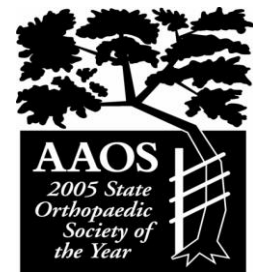




NEVADA ORTHOPAEDIC SOCIETY



February 11, 2014

Mr. Steve George
Department of Business and Industry
Administrator, Division of Industrial Relations
1301 North Green Valley Parkway
Henderson, NV 89074

Dear Director George,

Thank you for allowing interested parties to provide comments regarding the report on "Workers' Compensation: Provide Reimbursement Recommendations, All Service Types" which was prepared by the consulting firm Milliman and discussed in a public workshop on January 28, 2015.

The Nevada Orthopaedic Society (NVOS) attended the workshop and has serious concerns about the study's methodology, assumptions and conclusion as they affect the recommended changes to Nevada's Medical Fee Schedule (MFS). NVOS makes several observations that need to be addressed prior to finalizing any changes in the MFS.

Concern 1: Business Impact Statement

The report proposed a series of revised provider reimbursements for treatment or services that qualify as accident benefits. DIR is proposing such changes in its MFS pursuant to NRS 616C.260.

With the notice of the workshop, DIR provided the public with a statement regarding the impact of such MFS changes on Nevada small businesses, pursuant to NRS 233B.608. NVOS reviewed the small business impact statement and finds that the method used to conduct the analysis of the impact of proposed MFS changes was improper and inaccurate in its conclusions. Indeed, NRS233B.0608 requires, the agency shall:

(a) Insofar as practicable, consult with owners and officers of small businesses that are likely to be affected by the proposed regulation.

(b) Conduct or cause to be conducted an analysis of the likely impact of the proposed regulation on small businesses. Insofar as practicable, the analysis must be conducted by the employee of the agency who is most knowledgeable about the subject of the proposed regulation and its likely impact on small businesses or by a consultant or other independent contractor who has such knowledge and is retained by the agency.

As best we can ascertain, neither the DIR nor its consultant, Milliman, contacted any member of the NVOS to ascertain the impact to their business of the changes contemplated to Nevada's MFS. DIR somehow concluded that insurers, self-insured employers and employees of leasing companies and businesses subject to insurance premium changes may be minimally impacted. However, DIR did not

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examine the impact to the businesses – i.e., physician practices -- of members of NVOS. Members of NVOS are, indeed, directly and materially impacted by proposed changes to the MFS.

NVOS recommends, in full compliance with the requirement of NRS 233B.0608, that DIR undertake a new examination of the business impacts to the businesses of physician practices that may result from any change in:

- standards used for the development of the schedule of fees and charges that are billed and paid for physician services, and
- the levels of fees and charges developed from any new schedule of fees and charges that are billed and paid for physician services.

Concern 2: Complexity of Care and Access

NVOS believes that the recommended drastic decrease in the physicians' fee schedule will lead to decreased access to care for injured workers. Unfortunately, delayed care can then lead to complications for the injured worker and additional expenses for employers.

In Nevada, physicians in the orthopaedic community offer priority access to employers and insurance companies responsible for injured workers. The expectation is that the workers will be seen immediately. To accommodate this need for immediate (same day/ next day) appointments, physicians must block/allot time in their clinic schedules.

A physician must also employ educated staff members fluent in the complexity of workers' compensation to accommodate the scheduling and prior authorization needed to accommodate the expectations of the employer/ insurance company.

According to the American Academy of Orthopaedic Surgeons (AAOS), the additional administrative and regulatory burdens associated with workers' compensation cases are often too cumbersome for providers to justify the insufficient compensation resulting from low-multiple RBRVS fee schedules.

Also according to AAOS reviews, the hourly practice expense for physicians who accepted workers' compensation patients was determined to be 2.5 to 3 times the hourly Medicare practice expense. If practice expenses associated with treating workers' compensation patients are 247-295% of Medicare, fee scales set at 100-125% of Medicare fees do not provide enough financial incentive to maintain high physician participation levels.

NVOS recommends that any rule making process that undertakes to change the schedule of fees or standards that relate to the schedule of fees for physician services rigorously examine the impact from any such proposed change to access by patients to appropriate physician services in a timely manner.

Concern 3: Methodology

3.1: RVP vs RBRVS

Pursuant to NRS 616C.260(4)(a), DIR must include in its regulations the "standards for the development of the schedule of fees and charges that are billed and paid...." By reference, NAC 616C.145 adopts the scale known as Relative Value for Physicians ("RVP").

RVP is based on actual clinical work performed and is not influenced by Medicare budget constraints. It is based on national survey data from physicians in all specialties and measures work, risk and time for services performed by providers. RVP has values for nearly all CPT codes, whereas RBRVS is slow to add CPT codes that Medicare does not reimburse due to budgetary factors.

RBRVS is relative to the Medicare population; it is adjusted downward for highly utilized codes in the Medicare population. The workers' compensation population is very different. RBRVS would create a disincentive to see these patients and to provide the additional administrative and time requirements needed to assist an injured worker.

NVOS members are concerned that injured workers not be subject to additional harm because of limited, delayed or no access to the services they need. Such delays will only prolong and frustrate the process of mending the injured worker and returning him or her to work in timely manner.

NVOS recommends that DIR undertake a full and complete rulemaking process to amend NAC 616C.145 that rigorously examines the benefits and rationale of departing from the RVP methodologies, concepts and standards prior to undertaking any further work sessions on adopting any new standard, such as the Resource-Based Relative Value Scale ("RBRVS") recommended by Milliman.

3.2: Assumptions


The Milliman report recommends that MFS for physicians needs to be adjusted downward based on commercial reimbursement data. However, to compare workers' compensation to commercial insurance is flawed. As described above, physicians caring for injured workers have a greater responsibility in the overall outcome for the injured worker than in commercial insurance. The physician must manage multiple medical and administrative details to assist an injured worker to return to work in a safe and timely manner. Such responsibility and extra work (i.e., forms, reporting, dictation requirements, communication with case managers etc.) demand more resources and affect the overall outcome of the injured worker greatly.

Conclusion

In conclusion, before any further consideration of changes to Nevada's MFS proposed by Milliman are undertaken, NVOS recommends and requests that DIR convene a working group of **all** interested and affected parties to: assist the DIR in reviewing the projected business impact; reexamine the assumptions and methodology used in the Milliman study; and reconsider the shift from RVP to RBRVS.

Members of NVOS will be pleased to devote the time and expertise necessary to make such review accurate and non-discriminatory in its outcome.

Sincerely,

A handwritten signature in black ink, appearing to read 'AR', with a stylized flourish extending to the right.

Abdi Raissi, MD
President