St. Alphonsus Regional Medical Center

PROVIDERS

Department's authority to regulate out-of-state providers

Every health care provider, defined in statute as "any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of services related to the treatment of an industrially injured worker" must, as a condition of payment, adhere to the Department's medical aid rules. The Department has authority to compel compliance of out-of-state providers with state regulations for the purposes of Title 51 and the Department's authority to revoke the provider's authorization to treat injured workers was within its delegated authority. ***….In re St. Alphonsus Regional Medical Center*, BIIA Dec., 96 P051 (2000)**

STANDARD OF REVIEW

Provider revocation

A Department decision to revoke a provider's eligibility to treat Washington injured workers and be reimbursed is subject to de novo review based on a preponderance of the evidence since none of the relevant statutes and regulations define the Department's decision making process in terms of being within the "sole discretion" of the director. ***….In re St. Alphonsus Regional Medical Center*, BIIA Dec., 96 P051 (2000)**

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: ST. ALPHONSUS REGIONAL MEDICAL CENTER	**)**	**DOCKET NO. 96 P051**
PROVIDER NO. 26199	**)**	**DECISION AND ORDER**

APPEARANCES:

Provider, St. Alphonsus Regional Medical Center, by
Hall, Farley, Oberrecht & Blanton, P.A., per
Phillip S. Oberrecht

Department of Labor and Industries, by
The Office of the Attorney General, per
M. Catherine Walsh and Lori Oliver-Hudak, Assistants

The provider, St. Alphonsus Regional Medical Center, filed an appeal with the Board of Industrial Insurance Appeals on July 5, 1996, from an order of the Department of Labor and Industries dated July 1, 1996. The order, pursuant to WAC 296-20-015(4)(h)(ii), terminated St. Alphonsus' eligibility to participate as a provider of services, or to be paid under any provider number for service provided to workers covered under Title 51, RCW effective October 1, 1996. **AFFIRMED.**

PRELIMINARY AND EVIDENTIARY MATTERS

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by the Department to a Proposed Decision and Order issued on November 30, 1999, in which the order of the Department dated July 1, 1996, was reversed and remanded to the Department with direction to reinstate the provider number of St. Alphonsus Regional Medical Center retroactive to October 1, 1996.

The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no prejudicial error was committed and the rulings are affirmed except for the rulings made on page 46 and 47 of Steve Farden's testimony. The hearsay objections are sustained and the testimony stricken beginning at page 46 through 52.

DECISION

There are two issues in this appeal. The first issue is whether an out-of-state medical provider who treats injured workers covered by the provisions of RCW 51 is also subject to the provisions of Title 51 and administrative rules promulgated by the Department of Labor and Industries. The second issue is whether the Department's termination of the provider number issued to St. Alphonsus Regional Medical Center (St. Alphonsus) for violating the provisions of WAC 296-20-022 and WAC 296-23A-165 by order of July 1, 1996, was correct. We have granted the Department's Petition for Review because we believe the Department has the authority and jurisdiction over an out-of-state provider when the provider has provided services and requested payment from the Department under Title 51. Although we recognize the gravity of the Department's action, we find that the Department was correct in revoking the provider number of St. Alphonsus and we affirm the Department order.

St. Alphonsus began providing medical treatment and services for Washington injured workers in 1984. Bills for payment of medical services submitted by St. Alphonsus to the Department were paid as billed until the late 1980s when the Department promulgated administrative regulations for health care cost containment and reimbursement programs pursuant to legislative mandate. St. Alphonsus contends that Washington law does not extend to them because St. Alphonsus is in Idaho, and therefore the Department is obligated to pay 100 percent of the actual billed charges for reasonable and necessary medical services rendered by an out-of-state provider. St. Alphonsus argues that the Department lacks the authority to reduce the bills charged by an out-of-state provider. St. Alphonsus also argues that it did not violate WAC 296-20-022 and WAC 296-23A-165 when billings were inadvertently mailed to injured workers. We disagree with St. Alphonsus' assertions.

St. Alphonsus raises an equal protection argument claiming unequal treatment by the Department because it reimburses less of the charged amount if the provider is in a state bordering Washington. Thus, the contention is that the reimbursement scheme "favors" out-of-state providers other than those in states bordering Washington (Oregon and Idaho). The record is not developed as to why the rule reimburses Oregon and Idaho providers on a different basis from other out-of-state providers. The record demonstrates that the parties expended considerable energy presenting evidence as to and debating the relative inequities of the Department's reimbursement policies and regulations, including the "percentage of allowed charge" (POAC) payment system and use of "diagnostic related groups" (DRG). Because we determine that the Department has the authority to regulate out-of-state providers, such as St. Alphonsus, we decline to second-guess the Department on the details of implementation. While we can speculate as to any number of reasons why the rule might differentiate in this way, this Board does not have the authority to review whether statutes and rules are constitutional.

We further note that the litigation brought in the Idaho state courts by St. Alphonsus against the Department's reimbursement policy resulted in the Idaho Supreme Court holding that Idaho lacked jurisdiction to make the determination. *St. Alphonsus Regional Medical Center v. State of Washington,* 123 Idaho 739, 52 P.2d 491 (1993). The Idaho Supreme Court found:

> Washington neither instigated nor attempted to foster its relationship with St. Alphonsus. St. Alphonsus voluntarily chose to participate in Washington's worker's compensation system by treating Washington patients and sending the bill to Washington. St. Alphonsus then voluntarily chose to continue participating in the program after being apprised of the change in the repayment rate.
>
> Washington's decision to apply a POAC rate and its subsequent application of this rate to out-of-state providers was done in furtherance of its own worker's compensation system, irrespective of its contacts with Idaho, and is within its province as a sovereign.

We agree with the Idaho Supreme Court that Washington developed and implemented its reimbursement system for out-of-state providers in furtherance of its workers' compensation system. Clearly, the director of the Department is empowered by the Legislature to balance the interest of providing cost effective health care with the interest of not unduly restricting access to that health care for injured workers who may seek treatment outside of Washington State. This broad grant of authority to promulgate rules for providing medical care extends even to citizens who decide to leave the state of Washington. The Legislature is presumed to know that injured Washington workers will on occasion seek treatment beyond the borders of this state. We acknowledge that maintaining the balance between cost effectiveness and access is sometimes a delicate one, especially when the providers are not in the state of Washington. The Department in maintaining that balance, however, is empowered to regulate all providers, whether inside or outside Washington, on all matters pertaining to services provided under RCW 51. The Legislature has specifically determined that services are to be paid at the fee schedule rates. RCW 51.04.030. The Department's regulations are pursuant to a specific delegation of authority and are consistent with the intent of the statute.

The Industrial Insurance Act charges the Department with responsibility for enforcing all provisions of the Act and the rules promulgated under the authority of the Act. Persons injured at work are entitled to receive proper and necessary medical treatment that conforms to accepted standards of good practice within the scope of the medical provider's license, and proper and necessary hospital care and services during the period of the disability resulting from the injury. RCW 51.36.010; and WAC 296-20-01002. The Department is required to supervise the medical, surgical and hospital treatment "to the intent that it may be in all cases efficient and up to the recognized standard of modern surgery." RCW 51.04.020(4). The Department is required to adopt rules governing the type, level and extent of medical care provided to injured workers, and in

compliance with this mandate has adopted "the medical aid rules," codified at WAC 296-20-010 *et seq.*

RCW 51.36.080(1) provides:

> All fees and medical charges under this title shall conform to the fee schedule established by the director, . ..
>
> In establishing fees for medical and other health care services, the director shall consider the director's duty to purchase health care in a prudent, cost-effective manner without unduly restricting access to necessary care by persons entitled to the care. With respect to workers admitted as hospital inpatients on or after July 1, 1987, the director shall pay for inpatient hospital services on the basis of diagnosis-related groups, contracting for services, or other prudent, cost-effective payment method, which the director shall establish by rules adopted in accordance with chapter 34.05 RCW.

Hence, every health care provider, defined in statute as "any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of services related to the treatment of an industrially injured worker" must, as a condition of payment, adhere to the Department's medical aid rules. Similarly, WAC 296-20-020 provides:

> The filing of an accident report or the rendering of treatment to a worker who comes under the department's or self-insurer's jurisdiction, as the case may be, constitutes acceptance of the department's medical aid rules and compliance with its rules and fees.

In short, the Department is charged with the significant responsibility of supervising the care and treatment Washington injured workers receive, ensuring that such treatment is accessible, prudent, and cost effective for the state of Washington.

We find that the Department has authority to compel compliance of out-of-state providers with state regulations for the purposes of Title 51 and that the Department's authority to revoke St. Alphonsus' authorization to treat injured workers was within its delegated authority. We also find that the Department's action to revoke St. Alphonsus' provider number and make St. Alphonsus ineligible to treat Washington injured workers was correct as a factual matter.

A Department decision to revoke a provider's eligibility to treat Washington injured workers and be reimbursed is subject to de novo review based on a preponderance of the evidence since none of the relevant statutes and regulations define the decision making process in terms of being within the "sole discretion" of the director. See: RCW 51.04.030; 51.36.080; 51.36.110; WAC 296-20-015. *See also*, *In re Susan Pleas*, 96 7931 (1998).

In March 1988, St. Alphonsus' general business manager, Stan Farden, completed and returned to the Department a "Provider Application/Notice to Providers" form (Exhibit No. 1). On the returned application form, Mr. Farden excised Department language warning that the rendering of treatment to workers who come under the Department's jurisdiction constitutes acceptance of the medical aid rules and fees. Mr. Farden crossed out the Department's instruction that the provider may not bill workers for services covered by the industrial insurance program or for the difference between the billed and the paid charges, nor for the difference between the provider's customary fee and the Department's fee schedule. Even with these deletions, the Department assigned St. Alphonsus a provider number. In January 1989, Mr. Farden advised the Department that, unless the Department could show that St. Alphonsus was "mandated" by the Department's regulation and reimbursement policies, St. Alphonsus would attempt to bill and collect any unpaid balance of billed charges from injured workers, (Exhibit No. 2). In July of 1989, the Department began paying out-of-state providers based on their new regulatory reimbursement policy. This reimbursement policy was implemented after health care providers, including St. Alphonsus, had been notified of the change. Thereafter, St. Alphonsus, together with the Idaho Hospital Association and other Idaho hospitals, challenged through the Idaho courts the Department's authority to compel compliance with its regulations concerning reimbursement and prohibition of billing injured workers.

Between 1989 and 1996, St. Alphonsus billed Washington injured workers for the difference between amounts billed and paid by the Department, a practice referred to in this record as

"balance billing." St. Alphonsus referred several of these accounts to collection agencies. Prior to 1996, the Department informally attempted to get St. Alphonsus to cease balance billing of injured workers. Mr. Farden testified that he attempted to modify the hospital's computer to postpone balance billing until the question of the Department's authority to regulate Idaho providers was decided by the courts. St. Alphonsus concedes that it did, in fact, bill injured workers after 1996, but argues that they did not violate the Department's regulations prohibiting billing of injured workers because the billings were inadvertent. Nevertheless, St. Alphonsus concedes that it did bill Washington injured workers after 1996.

In its supervisory authority, the Department has the power to revoke a provider's authorization to treat injured workers when a provider bills Washington injured workers. RCW 51.36.110 RCW provides:

> The director of the department of labor and industries or the director's authorized representative shall have the authority to:
>
> . . .
>
> (2) Approve or deny applications to participate as a provider of services furnished to industrially injured workers pursuant to Title 51 RCW; and
>
> (3) Terminate or suspend eligibility to participate as a provider of services furnished to industrially injured workers pursuant to Title 51 RCW.

WAC 296-20-015 provides:

> (4) The department as a trustee of the medical aid fund has a duty to supervise provision of proper and necessary medical care that is delivered promptly, efficiently, and economically. The department can deny, revoke, suspend, limit or impose conditions on a health care provider's authorization to treat injured workers under the Industrial Insurance Act. **Reasons for denying issuance of a provider number or imposing any of the above restrictions include, but are not limited to the following:**
> . . .
>
> **(h) Billing a worker for**:

> (i) Treatment of an industrial condition for which the department has accepted responsibility; or
>
> **(ii) The difference between the amount paid by the department under the maximum allowable fee set forth in these rules and any other charge.**

(Emphasis added).

Title 51 RCW prohibits injured workers from waiving the benefits of industrial insurance by contract, agreement, rule or regulation. RCW 51.04.060. Section 51.04.030 of the Revised Code provides in part that:

> (1) The director shall supervise the providing of prompt and efficient care and treatment, . . . to workers injured during the course of their employment at the least cost consistent with promptness and efficiency,
>
> . . .
>
> (2) . . . No service covered under this title . . . shall be charged or paid at a rate or rates exceeding those specified in such fee schedule, and no contract providing for greater fees shall be valid as to the excess.

Further, WAC 296-20-010(6) provides:

> (6) When a claim has been accepted by the department or self-insurer, no provider or his/her representative may bill the worker for the difference between the allowable fee and the usual and customary charge. Nor can the worker be charged a fee, either for interest for completion of forms, related to services rendered for the industrial injury or condition.

Specifically for payment of out-of-state providers, WAC 296-20-022 provides in part:

> (1) Beginning February 1, 1987, providers of health services in the bordering states of Oregon and Idaho shall bill and be paid according to the medical aid rules of the state of Washington.

> (2) Providers of health services in other states and other countries shall be paid at rates which take into account:
>
> (a) Payment levels allowed under the State of Washington medical aid rules;
>
> (b) Payment levels allowed under workers compensation programs in the provider's place of business; and
>
> (c) The usual, customary, and reasonable charges in the provider's state of business.
>
> (3) In all cases these payment levels are the maximum allowed to providers of health services to workers. Should a health services provider's charge exceed the payment amount allowed under the state of Washington medical aid rules, the provider is prohibited from charging the injured worker for the difference between the provider's charge and the allowable rate. Provider's violating this provision are ineligible to treat injured workers as provided by WAC 296-20-015 and are subject to other penalties.
>
> . . .
>
> (5) Out-of-state hospitals will be paid according to WAC 296-23A-165.

The statute and rules repeatedly emphasize that a provider of services to an injured worker may not bill a worker for the difference between the amount paid by the Department and the amount billed by the provider. While revoking a provider number might seem a drastic action by the Department, it was the only feasible action available when St. Alphonsus claimed it was not subject to the Department's medical aid rules and continued to violate a clear mandate of the Act. The attempts made by St. Alphonsus to postpone its balance billing of injured workers until the litigation was resolved were insufficient to prevent bills from being sent to injured workers.

We are mindful that the long litigation process undertaken by St. Alphonsus in this appeal may have left Washington injured workers who have received treatment at St. Alphonsus not knowing whether the Department will be responsible for paying the hospital's charges for treatment of covered conditions. And, although the record demonstrates that the Department has consistently evidenced concern that injured Washington workers who have sought treatment with this provider not be "balance billed," we recognize that in the absence of a provider number, St. Alphonsus will have no alternative but to bill injured workers **directly**. We recognize also that some Washington workers may, in fact, have little choice with whom to seek treatment under certain circumstances (such as, a requirement for emergency treatment). We strongly encourage the Department to institute a process to ensure that Washington workers who seek treatment from a provider that has no contracted relationship with the Department, are protected from having to pay for any portion of billed services or ultimately being turned over to collection agencies, a result that would be anathema to the concept of sure and certain relief.

FINDINGS OF FACT

1. On July 1, 1996, the Department of Labor and Industries issued an order pursuant to WAC 296-20-015(4)(h)(ii) terminating St. Alphonsus' eligibility to participate as a provider of services, or to be paid under any provider number for service provided to workers covered under Title 51, RCW because St. Alphonsus billed or attempted to bill injured workers for the difference between the allowable fee and usual and customary charge in violation of the WAC. On July 5, 1996, the Board of Industrial Insurance Appeals received a Notice of Appeal from St. Alphonsus Regional Medical Center of the Department order dated July 1, 1996. The appeal was granted by the Board on August 2, 1996, and assigned Docket No. 96 P051.

2. St. Alphonsus Regional Medical Center, located in Boise, Idaho, treated Washington injured workers for medical conditions covered under the Washington Industrial Insurance Act from 1984 through 1996. On March 4, 1988, St. Alphonsus applied to the Washington State Department of Labor and Industries for a Provider Number and

permission to treat Washington injured workers who sought treatment at the Boise, Idaho facility. The Department issued St. Alphonsus provider number 26199, and thereafter St. Alphonsus applied for reimbursement from the Department for services provided. The application/notice explained that payments would be made according to the Medical Aid rules and that providers must accept payment by the Department as sole and complete remuneration for services. It further explained that providers could not bill workers for services covered by the industrial insurance system or for the difference between the billed and paid charges. Stan Farden, general manager of the business office at St. Alphonsus, signed the application, although he excised portions of the application he objected to concerning the prohibition from balance billing injured workers.

3. During the period 1988 through 1996, St. Alphonsus Regional Medical Center periodically balanced billed Washington injured workers for services provided that were covered by the Washington Industrial Insurance Act. In Idaho courts, legal action was brought by St. Alphonsus and other hospitals located in Idaho against the Department to require reimbursement at the levels charged for services rendered. While the litigation was pending, Stan Farden sought to modify St. Alphonsus' computerized billing procedure to postpone the billings sent to Washington injured workers, although due to error, the balance billing of injured workers occurred in several instances.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and the subject matter of this appeal.

2. The Washington Department of Labor and Industries administers Title 51, assuring that persons injured at work covered by the Washington Industrial Insurance Act receive proper and necessary medical treatment, and proper and necessary hospital care and services pursuant to RCW 51.36.010. St. Alphonsus violated Title 51 and the Washington Administrative Code, including 296-20-010(6) and 296-20-022(3).

3. The Department of Labor and Industries has the authority, pursuant to RCW 51.04.020, 51.04.030 and 51.36.080, to regulate out-of-state medical providers that treat injured Washington workers.

4. The Department order of July 1, 1996, is correct and is affirmed.

It is so **ORDERED.**

Dated this 16th day of June, 2000.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____
THOMAS E. EGAN Chairperson

/s/_____
FRANK E. FENNERTY, JR. Member

/s/_____
JUDITH E. SCHURKE Member