



1709 Hermitage Boulevard, Suite 200 ▪ Tallahassee ▪ FL ▪ 32308
jnmcconnaughay@mcconnaughay.com ▪ T (850) 222-8121 ▪ F (850) 222-4359 ▪ www.mcconnaughay.com

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What's New In Our Industry Florida Executive/Administrative

The Firm is following several administrative rulings that affect to a substantial degree medical payments that are being made for prescription bills and hospital inpatient and outpatient costs. The following is a summary of the status of these two cases.

Medical Providers Prescribing and Dispensing Medication – Employer/Carrier Authorization

An Administrative Law Judge (ALJ) entered an Order styled *Publix Supermarkets, Inc., et al (Petitioners) vs. Department of Financial Services, Division of Workers' Compensation (Respondent) and Prescription Partners LLC et al (Intervenors)* dated March 27, 2023. The decision of the Administrative Law Judge related to issues surrounding the ability of a prescribing medical care provider to also dispense medication that he/she had prescribed in the first instance. As a summarization of the ruling made by the ALJ without detailing the various arguments of the parties, the ALJ determined that a dispensing medical practitioner is a "pharmacy" under the terms of Section 440.13(3)(j), Florida Statutes, and if the injured worker elects to obtain prescribed medication from the injured worker's medical care provider deemed to be a pharmacy, the employer/carrier cannot deny the injured worker's choice. In other words, since the dispensing medical provider was deemed to be a "pharmacy," the employer/carrier could not deny the injured worker's statutory right to select the medical care provider/pharmacy to dispense medication, contrary to 440.13(3)(j), Florida Statutes.

It is our understanding that the Department of Financial Services, Division of Workers' Compensation, will be approving this administrative determination pursuant to Chapter 120, Florida Statutes (the Administrative Procedures Act). It is expected that an appeal to this decision would be filed to be considered by the Florida First District Court of Appeals.

Proposed Rule Change Creating a Revised Maximum Reimbursement Allowance (MRA) for Hospital Inpatient and Outpatient Care (Background Information of Proposed Rate Changes and Challenges Summarized in the Firm's Newsletter dated March 23, 2023)

The Division of Workers' Compensation (Division) sought to create a new MRA for hospital inpatient and outpatient care for treatment provided in the Florida workers' compensation system. Various employer/carriers objected to the proposed rule change in accordance with Chapter 120, Florida Statutes, the Administrative Procedures Act. An Administrative Law Judge entered an opinion in the case of *Normandy Insurance Company et*

al (Petitioners) vs. the Department of Financial Services, Division of Workers' Compensation (Respondent) and Tallahassee Medical Center, Inc., d/b/a HCA Florida Capital Hospital (Intervenors), Case No. 22-2767RP dated March 9, 2023. (See background information that caused the proposed rule change as summarized in the March 23, 2023 Firm Newsletter.)

The prior MRA for hospital care provided a per diem reimbursement formula but also contained a "Stop-Loss" provision that stated that once the per diem amounts reached a certain amount, the hospital would be paid a percentage of billed amounts. The rule proposed by the Division created a per diem payout rate schedule for hospital bills and eliminated any provision associated with a Stop-Loss payment. The Administrative Law Judge basically determined that the Division proposed MRA for hospital costs, without a Stop-Loss provision was appropriate, reasonable, statutorily authorized and supported by an estimated \$100 million savings in medical costs opined by NCCI. It is industry's understanding that parties affected by the created per diem rates intended to appeal this decision to the Florida First District Court of Appeals.

Even if no appeal is filed or the ALJ's opinion affirmed on appeal, significant issues remain, mainly related to the status of past outstanding cost reimbursement requests that have not been finally adjudicated (estimated now to be approximately 1200 cases) or the reimbursement amounts are for services prior to the date of the rule changes that had not been formally asserted for claims adjudication. Further issues relate to those employer/carriers that paid for past hospitalization costs utilizing the Stop-Loss provisions that existed in prior reimbursement rules. As referenced in the prior Newsletter, it would appear that millions of dollars are at issue in determining how these hospital bills will be finally adjudicated.

No decision has been made in regards to how these continuing issues will be ultimately dealt with or what will be ultimately contained in the Division's Final Order in response to the ALJ's decision. However, based upon the Department's informal announcements, the new manual will go into effect on June 1, 2023 (unless the appellate court issues a stay). The new manual will not apply retroactively. The Department wants hospitals and employer/carriers to negotiate payment on the old bills and, if necessary, the Department will provide mediators. The Department does not intend to begin adjudicating the old existing claims utilizing the old fee schedule at per diem stated amounts without the Stop-Loss provisions until the appellate court makes a final determination. A spreadsheet is to be prepared by the Division of the 1200+ inpatient reimbursement disputes and if anyone is interested in this information, please advise.

Ambulatory Surgical Center Reimbursement Manual

The Division of Workers' Compensation has adopted a new Ambulatory Surgical Center Reimbursement Manual (ASC Manual) with an effective date of July 1, 2023. The new ASC Manual contains hundreds of new MRAs for ASC surgery reimbursement. We anticipate that the new ASC Manual MRA and rules will eliminate many disputes related to procedures which previously had no MRA.