

OPINION
59-296

June 30, 1959 (OPINION)

WORKMEN'S COMPENSATION

RE: Bureau - Fee Schedule for Hospital and Medical Services

This is in reply to your request for an opinion or a copy of an opinion if one had been issued on section 65-0208 of the N.D.R.C. of 1943 relating to fees on hospital and medical services.

From your letter it appears the bureau has adopted and is following a fee schedule for hospital and medical services which is below the normal standard. The hospital then in turn bills the injured person for the difference. You further state that the bureau has been advising that the hospital cannot legally charge the injured person the difference between the amount allowed or paid by the bureau and the charge by the hospital.

Section 65-0208 and the material portion is as follows:

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

In connection with this section it is observed that there is within the Workmen's Compensation Act another provision which is section 65-0507 and provides in part as follows:

"Immediately after an injury sustained by an employee and during the resulting period of disability, the fund shall furnish to the employee such medical, surgical, and hospital service and supplies as the nature of the injury may require. . . ."

These two sections were both amended and reenacted by the same Legislature. The apparent difficulty arises from the two statutes cited above relating to the same subject matter. The first one authorizes the bureau to adopt a fee schedule and the second one provides that the bureau is to pay all hospital and medical expenses connected with the injury sustained in the course of employment.

The general principle of law is that where two statutes of equal stature refer to the same subject matter in a different manner every effort should be made to reconcile the two statutes. In harmonizing and reconciling the two statutes we cannot lose sight of the purpose for which the Workmen's Compensation Act was created, namely for the benefit of the injured employee.

The fees adopted under section 65-0208 have a relative standing as a rule or regulation. It is a fundamental rule of law that no rule or

regulation can supersede nor supplant a statute.

Any rule adopting fees which fees would virtually leave the employee not fully compensated under section 65j0507 is vulnerable and cannot prevail. The schedule of fees must be a harmony with section 65-0507. The Legislature apparently was cognizant that the bureau revises its premium rates once a year and intended that the rules adopting fees for hospital and medical services be amended correspondingly to keep them within the economic conditions existing at the time. The fee schedule is, in effect, only between the injured person, the claimant, and the bureau. Such fee schedule is not binding on the hospital or doctor rendering services to the injured person.

The North Dakota Supreme Court. in the case of Henderson v. Scott, et al, 10 N.W. 2d. 490, said:

A physician is not legally bound to furnish services for either compensation claimant or workmen's compensation bureau and hence may contract with claimant without reference to bureau, in which case claimant, in absence of express agreement as to fees, is liable to pay physician reasonable value of services irrespective of what amount bureau may allow for medical services."

The same statement of law applies to hospitals.

It is, therefore, our opinion that the fee schedule adopted by the bureau under section 65-0208 must be such to give full recognition and effect to section 65-0507.

With respect to an outstanding opinion, we wish to advise that this office has no record of an opinion having been rendered on this subject. It has been learned that the opinion referred to is a letter by Bernard C. Lyons, who was then attorney for the bureau, to the commissioners. The letter is not a formal opinion of this office.

From the foregoing, it is also observed that the fee schedule adopted by the bureau applies only to the claimant and the bureau but does not affect hospitals and doctors rendering medical services to the injured person. To make such a fee schedule binding on the hospital and doctors, it would be necessary to enter into a contract with such services to make the fee schedule binding.

Under section 65-0507 it is contemplated that the bureau pay all of the medical and hospital expenses connected with an injury in course of employment. Such payment should be on the basis of the reasonable charge made for services, so that the claimant is not required to pay out of his pocket for such services.

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