

DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS

Statutory Authority: 19 Delaware Code, Section 2322 B, E (19 **Del.C.** §2322 B, E)

FINAL

ORDER

A public hearing was held on November 5, 2007 to receive public comments relating to the proposed Delaware Workers' Compensation Employer's Modified Duty Availability Report and the Delaware Workers' Compensation Physician's Report of Workers' Compensation Injury (collectively the "Forms") and the proposed Delaware Workers' Compensation Health Care Payment System Payment Rates for Physicians and Hospitals (the "Fee Schedule") for adoption by the Delaware Department of Labor. The members of the Health Care Advisory Panel ("Panel") present recommend that the Secretary of Labor adopt this proposal as it was published in the Register of Regulations, Vol. 11, Issue 4 (October 1, 2007).

Summary of the Evidence and Information Submitted

Exhibits Admitted:

Exhibit 1 – News Journal Affidavit of publication of notice of public hearing.

Exhibit 2 – Delaware State News Affidavit of publication of notice of public hearing.

Exhibit 3 – Letter from Richard Stokes, Esquire, Property Casualty Insurers Association of America.

Dr. Jeffrey Meyers and Richard Stokes, Esquire, Property Casualty Insurers Association of America addressed the Panel. First, Dr. Meyers stated a concern that the Forms did not adequately address those employees that work more than eight (8) hours per day. Further, Dr. Meyers suggested that an instruction sheet detailing how to complete the Forms should accompany the Forms. Lastly, with regard to the Fee Schedule, Dr. Meyers voiced a concern over the acupuncture codes and the impact on reimbursements when multiple treatment codes are referenced.

Mr. Stokes addressed the Panel and provided a written submission which is incorporated here as Exhibit 3. Several concerns were raised by Mr. Stokes. The first concern was the lack of information that his client received from the Panel. Second, Mr. Stokes raised a concern regarding the number of CPT Codes that will be paid at 85% of charge and their potential fiscal impact. Lastly, Mr. Stokes addressed a concern over the billing and review processes in general.

The Panel discussed the public concerns raised and reviewed their applicability to the proposed Forms and Fee Schedule. The Panel voted unanimously to recommend approval of the Forms and voted ten (10) in favor and one (1) opposed to recommend approval of the proposed Fee Schedule.

Recommended Findings of Fact with respect to the Evidence and Information

The Panel is persuaded that the proposals are consistent with administering the statutory directives in the new workers compensation law.

Recommendation

The proposals are respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 14th day of November, 2007.

HEALTH CARE ADVISORY PANEL

George B. Heckler, Esquire

James Downing, M.D.

Linda Cho

Barry Baskt, D.O. Vice-Chair

Wayne Smith

Douglas R. Briggs, D.C.

Matthew Eppley, M.D.
Marcia DeWit, J.D.
Joseph Rhoades, Esquire

Walter Powell, M.D.
Glenn Brown

Decision and Effective Date

Having reviewed and considered the record and recommendations of members of the Health Care Advisory Panel, the proposals (1) Forms and (2) Fee Schedule are hereby adopted and made effective **May 23, 2008**.

Text and Citation

The Forms and the Fee Schedule Notice appear in the Register of Regulations, Vol. 11, Issue 4 (October 1, 2007). The Forms and Fee Schedule are available from the Department of Labor, Division of Industrial Affairs, Office of Workers' Compensation.

DEPARTMENT OF LABOR

Thomas B. Sharp
Secretary of Labor

Workers Compensation Regulations

1.0 Definitions

As used in this regulation:

"Department" means the Department of Labor.

"Fee Schedule Amounts" mean the fees as set forth by the Health Care Payment System.

"Health Care Advisory Panel" or "HCAP" means the seventeen (17) members appointed by the Governor by and with the consent of the Senate to carry out the provisions of Chapter 23, Title 19, Delaware Code.

"Health Care Payment System" means the comprehensive fee schedule promulgated by the Health Care Advisory Panel to establish medical payments for both professional and facility fees generated on workers' compensation claims.

"HCAP Forms" means the standard forms for the provision of health care services set forth in Section 2322E, Chapter 23, Title 19, Delaware Code.

2.0 Purpose and Scope

2.1 Section 2322B, Chapter 23, Title 19, Delaware Code authorizes and directs the Department within 180 days from the first meeting of the Health Care Advisory Panel to adopt a Health Care Payment System by regulation after promulgation by the Health Care Advisory Panel.

2.2 Section 2322B(c), Chapter 23, Title 19, Delaware Code establishes the formula based upon historical data required to determine the Fee Schedule Amounts for professional services.

2.3 Section 2322B(e), Chapter 23, Title 19, Delaware Code establishes the amount of reimbursement for a procedure, treatment or service to be eighty-five (85%) of the actual charge as of November 1, 2008, if a specific fee is not set forth in the Fee Schedule Amounts.

2.4 Section 2322B (g), Chapter 23, Title 19, Delaware Code establishes separate service categories.

2.5 Section 2322B (h), Chapter 23, Title 19, Delaware Code establishes the Hospital fees developed for the Health Care Payment System.

2.6 Section 2322B (i), Chapter 23, Title 19, Delaware Code establishes the Ambulatory Surgical Treatment Center fees developed for the Health Care Payment System.

2.7 The fees to be established in Sections 2322B (k)(l) and (m) shall be promulgated and recommended by the Health Care Advisory Panel to the Department before the effective date of the regulation.

2.8 Section 2322E, Chapter 23, Section 19, Delaware Code, authorizes and directs the Health Care Advisory Panel to approve, propose and recommend to the Department the adoption by regulation of consistent

forms for the health care providers ("HCAP Forms").

11 DE Reg. 920 (01/01/08) (Final)