

WCRI Study

NC hospitals paid more for workers' comp claims

Payments to hospitals for workers' compensation claims were the highest in North Carolina among the 15 states studied recently by the Massachusetts-based Workers Compensation Research Institute.

North Carolina paid more for both inpatient and outpatient hospital care. The average inpatient payment to North Carolina hospitals per episode (for claims with an average of 24 months maturity) was 49 percent higher.

Although hospitals in North Carolina were paid the most for inpatient and outpatient care, the state paid less for care provided by physicians and physical and occupational therapists. The offsetting effect may have been one reason why overall medical costs per claim in the state were only 14 percent higher than in the other states studied by WCRI.

Although the fee schedule specifies that hospitals will be paid a lower percentage of their total charges, it does not restrict hospitals from increasing their total charges (which could offset the impact).

Based in Cambridge, The Workers Compensation Research Institute is a nonpartisan, not-for-profit membership organization conducting public policy research on workers' compensation, healthcare and disability issues. WCRI looked at workers' compensation systems in North

Carolina, California, Florida, Illinois, Indiana, Iowa, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Pennsylvania, Tennessee, Texas, and Wisconsin.

WCRI noted that non-hospital providers in North Carolina were paid less than in other states studied because of the physician fee schedule the state adopted in 2006. North Carolina adopted a fee schedule for hospitals in July 2009.

The fee schedule specifies hospitals are to be paid 75 percent of inpatient charges, instead of the previous 77 percent. For outpatient care, hospitals are paid 79 percent of charges, instead of being paid 95 percent of their charges. (Rural hospitals are paid more for both inpatient and outpatient care.)

Although the fee schedule specifies that hospitals will be paid a lower percentage of their total charges, it does not restrict hospitals from increasing their total charges (which could offset the impact). Nevertheless, the financial impact study commissioned by the North Carolina Industrial Commission estimates the following savings to the system because of the fee schedule:

- \$3,220,635.00 in savings on charges for inpatient services.
- \$28,370,847.00 in savings on charges for outpatient services.
- \$3,847,484.00 in savings on charges for ambulatory surgical services.
- Total estimated savings for FY 2009-10: \$35,438,593.00

INSIDE THIS ISSUE

WHITHER NORTH CAROLINA? TWO

CASE LAW UPDATE TWO

NC OSHA DOING A GOOD JOB, COULD DO BETTER AT DOCUMENTATION THREE

COMING UP FOUR

President's Note

Two reports

Two objective studies of North Carolina's workers' compensation and occupational safety programs shed revealing light on the how the state is performing. As we report in this newsletter, WCRI documented North Carolina hospitals are paid more for treating injured workers than hospitals in other states. Perhaps belatedly, North Carolina adopted a hospital fee schedule in July 2009.



The impact won't be clear for at least another year, and there is no assurance hospitals won't simply increase their charges to offset the reductions imposed by the fee schedule. But it is a start, and the fee schedule should be of broad interest to North Carolina employers given that medical costs account for nearly 50 percent of the total cost of workers' compensation.

The second report is encouraging, despite receiving a cool reception from state authorities. Elsewhere in this newsletter we highlight federal OSHA's recent assessment of the state-run program. Federal observers made a few recommendations but, as the North Carolina Department of Labor protested, did not do justice to the state's generally competent program.

There is a lot to chew here. Despite steadily falling injury and claims rates, employers don't sense a relief from workers' compensation costs. It is difficult to see how we can improve our workers' compensation system without understanding the major forces driving up costs in this state.

With very best wishes,
Jay Norris, president

CASE LAW UPDATE

By Joe Austin



Disability benefits following termination for cause

In *McLaughlin v. Staffing Solutions*, the employee sustained multiple injuries as a result of an accident in 2004. Because of those injuries, the employee was only able to work four hours per day, which the employer accommodated.

In 2006, the employer received a report that the employee smelled of alcohol and fired the employee. Subsequently, the employee claimed he was unable to find work. The Industrial Commission determined that the employee's physical restrictions were a significant factor in his inability to find work, and ordered the employer to pay compensation.

On appeal, the Court of Appeals ruled that even though he had been fired for cause, the employee had satisfied his burden of proving disability, and affirmed the award.

Unexplained falls

In the case of *Hedges v. Wake County Public School System*, the employee was injured when she stumbled and fell at work. There was nothing obstructing the employee's path, and she could not account for what caused her to stumble. Thus, the employer took the position that the injury did not "arise out of" the employment.

The employer did not present any evidence, and did not argue that the employee's testimony was not credible or that the fall was due to an idiopathic condition or some other external force. The Industrial Commission awarded benefits and ordered the employer to pay attorney's fees for unreasonably defending the claim.

Citing prior case law that unexplained falls are compensable when the only active force is the employee's performance of her job duties, the Court of Appeals affirmed the award.

Injury from taking stairs

In *Shay v. Rowan Salisbury Schools*, the employee was a teacher who normally rode the elevator to get to her classroom. She began taking the stairs after the elevator broke, and after a month, she experienced an injury when she felt a pop in the knee on her way up the stairs.

The Industrial Commission awarded benefits, but the Court of Appeals reversed. In the majority opinion, Judge Calabria reasoned that taking the stairs had become a part of the employee's normal work routine by the time the injury occurred. Thus, the Court held that there had not been an accident.

Joe Austin leads the workers' compensation practice group at Young Moore and Henderson in Raleigh. A graduate of Davidson College, Joe received his law degree from Wake Forest University.

Federal evaluation

NC OSHA doing a good job, could do better at documentation

A recently released evaluation of North Carolina's occupational safety and health program concludes the state-run program is doing a competent job. Federal evaluators issued 12 recommendations, drawing an indignant response from the NC Department of Labor.

Federal OSHA conducted a special evaluation of state-run occupational safety and health programs prompted by numerous construction-related fatalities in Las Vegas, Nevada, along with North Carolina, South Carolina, Tennessee, and Kentucky, is among the 24 states which administer their own occupational safety and health programs. States may run their own programs provided they are at least as effective as federal OSHA.

Recommendations issued by federal evaluators covered the following areas in North Carolina's program: procedures to improve case file documentation; procedures to improve communication with next-of-kin; improved written correspondence to complainants; procedures for review of inspection data; improved violation classification and penalty policies and practices; and procedures related to the discrimination program.

North Carolina officials took exception to the evaluation, noting it includes few comments about the overall quality of the state program but chooses to emphasize the few areas where federal OSHA has determined improvements should be made. "There is also no attempt to place the so-called problems in the context of overall successful program activity," wrote Allen McNeely, director, occupational safety and health at the NC labor department.

"A review of state performance will confirm that progress toward our goals is being met and that North Carolina operates one of the best OSHA programs in the nation (state or federal)," the letter said.

Federal OSHA noted the following deficiencies:

- Supporting documentation (photos, interview statement) is purged from case files when they are closed. Purging of case files limits the state's ability to conduct a complete review of a company's history and of the documentation needed to properly investigate future violations.
- For complaints handled by letter, complainants received insufficient information regarding the results of the investigation of their complaints.
- Victim's families should receive more complete information on the State's fatality investigation.
- Case files do not always contain complete information on hazards or injury/illness data from the 300 logs.
- Case file data is not being kept up-to-date; case files are not closed and a few cases were beyond the 6 month period without citations having been issued.
- Violations are misclassified and willful violations were not cited. More follow-up visits should be conducted.
- State penalty calculation and adjustment policies result in lower penalties for serious violations.
- Review of discrimination case files found that complaints are not accepted unless filed in writing, interviews are conducted by phone, and the results of closing conferences and settlements are not documented.

The evaluation did note North Carolina was ahead of federal OSHA in adopting a cranes and derricks rule. It also commended North Carolina's five-year performance plan, which was initiated in 2009.

"The new performance plan is streamlined, more results-oriented, and reflects what they have learned from their long experience in using strategic planning to achieve their overall mission of reducing injuries, illnesses, and fatalities," the report said. Among the performance plan's goals over the next five years:

- Reduce construction industry fatality rate 5%
- Reduce the injury and illness rate in sawmills, veneer, manufactured home and other wood products, furniture and related products manufacturing by 15%
- Decrease fatality rate in logging and arborist activity by 5%
- Reduce the days away, restricted, or transferred (DART) rates in long-term care facilities by 15%
- Conduct emphasis inspections, training, and consultation activity in establishments known for health hazards such as lead, silica, asbestos, hexavalent chromium and isocyanates.
- Reduce the injury and illness rate (DART) in establishments in food manufacturing by 12%.

coming up

March 23-25, 2011

North Carolina Association of Self-Insurers Annual Meeting
& Educational Conference.

Holiday Inn Resort, Wrightsville Beach.

April 13–15, 2011

Members-Only Forum, SC Self-Insurers Association.

Litchfield Beach & Golf Resort.

May 15, 2011

RIMS 2011 Annual Conference & Exhibition.

Vancouver.

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NCASI

NORTH CAROLINA
Association of Self-Insurers

The employers' voice in workers' comp

Comp costs are higher for obese workers

Medical costs for obese workers are higher than for workers who are at the recommended weight, according to a report from the National Council on Compensation Insurance.

NCCI cites findings of a recent study of workers' compensation claims of Duke University employees which shows that for the morbidly obese the medical costs per 100 full-time equivalent employees are nearly seven times as high as for employees of recommended weight.

“The study also shows how the cost difference between “obese claims” and comparable “non-obese claims” develops as claims mature—this evidence of the difference in development offers important guidance for reserving and ratemaking,” NCCI concludes.

It adds the study results show that, in the aggregate, obese claims are 2.8 times more expensive than non-obese claims at the 12-month maturity, but this cost difference climbs to a factor of 4.5 at the three year maturity and to 5.3 at the five year maturity.

One-third of U.S. adults are considered obese according to definitions adopted by the Centers for Disease Control and Prevention. An adult who weighs 203 lbs or more is considered obese if only 5'9" tall because the body mass index (BMI) would be 30 or higher.

There are six BMI categories, ranging from underweight to recommended weight, overweight, and three classes of obesity. The highest level of obesity is class III, which comprises the morbidly obese, identified by a BMI of 40 or higher.

An earlier Duke University study found medical costs are 6.8 times as high for the morbidly obese as for employees of recommended weight, and morbidly obese workers are twice as likely to have a claim.

For obese class II (BMI of at least 35 but less than 40) and obese class I (BMI of at least 30 but less than 35), the medical costs per employee are 3.1 and 2.6 times as high as for employees of recommended weight.