report they are being paid as low as 12% from some out of state non-contracted carriers. Many hospitals report that Utah based carriers are paying 75% which is in line with S.B. 64. It is reported that workers' compensation carriers are either just paying a lower rate than S.B. 64 requires or they are reducing payable charges by stating the services are non-covered. There are also varying degrees of appeal/overturn success. Hospitals state that many workers' compensation carriers have inadequate customer service and no provider representatives to work quickly through the appeals process. Bottom line: Non-contracted plans are largely not following SB64.

4. Do hospitals generally bill at a higher amount for non-contracted rates, and do they provide a discount based on volume?

Response: The majority of reporting hospitals state that they do not bill at a higher rate for non-contracted services. Some offer volume discounts while many do not.

Additional comments from the UHA:

"UHA and Utah's hospitals appreciate the opportunity to report this information to the Legislature as it is clear that many out of state workers' compensation carriers are not following S.B. 64 and are continually breaking the law by paying less than required under the law. UHA urges the Legislature to strengthen S.B. 64 to ensure compliance in payment as it is clear that many carriers are ignoring the law. UHA urges the Legislature to consider new ways to enforce compliance for carriers in the 2021 legislative general session. Examples may include not allowing out of state carriers to write business in Utah or have a license in Utah unless they demonstrate compliance with S.B. 64, adding fines and interest to amounts not paid under S.B. 64 and any other idea that can be used to bring carriers into compliance. UHA stands ready to work with the Legislature to improve S.B. 64 to solve this problem."

3. The Approximate Rate at Which a Workers' Compensation Insurance Carrier or Self-Insured Employer Should Expect to Reimburse a Hospital for Billed Hospital Fees for Covered Medical Service

In considering what workers' compensation insurance carriers and self-insured employers should expect to reimburse hospitals for workers' compensation related services, the Council considered several options including a review of databases managed by the Utah Department of Health. One valuable database, the Utah Open Data Catalog, tracks average hospital inpatient costs which are calculated by the Office of Healthcare Statistics using Utah's All Payer Claims Database. Though this catalog captures all hospital inpatient procedures and costs, typical workers' compensation procedures are included by extension. These costs are tracked using the 25th, 50th, and 75th percentiles and the data is easily extractable and searchable.

The Council believes the information contained in the Utah Open Data Catalog is neutral in nature and reflects the amount workers' compensation insurance carriers and self-insured employers have reimbursed hospitals for the most common workers' compensation related services. This establishes a baseline by which the Council can consider future reimbursement expectations. Outpatient reimbursement rates will need to be considered as well.

Conclusion

It should be noted that this is the second of three required yearly reports. The Council will continue to review and discuss these issues throughout the following year, expound upon any new information that presents itself or address any additional points the legislature desires.

The Council appreciates the opportunity to study this important and complicated matter. It also appreciates the opportunity to present this report and looks forward to continuing the work.

Sincerely,

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