

June 1, 2021

RE: Auto No-Fault Fee Schedule Rules – Draft

Chairperson Meerman and JCAR Members:

On February 22, 2021, we provided DIFS with written comment on the initial auto no-fault fee schedule draft rules; and subsequently provided oral comment during the public hearing on March 26, 2021. Since then, a second set has been made available; however, without another public comment opportunity, we are compelled to share with you our urgent concerns for the rules as written.

We continue to assert our belief that the rules introducing a new fee schedule system for companies that did not have an average charge as of January 1, 2019, is outside the purview of the Department, as the statute itself does not address these circumstances. With that said, we do have concerns as these rules move forward, specifically with the use of the Fair Health Benchmark as the fee schedule to be referenced for these companies.

We believe that the following needs to be clearly addressed before making these rules final. **We urge JCAR to stop these rules from proceeding to the Secretary of State for adoption unless all of these concerns are clearly addressed:**

- What Percentile of Fair Health will DIFS use when consulting the database to set a provider’s “average amount charged”?
- What specific product of Fair Health’s will DIFS be using?
- For many procedure codes, the Fair Health data base lists two different types, categories or levels of care. They are 1) “Transportation, Medical Equipment and Supplies” and 2) “Health Care Facility.” Based on various procedure codes, there can be pricing data under both categories, or sometimes just one or the other. Pricing data can vary drastically.
 - What category is applicable and when?
 - Who determines which category is appropriate?
 - If there is a procedure with only one category available, do you default to that category for just that services or is there no price available?
- For many services, there are sometimes multiple procedure codes, all listing vastly different charge amounts.
 - Who determines which procedure is the proper procedure? The provider, the insurer, or DIFS?
- *Please confirm:* For a new company or a new service, it appears DIFS will forever be looking back to Fair Health’s database inclusive of 1/1/2019 data for the particular geo-zip. Then depending on the answers to the questions above, an “average amount charged” will be determined for applicability under 3157 sub 2, 3, 5, 6, and 7.
- *Please confirm:* If a new company’s “average amount charged” created under this rule, for a Medicare payable service, was less than 200% of Medicare, they would be forever cemented into that lower reimbursement level, as adjusted for CPI.

We have learned that there is significant variability in the data that will result in drastic reimbursement differences across the state. This is contrary to what is stated in the RIS form submitted regarding the No-Fault Fee Schedule rules and its impact on rural providers: “A provider’s or insurer’s location will not have any bearing on the degree to which the rules affect it.” (16.A)

- Is DIFS aware of the vast differences between the two categories (1)Trans, Equip & Supplies versus (2) Health Care Facility?
- Is DIFS aware that differences between geographic locations within the State of Michigan may be vastly different for the same service in a different area?
- When will DIFS be publishing the Fair Health 2019 database for all zip-codes? If this is a basis for payment, providers and insurers should know immediately.

In the RIS form submitted regarding the No-Fault Fee Schedule rules, it is stated that “uniformity in reimbursement rates related to the administration of no-fault benefits is essential to the purpose and intent of MCL 500.3157” (26). Unfortunately, due to the concerns stated above, these rules will actually create more uncertainty, inconsistency, and variability.

On behalf of the members of the Michigan Brain Injury Provider Council, I urge JCAR to stop the rules from being filed with the Secretary of State until these concerns are clearly addressed.

Sincerely,



LMSW, CBIS

Tom Judd
President, MBIPC