03.11.14

Weber Gallagher

Defending Baseless Medical Provider Claims in New Jersey

This article addresses the latest trend in New Jersey workers' compensation defense: New Jersey medical providers filing "Medical Provider Claims" against out-of-state employers/carriers claiming that because medical treatment was provided in New Jersey, those carriers/employers must pay New Jersey's "usual and customary" fees for medical services rather than follow the home-state's medical fee schedule. In these cases, the injured worker **has a valid, workers' compensation claim** back in her home (work) state, but is getting medical treatment in New Jersey.

Do the employer/carriers get to apply their home state medical fee schedule or do they have to pay New Jersey's "usual and customary" fees, which are usually **much** higher? Our answer is that unless there is an independent basis for the worker to file a workers' compensation claim in New Jersey, the carrier/employer should pay according to the available fee schedule.

New Jersey has No Fee Schedule for Medical.

About 10% of all the new Workers' Compensation claims filed in New Jersey last year were filed by medical providers seeking increased fees for medical services. These medical provider claims have turned into a cottage industry in New Jersey, with a few law firms specializing in filing hundreds of "Medical Provider Application for Payment or Reimbursement of Medical Payment." The medical providers argue that the fees paid to them by workers' compensation sources were less than their "usual and customary" fees, and that because New Jersey does not have a fee schedule, they claim they are due additional payments. Anyone who deals with medical billing practices knows that determining what is "usual and customary" is a dark art. In fact, recent data shows that New Jersey medical facilities routinely charge many multiples of what is charged in neighboring states for identical treatments.

In defense against the dark arts, and to make uniform the process of litigating these fee disputes, New Jersey amended its Workers' Compensation Act, N.J.S.A. 34:15-15, on November 19, 2012, to grant to the Workers' Compensation Division "sole" discretion over fee disputes arising out of a Workers' Compensation matter. The amendment was not intended to expand the jurisdiction of the Act to include claims arising from other state's workers' compensation laws or even medical fee disputes arising from other treatments not associated with a workers' compensation claim but occasioned or accompanied by other New Jersey litigation (for example, PIP medical fee arbitration).

N.J.S.A. 34:15-15 states:

> *"Exclusive jurisdiction for any disputed medical charge arising from any claim for compensation for a work-related injury or illness shall be vested in the division."*

As evidenced by its situation inside of the New Jersey Workers' Compensation section of the New Jersey Labor Statute, this provision is meant to apply to New Jersey Workers' Compensation claims alone. New Jersey Workers' Compensation claims arise out of injuries, and/or extensive contract connections, in New Jersey.

What's new: Claims for Treatment Performed in New Jersey.

New Jersey providers who are treating patients collecting benefits in another state (New York, Pennsylvania) are now filing Medical Provider Applications demanding that New Jersey's much higher

"usual and customary" fees be paid **rather than the fee schedules in place in the home state.** For example, both New York and Pennsylvania have medical fee schedules. Doctors in those states are sending their patients to their own facilities in New Jersey for "treatments" in order to demand payment according to New Jersey's "usual and customary" (higher) fee structure.

Now, just because a workers' compensation patient treats in New Jersey, the medical providers are trying to drag the employer/carrier into a New Jersey workers' compensation court and fleece them for medical fees far exceeding the home state's fee schedule. Can they do this?

Defending Out-of-State Medical Fee Applications in New Jersey.

Defending these baseless claims for higher payment for "out-of-state" treatment should focus on (a) the lack of jurisdiction in the New Jersey Workers' Compensation Court to hear the Application for Medical provider Claim, and (b) educating the trial judge that New York (or Pennsylvania, or Connecticut, as the case may be) retains jurisdiction to determine the fee dispute. This article will use New York as an example, but other neighboring states, such as Pennsylvania and Connecticut, also have medical fee schedules.

New Jersey Workers' Compensation Courts Have No Jurisdiction over Extraterritorial Workers' Compensation Matters.

N.J.S.A. 34:15-15 does not territorially expand the New Jersey Workers' Compensation Act to encompass the workers' compensation claims of other states. The jurisdiction of the Workers' Compensation Courts is strictly limited by statute (N.J.S.A. 34:15-1 et. seq.). See Conway v. Mister Softee, Inc., 51 N.J. 254 (1968). Jurisdiction under the New Jersey's Workers' Compensation Act is not to be "expanded by consent, waiver, estoppel, or judicial inclination." See O'Keefe v. Johansen Co., 117 N.J. Super. 364 (Co. 1971), *rev'd on other grounds*, 122 N.J. Super 45, 298.

New York retains Jurisdiction to Decide Fee Disputes.

New York has a fee schedule applicable to all medical treatment provided under its Workers' Compensation Law. This is not the case in New Jersey, where there is no workers' compensation fee schedule. New Jersey medical providers who provided services to New York Claimants are not left without remedy. Medical providers who seek additional payments for medical services rendered in New Jersey can seek redress before the appropriate New York workers' compensation forum.

If the medical provider does not like the application of New York's fee schedule, the provider has a remedy. The New York Workers' Compensation Board has the authority to determine fees paid to out-of-state medical providers who dispute the application of the Medical Fee Schedule. It is well-established New York Workers' Compensation Law that the New York Worker's Compensation Board "is vested with the duty to establish reasonable fees for treatment by out-of-state physicians." Matter of Bowman v. J & J Log and Lbr. Corp., 758 N.Y.S.2d 852, 853 (N.Y. App. Div. 2003), 3rd Department, interpreting Matter of Conn v. Kotasek Corp., 603 N.Y.S.2d 247 (N.Y. App. Div. 1993), 3rd Department.

In Conn v. Kotasek Corp., the N.Y. Appellate Division decided a case where the New York State Worker's Compensation Board had made a judgment as to the reasonableness of the fees of a Florida medical provider. The Florida provider had treated a Florida resident in connection with a New York Workers' Compensation matter. The Board had issued a decision limiting the fees of the Florida provider. New York's Appellate Division stated that that:

"the Board has the right, 'in the case of a person who…finds it necessary to obtain medical service in the state

of his residence", [sic] to make an award for the reasonable value of the services rendered[.]"

Conn v. Kotasek at 248 (1993); citing Matter of Ranellucci v. New York Cent. R.R. Co., 122 N.Y.S.2d 432, 434 (N.Y. App. Div. 1953). In Conn, the court ruled that the Board properly "discharged its duty to define a reasonable reward[of medical fees]." Conn v. Kotasek at 248.

In J & J Log and Lbr. Corp., the Appellate Division interpreted Conn, and found that the New York Board's authority over the fees of out-of-state medical providers, which had provided services in connection with New York Workers' Compensation matters, is so plenary that the Board can apply the New York Fee Schedule "to the treatment provided by claimant's out-of-state medical providers." Bowman v. J & J Log and Lbr. Corp. at 853 (2003). The Appellate Division ruled that "the Board is vested with the duty to establish reasonable fees for treatment by out-of-state physicians." Id. In that case, the Appellate Division found the Board's action was reasonable where the Board limited the New York claimant's Connecticut medical providers' fees to conform to the New York Fee Schedule. See id.