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July 23, 2021

What's New In Our Industry

Florida

WORKERS' COMPENSATION

ADMINISTRATIVE

With this year's legislative session (Regular and Special) having been completed, the focus of workers' compensation activity in the State of Florida has been directed to the administrative and judicial arenas.

A. Dispute Resolution Procedures Between Providers and Payors of Medical Bills

As a general statement (with limited exceptions), disputes between medical providers including pharmaceutical costs and employer/carrier/payors (without involvement of the injured worker) are resolved by the Division of Workers' Compensation as opposed to Judges of Compensation Claims. See §440.13(7), Florida Statutes. The rules and forms related to those proceedings are as found in Chapter 69L-31, FAC which have been the subject of recent amendments. Amended rules can be obtained by referring to CHAPTER 69L-31. New forms can be referenced here: 6A and 6B. Effective August 2, 2021, all providers and all carriers and servicing agents must use the mandatory forms and will be regulated according to the new rules. Failure to follow the new rules or use the proper forms will result either in potential sanctions or in a Notice of Deficiency being issued by the Division.

The "Report to the Three Member Panel Regarding the Resolution of Reimbursement Disputes and Actions pursuant to paragraph 440.13(12)(e), Florida Statutes," published by Florida's Chief Financial Officer for Fiscal Year 2019-2020 (interrupted significantly by the Covid-19 pandemic) provided information as to the frequency of provider-payor litigation. During this time period alone, the Division of Workers' Compensation received 4,607 reimbursement disputes between providers and payors, up from 3300 for the previous fiscal year. The existing cases for previous fiscal years numbered in the thousands indicating a huge backlog of pending cases. Most of the disputes were between payors and hospitals for outpatient care. The upward trending of these disputes would strongly suggest that they would continue in the future at an accelerated rate, especially as disputes over the costs of pharmaceuticals seemingly are increasing. With these projections for increased numbers of disputes, employer/carriers/payors are well

advised to strictly follow these new rules closely, failure of which will jeopardize the ability to contest or dispute the ever-increasing increases in medical care where legally appropriate.

B. Proposed Amendments to the Workers' Compensation Medical Reimbursement and Utilization Review Rule – 69L-7 FAC

Rule Amendments of significance to the employer/carrier/payor community and providers are currently being discussed. Those that relate to payors of medical bills (Rule 7.740) restrict how bills can be adjusted or denied by allowing for such only through the use of an EOBR form. Payors will be santioned for attempting to deny or reduce adjustments of bills by using reasons other than as noted in EOBR codes. Payors cannot refuse to authorize practitioners from prescribing and dispensing drugs and cannot defend denying medical care based on medical necessity if such had been authorized. Finally, a payor can be charged with a pattern and practice sanction for any violation of the rules which includes untimely response to requests for treatment, untimely bill payment, untimely DWC form filing and data reporting and where a bill adjustment is not supported by rule or otherwise.

C. Reimbursement Manual Changes

The DWC has identified new procedures and the proposed maximum reimbursement for outpatient hospital reimbursements. The Division is considering a provider proposal to order payment under a revised schedule for hospital inpatient per diem payments.

Workshop hearings in regards to the above listed issues are scheduled for August 26, 2021. See amendment proposals at CLICK HERE.

JUDICIAL

A. Listed below are summaries of the cases that have been decided by the Florida First District Court of Appeals concerning workers' compensation issues since our last Newsletter.

St. Lucie Public Schools/Relation Ins. Services of FL v. Alexander
46 Fla. L. Weekly D1436a
6/16/21
The DCA affirmed the JCC's ruling that the Claimant had the right to select her one-time change physician, after the unreasonably delayed setting an appointment with their selection of a one-time change physician. In this case, the E/C timely provided the name of a one-time change doctor, but did not engage in any follow-up or scheduling with that physician. After a period reviewing the medical records, the selected physician declined care. The E/C located another physician. The DCA found the time period to be an unreasonable delay in setting an appointment with a new physician, and in accordance with the decision in *City of Bartow v. Flores,* the Claimant is allowed to select her physician.

N. Hannoush Jewelers, Inc./Massachusetts Bay Ins./Hanover Ins. Group v. Bly
46 Fla. L. Weekly D1560a
6/30/21
In this two-issue appeal, the DCA affirmed the JCC's Order, but addressed only the JCC's award of TPD benefits, "subject to the payment of unemployment benefits." The DCA found the award of TPD benefits to be appropriate, as well as the JCC's allowance for the E/C to reduce the amount of TPD benefits paid by the unemployment benefits the claimant received during the time period. The Claimant unsuccessfully argued that the E/C did not properly reserve their right to "offset" the unemployment compensation from the TPD benefits. The DCA stated that receipt of unemployment benefits dues not result in an offset, as an offset is a reduction in the amount of benefits the E/C must pay. Unemployment benefits do not reduce entitlement to TPD benefits; instead, TPD benefits are supplemental to any unemployment compensation received by the Claimant. Given this, the E/C did not waive its ability to account for the Claimant's receipt of unemployment compensation when addressing the amount of TPD benefits owed.

Jones v. Grace Healthcare
46 Fla. L. weekly D1561a
6/30/21
The Claimant's authorized physician referred him to a physician qualified to provide a certification for medical marijuana, and the Employer denied this referral. In the Final Compensation Order, the JCC acknowledged that the medical evidence showed the medical marijuana was a medically necessary benefit in the case. Nevertheless, he affirmed the denial of the referral, as state law precludes marijuana from being reimbursable under Chapter 440. The JCC also determined that the statute prohibited reimbursement for initial and subsequent evaluations to obtain certification for medical marijuana. Finally, there is potential federal criminal liability should an employer pay for or facilitate a worker's use of marijuana.

The DCA affirmed the JCC's position, but with different reasoning, stated that an evaluation with a physician to provide certification for access to medical marijuana could not be medically necessary as a matter of law because marijuana is not reimbursable or medically necessary. Since the referral for the evaluation is tied to the potential receipt and use of marijuana, that evaluation cannot be deemed medically necessary. A claimant cannot force an E/C to pay for an evaluation by a physician when the purpose of that evaluation is to obtain treatment utilizing marijuana. As a result, the denial of the evaluation is appropriate.

B. Proposed Rules of Procedure in Regards to Proceedings Before Judges of Compensation Claims

Two Rule Development Workshops were held recently. There is a Notice for Proposed Rule on the OJCC website as well as a video recording of the Zoom Workshop held on July 8, 2021. Use passcode: n7gTb$p@ If you have any suggestion(s) of changes being made or additional concerns about the new rules, contact Judge Langham at: david.langham@doah.state.fl.us.