

Fee Schedules Reduce Injured Workers' Access to Quality Medical Care

In states that have enacted artificially low fee schedules, physician availability has decreased dramatically for workers injured on the job. It has been proven that specialists, such as, neurologists and orthopedists, stop providing treatment because they are inadequately compensated for the high-level quality care and specialized treatment, therapies, and long-term care required by injured workers.

Under these circumstances, injured workers are either forced to forgo medical treatment altogether or turn to taxpayer-funded programs, such as Medicare and Medicaid, to cover their medical costs. Injured workers suffer by failing to receive prompt quality medical care that will accelerate their healing process and allow them an early return to work. Physicians suffer by having non-medical insurance adjusters dictate costs and types of treatment.

Fee Schedules Dramatically Limit Injured Workers' Access to Medical Care.

- One study, *Workers' Compensation Medical Fee Schedules: Findings & Implications for California*, found a markedly low rate of neurologist participation shortly after states (California, Florida, Hawaii, Maryland, Texas, & West Virginia) adopted a low multiple of the Medicare Resource-Based Relative Value Scale (RBRVS).[2] Within the first year of adoption, neurologist participation fell in Texas and Hawaii, 75% and 86% respectively.[3]
- When interviewed, 63% of Texas neurologists indicated that they decided to stop accepting workers' compensation patients "either solely or primarily due to the introduction of the 125% of Medicare Medical Fee Guide (MFG)" enacted in April 2002.[4]
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Low fee schedules have a negative impact on the availability of non-specialized physicians, including primary care physicians.

- Shortly after Texas adopted a fee schedule, the percentage of all physicians accepting workers' compensation patients fell dramatically. In 2002, 36% of family practitioners were treating injured workers but by 2004 that percentage fell to 23%.[5] Experts speculate that primary care physicians may be apprehensive in treating injured workers if there are no specialists to refer them to. Given that primary care physicians lack the background and experience to treat trauma-based injuries, their reluctance to do an initial screening of these patients is understandable.
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Physicians in low scheduled fee states may find it economically prohibitive to treat injured workers

- There are additional administrative and financial burdens associated with treating these workers that will not be fully compensated by low fee schedules.
- These burdens are associated with additional staffing needs and resource allocation costs driven by layers of bureaucracy that require: "obtaining pre-authorization from the insurance adjustor for all treatment; appealing negative utilization review decisions; submitting transcribed reports of all visits and treatments; pursuing payments for months or years; providing disability status and rating reports; submitting applications and credentials for medical provider panels; responding to nurse case managers and attorneys; and submitting to sworn depositions." [6]
- One study found that "the hourly practice expense for offices accepting workers' compensation patients was 2.5 to 3 times higher than the Medicare practice expense rate" in the surrounding metropolitan area of Los Angeles. [7]

Fee Schedules Threaten Injured Workers' Quality of Care

When injured workers do manage to find a physician willing to treat them in states with low fees schedules, the physician is, in general, less qualified.

- According to a study conducted by the Association of California Neurologists, "only 33% of those who continue to accept workers' compensation patients in Texas and West Virginia attended a U.S. medical school and are board-certified, while more than 50% of those who do not accept injured workers have these qualifications." [8] It is likely due to the fact that more qualified physicians are

in a better position to adapt their practice and treat other types of patients for whom they can ensure they will be better and more fully compensated.

- Also, if a physician is going to be paid a fixed rate for delivering medical treatment, there is little economic incentive for the physician to conduct follow up visits and monitor workers' long-term recovery. Consequently, they will need to attend to the needs of other paying patients to compensate for the loss under a fixed rate fee schedule.
- Finally, the free market helps ensure retention of physicians in highly specialized career fields related to workers' injuries and inviting to subsequent generations of physicians. It stands to reason that physicians will be attracted to career fields that pay well and allow them to practice high quality, state-of-the-art medicine. The free market will make specialized medical career fields, such as, neurology and orthopedics, increasingly competitive, which will attract more skilled and better qualified physicians. Under the free market, both the physician and the patient reap the benefits to which they are entitled.

Shift Economic Burden of Injuries to Families and Taxpayers

- When injured workers don't have access to quality medical care within the workers' compensation system they are forced to seek short-term emergency medical care from hospital emergency rooms. Taxpayer funded Medicare and Medicaid programs reimburse hospitals for such emergency procedures. In addition, given that emergency room care seldom provides long-term care to the injured patient, workers remain unemployed longer.
- Consequently, they become increasingly dependent on other taxpayer-subsidized programs, such as, Social Security Disability Insurance (SSDI). In 2006, Social Security paid \$91.7 billion in cash benefits to 6.7 million disabled workers and their dependents and Medicare paid \$52.2 billion for health care for 5.4 million disabled workers.^[9]

The adoption of fee schedules is the insurance industry's attempt to control both the treatment and cost of medical procedures at injured workers, physicians, and taxpayers expense. Noteworthy is the fact that, within a free market environment, injured workers continue to receive premium medical care from highly skill, well-paid physicians. The insurance industry advocacy of fixed fee schedules is antithetical to long-established free market competition.

[1] Steven E. Levine, M.D., Ph.D., FA.A.N. Trends in Medical Specialist Participation in Workers' Compensation Systems – Implications for California, p. 1, (2007), available at:

<http://csims.org/system/pdfs/20/original/Trends%20in%20Medical%20Specialist%20Participation%20in%20Workers%20Compensation%20Systems.pdf>

[2] Id.

[3] Id at p. 1.

[4] Id at p. 10.

[5] Workers' Compensation Special Report – 2004 Survey of Texas Physicians, Texas Medical Association, 2004, available at:

<http://www.senate.state.tx.us/75r/senate/commit/c780/Downloads/testimony/032504/TMAWorkerscomp.pdf>

[6] Supra 1 at p. 1

[7] Id. at p. 4

[8] Id. at p. 4. See also: Impact of Medicare-based Workers' Compensation Fee Schedules on Injured Worker Access to Neurological Care in Texas & Hawaii, Association of California Neurologists – Workers' Compensation Committee, (authors unidentified, March 2005), available at: <https://csims.org/system/pdfs/51/original/ACN%20Workers%20Comp%20Fee%20Schedule.pdf>

[9] Workers' Compensation in the United States: Cost Shifting and Inequities in a Dysfunctional System, University of California School of Medicine, New Solutions, Vol. 20(3) 291-302, (2010), <http://www.ncbi.nlm.nih.gov/pubmed/20943472>