



You probably don't have to take workers' comp cases — unless they sneak in

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Question: *A patient has come in with a work-related injury that he says he intends to submit to workers' compensation. Can I refuse to treat him?*

Answer: Outside of Emergency Medical Treatment and Active Labor Act (EMTALA) concerns in the case of urgently needed care, chances are you're not obliged to accept the patient for treatment. State laws may vary, but experts to whom we spoke in Texas, Indiana, Ohio and Kentucky say this is the providers' call in their states.

"Many physicians in Texas do not accept workers' compensation insurance because of the difficulties in dealing with insurers," says Barbara Bergin, M.D., an orthopedic surgeon with Texas Orthopedics in Austin.

In fact, in some states workers' compensation payers have empanelled providers to whom they exclusively refer patients whose claims have been accepted. In Indiana, if a work injury is accepted as compensable by a workers' compensation payer or board, "the employer has the right to direct treatment and will generally send the employee to a medical provider approved by the workers' compensation insurer — and with whom the insurer often has a contractual arrangement to provide discounted services," says Phillip Olsson, an attorney with Reminger Co. LPA in Indianapolis.

Under the Kentucky Workers' Compensation Act, the injured employee and provider of his choice "sign off" on the agreement to treat the patient and notify the payer or board, says Mark R. Bush, an attorney with Reminger Co. LPA in Lexington, Ky. "If the treatment is deemed unreasonable, unnecessary or unrelated to the work event, the provider can then bill a secondary payer," he adds.

But not all states operate this way, and if a patient comes past the front desk and into your exam room and reveals he has a work injury, you may be stuck with his workers' comp claim. You could tell the patient you prefer to bill it to regular insurance, and he or she may go along, but "if the employee presents his group insurance and you start treatment and the notes suggest a work injury, the group plan payer may say 'this doesn't look right' and upon audit take the money back," says Robert Orzechowski, chief operating officer of the Lancaster (Pa.) Cancer Center.

What does your state say?

Check your state law to ascertain which of the responsibilities apply to you:

Reporting to the patient's employer. If a patient reports his or her injury to be work-related, Texas providers are required by law to inform the patient's employer, says Bergin. This is also true when the patient doesn't inform the provider until a subsequent encounter that the injury was work-related. Note that the HIPAA privacy rule permits covered entities to disclose protected health information to employers involved in workers' compensation systems without the individual's authorization for insurance purposes.

Alternative insurance claims must wait. In Texas, if your patient reports that the injury you're treating is work-related, "you cannot turn to the patient's private insurance unless the injury is deemed non-compensable by the [workers' compensation] insurer," says Bergin — and that can take a long time.

While in theory "there really is nothing to stop one bill from being submitted to two payers to see who pays it first," says Fresco, "we typically see a private insurer automatically deny charges out of hand for instances where the impetus of the care was a work-related injury. Those insurers will maintain that denial until the patient produces an order from Ohio's Industrial Commission finding that the injury or the care was not work-related."

Encourage the patient

If you have a workers' compensation patient and the insurer is being slow or has denied the claim, it's up to the patient to appeal his or her claim. You may prefer that it be dropped so you can appeal to alternative insurance — but often workers' compensation judgments take so long that timely filing deadlines of other insurance are missed (*PBN 1/11/16*).

In such cases, it's in your interest to support the patient and encourage him or her to appeal vigorously, says Bergin. "Once we start having problems, we get the patient on board ASAP, helping them be the squeaky wheel," she says. "I have many injured workers who have to go through appeals processes and even occasionally have to hire attorneys."

On the other hand, you might choose to take workers' comp cases anyway. True, these claims can take a long time to settle and create paperwork hassles — Bergin says Texas Orthopedics has "several employees who do nothing but try to get [workers' comp] carriers to pay us for our services to their injured employees" — which is why some providers

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want to avoid them. But while he admits there are "a lot of moving parts" to workers' comp, Orzechowski says, "the book on workers' comp is it takes longer but tends to pay better — better than payers under group health plans. So I don't think it's wise to not accept it, provided you can bear the burden of untimely payments."



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