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Opinion No. 06-126

Interpretation of Tenn. Code Ann. § 50-6-204(a)(1)

QUESTION

Does Tenn. Code Ann. § 50-6-204(a)(1) require that an attending physician personally see a workers' compensation patient on every visit to the attending physician's office?

OPINION

No. Tenn. Code Ann. § 50-6-204(a)(1) does not require that a workers' compensation patient's attending physician see him or her on every visit to the physician's office.

ANALYSIS

Section 50-6-204(a)(1) governs the procedures and requirements for an employer to provide, and for an injured employee to receive, medical treatment and care for work-related injuries under the workers' compensation law. This section provides as follows:

(a)(1) The employer or the employer's agent shall furnish free of charge to the employee such medical and surgical treatment, medicine, medical and surgical supplies, crutches, artificial members, and other apparatus, including prescription eyeglasses and eye wear, such nursing services or psychological services *as ordered by the attending physician* and hospitalization, including such dental work made reasonably necessary by accident as defined in this chapter, as may be reasonably required; provided, that within thirty (30) days after examination or treatment of an employee, a physician shall, upon request, furnish to the employer or to the employer's insurer and to the employee or the employee's attorney a complete medical report at a charge not to exceed ten dollars (\$10.00) for reports twenty (20) pages or less in length and twenty-five cents (25¢) per page for each page copied after the first twenty (20) pages, as to the claimed injury, its effect upon the employee, the medical treatment prescribed, an estimate of the duration of required hospitalization, if any, and an

itemized statement of charges for medical services to date. If an employer or an insurer has not previously requested copies of such records from a physician or hospital, then an attorney for an employer may request such records under this subdivision (a)(1).

Tenn. Code Ann. § 50-6-204(a)(1) (2006) (emphasis added).

Your question states that the Department of Labor and Workforce Development (“Department”) has interpreted Tenn. Code Ann. § 50-6-204(a)(1) as requiring that an attending physician personally see each workers’ compensation patient on every visit to the physician’s office. The question also notes that physicians providing medical care under the workers’ compensation law commonly employ physician assistants, advance practice nurses and orthopedic physician assistants to provide services to their patients. As you correctly note, these allied health practitioners are licensed as allowed by Tennessee law and practice under the supervision, direction and ultimate responsibility of the attending physician. You state that the Department’s interpretation has created problems for physicians, resulting in inefficient use of their time as well as in significant scheduling problems.

The question posed is one of statutory interpretation, requiring us to determine whether the Department’s interpretation of § 50-6-204(a)(1) is reasonable. In construing statutes, we must “ascertain and give effect to the legislative intent without unduly restricting or expanding a statute’s coverage beyond its intended scope.” *Wilson v. Johnson County*, 879 S.W.2d 807, 809 (Tenn. 1994). When the statute is unambiguous, legislative intent is determined from the statute’s plain and ordinary meaning of the language used. *Freeman v. Marco Transp. Co.*, 27 S.W.3d 909, 911 (Tenn. 2000). The statutory language must be “read in the context of the entire statute, without any forced or subtle construction which would extend or limit its meaning.” *National Gas Distribs. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991).

We note that, in Tennessee, “interpretations of statutes by administrative agencies are customarily given respect and accorded deference by courts.” *Riggs v. Burson*, 941 S.W.2d 44, 50-51 (Tenn. 1997) (citing *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 844 (1984)). Commonly known as “*Chevron* deference,” under this principle courts will not “substitute its own construction of a statutory provision for a *reasonable interpretation* made by the administrator of an agency.” 467 U.S. at 844 (emphasis added).

Applying the above principles of statutory interpretation, we conclude that Tenn. Code Ann. § 50-6-204(a)(1), which is unambiguous, does not require that an injured worker’s attending physician see him or her on every visit to the physician’s office. The statute’s plain text does not mandate that an attending physician personally see (or examine) a workers’ compensation patient on every visit to his or her office.¹ Section 50-6-204(a)(1) requires, in relevant part, that an injured

¹We note, however, that Tenn. Code Ann. § 50-6-204(d)(1) does require that, when requested by an employer, a physician personally examine an injured employee. Section 50-6-204(d)(1) provides as follows: “The injured employee must submit to examination by the employer’s physician at all reasonable times if requested to do so by the

worker's employer furnish "free of charge to the employee" the following: "medical and surgical treatment, medicine, medical and surgical supplies, crutches, artificial members, and other apparatus, including prescription eyeglasses and eye wear, such nursing services or psychological services *as ordered by the attending physician.*" *Id.* (emphasis added). In addition an attending physician may order these treatments or services "as may be reasonably required." *Id.*

Section 50-6-204(a)(1) only requires that the medical services provided be *ordered* by the attending physician. To order means "to request or direct that (something) be supplied, done, [or] carried out." *Webster's New World College Dictionary* 1015 (4th ed. 2001). Thus, so long as the medical treatment specified in § 50-6-204(a)(1) is requested or directed by the attending physician, he or she need not personally see an injured worker every time the worker visits the physician's office. Because physician assistants and orthopedic physician assistants render services "under the supervision, direction, and ultimate responsibility of a licensed physician accountable to the Board of Medical Examiners," Tenn. Comp. R. & Regs. 0880-3-9-.02; 0880-10-.02, any medical services they may recommend or provide are therefore ultimately ordered by the attending physician. The same is true for nurse practitioners. *See* Tenn. Comp. R. & Regs. 0880-6-.02. In our view, the requirement in Tenn. Code Ann. § 50-6-204(a)(1) that the medical services be ordered by the attending physician is consistent with the regulatory protocols established by the Tennessee State Board of Medical Examiners.

employer, but the employee shall have the right to have the employee's own physician present at such examination, in which case the employee shall be liable to such physician for such physician's services." This provision is triggered when the employer wishes to obtain a medical report for the purpose of establishing a medical impairment rating for the employee's work-related injury. Because the statute's plain text explicitly requires that a physician examine the injured worker, the physician could not delegate this function to a licensed allied health practitioner working under his or her supervision.

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