February 19, 1993

Honorable Ryan deGraffenried, Jr.
Honorable Don Hale
Honorable W.H. "Pat" Lindsey
Members, Alabama State Legislature
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Workmen's Compensation -
Workmen's Compensation Law -
Physicians - Medical Services
- Fees

Sections 25-5-310 through
25-5-315, Code, govern
reimbursement of licensed
physicians providing services
under Workmen's Compensation
Act.

Dear Senators:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTIONS

1. Do Sections 42 through 47 of the Alabama Workmen's Compensation Act, Act No. 92-537, now codified as Sections 25-5-310 through 25-5-315 Code of Alabama 1975, govern reimbursement to physicians licensed to practice medicine for medical services provided to employees entitled to receive workers' compensation benefits under the Act?

2. Should other sections of the Act limiting an employer's liability to the "prevailing rate" or "maximum schedule of fees" be construed to limit reimbursement to physicians licensed to practice medicine to the "prevailing rate," rather than the "maximum fee schedule" established by Workers' Compensation Medical Services Board in Section 45 of the Act?

FACTS, LAW AND ANALYSIS

After considerable controversy and two legislative sessions, Act No. 92-537 was passed revising the Alabama Workman's Compensation Law. In Section 1 of the Act the Legislature stated:

> "It is the intent of the Legislature that the Department of Industrial Relations and the Alabama judicial system shall administer the Alabama Workers' Compensation Act to provide a workers' benefit system to insure the quick and efficient payment of compensation and medical benefits to injured and disabled workers at a reasonable cost to the employers who are subject to the Alabama Workers' Compensation Act."

The Legislature went on to say:

> "It is the further finding of the Legislature that the provision of quality medical services to employees injured in the work place at a reasonable cost to employers is an important part of the workers' compensation system. The establishment of a Workers' Compensation Medical Services Board as constituted in this amendatory Act is considered by the Legislature to be the most appropriate mechanism for insuring that high quality medical services are provided in a cost effective manner to employees injured in the work place." (Emphasis supplied.)

The Workers' Compensation Medical Services Board is established and given its charge in Sections 42 through 47 of the Act, now codified as Sections 25-5-310 through 25-5-315, Code of Alabama 1975. Section 42 of the Act, Section 25-3-310 in the Code, defines "medical or medical services" as "any and all medical or surgical services provided by physicians under this new Article." In Section 25-5-312, we find:

> "The board shall exercise general supervision in all matters related to the provision of medical services provided by physicians, as defined in Section 25-5-310, rendered to workers under this Article." (Emphasis supplied.)

Under Section 25-5-313 the Workers' Compensation Medical Services Board is to establish an initial schedule of maximum fees for medical services covered by the Article. This section goes on to provide:

> "The fee for each service in this schedule shall be exactly equal to an amount derived by multiplying the preferred provider reimbursement customarily paid on May 19, 1992, by the largest health care service

> plan incorporated pursuant to Sections 10-4-100 to 10-4-115, inclusive, by a factor of one point zero seven five (1.075), which product shall be the maximum fee for each such service." (Emphasis supplied.)

There are provisions for modification of the fees to reflect changes in the cost of living, in response to changes in technology and medical practice, and in response to state and federal tax policies. The last two sentences of Section 25-5-313 read:

> "The liability of the employer for the payment of services rendered by physicians shall not exceed those maximum fees established by the board and approved by the Governor. The employee shall not be liable to the physician for any amount in excess of the schedule of maximum fees established by the board and approved by the Governor." (Emphasis supplied.)

We recognize that the language utilized by the Legislature in Section 25-5-313 referring to the largest health care service plan incorporated pursuant to Sections 10-4-100 to 10-4-115 refers to the Blue Cross/Blue Shield Preferred Medical Doctor reimbursement. The factor utilized, 1.075, results in the initial maximum fee schedule being equal to the "Blue Cross PMD," plus 7 1/2 percent.

Section 40 of the Act, codified at 25-5-293, includes the following language:

> AIt is the intent of the Legislature that final reimbursements related to the workers' compensation claims be commensurate and in line with the prevailing rate of reimbursement or payment in the state of Alabama, or as otherwise provided in this Article."

This Section sets the statutory maximum reimbursement rate for certain providers other than physicians. It does not address the maximum reimbursement rates for physicians' services.

Indeed, in Section 25-5-293, Subsection (g), we find the following language:

> "It is the express legislative intent of this Article to insure that the highest quality health care is available to employees who become injured or ill as a result of employment, at an appropriate rate of provider reimbursement. All insurers, claims adjusters, self-administered employers, and any entity involved in the administration or payment of workers' compensation claims are mandated to implement utilization review and bill screening for health services provided to employees covered under this Article. In this regard, employer's liability for reimbursement shall be

> limited to the prevailing rate or maximum fee scheduled established by the Workers' Compensation Service Board for similar treatment. All services will be reviewed by utilization review for medical necessity and bills for such services screened for appropriateness of charges. Services provided that are deemed not medically necessary are not reimbursable and the employer is held harmless. In no event is the employee responsible or held liable for any charges associated with an authorized workers' compensation claim." (Emphasis supplied.)

The fundamental rule of statutory construction is to ascertain and effectuate legislative intent as expressed in the statute. Such intent may be gleaned from the language used, the reason and necessity of the act, and the purpose sought to be obtained. Shelton v. Wright, 439 So.2d 55 (Ala. 1980). A further rule of statutory construction is that a court has the duty to construe each word consistently with other sections in pari materia. The entire statute should be construed and not just isolated parts. The statute should be construed so that every clause is given effect in the light of the subject matter and purpose of the law. Norandal USA, Inc. v. State Department of Revenue, 545 So.2d 792 (Ala.Civ.App. 1989).

If the Legislature had intended to limit an employer's liability for physician services to the prevailing rate, then Sections 25-5-310 through 25-5-315 would have no field of operation. But the Legislature is presumed not to enact a meaningless, vain, or futile statute. See Fletcher v. Tuscaloosa's Federal Savings & Loan Association 314 So.2d 51 (Ala. 1975).

If there is a conflict in the provisions of the same statute, it is the law in Alabama that the last provision in point of arrangement controls. See Alabama State Board of Health Ex Rel. Baxley v. Chambers County, 335 So.2d 653 (Ala. 1956) and In Re Ashworth, 287 So.2d 843 (Ala. 1947). Accordingly, provisions of Sections 42 through 47, that is to say Sections 25-5-310 through 25-5-315, coming at the end of the Act, control.

It is the opinion of this office that the plain language of the Act supports but one conclusion; that is, that an employer's liability for medical services is limited to specific statutory maximums: 1) the prevailing rate ascertained by the director/advisory committees for certain providers other than physicians, specifically described in Section 40 of the Act, Section 25-5-293, Code, supra; 2) hospital limitations ascertained through negotiations or committees described in
Section 23 of the Act, Section 25-5-77, Code; and, 3) the maximum fee schedule described in Sections 42 through 47, Section 25-5-310, Code, for physicians services. The most persuasive evidence of legislative intent is the wording of the statute itself, and reading all of the sections of the Act together with the express legislative intent set forth in the Act, supports the above reasoning.

CONCLUSION

For the reasons set forth above, it is the opinion of this office that your first question should be answered in the affirmative; Sections 42 through 47 of the Act, now codified as Sections 25-5-310 through 25-5-315, Code of Alabama 1975, govern reimbursement of physicians licensed to practice medicine for medical services provided to employees entitled to workmen's compensation benefits under Act No. 92-537, the Alabama Workmen's Compensation Act. Other sections of the Act do not relate to the compensation of physicians which is controlled by the maximum fee schedule established by the Workers' Compensation Medical Services Board pursuant to Section 25-5-315, Code of Alabama 1975. A physician or other provider may agree to accept less than the fee established by law but cannot be compelled to do so.

I hope this sufficiently answers your questions. If your office can be of further assistance, please do not hesitate to contact us.

Sincerely,

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