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What's New In Our Industry Florida

Executive/Administrative

Proposed Hospital Inpatient Rule Challenge

The Department of Financial Services, Division of Workers' Compensation, proposed a rule change related to a new Fee Schedule for hospital inpatient medical care under the terms of the Florida Workers' Compensation Act. According to Section 440.13(12) (a), Florida Statutes, inpatient hospital care is based on per diem rates. The current hospital maximum reimbursement rates are provided for in the Hospital Reimbursement Manual (2014 edition which became effective on January 1, 2015, not updated since it took effect) provides per diem rates. However, once the per diem allowance exceeds \$59,891.34, the hospital would be paid under a "stop- loss provision" 75% of the total gross charges.

An Administrative Law Judge had determined in the case of *Zenith Insurance Company v. Department of Financial Services*, DOAH Case number 18-3844(FL DOAH May 8, 2019) that the stop-loss reimbursement provision contravened Section 440.13 (12) (a), Florida Statutes, since the statutory provision for hospital charges made no reference to a stop-loss mechanism for paying hospital costs. As a consequence, the established per diem rate only controlled in determining the amounts payable to the hospital and what initially was a hospital bill amounting to well over \$150,000 turned into a reimbursed amount of less than \$15,000.

Following this decision in the Zenith Insurance Company case, the Division began developing a new hospital inpatient per diem fee schedule without a stop-loss provision. It was this per diem fee schedule without a stop-loss provision that was ultimately developed and was the subject of this rule challenge. According to the ALJ in this case, the Division did not move forward with rulemaking at an earlier date "because of very strong objections from workers' compensation carriers to any structure that included 'hospital charges' as a basis for determining reimbursement." According to NCCI, the Division's per diem proposed rates without the stop-loss provision would result in a reduction of workers' compensation premiums of 2.6% which translates to an estimated cost savings of \$100 million.

In summary, and without reviewing the various arguments made by the parties, the ALJ determined that the proposed fee schedule was not an invalid exercise of delegated legislative authority, did not enlarge, modify, or contravene the law implemented, and the proposed rule is not arbitrary or capricious.

The primary question is what effect this decision will have on industry in regards to pending cases that are being held by the Division for adjudication (an estimated 1,000 cases) and those cases that had been previously adjudicated by the Division utilizing the stop-loss provisions of the previous fee schedule. Millions of dollars are at stake dependent upon how the Division of Workers' Compensation interprets this ruling and what actions will be taken by the hospital industry to collect past hospital costs allegedly due based on the referenced stop-loss provision of the prior fee schedule. Unquestionably, this decision will not be the final action taken in regards to hospital charges in Florida's workers' compensation system.