Dedicated to protecting access to quality healthcare for automobile accident victims

Background

The No-Fault insurance system was designed to permit only those who sustain serious injury to pursue negligence claims while ensuring that all accident victims are promptly compensated for economic injury, including health care expenses.

The No-Fault statute specifically provides that payment is to be made "without limitation as to time, provided that within one year after the date of the accident causing the injury it is ascertainable that further expenses may be incurred as a result of the injury." Ins. Law 5102(a)(1).

Reasonable cost containment, a laudable aspect of the No-Fault system, is achieved by limiting reimbursement to the amounts allowed in the NY Workers' Compensation Medical Fee Schedule for the treatment of work related injuries. This schedule, in addition to limiting the reimbursement for specified services, also contains numerous Ground Rules that include, among other things, frequency limitations.

However, there are many aspects of the Workers' Compensation system that do not and should not apply to those seeking No-Fault automobile insurance benefits. Workers' Compensation has its own unique forms, reporting requirements, treatment guidelines, pre-authorization procedure and dispute resolution forum. As such, there are Ground Rules in the Workers' Compensation Fee Schedule that cannot apply to reimbursement sought under a No-Fault automobile insurance policy.

The Current Crisis

For more than two decades, the reimbursement available under the Workers Compensation Fee Schedule remained relatively unchanged. On June 6, 2018 the Workers Compensation Board released a proposal to, among things, increase reimbursement for the vast majority of services provided by nearly every class of heath care provider. One notable exception was a new ground rule that prohibits chiropractors from billing for services that do not have a CPT code within the chiropractic fee schedule, even though the service provided may be within the scope of their license. The Superintendent of Financial Services, anticipating the No-Fault insurance reimbursement increases, amended Regulation 83 to provide for an 18 month delay in the applicability of the increase to No-Fault claims.

On October 3, 2018 the Chair of the Workers' Compensation Board published a Revised Rule Making Statement that identified only one substantive modification to the initial proposal: Increasing from 8 to 12 units, the per day therapy limitation.

However, the actual text of the new proposed Fee Schedule contains an unprecedented and outrageous limitation on physical treatment: **limiting physical therapy to 12 sessions within the first 180 days.** Another proposal limits chiropractic care to 180 days. Neither rule was noted in the State Register.

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Proposed Ground Rule 2 provides:

> 2. Physical Medicine Utilization
> Physical medicine services may not exceed 12 sessions/visits per patient per accident or illness or be rendered more than 180 days from the first session/visit.

Proposed Ground Rule Chiropractic Physical Medicine Ground Rule 3 also limits treatment to 180 days. These Ground Rules must not be applied to automobile accident victims! First, they are arbitrary limitations made without regard to the patient's needs, and without any examination of the patient or the patient's records. These Ground Rules effectively takes medical decision making out of the hands of the medical professionals, without any regard for the needs of the individual patient, or the professional judgment of their health care provider.

In contrast, the current Ground Rule permits reimbursement for physical therapy beyond 12 visits if there is documentation that includes a doctor's certification of the need for continued treatment:

> Physical medicine services in excess of 12 treatments or after 45 days from the first treatment, require documentation that includes provider certification of medical necessity for continued treatment, progress notes, and treatment plans. This documentation should be submitted to the insurance carrier as part of the claim.

Currently, not only is the documentation subject to insurer review, but the insurer may itself conduct an examination of the patient to verify the need for further treatment. Thus, decisions regarding the need for treatment are made by medical professionals, not a line in a regulation.

Under the proposed rules, a patient who prudently delayed receiving reconstructive surgery while receiving conservative treatment could easily find herself in a situation where the surgery is covered, but the physical therapy necessary to recover from the surgery is not. There is no medical justification for such a rule. In fact, it seems to promote medical malpractice.

Second, the proposed rules directly contradict the statutory provision that all necessary No-Fault benefits are available without time limitation, as long as the need for treatment is determinable within one year. Applied to an automobile accident victim, this proposal brings us from the current universe where the statute permits all necessary treatment without regard to time, based upon the actual needs of the patient, to a world where physical therapy--the most effective and commonly prescribed recuperative treatment regime--is arbitrarily limited to 12 visits within the first 180 days. It also limits chiropractic therapy and denies chiropractors reimbursement for services that fall within the scope of their license and expertise. It represents a shocking reversal that violates the express intent and language of the No-Fault law.

Third, the most draconian effects of these rule falls directly upon the accident victim seeking the No-Fault benefits from the insurance policy he was required to purchase.

Injured workers, unlike auto accident victims, may receive treatment in excess of the 12 session/180 day limitation as long as it comports with the Treatment Guidelines for services rendered to body parts covered by the Guidelines. Furthermore, injured workers may seek a variance authorizing treatment in excess of that recommended by the guidelines.

In contrast, automobile accident victims will be subject to a harsh arbitrary rule denying necessary treatment without consideration of their own condition, without exception, and without recourse.