Houston
Medical Journal
The Leading Source for Healthcare Business News

Keeping insurers' slow-pay or no-pay tactics in check

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There is one certainty in the practice of medicine today: Insurance companies, in an ever-expanding effort to make money, will deny or slow-pay valid claims for reimbursement. Traditionally, healthcare providers have been reluctant to take legal action and have instead opted to absorb these unpaid claims as a cost of maintaining a good relationship with the insurer.

But as unpaid claims mount, healthcare providers should review their legal options. Thankfully, the Texas Prompt Payment Act entitles healthcare providers to significant compensation if insurance companies have wrongfully denied or slow-paid claims for reimbursement.

The Texas Prompt Payment Act

Under the Texas Prompt Payment Act (TPPA), insurers must pay "clean claims" submitted by the healthcare provider within 30 days if the claim is submitted electronically or 45 days if the claim is submitted on paper. Even if the insurer determines that the claim is not payable either in whole or in part, the insurer must still notify the healthcare provider of that decision within that same timeframe. Essentially, a "clean claim" is any claim that is submitted in accordance with standard claims-submission procedures.

If an insurer fails to pay any amount on a clean claim within the required timeframe, then the insurer is liable to the healthcare provider for a range of civil penalties depending on how late the insurer finally pays the claim—a civil penalty that is in addition to the amount of the unpaid claim. On a claim that is paid between 1 and 45 days late, then the insurer must pay a penalty equal to "50 percent of the difference between the billed charges, as submitted on the claim, and the contracted rate" or $100,000, whichever is less.

From 46 to 90 days late, then the penalties jump to "100 percent of the difference between the billed charges, as submitted on the claim, and the contracted rate" or $200,000, whichever is less. And after 91 days late, then the insurer is not only liable for 100 percent of the difference between the billed charges and the contracted rate (or $200,000, whichever is less), but the insurer is also liable for 18% interest on the claim.

A common misconception is that a partial payment within the allowed timeline exonerates the insurer from civil penalties. In reality, so long as the insurer pays any of the balance of the claim late, the penalties follow the same general formula as if no payment had been made at all.

A common misconception is that a partial payment exonerates the carrier from civil penalties. However, if the insurer pays the balance of the claim late, the penalties follow the same general formula as if no payment had been made at all.

Civil Penalties under the TPPA

Civil penalties under the Texas Prompt Pay Act add up quickly, especially for high volume practices or specialty practices with high per-procedure reimbursement rates. For example, consider an oncologist that bills $60,000 per chemotherapy infusion and has a participating provider contract with Blue Cross pursuant to which he or she will get compensated $30,000 per infusion. If the oncologist submits clean claims for 20 infusions that Blue Cross pays 60 days late, then Blue Cross is liable for $600,000 in civil penalties was well as $600,000 for the underlying claims—a total of $1.2 million.

Institutional providers, such as hospitals and other health-related service facilities, are only allowed to keep 50% of the total penalties assessed against an insurer, but they are allowed to keep 100% of any accrued interest. The insurer must pay the rest to the Texas Health Insurance Risk Pool. Non-institutional providers like individual physicians and physician-group practices are allowed to keep 100% of the penalties, but not the 18% interest.

To make courts more accessible to healthcare providers, providers are also entitled to their attorneys' fees and court costs in any successful action to enforce their rights under the TPPA.

Potential Issues with TPPA Claims

Although the text of the TPPA is straightforward, it can be complicated in practice due to the complex minefield of federal preemption or the technical definitions in the Act itself. For example, TPPA claims involving reimbursements under Medicare Advantage plans are pre-empted by federal Medicare laws, in which case the parties' remedies will be dictated solely by their written contract and federal law.

Likewise, the TPPA may, under certain scenarios, be pre-empted by the Employee Retirement Income Security Act. And an insurer that is merely acting as the administrator for a self-funded employer healthcare plan or a government-funded plan is not liable under the TPPA, since it is not acting as an insurer.

On top of that, many insurers try to limit their exposure to TPPA penalties by inserting favorable provisions into their contracts with healthcare providers. Although the TPPA's prompt payment and civil penalty provisions are nonwaivable, insurers can make it difficult for healthcare providers to enforce rights under the TPPA by requiring arbitration of those claims.

No Retaliation Allowed

Many healthcare providers, especially individual physicians and smaller group practices, are reluctant to bring TPPA claims against insurers for fear that the insurer may terminate or not renew their provider contract in retaliation for bringing a lawsuit. However, the TPPA explicitly prohibits an insurer from taking any retaliatory action against a healthcare provider, including "refusal to renew or termination of a contract," in response to the healthcare's providers filing of a complaint against the insurer. Although the definition of complaint under the TTPA does not explicitly include lawsuits, the definition is likely broad enough to encompass them.

Conclusion

Healthcare providers cannot, and should not, take it on the chin from insurance companies demanding contracts with low reimbursement rates and then compound the misery on a slow-pay or no-pay basis. Unpaid claims for reimbursement amount to a massive volume of dollars outstanding that merit investigation and recovery. ▼