

Bugbee & Conkle, LLP

Workers' Compensation News

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OHIO HOSPITAL ASSOCIATION ATTEMPTS TO OBTAIN REIBURSEMENTS FROM SELF-INSURED EMPLOYERS



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On September 1, 2005, the Bureau notified healthcare providers of its intention to reduce the reimbursement rates for providers which were members of the Bureau's Health Partnership Program (HPP). In response, the Ohio Hospital Association (OHA) filed a declaratory judgment action against the Bureau later that month to prevent implementation of the new rate structure. Ultimately, the Franklin County Court of Appeals determined the Bureau should have promulgated a rule with respect to the new rate structure pursuant to R.C. 119 and that it was improper to unilaterally change the reimbursement rates merely by notice. Accordingly, the court granted a permanent injunction against the Bureau preventing it from implementing the new rate structure.

Of note, this case ([Ohio Hospital Association v. Bureau of Work. Comp., Franklin App. No. 06AP-471, 2007-Ohio-1499](#)) did not involve any self-insured employers. The decision is binding only upon the parties to the lawsuit, namely OHA and the Bureau. Moreover, the case did not set forth a remedy for hospitals seeking restitution for services reimbursed pursuant to the improper reduced fee structure.

On January 1, 2007, a rule (Ohio Admin.Code 4123-6-37.1) went into effect under the HPP regarding reimbursement for "in-patient hospitalization." The rule prescribes reimbursement parameters for Managed Care Organizations (MCO),

which have not negotiated different payment rates with hospitals under Ohio Admin.Code 4123-6-08.

Recently, OHA has sent a form letter to self-insured employers suggesting they may be liable to reimburse hospitals which were reimbursed at the reduced rate between October 1, 2005 and August 31, 2007. A copy of OHA's form letter can be found at the end of this newsletter. In addition, some self-insured employers have received invoices from hospitals seeking such reimbursement.

Unless a self-insured employer utilizes an MCO, the rules on reimbursement under the HPP are inapplicable to self-insured employers. Generally, self-insured employers reimburse healthcare providers according to the Bureau's fee schedule. Nevertheless, there is no rule requiring self-insured employers to do so and there is no provision of the HPP rules addressing the manner in which self-insured employers reimburse healthcare providers. As a practical matter, self-insured employers are free to negotiate reimbursement rates as they see fit.

If you are a self-insured employer and you have received correspondence from a hospital seeking reimbursement for services billed between October 1, 2005 and August 31, 2007, you may have several defenses. Should you receive such correspondence from a hospital, please feel free to contact us to discuss your legal options.

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OHIO SUPREME COURT PONDERES REACH OF SENATE BILL 7

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In *Thorton v. Montville Plastics & Rubber, Inc.*, the employer appealed the allowance of a 2005 claim to court pursuant to R.C. 4123.512. Prior to trial, the claimant voluntarily dismissed the employer's appeal without consent. Montville Plastics appealed the trial court's judgment entry approving the claimant's dismissal on the ground that R.C. 4123.512(D) prohibited the dismissal without the employer's consent. Montville Plastics also argued the claimant's dismissal amounted to a dismissal with prejudice because the dismissal was without the employer's consent, entitling Montville Plastics to judgment in its favor.

The court of appeals dismissed the appeal for lack of jurisdiction and Montville Plastics appealed to the Supreme Court, which accepted the case as a discretionary appeal. Montville Plastics asserts the issues before the court include the retroactive application of Senate Bill 7, which amended R.C. 4123.512(D) to require employer consent before a claimant may voluntarily dismiss his complaint under Civil Rule 41(A) in an employer appeal.

On October 1, 2008 the Supreme Court heard arguments and expressed a diversity of concerns and opinions through its questioning of counsel. ([See argument](#)). Justice Pfeifer sug-

gested Senate Bill 7 may be constitutionally flawed because the law appears to intrude upon the Court's exclusive jurisdiction over the Civil Rules of Procedure. Justice Stratton made clear her belief that claimants should not have the right to voluntarily dismiss their complaints in employer appeals regardless of the application of Senate Bill 7. Chief Justice Moyer questioned whether the court of appeals' decision contained sufficient errors upon which the Supreme Court could render an opinion.

It remains unclear how the Court will rule on Montville Plastics' appeal. Because the court of appeals dismissed Montville Plastics' appeal on jurisdictional grounds, the Supreme Court may avoid the application of Senate Bill 7 altogether. If the Court does avoid the issue, this may be short lived, as there are two other cases pending in the Supreme Court challenging Senate Bill 7's application.

We will keep you apprised of the outcome of *Thorton v. Montville Plastics* and all other cases involving the application of Senate Bill 7 through this newsletter and E-alerts. Please contact our office if you have any questions.

The information contained in this publication is not intended to serve as legal advice, but merely to alert readers to developments in the law. If you have any questions, either call at the address listed above left or email us through our website. The website can be accessed by clicking the link below.

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September 19, 2008

Dear BWC Self-Insured Employer

On Sept. 1, 2005, the Ohio Bureau of Workers' Compensation notified Ohio hospitals that it was reducing reimbursement rates for both inpatient and outpatient services. On Sept. 30, 2005, prior to the effective date of the reimbursement reductions, the Ohio Hospital Association filed suit in the Franklin County Court of Common Pleas seeking a declaratory judgment that the Bureau of Workers' Compensation had promulgated a rule without following the statutory procedure required in the rulemaking process.

Ultimately, the Franklin County Court of Common Pleas agreed with the Ohio Hospital Association and issued a judgment in its favor, along with a permanent injunction prohibiting the Bureau of Workers' Compensation from promulgating the reduced rates. The Court of Common Pleas' decision was affirmed by the Franklin County Court of Appeals in March 2007, and the Bureau of Workers' Compensation did not pursue an appeal to the Supreme Court.

Since that time the Bureau of Workers' Compensation has been working with individual hospitals in the state along with the Ohio Hospital Association to properly reimburse individual hospitals that were adversely affected by the illegally promulgated reimbursement rates from the period between Oct. 1, 2005, through Dec. 31, 2006, on inpatient hospital bills, and the period between Oct. 1, 2005, and August 31, 2007, on outpatient bills. At the present time, the Bureau of Workers' Compensation is working with hospitals and managed care organizations to finalize those payment adjustments.

To the extent that you as a self-insured employer made payments to hospitals using the Bureau of Workers' Compensation's illegally promulgated fee schedules, you may be liable to reimburse each hospital which provided care, whether inpatient or outpatient, to injured workers in your employ.

It is the position of the Ohio Hospital Association that there is no prohibition against its members seeking reimbursement under this theory. Therefore, you may anticipate being contacted by hospitals which have rendered those services to your injured workers, seeking reimbursement for services provided during the applicable periods of time.

Very truly yours,

A handwritten signature in cursive script that reads 'Charles Cataline'.

Charles Cataline
Senior Director, Health Policy