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Emily A. Spieler, Commissioner
Workers' Compensation Fund
601 Morris Street
Charleston, West Virginia 25301

Dear Commissioner Spieler:

You have requested an official opinion of this office on behalf of the West Virginia Workers' Compensation Fund regarding out-of-state health care providers. Specifically, you have asked:

1) Does the Fund's fee schedule apply to invoices from out-of-state health care providers when the services rendered are performed outside of West Virginia so that the Fund may only pay the provider the amount permitted by the fee schedule?

2) If the response to number 1 is in the affirmative, does West Virginia Code, §23-4-3, effectively prohibit such an out-of-state provider from seeking payment of the remainder above and beyond the part of the invoice paid for by the Fund directly from the claimant?

3) Is the Fund permitted to use its utilization review system to determine whether the health care service rendered to a claimant is reasonably required for the treatment of the compensable injury if the service is performed by an out-of-state provider and the service is not performed in West Virginia and, if it is found that the service was not reasonably required, may the Fund:

- a) refuse payment upon such an invoice, and
- b) if the Fund may refuse payment, is the out-of-state provider prohibited from seeking payment from the claimant?

Our answers to these questions are in the affirmative.

In West Virginia, whenever an employee is injured in the regular course of or as a result of his/her employment, most tort remedies have been supplanted by the functions of an exclusive State insurance fund, the West Virginia Workers' Compensation Fund. This system of compensation for work-related injuries was established in 1913 and beneficially provides determinate liability and assures a prompt remedy.

Unlike the overwhelming majority of State jurisdictions in which workers' compensation insurance coverage is provided by private insurance carriers, the State of West Virginia, along with Nevada, North Dakota, Ohio, Washington, and Wyoming, replaces lost wages and pays for the medical treatment of their injured employees. Private insurance coverage is unlawful. W. Va. Code §§ 23-1-1, et seq. The Commissioner of the Fund is statutorily mandated to "disburse the workers' compensation fund to the employees . . . which . . . have received personal injuries in the course of and resulting from their covered employment." W. Va. Code § 23-4-1 (1989 Supp.). However, while the Commissioner is required to disburse the Fund, a limitation on payments for medicine, medical, surgical, dental, and hospital treatment is statutorily imposed. This limitation permits payments of only certain maximum reasonable amounts. W. Va. Code § 23-4-3.

West Virginia Code § 23-4-3(b) prohibits medical providers from billing the injured employee or any other person, firm, or corporation for any balance appearing to remain payable after the Fund has reasonably compensated the provider for its service. The controlling statutes make no arbitrarily discriminatory distinction between in-state providers of medical services and their out-of-state counterparts. Obviously, it would be irrational for West Virginia law to require payment to West Virginia medical providers at a rate lower than that paid to out-of-state vendors. Likewise, it would not make sense to actuarially determine that a given West Virginia employer's premium rate must be higher because some of his employees sought medical services from unreasonably high cost providers physically located outside the State.

West Virginia Code § 24-4-3(b) (1989 Supp.) is clearly extraterritorial in its application:

Provided, that no payment hereunder shall be made unless such verified statement shows no charge for or

with respect to such treatment or for or with respect to any of the items specified above has been or will be made against the injured employee or any other person, firm or corporation, and when an employee covered under the provisions of this chapter is injured in the course of and as a result of his employment and is accepted for medical, surgical, dental or hospital treatment, the person, firm or corporation rendering such treatment is hereby prohibited from making any charge or charges therefor or with respect thereto against the injured employee or any other person, firm or corporation which would result in a total charge for the treatment rendered in excess of the maximum amount set forth therefor in the commissioner's schedule established as aforesaid.

This provision is clear and unambiguous. Acceptance of the patient for treatment results in a statutory prohibition of balance billing by the provider, whether located physically in-state or out-of-state. The pre-admission or pre-treatment inquiry by a medical services provider necessary to obtain a prospective patient's history clearly puts an out-of-state provider upon notice that the patient was injured on the job and that the West Virginia Workers' Compensation Fund will be the party paying for any services rendered. For these reasons, it is our opinion that it would be unlawful for an out-of-state medical provider to balance bill a West Virginia resident who has suffered a work-related injury.

Anticipating that out-of-state providers may be inclined to disregard West Virginia law because they feel that this is purely a matter controlled by the commercial contract law of the provider's state, we believe that we must also examine the potential conflict of law issue. A judgment in debt in a provider's state cannot be successfully executed for collection purposes by a provider in the State of West Virginia, where it would represent an attempt to unlawfully collect monies not due or owing. The Constitution of the United States, Article IV, Section 1 states:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Undoubtedly, the provider's State would contend that the judgment in debt resulting from an application of contract law would be entitled to full faith and credit in West Virginia as a sister state's judicial proceeding. We are of the opinion that West Virginia's public acts (specifically its workers' compensation statutes) are entitled to recognition in the home state forums of out-of-state providers.

A statute is a public act within the meaning of the full faith and credit clause of the Constitution of the United States. Carroll v. Lanza, 349 U.S. 409 (1954). A court cannot disregard 28 U.S.C. § 1738, wherein Congress for the first time provided that statutes of a sister state must be given full faith and credit. Id. at 422 (Frankfurter, J., dissenting).

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

28 U.S.C.S. § 1738 (1989).

It has long been held that when state laws conflict by reason of extraterritoriality, there is no denial of due process or equal protection unless the exercise of the questioned state powers is arbitrary or otherwise unreasonable. Alaska Packers Association v. Industrial Accident Commission, 294 U.S. 532 (1934). Prima facie every state is entitled to enforce in its own courts its own statutes. Id. at 547. Further, every state statute carries with it a presumption of constitutionality. Id. at 543. But one may rightfully ask whether these arguments do not apply equally in support of the contract debt statutes of the out-of-state provider as well as the West Virginia Workers' Compensation statutes?

A rigid and literal enforcement of the Full Faith and Credit Clause, without regard to the statute of the forum, would lead to the absurd result that, whenever the conflict arises, the statute of each state must be enforced in the courts of the other, but cannot be enforced in its own courts. Id. at 547.

It is at this point that a conflict of law issue is fully joined by your request for an opinion. Both states undoubtedly would claim that the statute or judgment of the other state is obnoxious to their corresponding statutes and judgments.

Conflict of law cases have been categorized generally into three well-recognized types by the Supreme Court of the United States. They are: (1) commercial cases which include contract issues; (2) insurance carrier cases; and (3) workers' compensation cases. See generally Carroll v. Lanza, 349 U.S. at 414-419 (Frankfurter, J., dissenting) (collected cases). Contracts for the rendition of services will ordinarily be governed by the local law of the state where the services are rendered under modern choice-of-law principles. Restatement (Second) of Conflict of Laws §§ 6, 196. However, if the contract is entered into by an individual exercising his rights under a workers' compensation statute, the rule changes. These matters constitute an exception to the general rule:

A peculiarity of the area is that usually relief under a particular statute may be obtained only in the state of its enactment. This is because the statutes normally provide for their enforcement by special administrative tribunals and such tribunals do not consider themselves competent to give relief under any statute but their own. Hence the principal problem in the area is not one of choice of law but rather what range of application to persons and things without the state will be given by a state to its own workmen's compensation statute.

Id. at Introductory note, § 181. (Emphasis supplied.)

While cases purely of the first type are generally resolved in favor of the law of the forum state, conflicts involving insurance carrier cases and workers' compensation statutes are usually resolved by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight. Carroll v. Lanza, 349 U.S. at 419. It is under such scrutiny that one finds the extraterritorial strength of the West Virginia statute. Relevant considerations include: (1) the place of the employment contract; (2) the residence of the parties; (3) the place of injury; (4) the possibility of the workman becoming a public charge in the state seeking to award compensation; (5) the policy of prompt payment of medical fees; (6) the policy of determinate liability and prompt remedy underlying all workers' compensation statutes; and (7) the state's interest in the bodily safety and economic protection of its workers. Id.

Historically, most conflicts of law occur when two sister states dispute whose workers' compensation statutes apply in a given case. It is our opinion that the same considerations are

relevant when resolving a conflict involving a workers' compensation statute of one state and a judgment or contract debt statute of another. We base this opinion on the language used by Justice William O. Douglas writing for the majority Court in Carroll v. Lanza, a workers' compensation case, when he said, "For we write not only for this case and this day alone, but for this type of case. The state where the tort occurs certainly has a concern in the problems following in the wake of the injury. The problems of medical care and the possible dependents are among these." 349 U.S. at 413.

An analysis of the relevant considerations, and a balancing of the competing interests of West Virginia and any state in which an out-of-state medical service provider is physically located, would certainly turn the scale of decision in favor of the West Virginia statute. In most instances, the out-of-state medical service provider's state interest would be in securing for the provider only that incremental balance deemed to be unreasonable by the West Virginia fee schedule. This position would undoubtedly be asserted based upon a legal theory that since the contract was entered into in the other state and the services were performed there, that State's statutes or judgments should be controlling. This position would ignore the advance knowledge of the nature of the injury and method of payment that is acquired by the out-of-state provider at the initial visit. It would also ignore that the amount of the bill objectively determined to be reasonable had been paid.

On the other hand, the patient would, in most instances, be a West Virginia resident, employed in West Virginia by a West Virginia employer. The injury would most likely have occurred in West Virginia. The contract of employment would probably have been entered into in this State. The West Virginia statute reflects its interest in (1) securing for its residents a system of determinate liability, (2) prompt payment for necessary medical expenses billed in reasonable amounts, (3) control of costs associated with employment injuries, (4) the bodily safety and economic protection of the workers within it, Carroll v. Lanza, 349 U.S. at 419, and (5) the fact that only one state's workers' compensation law must prevail in each case if this national system of employment-related tort replacement law is to succeed.

Other relevant considerations are: (1) the West Virginia statute has a rational basis, Alaska Packers Association v. Industrial Accident Commission; (2) by enacting the workers' compensation statute, West Virginia exercised a traditional power of sovereignty, Carroll v. Lanza; and (3) a state enacting a

workmen's compensation statute may consistently with due process prohibit any contract in evasion of it. Alaska Packers Association v. Industrial Accident Commission.

In conclusion, other states should recognize the validity of the West Virginia Workers' Compensation statutes either as a matter of comity or full faith and credit. This is especially true since some of our sister states seek to impose such extraterritorial charges for medical services by out-of-state providers, whether or not they have an explicit statute such as West Virginia's. We believe that an analysis of relevant considerations, as well as a balancing of the compelling interests behind the West Virginia statute against the interests of the medical service provider's state, would result in a judicial finding that the comparative casual interests of the medical provider's state are obnoxious to the substantive interests of the State of West Virginia, which are, therefore, controlling.

It is our opinion that W. Va. Code § 23-4-3 effectively prohibits medical service providers which are physically located outside the State of West Virginia from seeking from the claimant, the employer, or any other person or business, payment of any balance remaining after payment by the Workers' Compensation Fund of the determined reasonable fee for such services.

In answer to your third question, if it is determined that an out-of-state provider of medical services has presented for payment an invoice for a service not reasonably required, the Fund should refuse payment. West Virginia Code § 24-4-3 (1989 Supp.) requires that the Fund's Commissioner pay only such sums for "medicines, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices as may be reasonably required." (Emphasis added.) This provision of the statute precludes any payment by the Fund, the claimant, the employer, or any other person or business for unreasonable medical services.

Sincerely,

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C. TERRY OWEN
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