

FLAHIVE, OGDEN & LATSON

ADVISORY NO. 7

TOPIC: Medical Fee Guidelines

DISCUSSION: On January 11, 1991, the Board of Commissioners of the TWCC adopted medical and pharmaceutical guidelines, on an emergency basis, which will be effective for 90 days beginning on February 1, 1991. During that 90 day period, the Commissioners, along with the help of a Medical Advisory Committee (to be appointed), will review and analyze the emergency guidelines with the view of adopting final guidelines effective May 1, 1991, to control medical and pharmaceutical fees until reappraisal is required in 1993.

Following the original proposal of the guidelines in the Texas Register, the health care industry challenged the adequacy of the fees in the public meeting before the Commission. The comments received basically suggested that the fees were too low to keep qualified health care providers in the workers' compensation health care delivery system. These suggestions were made despite the fact that comparison studies showed that the average cost of medical care in Texas is significantly higher than that allowed in comparable states.

As a result of the comments received at the public meeting, the TWCC staff recommended relative value scale fee increases for numerous medical services contained in the proposed guidelines.

Even with these increases, Commissioners representing employees on the TWCC expressed dissatisfaction with the final result and fear that injured employees would be unable to obtain quality health care. After marathon discussions and backdoor negotiations on January 10th and 11th, the Commissioners finally voted 4-0 to adopt the guidelines after accepting amendments to further increase all conversion factors in the proposed guidelines. As a result, it would appear that health care costs in the Texas workers' compensation system will continue to exceed the amounts allowed for the same services in comparable jurisdictions.

Furthermore, the action by the Commissioners could undermine the recent decision by the SBI to freeze premium rates for workers' compensation carriers due to the planned implementation of the new law. Testimony was received by the SBI during the recent rate hearings concerning the proposed guidelines. The factual basis for the SBI decision to freeze rates may now have been altered and the SBI should now reconsider its stance on the rate freeze.

A comparison of the medical fee conversion factors is as follows:

<u>Service</u>	<u>1988</u>	<u>Proposed</u>	<u>New</u>
Medicine	\$ 7.90	\$ 6.75	\$ 7.09

Surgery	205.64	185.00	194.25
Anesthesia	41.48	37.00	38.85
Radiology	2.91	1.75	1.84
Pathology	1.90	0.90	0.95

In addition to the "new law" impact of recent TWCC action, the Executive Director announced that pursuant to his authority under the "old law", he will adopt the identical guidelines on an emergency basis to control "old law" fees effective February 1, 1991. Thus, beginning February 1, 1991, the new guidelines will be effective for both old law and new law cases. Until then, old law cases will be governed by the 1988 guidelines. As far as new law cases arising between January 1, 1991, and January 31, 1991, are concerned, there are no guidelines in effect and the amount of fees will simply be governed by "fair and reasonable" concepts.

Medical services will accordingly be reimbursed as follows:

<u>Date of Injury</u>	<u>Services Rendered</u>	<u>Guideline</u>
pre 1/1/91	through 1/31/91	1988
pre 1/1/91	after 2/01/91	New
post 1/1/91	through 1/31/91	None
post 1/1/91	after 2/01/91	New

Finally, it should be noted that the Commissioners did vote to delete all CPT codes making reference to thermograms and thermography from the medical fee guidelines.