



Texas Department of Insurance

Division of Workers' Compensation, Office of the Commissioner

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Ms. Marilyn Tavenner, Administrator
Center for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Ms. Tavenner,

I am writing to you today to alert you to an emerging issue that is affecting the delivery of medical care through Medicare to Texas citizens that are both Medicare beneficiaries and workers' compensation claimants.

The Texas Department of Insurance, Division of Workers' Compensation (DWC) continues to receive complaints from Medicare beneficiaries and their health care providers who have been denied medical coverage by CMS, through its intermediaries, because the beneficiary had a previous workers' compensation claim. In some of these cases, CMS has denied medical coverage to beneficiaries seeking medical care for conditions that are not related to their previous workers' compensation claim. In other cases, CMS denied medical coverage to beneficiaries based on the existence of a previous workers' compensation claim that occurred years ago.

Medicare beneficiaries and their health care providers are asking DWC to confirm that the beneficiary's prior workers' compensation claim has been closed/settled so that the injured employee may seek medical treatment through Medicare. DWC is unable to confirm that workers' compensation claims are "closed" or "settled" since Texas state law (Texas Labor Code, §408.005(b) and §408.021(d)) prohibits the settlement of medical benefits for workers' compensation claims. Under the Texas Workers' Compensation Act, injured employees are entitled to receive "all health care reasonably required by the nature of the injury as and when needed" and these medical benefits "may not be limited or terminated by agreement or settlement."

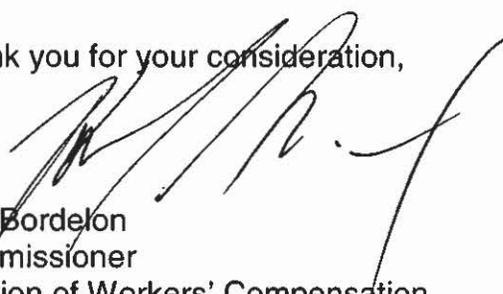
This issue has arisen because of the mandatory reporting requirements put in place by Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, which requires responsible reporting entities, including workers' compensation insurance carriers to report information regarding "open" workers' compensation claims. There is little policy guidance available for responsible reporting entities to address situations where state workers' compensation laws

prohibit claims settlements for medical benefits (and therefore prohibit claims to be "closed" for future medical benefits). As a result, the data that are being reported to CMS does not provide enough information to allow CMS to accurately make coverage determinations and this is creating unnecessary hurdles for Medicare beneficiaries who urgently need access to medical care for non-work-related medical conditions.

DWC urges CMS to provide additional policy guidance to responsible reporting entities who report data to CMS via the Mandatory Insurer Reporting for Non-Group Health Plans (NGHP) program to address situations, like these, where state laws prohibit the settlement of medical benefits for workers' compensation claims. Reporting whether a workers' compensation claim is "open" or "closed" does not provide sufficient information to CMS to ensure that Medicare coverage denials are justified.

Texas state law expects workers' compensation carriers to pay for all medical benefits that arise from a compensable work-related injury. As such, DWC understands that these CMS data reporting requirements were set up to prevent cost-transfer between workers' compensation programs and Medicare. However, CMS should not make coverage determinations for Medicare beneficiaries based solely on the existence of an open workers' compensation claim without additional information about the conditions that were accepted as part of the work-related injury, as well as information about whether a workers' compensation insurance carrier expects to make any future medical benefit payments on the claim.

Thank you for your consideration,



Rod Bordelon
Commissioner
Division of Workers' Compensation
Texas Department of Insurance

CC: Members of the Texas State Congressional Delegation