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Insured Payment of Medical-Only Workers' Comp Claims in Massachusetts

A GUIDE FOR AGENTS AND EMPLOYERS



White Paper: Insured Payment of Medical-Only Claims in Massachusetts

In the early 1990s, the Qualified Loss Management Program (QLMP) played a key role in transforming Massachusetts from the 3rd highest cost state for workers compensation (WC) to our current ranking of 44th. Throughout the 1990s, one of the strategies recommended for reducing employers' premiums was to have insureds self-pay medical-only claims. (Note: this strategy that was never sanctioned by the National Council on Compensation Insurance - NCCI.) Given that primary losses – the first \$5,000 of each claim – were included at 100% of their value in the experience mod calculation, and that most medical-only claims were comprised entirely of primary losses, it made sense to keep these small claims out of the experience modification calculation. QLMP consultants typically recommended the insured pay the medical bills but still notify the insurer of the injury as a “report only” claim; some carriers were even willing assist in this by rating the medical bills against the state’s stringent fee schedule, enabling insureds to minimize their payments. This practice was also not sanctioned by the NCCI, so it became an “off the books” practice to artificially suppress experience modifications.

The NCCI has determined that this practice has led directly to wide-spread under-reporting of claims. NCCI also maintains that the under reporting of actual accidents creates a statistical imbalance in the experience modification process, creating both a fairness imbalance as well as underwriting distortions. About seven years ago, NCCI changed the rules: in order to ensure that *all* claims are reported, NCCI now discounts medical- only claims by a whopping *70 percent*. In the 38 states administered by NCCI, there is no longer any reason for insureds to self-pay medical only claims; in fact, they may lose money if they continue the old approach.

Massachusetts Stands Alone

Massachusetts, which operates independently from NCCI, has not yet adopted the discount for medical-only claims, so the rationale for insured self-payment still exists. At the same time, carriers are no longer cooperating with insureds who want to pay these claims directly. Carriers no longer help to rate the bills against the fee schedule. More important, in a number of instances, carriers have taken the position that by paying medical bills directly, insureds are *assuming full liability for the claim*, especially if the medical-only injury evolves into a lost time claim. By statute, carriers are required to perform two distinct actions on every claim: first, determine compensability; and second, make any and all payments. By making payments prior to the carrier’s determination of compensability, insureds are pre-empting the carrier’s statutory role and thus potentially assuming full liability for the claim.

The payment of medical-only claims developed as an informal “under the radar” practice between insureds and insurers. It began when the rates in Massachusetts were 65 percent *higher* than they are today. This premium reduction technique required – and would still require – the tacit participation of insurers. Given the absence of any support for this practice from carriers, and the ominous threat of the insured assuming open-ended liability for an injury, self-payment of medical-only claims is no longer a viable option. What was once an accepted practice for reducing premiums now involves unacceptable risk. Given that many agents have in the past recommended the self-pay approach, it is important for these agents to cease recommending this strategy to their clients and proactively inform them that the practice is no longer recommended. Agents who persist in this practice risk serious errors and omissions consequences that may not be covered under their E&O insurance.

Good Idea Gone Bad

While medical-only claims in MA still have a significant impact on experience mods and self-payment of medical-only claims may make superficial *financial* sense, given the assumption of open-ended liability, this practice is no longer a viable option. The good news is that WC rates in MA are substantially lower than those in every other New England state. For most MA insureds, even those with relatively high frequency and high experience mods, the cost of WC is still substantially less than it would be in other states. In other words, even with medical-only claims valued at 100 percent in the experience mod calculation, most Massachusetts employers still pay far less for insurance than similar businesses in neighboring states.

Eventually, the WCRIBMA will likely adopt the discount on medical-only claims. In the meantime, our recommendation to agents is to inform their insureds that this cost-savings strategy is no longer an appropriate option.