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The State of South Carolina



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October 10, 1986

The Honorable John R. Tally
Commissioner
South Carolina Worker's Compensation Commission
1612 Marion Street
Columbia, South Carolina 29202-1715

Dear Commissioner Tally:

The Workers' Compensation Commission has asked the advice of this Office relative to charges for hospital services for workers' compensation patients. Specifically, the Commission's concern relates to its authority to prescribe by regulation a fee schedule for the approval of hospital charges.

I note at the outset that this Office, in the issuance of its opinion, does not attempt to determine disputed facts. Op. Atty. Gen. (December 12, 1983). Our opinion is thus based upon the facts presented to us. We understand that the Commission's staff, and in particular, its Division of Medical Services, acquires statistical data from various hospitals throughout the State and based upon this data schedules a per diem rate for hospitals for payment from the employer or the carrier for compensable treatment. The Commission adopted this policy on June 1, 1985 and the program is being phased in over a period of months as the cost data is accumulated.

The procedure for reimbursement for hospital services is initiated by the submission of a hospital bill by either the employer or the compensation carrier. The Commission's staff reviews the bill to ascertain that it comports with the schedule and if it does payment is authorized. If the hospital bill is determined by the staff not to be in accordance with the schedule the bill is amended and the adjusted payment authorized. In such cases, an appeal by the hospital may be taken to the Division Director of Medical Services and ultimately to the Commission. The Commission, or a single Commissioner, may make findings and approve the submitted bill although the bill is not in accordance

with the schedule; however, it is contemplated that the scheduled rate will ordinarily constitute a reasonable reimbursement.

I note that the Commission as a matter of course did not review or approve hospital bills until very recently. The Commission was of the opinion that it lacked the statutory authority to undertake such review until Section 42-15-90 was amended in 1980 to expressly provide for approval of the "charges of hospitals for services." Act No. 318, § 3 of 1980. Nonetheless, the Commission has for years reviewed and approved physicians' fees pursuant to a similar procedure and in accordance with a predetermined schedule. See 1936 Op. Atty. Gen., p. 299.

We have reached several conclusions relative to the broad question presented and these are individually summarized as follows:

1. The Commission is most probably authorized pursuant to its statutory enabling provisions to prescribe a rate schedule for hospital services to be considered by it in approving the payment of hospital bills; however, in prescribing the scheduled rates, the Commission's standard should be to provide reimbursement for compensable hospital services at a customary rate.

2. The policy of the Commission to prescribe a hospital rate schedule should be implemented in accordance with Section 42-3-185.

3. A challenge to the Commission's usage of the hospital rate schedule as guidance to it in the approval of hospital charges must be heard by the Commission in the first instance.

These conclusions are hereinafter discussed.

Several Code Provisions within the Workers' Compensation Act [Title 42, Chapter 15] and within the Administrative Procedures Act [Title 1, Chapter 23] support the Commission's authority to implement a hospital rate schedule to assist in the administration of the Workers' Compensation Act. Section 42-15-90 provides in pertinent part:

Fees for attorneys and physicians and charges of hospital for services under this title shall be subject to the approval of the Commission;....

We have previously interpreted the approval authority in Section 42-15-90 as providing for the exercise of discretion and judgment by the Commission. We further concluded that Section 42-15-90 clearly contemplates that the Commission in its approval of fees will function in its quasi-judicial capacity. Op. Atty. Gen. (May 23, 1986); see also Brice v. Robertson House Moving, Wrecking and Salvage Company, 249 N.C. 74, 105 S.E.2d 439 (1958).

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Although the approval of fees for services under the Act by the Commission is a quasi-judicial function of it, the Commission may delegate to its staff administrative duties relating to the review of fees. See, Pettiford v. South Carolina State Board of Education, 218 S.C. 322, 62 S.E.2d 780 (1950), cert. den. 340 U.S. 920. We believe the provision of schedules and procedures to facilitate the process of approving hospital fees is consistent with the Commission statutory approval function provided that the Commission retains the ultimate authority to approve hospital fees.

As earlier identified, the Commission has for several years interpreted its authority pursuant to Section 42-15-90 to approve physicians' fees for services under the Act as permitting it to schedule fees in advance for administrative convenience and for the guidance of the health care providers and the parties before the Commission. Since the enabling provisions relating to hospital charges are identical to those relating to physicians' charges, and the procedures employed by the Commission to approve the respective fees and costs are most similar, deference to this long standing administrative interpretation is suggested absent cogent reasons that dictate otherwise. Etiwan Fertilizer Company v. South Carolina Tax Commission, 217 S.C. 354, 60 S.E.2d 682 (1950). Because we have concluded that the Commission's procedure of scheduling hospital rates for services under the Act is not in conflict with the statutory provisions requiring the Commission to approve such fees, we are constrained to follow the Commission's long standing interpretation of these similar provisions. Incidentally, this administrative practice of the Commission has been acquiesced in by the General Assembly.

Additionally, we are persuaded by the reasoning of the Idaho Supreme Court in the case entitled: Idaho Hospital Association, 251 P.2d 538 (Id., 1952). The Idaho court first reviewed the state's industrial accident board's policy of prescribing in advance a reimbursement rate for hospital services. The board possessed statutory authority similar to that in South Carolina's Compensation Act to regulate fees and services under the Compensation Act. The Idaho Court acknowledged at the outset the substantial deference to an administrative interpretation followed by the board over a period of years. (We have previously identified that South Carolina law regarding deference to any reasonable agency interpretation is similar, and have heretofore concluded that we believe deference to the Commission's administrative interpretation is proper here). The Court further reasoned that in prescribing a hospital rate scheduled in advance, the Board acted in accordance with its "approval" authority and merely provided advance guidance as to the acceptable rates to all interested parties. The Court reasoned that the determination by the Board, whether it precedes or follows the charging of the fee, envisages the same essential function. The Court read the rate schedule as a general guide subject to modification by the Board if the circumstances in a

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particular case so required. The procedure employed in South Carolina is similar to that approved in Idaho and, importantly, the South Carolina schedule facilitates the administrative review of hospital bills but does not remove the ultimate authority of the Commission to approve a bill in a disputed case. The Idaho decision was reaffirmed in Idaho Hospital Association, 277 P.2d 287 (Id., 1954).

We are also impressed that the General Assembly contemplated that the Commission would implement across the board policies to assist in approving fees and charges since the General Assembly expressly authorized and addressed the promulgation of procedures and policies to implement Section 42-15-90. See, Section 42-3-185. Moreover, the Administrative Procedures Act contemplates the consideration of staff data or memoranda, such as a prepared rate schedule, by an official resolving disputes in a quasi-judicial proceeding. See, Section 1-23-330(4).

We recognize that the Georgia Court of Appeals reached an opposite conclusion and held that the Georgia Board of Workmen's Compensation lacked the authority to provide a rate schedule although there existed similar enabling legislation. Bibb Manufacturing Company v. Darsey, 122 Ga. App. 420, 177 S.E.2d 165 (1970). The Georgia appellate court disallowed the application of the prescribed fee schedule to limit a hospital charge principally because the schedule did not reflect a consideration by the Commission that the scheduled fee represented "charges as prevail in the same community for similar treatment of the injured persons of a like standard of living when such treatment is paid for by the injured persons...." Id. p. 156. Further, the Court was troubled by the absence of statutory authority in the Commission to promulgate substantive regulations, a problem not presented in South Carolina. Thus, while a fair reading of the Bibb decision suggests that a fee schedule must be guided by the statutory "prevailing rates" standard, the holding does not preclude implementation of an appropriate fee schedule to be considered by the Commission in approving hospital charges. Incidentally, Georgia's Compensation Act was amended to expressly authorize the implementation of a hospital rate schedule. See, Section 34-9-205 (Ga. Code), as amended by 1985 Ga. L., p. 727, Section 5. The Utah Court has also determined that its Industrial Commission lacks the authority to prescribe hospital rates; however, the Utah Commission lacked enabling authority similar to South Carolina's and thus the decision is inapposite. Intermountain Health Care, Inc. v. Industrial Commission of Utah, 657 P.2d 1289 (Utah, 1982).

Accordingly, we believe that the implementation of a hospital rate schedule to guide the Commission in its required function of approving hospital charges is consistent with the Workers' Compensation Act. We emphasize that in determining a rate schedule, and ultimately, an approved fee, the Commission is constrained by the prevailing charge standard articulated in Section 42-15-70. Section 42-15-70 provides in pertinent part:

The pecuniary liability of the employer for medical, surgical and hospital service or other treatment required, when awarded by the Commission, shall be limited to such charges as prevail in the community for similar treatment of the injured persons with a like standard of living when such treatment is paid for by the injured person....

This provision is in pari materia with Section 42-15-90 and most probably serves as the guide post for the Commission's exercise of discretion in approving hospital charges. Bibb Manufacturing Company v. Darsey, id. The purpose of the limitation expressed in Section 42-15-70 is "to prevent charges from medical and surgical services to an injured employee being made at a higher rate than they otherwise would be because they are to be paid by the employer or his insurer." Covey v. Honiss Oyster House, 167 A. 807, 808 (Conn., 1933). Thus, while we believe Section 42-15-70 does not preclude the scheduling of compensable hospital rates by the Commission, the Commission is guided by the purpose of Section 42-15-70 in determining what are "reasonable" hospital rates subject to its approval for services under the act.

Although we conclude that the Commission most likely has the authority to prescribe a hospital rate structure for guidance in its review of hospital bills, Section 42-3-185 expressly requires the Commission's policies and procedures implementing Section 42-15-90 be subjected to legislative review prior to the implementation. This office has previously advised that this statutory provision should be followed by the Commission although the constitutionality of the provision is questionable. Op. Atty. Gen., (May 23, 1986).

We further advise that the Commission is the appropriate forum to first determine disputes relative to the approval of hospital charges for services under the Compensation Act. Section 42-3-180 provides:

All questions arising under this Title, if not settled by agreement of the parties interested therein with the approval of the Commission, shall be determined by the Commission, except as otherwise provided in this Title.

Our Courts have often looked to the North Carolina decisions construing the North Carolina Compensation Act for guidance in interpreting provisions of the South Carolina Act since South Carolina's Act was fashioned upon that of North Carolina. Hines v. Hendrick's Canning Company, _____ S.C. _____, 211 S.E.2d 220 (1975). The North Carolina Court in reviewing a provision identical to Section 42-3-180 has expressly held that challenges to the authority of the Industrial Commission to prescribe a hospital rate schedule for review of charges under the North

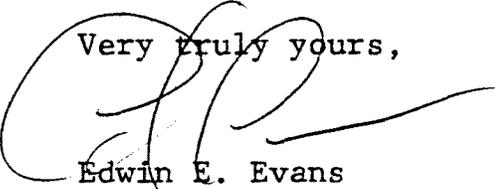
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Carolina Compensation Act must first be presented to the Commission. Wake County Hospital System, Inc. v. North Carolina Industrial Commission, 174 S.E.2d 292 (N.C., 1970). We believe the same result would be required in South Carolina, particularly since the Commission has provided for review of disputed hospital charges for services under the Act. See, also Section 1-23-150(a) ["any person may petition an agency in writing for a declaratory ruling as to...the authority of the agency to promulgate a particular regulation"].

In conclusion, you are advised that the Workers' Compensation Commission is most probably authorized to promulgate a hospital rate schedule for hospital charges under the Compensation Act to guide the Commission in the performance of its required function of approving hospital charges under the Act. The Commission's recognized broad discretion to approve charges is guided by the standard articulated in Section 42-15-70 and any charges approved by the Commission should be limited to those prevailing in the community. We further advise that Section 42-3-185 provides for legislative review of Commission procedures and policies implementing its approval authority under Section 42-15-90 and the requirements of that provision should be followed.

Please call on this Office if we may be of further assistance.

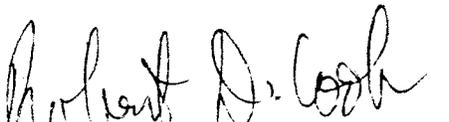
Very truly yours,



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APPROVED:



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