Inequitable Fee Schedules

A look at payment changes in New Jersey from the Payment Policy Committee.

By James C. Hall, CPA

EARLIER THIS YEAR, my company, Rehab Management Services, picked up a consulting agreement with a New Jersey-based firm, and I found a payment nugget that is worthy of sharing with every provider in the United States. Before I relay "this nugget," let me share some insurance basics for those of you who delegate the billing/payment side of your practice to administrative staff. Fifty sets of state and four sets of federal insurance regulations exist. Other than the 50 sets of unique state insurance laws, the federal programs are as follows:

- Medicare
- Medicaid (which varies state by state due to the federal/state buy in process)
- Champus (U.S. Military coverage)
- Employee Retirement Income Security Act or Employer Self-Funded plans (ERISA)

My company came across a payment issue involving ERISA plans that are self-funded by employers. In New Jersey, patients may come to the physical therapy office with an ERISA (self-funded) primary commercial coverage and a secondary policy. The employer contracts with a third party administrator (TPA)—in this case Horizon Blue Cross Blue Shield (BCBS) of New Jersey—who processes the insurance claim according to their contracted fee schedule on behalf of the employer. In this example, the provider submitted a claim to Horizon BCBS, the claim was processed, and the fee schedule applied. However, on the

explanation of benefits (EOB) or the electronic remittance advice (ERA), the claim shows the first line or two of the claim as being processed and paid according to the insurer's contracted rate with the provider. All remaining lines show a payer-initiated (PI) 97 adjustment. However, no contractual relationship between the payer and the provider exists in the code. In other words, the provider signed an agreement with the insurer, but the insurer cannot share that contracted rate with the employer—thus the provider is not obligated to accept the payment as payment in full. If the patient was covered directly under a Horizon Policy (i.e., the policy was not an ERISA plan), these lines with the PI adjustment would contain contractual obligation (CO) adjustments, and the provider could not collect more than the contracted rate.

Therapists should begin dialoguing with their state chapters and working with legislators and lobbyists to bring inequitable fee schedules to the attention of people in a position to negotiate change.

In discussion with Elmer Platz, an APTA PPS member in New Jersey, I was able to locate sources who had some knowledge as to how this PI adjustment came to exist:

Dennis Marco is past officer and vice president for Horizon BCBS of New Jersey. Dennis relayed that approximately 10 hospitals brought suit against Horizon after Horizon began to offer to "lease" their network to self-funded plans in early 2000. These hospitals brought suit against Horizon for using a silent participating provider organization when the hospital providers did not have a contract with these ERISA groups, and therefore, they should not be entitled to Horizon's discounts. Unfortunately, the matter was settled under a confidentiality agreement, but information regarding this suit can be found in New Jersey Case/Docket number BER-L-4234-06.

When working with our client in New Jersey, we noted the following example that illustrates why this issue could be relevant to other providers around the country. We noted that a claim was submitted to Horizon BCBS of New Jersey. When they processed the claim as a third party administrator (TPA), the first line or two paid according to the Horizon fee schedule up to the contracted rate of $68. Any additional services were then denied using a PI code, as opposed to a contractual obligation (CO) code. With this PI code, the provider then billed the secondary insurance and collected money in excess of the Horizon contracted rate of $68. In a number of cases, we noted additional payments that were higher than Horizon's paid rate (the total payment exceeded $136). We also noted PI adjustments with United Healthcare as well (but I have not come across the PI adjustment with Aetna or Cigna yet—both of which I believe to be acting as TPA's within the state of New Jersey).

Why is this important if it pertains to Horizon BCBS of New Jersey? Blue Cross is a large insurer doing business in all 50 states in a similar fashion, which means they are likely a TPA in your state. Although this case was settled confidentially, I believe the circumstances driving this settlement exist in all 50 states. While hospitals may have deeper pockets and be in a more advantageous position to bring suit against an insurer, therapists should begin dialoguing with their state chapters and working with legislators and lobbyists to bring inequitable fee schedules to the attention of people in a position to negotiate change. Therapists do not contract with employers, so why should they be entitled to utilize silent PPO rates that are oftentimes non negotiable to the provider?

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