Bureau Requiring New Format for Medical Payment Screens in Response to Dept. of Labor and Industry v. WCAB (Crawford)

In the recent Commonwealth Court case Dept. of Labor and Industry, Bureau of Workers' Compensation v. Workers' Compensation Appeal Board (Crawford),[1] the Court affirmed the carrier's right to obtain reimbursement for medical benefits paid after the date supersedeas was requested (in connection with a Section 413 petition to "review and modify or set aside a notice of compensation payable and an original or supplemental agreement") for treatment which occurred prior to the date the request was made.

The bill at issue in Crawford pertained to surgery occurring on June 1, 2004. The defendant requested supersedeas in connection with a Termination Petition filed on July 19, 2004. The carrier received the bill for the June 1, 2004 procedure on October 11, 2004, and paid for the treatment on January 25, 2005 – both receipt of the bill and payment occurred after the request for supersedeas. The Court determined that "it does not matter that the date of service of the medical expenses in question preceded the request for Supersedeas – what matters is that the treatment in question was later determined to be ineligible for payment, and **the bill for that treatment was submitted to and paid for** by the insurer **after** Supersedeas was requested and denied".

The Bureau has responded by issuing the following letters upon receipt of an application for fund reimbursement:

"Dear Carrier/Carrier's Counsel:

A Supersedeas Fund Reimbursement Application was filed in the above-captioned matter. To properly process this application, documentation evidencing the date each medical payment was submitted to the insurer and paid by the insurer is required.

Please send a copy of this necessary documentation to my attention at the address listed below. Please call me if you have any questions.

Sincerely,

Law Clerk, J.D.

In Crawford, the Bureau argued that employers and insurers would be encouraged to withhold compensation payments until after supersedeas had been denied, so as to be able to cast a wider net against the Fund if successful in the underlying litigation. The Bureau argued that to prevent this practice, the date upon which the treatment occurred should control the right to reimbursement.

[1] No. 2211 C.D. 2007, 2009 LEXIS 23 (Pa. Cmwlth., February 2, 2009).

Rejecting the Bureau's position, the Court found that the critical issue was not when the treatment occurred, but rather, when the "obligation" to pay the bill arose -- quoting the WCJ's original description that "obligation" occurred "the date when the bill is properly presented." Although not discussed in any significant decree, one would assume that "properly presented" would require the provider to make the request for payment on HFCA Form 1500 or HFCA Form 1450 or any successor form and has also submitted the periodic medical reports with Bureau Form LIBC-9.

The form currently promulgated by the Bureau for Application for Supersedeas Fund Reimbursement, LIBC Form 662, requires only "dates of service for indemnity and medical expenses incurred and payee names," supported by "copies of cancelled checks or computer printouts of payment records."

In response to Crawford, the Bureau now demands the date of receipt by the insurer of each medical expense for which reimbursement is sought, even when it would appear superfluous (such as when the date of treatment occurred **after** the request for supersedeas was made, because the bill would always be received and paid after the request for supersedeas).

Consider, however, that under Section 306(f.1)(5), 77 P.S. 531(5), employers or their insurers are directed to make payment to a provider within thirty days of the receipt of the provider's bills and records. Thus, the "obligation" arguably endures for a period of thirty days after the bill has been properly presented.

What happens, then, in the case where the bill is presented prior to the request for supersedeas, but payment is not due or made until some time thereafter by operation of Section 306(f.1)(5) of the Act? Arguably, Crawford does not specifically address this situation, since the bill at issue was presented and paid after the request for supersedeas was made.

Given its penchant for denying reimbursement whenever possible, there is little doubt that the Bureau will refuse to reimburse medical treatment paid after the date for supersedeas if the bill was received prior to the supersedeas request. The Bureau will likely rely upon Crawford for this position, despite the fact that the Crawford case would be properly distinguishable.

In order to comply with the current LIBC Form 662, most carriers maintain a payment history that includes the date the treatment occurred as well as the date that payment was issued.

At this time, it is recommended that all medical payment screen formats be amended to include the date upon which the bill for treatment was received. In order to obtain reimbursement from the Fund without excessive delay, it is further recommended that all medical payment history records clearly indicate the date on which treatment occurred; the date on which the bill was properly presented; and the date on which payment was made. Finally, if a Section 413 Termination Petition is being considered,

any recent medical bills should be scrutinized to ensure the bill has been "properly" presented – if not, a claims adjuster would be wise to deny the bill pending receipt of the proper forms so as to increase the likelihood of reimbursement if an appropriate request for supersedeas is made and denied prior to "proper" presentation of the bill.

The Attorneys of The Chartwell Law Offices, LLP, welcome further questions on this topic and any other workers' compensation inquiry.