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Gallagher Sharp Shop Talk: Workers' Compensation

Question: What is the significance of an ICD code? What if a wrong ICD code is used in a medical report as a basis for retroactive approval for surgery?

“ICD” refers to the *International Classification of Diseases*, a standard diagnostic tool for epidemiology, health management and clinical purposes. The ICD is designed as a health care classification system, providing a system of diagnostic codes for classifying diseases and conditions. While the BWC uses ICD codes to identify allowed conditions, the Industrial Commission normally does not. Recently, the Ohio Tenth District Court of Appeals was asked to consider whether a request for post-surgical authorization based upon a medical report citing a non-allowed ICD code should have been denied, or whether it should be remanded for further evaluation of the existing medical evidence.

State ex rel Cleveland Clinic Health Sys v. Indus. Comm., 2013-Ohio-3826, centered on a lumbar fusion surgery that occurred on August 3, 2010. The claimant was initially injured in a fall on February 2, 2008, and her claim allowed for “lumbar sprain.” There was no dispute that the claimant had previous back problems and two previous lumbar surgeries, including a lumbar fusion in 2005. There was also no dispute that the result of the 2005 fusion was not good. After the 2008 fall, the claimant experienced recurring symptoms and had an MRI which indicated that a third surgery was needed to remove and reapply hardware, and that surgery was performed on March 24, 2008. The claimant then moved to have her claim additionally allowed for “shifting of fusion hardware at L5-S1,” and this motion was granted and not appealed by the employer. In 2010, the claimant sought another opinion, and an MRI noted “non-union” at L4-5 and L5-S1. Without prior authorization, the claimant underwent a fourth lumbar surgery on August 3, 2010. After the fact, the claimant sought approval for the surgery, but a medical report submitted by Dr. Todd Hochman in support erroneously cited “lumbosacral instability (724.6)” as an allowed condition. The employer contested the motion, arguing that the cited condition was not allowed and that the claimant’s current problems were a result of the failed 2005 surgery, not the 2008 surgery. An SHO approved the surgery over the objection of the employer, prompting an action in *mandamus* before the Tenth District. A magistrate recommended that the order approving the surgery be vacated and the matter remanded for consideration of other evidence, prompting objections by the employer and Industrial Commission.

The Tenth District affirmed the findings of the magistrate, and ordered the matter remanded for further consideration. While agreeing that Dr. Hochman’s flawed report was not “some evidence,” it disagreed with the employer’s position that the request for approval should be denied. The Supreme Court of Ohio has clearly articulated a three-pronged test for the authorization of medical services, including surgery: (1) Is the service reasonably related to the allowed condition?; (2) Is the service reasonably necessary for treatment of the allowed condition?; and (3) Is the cost of the service medically reasonable? *State ex rel Miller v. Indus. Comm.*, 71 Ohio St.3d 229, 252 (1994). While the Commission clearly erred in relying upon the report of Dr. Hochman, the court found that the problem was exacerbated by the fact that the additionally allowed condition (“shifting of fusion hardware at L5-S1”) has no ICD-9 code. In

sum, there was confusion as to just what the “allowed condition” was. The Court concluded that it would be most fair to remand the matter to consider other evidence, including the operative report and office notes.

In *Cleveland Clinic*, the court clearly felt that the employer’s position was too harsh, particularly given its failure to administratively appeal the 2008 request for additional allowance. When requesting (or defending against) an additional allowance, consideration should also be given to what ICD-9 code is being attached to a condition. If you would like to submit a question to Shop Talk, or would like to discuss this or any other workers’ compensation issues, please feel free to contact me.

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