LUKS, SANTANIELLO PETRILLO & JONES

CLM

LEGAL UPDATE

VOLUME 10, ISSUE 1

JANUARY — MARCH 2011

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Rey Alvarez

Rey (Reinaldo) Alvarez is the new Workers' Compensation Managing Attorney. Rey has substantial WC Defense experience and knowledge of Medicare Compliance, Medicare Set-Asides and Medicare Conditional Liens. Rey's Workers' Compensation experience includes extensive trial experience and managing a Medicare Reporting and Set Aside Department with his last firm. He authored and published a book on the new Medicare Reporting and MSA requirements. Rey also manages our Section 111 Reporting (Liability) and Medicare Set Aside (WC and Liability) division and handles all firm wide conditional lien negotiations. Rey possesses substantial knowledge of the Social Security Disability law and has represented all types of Social Security Disability matters. Rey divides his time between the Fort Lauderdale and Miami offices and directs the assigned teams in Jacksonville, Tampa, Orlando, and Tallahassee.

Liability

PIP Recommendations and Issues Identified by the ICAO Roundtable by Andrew Chiera, PIP Associate.


Andrew Chiera

In the summer of 2010 the Office of the Florida Insurance Consumer Advocate hosted a roundtable in Tallahassee to discuss common concerns raised regarding Personal Injury Protection ("PIP") coverage in Florida. The common concerns included, but were not limited to, the increased incidences of staged accidents; fraudulent activities at health care clinics; difficulties in navigating the claims payment process; and other general items that are impacting automobile insurance premiums. This article summarizes the issues identified and the recommendations made at the roundtable. Please note that an additional issue regarding Examinations Under Oath was raised, but case law decided subsequent to the roundtable *may* be controlling on the issue.

Issue 1: Staged Accidents

The National Insurance Crime Bureau ("NICB") is exclusively dedicated to preventing, detecting, and defeating insurance fraud through analysis, investigation, and public awareness. In the NICB's Staged Accidents Analysis for Florida (2008 - 2009), the bureau concluded that there was a 58% increase in questionable claims involving staged accidents. The study ultimately concluded that on a national level, Florida is now ranked number one with regard to the number of questionable claims involving staged accidents.

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Workers' Compensation

A Judge of Compensation Claims Lacks Jurisdiction over Medical Bill Reimbursement Disputes F.S. 440.13(11)(c) by Rey Alvarez, WC Managing Attorney.

Rey Alvarez

At least once a week a petition for benefits will come across the desk of an adjuster requesting payment of a medical bill. Sometimes a copy of the bill gets attached, sometimes not, but the proper form will never be attached. The adjuster's response is usually always the same. The bill needs to be submitted on proper form, and upon receipt, the bill will be processed for payment if it was authorized and casually related to the accident.

The filing of a petition requesting payment of a medical bill is not allowed under Chapter 440. Nonetheless, petitions for payment of a medical bill are routinely filed. It requires the adjuster to file a response, defense counsel to review and prepare to defend the issue, and as a result of the petition, a mediation will be scheduled. In approximately 90-95% of the cases, based on the response to the petition, a petition requesting payment of a medical bill will be dismissed by Claimant's counsel prior to the mediation or the issue will be resolved at the mediation.

A petition for payment of a medical bill is improper and every attempt should be made to get the petition dismissed. A close reading of the statute shows that a Judge of Compensation Claims (JCC) lacks jurisdiction when it comes to payment of medical bills. F.S. 440.13(11) reads that "The agency has exclusive jurisdiction to decide any matters concerning reimbursement..." That portion of the statute needs to be read in conjunction with F.S. 440.13(1) which defines a reimbursement dispute as "any disagreement between a health care provider or health care facility and carrier concerning payment for medical treatment." This portion of the statute has been in effect for quite a long time. However, petitions for payment of a medical bills are routinely filed.

On January 13, 2011 the First District Court of Appeals (1DCA) decided a case that should bar the filing of petitions for payment of medical bills. In Cook v. Palm Beach County School Board, the Claimant filed a petition seeking payment of five medical bills for treatment she received. The bills had not been paid at the time that the petition was filed. But, upon receipt of the bills on proper form, the Employer/Carrier sent the bills to be processed for payment. The Employer/Carrier filed a motion for a Summary Final Order arguing that Claimant's request for payment of bills is a reimbursement dispute over which the JCC lacks jurisdiction. The JCC agreed, and granted the Employer/Carrier's Motion for Summary Final Order.

The Claimant appealed the decision and the 1DCA affirmed the JCC's decision. They held that based on F.S. 440.13(1) and F.S. 440.13(11) that the JCC lacked jurisdiction over Claimant's petition and correctly granted the Employer/Carrier's motion for Summary Final Order.

This is an important decision for the Employer/Carrier/Servicing Agents. It should alleviate needless litigation and, in turn, reduce costs. It is sending a strong signal that the Courts want the statute and the Florida Administrative Code followed.

Employer/Carrier/Servicing Agents still need to pay the medical bills promptly. The statute provides a procedure to ensure that medical providers are paid timely. In order to dispute the payment of a medical bill, a provider must provide the medical bill(s) on proper form to the Employer/Carrier/Servicing Agent. Pursuant to F.S. 440.20(2), "the Employer/Carrier/Servicing Agent must pay, disallow, or deny all medical, dental, pharmacy, and hospital bills submitted to the Employer/Carrier/Servicing Agent no later than 45 calendar days after the receipt of the medical bill.

If the medical provider is not satisfied with the payment, then they can petition the Department of Financial Services. Pursuant to F.S. 440.13(7), a medical provider has 30 days to petition the Department of Financial Services after receipt of the resolution of the bill. F.A.C. 59A-31 and the statute set out all the requirements for medical providers to dispute medical bill reimbursement.

Liability continued.

Of note, Tampa has replaced Miami as the number one city in Florida for questionable claims involving staged accidents. In fact, questionable claims increased by 290% in Tampa between 2008 and 2009.

The Insurance Consumer Advocate's Office ("ICAO") offers the following recommendations:

- Increase funding to the Department of Financial Services, Division of Insurance Fraud for additional staff to investigate fraudulent activities and prosecute insurance fraud;
- Create a dedicated team of state-wide prosecutors to pursue insurance fraud;
- Require all law enforcement officers to complete the long form of the crash report when there are passengers in the vehicle involved in an accident in order to document the name, address, and contact information of each passenger;
- Increase minimum mandatory terms of imprisonment and fines for persons convicted of violating Section 817.234 Florida Statutes, for filing false claims for PIP benefits;
- Provide immunity from criminal prosecution to members of an insurer's designated Anti-Fraud Investigation Unit who in good faith share information regarding suspected fraudulent activities involving health care practitioners and/or health care clinics;
- Support legislation to adopt provisions of the Coalition Against Insurance Fraud's Insurance Fraud Model Act that are not currently in Florida law. (Available online at http://www.insurance fraud.org/downloads/Model%20fraud%20act.pdf)

Issue 2: Licensure of Health Care Clinics

According to the Department of Financial Services' Division of Insurance Fraud, in 90% of PIP fraud cases involving health care clinics, the clinics are exempt from licensure. Presently, an unlicensed clinic operating under such an exemption can provide a full range of treatment for injuries covered by PIP under the license of a single M.D. physician. Many roundtable participants consider this to be a common method used to establish a "front" for criminal activity. Interestingly, while the number of exemptions grew by 32% in Miami-Dade County and 110% in Hillsborough County, the number of exemptions issued to massage therapists increased by 342% in Miami-Dade and 975% in Hillsborough County for the years 2008 - 2009.

The ICAO makes the following recommendations:

- Require health care clinics to be licensed if medical services are offered outside of the scope of the owners' practitioner's license. However, there should be no restrictions on services provided within the scope of license by licensed health care providers who provide services to the clinic;
- Require the Certificate of Exemption from licensure as a health care clinic to be renewed every two years or whenever there is a change in ownership and require continued disclosure and remedies for false or misleading application;
- Require clinic application and exemption forms to include a statement that knowingly providing a false, misleading or fraudulent application or document relating to licensure or exemption or compliance with the clinic licensing law is a fraudulent insurance act that is subject to investigation by the Division of Insurance Fraud and may be grounds for discipline by Department of Health licensing boards;
- Provide that submitting false, misleading or fraudulent information on a clinic application or exemption form is a felony;
- Strengthen penalties for submitting a fraudulent application and conducting fraudulent activities at health care clinics;
- Require a 12-month license suspension for any physician or other practitioner licensed in Florida who is found guilty of insurance fraud involving PIP benefit claims, or alternatively, decertify licensed practitioners who allow their names to be used to foster fraudulent activities at a health care clinic;
- Require health care clinics to be licensed if their operations are more than 50% devoted to PIP claims, or alternatively, require licensure if a clinic promotes its business and/or any of its practices as a PIP provider in advertising, on a marquee, on business cards or in any directories.

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Liability continued.

Issue 3: PIP Claims Handling Process

Some believe that a uniform claims handling process and use of Explanations of Benefits ("EOB") by insurers would simplify the claims process, reduce the number of errors, minimize the time needed to resolve disputes, expedite payments, deter fraud, and reduce litigation. It was noted that there is an absence of a uniform system for adjudicating claims and that the requirement that all claims be furnished on designated printed forms which must be submitted by mail has served to increase the time and effort necessary to process PIP claims.

Recommendations are as follows:

- Study the feasibility of requiring insurers to adjudicate claims electronically in accordance to the Federal Transactions Standards;
- Study the feasibility of requiring insurers to provide an EOB in a standardized format for each health care provider bill received by the insurer;
- Allow insurers to suspend the payment of a claim for 60 days from the date of receipt when, based on actual knowledge or reasonable belief, a prudent person should have after reviewing the claim, fraud is suspected. This change will allow the insurer an additional 30 days to properly investigate the claim, reduce the need for a demand letter, expedite payment for valid claims, and deter fraudulent activity.

Issue 4: The Fee Schedule

As many of you know, the legislature's effort to standardize payment for PIP claims and reduce litigation by implementing a fee schedule has not had the desired effect. Not only has there been argument over which specific Medicare standard applies, but some have taken the position that the insurer must clearly state in the policy that the legally created and authorized fee schedule will be applied to PIP claims. Needless to say, litigation over PIP reimbursements continues despite the implementation of the fee schedule.

ICOA's Recommendations are:

- Clarify the utilization of the 2007 Medicare Part B fee schedule. There are differences between the 2007 Medicare Part B fee schedule found on the Centers for Medicare and Medicaid Services website (www.CMS.gov) and the 2007 Medicare Part B fee schedule found on the First Coast Services Options (Medicare's Florida Administrator) website (www.medicare.fcso.com).
- Clarify that the fee schedule is the maximum amount of reimbursement payable by insurers to medical providers for medical procedures and treatment covered by PIP.

Issue 5: Material Misrepresentation

Without question an insurer is allowed to rescind a policy after a loss if there is evidence that the applicant concealed, omitted, or provided false information which would have affected the premium assigned or offer of coverage. Typical scenarios involve undisclosed licensed household members and undisclosed prior losses/PIP claims. The law makes no exception for the explanation that the applicant did not understand the question or did not read the application form before signing it.

Recommendations

- Require all applications for automobile insurance to have a "YES" or "NO" question pertaining to roommates and other family members residing in the same household. If the response is "YES", the applicant would be required to write in the name of their roommates and/or other resident family members. If the answer is "NO", the applicant would be required to write that "There are no roommates or other family members residing in the household."

- Provide that insurers who fail to notify the insured within 21 days of the date of a motor vehicle insurance application that the application contains a misstatement or material misrepresentation that should have been discovered within 21 days by a reasonable investigation by the insurer waives the right to later cancel the policy based on the information unless the insured fails to provide the correct information to the insurer.

New Office Addresses for Jacksonville & Tallahassee.

Please update your records with our new office addresses for Jacksonville and Tallahassee.

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Verdicts & Summary Judgments

- ***Jeffrey and Carol Patterson v. Green Bull,*** Slip and Fall—Ladder, Polk County, Paul Jones and Thomas Farrell, **$1M Sought**, Defense Verdict, 1/21/2011.
- ***Strassman v. Olin Mobile Home***, Slip and Fall, Broward County, Daniel Santaniello and Thomas Gibbons, Summary Judgment, 1/6/2011.
- ***Ivonne Acosta v. Defendant Mall,*** Slip and Fall, Lee County, Jack Luks and David Lipkin, Defense Verdict, 12/7/2010.
- ***Charles v. Defendant Store***, Trip and Fall, U.S. District Court, Southern District of Florida, Summary Judgment, Jack Luks and David Lipkin, 12/6/2010.
- ***Kenia Garcia (Plaintiff/Appellee) v. Gregory F. Georges (Defendant, Appellant)***, Pedestrian Hit, United States District Court, Southern District of Florida, Douglas De Almeida, Motion for Summary Judgment, 11/13/2010.
- ***Barry Rhodes v. Bob and Barbara Christensen,*** Malicious Prosecution, Okeechobee County, Daniel Santaniello and Anthony Merendino, Defense Verdict, 10/5/2010.

CLM

Luks, Santaniello, Petrillo & Jones is pleased to announce that Jack Luks, Daniel Santaniello, Anthony Petrillo and Paul Jones have been invited to join the prestigious Council on Litigation Management. The Council is a nonpartisan alliance comprised of thousands of insurance companies, corporations, Corporate Counsel, Litigation and Risk Managers, claims professionals and attorneys. Through education and collaboration the organization's goals are to create a common interest in the representation by firms of companies, and to promote and further the highest standards of litigation management in pursuit of client defense. Selected attorneys and law firms are extended membership by invitation only based on nominations from CLM Fellows.

RIMKUS Sixth Annual CE Seminar Orlando

Paul Jones

Paul Jones, Orlando Partner will speak on the professional rules of conduct at the Orlando RIMKUS Sixth Annual CE Seminar on March 10, 2011. Paul will discuss the ethical responsibilities of claims professionals in evaluating, handling and negotiating claims. The event is complimentary for insurance adjusters and includes 5 courses for up to 6 hours of credit units. The deadline for registration is March 2, 2011. For further information, please visit www.rimkus.com.

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Please update your records with our information.

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