Hospitals: Know Your Rights to Collect
for Medical Services Provided to Injured Workers

ISSUE: What recourse is available to Florida hospitals seeking reimbursement for medical services provided to injured employees?

Most employers in Florida are required to carry workers' compensation insurance to cover the medical expenses associated with workplace injuries suffered by employees. Nevertheless, hospitals are often burdened with unpaid or underpaid bills for emergency care rendered to injured employees covered by workers' compensation insurance. In Florida, the very industries which give rise to the greatest frequency of catastrophic injuries requiring costly emergency medical care (construction, agriculture, and trucking) are the same industries most susceptible to coverage disputes that can leave hospitals caught in the middle with unpaid claims for emergency care services. Because Florida 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 that should otherwise be covered by a workers' compensation policy. Injured workers who find themselves involved in a coverage dispute with their employer will oftentimes engage in little effort to ensure that a medical provider is sufficiently compensated for services provided following an otherwise compensable injury. Likewise, employers and carriers disputing the compensability of an accident or injury will do little to involve the medical provider in the coverage dispute (avoiding financial responsibility) on the assumed basis that the medical provider has no legal interest in the dispute between the employer and the employee.

Florida statutory and case law, however, clearly provides hospitals with an independent legal right to seek reimbursement from Florida employers and their insurance carriers for medical services provided to an employee injured during the course and scope of employment. Nevertheless, under the Workers' Compensation statutes, there are strict deadlines and compliance requirements for hospitals and other health care providers seeking reimbursement.

<u>Once Emergency Medical Care is Rendered by the Hospital or Health Care Provider</u>

An employee who seeks emergency medical treatment for a work-related injury is generally not liable for payment for medical treatment or services. F.S. 440.13(3)(g). 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. F.S. 440.13(3)(b). There

are very strict parameters for hospitals seeking reimbursement by the employer/carrier for medical care rendered to an injured employee. To be compensated by the employer/carrier, a health care provider who renders emergency care must notify the carrier by the close of the third business day after it has rendered such care. F.S. 440.13(3)(b). This strict deadline should not discourage the hospital that is "left in the dark" as to 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.

Once Payment or Notice of Non-Payment is Received from the Carrier

A hospital or health care provider who receives notice of non-payment, or "disallowance" of payment, or an adjustment of payment that grossly reduces the amount of the charges must file a petition with the Department of Financial Services (DFS) within 30 days to resolve the dispute. The hospital must 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. Sec. 440.13(7)(a), Fla. Stat. (2009). Within 10 days of filing the petition, the carrier must submit to DFS all documentation substantiating the carrier's disallowance or adjustment. Failure to timely submit such documentation constitutes a waiver of all objections to the petition. 440.13(7)(b). In Fairpay Solutions v. AHCA, et al, 969 So. 2d 455 (Fla. 1st DCA 2007), two hospitals billed the 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. 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). The carriers failed to timely submit a response to the petition within 10 days and AHCA issued a ruling in favor of the hospitals. In response, the carriers filed a petition for administrative hearing, arguing that despite their failure to file a response, they were entitled to a formal hearing under the Administrative Procedure Act. The First DCA ruled that 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.

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If Carrier Denies Payment to Hospital or Health Care Provider Based on Non-Compensability of Claim

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 Office of Judge of Compensation Claims (OJCC) where the employer is located. A recent case suggests that DFS has sole jurisdiction of any dispute between medical care provider and carrier. Bryan LGH Medical Center v. Florida Beauty Florida, Inc. and Associated Industries Insurance Company, an opinion by the First DCA on May 20, 2010 (Case No. 1D09-3181), upheld a decision by a Judge of Compensation Claims (JCC) to dismiss for lack of jurisdiction a claim for payment against the employer/carrier for emergency medical services furnished to an alleged employee. The First DCA stated that the hospital has independent standing to bring a claim for payment for medical services it alleges are due from the employer/carrier, however, that such jurisdiction solely rests with the DFS. It should be noted that the opinion 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) states 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, eg, Rebich v. Burdines, 417 So.2d 284 (Fla. 1st DCA 1982). Therefore, the prudent 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

The Florida Legislature has created an independent "point of entry" for hospitals to collect unpaid, or underpaid, 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 reimbursement for medical services to injured workers.