

Minutes of the Committee on
Workers' Compensation & No-Fault Insurance
Wednesday, June 6, 2018

A meeting of the MSSNY Committee on Workers' Compensation & No-Fault Insurance was held on Wednesday evening via telephone conference on June 6, 2018. Jay Weiss, MD, Chair presided.

The meeting of this MSSNY Committee was called to order by the Chair at 6:30 PM

The sole purpose of this meeting was to address and discuss a new auto No-Fault reform proposal brought forth by No-Fault insurance carriers Allstate, Geico, and State Farm. In an effort to control costs and reduce some fraud and abuse, these three carriers propose to develop electronic billing for no-fault insurance claims.

Mr. Mark Gardner of Allstate Insurance was asked to provide a brief overview of their proposal.

Mr. Gardner advised the members that this project is referred to as the No Fault Reform Initiative. It was started by Allstate, State Farm and Geico Auto Insurance about three years ago. It originated in a meeting on Long Island where some of the claims folks got together and tried to figure out what could be done to improve the no-fault law for policyholders and insurance companies in NY. One of the things that came out of the meeting was electronic billing.

The auto insurance carriers are trying to introduce electronic billing into the No Fault (NF) system in New York State. Right now, the current NF system is paper based. So, there are paper bills that are going back and forth and there are paper requests for verification and clarification. It is not how business should be done in the 20st century much less the 21st century.

Mr. Gardner stated that his group has been working with Mr. Christopher Maloney and several other folks at the DFS have the Department of Insurance issue an amendment to change Regulation 68 to allow billing electronically for No Fault related claims. His group has reached out to HANYS, GNYHA, and now MSSNY. Mr. Gardner stated that they will be having a meeting with the NYC Health and Hospitals Corporation, shortly. The CEO of HHC indicated in an article that the HHC is interested also in improving their billing.

Committee members were provided with a package of different materials from the auto insurers. One of the documents is a legal opinion from a law firm named Rivken/Radler. The opinion outlines the rationale for the possibility of moving forward with electronic billing of NF claims in NYS.

The package also contains information about recent changes to the laws in New Jersey. According to Mr. Gardner, the law authorizes the state of New Jersey to allow electronic billing for both its WC and PIP (NF) programs.

*In researching this with NJ, I was advised of the following:
NJ's PIP (NFA) electronic billing requirement has not gone into effect yet. The NJ workers' compensation electronic billing requirement went into effect a little under a month ago. NJ hasn't heard anything from members, positive or negative.*

Mr. Gardner explained that the auto insurers are interested in progressing with electronic billing in order to avoid paper-based system, the mail, postage costs, and extra personnel. In addition, the insurers expect that electronic billing would reduce some of the unscrupulous activities that occur in the program. Electronic billing should result in fewer claims of non-receipt of bills/claims and

documentation. Electronic might also reduce time frames to pay claims, legal fees litigation and arbitration.

After meeting with a variety of stakeholders at the request of DFS, the auto insurers would like to initiate the drafting of regulation.

Dr. Jay Weiss, Chair expressed appreciation for the quick overview. He stated that most practicing physicians with access to electronic billing would welcome the change for the No-Fault system. He would favor the progression so long as it will work with existing electronic billing systems and will not be onerous or burdensome. Any electronic billing for NF must not add any costs to a physician practice in order to comply.

In addition, any amendment regarding electronic billing must not contain a mandate. It must be voluntary for physician practices. A practice that might see a NF case on a very rare occasion must not be mandated to file electronically. Also, for small physician practices that do not file electronically with any insurer, there must be a waiver or an exception.

Mr. Christopher (Chris) Maloney of the NYS Department of Financial Services (DFS) advised that any amendment for electronic billing for NF claims would be a regulation. DFS wants to obtain all of the stakeholder's input. DFS is not at the point of putting pen to paper. DFS is looking to the stakeholders to outline and or define what principles should be in the regulations.

Dr. Weiss questioned if DFS foresees having exceptions for very low billers? An example that comes to mind would be the plastic surgeon that may repair a laceration two or three times a year. The practice may not want to invest in equipment or enter an arrangement with a billing service to file a NF claim electronically. It would make sense to maintain paper billing.

Chris agreed that that can be an example of one of the principles that DFS would want to develop before drafting rules.

A member questioned Mr. Gardner regarding his statement that in regard to fraud and abuse, that the amount for the penalty and the interest for those that prevail have to dispute, actually exceed that for the cost of care. The Committee would like to see that data and would like to be able to review and verify the statement.

Mr. Gardner said that there are a tremendous amount of legal fees that are entailed when an insurance company has to go to court, then appeal a decision and appeal it again. There are actually reported cases going on all the way up to the court of appeals. But, to answer the question the data is not currently available; it would have to be developed by the companies.

Mr. Gardner explained that he is not very well versed in the IT aspects. However, the auto insurers were discussing using the nationally accepted HIPAA transaction standards.

If the HIPAA transactions standards are used, there should be no added expense to a physician's medical practice. The practice would just need the payor Id for any no-fault carrier to be added to your billing service so the claim gets routed appropriately.

Mr. Gardner concurred and mentioned that when the discussion of electronic billing comes to fruition, the next step would be the inclusion of electronically paid claims. This phase two of the reform has not been discussed; yet. However, eventually the initiative would be broadened to include Electronic Funds Transfer (EFT). EFT would result in faster payments.

In reference to exemptions, the Medicare program or the federal law under ASCA allows medical practices that have less than ten full time employees on their payroll to be exempt from electronic claim filing.

Chris from DFS advised that there was initially a question of whether a regulation had to be written. DFS's General Council has decided that there should be a regulation drafted for this proposal. The regulation that mandates that everyone must participate needs to outline various exemptions and/or waivers for those to be excluded from the mandate. DFS wants to develop a set of principles for what should be contained in the regulations.

Moe Auster of MSSNY's Governmental Affairs Division suggested that there should be a phase-in or grace period in order to iron out whatever difficulties might be encountered at the beginning of this new process. With a grace period, certain problems could be identified and resolved.

Dr. Weiss thanked Mr. Gardner for his participation stating it was an excellent synopsis and acknowledged the obvious benefits both for the auto insurance industry and physicians.

Mr. Gardner advised that he would talk to Geico and State Farm about getting the data relating to the savings the insurance companies would sustain by reducing paper and the *he said she said litigation about dates of mailings* and things like that. When the data is developed, he will apprise us.

Mr. Gardner left the call.

The members discussed the variety of forms and the data contained on them and how that would be sent electronically. Report submission is a requirement under both WC and NF. Workers' Compensation allows for electronic submission of required data via a narrative format. It is possible that similar submission processes can be developed for NF.

Members then discussed the need for the data to be savable, reusable and be retrievable so that what was entered at the last visit is visible. Physicians would be able to modify and update the patient's information so that practices are not burdened with having to reenter all data on a case from scratch. Claim filing should not require another full entry.

In addition, the members clarified that they are interested in the insurers' estimated savings resulting from this reform proposal. If this amendment results in large savings for the insurers, physicians should be able to garner some of the savings, as well.

In a related point of information, the WC program has indicated that they are considering switching to the CMS 1500 form as part of their making the compensation program a little less onerous for physicians. This is the universal form for most payers. And it might be beneficial to explore NF's consideration of this universal form, as well.

The Committee needs to identify the best features that link Worker's Comp and No Fault. Each program needs improvements. Being able to attach notes electronically to the forms and to the CMS 1500 form, receiving the actual payment, and then of course one of the other things which is of utmost importance is that if filing claims electronically saves the carriers money, physicians should then be paid in a more timely manner. The time frames for paying claims need to be shortened.

The Committee members briefly discussed their displeasure with the 5% increase offered for the physician fee schedule under the WC Program. When the WC redesign team put forth their efforts to develop Medical Treat Guidelines and added improvements for the WC program, it was anticipated that there were millions upon millions of dollars which were saved and were supposed to be shared across all of the players within the field. There is no guarantee that the WCB will be adding the 5% increase to the fees every year, nor will they be adding cost of living increases. The regulations say the fee schedule should be reviewed each year. We should not be happy with 5%.

Dr. Weiss asked that the Committee focus on the NF electronic billing proposal. He stated that he viewed the proposal as very much in physicians' interest. However, he asked the Committee if they envision any down side.

There needs to be a central repository and confirmation of receipt of claims. In addition, DFS needs to consider and support instances where physicians need an immediate response and obtain action within a very short period of time. Similar to WC, physicians should ask for DFS to create a correlation in NF whereby if the claim is not paid in a timely fashion, an NC1 Class of forms could be filed to guarantee a quick turnaround time.

On a separate note, the WCB advised that they would be putting the Medical fee schedule on their website after midnight on 6/6/18 for review. The Board would publish the Ground Rules, the 2017 AMA-CPT codes, the RVUs and the Conversion Factors for review. What will not be on the WCB website is the nomenclature for the codes.

Members expressed dismay that the WCB has indicated that hardcopy of the full medical fee schedule will need to be purchased for \$100.00. A digital version can be purchased for \$400.00. However, if physicians have an AMA-CPT book with the nomenclature, they would have the complete information with what is being placed on the WCB site.

Please see the following links:

<http://www.wcb.ny.gov/content/main/hcpp/FeeSchedules.jsp>

<http://www.wcb.ny.gov/content/main/hcpp/MedFeeSchedules/GroundRules/Ground-Rules-Medical.pdf>

AND

http://www.wcb.ny.gov/content/main/hcpp/MedFeeSchedule_CPTCodes.jsp

At the bottom of the page for the DRAFT WC medical fee increase are links to the information about DFS's stance on the fee increase for no-fault. Please see the following:

<https://www.dfs.ny.gov/insurance/re83a34text.pdf>

(2) Notwithstanding subdivision (a) of this section, when charges for services prepared and established by the chair of the Workers' Compensation Board pursuant to paragraph (1) of this subdivision are increased by the chair, any such increases **shall not be effective for no-fault**

until eighteen months after the effective date of the increases established by the chair. The superintendent may upon notice in the state register adopt any such charge increases prior to the expiration of the eighteen-month period if the superintendent determines that it would be in the best interest of consumers.

Superintendent Maria T. Vullo of DFS states that the WC fee increase could not have been anticipated by auto insurance carriers rates were established for policyholders. So, to mitigate the effect of unforeseen rate increases, the Superintendent deems it necessary to delay implementation of the WC fee increase for NF for 18 months.

Being no further business to discuss, the meeting was adjourned.

Respectfully submitted,

Jay Weiss, MD, Chair