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HEALTH SERVICES COST REVIEW COMMISSION

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To: To Whom It May Concern:

From: Dennis N. Phelps - Associate Director
Audit & Compliance

Date: September 15, 2006

Re: Workers' Compensation Claims

The purpose of this memorandum is to clarify the law in Maryland on Workers' Compensation Claims. Under Maryland law, the Health Services Cost Review Commission (HSCRC) establishes the rates for hospital services provided by Maryland hospitals (Health-General Article §19-201 et seq.). The authority of the Workers' Compensation Commission ("WCC") to regulate fees and charges for medical treatment is limited to "the amount that prevails in the same community ..." (Labor and Employment Act §9-663). The charges that prevail in the community of Maryland are those established by the HSCRC. Therefore, in those cases where the HSCRC has set a rate for a particular hospital service, and the rate is different from the fee established by the WCC, the HSCRC rate prevails. This conclusion was reaffirmed by an Attorney General's Opinion of February 18, 1977. Moreover, under law enacted by the 1993 session of the Maryland General Assembly, insurers authorized to do business in the State of Maryland are required to pay hospitals for hospital services rendered on the basis of the rates approved by the HSCRC (Maryland Insurance Article §15-604).

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February 18, 1977

Mr. Alvin M. Powers, Chairman
Health Services Cost Review Commission
First Floor, O'Conor State Office Building
201 West Preston Street
Baltimore, Maryland 21201

Dear Mr. Powers:

In your recent letter you have asked this office to render an opinion with regard to what appears to be a conflict between Article 101, Section 37(c) and Article 43, Section 568H of the Annotated Code of Maryland. Article 101, Section 37(c) deals with the power of the Workmens Compensation Commission to require employers to pay for medical treatment of injured workmen and states: "All fees and other charges for such treatment and services shall be subject to regulation by the Commission and shall be limited to such charges as prevail in the community for similar treatment of injured persons of a like standard of living." In addition thereto, the Workmens Compensation Commission is empowered under Section 38(e) to adopt rules and regulations pertaining to "furnishing medical, nurse, hospital services and medicine to injured employees entitled thereto and for the payment therefor."

Article 43, Section 568H deals with the power of the Health Services Cost Review Commission and charges that body with responsibility "to assure all purchasers of health care hospital services

The most recent legislative amendment of Article 101, Section 37 can be found in Chapter 814 of the Laws of Maryland 1957, which divided former subsection (b) into present subsections (b) through (e).

Article 43, Section 568H was passed by the Legislature in its 1971 session and can be found in Chapter 627 of the 1971 Laws of Maryland.

that the total costs of the hospital are reasonably related to the total services offered by the hospital; that the hospital's aggregate rates are set in reasonable relationship to the hospital's aggregate costs; and that rates are set equitably among all purchasers of services without undue discrimination."

You have advised us that certain hospitals have been reimbursed by employers of injured workmen at rates set according to the fee schedule published by the Workmens Compensation Commission, rather than at rates which have been set by the Health Services Cost Review Commission after a rate review.

The question to be addressed, therefore, is: does a conflict exist, in the setting of hospital rates, between the Workmens Compensation law and the Health Services Cost Review Commission enabling legislation and, if so, which law prevails; i.e., which agency determines the hospital rate?

In an opinion dated August 24, 1976 addressed to G. Howlett Colbourn, Chairman, Workmens Compensation Commission (61 Opinions of the Attorney General —), the constitutionality of Section 37 of Article 101 was considered and found to conform to the requirements of due process. Nebbia v. New York 291 U.S. 502, 537 (1934); Allied American Mutual Fire Insurance Co. v. Commissioner of Motor Vehicles 219 Md. 607, 616 - 617 (1958).

The Court of Appeals, in considering the Health Services Cost Review Commission's power with regard to hospital rates, has stated: "In our view, the Legislature, in delegating to the Commission the power to review and approve the reasonableness of hospital rates, intended that the Commission have the power to approve those rates which it considers best designed to effectuate the purposes of the statute." Blue Cross of Maryland, Inc. et al. v. Franklin Square Hospital et al. 277 Md. 93 at 110 (1976).

The medical fees and charges subject to regulation by the Workmens Compensation Commission are those for care and treatment rendered to a compensable industrial accident victim at the employer's expense by order of the Commission. Article 101, Section 37(a) provides in relevant part: "(a) In addition to the compensation provided for herein, the employer shall promptly provide for an injured employee, for such period as the nature of the injury may require, such medical, surgical or other attendants or treatment, nurse or hospital services, ... as may be required by the Commission...."

The Health Services Cost Review Commission is required to

permit all hospitals in the State of Maryland "to charge reasonable rates which will permit the institution to render effective and efficient service in the public interest" Article 43, Section 568V(2)(A) and (B). In order to accomplish this, the Commission is extended the "full power to review and approve the reasonableness of rates established or requested by any hospital" subject to its jurisdiction. Section 568U(b), Blue Cross, supra. Indeed, the authority of the Workmens Compensation Commission to regulate fees and charges for medical treatment of injured workmen is limited to "such charges as prevail in the same community for similar treatment of injured persons of a like standard of living." The "charges that prevail in the community" of Maryland are, generally, those charges as approved by the Health Services Cost Review Commission.

A careful reading of the law pertaining to the Workmens Compensation Commission and the Health Services Cost Review Commission indicates that no actual conflict exists between the two statutes. It is the duty of the Workmens Compensation Commission to regulate fees and charges. It is the duty of the Health Services Cost Review Commission to approve hospital rates which subsequently become the prevailing "charges in the community."

It seems clear, therefore, that the ability to establish medical fees and charges for health care services falls most appropriately within the expertise of the Health Services Cost Review Commission. In situations, however, where fees and charges have not been established by the Health Services Cost Review Commission as when, for example, a hospital has not as yet been reviewed by the Commission, or when a medical service is provided which is not within the jurisdiction of the Commission, the Commission would properly defer to the Workmens Compensation Commission for the determination of fees and charges for care and treatment rendered to a compensable industrial accident victim.

CONCLUSION

The rate setting power of the Health Services Cost Review Commission appears to be authoritative, both by the clear language used by the Legislature as well as the language of the Court of Appeals in Blue Cross, supra, while the power of the Workmens Compensation Commission to regulate fees and charges for medical treatment is "limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living." Moreover, the broad rate setting power of the Health Services Cost Review Commission would seem to establish those rates to be

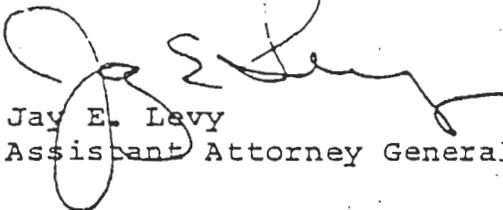
Mr. Alvin M. Powers

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set by the Commission as the "charges which prevail in the same community." Accordingly, where the Health Services Cost Review Commission has set a hospital rate for a particular service, and the Workmens Compensation Commission fee schedule has also set a rate for that same service, then as a matter of comity between State agencies, as well as a result dictated by statute, the rate as set by the Health Services Cost Review Commission should prevail.

Very truly yours,



Jay E. Levy
Assistant Attorney General

JEL/EMC

CC: Fred Oken
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