

In the Medical of  
**Carolyn Mott, Claimant**  
Contested Case No: 06-132H  
**CORRECTED PROPOSED & FINAL ORDER**  
December 13, 2006  
SAIF CORPORATION, Petitioner  
CAROLYN MOTT, Respondent  
Before John Mark Mills, Administrative Law Judge

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Hearing convened and closed before Administrative Law Judge Mills in Portland, Oregon, on November 14, 2006. No appearance was made by claimant, Carolyn Mott. SAIF Corporation was represented by their attorney, Jill Gragg. Kathy Loretz was their representative. WCD was represented by Assistant Attorney General Carol Parks. Debbie Buchanan was their representative. Dr. Schwartz appeared as a witness on behalf of Doctor's Family Clinic, the medical provider. Exhibits 1 through 17 and A and B were received into evidence.

### ISSUES

SAIF contests the July 19, 2006 Administrative Order issued in this matter which ordered SAIF to reimburse the clinic for medical supplies. The Order is reviewable pursuant to ORS 656.248(12) and is de novo pursuant to OAR 436-001-0225(1).

### FINDINGS OF FACT

Claimant sustained a compensable injury, a right index fingertip laceration, on February 26, 2006. SAIF Corporation accepted the claim for that condition.

Claimant sought medical treatment on that date of injury from the Clinic. Dr. Bohling repaired the laceration and billed SAIF for the procedure, using CPT codes 99202, 12001 and HCCPS code A4550. CPT is a coding system developed by the American Medical Association (AMA). HCCPS is another coding system, Health Care Common Procedure Coding Systems.

In response to this billing, SAIF paid for the two clinical procedures, but did not pay for the medical service billing which was for a surgical tray. The clinic billed for the surgical tray separately because, during the procedure, the treating physician determined that it was necessary to use a cauterizing device which is part of the tray. The device and therefore the tray is not always used to repair a laceration and, therefore, this was a medical supply used over and above that normally used during the laceration repair covered by the CPT codes for that procedure.

The clinic contested SAIF's refusal to pay for the tray and requested administrative review. During the review process, SAIF explained its refusal to pay for the tray was based on its interpretation of the CMS (Centers for Medicare and Medicaid Services) (ex. A). The CMS is a resource developed by Medicare to govern billing for Medicare and Medicaid services. Pursuant to ORS 656.248(3), the director adopted portions of the CMS in addition to the CPT for purposes of developing a coding fee schedule for Workers' Compensation medical service

providers. Specifically, the director adopted Addendum B, the Relative Value Units (RVU) and Addendum C, codes with interim RVU. The director **excepted** the status indicators from Addendum B in its adoption. These status indicators provide additional information and explanation for determining billing pursuant to the RVU's.

The director did not adopt the status indicators for a couple of reasons. First, the policy of CMS is to reduce medical costs. In contrast, the director's objective is to ensure that fees are adequate to ensure that insured workers receive quality medical care. Specifically the status indicators provide for bundled codes where a billing for a medical service is made under one CPT code and includes incidental services and expenses associated with that billed code. That is specifically the case, for example, for surgical trays which, under the CMS prior to 2002 were billable separately, but were then changed to be billed as part of the service in a bundled code. The director specifically determined that this portion of the CMS would not be adopted and that instead the CPT would be relied on which provides that supplies and materials over and above those usually included with a procedure are billed separately as either CPT code 99070 or a specific supply code. The HCPCS code billed in this matter is such a specific supply code (ex. 15-2).

### CONCLUSIONS AND OPINION

SAIF corporation has the burden of proving that the clinic should not be reimbursed for the cost of the surgical tray. More specifically, SAIF has the burden of establishing that in directing the insurer to pay for the tray, the director erred in the manner in which the director interpreted and applied the administrative rules and medical service billing procedures and codes that apply in this case.

Under ORS 656.248(1), in establishing a medical service fee schedule, the director "where applicable, and to the extent the director determines practicable," shall base the fee schedules on a number of factors and resources including the current procedural codes and RVU's for Medicare and other commonly used and accepted medical service fee schedules. Under ORS 656.248(6), fee schedules "shall be adequate to ensure at all times to the injured workers the standard of services and care intended by this Chapter" notwithstanding subsection (1) of the statute.

The insurer's primary argument is that the director erred in adopting the RVU portion of the CMS, but in not adopting the status indicators and other explanations for how to apply the provisions of that fee schedule. The insurer's position is that the analysis provided by Medicare must be considered along with the RVU and that when that is done, it is clear that the tray billed separately in this case should not have been paid for because it is considered part of a bundled service for the procedure which was performed.

SAIF's argument is not persuasive. The director was not compelled to adopt any or all of the CMS. The statute does not require adoption of the CMS or if it is adopted that it be adopted in total. The director acted within the director's discretion in adopting only a portion of the CMS.

Moreover, the director's action in adopting only a portion of the CMS is consistent with the overriding goal of the statute, to provide for medical services for injured workers. The record reflects that in contrast to this goal, the goal of Medicare and Medicaid in adopting the CMS is to reduce costs to the system. In addition, the population served by Medicare and Medicaid is significantly different than that served by ORS Chapter 656. The director reasonably and properly adopted only certain portions of the CMS and then additionally adopted the CPT coding provision which was permissible under ORS 656.248(1)(d). And, under the CPT, a billing for a surgical tray is to be reported separately when it is a supply used over and above those usually included within the procedure. The medical evidence at hearing establishes that the tray used in this case was in fact over and above what is generally used in the procedure.

The insurer also argues that it should not have been directed to pay for the tray because it was billed out under a specific supply code rather than a CPT code. However, as the director notes, the CPT provision dealing with medical supplies which is at issue in this case, provides for billing under either the CPT code, 99070, or a specific supply code. The billing here was under HCPCS code A4550 which is such a specific supply code. The billing in that matter was also permissible under OAR 436-009-0010(4)(a), which provides for HCPCS code billing in connection with CPT code billing.

In sum, I approve the Administrative Order.

This Order corrects the Proposed and Final Order dated November 30, 2006, which is hereby withdrawn.

IT IS SO ORDERED.