

“Usual & Customary” Workers’ Compensation Trauma/Burn Payments

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Act 44 provides that Level I and II trauma centers and ABA verified burn centers “shall be paid based on 100% of the usual and customary charges . . .” for acute care rendered to patients with an “immediately life-threatening or urgent injuries.”

[34 Pa.Code 127.128(a)]

- In practice, this has meant that insurers routinely paid 100% of the trauma/burn center’s full charges
- 2 years ago SWIF began challenging this, asserting that “usual and customary” is something less than full charges

SWIF relied on statute defining “usual and customary” as “the charge most often made by providers of similar training, experience and licensure for a specific treatment, accommodation, product or service in the geographic area where the treatment, accommodation, product or service is provided.”

[77 Pa.C.S.A. 29]

- To establish U&C charge, SWIF initially attempted to use Fair Health Database
- One case accepted Fair Health database, but this was rejected by other cases
- Significant reductions: Paid 8% on a \$1.14 million trauma bill; 30% on a \$140k trauma bill;

After use of Fair Health database was rejected, SWIF attempted to get charge data on trauma/burn charges from other sources

- In one case, SWIF proposed serving subpoenas on 14 trauma centers seeking 3 years of data on over 68,000 trauma patients

After the Hearing Officer narrowed the scope of the subpoenas SWIF did not serve them

- Requested data from PHC4

Unsuccessful in doing so thus far

What happened at the hearing yesterday?

- SWIF has offered to settle for 90% of original charges, not including 10% interest
- Hospital has made demand for 97% of original charges, not including interest

Hearing was continued for 30 days to allow the parties time to discuss settlement

What should you do?

- Do not accept less than 100% of charges on burn/trauma cases
 - File Fee Review Applications promptly to challenge any underpayments
 - Retain counsel at Hearing Officer level to challenge U&C reduction on trauma/burn case
- If you receive a subpoena seeking trauma/burn charge data inform hospital's CFO, Hospital Association of Pa and me to quash subpoena and coordinate a response with other hospitals

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