

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

PUBLIC HEARING

Friday, November 14, 2014
Elihu Harris State Office Building Auditorium
1515 Clay Street
Oakland, California

Destie Overpeck
Moderator
Acting Administrative Director

Jarvia Shu
Industrial Relations Counsel

Maureen Gray
Regulations Coordinator

Reported by: Richard H. Parker

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Alex Khazin	5
Lisa Anne Forsythe	9

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1 (Time Noted: 10:10 a.m.)

2 MS. OVERPECK: Good morning. Thank you for coming today.
3 I'm Destie Overpeck, the Acting Administrative Director for the
4 Division of Workers' Compensation.

5 This is the Public Hearing for the Official Medical
6 Fee Schedule Regulations. Copies of the proposed regulations
7 are over here on the front desk.

8 Also, please make sure that you sign in on the sign-in
9 sheet and indicate if you want to testify today. By signing in
10 that will make sure -- we will make sure that you get any
11 further revisions that we may make to these regulations.

12 I'd like to introduce the other staff up here. Our
13 court reporter is Richard Parker. This is Jarvia Shu, an
14 attorney with the Division, and Maureen Gray who is our
15 Regulations Coordinator.

16 All of the testimony given today will be taken down by
17 the court reporter. If you have any written testimony that you
18 want to hand in, please give it to Maureen Gray or you can
19 e-mail or deliver it to our building today as long as you get
20 it to the 18th floor by 5:00 o'clock.

21 I will call the names for those who have checked that
22 they want to testify. And I will also make sure that at the
23 end that anybody who has changed their mind and decides to
24 testify has an opportunity.

25 Based on the number of people here and those who have

1 signed in, I doubt we will be going on for very long today.

2 The purpose of this hearing is to receive comments on
3 the proposed regulations and we welcome any comments that you
4 have about them. All of your comments that are given, either
5 here today orally or submitted in writing, will be considered
6 equally and we will carefully take a look at them in
7 determining what revisions we may make to the regulations, if
8 any.

9 Please restrict the subject of your comments to the
10 regulations and to any suggestions you may have regarding them.

11 We do not enter into any discussion with regard to the
12 regulations, although we might ask for some clarification or we
13 might ask you to elaborate.

14 When you come up, please give your business card, if
15 you have one, to Maureen and please state your name and spell
16 your name as you testify. Okay.

17 So let's start with Alex Khurzin (phonetic).

18 MR. KHAZIN: Khazin.

19 MS. OVERPECK: Khazin.

20 MR. KHAZIN: Thank you. I apologize. I didn't take a
21 business card. I'll be more than happy to --

22 MS. OVERPECK: Could you spell your name.

23 MS. KHAZIN: Sure. It's Alex, A-L-E-X, K-H-A-Z-I-N as in
24 Nancy.

25 MS. GRAY: Thank you.

1 I'm here today in the strongest terms possible to
2 request that the Acting Administrative Director reconsider the
3 modification code of reg code 9792(c), small C.

4 The fact of the matter is that when the new
5 regulations were enacted in 2004, no end date was placed in
6 the -- in code reg 9792(c). And understandably so. While
7 others may think it was an oversight for ten years, I believe
8 that not to be the case.

9 For ten years providers have had the ability to argue,
10 when circumstances warrant, that the Official Medical Fee
11 Schedule may not have been adequate to compensate them for
12 services relating to an industrial injury. Moreso, the Appeals
13 Board supported the concept of 9792(c) and in quoting a Baylay
14 case in 2011, quote, "As can be seen, rule 9792(c) expressly
15 contemplates that in applying the Official Medical Fee Schedule
16 there may be extraordinary circumstances that would cause a fee
17 schedule under the -- cause a fee calculated -- excuse me --
18 under the Official Medical Fee Schedule less than reasonable in
19 light of the unusual nature of the services rendered."

20 No one would dispute the fact that in order to recover
21 fees in excess of the fee schedule evidence must be presented
22 establishing why the provider deems that the Official Medical
23 Fee Schedule is insufficient or inadequate.

24 State regulations, if modified, retrospectively would
25 appear to be a violation of due process as it may cause harm or

1 unintended consequences to such as undoing cases that have been
2 litigated or currently under review, claims resolving from 2004
3 to the potential date of modification.

4 I'm sure you've heard that the regulation does not
5 apply to dates of injuries after 2004 and that you're doing --
6 and what you're doing now is cleaning up the regulation
7 reflecting -- excuse me -- regulations to reflect the intent of
8 the legislature.

9 However, I respectfully disagree with the analysis for
10 the following reasons: Clearly 9792(a) and (b) are tied to a
11 specific unit of the fee schedule. However, 9792(c) recognizes
12 that there will be circumstances that are so unique to
13 providers or a facility such as to allow fees in excess of the
14 fee schedule so long as reimbursement is reasonable to the
15 providers and ensure the Applicant's quality of care.

16 This panel must recognize that not all providers are
17 alike and that's why 9792(c) anticipates the indescribable such
18 as to -- such as the immediate need for burn centers and trauma
19 centers wherein most general acute care facilities are simply
20 that, quote, general, unquote.

21 Knowing the uniqueness of these facilities -- excuse
22 me. I would like the panel to recognize that there remains 12
23 burn centers in our state. Of those, only five burn centers
24 can treat catastrophic injuries, catastrophic burns.

25 Furthermore, there remains approximately 35 trauma

1 centers that are level 1 or 2 in our state, out of those
2 approximately 450 general acute care hospitals in California.

3 I was on a case not several months ago where I think
4 this circumstance would apply. The patient was working as a --
5 in the kitchen of a restaurant and had injured his lower
6 extremities, foot. He cut it. And when he went to the
7 hospital, it was nothing serious. It was a debridement. It
8 was a debridement procedure and the fee schedule recognized
9 that as a process that's reimbursable at about 20, 21,000
10 dollars. However, the fee schedule also took into
11 consideration what the average length of stay would be for this
12 type of procedure. The patient ended up staying in the
13 hospital for 26 days. The fee schedule recognized the average
14 to be five and a half days.

15 It turns out that the patient was a diabetic moroso
16 and a non-compliant diabetic. He wasn't treating. That
17 certainly isn't the hospital's fault, but the fact of the
18 matter is the hospital kept him there for 26 days, almost --
19 more than -- or approximately five times what the average
20 length of stay would be. Certainly I'm hoping that the Board
21 can recognize that this would be an unusual or extraordinary
22 event.

23 So I leave you with this: The purpose of the work
24 comp system is to promote workplace safety. Unfortunately,
25 those that suffer from a legitimate work-related injury should

1 be entitled to quality health care. Limiting the applicability
2 of reg 9792(c) may create simply that; cannot afford to treat
3 injures not generally suffered by injured workers.

4 Therefore, on behalf of those lien claimants who
5 provide emergency and inpatient care that you do not limit the
6 applicability of 9792(c). Thank you.

7 MS. OVERPECK: Thank you. Is there anyone else who would
8 like to make a comment today? Lisa?

9 MS. FORSYTHE: I just have one question. Do you want me
10 to get up?

11 MS. OVERPECK: Yes.

12 LISA ANNE FORSYTHE

13 Hi, I'm Lisa Anne Forsythe with Coventry Work Comp
14 Services.

15 Just a quick question from our fee schedule team.
16 That was on 9789.23 sub b, like boy, number 1. They had
17 notification in here on pages 20 and 30 of the proposed
18 regulations that the DRG's and applicable notices refer to the
19 fiscal year 2014 which are currently loaded for California in
20 your last inpatient update effective 3/15/2014. They're asking
21 going forward are we to continue to use fiscal 2014 or was that
22 a typo and did you intend for that to be fiscal 2015 DRG
23 tables? That was their one clarifying question.

24 MS. OVERPECK: Okay. Thank you.

25 MS. FORSYTHE: Sure. No problem.

1 MS. OVERPECK: Okay. Is there anybody else who would like
2 to make a comment? So it's 20 past 10:00. I think what we'll
3 do is go off the record for ten minutes and then come back at
4 10:30 and see if anyone else has shown up. If not, we will
5 close the hearing at that time.

6 (Recess taken from 10:20 a.m. to 10:30 a.m.)

7 MS. OVERPECK: All right. So it's just about 10:30.

8 Just to confirm, is there anyone else who would like
9 to make an oral statement today? I don't hear anything so....
10 Since there's no one else here who is going to testify, the
11 hearing will be closed.

12 The opportunity to file written comments will stay
13 open until 5:00 p.m. this afternoon. These comments should be
14 delivered to the DWC office on the 17th or 18th floor of the
15 building. You can also e-mail or fax in comments.

16 Thank you for your attendance and your input. The
17 hearing is now closed.

18 (The proceedings adjourned at 10:31 a.m.)

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R E P O R T E R ' S C E R T I F I C A T E

I, Richard H. Parker, Official Hearing Reporter for the State of California, Department of Industrial Relations, Division of Workers' Compensation, do hereby certify that the foregoing matter is a full, true and correct transcript of the proceedings taken by me in shorthand, and with the aid of audio backup recording, on the date and in the matter described on the first page thereof.

Richard H. Parker

RICHARD H. PARKER,
Official Hearing Reporter
of the State of California,
Workers' Compensation Appeals Board

Dated: November 17, 2014
Fresno, California
/s/