

## ADVISORY NO. 212

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### TOPIC: HOSPITAL FEE GUIDELINES

On February 13, 1997 the Texas Supreme Court denied the TWCC's motion for rehearing on its earlier denied application for writ of error in the Hospital Fee Guidelines case. This means that the lower trial and appellate court decisions which invalidated the Guidelines on procedural grounds have now become final.

Attached is a February 24, 1996 letter from TWCC Executive Director Todd Brown regarding the handling of medical fee disputes involving acute care inpatient hospital services in light of the final decision. **This letter is likely to generate a large number of provider resubmissions of hospital bills to carriers, requests for medical dispute resolution, and ultimately medical dispute hearings before SOAH where hospital fees were cut pursuant to the Guidelines.**

The TWCC appears to have elected to deal with the still unresolved questions of fees for hospital services by simply letting them be litigated administratively on a case by case basis. It is not clear yet what standards the Medical Review Division will use in evaluating hospital fee disputes once they have to start considering them. Carriers, adjusters and peer review companies need to be ready for these resubmitted bills, requests for medical dispute resolution and administrative hearings and should immediately develop a plan to deal with them.

As indicated in the letter, the Executive Director had previously directed providers not to file requests for medical dispute resolution where the sole issue was the validity of the Hospital Fee Guidelines and where the services in question were provided on or after December 6, 1995. He now advises providers that the TWCC Medical Review Division will now accept requests for medical dispute resolution of resubmitted bills for such services providing the following conditions are met:

1. The **bill must be resubmitted first** to the carrier who is required to review it as it would any other bill. If there is a denial or reduction the provider or claimant may submit a request for medical dispute resolution. Thus any hospital who wishes to challenge fees previously cut pursuant to the Guidelines must resubmit the bill and first give the carrier an opportunity to reconsider its initial reduction. If the provider is dissatisfied with the carrier action on the resubmitted bill, it may then request medical dispute resolution.
2. If the original bill covered care provided on or after **December 6, 1995 through May 31, 1996**, the request for medical dispute resolution must be filed no later than **May 31, 1997**. Services provided on or after June 1, 1996 will be subject to the requirement of TWCC Rule 133.305 that requests for medical dispute

resolution be made within a year of the date the service in question was performed. The TWCC is in effect extending the one year filing period for services provided up to May 31, 1996 because of its earlier refusal to accept filings for hospital fee disputes pending the outcome of the legal battle over the validity of the Guidelines and because it is requiring resubmission of the bills to the carriers first.

3. The dispute must only involve **the amounts to be paid for the services performed, where there was a reduction under the fee Guidelines**, for the provider to get the benefit of the extended period for requesting medical dispute resolution. Issues of whether certain services were reasonable and necessary or were required to be preauthorized, and even fee issues involving "medical justification for a deviation from the Guideline amounts" are required to be raised within a year of the date of service.
4. The request for medical dispute resolution "must be otherwise in accordance with" TWCC Rule 133.305. The provider must submit the documentation required by the rule as well as show that the bill was submitted to the carrier at least 60 days earlier.

Flahive, Ogden & Latson will monitor developments at the Commission regarding this issue and will issue further advisories with respect to management of this very phenomenal medical expense exposure.

Until directed otherwise by Commission Advisory, Appeals Panel Decision or State Office of Administration determination, we recommend that we refuse requests for the reimbursement of any outstanding balances previously paid under the old guidelines. We would recommend that we continue to use those guidelines as a fair and reasonable standard until directed otherwise.