



## MEMORANDUM

**RE:           Who Pays the Hospital Bill When Workers Get Injured?**

**DATE:       December 20, 2010**

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The scenario is typical: a worker is injured on the job and immediately transported to the nearest emergency room for care. The worker's injuries are catastrophic and he remains in the hospital for several days, before he is stabilized and released to the care of a physical therapist or some other specialist. The question the hospital is left with: Who pays the bill? The short answer is the patient's employer or the employer's work-comp carrier. However, getting the bill paid can be a daunting task for a Florida hospital.

Under Florida law, a health care provider may not collect or receive a fee from an injured employee.<sup>1</sup> Because hospitals have a mandatory obligation to provide emergency services regardless of a patient's ability to pay, it is not uncommon for hospitals to get left with significant unpaid bills for workplace injuries and accidents. As a result, many hospitals simply "write off" the costs of providing such emergency medical services to injured workers.

Fortunately, case and statutory law has provided some recourse to hospitals. In Florida, most employers are required to carry workers' compensation insurance to cover medical expenses associated with workplace injuries. Those hospitals lucky enough to have documented the patient's employer and/or the employer's insurance carrier during the admissions process can forward the bill to the proper party for payment. However, submitting the bill to the proper party does not guarantee payment. Many hospitals find that the bill is grossly discounted by one of the many third-party "medical review companies" employed by the insurance carrier. Worse, the patient's employer or insurance carrier may contest the compensability of the patient's injuries and refuse to pay the bill outright. The next question becomes: How does the hospital enforce payment of its bills for care rendered to injured workers? The answer depends, in part, on whether the hospital has followed the mandates under the Florida Worker's Compensation statute.

Once Emergency Medical Care is Rendered by the Hospital or Health Care Provider

The hospital's success in having its bill paid by the insurance carrier depends on whether there is clear compensability under the worker's compensation statute. The key rule is: Emergency care rendered by a hospital is payable by the employer/carrier only if the injury requiring emergency care arose as a result of a work-related accident.<sup>ii</sup> A hospital is in no position to determine the legal parameters of what constitutes a "work-related accident" and, therefore, it is prudent that hospitals cover their bases in the event compensability is later challenged.

The statutes place strict notice requirements on hospitals seeking reimbursement for medical care rendered to an injured worker. In order to be compensated, a hospital must notify the carrier of emergency care rendered to an injured employee by the close of the third business day.<sup>iii</sup> This deadline should not discourage those hospitals who don't know the identity of the carrier responsible for payment. Courts are likely to find that the three-day grace period begins once the hospital or health care provider knows, or reasonably should know, the identity of the employer/carrier responsible for payment of medical care. If emergency medical care results in the admission of the employee to a health care facility, the health care provider must notify the carrier *by telephone* within 24 hours after initial treatment. A health care provider is prohibited from referring the employee to another health care provider, diagnostic facility, therapy center, or other facility without prior authorization from the carrier, except when emergency care is rendered. If a carrier does not respond to a request for authorization by the close of the third business day after receipt of a request, such carrier is deemed to have consented to the medical necessity for such treatment. It is important to note that the statute specifically requires all such requests be made to the carrier. Notice to the employer, alone, is not sufficient.

When the Carrier Refuses to Pay the Hospital's Bill

If a hospital or health care provider receives a notice of non-payment (also called "disallowance of payment"), or an adjusted payment that grossly reduces the amount of the hospital's charges, it must file a petition with the Department of Financial Services (DFS) within 30 days to resolve the dispute. In doing so, the hospital must also serve a copy of the petition to the carrier and all other affected parties by certified mail. The petition must include all supporting documents and records to avoid dismissal.<sup>iv</sup> In response, the carrier must submit to the DFS all of its documentation substantiating the carrier's disallowance or adjustment within 10 days. Failure of the carrier to timely submit such documentation constitutes a waiver of all objections or challenges to the petition. In the consolidated case of Fairpay Solutions v. AHCA, et al, 969 So. 2d 455 (Fla. 1st DCA 2007), two hospitals separately billed insurance carriers for medical services provided to their insureds. The carriers paid substantially less than the amounts charged by the hospitals, after a third-party "medical review company" discounted the bills. Unsatisfied with the discounted payments, the hospitals filed petitions for reimbursement under 440.13(7)(a) to the Agency for Health Care Administration (the Legislature transferred jurisdiction to the DFS after 2007). Because the carriers failed to timely submit a response to the petitions within 10 days, AHCA issued a ruling in favor of the hospitals. The carriers then

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petitioned for an administrative hearing under the Administrative Procedure Act. AHCA denied the requests and the carriers appealed to the First DCA. Upon review, the court ruled that the agency's decision in favor of the hospitals under section 440.13(7)(b) does not violate the carriers' rights under the APA because the carriers had 10 days in which to challenge the medical providers' petitions seeking higher reimbursement. They simply failed to do so in a timely manner.

### When the Underlying Injury is in Dispute

A work-comp insurance carrier may refuse to pay a hospital bill because it challenges whether the underlying injury giving rise to the medical treatment is covered by worker's compensation. The injured worker, now faced with the responsibility of paying the hospital bills himself, will have to file a petition in the Office of Judge of Compensation Claims (OJCC) to get a ruling on the compensability issue. However, injured workers who find themselves involved in a coverage dispute with their employer oftentimes engage in little effort to ensure that a medical provider is sufficiently compensated for services provided. Likewise, employers and carriers disputing the compensability of an accident or injury will do little to involve the medical provider in the coverage dispute on the assumed basis that the medical provider has no legal interest in the dispute between the employer and the employee.

If compensability is disputed by the insurance carrier, the hospital or health care provider would be best served by filing petitions for a claim of unpaid services with both the DFS and the OJCC where the employer is located. A recent case suggests that DFS has sole jurisdiction of any dispute between medical care provider and carrier. In a recent court opinion, Bryan LGH Medical Center v. Florida Beauty Florida, Inc., et al, the First DCA upheld a decision by a Judge of Compensation Claims (JCC) dismissing for lack of jurisdiction a claim for payment against the employer/carrier for emergency medical services furnished to an alleged employee.<sup>v</sup> The First DCA stated that the hospital has independent standing to bring a claim for payment for medical services against the employer/carrier, however, that such jurisdiction solely rests with the DFS.

### Limitations on Jurisdiction of the Department of Financial Services

It should be noted that the Bryan LGH case does not address whether the jurisdiction of the DFS is limited to disputes as to the amount of compensability, the compensability itself, or both. Section 440.13(11)(c) provides that the DFS has exclusive jurisdiction to decide any matter concerning reimbursement, to resolve any overutilization dispute under subsection (7) and to decide any question concerning overutilization under subsection (8), which question or dispute arises after January 1, 1994. However, questions of compensability of the employee's work-related injury often requires a full evidentiary hearing that is better suited for a JCC. Indeed, case law decided prior to Bryan LGH states that the proper forum for hospitals and health care providers to assert claims for medical services where compensability is in dispute is with the JCC. See, e.g., Rebich v. Burdines, 417 So. 2d 284 (Fla. 1st DCA 1982). Therefore, the prudent

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course of action for the hospital or health care provider would be to file petitions in both jurisdictions to ensure all rights to compensation are preserved.

### Conclusion

Florida statutory and case law has created a clear “point of entry” for hospitals to collect on unpaid medical bills arising from emergency care provided to injured employees. There are several avenues for reimbursement depending on the nature of the dispute. Hospitals who provide emergency care to injured workers should consider retaining legal counsel to address disputes over obtaining full reimbursement for such claims and to develop policies and protocols to maximize the ability to recover full reimbursement for medical services to injured workers.

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<sup>i</sup> See Sections 440.13(14), 440.13(3)(g), and 440.13(11), Fla. Stat.

<sup>ii</sup> Section 440.13(3)(b), Fla. Stat.

<sup>iii</sup> Section 440.13(3)(b), Fla. Stat.

<sup>iv</sup> Section 440.13(7)(a), Fla. Stat.

<sup>v</sup> Bryan LGH Medical Center v. Florida Beauty Florida, Inc. and Associated Industries Insurance Company, 36 So. 3d 795 (Fla. 1st DCA 2010)