

Social Workers' Rights to Prompt Payment

Introduction

One of the constant complaints about managed care by social workers and other healthcare professionals is the lengthy delays in payment of claims. The problems are so pervasive and chronic that they appear to be standard operating procedure in some sectors of the managed care and health insurance industries. The problem of delayed payments has become so widespread that states have responded to this bottom-line issue by enacting legislation to compel third-party payers to make timely reimbursement to health care practitioners or suffer financial penalties for violations.

This article discusses states' efforts to encourage payers to remain current in their payments to service providers. Numerous commentaries and resources are available on this topic on the Internet and some pertinent items are noted here.

Overview of Prompt Payment Legislation

Forty-eight states now have some form of prompt payment legislation or regulation in place (the two that do not are Idaho and South Carolina).[1] The most common provisions set specific time limits on the payment of claims and institute interest payments and other monetary penalties for noncompliance. Among the states, time frames within which a "clean claim" must be paid by an insurer range from 15 – 60 days. A handy chart of the time lines in effect in 2001, "States with Prompt Pay Laws," was created by the Federation of Physicians and is available online, at:

<http://www.fpdunion.org/insurers/data-promptpaylaw.htm>.

According to Jay Fisher, JD, legislative analyst for the American Academy of Orthopaedic Surgeons, states' prompt pay laws usually focus on two issues:

- 1) How is a clean claim defined?
- 2) What can be done to increase the punishments imposed [to insurers] for violations of the act?[2]

The issue of what constitutes a clean claim is one of intense debate between health practitioners and the insurance industry. In some states, the requirements for a "clean" claim are so onerous as to eviscerate the basic purpose of prompt payment provisions. For example, in Texas the required elements for a clean claim are numerous, cross-referencing other regulatory provisions, such as a list of 29 basic data elements:[3]

The more commonly used definition, quoted from the Alaska statute, is fairly simple:

"[C]lean claim" means a claim that does not have a defect, impropriety, or circumstance requiring special treatment that precludes timely payment on the claim[.] [4]

The determination of whether a claim is "clean" is usually left to the insurer or HMO. Considerable friction remains between insurers and providers as to who is at fault when a claim

is rejected as not “clean.” Clinical social workers and other mental health practitioners experience additional frustration when a claim is corrected and resubmitted, and then denied for lack of timeliness.

Many, though not all, prompt pay laws apply to health insurance claims submitted by “other providers,” as well as physicians. It is important for social workers to clarify whether they are among the practitioners protected by prompt pay laws in each state. Moreover, social workers can work effectively for inclusion in prompt pay insurance laws and regulations by joining coalitions with other “non-physician” health care practitioners or coalitions of mental health professionals.

State Enforcement

Many of the prompt payment laws are new or have recently-amended provisions, however, states are not waiting to bring enforcement actions. The Texas Department of Insurance reported in April 2002 that 47 insurance companies and HMOs were required to pay over \$36 million in restitution to health care practitioners and \$14.9 million in fines as a result of a year-long enforcement effort in Texas alone.^[5] Another report listed enforcement actions against insurers for violating prompt pay laws in eight states in 2001.^[6] The National Association of Insurance Commissioners has set a standard for insurers allowing an error rate of 7 percent on timely processing of clean claims. Even using that standard, the Ohio Department of Insurance fined seven identified companies, as reported in 2001.^[7]

Private Enforcement Action

Unsatisfied by the remedies provided through state oversight agencies, some health care practitioners have attempted to enforce state prompt-pay laws through private lawsuits. In *Solomon v. United States Healthcare Systems of Pennsylvania, Inc.*, 797 A.2d 346 (2002), a class-action suit, the court ruled that the Pennsylvania Quality Health Care Accountability and Protection Act, 40 P.S. §§ 991.2101 *et seq.*, did not create a private right of action to enforce the prompt payment provisions of the statute. Instead, Pennsylvania providers are forced to wait for governmental agencies to take appropriate measures to address chronic or pervasive delays in payments by health plans.

Some health care professionals, including some social workers, have found that the only way to ensure payment of claims due is to file a lawsuit against a client’s insurer or HMO in small claims court. In contrast to the *Solomon* case, these suits are brought by individual practitioners for direct payment of health claims. This can be an effective, but time-consuming, strategy for obtaining payment. However, it fails to address systemic and recurring problems which delay payment.

Class-Action Litigation

Since 1999 several class action lawsuits by physicians against managed care organizations have been percolating through the judicial system. Cases from multiple states have been joined together, and in some instances settlements in other lawsuits have been held in abeyance until the federal court makes its findings. Systematic delays in payments to physicians by the named defendant companies are included among the many counts of the complaint in *In re Managed Care Litigation*, 2002 WL 31817812, -- F.Supp. – (2002). The case has been placed under the authority of Judge Mereno in the federal district court in Miami, although a portion of the

massive litigation has spawned a review by the U.S. Supreme Court on the limited issue of the scope of arbitration clauses in physician-insurer contracts. *PacifiCare Health Systems, Inc. v. Book*, 123 S.Ct. 409, *cert. granted* (2002). Originally filed in Kentucky, the outcome of the primary lawsuit will be closely watched by insurers and health care providers alike.

Electronic Solutions

Some industry analysts attribute many of the payment problems to computer systems that are unable to communicate due to incompatible formats.^[8] The new HIPAA regulations on electronic transactions standards were meant to address this. It is too early to evaluate their impact, as compliance will not become fully effective until October 2003. At least one health provider association has requested that HIPAA-compliant health claims be defined as a “clean claim” for purposes of states’ prompt payment provisions.^[9]

Conclusion

The rapid spread of prompt payment legislation to nearly all states highlights the growing need for effective remedies. Third-party payers may be held accountable for timely payment of claims, relying on applicable provisions of current state law. Health plans that repeatedly violate state prompt payment provisions should be reported to the designated state oversight agency, such as the insurance department, so that enforcement measures can be initiated, especially against companies with an established pattern of violations.

Social workers will want to diligently monitor the status of prompt pay laws in their respective states to prevent erosion of hard-won protections. Texas, which passed provisions in 1999, is now set to repeal prompt pay requirements by June 2003.

Once HIPAA’s “Administrative Simplification” provisions are fully implemented, new avenues for achieving prompt insurance reimbursement will likely emerge. Changes in the billing practices of social workers, along with other health care professionals, will be required as electronic billing becomes the industry standard.

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Endnotes and Links to Sources

[1] “[Fact Sheet: Prompt Payment](#),” Health Policy Tracking Service, October (2002) (map of states covered is included), summary available at: <http://www.hpts.org/info/info.nsf/9467d5427e7f172d.../5a3b3907b7b2970f852566a900653e06?OpenDocument> (visited December 19, 2002).

[2] See Jay Fisher, “[More states pass prompt payment laws](#),” *The American Academy of Orthopaedic Surgeons Bulletin*, Vol. 50, No. 3 (June 2002), available at: <http://www.aaos.org/wordhtml/bulletin/jun02/fline9.htm> (visited December 19, 2002).

[3] Clean claim -- A claim submitted by a physician or provider for medical care or health care services rendered to an enrollee under a health care plan or to an insured under a health insurance policy with documentation reasonably necessary for the HMO or preferred provider carrier to process the claim, which contains:

(A) the required data elements set forth in §21.2803(b) of this title (relating to Elements of a Clean Claim); [29 required elements for non-institutional providers]

(B) the attachments of which the physician or provider has been properly notified as necessary for processing pursuant to §§21.2803(c) of this title (relating to Elements of a Clean Claim) and 21.2804 of this title (relating to Disclosure of Necessary Attachments);

(C) any additional elements of which the physician or provider has been properly notified pursuant to §§21.2803(d) of this title (relating to Elements of a Clean Claim) and 21.2805 of this title (relating to Disclosure of Additional Clean Claim Elements);

(D) the amount paid by the primary plan or other valid coverage pursuant to §21.2803(e) of this title (relating to Elements of a Clean Claim), if applicable; and

(E) any revised data elements, attachments, and additional clean claim elements of which the physician or provider has been properly notified pursuant to §21.2806 of this title (relating to Disclosure of Revision of Data Elements, Attachments, or Additional Clean Claim Elements, Tex. Admin. Code tit. 28, § 21.2802, WESTLAW, Current through November 30, 2002 (visited January 2, 2003).

[4] Alaska Stat. § 21.54.020, WESTLAW (visited January 2, 2003).

[5] See "[Prompt Pay Blitz Nets Restitution, Fines from 47 Carriers](http://www.tdi.state.tx.us/commish/nr04292a.html)," available at: <http://www.tdi.state.tx.us/commish/nr04292a.html> (visited December 19, 2002).

[6] See chart of time frames for payment state-by-state and 2001 enforcement actions in "[State Laws and Enforcement Actions for Prompt Payment to Providers](#)," available at:

<http://www.aishealth.com/ManagedCare/MgdCareCharts/PromptPayment.html> (visited December 19, 2002).

[7] Carol Patton, "[Doctors Push for Enforcement of Prompt-Pay Laws](#)," Physician's Financial News, Vol. 19, No. 9 (2001), available at: <http://www.medscape.com/viewarticle/409421> (free login required for access; visited December 19, 2002).

[8] MediMedia USA, "[Prompt-Payment Laws Don't Get to Heart of Matter](#)," Managed Care, June (2001), available at:

<http://www.managedcaremag.com/archives/0106/0106.states.html> (visited December 19, 2002).

[9] Rick Pollack, Executive Vice President, American Hospital Ass'n., available at: <http://www.hospitalconnect.com/aha/advocacy-grassroots/advocacy/agencyletters/FedAg020502Guidance.html> (visited January 2, 2003)

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