MEDICAL BILLING
IN WORKERS' COMPENSATION

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Medical Billing in Workers' Compensation

I. Commission's exclusive jurisdiction pursuant to §65.2-714

The Workers' Compensation Commission has exclusive jurisdiction over fees of health care providers treating Workers' Compensation claimants pursuant to §65.2-714 of the Virginia Code (a copy of Section 714 is at Exhibit 1 hereto). There are several requirements to an employer's* responsibility for paying a bill. Pursuant to Section 714, if : 1) a medical provider is treating a compensable work injury; 2) that provider is an authorized treating physician in the referral chain; and 3) the care provided is reasonable, necessary and related to the work injuries, the medical bills of that provider should be paid by the employer. Watkins v. Halco Engineering, Inc., 225 Va 97, 300 S.E. 2d 761 (1983); Selman v. McGuire Group Service, Inc., 77 O.W.C. 18 (1998); Boettger v. Div. of Motor Vehicles, 64 O.I.C. 51 (1995). However, in order for health care providers to be entitled to collect fees from an employer, they must provide medical reports to the employer within a

* The term employer is used interchangeably with Workers' Compensation carrier since the employer's obligations are typically administered by the carrier.

reasonable time. §65.2-714A of the Virginia Code. See also §65.2-604 of the Virginia Code (a copy of §604 is at Exhibit 2 hereto). Parks v. Systems Engineering Associates Corporation, 66 O.I.C. 104 (1987).

II. No balance billing or collection permitted, peer reviews

Ultimately, when a medical bill has been paid by the employer, a health care provider is not permitted to balance bill the injured employee in connection with that medical treatment. §65.2-714D of the Virginia Code. Also, during the pendency of litigation at the Commission regarding the bill, the provider may not attempt to collect the unpaid bill from the injured worker. §65.2-601.1 of the Virginia Code (a copy of §601.1 is at Exhibit 3 hereto).

In the event a dispute arises, contests on the reasonableness of medical charges can be referred to a peer review committee established pursuant to §65.2-1300 to 1310 of the Virginia Code (see a copy of those sections at Exhibit 4 hereto). However, a peer review committee may not rule upon medical expenses previously approved or ruled upon by the Commission. Jenkins v. Case Bag Company, 62 O.I.C. 247 (1983). It also seems that the peer reviews are principally designed to adjust over charges by providers as opposed to underpayments by

employers. See §65.2-1306 (Exhibit 3); Davis v. Rosso & Mastracco, t/a Giant Open Air, 69 O.I.C. 211 (1990).

III. Prevailing rate in community is rule of thumb

The general rule of thumb in regards to payment of medical services provided in Workers' Compensation cases is that the employer is responsible to pay medical charges at the prevailing rate in the "same community". §65.2-605 of the Virginia Code (a copy of §605 is at Exhibit 5 hereto). The "same community" refers to the city, county or town in which the medical care provider practices. Hopkins v. Fairfax County School Board, 73 O.W.C. 168 (1994). Without evidence to the contrary, medical bills received by the injured worker are considered "prima facia" evidence that the bills are reasonable and that the treatment was necessary. Blevens v. Williamsburg Pottery, 75 O.W.C. 103 (1996). Therefore, upon proper submission of those bills by the claimant or provider (i.e. with CPT Codes, etc.), the employer alleging excessive or unnecessary doctor's fees must prove that the costs exceed the prevailing rate in the community for the same or comparable services. Korsh v. Builders Hardware & Architectural Prods., Inc., 76 O.W.C. 76 (1997).

IV. Methods for determining prevailing rate in community

Disputes can arise as to the proper method for determining the prevailing rate in the community. In one case, the Commission determined that an acceptable method for determining what constitutes the prevailing rate in the same community was utilized when the employer retained the services of a business called MedCheck. Their procedures involved collecting data from physicians, clinics, insurance carriers and other existing fee schedules, grouping them by geographic area and CPT, dividing the 50 states into 195 fee similar geographic areas by zip code and making payment recommended at the 80th percentile. Davison v. Smyth County Public Service Authority, 73 O.W.C. 171 (1994) (copy enclosed at Exhibit 6). In another case, it was held that MedCheck procedures, a service of Corvel Corporation, were not appropriate. The evidence revealed that the cost database was incomplete and was not shown to be truly representative of the cost of similar services charged by health care providers in the community. In that case, it was held that the employer's decision to pay only at the 70th percentile failed to show any correlation with the standard for determining appropriate costs as set out in the Workers' Compensation code. Louise Obici Hosp. v. Dept. of Trans., 75 O.W.C. 235 (1996) (copy enclosed at Exhibit 7). See also Lillard v. Safeway Stores, Inc.,

71 O.W.C. 213 (1994); Griffin v. Suffolk City Public Schools, 71 O.W.C. 217 (1992).

V. Provider contracts trump statutory and case law

The issue of provider contracts presents an entirely separate layer of consideration of the amount of medical bills. Despite all of the above discussion, health care providers and employers or various insurance companies can completely ignore this statutory and case law and enter into contractual arrangements to the contrary. When the parties have bound themselves by "provider contracts" for payment of medical services at specified rates, the Commission will not override those agreements. In re Cohen 75 O.W.C. 63 (1996). The only question may be whether or not, in a particular case, the provider contract governs. This point has been a matter of litigation over the last couple of years with somewhat unintended results from the standpoint of the providers involved. Melchor v. Trussway, Ltd., 00 WC UNP 1815646 (2000) aff'd Leibovich v. Melchor, 35 Va. App. 542 S.E. 2nd 795 (2001) (holding that if there is privity of contract between the Workers' Compensation carrier and a preferred provider organization (PPO) the health care provider deals with, that the health

care provider may be required to accept contractually reduced fees from the Workers' Compensation carrier) (copy of both cases at Exhibit 8).

VI. Real issue is late payment requiring legislative remedy

The ultimate problem with payment of medical bills in Workers' Compensation cases is probably not the amount of the bill. Either reasonable people can ultimately agree, or the Commission could ultimately rule on whether or not the medical services in question were reasonable, necessary, in the referral chain, related to the work injury and the appropriate amount that should be paid for them. Perhaps what is of greater moment is the amount of time it takes for these matters to be resolved. What is also of great significance to health care providers who wait for payment or injured workers who wait for services to be provided, is that often it seems that the Workers' Compensation insurance companies suffer little or no penalty for non-payment or late payment of these medical bills. After it is all said and done, it seems that the worst that can happen to the employer or Workers' Compensation insurance carrier for causing a delay in provision of medical services or delay in reasonable payment of medical bills is that they ultimately provide those services or pay the bills at the same rate that they would have had to pay them at the outset with no penalty, no interest, no additional cost

to the employer or carrier, despite perhaps years of delay and the imposition of hardship or even attorney's fees to claimants or health care providers. Jenkins v. Chase Bag Co., supra at 249-50. Toward this end, some reasonable legislation to resolve this issue ought to be considered. Two such bills were proposed during the last legislative session (see attached Exhibit 9 hereto). Perhaps a similar bill will meet with success in the future.

LIST OF EXHIBITS

Exhibit 1: §65.2-714 of the Virginia Code

Exhibit 2: §65.2-604 of the Virginia Code

Exhibit 3: §65.2-601.1 of the Virginia Code

Exhibit 4: §65.2-1300 to 1310 of the Virginia Code

Exhibit 5: §65.2-605 of the Virginia Code

Exhibit 6: *Davison v. Smyth County Public Service Authority*
73 O.W.C. 171 (1994)

Exhibit 7: *Louise Obici Hosp. V. Dept. of Trans.*
71 O.W.C. 213 (1994)

Exhibit 8: *Melchor v. Trussway, Ltd.*
00 WC UNP 1815646 (2000)
Leibovich v. Melchor
35 Va. App. 542 S.E. 2d 795 (2001)

Exhibit 9: Proposed bills from last legislative session