NC Workers' Comp NEWS

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WCRI study

Healthcare providers gaming workers' comp

Healthcare providers who are paid a fixed sum per insured employee are more likely to call an injury work-related so they can shift costs to workers' compensation programs, which reimburse them on a fee-for-service basis.

A recent study by the Workers Compensation Research Institute asserts a back injury was as much as 30% more likely to be called "work-related" (and paid by workers' compensation) if the patient's group health insurance was capitated rather than fee-for-service. Specifically, the study concludes "workers covered by capitated health plans were more likely to have treatment for soft tissue conditions paid for by workers' compensation than workers covered by fee-for-service health insurance plans."

The WCRI study spells out the logic and dynamics in distressing detail. When a patient covered by a capitated health insurance plan seeks treatment for, say, back care, the physician and his healthcare facility are well-aware they will not earn incremental revenue for their services since they were paid a fixed amount for that patient at the outset of the policy year. But if the condition is deemed work-related, the providers know they will be paid for each service they provide.

The temptation is there and the opportunity arises when the cause of injury is not certain, as is the case with a soft-tissue condition or non-specific back pain or strain/sprain of knee or shoulder. WCRI notes it is notoriously difficult to pinpoint the cause of back pain; some cases of back pain are said to be caused by a specific event, others are said to be caused by repetitive motion, and still other cases of back pain are attributed to the aging process.

A lot hinges on the professional judgment of the physician, and given the choice between receiving additional revenue and not receiving additional revenue, many prefer the former. WCRI says providers are more likely to shift cases to workers' compensation in states where capitated group health plans are more common and, therefore, providers are more aware of the rewards of classifying an injury "work-related."

WCRI adds its findings are reinforced by the fact case-shifting is not common in states where capitation is not common, and there is no case-shifting for patients with conditions where the causation is more certain (for e.g. fractures, lacerations, contusions). WCRI is not the first to find evidence of case-shifting; nearly a dozen studies in the 1980s and 1990s documented a similar phenomenon under health maintenance organizations, which paid healthcare providers on a capitated basis.

Since the U.S. healthcare system is moving away from fee-for-service in favor of capitated or lump-sum payments, workers' compensation is an inviting target because it not only pays on a fee-for-service basis but pays higher prices. An earlier WCRI study found that in almost all states, workers' compensation programs were charged higher prices for common surgeries than paid by group health insurance plans. In some states, prices paid by workers' compensation were two to four times higher.

Employers should be aware how case-shifting adds to their costs, WCRI says. Workers' compensation commissioners should also be aware physicians are more likely to classify an injury as work-related if it means they will get paid on a fee-for-service basis.

"This distinction may also be relevant to system designers who might want to give adjudicators access to an independent medical assessment in certain cases," WCRI concludes.

INSIDE THIS ISSUE

CASE LAW UPDATE

By Rebecca Thornton

Holliday v. Tropical Fruit & Nut Co.: Revisiting the Injury by Accident Standard

An initial reading of the recent Court of Appeals' holding in *Holliday v. Tropical Nut & Fruit Co*. seemingly blurs the standard applied in injury by accident claims. However, a closer review reveals that the fact specific inquiry by the Court is in keeping with other notable injury by accident cases. Although the holding in *Holliday* may seem like an outlier, it is more likely limited to its unique facts.

Plaintiff Holliday was employed as an outside sales representative. In 2011, he attended a sales conference held to discuss the year's sales figures, future business, and to provide training. Attendance at the conference was mandatory. Holliday was paid his normal salary throughout the conference and his family was not permitted to attend.

During the conference, Defendant-Employer organized and paid for a social event for the sales staff that included laser tag and bowling. Holliday was scheduled to play laser tag and was assigned to a team by Defendant-Employer. During the game, Holliday traveled up and down ramps, twisted around columns and tried to catch other players. After the event, he reported a knee injury and sought medical treatment.

Defendants denied the claim. At a hearing, a Deputy Commissioner concluded that Holliday suffered a compensable injury by accident. Defendants appealed to the Full Commission and the Court of Appeals, both of which affirmed. The Court of Appeals held that Holliday's injury arose out of his employment; noting that Defendant-Employer mandated attendance at, and fully financed the social event, and derived a business benefit from the employees' attendance.

The Court also held that Holliday suffered a compensable injury by accident, though he could not identify the exact moment or precise motion that caused his injury. The Court explained that laser tag was not an activity Holliday normally performed as a sales representative and was an interruption of his normal work routine.

"Accident" is defined in the Workers' Compensation Act as an unlooked for event, not expected or designed by the person who suffers the injury. When an interruption of the employee's normal work routine occurs, and unusual conditions likely to result in unexpected consequences are introduced, an accident or accidental cause will be inferred. *Gray v. RDU Airport Authority*, 203 N.C. App. 521, 692 S.E.2d 170 (2010).

In *Gray v. RDU Airport Authority*, the evidence established that there were no unusual or unforeseen circumstances interrupting Plaintiff Gray's normal work routine. Plaintiff Gray's normal work routine included standing, walking, directing traffic and stepping off the crosswalk, which caused his injury. No accident or accidental cause could be inferred under those circumstances.

The Court of Appeals also held that an employee injured while climbing stairs at work did not sustain a compensable injury in *Shay v. Rowan Salisbury Schools*. The evidence established that Plaintiff Shay used the stairs as part of her job for more than a month before sustaining an injury. The Court concluded that climbing the stairs had become part of Plaintiff Shay's normal work routine and was not a new condition of her employment.

In contrast, the Court in *Konrady v. U.S. Airways, Inc*. reached a different conclusion. Plaintiff Konrady was injured when the van she was exiting pulled closer than normal to the curb so that the last step was shorter than the other steps. Exiting the van was routine for Plaintiff Konrady; however, the van's location to the curb, interrupted the normal routine and introduced an unexpected condition that resulted in unforeseen circumstances. The Court concluded that a compensable injury by accident had occurred.

Although *Holliday* is factually unusual, its analysis keeps with established precedent in its application of the injury by accident standard. Evidence of the exact moment or precise motion that caused Holliday's injury was not necessary where the evidence demonstrated that playing laser tag was a significant departure from his normal work routine from which an accidental cause could be inferred.

Consistent with *Gray, Shay and Konrady, Holliday* serves as a reminder that an accident may be inferred from an interruption of an employee's normal work routine; however, the burden remains with employees to offer proof of the interruption, by the greater weight of the evidence.

Rebecca Thornton is an attorney with Teague Campbell practicing workers' compensation defense and civil litigation from their Raleigh office. In 2015 she was recognized by North Carolina Super Lawyers magazine as a "Rising Star."

President's Note

Can comp stay out of the healthcare system?

Two stories in this issue of ***NC Workers' Comp News*** illustrate the problems inherent in having separate healthcare systems for group health insurance and workers' compensation. A recent study by WCRI says because payments under workers' comp are higher than under group health insurance, it is tempting to healthcare providers to classify injuries as work-related.

Second, while the U.S. healthcare system adopted ICD-10 on October 1, nearly 25 states still expect healthcare providers to maintain ICD-9 coding for workers' compensation claims. This is a recipe for unnecessary costs, burden, and confusion.

The North Carolina Industrial Commission, to its credit, is among those that announced early on medical services provided to injured workers must be billed using ICD-10 diagnosis and procedure codes. South Carolina has also adopted ICD-10 but waited until August 27 to make the announcement.

With very best wishes,
Jay Norris

ICD-10

Showtime for U.S. Healthcare

After three extensions of the deadline, and more than six years after Health and Human Services published its final rule on ICD-10, the U.S. healthcare system began converting to the new disease classification system on October 1 amid some drama and uncertainty.

While hospitals say they are ready for the big change, surveys indicate many physician practices are not prepared, and in little hurry to make the necessary changes. A recent survey by the Texas Medical Association found only 10% of physicians responding to the survey were ready to make the transition, and nearly 75% of physicians said they had not started or had only made partial progress towards adopting the new system.

A separate nationwide survey by the Workgroup for Electronic Data Interchange (WEDI) found nearly 90% of hospitals were ready, but fewer than 50% of physician practices nationwide expected to be ready by October 1. Workers' compensation systems are not required to use ICD-10, setting up an untenable situation: about 25 states have adopted ICD-10 and a similar number are expecting healthcare providers to maintain ICD-9 for comp purposes and ICD-10 for other healthcare claims.

A major reason for the healthcare system's sluggish response has been the fierce resistance from physician practices and the American Medical Association largely because of the expense involved in making the conversion. Critics of ICD-10, which include the conservative think tank the Heritage Foundation, contend the administrative and financial burdens are not worth the numerous benefits which appeal to the American Hospital Association, major insurers, federal agencies, and various researchers and policy makers.

For one, the new coding system is expected to yield a much clearer picture of what is going on with the patient because it asks for greater specificity to capture even tiny nuances. Whereas ICD-9 was so broad it did not differentiate between Type 1 and Type 2 diabetes or, to mention another noteworthy example, could not distinguish Ebola from other diseases spread by viruses, under ICD-10 cardiologists have not one but 845 codes for angioplasty. Dermatologists will need to specify which of eight kinds of acne a patient has.

In all, the number of diagnostic codes doctors must use to get paid is expanding from 14,000 to 70,000, while a separate set of ICD-10 procedure codes for hospitals is expanding, from 4,000 to 72,000.

Critics have had fun in noting there are now nine codes to describe an injury or illness from a macaw: for instance, W6111XA - Bitten by macaw, initial encounter, as distinguished from W6111XD - Bitten by macaw, subsequent encounter; which is different from W6111XS - Bitten by macaw, sequela, and W6112XA - Struck by macaw, initial encounter, and so on.

But to focus on such isolated trivialities is to miss the big picture: ICD-10 will have a big impact on hospitals' financial health because facilities that code accurately will be able to capture the severity of their patients' condition, and will be paid accordingly. The added specificity can make a big difference.

As analysts have noted, the move to ICD-10 is far more than an IT update, and very much like a change in business processes, affecting almost every single system in a hospital.

coming up

Mar. 30– Apr.1, 2016
NC Association of Self-Insurers' Annual Conference. **Holiday Inn Resort, Wrightsville Beach**

April 6-8, 2016
Members-Only Forum of the SC Self-Insurers Association. **Hilton Myrtle Beach Resort**

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Industrial Commission News

The Industrial Commission has given notice of some new proposed Industrial Commission Rules. The proposed Rules are an effort by the IC to adopt a comprehensive electronic filing rule. The new rule will mandate electronic filing, with exceptions for filers without electronic filing capabilities,and prohibit duplicate filings, both of which will significantly improve the accuracy and efficiency of document intake and processing by the IC. Here is a link to the public hearing notice. http://www.ic.nc.gov/NCICProposedRules-102015PublicHearing.pdf

The public hearing is scheduled for October 20, 2015. The written comment period ends November 16, 2015. The proposed effective date for one of the rules is January 1, 2016 and February 1, 2016 for the remainder of all the rules. If adopted, mandatory electronic filing will become effective February 1, 2016.

All documents filed with the IC in workers compensation cases shall be submitted electronically. Documents which are not transmitted to the IC in a manner consistent with the Rules, shall not be accepted for filing. Electronic filing requirement does not apply to claimants and employers without legal representation. Claimants and employers without legal representation may file documents with the IC via EDFP, electronic mail, facsimile, US mail, private courier service, or hand delivery.

Also, Chairman Heath has announced the appointment of seven deputy commissioners. Chairman Heath has appointed Leigha Blackwell Sink and Jesse "Jay" Tillman and reappointed current Deputy Commissioners Philip Baddour, Brad Donovan, Jim Gillen, Myra Griffin and Adrian Phillips. All appointments are for six-year terms effective August 1, 2015.