State of New Jersey
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
PO BOX 381
TRENTON, NEW JERSEY 08625-0381

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

HAROLD J WIRTHS
Commissioner

MEMORANDUM

December 9, 2014

To: All Interested Parties

From: Peter J. Calderone, Director and Chief Judge

Subject: Medical Provider Committee Report

A Committee of the Commissioner's Advisory Council on Workers' Compensation issued the attached Report concerning Medical Provider Claims. In particular, the Report recommends procedures and requirements for the filing, processing and resolving the claims.

We have received inquiries concerning the Report and its recommendations. Since the Report may result in Division of Workers' Compensation policies or regulations, your comments and suggestions are being requested before any agency action. Please submit relevant information, comments and/or suggestions concerning this issue to this office on or before January 12, 2015 by fax (609-984-2515) or e-mail (peter.calderone@dol.state.nj.us).

Thank you for your assistance in this review.

Attachment

GUIDELINES for MEDICAL CLAIMS by PROVIDERS
PROPOSAL by Medical Provider Claim Task Force

N.J.S.A. 34:15-15 states in relevant part: All fees and other charges for such physicians' and surgeons' treatment and hospital treatment shall be reasonable and based upon the usual fees and charges which prevail in the same community for similar physicians', surgeons' and hospital services.

The purpose of these Guidelines that follow is to institute uniform and consistent hearing processes for Medical Provider Claims ("MPC") in the Division of Workers Compensation. These guidelines are proposed supplements to Subchapter 3 of the Division Rules, specifically Rule 12:235-3.1, Initial Pleadings, Rule 12:235-3.8, Discovery Rule 12:235-3.11, and Pretrial Conference Rule 12:235-3.12, Conduct of Formal Hearings. The Medical Provider Task Force believes that these Guidelines, which are intended to assist judges, will also inform litigants of the essential evidence to be gathered and produced for consideration by the Court. Adherence to the proposed discovery and pretrial processes will ensure that the litigants meet their respective burdens of proof and that Division Judges properly receive the necessary evidence for them to execute their responsibilities under the Act, N.J.S.A. 34:15-1 et seq.

The Guidelines, which are mindful of the findings and recommendations of the 2010 Task Force on Medical Provider Claims, are proposed to supplement the current Division Rules. They should be construed to secure just determinations, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

INITIAL PLEADINGS

Medical Claim by Provider (MCP) Claim Petitions shall be in the form prescribed by the Rules of the Division. MCP petitions shall be verified by the provider and include the date of the signature and verification.

DISCOVERY

a. Within 30 days of the filing of a MPC, the Medical Provider or Applicant must file with the Court and serve upon the respondent party the following documents, certified to be true copies of business records kept in the ordinary course of the Medical Provider's business:

    1. Certification that the Medical Provider has served upon the Respondent all its charges for all dates of service and procedures that are in dispute;
    2. Certification or documentation that the Provider has complied with the Respondent's/Carrier's internal appeals process or Requests for Reconsideration and responses thereto, if any;
    3. A statement addressing (all that apply): whether the Medical Provider is within network, a panel physician, or whether there is a network dispute with the carrier;
    4. A statement of the exact amount of payments made by the carrier to date in conjunction with the proffered bills, and a statement of explanation/clarification addressing any coding disputes;
    5. The corresponding medical treatment records, Health Insurance Claim Forms (HCFA or UB as applicable), Explanations of Benefits or Reimbursements (EOBs or EORs), the type of facility where the service or procedure was performed, and an explanation of how the provider derived its fee schedule.

b. When the Division has received notice that the MCP applicant has filed and served the above required documentary proofs with the Court, the Court may Order Respondent to provide the following proofs:

    1. Confirmation that the EOBs or EORs filed by the applicant were true/accurate copies;

2. A statement of explanation/clarification addressing any coding disputes, or solely the level of reimbursement only, if that is the sole issue, and/or other issues such as compensability or unauthorized treatment;
3. Any other proofs in support of its position that usual and customary reimbursement on charges was or was not paid by the carrier or its agents.

c. The parties may propound and exchange MCP Interrogatories within 30 days of the filing of Respondent's Answer. Answers to Interrogatories shall be served within 60 days of their receipt.

d. Discovery may be extended or expanded by the Court with the consent of the parties, or by Order upon good cause shown.

e. The parties shall file with the Court data points or evidence of UCR payments (usual, customary and reasonable) showing paid amounts for each CPT Code at issue, in accordance with all applicable reimbursement rules (e.g., cascades, multiple surgical procedures performed contemporaneously, applicable modifiers). These data points are not to be limited but must include reimbursements for the relevant codes made under the following: Fair Health Allowed Module, New Jersey Personal Injury Protection Fee Statute, Provider/Carrier Commercial Payments, CMS, Wasserman, the Pennsylvania Workers Compensation Fee Schedule, the New York Workers Compensation Fee Schedule, Federal Workers Compensation Fee Schedule, and any other probative evidence of paid charges received and accepted by the Medical Provider or paid by the carrier.

PRETRIAL CONFERENCE, PRETRIAL MEMORANDUM AND CONDUCT OF FORMAL HEARING

a. At the Pretrial Conference the Judge of Compensation to whom the case is assigned shall review the above submissions by the Provider and the Respondent. The Judge of Compensation shall take note of missing proofs and permit the Applicant and Respondent to supplement the above proofs within a reasonable amount of time. If the proofs are not

provided within the time period ordered by the Court, the Respondent may request a "Not Moved" marking from the Court. Such a marking will be within the discretion of the Court. If either party fails to provide the required proofs as ordered by the Court, the aggrieved party may file a Motion to preclude prosecution of a claim or to suppress defenses.

b. At the completion of the discovery period as set forth above, or as extended by the trial judge, the Court will conduct a Pretrial Conference for the purpose of identifying and narrowing any outstanding issues for trial.

c. At the Pretrial Conference, the Medical Provider shall identify with specificity the relief sought, and the factual or legal basis for its claims. The Respondent shall likewise identify its defenses to the Medical Provider's claims. All documents to be submitted at trial will be exchanged no less than one cycle prior to execution of a Pretrial memorandum.

d. The Pretrial Memorandum shall identify the following:

1. Evidence of Charges, Payments and UCR Data Points. The parties shall produce a chart establishing the Provider's charges, the Respondent's payments, and the applicable reimbursements pursuant to: the New Jersey Personal Injury Protection Fee Schedule, CMS, Wasserman Fee Schedule, Fair Health Allowed Module, Pennsylvania Workers Compensation Fee Schedule, New York Workers Compensation Fee Schedule and Federal Workers Compensation Fee Schedule.

2. Any other relevant evidence of the charges and reimbursements the parties intend to produce in support of its claims or defenses.

i. **Medical Provider's Evidence**:

a. A statement of the relief sought for each service at issue;

b. Identification of any coding disputes;

c. The documents, witnesses, or other evidence that the Medical Provider intends to offer in evidence to satisfy its burden of proof that its demand for additional reimbursement is reasonable and based upon the reimbursement generally paid by carriers and accepted by medical providers in the same community for similar services, and that demonstrate that Respondent's reimbursements already paid were not based upon reimbursement made for usual fees and charges which prevail in the same community for similar services.

ii. **Respondent's Evidence:**

(a) Identification of any coding disputes;

(b) Documents, witnesses, or other evidence that the Respondent intends to offer in support of its position that the reimbursements made to the Provider were reasonable and based upon the usual fees and charges which prevail in the same community for similar services.

3. Documents. Non-expert documentation by either party may be admitted by consent of the parties and approval by the trial judge, or otherwise must qualify as a business record under the New Jersey Rules of Evidence.

4. Non-expert witnesses. The parties will identify non-expert witnesses and the subject of their testimony.

5. Experts. If either party intends to produce expert testimony, the expert shall be identified on the Pretrial Memorandum. Expert reports and curriculum vitae shall be exchanged no less than one cycle prior to execution of the Pretrial Memorandum.