

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN RE THE USE OF THE INGENIX MDR)
DATABASE FOR THE CALCULATION OF) ORDER
USUAL, CUSTOMARY AND REASONABLE)
FEES PURSUANT TO N.J.A.C. 11:3-29.4(e))

This matter relates to the decision of the Appellate Division of the New Jersey Superior Court in In Re Adoption of N.J.A.C. 11:3-29 by the State of New Jersey, Department of Banking and Insurance, 410 N.J. Super. 6 (App. Div. 2009) (hereinafter “In Re Adoption of N.J.A.C. 11:3-29”).

Background

Pursuant to N.J.S.A. 39-6A-4.6, the Commissioner of the Department of Banking and Insurance (the Department) is responsible for the promulgation of medical fee schedules to be used in the reimbursement of medical providers under the personal injury protection (PIP) coverages of automobile insurance policies. N.J.A.C. 11:3-29, Medical Fee Schedules: Automobile Insurance Personal Injury Protection and Motor Bus Medical Expense Insurance Coverage (“PIP Fee Schedule Rule”), and its Exhibits, establish the medical fee schedules and associated rule provisions for the payment of the PIP benefits by automobile insurers and motor bus insurers. N.J.A.C. 11:3-29.4(e) generally provides that an insurer's limit of liability for any medical expense benefit for any service or equipment not set forth in the PIP fee schedules shall not exceed “the usual, customary and reasonable fee.” As a part of the rulemaking originally

effective on August 29, 2007, the Department also adopted N.J.A.C. 11:3-29.4(e)1, which describes how insurers should determine the “usual, customary and reasonable fee” (UCR) for the services that are not on the fee schedules. It states,

[f]or the purposes of this subchapter, determination of the usual, reasonable and customary fee means that the provider submits to the insurer his or her usual and customary fee. The insurer determines the reasonableness of the provider’s fee by comparison of its experience with that provider and with other providers in the region. The insurer may use national databases of fees, such as those published by Ingenix (www.ingenixonline.com) or Wasserman (<http://www.medfees.com/>) for example, to determine the reasonableness of fees for the provider’s geographic region or zip code. [N.J.A.C. 11:3-29.4(e)1].

A coalition of groups representing medical providers filed a challenge in the Appellate Division to the 2007 adoption of the amendments to the PIP Fee Schedule rules. As part of the challenge to the adoption, the appellants objected to the use of Ingenix databases for determining the reasonableness of fees for services that are not on the fee schedule as referenced in N.J.A.C. 11:3-29.4(e)1. As noted above, on August 10, 2009, the Appellate Division issued its decision in this challenge to the PIP rules, and specifically affirmed the vast majority of the Department’s 2007 adoption of the amendments to the PIP fee schedule rules. In Re Adoption of N.J.A.C. 11:3-29, *supra*, 410 N.J. Super. 6. In its decision, the Appellate Division found that the Department had conducted a detailed review of multiple sources of fee data and based the physicians’ fee schedule on “databases (that) were reliable sources of information.” *Id.* at 34. The Appellate Division also found that the Department made “considered and informed judgments” in developing the rules and fee schedules, and that the fee schedules reflect amounts actually paid to providers by auto insurers (as opposed to amounts paid by other payers such as

health carriers). Id. at 36-37. The decision also reaffirmed that the Department's use of paid fees to develop the physicians' fee schedule was proper. Id. at 38-39.

The Appellate Division, however, enjoined the use of the Ingenix database authorized by N.J.A.C. 11:3-29.4(e)1 for the insurers' evaluation of fees that are not on the fee schedule, pending further review by the Department. Id. at 40-41. The Appellate Division referenced physician concerns that the Ingenix database might be improperly skewed toward the reduction of fee reimbursements, and the court ultimately "allow[ed] the Department to apply its expertise in assessing the bona fides of the questioned database" while allowing implementation of the remaining rules. Id. at 41.

This Order represents the analysis required by the Appellate Division prior to permitting use of any Ingenix database by an insurer to assess the reasonableness of a fee under N.J.A.C. 11:3-29.4(e)1. For the reasons set forth herein, the Department has determined that use of the Ingenix database in the PIP UCR context is reasonable and such use is therefore permissible.

Analysis

The Department sought to assess the bona fides of the Ingenix database by comparing it to other established and independently created databases to determine if it produced results that deviated from the other databases in ways that demonstrated a flawed methodology or an intentional suppression of fee amounts. For this comparison, the Department chose databases produced by Wasserman, the New York Workers' Compensation system, and Medicare. The Department chose Wasserman because its use in determining UCR was neither enjoined by the Appellate Division nor objected to by the appellants, despite its equal status with Ingenix in the PIP rule, and because the Medical Society of New Jersey recommended its use to the Department

during the development of the PIP fee schedule rules and provided an expert analysis concluding that Wasserman produced the most accurate UCR data available. The Department chose the New York Workers' Compensation schedule because it was comprehensive, independently developed and the product of a neighboring Department of Insurance that is known to this Department to have expertise in the development of fee schedules. The Department chose Medicare because it is the most comprehensive and widely used fee schedule database available, and because its underlying methodology is transparent and widely considered to be mathematically sound. On the Ingenix side of the comparison, the Department chose the MDR™ database because it is the Ingenix database primarily used by automobile insurers to determine UCR.

The Department's next step was to identify fees that were significant in dollar amount, yet not on the Physicians' Fee Schedule, and thus subject to ongoing UCR determinations. The Department used data from Consolidated Services Group (CSG), a PIP vendor for a number of insurers, to find the thirty-three highest-value (i.e., highest total reimbursement amount) Common Procedural Terminology (CPT) codes that met this standard. The Department then obtained the fees for those thirty-three codes from the following sources:

- 1) The May 2009 release of the Ingenix MDR™ database at the 75th percentile for geozip 070;¹
- 2) The 2009 Wasserman Physician Fee Reference (PFR) at the 75th percentile for zip code 07020;

¹ 1. According to the definition of "geozip" on the Ingenix website, geozips are "groupings of one or more 3-digit zip codes that describe geographic areas defined primarily by charge data similarity and geographic proximity." Geozip 070 is comprised of all USPS zip codes beginning in 070.

3) The July 2008 edition of the New York Workers' Compensation Fee Schedule for Region III (Westchester County, NY). Although distributed by Ingenix, the New York Workers' Compensation Fee Schedule is compiled by the New York Department of Insurance; and

4) The 2009 Medicare Physicians' Fee Schedule.

The Department then expressed the fees from the first three sources described above as a percentage of the 2009 Medicare Physicians' Fee Schedule to determine how they compared with one another when set against a common standard. The results of this comparison are displayed as a line graph found in Exhibit 1. The graph shows the Ingenix MDR™ fees, the Wasserman fees and the NY Workers' Compensation Fees to be similar in relative value to the Medicare fees. In other words, the actual output of Ingenix's system is a fee database that appears to consistently track the databases of other independent purveyors of fee databases, without anomalies suggestive of a flawed or arbitrary methodology. The results indicated a particularly strong mathematical correlation between the Ingenix and Wasserman fees for these codes, and this further supports the conclusion that Ingenix is producing legitimate fee data in the database used by the Department. Finally, and importantly, the graph shows that the Ingenix database often produces fees that are higher than those produced by the independent purveyor Wasserman, which maintains a database that the Medical Society of New Jersey has determined to be most accurate. These results appear to the Department to strongly support the conclusion that Ingenix fees are based on a reasonable methodology and not arbitrarily suppressed. Based on the analysis above, the Department believes that the bona fides of the Ingenix MDR™ database have been adequately demonstrated.

Conclusion

Based on the foregoing, it is on this 26th day of August, 2010, ORDERED that the Ingenix MDR™ database can be used by automobile and motor bus insurers to determine the reasonableness of fees billed for services that are not on the PIP Fee Schedule.



Thomas B. Considine
Commissioner

