STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MUNROE REGIONAL MEDICAL CENTER,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 08-0103
	)	
AGENCY FOR HEALTH CARE ADMINISTRATION,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

This case is before Administrative Law Judge T. Kent Wetherell, II, for resolution based upon the stipulated record filed by the parties on March 20, 2008. No hearing is necessary.

APPEARANCES

For Petitioner: Nicole K. Oeinck
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For Respondent: Mari H. McCully, Esquire
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STATEMENT OF THE ISSUE

The issue is whether the Petition for Resolution of Reimbursement Dispute was timely filed.

PRELIMINARY STATEMENT

On September 10, 2007, Petitioner filed a Petition for Resolution of Reimbursement Dispute with the Agency for Health Care Administration (Agency). On November 27, 2007, the Agency dismissed the petition as untimely.

On or about December 24, 2007, the Agency received a letter from Petitioner contesting the dismissal of the petition. The Agency treated the letter as a request for a formal hearing, and on January 4, 2008, the Agency referred the matter to the Division of Administrative Hearings (DOAH) to "conduct all necessary proceedings required under the law, and to submit a Recommended Order to [the] Agency."

The Agency's referral letter indicates that copies of the letter were sent to FairPay Solutions, Inc. (FairPay), and Lion Insurance Company. Neither of those companies sought to intervene in this proceeding.

This case was initially assigned to Administrative Law Judge Bram D.E. Canter and set for final hearing on April 15, 2008. The case was transferred to the undersigned on February 6, 2008.

On March 20, 2008, the parties filed a Joint Pre-hearing Statement [and] Joint Motion for Determination Without Hearing or Via Telephone (Joint Motion). The Joint Motion "request[s] determination of the issues raised by the Petitioner based on

the pleadings, these stipulations and the exhibits submitted herewith."

The final hearing was cancelled on March 21, 2008, based upon the Joint Motion. The Order Canceling Hearing stated that "[t]his case will be decided based upon a stipulated record consisting of the exhibits attached to the Joint Motion and the stipulations included in that filing." The exhibits attached to the Joint Motion were marked as Joint Exhibits A through G.

The Order Canceling Hearing directed the parties to file "copies of the governing statutes and rules, as well as a copy of the repealed reconsideration rule referenced in the Joint Motion." On March 28, 2008, the parties filed copies of Sections 440.015 and 440.13, Florida Statutes[1/]; Florida Administrative Code Rule 69L-7.602; the current and prior versions of Florida Administrative Code Rule Chapter 59A-31; and the current and prior version of Florida Administrative Code Rule 69L-7.501, along with the current and prior version of the hospital reimbursement manual incorporated by reference in that rule. Official recognition is taken of these statutes, rules, and manuals.

The Order Canceling Hearing gave the parties until April 4, 2008, to file proposed recommended orders (PROs). Neither party filed a PRO. On March 28, 2008, the parties filed a Joint Response to Order Canceling Hearing, which included argument in

support of their respective positions. Due consideration has been given to that filing.

FINDINGS OF FACT

1. Petitioner, a hospital, provided medical services to an injured employee/claimant in March 2006.

2. In January 2007, Petitioner provided an itemized bill totaling $3,401.12 to the workers' compensation insurance carrier responsible for providing benefits to the injured employee/claimant. The bill was submitted through the carrier's claims handling entity, Packard Claims Administration (Packard).

3. On or about February 13, 2007, Packard issued payment to Petitioner in the amount of $1,889.14. The payment was accompanied by a document showing how much of each charge was being paid. The parties refer to this document as the first Explanation of Bill Review (EOBR).

4. The first EOBR uses Agency-approved "reason codes"--e.g., 08 ("Reimbursement is based on the applicable reimbursement fee schedule"); 13 ("Reimbursement is included in the allowance of another service"); and 20 ("Other: Unique EOBR code description")--in conjunction with other codes--e.g., S01 ("This charge has been reviewed to a standard of reasonableness based on current industry benchmarks of charges and typical reimbursement for comparable services in your

geographical area"--to explain the disallowances and reductions in the hospital's charges.

5. Petitioner retained the services of The M.A.R.C. of the Professionals, Inc. (M.A.R.C.), for the purposes of securing additional payment from the carrier.

6. On March 16, 2007, M.A.R.C. sent a "Pre-Suit Demand Letter" to FairPay, whose address and phone number was listed on the first EOBR.[2/] The letter contested the disallowances and reductions in the hospital's charges "due to Usual and Customary allowances," and demanded payment "on the total hospital charges."

7. On May 22, 2007, M.A.R.C. sent a "formal appeal" letter to Packard, which stated in pertinent part:

> The hospital received a payment but the charges were reduced as usual and customary. Per the Florida Statute all compensable services for outpatient care shall be reimbursed at 75 percent of the hospital charges for medically necessary care.
>
> We are asking that you review this claim and reprocess for the correct amount of payment.

8. On or about June 4, 2007, a second EOBR was sent to Petitioner. No additional payment accompanied the second EOBR.

9. The second EOBR refers to the $1,889.14 that was "paid on prior bill," and denies additional payment based upon Agency-approved "reason code" 18 ("Duplicate Billing: Service previously paid, adjusted and paid, disallowed, or denied on

prior claim form or multiple billing of service(s) billed on same date of service.").

10. Thereafter, M.A.R.C. sent two additional "formal appeal" letters to Packard. The first letter, dated July 13, 2007, took issue with the payment being based upon "usual and customary charges" rather than 75 percent of the hospital's charges, as well as the disallowance of certain charges. The second letter, dated August 3, 2007, stated that "a formal complaint may be filed" if the correct payment is not received within ten days.

11. On or about August 10, 2007, a third EOBR was sent to Petitioner. No additional payment accompanied the third EOBR.

12. The third EOBR, like the second EOBR, refers to the $1,889.14 that was "paid on prior bill," and cites "reason code" 18 as the basis for denying additional payment. The third EOBR also cites code 901 ("Reviewer has previously reconsidered these items timely and properly. Additional inquiries are untimely to sustain any dispute over the payment recommendation.").

13. The third EOBR was received by Petitioner on August 17, 2007.

14. On September 6, 2007, Petitioner mailed a Petition for Resolution of Reimbursement Dispute to the Agency. The petition contends that "the bill was not paid at 75%," that "some charges

were disallowed as included in other services," and that "$668.45 [is] still due" on the bill.

15. The petition was received by the Agency on September 10, 2007, which is more than 30 days after Petitioner received the first and second EOBRs, but within 30 days after Petitioner received the third EOBR.

16. The Agency dismissed the petition as untimely in a letter dated November 27, 2007. The letter was addressed to Petitioner, M.A.R.C., the workers' compensation insurance carrier responsible for paying the claim, and FairPay.

CONCLUSIONS OF LAW

17. DOAH has jurisdiction over the parties to and subject matter of this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

18. Workers' compensation insurance carriers are required to disallow or adjust payment to health care providers if the carrier, or its designee, "finds that overutilization of medical services or a billing error has occurred, or there is a violation of the practice parameters and protocols of treatment established in accordance with this chapter." See § 440.13(6), Fla. Stat.

19. The carrier is required to provide notice of its disallowance or adjustment of payment to the provider through an EOBR. See Fla. Admin. Code R. 69L-7.602(1)(v), (5)(q).

20. The EOBR is required to explain the disallowance or adjustment of payment by using the "reason codes" listed in Florida Administrative Code Rule 69L-7.602(5)(o). Id.

21. The EOBR must provide additional explanation when reason code 20 is used. See Fla. Admin. Code R. 69L-7.602(5)(o)2.t. ("Use of EOBR code '20' is restricted to circumstances when an above-listed EOBR code does not explain the reason for payment, adjustment and payment, disallowance or denial of payment. When using EOBR code '20,' an insurer must reflect code '20' and include the specific explanation of the code on the EOBR sent to the health care provider. . . .").

22. The health care provider has 30 days from the receipt of the EOBR to petition the Agency to resolve any dispute concerning the disallowance or adjustment of payment by the carrier. See § 440.13(7)(a), Fla. Stat. ("Any health care provider, carrier, or employer who elects to contest the disallowance or adjustment of payment by a carrier under subsection (6) must, within 30 days after receipt of notice of disallowance or adjustment of payment, petition the agency to resolve the dispute."); Fla. Admin. Code R. 59A-31.008(1) ("[T]he thirty (30) day time period within which a petition must be served upon the Agency begins upon receipt of the [EOBR] by the health care provider . . . .").

23. If the petition is not timely filed with the Agency, it must be dismissed. See, e.g., Specialty Risk Services v. Agency for Health Care Admin., Case No. 01-4148, at ¶ 98(DOAH Jan. 9, 2003; AHCA Apr. 29, 2003) (dismissing untimely petition for reimbursement dispute).

24. The primary dispute in this case is when the 30-day period commenced. If the period commenced upon Petitioner's receipt of the first EOBR (or the second EOBR), then the petition is untimely. If, however, the period commenced upon Petitioner's receipt of the third EOBR, then the petition is timely.

25. Section 440.13(7)(a), Florida Statutes, is clear and unambiguous, and must be strictly construed in accordance with its plain meaning. See Fairpay Solutions v. Agency for Health Care Admin., 969 So. 2d 455, 458 (Fla. 1st DCA 2007) (strictly construing Section 440.13(7)(b), Florida Statutes.)

26. There is nothing in Section 440.13(7), Florida Statutes, that allows for the 30-day period for filing a petition with the Agency to be tolled for any reason.

27. The Agency previously had a rule requiring the provider to give the carrier an opportunity to "reconsider" its disallowance or adjustment before the provider could file a petition with the Agency, but that rule was repealed prior to the events giving rise to this case. See Fla. Admin. Code R.

59A-31.001(5) (repealed Apr. 2, 2006). And cf. Mednet Connect, Inc. v. Agency for Health Care Admin., Case No. 04-2978, 2006 Fla. Div. Adm. Hear. LEXIS 383, at ¶¶ 109-129 (DOAH Aug. 9, 2006) (concluding that the "reconsideration process" contemplated by the Agency's prior rules had been legally ineffective since 1994 because the rule conflicted with the timeframes in Section 440.13(7), Florida Statutes, including the 30-day period for filing a petition), recommendation rejected on other grounds, Order No. AHCA-07-0002-FOF-OLC (AHCA Jan. 1, 2007), appeal pending, Case No. 1D07-0378.

28. The Agency's current rules provide for a period of negotiations between the provider and the carrier after the petition and the carrier's response to the petition are filed with the Agency. See Fla. Admin. Code R. 59A-31.012. Moreover, the Agency's current rules make clear that:

> Neither the request for, nor the conducting of, an on-site audit, nor the referral of the health care provider for peer review consultation, nor independent medical examination shall toll the time period for petitioning the Agency for the resolution of a reimbursement dispute as set forth in section 440.13(7)(a), F.S. or the time period for the carrier to submit requested documentation under section 440.13(7)(b), F.S.

Fla. Admin. Code R. 59A-31.008(4).

29. It is not necessary to consider whether this rule conflicts with Section 12 of the 2004 reimbursement manual,

which was incorporated by reference in the prior version of Florida Administrative Code Rule 69L-7.501(1) and was in effect at the time the medical services at issue in this case were provided by Petitioner. Even if, as Petitioner argues, that provision of the manual allows a petition to be filed with the Agency after completion of an on-site audit,[3/] there is no evidence that such an audit was conducted in this case.

30. The period within which Petitioner was required to file a petition contesting the disallowances and adjustments in the first EOBR was not tolled by Petitioner's use of "other means to secure additional payment from the carrier," nor was the period "revived" by the second or third EOBRs, which simply reaffirmed the disallowances and adjustments in the first EOBR. Likewise, the second and third EOBRs did not give Petitioner new opportunities to petition the Agency for resolution of the reimbursement dispute that was clearly framed by the first EOBR.

31. This is not a case where the EOBR was unclear or otherwise insufficient to give the provider the required "notice of disallowance or adjustment of payment" and commence the 30-day period in Section 440.13(7)(a), Florida Statutes. Compare Wyatt Bros. Construction v. Dept. of Labor & Employment Security, Case 00-2572, 2000 Fla. Div. Adm. Hear. LEXIS 5421, at ¶¶ 39-43 (DOAH Dec. 13, 2000) (Partial Recommended Order). To the contrary, the first EOBR used the Agency-approved reason

codes to explain the disallowances and adjustments to payments and provided additional, more specific explanations where required; and, as reflected in M.A.R.C.'s March 2007 letter to FairPay on Petitioner's behalf, there was no confusion regarding the carrier's rationale for the disallowances and adjustments in the first EOBR.

32. In sum, the 30-day period in Section 440.13(7)(a), Florida Statutes, commenced upon Petitioner's receipt of the first EOBR, and the Agency properly dismissed the petition as untimely because it was filed more than 30 days after Petitioner received the first EOBR.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Agency issue a final order dismissing the Petition for Resolution of Reimbursement Dispute as untimely.

DONE AND ENTERED this 10th day of April, 2008, in Tallahassee, Leon County, Florida.

T. KENT WETHERELL, II
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of April, 2008.

ENDNOTES

[1/] All statutory references in this Recommended Order are to the 2007 version of the Florida Statutes.

[2/] According to the parties' stipulations, FairPay is a medical bill review company often retained by workers' compensation insurance carriers or their claims handling entities to review medical bills.

[3/] The 2004 reimbursement manual defines "on-site audit" as "an audit conducted at the hospital which compares the charges listed on an itemized statement accompanying the DWC-90 (UB-92) with the charges listed on the hospital's charge master. It includes verifying that services were medically necessary, related to the compensable admission, ordered and provided to the patient based on the documentation in the patient's medical record."

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.