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OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-667 - August 4, 1993

Board of Trustees: Michael H. Holland, Chairman; Thomas F. Connors, Trustee;  
Marty D. Hudson, Trustee; Robert T. Wallace, Trustee.

The Trustees have reviewed the facts and circumstances of this dispute concerning a time limit for claiming benefits under the hold harmless provision of the Employer Benefit Plan.

Background Facts

In June, November and December, 1992, the Employer notified Employees and Retirees by individual letter of new hold harmless procedures, to be followed in cases of a provider billing an Employee for excessive or medically unnecessary charges. These new procedures include eight requirements. (A copy of the November letter is enclosed herein.)

Major points include: (1) that the Employee, in the event of receiving such a billing, first contact the provider "on your own in an attempt to resolve the matter"; (2) that the Employee bring the matter to the company's attention within 90 days of receiving a balance due statement from a provider; (3) "Should you visit a provider who requires payment in full before services are rendered, you will be Held Harmless if the charges are excessive or the services are medically unnecessary. However, once you become aware of the provider's billing practices, you may not be Held Harmless in the future if you continue to use this provider and pay in advance."; and (4) that health claims "initially submitted for payment that are more than 2 years after the date of service may not be paid..."

The Employer states that, in addition to the individual letters, the procedures were also discussed at a meeting with UMWA sub-district representatives on March 12, 1992.

The Employee states that the Employer has unilaterally applied a time limit provision to the Employer Benefit Plan by notifying Employees that unpaid medical bills involving hold harmless matters must be brought to the Plan Administrator's attention within 90 days of receipt of a bill from the provider. Further, the Employee states that the Employer has also threatened to refuse to hold the Employee harmless if this time limit is not met. The Employee requests that the Trustees order the Employer to cease from making unilateral changes to the Employer Benefit Plan and rule in accordance with ROD 81-697 (copy enclosed herein).

### Dispute

Are the Employer's new procedures regarding the handling of hold harmless issues appropriate under the Employer Benefit Plan?

### Positions of the Parties

Position of the Employee: The 90 day time limit for presenting unpaid medical bills to the Plan Administrator's attention is a unilateral change made by the Employer and should be rescinded.

Position of the Employer: The new hold harmless procedures were established to provide Employees and Retirees with efficient and timely service related to balance due billings from providers for charges determined to be above reasonable and customary and/or charges not medically necessary as defined by the Plan. Article III. A. (10)(b) of the Employer Benefit Plan authorizes the Plan Administrator to promulgate rules and regulations to implement and administer the Plan. The Plan Administrator, therefore, is authorized to establish a time limit for hold harmless procedures.

### Pertinent Provisions

Article III. A. (10)(b) and (g) 3. of the Employer Benefit Plan state in pertinent part:

(b) Administration

The Plan Administrator is authorized to promulgate rules and regulations to implement and administer the Plan, and such rules and regulations shall be binding upon all persons dealing with the Beneficiaries claiming benefits under this Plan....

3. The Employer and the UMWA agree that the excessive charges and escalating health costs are a joint problem requiring a mutual effort for solution. In any case in which a provider attempts to collect excessive charges or charges for services not medically necessary, as defined in the Plan, from a Beneficiary, the Plan Administrator or his agent shall, with the written consent of the Beneficiary, attempt to resolve the matter, either by negotiating a resolution or defending any legal action commenced by the provider. Whether the Plan Administrator or his agent negotiates a resolution of a matter or defends a legal action on a Beneficiary's behalf, the Beneficiary shall not be responsible for any legal fees, settlements, judgments or other expenses in connection with the case, but may be liable for any services of the provider which are not provided for under the Plan. The Plan Administrator or his agent shall have sole control over the conduct of the defense, including the determination of whether the claim should be settled or an adverse determination should be appealed.

### Discussion

Article III. A. (10)(b) of the Employer Benefit Plan provides that an Employer is authorized to promulgate rules and regulations necessary to the administration of the Plan. The issue has been addressed previously in RODs 88-076, 88-335 and 88-558 and others (copy of ROD 88-076 enclosed herein). In these, the Trustees upheld the Employer's right to establish hold harmless procedures if such procedures are reasonable and effectively communicated to Employees.

The Trustees find that the Employer's written notification, in June, November and December, 1992, with discussion at a meeting with UMWA sub-district representatives on March 12, 1992, constitutes effective communication.

The remaining issues are:

- 1.) whether the Employer may require an Employee to begin the process of hold harmless negotiation with a provider in the manner outlined;
- 2.) whether a 90-day time limit for bringing the matter to the Employer is appropriate;
- 3.) whether the Employee may be covered under hold harmless if he continues to use a provider who requires payment in full before services are rendered; and
- 4.) whether the Employer can impose a two-year time limit on initial submission of health benefit claims.

On the first issue, Article III. A. (10)(g)(3) provides that the Plan Administrator shall, "with the written consent of the Beneficiary," attempt to negotiate with or defend a beneficiary against providers who seek to collect excessive fees or charges for services not medically necessary as defined by the Plan..." Whether the Employer negotiates a resolution or defends a legal action, the beneficiary is not responsible for any expenses in connection with excessive fees or charges for services not medically necessary. The same section states further that "The Plan Administrator or his agent shall have sole control over the conduct of the defense, including the determination of whether the claim should be settled or an adverse determination should be appealed."

The clear language of this section is that the Employer is responsible for resolving a hold harmless matter, given the written consent of the Beneficiary. However, the Trustees note that the Plan also states that charges involving hold harmless matters are "a joint problem requiring a mutual effort for solution." Therefore, the Trustees find that the Employer may request such action by the Beneficiary. but may not impose a requirement that the Beneficiary first "[c]ontact the provider on your own in an attempt to resolve this matter."

On the second issue, the Trustees find that the Employer's requirement that an Employee notify the Employer within 90 days of the start of a billing by a provider involving a hold harmless issue is reasonable (absent extraordinary circumstances). The Trustees note that the Employer needs time to negotiate a resolution and prepare a defense in any legal action commenced by the provider, and may be prejudiced in this attempt by the Employee's failure to provide prompt notification. (See RODs 88-452 and 88-076, copies enclosed herein.)

On the third issue, the Trustees find that the Employer may limit the use of providers who require up-front payment, in hold harmless matters, in the manner described, provided the Employer is making timely payments of health benefits, and the Employer should consider also that many Employees and Pensioners may live in rural areas, with limited access to practitioners, and may lack reasonable access to alternative providers. (See ROD 84-484, copy enclosed herein.)

On the fourth issue, in ROD 81-697, the Trustees found that a two-year time limitation on initial submission of claims to be reasonable (absent extraordinary circumstances), and the Trustees find the same in this case.

#### Opinion of the Trustees

The Employer may not, in establishing hold harmless procedures, impose a rule that requires a Beneficiary to first contact the provider in an attempt to resolve the matter "on your own," but it may request this step of its Beneficiaries; it may set a 90 day limit for the Employee to submit a balance due billing involving a hold harmless matter to the Employer (absent extraordinary circumstances); it may limit, in the manner described in the letter, the use of hold harmless protection for the Beneficiary against providers who require up-front payment, provided the Employer is making timely payments of health benefits; and it may establish a two-year time limit for the initial filing of claims (absent extraordinary circumstances).

Dear UMWA Employee and Retirees:

Reference: Hold Harmless Procedure

On June 19, 1992, you were advised of the Hold Harmless procedure that had been established relating to Article XX, section (12) of the 1988 Wage Agreement. The purpose of this letter is to re-communicate the procedures you must follow in order to be held harmless from excessive charges or for services not medically necessary. The procedure is as follows:

- \* Retain all Explanations of Benefits (EOBs) from (Insurance Carrier) until you are sure all bills have been paid under the Plan.
- \* If you receive a balance due bill from a provider for charges not paid by the Plan which were excessive or medically unnecessary, contact the provider on your own in an attempt to resolve this matter. Ask the provider to accept the payment under the Plan as payment in full.
- \* If you are unsuccessful in resolving this matter you must bring your EOB and the balance due bill to the claims processor at your location within 90 days of receipt of a balance due statement from the provider. Failure to notify the Company within this specified period of time may prevent us from holding you harmless.
- \* After you complete a Hold Harmless agreement, (Insurance Carrier), our claims administrator, will contact the Provider in an attempt to negotiate a resolution of this matter on your behalf.
- \* While (Insurance Carrier's) negotiations are underway, do not pay any portion of the charge in question or discuss the matter with the provider. If you do pay the charges during the negotiations, we will not be able to protect you under Hold Harmless procedures.
- \* If the negotiations with the provider are unsuccessful, and the provider will not accept previous payment as payment in full, you will be notified. You should notify the claim's processor at the mine office immediately if the provider turns the bill over to a collection agency.
- \* Should you visit a provider who requires payment in full before services are rendered, you will be Held Harmless if the charges are excessive or the services are medically unnecessary. However, once you become aware of the provider's billing practices, you may not be Held Harmless in the future if you continue to use this provider and pay in advance.
- \* Claims initially submitted to the Plan for payment that are more than 2 years after the date of service may not be paid by the Plan.

It is our sincere desire to comply with the hold harmless provisions of the UMWA Employer Benefit Plan. These procedures have been established so that we may better assist you. We can only do this with your cooperation.