

Ruling to affect workers' comp

Fund not required to pay bills in full

by **Howard Fischer** - Dec. 11, 2008 12:00 AM
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A new court ruling will keep costs down for workers' compensation insurance companies and, by extension, the firms that get coverage through them.

Maricopa County Superior Court Judge Edward Burke ruled that the State Compensation Fund does not have to pay the full-bill charges for services provided at ambulatory-care centers for employees who are injured.

In what is believed to be the first ruling of its kind in the state - and possibly the nation - Burke said the evidence shows that the charges by several ambulatory-surgery centers were "not the reasonable value of their services."

More to the point, Burke said that the surgery centers routinely accepted amounts less than the full-bill charges from Medicare, the Arizona Health Care Cost Containment System and other insurers that have contracts with them.

The judge said there is no reason that the

State Compensation Fund, which does not have contracts with the ambulatory-care centers, should have to pay more.

Christa Severns, spokeswoman for the fund, said Burke's ruling essentially affirms the practices of her agency, which provides coverage for about 58 percent of all employers in the state.

"It means that we won't have to pay exorbitant prices," she said. "We'd have to pass those along to our policyholders."

But the decision affects other workers' compensation carriers as well as large firms that are self-insured against claims by employees injured on the job.

Attorney Mark Worischek, who represents the fund, said workers' compensation carriers are in a "unique position" because they cannot tell injured employees where they can get their care. That means they also cannot negotiate special contracts with health-care providers based on a guaranteed number of clients.

"These (health-care) providers, who can set their levels anywhere they want, are taking advantage of that situation," he said.

Worischek said such firms can set their official charges as high as they want, knowing that the insurers who can negotiate

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discounts will do so. He said the providers make up the difference by shifting the cost to companies that have no contracts and no control, like the State Compensation Fund.

And he noted that the injured don't bother to shop around for the best prices because they are not picking up the bill.

"The only price-conscious party in this transaction is SCF because these workers never have to pay a dime," he said. "These providers know that, and they don't negotiate like they would with other payors."

When SCF refused to pay those full-bill charges, five of the providers sued.

Three subsequently settled out of court, agreeing to negotiate fees less than bill charges. But two - Canyon Ambulatory Surgery Center and El Dorado Surgery Center - decided to go to trial.

Burke said the evidence shows that Canyon accepts 30 percent or less of its billed charges from 82 percent of its patients' insurers, with El Dorado accepting less than 24 percent of its bill charges from 89 percent of insurers.

"This is the true measure of the reasonable value of plaintiff's services," Burke wrote.

He noted that SCF paid Canyon 46.1 percent

of its bill charges and El Dorado 42 percent of its bills, "which is more than what the entire market pays on average to plaintiffs." Burke said the record show that SCF "paid a reasonable amount" and should not be required to pay more.

Past precedent

While this ruling affects only workers' compensation carriers, it buttresses legal contentions that what hospitals and health providers bill is largely a fictional figure that only affects people and companies unable to negotiate lower rates.

Two years ago, Catholic Healthcare West agreed to an out-of-court settlement to allow thousands of Arizonans who were treated at three hospitals to qualify for what could be tens millions of dollars of refunds.

That deal settled a federal lawsuit, filed in San Francisco, which alleged that the hospital chain charged uninsured patients too much for treatment or services.

One basis of that claim was that these patients paid more than the hospitals charged patients who had private insurance or were covered by Medicare, which negotiated discounts.

Kelly Dermody, who represented plaintiffs in the lawsuit, said the dual-pricing structure

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violated various consumer fraud and contract laws.

"Hospitals like CHW essentially charge one price for 95 percent of their patients and a completely different prices that is exponentially more, sometimes two or three or four or even more times the price charged to other payors," she said.

"There's absolutely no basis for doing that," Dermody continued. "It is unreasonable, it's unconscionable and it's illegal."

About 40 hospitals in three states will be affected, including St. Joseph's Hospital in Phoenix, Chandler Regional Hospital and Mercy Gilbert Medical Center in Gilbert.

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