

## **N.D.A.G. Letter to Tracy (Aug. 11, 1992)**

August 11, 1992

Ms. Helen Tracy  
Executive Director  
Workers Compensation Bureau  
Russell Bldg., Hwy 83 N.  
4007 N. State St.  
Bismarck, ND 58501

Dear Ms. Tracy:

Thank you for your July 14, 1992, letter requesting my opinion on whether N.D.C.C. ch. 15-52 requires the North Dakota Workers Compensation Bureau ("Bureau") to pay medical charges submitted by the University of North Dakota Medical Center Rehabilitation Hospital ("MCRH") which exceed the medical fee schedule adopted by the Bureau pursuant to N.D.C.C. § 65-02-08 and N.D. Admin. Code § 92-01-02-27.

N.D.C.C. § 65-02-08 provides in pertinent part:

The bureau shall adopt such rules, not inconsistent with this title, as may be necessary to carry out this title. All fees on claims for legal, medical, and hospital services rendered under this title to any claimant must be in accordance with schedules of fees adopted or to be adopted by the bureau.

The above language provides that all fees paid by the Bureau for medical and hospital services rendered to any claimant must be in accordance with the fee schedules adopted by the Bureau. The above language provides no room for exception.

N.D.C.C. § 15-52-07 provides in pertinent part:

All agencies of the state . . . in any way concerned with health, medical care, or public welfare, shall make the fullest possible use of the facilities and services of the North Dakota state medical center and shall pay therefor the established fees and charges . . . .

The plain language of section 15-52-07 requires all state agencies that use MCRH's services and facilities to pay the established fees and charges. The question is whether the Bureau, a state agency, must pay MCRH's established fees and charges when a claimant, at the direction of his physician, receives medical care at MCRH.

The North Dakota Supreme Court has explained that where contradictions arise between statutes, the statutes should be construed so as to make them harmonious, if possible. See Elliot v. Drayton Public School District No. 19, 406 N.W.2d 655, 658 (N.D. 1987);

United Development Corp. v. State Highway Dep't, 133 N.W.2d 439, 442 (N.D. 1965).  
N.D.C.C. § 1-02-07 further provides:

Whenever a general provision in a statute is in conflict with a special provision in the same or in another statute, the two must be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision must prevail and must be construed as an exception to the general provision, unless the general is enacted later and it is the manifest legislative intent that such general provision shall prevail.

Based upon the above rules of statutory construction, it is my opinion that the Bureau may not pay medical charges submitted by MCRH which exceed the medical fee schedule adopted pursuant to N.D.C.C. § 65-02-08.

N.D.C.C. § 15-52-07 is a general provision applying to all state agencies and political subdivisions of the state, whereas N.D.C.C. § 65-02-08 is a specific provision authorizing the Bureau to establish fees for all medical and hospital services rendered to any claimant. Although N.D.C.C. § 15-52-07 was enacted after the relevant language of N.D.C.C. § 65-02-08, there is nothing to indicate that the legislature intended N.D.C.C. § 15-52-07 to prevail. See 1943 N.D. Sess. Laws ch. 274, § 10 ; 1945 N.D. Sess. Laws ch. 172, § 7. See also 1987 N.D. Sess. Laws ch. 234 § 4. Consequently, N.D.C.C. § 65-02-08 must be construed to be an exception to N.D.C.C. § 15-52-07.

In conclusion, it is my opinion that fees paid by the Bureau to MCRH for medical and hospital services rendered to any claimant under Title 65 must be in accordance with a fee schedule adopted by the Bureau.

I trust this responds to your question.

Sincerely,

Nicholas J. Spaeth

dab/cb