

**Tips for Defending Challenges to Carrier Medical Bill Reductions;
Understanding Virginia's "Prevailing Community Rate" Standard**

Scott C. Ford, Esquire ••• *McCandlish Holton, P.C.ⁱ*

What is the employer's reimbursement responsibility under the Virginia Workers' Compensation Act?

Va. Code § 65.2-605 addresses an employer's reimbursement responsibility. In pertinent part it provides:

The pecuniary liability of the employer for medical, surgical, and hospital service herein required when ordered by the Commission shall be limited to such charges as prevail in the same community for similar treatment when such treatment is paid for by the injured person ...

This statute does not establish a minimal charge nor does it prohibit medical care providers from entering into agreements for fee reimbursement. Liebovic v. San Juanito Melchor, Trussway, Ltd., 35 Va. App. 51 (2001). Such agreements will be enforced in the absence of fraud, mutual mistake, or violation of law or public policy. In Re: Cohen, VWC File No. 163-39-88 (Feb. 14, 1996); Damron v. Neurosurgical Associates, VWC File No. 214-53-77 (September 22, 2006).

For purposes of determining the prevailing community rate, the Commission has adopted Rule 14 of the Rules of the Virginia Workers' Compensation Commission. Rule 14 divides the state into various communities. Thus, Va. Code §65.2-605 and Rule 14 provide a standard for determining whether a healthcare provider's charges fall within the prevailing community rate.

Medical bills received by an injured employee are *prima facie* evidence that the charges are reasonable and necessary. Bogle Dev. Co., Inc. v. Buie, 19 Va. App. 370, 375, 451 S.E.2d 682, 685 (1994), rev'd on other grounds, 250 Va. 431, 463 S.E.2d 467 (1995). Hence, the employer bears the burden of establishing that those charges do not meet the community standard set forth in Code 65.2-605. See, e.g. Hopkins v. Fairfax County School Board, 73 OWC 168 (1994); Hargrave v. Williamsburg/James City County School Board, VWC File No. 1995-12-65 (March 20, 2002); Rabineau v. McDonald's/RJK Corp., VWC File No. 156-99-57 (October 15, 1993).

The Virginia Workers' Compensation Act requires evidence of charges for similar treatment in the same community, which a patient would pay. Corley v. Davis Mechanical Contractors, Inc., VWC File No. 138-95-58 (May 12, 1994). Statistical evidence is strictly construed and the Commission requires that data for the specific community at issue (as set forth in Rule 14) be analyzed as opposed to state-wide data. Northern v. Margaretten & Company, Inc., VWC File No. 164-28-17 (October 5, 1998).

What happens when the medical provider challenges the reimbursement?

When payments made by the carrier to the health care provider are challenged these matters are generally set for an on-the-record determination before a Deputy Commissioner. Either side may request an evidentiary hearing if testimony and/or significant discovery is necessary. The decision to permit an evidentiary hearing is within the discretion of the Deputy Commissioner.

If the matter is considered for an on-the-record determination, both sides will submit Position Statements setting forth their respective positions along with any supporting documentation.

Some tips for defending a reimbursement challenge by the medical provider.

1) Health care provider contracts. A threshold issue that the carrier should evaluate is whether the health care provider has entered into any agreements for fee reimbursement. If so, these agreements will dictate the appropriate reimbursement as opposed to the prevailing community rate standard.

2) On-the-record determinations.

The following is recommended for on-the-record determinations:

a) Insurer affidavit. The employer and carrier should submit an affidavit by a senior manager that includes the following elements: (i) data for the applicable community (as set forth in Rule 14) has been considered; (ii) sufficient data (identify percentage of providers in community participating) has been considered; (iii) that the data is reliable (including frequency of updates); and (iv) the manner of calculation of prevailing community rate.

b) Statistician affidavit. It is also advisable to employ a statistician to evaluate the reimbursed amount and opine that it constitutes the prevailing community rate. A statistician will generally determine the mean, median and modal values for a particular CPT code for the local community at issue and use the highest number (giving the “benefit of the doubt” to the provider) for the prevailing community rate.

c) Interrogatories and requests for production of documents. When faced with a challenge it is often advisable for the employer and carrier to propound discovery to the health care provider. See Henson v. Phillips Technical Staffing Co., V.W.C. File No. 189-56-222 (August 29, 2001) (held discovery proper in disputes involving fee reimbursement disputes). Some information that may be sought includes documents reflecting charged amounts and accepted amounts by the health care provider for the last one year for the CPT code reimbursement at issue and an interrogatory requesting an explanation for how the provider determines its charged amounts.

3) Evidentiary hearings.

An evidentiary hearing should be sought any time that the carrier wishes to present more evidence than can be obtained through items 2(a) through (c) above. For example, if testimony from the billing physician is necessary, an evidentiary hearing should be requested.

At a hearing the carrier should be prepared to present evidence through live witnesses to establish the elements set forth in 2(a) and (b) above. In addition to propounding written discovery as set forth in 2(c) above, the carrier may also want to secure deposition testimony.

ⁱ Scott chairs the Workers’ Compensation Practice Group for McCandlish Holton. He defends employers and carriers with workers’ compensation matters throughout the Commonwealth of Virginia including medical billing disputes between medical providers and carriers. He can be reached by email at sford@lawmh.com and by telephone at (804) 775-7202.