

The State of South Carolina



Office of the Attorney General

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

Dear Commissioner Tally:

The Worker's Compensation Commission has requested the advice of this Office relative to the Commission's authority to approve physicians' fees for medical services performed in states other than South Carolina. The Commission's staff has advised that the Commission has for a number of years applied a medical fee schedule in approving physicians' fees pursuant to Section 42-15-90, South Carolina Code of Laws (1976 as amended), in its review of charges for medical services rendered in South Carolina. I am further advised that the Commission uses as its guide post in approving medical fees the prevailing standard in the community; the "community" is construed to be the State of South Carolina. Specifically, the question presented is whether the fee schedule created from data collected in South Carolina to establish the customary and prevailing medical rate can be used to review out-of-state medical bills.

I first note that this Office has previously recognized that the Commission has broad discretion to approve medical fees pursuant to Section 42-15-90 as guided by the prevailing rate standard identified as Section 42-15-70. See, Op. Atty. Gen., (October 10, 1986). Moreover, we have concluded that Section 42-15-90 "clearly contemplates that the Commission in its approval of fees will function in its quasi-judicial capacity." Id., at 2. We specifically noted, however, that the Commission may utilize a fee schedule prepared by its staff in its consideration of an appropriate fee provided the Commission retains the ultimate authority to approve medical fees. Id., at 2.

Section 42-15-90 contains no limiting language that suggests that the Commission should not approve physicians' fees for services under the Compensation Act when the authorized services

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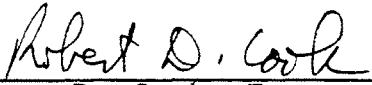
are performed by out-of-state physicians. I do believe, however, that Section 42-15-70 would charge the Commission to approve out-of-state physician fees at the prevailing rate in the community wherein the services are provided or in a comparable community. The Idaho Supreme Court in Matter of Application of Idaho Hospital Association, 277 P.2d 287 (1954), determined that the word "community" as used in a similar context has a flexible meaning and could be construed to apply to communities that are geographically segregated but may be similar as to factors affecting medical charges. I am also familiar with the published decision of the Deputy Industrial Commissioner in New Jersey wherein he concluded that an out-of-state physician's fee should be reduced to comply with the local fee schedule. See, Worthington v. Plainfield Board of Education, 23 N.J.M. 14, 40 A.2d, 9 (1944). I simply do not find the Worthington decision persuasive and advise that the decision does not explain its reasoning to support the conclusion that the physician's fee should be adjusted to comport with the local fee schedule. Thus, I advise that it is doubtful that the prevailing rates in South Carolina would be considered applicable to physicians' services provided in dissimilar communities out-of-state.

I note that a far more serious question presented is whether in the absence of agreement by an out-of-state physician to be bound by South Carolina law, South Carolina law may be applied to the contract for provision of medical care. Ordinarily, a contract for professional services is controlled by the law of the state where the services are rendered. Restatement 2d, Conflict of Laws, Sections 186, 187, 188 and 196. South Carolina law appears to be in accord. See, Murphy v. The Equitable Life Assurance Society of the United States, 197 S.C. 393, 15 S.E.2d 646, 651 (1941) ["Our Courts hold that a contract is controlled by the laws of the State in which it is made and is to be performed."] Thus, while South Carolina law may require Commission approval for physicians' fees for covered services, the law of the locale where the contract is entered and where the professional services are provided would likely be controlling. In this regard, I suggest that the Commission procure agreements from participating physicians that they will be bound by the South Carolina Compensation Law.

Very truly yours,


Edwin E. Evans
Deputy Attorney General

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