

TESTIMONY OF THE MAINE MEDICAL ASSOCIATION
IN SUPPORT OF
PROPOSED AMENDMENTS TO
WCB RULE CHAPTER 5, MEDICAL FEES; REIMBURSEMENT LEVELS;
REPORTING REQUIREMENTS

Workers' Compensation Board, Central Office
AMHI Complex, Deering Building, 90 Blossom Lane, Room 170
Augusta, Maine
Monday, August 17, 2009

Good morning Chairman Dionne and Members of the Workers' Compensation Board.

My name is Andrew MacLean, Deputy Executive Vice President of the Maine Medical Association. Thank you for providing us the opportunity to comment in favor of the proposed amendments to Rule Chapter 5, the Board's medical fee schedule. The Maine Medical Association is a professional organization representing the interests of more than 3000 Maine physicians, residents, and medical students whose mission is *to support Maine physicians, advance the quality of medicine in Maine, and promote the health of all Maine citizens.*

Although I will raise several substantive issues or concerns with the revised Rule Chapter 5 in my comments and will follow up with some technical comments or questions prior to the written comment deadline, the MMA does support the establishment of a facility fee schedule for ambulatory surgical facilities in Section 4 of the proposed rule. The MMA also supports updating the fee schedule to the most recent Physician's Current Procedural Terminology (CPT) and Medicare RBRVS Report.

I acknowledge the desire of the Maine State Chamber of Commerce, Maine's workers' compensation insurers, and self-insured businesses for a health care facility fee schedule in the system. I appreciate the efforts of the Workers' Compensation Board to broker a compromise by

investing its resources in the independent consulting expertise of Ingenix's Eric Anderson and by convening the stakeholders in a consensus-based rulemaking process. Mr. Anderson's research and analysis brought some rationality to a debate based largely upon anecdote between the health care provider community and business community since 2003.

The MMA supports the establishment of a reasonable facility fee schedule to bring a measure of certainty to Maine's workers' compensation system that has borne the cost of too much litigation about facility fees during the past five or more years. Mr. Anderson has estimated that delaying implementation of his recommendations by another year could increase system costs by an estimated \$800,000 - \$900,000 for inpatient services and by approximately \$2 million for outpatient services.

At the conclusion of the consensus-based rulemaking process in late 2008, business representatives expressed the view that such savings is insufficient and reiterated arguments about medical costs in the workers' compensation system advanced by them since 2003.

A principal contention of business advocates has been that medical fees in the workers' compensation system should be at parity with those paid by private health insurers in Maine such as Anthem, Aetna, and CIGNA. The MMA strongly disagrees with this suggestion. As I stated in my testimony on Chapter 5 on September 25, 2003, it is appropriate that Maine's workers' compensation system fee schedule is higher than other payers because workers' compensation patients present more complicated medical issues than the average patient and workers' compensation cases impose a greater administrative burden on medical practices. Furthermore, a reduction in the workers' compensation fee schedule undoubtedly would discourage providers from participating in the system and would decrease the access of injured workers to the broadest

network of providers in the state, particularly the best who have the luxury to choose their patients.

Ingenix's Mr. Anderson analyzed the modified Medicare versus the private payer comparison approach to establishing a facility fee schedule and he concluded that the private insurance market was not an appropriate benchmark for a facility fee schedule in the workers' compensation context. Specifically, Mr. Anderson stated in his presentation of November 18, 2008:

While Ingenix recognizes that the board must consider private payer rates, we do not believe that a private payer methodology is the best way for the board to achieve the goal of fair payments made in a cost-effective manner while ensuring access to care for injured workers.

Despite his best efforts to reach out to the business community and payers, Mr. Anderson was unable to gather sufficient specific Maine data to permit a meaningful comparison of Maine workers' compensation payments with those of private third party payers in the state. Describing his Medicare-based facility fee schedule methodology, again in his November 18, 2008 presentation, he noted:

The proposed methodology attempts to intelligently produce the greatest savings while maintaining system integrity.

Mr. Anderson expressed concern about the likely negative impact on patients in the workers' compensation system of significant cuts in provider reimbursement:

Access to care is a critical issue. There are many doctors in Maine, but fewer hospitals, and significantly fewer hospitals capable of treating severely injured patients. Implementing a system which causes a few key hospitals or ambulatory surgical centers to drop out of the system will force patients to even more expensive out-of-state hospitals.

While the MMA supports the establishment of a facility fee schedule, I ask you to consider two substantive issues with the proposed rule raised by us during the consensus-based rulemaking process.

1. Reimbursement for durable medical equipment and supplies (Sections 1.12 and 4.08).

The proposal to pay cost plus 20% is below industry standards and does not contribute sufficiently to the facility's overhead costs. Reimbursement for DME and supplies at cost plus 75% would be more realistic. On this point, here is a comment from an ASC practice manager:

What we do know is that the costs to order, distribute, inventory, store, and bill supplies exceed, on average, 20%, and that 75% would be a more reasonable figure. I often wonder why those who sell these supplies to medical practices are permitted to cover their production and distribution costs AND add a mark up while physician practices are asked to simply pass along invoice costs and a portion of their overhead costs.

2. Prompt payment incentive. With the elimination of the 5% "prompt payment" discount from the rule, Maine workers' compensation payers are subject to no timely payment requirement. I suggest that the Board consider adopting the standard that currently applies to commercial health insurers found at 24-A M.R.S.A. §2436. It provides that an insurance carrier is subject to interest at the rate of 1 ½% per month for an "undisputed claim" that is not paid within 30 days of submission.

The MMA and/or individual ambulatory surgical facilities will follow up with further written comments on several technical questions and issues.

Finally, the MMA has stated since the beginning of the debate about medical facility fees before the Board that it is prepared to endorse a reasonable facility fee schedule. Except for the issues identified in my testimony and those to be covered in follow-up comments, the MMA believes that the Ingenix analysis of the current Maine market and recommendations for a facility

fee schedule are sound. The Board should complete the rulemaking process and see what savings the proposed approach to facility fees can produce. The MMA will be prepared to revisit the issue during a future revision to Chapter 5.

I will close by pointing out that Maine's ambulatory surgical facilities already are a cost-effective component of the health care delivery system serving Maine workers' compensation patients because they generally are reimbursed at approximately 50% of hospital rates. Workers' compensation cases are, at most (for orthopaedic facilities) only 10-12% of ambulatory surgical facility business, so it is not enough market share to prevent them from making practical, financial decisions about the type of care and payer mix they will seek. The MMA understands concerns about medical costs in the workers' compensation system and physician-owned facilities are willing to contribute to the savings, but reimbursement must be maintained at a level that ensures the viability of the workers' compensation business.

Thank you for considering our views on the proposed Rule Chapter 5.